

15<sup>th</sup> May 2014

Dear Headteacher / Principal

**Re: School Attendance - Penalty Notice Code of Conduct for Unauthorised Absence from School**

Please find enclosed a copy of the final Penalty Notice Code of Conduct for Unauthorised Absence from School, together with the necessary documentation for requesting action by the Education Welfare Service (EWS). These came into effect on 1<sup>st</sup> May 2014.

The EWS is one of the bodies that may issue penalty notices. The Thurrock EWS will accept requests from schools for a penalty notice to be issued. The completed request should be sent to Frank Holohan, Pupil Tracking and Child Employment Officer, Civic Offices, New Road, Grays RM17 6SL or via e-mail to [EWS@thurrock.gov.uk](mailto:EWS@thurrock.gov.uk).

It is a requirement that parents be given at least fifteen days warning of an impending penalty notice in order to give them an opportunity to improve their child's attendance, except where the penalty notice is in respect of unauthorised leave of absence during term time.

Each request for a penalty notice to be issued must be accompanied by an up to date pupil attendance record (PAR), including a history of changes to the pupil's PAR, a copy of the warning letter and any other relevant supporting documents.

In circumstances where a penalty notice is unpaid, the local authority will progress the matter to court and a member of school staff may then be required to produce a statement or attend court to give evidence.

Further advice about the regulations governing the issuing of penalty notices as well as specific support with individual cases is available from the EWS.

Yours faithfully



Colin Jones  
Admissions, Adult Education, Education Welfare Service & Music



# Penalty Notice Code of Conduct for Unauthorised Absence from School

## 1. Introduction

1.1. This is the Code of Conduct for issuing Penalty Notices in cases of unauthorised absence from any school or alternative provision in Thurrock. It is intended to comply with the relevant law, to be easy to use and to ensure that Penalty Notices are administered fairly across the Local Authority.

1.2 It applies to all schools within Thurrock, including academies, free schools and establishments where alternative provision is arranged under Section 19 of the Education Act 1996. It is effective from 1 May 2014

1.3 Each Local Authority must draw up a Code of Conduct to ensure consistency in the issuing of Penalty Notices within its area. Penalty Notices must also be issued in accordance with the Human Rights Act 1998 and the Equality Act 2010. All prosecutions are brought by the Local Authority. The Education Welfare Service will be able to clarify queries.

## 2. Background

2.1 Regular and punctual attendance at school is a legal requirement for pupils and is essential if pupils are to maximise the opportunities available to them. It is a parent's responsibility to ensure that their child attends regularly.

2.2 An offence occurs:

- If a parent fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school; or
- An excluded child is found in a public place, without their parent, during the first 5 days of a formal exclusion from school.

2.3 Section 576 of the Education Act 1996 defines "parent" as *"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 means that person with whom the child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a parent in education law."*

2.4 Schools have a range of strategies available to them to encourage good attendance. The Education Welfare Service investigates cases of regular non-attendance from school. The Local Authority is required by law in some circumstances to take legal action to improve attendance and as a last resort may prosecute.

2.5 A Penalty Notice is an alternative to prosecution and may be used to address problems with non-attendance before they become entrenched.

### **3. Compliance with the Code**

3.1 Anyone issuing a Penalty Notice in respect of school attendance in Thurrock must do so in accordance with this Code. Failure to do so may result in the Penalty Notice being invalid and ultimately withdrawn.

### **4. Circumstances in which a Penalty Notice may be issued**

4.1 Penalty Notices can only be issued in cases of unauthorised absence, and in one or more of the following circumstances. In the first three cases a letter warning that a Penalty Notice could be issued must be sent first.

- At least 19 sessions of unauthorised absence are recorded against the pupil's name within the previous 12 weeks. One session is a half day.
- The parent is not willing to take responsibility for securing their child's attendance and has not co-operated with any proposed voluntary or supportive measures.
- The Education Welfare Officer believes that issuing a Penalty Notice could avoid further absence, in the early stages of an existing case, for example, where a parent continually fails to provide an explanation for a pupil's absence when requested to do so.
- If a Head Teacher does not authorise a request from a parent for term time leave of absence and the parent takes the leave. In such circumstances, the school must advise parents of this and how the action conforms to the school's attendance policy. There must be a least 10 sessions of unauthorised term time leave of absence taken in a six week period. No warning letter will be given.
- Where a pupil of compulsory school age who has been excluded from school, either for a fixed period or permanently is found to be present in a public place during school hours in the first five days of the exclusion, without reasonable justification. The parent must have been notified in writing by the school at the time of the exclusion of this and the days to which it applies.

