



Dorset Council

Children's Services

Code of Conduct for the issue of fixed penalty notices

1. Rationale

In order for children and young people to take full advantage of their educational opportunities, regular and punctual attendance at school is both a legal and essential requirement.

As absence is so often a symptom of wider issues a family is facing, schools, trusts and Dorset council will always work together with partners to understand the barriers to attendance and provide support. Families may access support and advice via their child's school, Dorset Council and/or partner agencies to overcome barriers which may be preventing their child's regular attendance at school.

Where support is not successful, or is not engaged with, the law protects pupils' right to an education. Where a child is a registered pupil at a school and their parent¹ fails to ensure their regular attendance/punctual arrival, an offence in law occurs in cases where the absences/late arrivals are not authorised by the school.

Section 23 of the Anti-Social Behaviour Act 2003 added two new sections (section 444A and 444B) into the Education Act 1996. Penalty notices were introduced as a potential alternative to prosecution under section 444. The issuing of penalty notices is governed by:

- The Education (Penalty notices) (England) Regulations 2007
- The Education (Penalty notices) (England) (Amendment) 2013

¹ All those defined as a parent under Section 576 Education Act 1996 are parents for the purpose of these provisions. This means that all natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and any person who, although not a natural parent, has care of a child or young person. Having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law. Parent means each and every parent coming within the definition (whether acting jointly or separately) and should not be taken to mean that provisions only apply to parent in the singular. As with prosecutions under Section 444 Education Act 1996 a penalty notice may be issued to each parent liable for the offence.

Local authorities each have the responsibility for developing a local code of conduct, along with all relevant partners, which clearly outlines the terms under which penalty notices may be issued within their jurisdiction. The Dorset Code of Conduct has been agreed between the following parties:

- Dorset Council representatives (Inclusion Service Manager, Inclusion Team Managers, and Inclusion Leads)
- Representatives from Head Teachers of Dorset Schools
- Legal Services commissioned by Dorset Council
- Dorset police were also invited to be involved

2. Authorisation to issue penalty notices

Penalty Notices may be requested by Head Teachers and will be issued by Dorset Council. Primary responsibility for administering the issuing of penalty notices rests with the Local Authority (LA). Dorset Council will administer the scheme using any funds obtained as a result of issuing penalty notices.

Head Teachers (and Deputy Head Teachers and Assistant Head Teachers authorised by the Head Teacher), and police are all able to issue penalty notices under the Act, although there is no requirement for them to do so. In Dorset it has been agreed that the Police and Head Teachers will not issue penalty notices to parents.

3. Circumstances in which a parent of a registered pupil at a Dorset school/academy may be issued with a penalty notice

Penalty notices may only be issued in relation to the unauthorised absence of a pupil of statutory school age. A pupil will be of statutory school age from the beginning of the school term immediately following the child's 5th birthday. A pupil ceases to be of statutory school age on the last Friday in June of the school year in which they turn 16.

The Department for Education have made clear, within their updated guidance 'Working together to improve school attendance' (May 2022), that legal action in respect of irregular school attendance should only be considered where support has been offered but has either not been engaged with or has not been successful. When used, it should be clear that it will change parental behaviour and in making the decision to use an intervention, headteachers and local authority officers should have regard to their safeguarding duties as set out in the statutory guidance on Keeping Children Safe in Education.

IMPORTANT: In Dorset, parents will only be issued with **one** penalty notice per parent for each child during any 12-month period. Should a pupil have further unauthorised absences/avoidable lateness recorded, following the issue of a penalty notice/s, schools

may request that cases be considered for direct prosecution under section 444 Education Act 1996.

Where a pupil's absence record meets one of the criteria mentioned below, Head Teachers must exercise their discretion in deciding whether or not they request for a penalty notice to be issued to parent/s. Dorset Council will only issue penalty notices in line with this Code of Conduct where:

- the Head Teacher requests that a fine/s be issued to parent/s;
- it is clear that one of the relevant criteria and associated coding of absence within this Code of Conduct has been met;
- parents have been appropriately warned of the risk of receiving penalty notice fines.

In Dorset, Head Teachers may request that a penalty notice be issued to the parent/s of a pupil where one of the following criteria may be evidenced:

3.1 Leave, for the purposes of a holiday, during term time:

- 3 or more consecutive school days (6 or more sessions) of unauthorised absence (G coded within the school's register) are recorded during the first ten days **from the date on which the school reopens at the start of a new academic year in September**;
- 5 or more consecutive school days (10 or more sessions) of unauthorised leave (G coded within the school's register) are recorded **AND** where the attendance level in the 10 school weeks immediately preceding the unauthorised leave falls below 90%, with the majority of absences within that period being recorded as unauthorised (O, U and/or G coded);
- Where a parent fails to make an application for leave during term time **AND** where a pupil has 5 or more consecutive school days (10 or more sessions) of unauthorised absence recorded (G coded within the school's register). **N.B. Previous attendance patterns will not be considered in such cases.**

Parents must be duly warned, in writing under separate cover, of the potential legal ramifications should they choose to remove their child from school for the purpose of a holiday. Where a parent fails to make an application for leave and takes their child on holiday during term time, schools must notify the parent/s of their intention to code the absences as unauthorised (using the G code) and request that penalty notices be issued.

