

STATUTORY CODE OF CONDUCT
The County Attendance Team
Education, Sufficiency and Access

**Issuing Penalty Notices for unauthorised absence from
schools**

November 2016

1. FRAMEWORK

- 1.1 The purpose of this code of conduct is to ensure that suitable arrangements are in place for the administration of Penalty Notice Fines and that the associated powers are applied consistently and fairly across the local authority area.
- 1.2 The law empowers designated county council officers, head teachers (or their authorised deputy or assistant head), or the police to issue Penalty Notices in cases of unauthorised absence from school for pupils of compulsory school age. This code is for their use.
- 1.3 Penalty Notices can be issued to parents and those with parental responsibility, in the circumstances outlined in this code. In this context, any reference to a “parent” means:
 - natural parents (irrespective of whether they are married)
 - a person who (although not a natural parent) has either parental responsibility for, or care of a child. A person having care of a child lives with and looks after the child, irrespective of their relationship to the child.
- 1.4 Fixed Penalty Notices may be issued in respect of unauthorised attendance of pupils registered in maintained schools, academies, free schools and alternative provision providers in Oxfordshire.

2. RATIONALE

- 2.1 Regular and punctual attendance at school is both a legal requirement and essential for pupils in order to maximise their educational opportunities. An offence may occur where a parent fails to secure a child’s attendance at school at which they are a registered pupil, where the absence is unauthorised.
- 2.2 The issue of a Penalty Notice is one of a range of options available to encourage school attendance. The aim is to support parents to meet their responsibilities in law. These options will be used only where parental cooperation in this process is either absent or deemed insufficient to resolve the presenting problem. Penalty Notices will only be used where there is a reasonable expectation that their use will secure an improvement. They offer a means of swift intervention at an early stage, before attendance problems become entrenched. Whatever action is taken, parents and pupils will continue to be supported by school, with the aid of other agencies if appropriate, to overcome apparent barriers to regular attendance, through a range of intervention strategies.
- 2.3 The aim is:
 - to ensure consistent and equitable delivery of Fixed Penalty Notices
 - to allow schools to maintain good relationships with parents
 - to allow cohesion with other enforcement sanctions and
 - to comply with statutory and other requirements

- 2.4 Whilst not a strict requirement of the Code, it is strongly recommended and anticipated that schools undertake annual training to maintain high standards and to keep up to date with current legislation and guidance. This training is available from the County Attendance Team at reasonable cost.

3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

- 3.1 Before making a Penalty Notice referral, school staff should carry out a thorough investigation of the pupil's circumstances, reasons for absence and have considered referring to other agencies for support. Following such investigations, Head teachers (or those listed at 1.2) are required to determine each case on its individual circumstances taking into account the results of any investigation, any other relevant information, any guidance, this code and of course the law.
- 3.2 A formal warning letter pre-empts the issue of a Penalty Notice. Warning letters (and then Penalty Notices) may only be issued as a consequence of unauthorised absences. Whilst there is no restriction on the number of times a parent may receive a formal warning of a possible Penalty Notice, these should be used sparingly for maximum effect. Warnings should only be used where there is an intention to follow through to enforcement where appropriate.
- 3.3 Use of Penalty Notices should be restricted to two per pupil per academic year. In cases where there is more than one poorly-attending pupil in a family, multiple Notices may be issued. This decision will involve careful consideration and consultation between school and the County Attendance Team.
- 3.4 Penalty Notices may be considered only where there is an unauthorised absence and in the following circumstances:
- where a parent fails to ensure that an excluded pupil is not present in a public place during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification;
 - or there is persistent late arrival at school (after the register has closed) equivalent to 6 sessions or more due to unauthorised absence in a period of no more than 6 weeks;
 - or where a pupil misses 6 sessions or more due to unauthorised absence in a period equivalent to no more than 6 weeks;
 - or a leave of absence of 6 sessions or more in a period equivalent to no more than 6 weeks that has not been approved due to exceptional circumstances during term time (unauthorised holiday).
 - Unauthorised holiday occurs if:
 - parents have not sought permission from the Headteacher before taking their child out of school for a holiday in term time;

- the Headteacher has refused the request but the absence occurs anyway;
 - a pupil has not returned to school by the agreed date with no satisfactory explanation.
 - a penalty notice must be requested within one month of unauthorised absence taking place with the exception of penalty notices required for unauthorised holidays/leave of absence where requests should be made within 5 school days of the child returning to school
- In these circumstances, a factor to consider in all cases will be the pupil's general attendance.

