

Bedford Borough Council

Non-school Attendance – Fixed Penalty Notices

Local Code of Conduct

(revised and operational from 19 August 2024)

RATIONALE

1. Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities. In law an offence occurs if a parent ‘fails to secure a child’s attendance at school at which they are a registered pupil, and that absence is not authorised by the school. Parents are supported by school, Local Authority Services and Partner Agencies to overcome barriers to regular attendance.
2. Section 23 of the Anti-Social Behaviour Act 2003 empowers 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 2024 came into force on 19 August 2024 and this Code of Conduct supersedes **Circular H/04/49 ‘Implementation of Penalty Notices and Parenting Contracts for absence from schools’**.
3. Penalty Notices supplement the existing sanctions to enforce attendance at school currently available under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989.
4. The issuing of Penalty Notices must conform to requirements of the Human Rights Act 1998 and the Equality Act 1989.
5. The LA has the prime responsibility for developing a protocol within which all partners named in the Act will operate and has responsibility for the overall administration of the Penalty Notice Scheme.
6. This local code sets out the procedures and terms under which Penalty Notices can be issued in Bedford Borough. Authorised persons should issue Penalty Notices in compliance with this code in order to ensure that the powers are consistently applied.

PROCEDURES FOR ISSUING PENALTY NOTICES

7. Bedford Borough Council Inclusion and Welfare Service (IWS) in consultation with schools (and other agencies where appropriate) will be responsible for the decision to issue Penalty Notices. This will ensure consistency in the delivery of the scheme; avoid school-home conflicts and ensure that the Penalty Notices are not being issued when the

process towards court prosecution has already started. The IWS will receive requests to issue Penalty Notices from schools, the police and neighbouring LA's. These requests will be considered provided that:

- all relevant and evidential information is supplied.
 - the circumstances of the pupil's absence meet the requirements of this protocol.
 - the issuing of a Penalty Notice does not conflict with other intervention strategies or other enforcement sanctions already being processed.
 - the IWS is satisfied that the referred has supplied information which evidences that appropriate support has been offered to the child/ family prior to referral.
8. The IWS will aim to action all Penalty Notice referrals within 10 schools' days of receipt and where sufficient evidence of prior action(s) is/are included in the accompanying school information which is also submitted alongside the Penalty Notice Referral:
- where information is available that indicates the child has moved into the Local Authority, contact the previous authority to check whether previous Penalty Notices have been issued within the 3-year period.
 - where appropriate, issues a Penalty Notice to Improve to the parent(s)* of the possibility that a Penalty Notice will be issued.
 - In the same letter, where relevant, 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.
9. There is no right of appeal by parents against a penalty notice.

CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

10. A Penalty Notice can only be issued in cases of **unauthorised** absence.
11. The issuing of a Penalty Notice will usually be restricted to one in an academic year (this does not apply to unauthorised Leave of Absence in Term Time). If a Penalty Notice has been issued and has been either paid or has led to a prosecution for non-payment, except in exceptional circumstances, no further Penalty Notice will be issued for the remainder of that academic year (this does not apply to Unauthorised Leave of Absence in Term Time). If the child concerned continues to accrue unauthorised absences, the case should be considered for referral to the Inclusion and Welfare Service.
12. If in an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
13. The National Framework for Penalty Notices sets out that a maximum of 2 Penalty Notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, then the legal action under Section 444 Education Act 1996 will be initiated.

14. If more than parent* has parental responsibility, both parents will receive a Penalty Notice (i.e. 1 per cent per child). In situations where there is more than one pupil in a family with irregular school attendance, multiple Penalty Notices can be issued to the same parents during the year.

15. A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a Penalty Notice is issued. If the national threshold has been met and support is appropriate, but offers of support have not been engaged with by the parent or have not worked, a notice to improve should usually be sent to give parents a final chance to engage in support. An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a Notice to Improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence). There will be no restriction on the number of times a parent may receive a Notice to Improve of the possible issuing of a Penalty Notice. A Notice to Improve will not be issued for absences related to unauthorised leave of absence in term time.

