



# **City of London Penalty Notice Local Code of Conduct**

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## DISTRIBUTION

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## 1. General and Background

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. Evidence suggests that absence from school can lead to anti social behaviour and youth crime. Section 23(1) of the Anti-Social Behaviour Act 2003 and Section 103 of the Education and Inspections Act 2006 introduced new powers to Section 444 of the Education Act 1996 that enable local education authorities to issue Penalty Notices. Penalty Notices can be used as an alternative to prosecution under Section 444 and enables parents to discharge potential liability for conviction for that offence by paying a penalty.

- This code of conduct has been drawn up in line with The Education (Penalty Notice) (England) Regulations 2007 and The Education (Penalty Notices) (England) (Amendment) Regulations 2012.

The issuing of all penalty notices will be based on clear threshold criteria which will need to be applied consistently and equitably across the Corporation's schools.

Any person authorised to issue a notice in the City of London must comply with the guidance set out in this code of conduct.

All references to 'school' in this Guidance refers to 'schools and academies' and should be read in conjunction with the City of London's Guidance for Schools on Pupil Leave of Absence in Term Time (currently in draft form).

## 2. Who May Issue a Penalty Notice?

By legislation, the local authority, schools and the Police only have the power to issue Penalty Notices. By local agreement between schools, the police and the City of London, the Education and Early Years' Service (EEYS), or an agency or organisation commissioned by the EEYS are the only agencies administering penalty notices in respect of school-related issues. Schools, academies and the police can request that a penalty notice be issued.

For the purpose of this Code of Practice in which the Local Authority issues all penalty notices, the power to **request** a penalty notice is similarly delegated to deputy and assistant headteachers. The authority to request a penalty notice cannot be delegated to other school staff. In the case of academies, the Principal may delegate this function to his or her deputy or assistant principals.

## 3. Payment of Fines

The amount of the penalty notice to be paid is:

- a. £60 where the amount is paid within 28 days of receipt of the Penalty Notice or
- b. £120 where the lesser fine of £60 has not been paid within 28 days, but where the higher amount is paid within 48 days of receipt

Payment is made to the CLPS AP Team 2, City of London Corporation, PO Box 270, Guildhall, London, EC2P 2EJ (further details on the reverse of each notice). Revenue generated from the fines is used to cover enforcement. If the revenue is greater than enforcement costs, that sum is held by central government. Schools do not receive any revenue from Penalty Notices.

## 4. Meaning of Parent

Within this Code of Conduct 'parent' is as defined in Section 576 of the Education Act 1996. As with prosecutions under Section 444, a Penalty Notice will be issued to **each** parent liable for the offence. The legal definition of a parent is contained in Section 576 of the Education Act 1996 and refers to

any adult who is a natural parent, someone with parental responsibility or someone who cares for a child.

## **5. Who will receive a Penalty Notice?**

A Penalty Notice will be issued to each parent of each child whose attendance is poor, whose child was taken on an unauthorised term time holiday or in the cases of exclusion where the pupil is present in a public place during the first five days. Head teachers have discretion whether or not to authorise term time holidays; they should be authorised as an exception rather than the rule. There is no entitlement of up to two weeks term time holiday per academic year. Schools can request the EEYS to issue penalty Notices for unauthorised term time holidays without a prior court warning. The EEYS will consider (a) the pupil's overall attendance pattern and the number of absences and (b) whether the school had previously informed all parents in writing of the holiday in term time policy as per the Guidance for Schools on Pupil Leave of Absence in Term Time, the requirement to apply for permission and the legal consequences of taking an unauthorised holiday. The pupil must have returned to school and the school has deemed and marked the absence with code "G" unauthorised holiday, before the Penalty Notice or Notices can be issued.

A maximum of one Penalty Notice may be issued per parent, per child, in a twelve month period.

A Penalty Notice is a method by which a parent may discharge potential liability for conviction of an offence for the period referred to in the Penalty Notice, either under

- a. Section 444 of the Education Act 1996 or
- b. Section 105 of the Education and Inspections Act 2006

## **6. Unpaid Penalty Notices**

If the Penalty Notice is not paid in full before the expiry of the period for paying, the Local Authority will instigate a prosecution. The EEYS may use the fact that a Penalty Notice was issued and remains unpaid as evidence. Unlike other Penalty Notice Schemes, the prosecution would not be for non payment of the fine, but for the original offence of failing to ensure a child's regular attendance at school.

## **7. Circumstances in which Penalty Notices may not be issued**

In cases of chronic poor school attendance and non cooperation by parents, the EEYS may decide to issue proceedings in the Magistrates' Court under Section 444 of the Education Act 1996, and dispense with the issue of a Penalty Notice.

## **8. Exclusions**

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that his or her child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion.

The days of exclusion when this duty applies are known as 'specified days of exclusion' and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

Sections 100 and 101 of the Education and Inspections Act 2006 place a duty on the school or Local Authority to make provision for the excluded child's full time education from the sixth day of a fixed period exclusion or permanent exclusion in a school year. Once provision is made, the parent's duty

to ensure that their child is not in a public place becomes a duty to ensure the child attends the provision i.e. the duty under Sections 444(1) and 444(1A) of the Education Act 1996.

Section 105 of the Education and Inspections Act 2006 allows for a penalty notice to be issued to a parent committing an offence under section 103 (failing to ensure their child is not in a public place on the days specified on the notice given to them). The notice allows the parent to pay a penalty as a way of discharging any liability for the offence. The parent must be notified by the school at the time of the exclusion of their duty and the days to which it relates.

