

LEICESTERSHIRE COUNTY COUNCIL
PENALTY NOTICE CODE OF CONDUCT
(Revised January 2023)

1. Rationale

- 1.1. Regular and punctual attendance of pupils at school is both a legal requirement and essential in order for pupils to maximise the opportunities available to them, unless parents elect formally to educate their children at home. A Penalty Notice is a useful sanction at an early stage before attendance problems become entrenched and where prosecution may seem inappropriate.

2. Legal Basis for the issue of Penalty Notices

- 2.1. In February 2004, the Anti-Social Behaviour Act 2003, section 23, sub-section 1 added sections 444A and 444B after section 444 of the Education Act 1996. These sections enable Penalty Notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.
- 2.2. Section 105 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents in relation to an excluded pupil of compulsory school age, should they fail to ensure their child 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.
- 2.3. Persons authorised to issue Penalty Notices must have regard to The Education (Penalty Notices) (England) Regulations 2007, the guidance issued by the Secretary of State, and the following legislation:

Human Rights Act 1998
Equality Act 2010
Data Protection Act 1998

3. Procedures for issuing Penalty Notices

- 3.1. The issue of Penalty Notices will be undertaken by staff authorised by Leicestershire County Council (LCC).
- 3.3 If a Headteacher wishes a Penalty Notice to be issued they should complete Penalty Notice referral form via the link on the website and attach copies of relevant documentation issued to parents.

- 3.4 LCC will always issue Penalty Notices by first class post (with proof of posting) as there may be health and safety implications involved in the operation of direct delivery.
- 3.5 Parents will normally receive a warning letter from the LA before a Penalty Notice is issued. The warning letter will indicate the period of time over which improvement is expected (typically a further 15 school days).
- 3.6 A Penalty Notice will usually only be issued to each parent if the pupil has at least 20 unauthorised half day absences recorded against their name within the previous 12 week period. The 20 unauthorised half day absences will be included within the Penalty Notice.
- 3.7 An exception to 3.5 and 3.6 are holidays or an unauthorised leave of absence in term-time where no permission has been requested by parents or where permission has not been granted by the Headteacher of the school. In such cases a Penalty Notice may be issued for less than 20 unauthorised absences in the previous 12 week period.

NB. As of 1st September 2013, LCC will issue Penalty Notices where parents choose to take a family holiday during term time and where the Headteacher deems the holiday to fall outside of their definition of 'exceptional circumstances.' A specific request form, Guidance notes on the process to be followed in relation to this updated legal support (Annex 1) and a sample letter for use by Headteachers when informing parents that leave of absence will not be granted for a family holiday during term time (Annex 2) are all provided herewith.

- 3.8 Each parent will receive no more than one separate Penalty Notice resulting from the unauthorised absence of an individual child in any one academic year. This is ensured by checking the database for previous actions.
- 3.9 To ensure the powers associated with Penalty Notices are applied consistently and fairly, Headteachers and LCC must be confident the circumstances of each case:
- meet the criteria for the issue of a Penalty Notice specified in this Code of Conduct; and
 - that all necessary information can be provided to LCC should a Penalty Notice be unpaid in order to pursue legal proceedings under Section 444(1) Education Act 1996.
- 3.10 A Penalty Notice would not be issued where other statutory intervention for irregular attendance is being pursued by the LCC or where a parent has received a previous conviction in respect of his/her child's absence from school within the previous two years.
- 3.11 Within this Code of Conduct, a parent is defined as in Section 576, Education Act 1996. This means all natural parents, whether married or not and includes any person who, although not a biological parent, has parental responsibility or has care of the child or young person.

- 3.12 The Headteacher or authorised person must provide to LCC a copy of the attendance register for the period covered by the Penalty Notice.
- 3.13 Other authorised LCC staff and the police, Headteachers, community support officers and accredited persons may also issue Penalty Notices subject to adherence to this Code of Conduct, for example as a result of truancy patrols and/or in relation to the whereabouts of excluded pupils in the first 5 days of exclusion.

4. Circumstances for Issuing a Penalty Notice

- 4.1 The Headteacher may consider requesting the issue of a Penalty Notice in relation to the parents of children of compulsory school age in the following circumstances:
- Early intervention to address unauthorised absence (where that unauthorised absence would meet the criteria for a prosecution under s444, 1996 Education Act and it is in accordance with the LCC's protocol)
 - Unauthorised holidays or an unauthorised leave of absence in term time (see paragraph 3.7 and attached guidance documents)
 - Unwarranted delayed return from an extended holiday (without school agreement); and
 - Persistent late arrival after the register has closed.
- 4.2 Authorised personnel may also issue a Penalty Notice in relation to an excluded pupil under Section 103 of the Education and Inspections Act 2006. A parent must be clearly informed in writing that they should ensure their child is not present in a public place (which does not include school premises) during school hours in the first five days of each and every fixed period or permanent exclusion without reasonable justification. A record of the exact time and place at which the pupil was observed is required.

