

Education Penalty Notice Code of Conduct

**Birmingham City Council
Education Legal
Intervention Team**

September 2022



Penalty Notice – Code of Conduct

This document is issued in compliance with the Education (Penalty Notices) Regulation 2007 and the Education Act 1996.

Rational:

Section 7 of the Education Act 1996 (the Act), states that the parent of a child of compulsory school age has a legal duty to ensure that they receive an efficient full-time education suitable to their child's age, ability, aptitude and any special educational needs. Therefore, in order to ensure that parents comply with this duty, and to ensure that children and young people are able to maximise the opportunities available to them via regular attendance at school, Birmingham City Council (the Local Authority) will support schools to challenge irregular school attendance using the powers outlined in this Code of Conduct.

Section 444A of the Act states that, if it is believed that a child has failed to attend school regularly and the parent is therefore guilty of an offence under section 444(1) of the Act:

- a Penalty Notice may be issued for £60, if it is paid within 21 days of receipt of the Notice;
- rising to £120, if it is paid after 21 days, but within 28 days of receipt; and
- non-payment will entitle the Local Authority to prosecute the parent for the original offence, under section 444(1) of the Act.

This Code of Conduct will govern the issuing of the above Penalty Notices for schools across Birmingham.

Guidance and legislation:

Application of this Code is subject to the law, in particular:-

- The Equality Act 2010
- The Children Act 1989
- The Human Rights Act 1998
- The Education Act 1996
- The Education (Pupil Registration) (England) Regulations 2006
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013
- The Data Protection Act 1998
- The Crime and Disorder Act 1998
- The SEND Code of Practice 2015
- The Anti-social Behaviour Act 2003

Definitions:

Compulsory School Age:

Section 8 of the Act states that a child is of compulsory school age from the start of the school term commencing on or after their fifth birthday, until the last Friday in June of the school year in which the young person becomes sixteen years old.

Leave of Absence:

The Education (Pupil Registration) (England) Regulations 2006 prohibits the proprietor of a maintained school from granting leave of absence to a pupil, except where an application has been made in advance and the proprietor is satisfied that there are exceptional circumstances for agreeing to that application. *(Note: Department for Education guidance confirms that such requests should only be authorised in exceptional circumstances, which will not normally include family holidays. The issue of unauthorised leave of absence was also considered by the Supreme Court in the case of Isle of Wight v Platt [2017] UKSC28).*

Parent:

Section 576 of the Act defines the 'parent' of a child or young person as including:

- Both of their natural parents, whether they are or were married or not;
- Any person who, although they are not the natural parent, has parental responsibility for the child or young person, as defined in the Children Act 1989; and
- Any person who, although not the natural parent, has care of the child or young person, i.e. with whom the child lives, irrespective of the nature of their relationship with the child.

Throughout this document, references to 'parent' means each and every person falling within this definition, whether or not those people are intentionally acting jointly or separately; the contents of this Code of Conduct does not only apply to 'parent' in the singular.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

The issuing of a Penalty Notice is considered appropriate in the following circumstances:

1. Attendance: When:

- a pupil has had a minimum of 10 sessions of unauthorised absence in the previous 12 calendar months and;
- a school or place of alternative educational provision has commenced the relevant local authority legal intervention process and;
- despite that process being followed by the school, there has been little improvement in the pupil's attendance.

2. Unauthorised Leave in Term Time: When:

- a pupil has been taken on an unauthorised "leave of absence" from school or a place of alternative educational provision for minimum of 10 continuous sessions (five days) and;
- the school or place of alternative educational provision have followed the relevant local authority legal intervention process, a penalty notice may be issued.

3. Excluded Child in a Public Place: When:

- a child of compulsory school age is excluded on disciplinary grounds, the parent of that child, provided they have been served with Notice under Section 104 of the act, must ensure that the child is not present in a public place during school hours during the first five days of that exclusion without reasonable justification. Where parents fail to ensure their child is not in a public place under these circumstances, a penalty notice may be issued.

Each parent will receive a separate Penalty Notice for each child.

PROCEDURE FOR ISSUING OF PENALTY NOTICES:

- 1 The Local Authority will administer the issuing of Penalty Notices, in order to ensure the consistent application of the Code of Conduct across Birmingham and avoid duplicate Penalty Notices being issued.
- 2 The Local Authority will post Penalty Notices via first class post.
- 3 The Local Authority will record when and whether the relevant financial penalty imposed under a Penalty Notice is received.
- 4 If the financial penalty has not been paid within 28 calendar days of being issued, the Local Authority will seek to prosecute the person who has not paid under section 444(1) of the Act
- 5 Penalty Notices can only be issued to each parent of a child exhibiting the necessary levels of unauthorised absence once and, where appropriate, in respect of more than one child. If there are further unauthorised absences in relation to the same child, the Local Authority may issue a second penalty notice. Where a third occurrence of unauthorised absence occurs, the Local Authority may prosecute the parent, under sections 444(1) or 444(1A) of the Act.
- 6 The Local Authority may, in cases of high levels of unauthorised absence including where unauthorised leave in term time of 30 school days or more has been taken, decide not to issue a Penalty Notice, but instead prosecute the parent under sections 444(1) or 444(1A) of the Act.
- 7 Penalty Notices will be issued to the parents of pupils who are attending maintained schools, academies or places of alternative provision in Birmingham, whether they are resident in the city or not. The attendance of pupils who are resident in Birmingham but attending schools or places of alternative provision in other local authorities' areas (except where those places are commissioned by Birmingham City Council) will be the responsibility of those local authorities.

PROCEDURE FOR WITHDRAWING A PENALTY NOTICE:

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

- a) It ought not to have been issued; or

b) It ought not to have been issued to the person named as the recipient.

Where a Penalty Notice has been withdrawn in accordance with the above:

- a 'Letter of Withdrawal' shall be given to the recipient;
- any financial penalty paid to clear that Penalty Notice shall be repaid to the person who paid it; and
- no prosecution under sections 444(1) or 444(1A) of the Act shall be continued or begun in connection with the same unauthorised absence period, against the recipient of the Notice of the Withdrawal.

PAYMENT OF PENALTY NOTICES:

1. Arrangements for the payment of a Penalty Notice will be detailed on the Penalty Notice.
2. Penalty Notice payments received by the Local Authority will be used for the purposes of issuing and enforcing Penalty Notices and prosecuting recipients who do not pay.
3. Any sum not used for the purposes of the functions specified in paragraph 2 above, will be paid to the Secretary of State for Education.

September 2022