## **5. Who can issue a Penalty Notice?**

5.1 In accordance with this Code of Conduct a Penalty Notice will only be issued by the following individuals:

- Authorised Local Authority officers – in Thurrock, these are members of the Education Welfare Service.
- Head Teachers, in respect of pupils registered at their school may make application to the Education Welfare Service to issue.
- Deputy and Assistant Head Teachers, as authorised by their Head Teachers may do the same.
- A Police Officer or Police Community Support Officer (PCSO) in the case of an excluded pupil being in a public place.

## **6. Procedure for Issuing a Penalty Notice**

6.1 Schools will adopt a policy that ensures parents receive an appropriate warning in relation to *any* unauthorised absence or persistent lateness.

6.2 Prior to issuing a Penalty Notice in the majority of cases it is a requirement that a final warning letter be sent to the parent warning that in the event attendance does not improve a Penalty Notice will be issued.

6.3 Attendance will be monitored and if there is no satisfactory improvement in the levels of attendance a Penalty Notice will be issued.

6.4 When issuing a Penalty Notice the authorised individual must ensure that there is sufficient evidence for a prosecution under section 444(1) or 444(1A) of the Education Act 1996. For the avoidance of doubt, a Penalty Notice issued under the provisions of this Code will be sufficient for a prosecution under, at the very least, s444(1) of the Education Act 1996.

6.5 A Penalty Notice can be issued in respect of each child and to each parent in relation to each instance of unauthorised absence.

6.6 Penalty Notices will only be sent by first class post and not as 'on the spot' action. This will ensure all evidential requirements are in place and safeguard officers.

6.7 If a Penalty Notice is issued to a parent whose child lives outside Thurrock a copy of the notice must be sent to the Local Authority where they live.

6.8 Once a person is issued with a Penalty Notice they must pay a fine. This is set by regulation at £60 if paid within 21 days, rising to £120 if paid after 21 days but within 28 days.

6.9 Penalty Notices must be paid in full. Instalment payment is not acceptable.

6.10 If the recipient fails to pay the fine within 28 days the Local Authority will prosecute for the offence to which the Notice applies, save for in very limited circumstances when the Notice may be withdrawn.

## **7. Circumstances in which a Penalty Notice may be withdrawn**

7.1 A Penalty Notice may be withdrawn by the Local Authority in any case in which the authority determines that:

- It has not been issued in accordance with the Code of Conduct.
- It ought not to have been issued, or
- It ought not to have been issued to the person named as the recipient
- It appears to the Authority that the Notice contains material errors.
- The Penalty Notice has not been paid in full after 28 days of issue, but it is not appropriate to prosecute the recipient for the offence in connection with which the Notice was issued.

7.2 The decision to withdraw the Notice must be in writing.

## **8. Non-payment of Penalty Notices**

8.1 If the Penalty Notice is not paid in full by the end of the 28 day period, the Local Authority must either prosecute for the offence to which the Notice applies or withdraw the Notice.

8.2 The prosecution is not for non-payment of the Notice, but is a prosecution for irregular school attendance under section 444(1) or 444(1A) of the Education Act 1996.

8.3 In the event of a prosecution following non-payment, the school will forward to the Education Welfare Service, at the following address: Frank Holohan, Pupil Tracking and Child Employment Officer, Thurrock Council, Civic Offices, New Road, Grays, Essex RM17 6SL, a bundle containing the following documents:

- Relevant correspondence/warning letters;
- Final warning letter (if applicable)
- Certified Extract and Attendance Records covering the relevant period
- Witness Statement/Summary of Facts

8.4 In the event of a 'not guilty' plea school staff may be required to give evidence in court.

## 9. General points

9.1 Schools must apply to the Education Welfare Service to issue a Penalty Notice on its behalf.

9.2 Applications must include a copy of the initial warning letter and the Pupil Registration certificate, including the history of changes, pertaining to the Penalty Notice period.

9.3 No parent will be issued with more than **two** separate Penalty Notices resulting from unauthorised absence of an individual child in any twelve months period, except when an excluded child is found in a public place, when there is no restriction.

9.4 For Penalty Notices issued in the case of unauthorised leave of absence, or in excess of the period determined by the Head Teacher, clear documentary evidence must be provided that demonstrates that the parent understood that permission had not/would not be given.

9.5 There are no restrictions on the number of times a parent may receive a formal warning that a Penalty Notice may be issued.

