

# **Dorset County Council Children's Services Penalty Notice Protocol**

## **1. Legal Basis:**

Sections 444A and 444B of the Education Act 1996 empower designated Local Authority (LA) officers, Head Teachers (& Deputy and Assistant Head teachers authorised by them) and the Police to issue Penalty Notices in cases of unauthorised absence from school. The Education (Penalty Notices) (England) Regulations 2007 require the Local Authority, in consultation with all of the above, to develop a code of conduct which must be followed when issuing Penalty Notices.

The issuing of Penalty Notices must conform with all requirements of the Human Rights Act 1988 and all Equal Opportunities legislation.

These provisions apply to all persons who fall within the definition of a 'parent' as set out in section 576 of the Education Act 1996. By virtue of this section 'parent' includes: all natural parents, whether they are married or not; any person or body who has parental responsibility for a child (as defined by the Children Act 1989); any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a 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. Rationale for Issuing Penalty Notices:**

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

Children's Services will continue to investigate cases of non-attendance from school and, following appropriate casework, instigate legal action if applicable.

In law, an offence occurs if a parent/carer fails to secure a child's attendance at the school at which they are a registered pupil and that absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under section 444 Education Act 1996 or section 36 Children Act 1989 to enforce attendance at school where appropriate.

Children's Services delivers this LA responsibility.

## **3. Circumstances where a Penalty Notice may be used:**

Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent and the absence has not been authorised by the school or where the pupil has persistently arrived late after the register has closed.

The level of absence that is necessary before a Penalty Notice can be issued is 10 or more half days of unauthorised absence within a 12 school week period.

The key consideration in deciding whether to issue a Penalty Notice will be whether it can be effective in helping to get the pupil who is missing education back into school.

A Penalty Notice is a suitable intervention in circumstances of parentally condoned truancy, where the parent is considered capable of securing their child's regular attendance but is not willing to take responsibility for doing so.

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

- No one parent will receive more than three separate Penalty Notices resulting from the unauthorised absence of an individual child in any twelve month period.
- However, where families contain more than one poorly attending pupil, multiple issues may occur.

#### **4. Procedure for issuing Penalty Notices:**

Children's Services will issue Penalty Notices for all Dorset Schools.

Penalty Notices will only be issued by first class post and never as an on the spot action; this is to satisfy that all evidential requirements are in place and to meet health and safety requirements.

Children's Services will receive requests from schools, Dorset Police and neighbouring LAs. Requests from Schools will be sent to the School Attendance Team following discussion with a member of the Team.

A Penalty Notice may be issued providing it does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

Children's Services will respond to all requests within 10 school days of receipt and where all criteria are met, will:

##### **In cases of unauthorised absence**

- Issue a formal warning to the parent/carer of the possibility of a Penalty Notice being used.
- In the same letter set a period of 15 school days within which the pupil must have no unauthorised absence.
- Issue a Penalty Notice through the post at the end of the 15 day period if the required level of improvement has not been achieved.

## **Unauthorised Leave in Term Time**

In accordance with The Education (Pupil Registration) (England) Regulations 2006 as amended a Penalty Notice can be issued in exceptional circumstances, for example where a parent takes a child on holiday during term time without the school authorising the absence. In such circumstances, although a minimum of 10 half day sessions of unauthorised absence will still apply before a Penalty Notice may be issued, the authorised person may issue a Penalty Notice without first issuing a formal warning to the parent as would otherwise be required. However s/he should still be satisfied that the parent was informed beforehand that, in some exceptional circumstances e.g. term time holiday, unauthorised absence could lead to a Penalty Notice being issued without further warning.

## **Who can receive a Penalty Notice?**

Any Penalty Notice issued must be addressed to one parent but a Penalty Notice may be issued to each parent liable for the offence or offences.

An authorised person has discretion when deciding whether to issue one or more parents of a child with a Penalty Notice. This is to enable account to be taken of the specific circumstances in individual cases.

## **5. Roles and Responsibilities of the Local Authority**

Local Authorities (LAs) may, in the absence of any other agreement, only issue Penalty Notices in respect of pupils registered at a school in that LA area or, in the case of an unregistered pupil, who resides in their area or for whom that LA has arranged alternative provision. LAs may only issue Penalty Notices in respect of pupils registered at a school in another LA area or, in the case of an unregistered pupil, for which another LA has arranged alternative provision if they have an agreement to that effect with the other LA.

## **6. Procedure for withdrawing Penalty Notices:**

Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person.
- The use of the Penalty Notice did not conform to the terms of this Protocol.
- The Penalty Notice contains a material error.
- The Local Authority (LA) must withdraw the Penalty Notice if it is not paid in full and the LA has not, and does not intend to, instigate legal proceedings.

## **7. Payment of Penalty Notices:**

Arrangements for payment will be detailed in the Penalty Notice.

Payment of a Penalty Notice discharges the parent/carer liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered in the Penalty Notice.

Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120.

## **8. Non-payment of Penalty Notices:**

Non-payment of a Penalty Notice will trigger the prosecution process. Prosecution is for the offence to which the notice relates rather than for non-payment of the notice. In the case of unauthorised absence, if there is a prosecution, it will follow the usual procedure of a prosecution for irregular attendance (including considering an Education Supervision Order as an alternative, or in addition, to prosecution) under the provisions of section 444(1) or 444(1a) The Education Act 1996.

## **9. Penalty Notices and Excluded Pupils**

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 their child is not present in a public place during school hours without reasonable justification during the first 5 days of each and every fixed period or permanent exclusion.

Section 105 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103. The Penalty Notice allows a parent to pay a penalty as a way of discharging any liability for the offence of failing to ensure that their child is not present in a public place on the days specified in a notice given to them. The parent must have been notified by the school at the time of the exclusion of their duty and the days to which it relates.

## **10. Procedure for Issuing of Penalty Notices in Cases of Exclusion**

When a child is excluded from school – either for a fixed period or permanently – and the child is found in a public place during normal school hours on a specified day of exclusion

- Issue a Penalty Notice

In order for the parent to incur either form of legal responsibility the school must give them notice informing them of the duty to ensure their child is not found in a public place, the days when this duty will apply and, as appropriate, of the arrangements for alternative provision.

If the child has been provided with alternative provision and is not attending this provision then the parent will be liable under the unauthorised absence regulations.

**11. Non Payment of Penalty Notices – Exclusions**

In the case of a prosecution of a parent who has failed to ensure their child is not found in a public place during a specified day of exclusion, the procedures, such as preparing and serving a summons, will be similar to those for unauthorised absence.