## 9. When is it appropriate to issue a Penalty Notice?

### Threshold Criteria

Before being issued with a penalty notice a parent will have always received a court warning detailing the consequences of their child's continued unauthorised absence, or the taking of holidays in term-time without authorisation, or in the case of exclusion their child being in a public place within the first five days.

This warning will be issued through:-

- a) The EEYS by letter in non attendance cases
- b) School correspondence in cases of parents taking children on term-time holidays without authorisation (see further information and letter templates in Guidance for Schools on Pupil Leave of Absence in Term Time) and
- c) In instances of an exclusion, the warning to parents will be contained in the initial exclusion notification letter from the school.

A penalty notice may be issued if:

- a) a registered pupil has been absent for more than 15 sessions in any ten week period, **or**
- b) where there has been a period of unauthorised absence which has been specifically condoned by the parent e.g. a parent choosing to take their child on a term-time holiday without authorisation,  
  
**or**
- c) a registered pupil has been late (after the close of registration) for 12 or more sessions in any six week period  
  
**and,**  
  
the Local Authority is satisfied that there is sufficient evidence to show the parent has committed an offence under s444(1) or s444(1A) of the Education Act 1996,  
  
**and,**  
  
a formal warning of the possibility of a penalty notice being issued has been served either by the school or the EWS.  
  
**and,**  
  
a penalty notice has not been issued in the past 12 months in respect of the child in question (if so alternative processes are necessary)  
  
**or**
- d) an offence has been committed under S103 of the Education and Inspections Act 2006 where a pupil had been found in a public place without reasonable justification in the first five days of

an exclusion. Reasonable justification will be considered in each individual case but will include e.g. a medical emergency or a pre-arranged medical appointment, or where it is not appropriate to leave a child alone in the home. This is not intended as a definitive list. **OR**

- e) A pupil has been stopped during a truancy patrol but only after due consideration when all the facts are known and the threshold for serving the notice (see (a) above) has been met. Information will be given to anyone stopped on a patrol, pupil and/or parent about the possible support and sanctions used to address non-attendance

***and, in cases whereby schools or the police issue the notice,***

agreement is reached with an EEYS Manager to ensure that it is appropriate to serve the notice, thus ensuring a notice is not issued when either a prosecution has commenced and to avoid duplication of notices **OR** the LA is not satisfied that there is sufficient evidence to show the parent has committed an offence under S444 (1) or S444 (1A) Education Act 1996.

When the EEYS receives requests for Penalty Notices from schools and the Police these will be actioned within fifteen school days, providing that all the relevant information is supplied and that all the circumstances of the unauthorised absence concur with those set out in this Code of Practice, specifically the threshold criteria and the 'Guidance for Schools on Pupil Leave of Absence in Term Time' (currently in draft) and 'Guidance for Schools on Persistent Lateness' (currently in draft).

## **10. Withdrawal of a Penalty Notice**

Once issued a penalty notice may only be withdrawn by the LA in the following circumstances:

- a) proof has been established that the penalty notice has been issued to the wrong person
- b) the notice ought not to have been issued i.e. where it has been issued outside the terms of this code of conduct or no offence has been committed
- c) in the instance of exclusion reasonable justification was evidenced by the parent

## **11. Representation**

There is no statutory right of appeal against the issuing of a penalty notice. The parent will be advised, when they receive the notice, that they may make representation to the Education and Early Years Manager (EEYS) setting out reasons why they should not be issued with a notice.

## **12. Payment of Penalty Notices**

Arrangements for payment will be detailed on the penalty notice. Generally, arrangements will be in place to allow for either personal payment at an office address or by post. Payment of the notice discharges the parent's liability for the period in question and they cannot be subsequently prosecuted under other enforcement powers for the period covered by the notice.

The LA retains any revenue from any penalty notice to cover enforcement costs. It is unlikely that revenue will be greater than enforcement costs. If revenue is greater than enforcement costs that sum is held by central government.

## **14. Paid Penalty Notices**

If a Penalty Notice is paid within 42 days, parents will discharge their liability for the period of absence in the Notice. If attendance continues to be poor, case-work will continue and a Court Assessment Meeting will be convened. A decision will be made at the Court Assessment Meeting as to whether

the case should proceed either to (a) Magistrates Court (b) Family Proceedings Court or (c) a review period following which (a) or (b) may result, if attendance continues to be at an unacceptable level.

## 15. Operational Details

- a) Schools will notify the EEYS of all cases of
- more than 15 unauthorised absence sessions in any ten week period
  - any unauthorised holiday (see Guidance for Schools on Pupil Leave of Absence in Term Time)
  - 12 or more lates (after the close of registration) in any six week period
- b) EEYS will monitor pupil attendance with schools regularly and agree statutory action as needed (including the issue of Penalty Notices)
- c) the EEYS will maintain a record of all notifications and make an assessment of the individual circumstances;
- d) in cases of persistent unauthorised absence parents will be warned by letter of the possibility of statutory action, and where there is subsequent unauthorised absence a penalty notice will be served
- e) in the event of unauthorised holidays or persistent lateness a penalty notice will be issued directly when the school has already sent a formal warning letter, using the templates provided in the Guidance for Schools on Pupil Leave of Absence in Term Time
- f) schools will have policies to ensure that a parent has received an appropriate warning in the specific circumstances of unauthorised holidays, persistent lateness and in their exclusion letters of parents' duty to ensure their child is not in a public place and may be liable to a penalty notice if reasonable justification is not evidenced
- g) a penalty notice issued by the EEYS will usually be delivered by post but in some circumstances will be delivered by post and by hand
- h) when a notice is issued to a parent where they live outside of Islington, a copy of the notice will be sent to the home local education authority.

## 16. Review

This code of conduct will be reviewed on a regular basis and may be amended depending on the outcome of the previous year's operation.