9.6 It is not appropriate to issue a Penalty Notice if this conflicts with other legal action already being taken or, in most cases, where the pupil is in the care of the Local Authority.

9.7 There is no statutory right of appeal against the issuing of a Penalty Notice. Parents may make written representations to Wendy Springham, Lead Officer for Education Welfare, Education Welfare Service, Civic Offices, New Road, Grays, Essex RM17 6SL setting out reasons why a Penalty Notice should not have been issued.

9.8 Where a Police Officer or Police Community Support Officer stops an excluded pupil in a public place during the school day and the pupil has no reasonable justification to be there a request can be made by the officer for the Education Welfare Service to issue a Penalty Notice. The Education Welfare Service will establish, as soon as practicable, whether the relevant criteria are met, and if so, will issue the Notice.

9.9 The Local Authority retains sums paid in respect of Penalty Notices, and these go towards the cost of administering the scheme and resulting legal action. In the unlikely event that the Local Authority receives more income from Penalty Notices than it spends on administering the scheme, the excess income must be paid to the Secretary of State.

- Schools will notify the Education Welfare Service of all cases, per term, which met the Penalty Notice criteria but no Penalty Notice was requested and the reasons for not taking any further action.
- Schools will also indicate to the Education Welfare Service whether they intend to take alternative action in any of these cases.

9.10 The Education Welfare Service will maintain a record of all notifications.





Children's Services, Education Welfare Service, Civic Offices, Grays, Essex, RM17 6SL

**EDUCATION WELFARE SERVICE – REQUEST FOR PENALTY NOTICE**

Section 444 Education Act 1996

(Subsection (1) of section 23 of the Anti-Social Behaviour Act 2003)

From  School/Academy

**This form will be used in legal action under the above Act relating to non-school attendance (unauthorised absence) of registered pupil at the school and should be completed by the Headteacher or authorised representative.**

I certify that ..... date of birth ..... year group..... is a registered pupil of compulsory school age, on roll at this school/academy. He/She had unauthorised absence on or between ..... to ..... as detailed in the attached Pupil Attendance Record (PAR).

To the best of my knowledge, the person/s with responsibility as a parent (as defined in the Education Act 1996) for this pupil is/are:

DETAILS OF PARENT / CARER 1						
Title		First Name		Last Name		
Gender		Relationship to child		P.R.	Yes-	
Address						
Post Code		Phone(s)				
DETAILS OF PARENT / CARER 2						
Title		First Name		Last Name		
Gender		Relationship to child		P.R.	Yes-	
Address						
Post Code		Phone(s)				

**Declaration:**

I hereby certify that the information given in this form is true to the best of my knowledge. The information has been extracted from the school's register of attendance – **copy of Pupil Attendance Record (PAR) including tracked changes is attached.**

Dated .....

Signature..... Name (printed).....

Title.....

**Please send this form fully completed to Education Welfare Service, Civic Offices, New Road, Grays RM17 6SL. E-mail EWS@thurrock.gov.uk**

**EDUCATION WELFARE SERVICE**

**(Request for Penalty Notice, Section 105 of The Education and Inspections Act 2006 – an excluded pupil is found in a public place during first 5 days of a formal exclusion)**

I certify that ..... date of birth..... is a registered pupil of compulsory school age at .....school/academy. This pupil was formally excluded from the school on..... The parent/carer was notified of their duty (section 103 of the Education and Inspections Act 2006) at the time of the exclusion, verbally on ..... and by letter (copy attached).

Pupil (name) ..... was found in a public place (at/in venue/road)..... at (time)..... on (date)..... by (name)..... Who is (LA Employee/Police Officer/School Staff) and is willing to give their evidence should the need arise. This is within the first five days of the formal exclusion and deemed to be a public place.

The school's records show the parents/carers to be:

DETAILS OF PARENT / CARER 1						
Title		First Name		Last Name		
Gender		Relationship to child		P.R.	Yes-	
Address						
Post Code		Phone(s)				
DETAILS OF PARENT / CARER 2						
Title		First Name		Last Name		
Gender		Relationship to child		P.R.	Yes-	
Address						
Post Code		Phone(s)				

**Declaration:**

I hereby certify that the information given in this form is true to the best of my knowledge.

Dated .....

Signature..... Name (printed).....

Title.....

**Please send this form fully completed to Education Welfare Service, Civic Offices, New Road, Grays RM17 6SL. E-mail EWS@thurrock.gov.uk**