3.5. Penalty Notices should not be issued where:

- a pupil is “Looked After” (as defined by law in the Children Act), as other interventions should be used
- a pupil has attendance above 90% at the time of referral
- it is clear that any legal and other requirements have not been complied with.

3.6. A penalty notice must be requested within one month of the unauthorised absence taking place with the exception of penalty notices required for unauthorised holidays/leave of absence, where requests should be made within 5 school days of the child returning to school

4. PROCEDURE FOR ISSUING PENALTY NOTICES

- 4.1 In Oxfordshire, the County Attendance Team will issue Penalty Notice Fines. If the correct procedure is not followed by schools, the County Attendance Team has the right to refuse a referral, and will remit the matter to school to reconsider. This will avoid the possibility of parents receiving Penalty Notice Fines inconsistently and from more than one source for the same period of unauthorised absence.
- 4.2 Penalty Notice Warning Letters (a warning letter) may be issued by those listed at 1.2.
- 4.3 Parents should be sent a warning letter before a Penalty Notice is issued. The warning letter will indicate the period of time over which improvement in attendance is expected, as otherwise a Penalty Notice will be issued (typically after a further 15 school days).
- 4.4 A warning letter may not necessarily be considered appropriate for multiples of leave of absence for the purpose of a holiday. A judgement should be

made about how best to proceed in these circumstances, with the ultimate decision held with the Local Authority.

- 4.5 Precedent forms must be used to make sure that the content complies with legal requirements. Precedents are available from the Attendance Team and are provided as part of the training (2.4). (The County Attendance Team can issue warning letters at the request of the school at a cost).
- 4.6 Penalty Notice Fines will only be issued by post and never as an on the spot action (e.g. during a truancy sweep). This is to ensure that correct procedures are followed and to ensure staff safety.
- 4.7 Where schools, the police or neighbouring Local Authorities consider the issuing of a Penalty Notice appropriate, this request will be investigated and actioned by the County Attendance Team provided that:
- it is appropriate to do so in the circumstances, which includes that to do so would not conflict with other enforcement sanctions or action being taken
 - there is a reasonable expectation that to issue a Penalty Notice would improve attendance.
 - all necessary information and documentation is provided promptly to the County Attendance Team in order to establish that an offence has been committed.
- 4.8 The County Attendance Team should respond to all requests within 20 working days of receipt, and where all criteria are met, will issue a Penalty Notice

5. PROCEDURE FOR THE WITHDRAWAL OF PENALTY NOTICES

- 5.1 Once issued, a Penalty Notice should only be withdrawn in the following circumstances:-
- proof has been established that the Penalty Notice was issued to the wrong person;
 - that it contains material errors;
 - it ought not to have been issued

6. PAYMENT OF PENALTY NOTICES

- 6.1 Arrangements about how to pay are outlined in Penalty Notice Fine documentation.
- 6.2 Payment of a Penalty Notice Fine discharges any parent's liability for the period specified on the Penalty Notice. This means the parent cannot be prosecuted subsequently for the same period. However the issue of an earlier Penalty Notice Fine (or failure to pay) may be relevant to what action is taken subsequently, should there be repeat absenteeism. This information may be used in any later court proceedings in accordance with relevant legal provisions.

6.3 The fine is £60 if paid within 21 days and increases to £120 if paid between 21 days and 28 days. This amount is prescribed.

6.4 The County Council retains any revenue from Penalty Notices.

7. NON PAYMENT OF PENALTY NOTICES

7.1 Where a fine is not paid after 28 days, the County Attendance Team will consider whether the case should be referred for a prosecution. Any prosecution would be for the period of non-attendance, rather than non-payment of the fine. Various factors should be taken into account before proceeding to court including the pupil's current level of attendance. Ultimately any decision to prosecute is a matter for the Local Authority Chief Solicitor.

8. POLICY AND PUBLICITY

8.1 Where schools have decided to issue Penalty Notices, any Attendance Policies must include information on the issuing of Penalty Notices and this will be brought to the attention of parents.

8.2 The Local Authority will include information about the use of Penalty Notices and other enforcement sanctions in promotional/public information material.

9. REVIEW

9.1 The County Attendance Team will review this code and Penalty Notice use when required or otherwise biannually. The DfE has indicated that new guidance may be issued in due course in the light of the on-going case *Isle of White Local Authority v Platt*. This code pre dates that guidance.

Signed Roy Leach
School Organisation Planning Manager
Oxfordshire County Council

Dated:

This Code of Conduct will be reviewed in 2018