Schools/ Academies must reference their use of penalty notices within their Attendance Policy, which must be available to all parents/carers online and/or in hard copy within the school, accessible to parents to read. Schools should remind parents of the protocol regarding leave of absence during term time.

A leave of absence is granted entirely at the headteacher's discretion. The decision to request a fixed penalty notice for an unauthorised leave of absence belongs to the Head Teacher and any queries related to the issuing of a fixed penalty notices will be directed to the school who have made the decision. Upon receiving an application for leave during term time, Head Teachers should consider whether the reasons for the leave may be considered exceptional circumstances. If the circumstances are not considered to be exceptional, the absences must be recorded as unauthorised, using the G code.

Headteachers must request a penalty notice for leave of absence within two weeks of the child returning to school. Penalty notices requested for leaves of absence after this time will not be processed. This will help to issue penalty notices in a timely manner. When making a request for a penalty notice please ensure that the request is for the parent or parents with responsibility for the pupil's attendance. The decision to request a penalty notice for one or both parents should be considered on a case-by-case basis by Head Teachers.

The penalty notice will not be issued without the following documentation being attached to the request:

- The parental request for leave in term time
- Evidence of the school's response unauthorising the request
- Registration certificate signed and dated by the Head Teachers
- Where the parents did not request a leave absence, a letter from the Head Teacher to the parent informing them that their child has had a period of unauthorised absence

3.2 Other unauthorised absence/lateness:

- Where a pupil has a total of 5 or more days (10 or more sessions) of unauthorised absence recorded across a 12 school week period and the absences have been coded using either O, U and/or G codes;
- Where a pupil regularly arrives to school late (after the attendance register has closed and where a U code has been entered into the register in line with the school's published attendance policy) **AND** where no valid reason is provided for the lateness, meaning that it could have been avoided. Weather conditions and transport disruptions should be taken into consideration.

Parents should engage in meetings to discuss/resolve concerns around their child's attendance, as failure to do so may lead to cases being considered appropriate for legal action. Parents must have been issued with a Legal Action Warning Letter, under separate cover, and provided with opportunities to inform the school of any factors which may be impacting their ability to ensure their child's regular attendance at school. Legal Action Warning Letters are valid for 18 calendar weeks. Where parents have not been adequately warned of the risk of being issued with penalty notices, requests may not be actioned/penalty notices may subsequently be withdrawn.

3.3 Pupils subject to a suspension/exclusion:

When a child is suspended/excluded from school, the parent/s will be responsible for ensuring that their child is not found in a public place during normal school hours on the first five days of each and every suspension or permanent exclusion². The suspending/excluding school must have informed the parent/s, in writing, of their duty in this regard and warning that a penalty notice could be issued.

Where a pupil is present in a public place with no valid reason during the first five days of a suspension/exclusion, Dorset Council would be responsible for issuing a penalty notice if the school is in their area. Where the child has been permanently excluded, the issuing of penalty notices would be actioned by the local authority in which the child resides.

4. Payment of Penalty Notice

The penalty for each parent issued with a penalty notice is £120 for each child, however if paid within 21 days of the issue of the notice, the amount payable is reduced to £60. All penalties are paid to Dorset Council and the revenue generated is retained to administer the system and contribute towards s444 prosecutions, in cases where parents choose not to pay their penalty notice fine/s. Where penalty notices are not paid in full by the 28th day deadline stipulated within the penalty notice, Dorset Council will consider whether to proceed to prosecution for the relevant offence under section 444 Education Act 1996 or whether there is justifiable cause to withdraw the notice.

IMPORTANT: There are no payment plan options available in respect of penalty notice fines issued under this Code of Conduct. Fines must be paid in full by the relevant payment deadlines. There is no statutory right of appeal against the issuing of a penalty notice.

5. Withdrawal of a penalty notice

A penalty notice may be withdrawn by the local authority named in the notice under the following circumstances:

- Where the local authority deems it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where the available evidence does not support the issuing of a penalty notice;
- It appears to the local authority that the notice contains material errors; or
- Where it has been issued to the wrong person named as the recipient.

² Section 103 Education and Inspections Act

6. Co-ordination between the local authority and its local partners

Dorset Council and its local partners will review this Code of Conduct annually unless local/national needs require otherwise.