5. Payment and non-payment of a Penalty Notice (with effect from 1st September 2013)

- 5.1 Payment of a Penalty Notice within 21 calendar days of receipt of the notice is £60 and payment after this time but within 28 calendar days of receipt of the notice is £120. Payment in full discharges parent/carer liability for the period in question and they cannot be prosecuted under other enforcement powers for the period covered by the Penalty Notice.
- 5.2 Non-payment will trigger a prosecution for non-attendance under Section 444(1) of the Education Act 1996. LCC will undertake the prosecution using a period of complaint including the period highlighted within the Penalty Notice. The school/externally employed attendance agency will need to prepare a Section 9 statement of witness. The Headteacher (or representative) may also be called to give evidence.

6. Withdrawing a Penalty Notice

- 6.1. When considering legal proceedings for non-payment of a Penalty Notice, LCC may request it be withdrawn if it determines that the Penalty Notice:

- ought not to have been issued i.e. it was outside the terms of this Code of Conduct; or
- has been issued to the wrong person; or
- contains material errors.

7. Administration of the Penalty Notice Scheme

- 7.1 All financial penalties will be made payable to LCC and the resources will be used to cover the costs of administering legal proceedings resulting from non-payment of Penalty Notices.

Annex 1

Process for Requesting Penalty Notice(s) in Respect of Unauthorised Family Holidays or an Unauthorised leave of absence

- Headteacher receives request from parent to grant permission for leave during term time as a result of a proposed family holiday OR Headteacher is notified that a family has taken a family holiday or unauthorised leave of absence without seeking prior permission;
- Headteacher considers whether the request could be considered to fall under the heading of 'exceptional circumstances'. If request is not being made as a result of 'exceptional circumstances' OR family have already taken a holiday without seeking the prior approval of the Headteacher, Headteacher must notify the parent, in writing, of their decision to refuse to grant permission for leave/code the absence as unauthorised, and warning them that this refusal places the parent(s) at risk of being issued with Penalty Notice(s), as per Leicestershire County Council's policy/Code of Conduct.

N.B. A sample letter has been provided as a tool for Headteachers (Annex 2).

- Headteacher to await the response of parent(s) and, if the family holiday goes ahead, during term time, then the period of absence (**of 5 days or more**) must be clearly recorded as 'G' on the official attendance register (thus ensuring that it is recorded as an unauthorised family holiday);
- Once the student has returned to school, Headteacher to complete the relevant 'Online Penalty Notice Referral Form and attach:
 1. The letter sent to parent(s) notifying them that the absence would not be authorised and warning them that the matter would now be passed to the Local Authority;
 2. A copy of the student's registration certificate which clearly shows the period of absence which has been coded as G (unauthorised family holiday or leave of absence)

Upon receipt of the relevant documentation, the Attendance Team will issue a Penalty Notice to each parent in respect of the unauthorised family holiday. Each parent will be given 21 days to pay £60, at which point the fine will double to £120 and parents will be given a further 7 days to make payment in full.

Parents failing to pay £60 within 21 days/£120 within 28 days will face prosecution under section 444 Education Act 1996.

Where court proceedings are instigated as a result of non-payment, the Attendance Team will be responsible for providing a section 9 witness statement and the Headteacher of the relevant school, will be required to provide a signed statement of attendance, a proforma of which will be provided to the Headteacher, as individual cases enter the court process. **If you have any queries/questions in relation to this process, please do not hesitate to contact the Attendance Team, on 0116 3056743.**

Annex 2 – Sample Letter

Dear Parent/Guardian

Re: Formal Warning in relation to your family holiday/unauthorised leave of absence request.

I write in response to your recent request to be permitted to take your son/daughter on a family holiday/out of school during term-time from [DATE] to [DATE].

New government guidelines, which came into effect on 1st September 2013, prevent Headteachers from granting any leave of absence during term time, unless there are exceptional circumstances. A family holiday during term-time does not fall under the category of 'exceptional circumstances' and I am therefore unable to grant leave of absence for your family holiday request.

As a result I must inform you that, should you disregard my decision and your son/daughter has absences recorded as a result of an unauthorised family holiday/absence of leave, Leicestershire County Council will be advised of this matter and will be requested to issue Penalty Notices in line with their policy.

The parent(s) of any child who has absences recorded as a result of an unauthorised family holiday will each be fined £60 which must be paid within a 21 day period. Failure to pay the fine(s) within this timescale, will result in the fines being doubled to £120 which will need to be paid within 28 days of the original fine being issued. If the fine(s) remain unpaid after the full period of 28 days has expired, parents may face legal action under section 444 of the Education Act 1996. If found guilty of an offence under this Act, parents will receive a criminal record and could be fined up to £1000.

It is hoped that you will take serious consideration of the information outlined above and reconsider your plans to take a family holiday during school term-time.

Headteacher