

**Children's Services, Education Welfare Service**  
**Penalty Notice Code of Conduct for**  
**Unauthorised Absence from School**

For further information or advice,  
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Education Welfare Service

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This booklet provides advice regarding the issuing of penalty notices by the council following the recent high court judgement:-

The Supreme Court ruled against a parent, who had earlier won a legal challenge against a £120 fine for unauthorised absence in a case brought by the Isle of Wight council.

The Department for Education (DfE) stated, "It is right that an individual headteacher has that flexibility to make a decision to ask the local authority to issue a penalty notice for non-attendance." The High Court has ruled that the interpretation of "regular" attendance, at the centre of this long-running dispute, should be decided by the school. The decision makes clear that parents in England can be fined if their children miss school without the agreement of the head teacher, except for reasons such as illness or family bereavement.

Our schools have developed a range of strategies to encourage all their children and young people to ensure good attendance as this will secure the best possible educational outcomes for them. This booklet provides guidance on the work of the Education Welfare Service to support our schools and academies in generating a penalty notice in circumstances under the law where attendance is unauthorised.



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## 10. Appeals

10.1 There is no statutory right of appeal against the issuing of a Penalty Notice. However; the Education Welfare Service may agree to suspend a Penalty Notice for a period of time to allow the school to conduct further investigations if a parent, **within 10 school days** from the date on the Penalty Notice, raises issues of significant gravity that could lead to a legal challenge or affect a subsequent court case.

10.2 If a parent provides evidence to suggest that the absence(s) ought to be authorised; a written request submitting said evidence must be made, **within 10 school days** from the date on the Penalty Notice; to the headteacher to reconsider their decision. Should the headteacher decide to retrospectively authorise the absence(s) the Education Welfare Service must be informed and the Penalty Notice withdrawn. It is expected that this matter should take **no longer than 10 school days** (from the date of the submission) to resolve and the school must liaise with the EWS during this period.

10.3 Parents who believe the Penalty Notice has been issued outside of the Code of Conduct may, **within 10 school days** of the date on the Penalty Notice; make written representation to Principal Education Welfare Officer, Education Welfare Service, Civic Offices, New Road, Grays, Essex RM17 6SL setting out reasons why a Penalty Notice should not have been issued. **Please note: this does not apply to those parents who believe the absence should be authorised (see point above).** The parent will be notified of the outcome in writing, within 10 working days of the submission, and a copy sent to the school.

## 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 (where appropriate) and the Pupil Attendance Record pertaining to the Penalty Notice period. Schools must be prepared to provide a copy of the Pupil Attendance Record showing all tracked changes if requested.

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

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

9.5 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.

9.6 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.

9.7 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.

9.8 The Education Welfare Service will maintain a record of all applications and outcomes.

## 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 September 2017**.

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 school 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 is available to investigate cases of regular non-attendance from school. The local authority is required by law in some circumstances to take statutory action to improve attendance and as a last resort may prosecute.

2.5 A Penalty Notice is an alternative to prosecution and offers parents the opportunity to discharge their responsibility for the period of non-attendance by payment of a penalty rather than by prosecution through the Criminal Court. The use of a Penalty Notice should be considered at the earliest opportunity; if it is believed it will address the non-attendance before it becomes entrenched.

### 3. Compliance with the Code

3.1 Penalty Notices issued in Thurrock must comply 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

#### Irregular Attendance

4.1 Penalty Notices can only be issued in respect of unauthorised absence, and must meet the following criteria:

- At least **12** sessions of unauthorised absence are recorded against the pupil’s name within a period of **120** available sessions (one session is a half day).

### 8. Non-payment of Penalty Notices

8.1 If the Penalty Notice is not paid in full by the end of the 28 calendar 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 the school will be required to submit to the Education Welfare Service, at the following address: Education Welfare Service, Thurrock Council, Civic Offices, New Road, Grays, Essex RM17 6SL, a bundle containing the following documents:

- Certified Extract signed by the Head teacher
- Witness Statement signed by the Head teacher
- Pupil Attendance Records (PAR) covering the relevant prosecution period
- Correspondence/warning letters relating to the prosecution period
- Final warning letter (if applicable)
- NPA01 (444 (1)(a) matters)

8.4 In the event of a prosecution and, in particular if the defendant enters a ‘not guilty’ plea; headteachers/school staff must be available to appear as a witness for the prosecution and be prepared to give evidence in court. Therefore, in addition to the documentation in section 8.3 details should be submitted of dates to be avoided.

6.8 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.

6.9 Once a person is issued with a Penalty Notice they must pay a penalty. This is set by regulation at £60 if paid within 21 calendar days (after the date of issue), rising to £120 if paid after 21 calendar days but within 28 calendar days.

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

6.11 If the recipient fails to pay in full within 28 calendar 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 to the person named as the recipient
- It appears to the local authority that the notice contains material errors.
- The Penalty Notice has not been paid in full after 28 calendar 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 confirmed in writing to the recipient of the original notice.

- Parents must first be sent a letter warning that a Penalty Notice could be issued and allowing them 15 school days to evidence a commitment to improving their child's attendance.
- We recommend that the warning letter should be sent before the criteria is met; at 8-10 unauthorised sessions. After 15 days the warning period can be extended further, but this must be communicated to the parent.

The Penalty Notice request must be submitted within four school weeks of the last absent session in the prosecution period. Applications submitted after this date and/or inaccurate or incomplete applications will be rejected and returned to the sender.

### Unauthorised Leave of Absence (term time holiday)

**The Education (Pupil Registration) (England) Regulations 2006 were amended in 2013 so that references to family holiday (including reference to headteachers allowing up to 10 school days for a term time holiday) and extended leave were removed. The amendments make clear that headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Headteachers should determine the number of school days the child may be away from school if the leave is granted.**

4.2 Penalty Notices can only be issued in respect of unauthorised absence, and must meet the following criteria.

- If a headteacher does not authorise a request from a parent for term time leave of absence and the parent takes the leave. **In such circumstances, it is good practice for the school to advise parents of this and how the action conforms to the schools attendance policy.**
- There must be at least 10 consecutive sessions of unauthorised term time leave.

The Penalty Notice request must be submitted within four school weeks of the pupil's return to school following the unauthorised leave of absence. Applications submitted after this date and/or inaccurate or incomplete applications will be rejected and returned to the sender.

## Exclusions

- 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.
- It is expected that the school has challenged the parent at the time and recorded evidence of this will be provided with the Penalty Notice application.

## 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.
- Headteachers, in respect of pupils registered at their school may make application to the Education Welfare Service to issue.
- Deputy and assistant headteachers, as authorised by their headteachers 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 respect of irregular attendance it is a requirement that a final warning letter be sent to the parent allowing the parent 15 school days to evidence a commitment to improving their child's attendance.

6.3 Attendance will be monitored by the school. If, after schools have followed a robust attendance management process, there is no satisfactory improvement in the levels of attendance application can be made for a Penalty Notice to 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, section 444(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 No more than 2 Penalty Notices will be issued to a parent within a 12 month period. If the law continues to be broken around school attendance consideration should be given to immediate prosecution through the Criminal Court under Section 444(1) or 444(1a).

6.7 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 safeguards officers.