



**PENALTY NOTICES TO ADDRESS POOR ATTENDANCE AT SCHOOL OR
ALTERNATIVE PROVISION**

CODE OF CONDUCT

RATIONALE

1. The purpose of this Code of Conduct is to ensure that the associated powers are applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of Penalty Notices.
2. Regular and punctual attendance at school, or alternative provision, is both a legal requirement and essential for children and young people to maximise their educational opportunities.
3. An offence occurs if a parent/carer fails to secure a child's attendance at a school, or alternative provision, at which they are a registered pupil and that absence is not authorised by the school, or alternative provision.
4. Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement. Sanctions of any nature will only be used where parental co-operation is either absent or deemed insufficient to resolve an attendance problem.

AUTHORISATION

1. The primary responsibility for the issuing of Penalty Notices rests with the Local Authority. The Secondary Behaviour and Attendance Service (SBAS) will therefore issue all Penalty Notices in East Sussex. This ensures consistency and will prevent conflict with other enforcement sanctions.
2. Although professionals other than those within the LA (e.g. Head Teachers, the Police etc.) are accredited persons within the legislation, able to issue Penalty Notices, there is no requirement for them to do so. In East Sussex it has been agreed that the Police will not issue Penalty Notices. If a Head Teacher feels it is appropriate for a Penalty Notice to be issued, they must consult with and instruct the SBAS. This will avoid a Penalty Notice being issued when the SBAS is instigating legal intervention proceedings for irregular school attendance.
3. The SBAS will ensure that the issuing of Penalty Notices is closely monitored. In this way the Local Authority have the means to avoid the issuance of duplicate notices.
4. Penalty Notices will only be issued by post and not as "on the spot" action; this will satisfy that all evidential requirements are in place.
5. SBAS will act upon requests to issue Penalty Notices from schools and alternative education providers, and Sussex Police, provided that:
 - a. all relevant information is supplied in the specified manner;
 - b. the circumstances of the pupil's absence meets the requirements of this Code of Conduct;
 - c. the issuing of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already in process.

WHEN A PENALTY NOTICE CAN BE ISSUED

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

1. Truancy: absence from school without permission or good reason and the absence is unauthorised by the school. In all cases a Warning Notice will first be issued and following the Warning Notice if 10 unauthorised sessions of absence are accrued a Penalty Notice will be issued. This process will follow a formal Attendance Panel held between the school and SBAS.

2. Persistent lateness: arrival at school after the register has closed is an unauthorised absence and 10 unauthorised sessions will result in a Penalty Notice being issued. In all cases a Warning Notice will be issued.
3. Holidays in term-time: if a Head Teacher does not authorise a written request from a parent/carer for a holiday s/he will respond to the request directly. This response will constitute a Warning to the parent. In all cases, a minimum of 10 sessions of absence must have been taken in relation to the holiday before a Penalty Notice is issued.
4. During a Truancy Sweep by the SBAS in conjunction with Sussex Police: if a child is found out of school or at home, and the absence is unauthorised, a Warning Notice will be issued. Following the Warning Notice, if a further 10 sessions of unauthorised absence is accrued a Penalty Notice will be issued.
5. An Excluded Pupil found in a public place during the school day: in all cases the SBAS will check whether the pupil was excluded at the time. If the criteria is satisfied then a Penalty Notice will be issued (a school is not deemed by the Education & Inspections Act 2006 to be a public place for the purposes of this legislation).

PROCEDURE FOR WITHDRAWING A PENALTY NOTICE

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

1. It ought not to have been issued; or it ought not to have been issued to the person named as the recipient; or
2. It appears to the authority that the notice contains material errors.

PAYMENT OF PENALTY NOTICES

The arrangements for the paying of Penalty Notices will be detailed on the Penalty Notice.

NON-PAYMENT OF PENALTY NOTICES

The penalty is £50 if paid within 28 days of receipt of the Penalty Notice (assumed as 2 working days following the Notice being sent by first class mail), or £100 if paid after 28 days but within 42 days of receipt of the Notice.

If the Penalty Notice is not paid in full by the end of the 42 day period, the local authority must either prosecute for the offence to which the notice applies or withdraw the Notice. The prosecution is not for non-payment of the Notice but is a prosecution for irregular school attendance under the Education Act 1996 Section 444.

There is no statutory right of appeal against the issuing of a Penalty Notice.

MISC

As with prosecutions under Section 444 Education Act 1996 a Penalty Notice may be issued to *each* parent liable for the offence.

The local authority will not issue more than two Penalty Notices in any 12 month period in respect of each child of the family.

Penalty Notices should not be issued for children in public care. Where there are concerns over attendance a looked after child (LAC) Review should be held.

In all cases of poor attendance, the school must review whether a pupil has special educational needs, whether these have been properly assessed and that the provision made is appropriate. For pupils with a SEN an annual review should be held before issuing a Penalty Notice.

Under this Code of Conduct all “revenue” from Penalty Notices for non-attendance will be collected by the local authority. The local authority will then report to schools and the Police annually.

LEGISLATION

1. Section 23 Anti Social Behaviour Act 2003 empowers authorised officers of a Local Authority, Head Teachers (and Deputy and Assistant Head Teachers authorised by the Head) and Police Officers (including Community Support Officers) to issue a Penalty Notice in cases of unauthorised absence from school, or alternative provision.
2. The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004.
3. The Education (Penalty Notices) (England) Regulations 2004 require the Local Authority, in consultation with the above, to develop a code of conduct for the issuing of Penalty Notices. Any person issuing a Penalty Notice must do so within the terms of this code of conduct (“the Code of Conduct”).
4. The Education (Penalty Notices) (England) (Amendment) Regulations 2005 extends the issuing of Penalty Notices to alternative provision.
5. The education provisions of the Anti Social Behaviour Act 2003 apply to all parents who fall within the definition of a “parent” as set out in Section 576 of the Education Act 1996. This Act defines “parent” as; all natural parents, whether they are married or not; any person who has parental responsibility for a child; and 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.
6. Penalty Notices supplement the existing sanctions currently available under Section 444 Education Act 1996 or Section 36 Children 1989 to enforce attendance at school or alternative provision.
7. Education & Inspections Act 2006; giving authorisation into Penalty Notices when a child has been excluded.
8. This Code of Conduct complies with the requirements set out in Sections 14-16 of The Education (Penalty Notices) (England) Regulations 2007.
9. The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Equal Opportunities legislation.

This Code will be reviewed in September 2012.