16. The issuing of a Penalty Notice is considered appropriate:

- When the pupil has taken Unauthorised Leave of Absence during term-time and the absence has not been authorised by the school, providing the school has taken into account Department for Education Statutory Guidance to inform its decision making.
- Following a Truancy Patrol when the school has recorded the absence of the pupil as unauthorised.
- In the early stages of intervention where the school or IWS believes that the sanction may lead to an improvement in attendance, e.g. persistent late arrival at school, parents' failure to attend/ co-operate at an Attendance Contract meeting.

17. To ensure consistent delivery of Penalty Notices, the following criteria will apply:

- At least 10 sessions (equal to 5 school days) lost to unauthorised absence by the pupil during the previous 10 school weeks. The period of 10 school weeks can also span different terms or academic years.
- Except in exceptional circumstances, the parent* will receive a Notice to Improve (advising of the possibility of a Penalty Notice being issued) and a maximum of 30 school days to affect an improvement. Improvement is defined as no further unauthorised absence within the Notice to Improve period unless there are exceptional circumstances.

OTHER TYPE OF PENALTY NOTICE NOT INCLUDED IN THE NATIONAL FRAMEWORK

18. A penalty notice may also be issued where parents allow their child to be present in a public place during school hours without reasonable justification during the first 5 days of a fixed period or permanent exclusion. The school must have notified the parents of the days the pupil must not be present in the school place. **This type of penalty notice is not included in the National Framework** and therefore not subject to the same considerations about support being provided or count towards the limit as part of the escalation process in the case of repeat offences for non-attendance. These penalty notices are charged at £120, reduced to £60 if paid within 21 days.

PROCEDURE FOR WITHDRAWING PENALTY NOTICES

19. A Penalty Notice can only be withdrawn in the following circumstances:

- When it has been issued to a wrong person
- When the use of the Penalty Notice did not conform to the terms of this protocol
- It contains a material error.
- Not paid, and the LA has not and does not intend to instigate proceedings.

INFORMING SCHOOLS OF THE OUTCOME OF A PENALTY NOTICE

20. The IWS will inform a Headteacher on a termly basis of the outcome of referrals made for a Fixed Penalty Notice to be issued.

PAYMENT OF PENALTY NOTICES

21. The arrangement for the payment will be detailed on the Penalty Notice.

- The first Penalty Notice issued to a parent in respect of a particular pupil will be charged at £160 if paid within 28 days. This will be reduced to £80 if paid within 21 days beginning with the date on which the notice is received.
- If a second Penalty Notice issued to the same parent in respect of the same pupil, this penalty notice will be charged at a flat rate of £160. **There will not be a reduction of the penalty notice if paid any earlier, this notice should be paid within 28 days.**
- A third penalty notice will not be issued to the same parent in respect of the same child where two previous penalty notices have been issued within a 3 year period of the date of the first penalty notice. In a case where the national threshold is met for a third time (or subsequent times) within these 3 years, alternative action should be taken instead. This will often include considering prosecution but may include other tools such as other attendance legal interventions i.e. School Attendance Order or Education Supervision Order.

22. Monies collected will be used for the administration of the penalty notice and prosecution.

22. Non-payment of a Penalty Notice will result in the immediate prosecution of parent(s)* under the provisions of Section 444 of the Education Act 1996 unless:

- It has been issued to the wrong person.
- The use of the Penalty Notice did not conform to the terms of this protocol.
- The notice was materially defective.
- The LA has not started legal proceedings and has no intention of doing so.

POLICY AND PUBLICITY

23. The deployment of Penalty Notices as a sanction is included in the Authority's Attendance Strategy. All school attendance policies should include information on the deployment of Penalty Notices which should be brought to the attention of parents. The LA will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional material.

REPORTING AND REVIEW

24. A review of the deployment of the Penalty Notices will be undertaken at regular intervals and the strategy amended as appropriate.

*Definition of a parent

Section 576, Education Act 1996 defines a parent as:

- all natural parents, whether named or not;
- any person who although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- any person who, although not a natural parent, has care of the child or young person. A person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered a parent in education law.

In this document 'parent' means each and every person referred to within this definition.

August 2024