

Code of Conduct for the issuing of Penalty Notices

London Borough of Newham 2014-15

1. Purpose of the code

The Government has made it clear that it expects Local Authorities to have a Code of Conduct in place so that the full range of measures for improving attendance are available to schools. Regular school attendance is both a legal requirement, and essential if the children of Newham are to achieve better outcomes in education maximise the opportunities available to them. Newham Schools consistently work towards a goal of 100 per cent attendance for all children in school.

The purpose of the local Code of Conduct is to ensure that Penalty Notices are issued consistently and fairly across the Local Authority area, in accordance with the relevant legislation, and that suitable arrangements are in place for the administration of the scheme.

Regulations specify that the following must be included in the Code:

- Means of avoiding the issue of duplicate notices
- Measures to ensure that a notice is not issued when proceedings for an offence under S.444 of the 1996 Act have been decided upon or are under way
- The occasions when it will be appropriate to issue a Penalty Notice
- The maximum number of Penalty Notices that may be issued to a parent in a twelve month period, in respect of any individual child.

The Code will be reviewed annually in consultation with local partners:

- The Local Authority
- Governing Bodies and Head teachers of Schools
- Police.

2. Background Legislation

In February 2004, the Anti-Social Behaviour Act, S.23, Sub-section 1 added sections 444A and 444B after S.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 S.444 by paying a financial penalty to the Local Authority.

Section 103 of the Education and Inspections Act 2006 enables Penalty Notices to be issued to parents in relation to an excluded pupil 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.*

It is incumbent upon parent(s) in such circumstances to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere than at home.

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
- Disability Discrimination Act 1995
- Data Protection Act 1998

The Education ((Penalty Notices) (England) Amendment Regulations 2013 amended the timescales for payment of Penalty Notices as from 1 September 2013. A Penalty Notice incurs a fine of £60 per parent, per child if paid within 21 days, which rises to £120 per parent, per child, if paid within 28 days. Furthermore, the Education (Pupil Registration) (England) Regulations 2006 were amended from 1 September 2013, removing references to family holiday and extended leave as well as the statutory threshold of ten school days. The amendments made clear that Headteachers may not grant any leave of absence during term time unless there are exceptional circumstances. Where leave is granted, Headteachers should determine the number of school days a child can be away from school and the date for return.

3. Circumstances in which a Penalty Notice can be issued

In agreement with local partners, the following circumstances may result in the issue of a Penalty Notice:

- a) Where parents persistently fail to ensure their children attend school and attendance is 90 per cent or below in a term i.e. 12 or more sessions of absence in a 12 week period), with no acceptable reason, and no other legal sanctions are under way
- b) Term time leave is taken without obtaining the agreement of the school and the parents have been warned that a Penalty Notice may result,
- c) Unwarranted delayed return from term time leave without school agreement.
- d) Persistent late arrival after the registers have been closed (U co only) (10 sessions or more)
- e) Parents' or carers' failure to make arrangements to ensure that children who have been excluded from school due to misbehaviour are not in a public place at prescribed times during the first five

school days of any exclusion, without reasonable justification.*

* It is incumbent upon the parent(s) in such circumstances to provide proof of reasonable justification, for example, that the child or young person needed to attend a pre-arranged medical appointment, or a medical emergency requiring the child to be supervised elsewhere than at home.

4. Authorisation to issue a Penalty Notice

In consultation with local partners it has been agreed that the Local Authority will issue Penalty Notices on their behalf. This will avoid the potential for duplicate notices to be issued, or for notices to be issued when there are legal proceedings in train.

A Head teacher, Deputy or Assistant Head, or Police officer can make a request in writing to the Council to issue a notice by completing the PN Request form.

5. Who can be issued with a Penalty Notice

Anyone defined as a parent under Section 576 Education Act 1996 is a parent for the purposes of these provisions. This means:

- all natural parents, whether they are married or not
- any person who, although not a natural parent, has parental responsibility (as defined by the Children Act 1989) for a child or young person
- any person who, although not a natural parent, has care of a child or young person.

Having care of a young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

A parent means each and every parent coming within the definition (whether acting jointly or separately) and should not be taken to mean that provisions only apply to parent in the singular. As with prosecutions under Section 444 Education Act 1996, a Penalty Notice may be issued to each parent liable for the offence.

6. Maximum number of Penalty Notices that can be issued

Local partners have agreed that the maximum number of formal written warnings that may be issued in a twelve-month period is two. The parent(s) would be advised, within the Warning letter, that at this stage only can they make representations to the nominated Senior Local Authority officer. The maximum number of Penalty Notices that can be issued in respect of an individual child in a twelve-month period is two.

7. Amount of Penalty and Payment Arrangements

The penalty for each parent is £60 for each child, if paid within 21 days of receipt of the notice. The penalty increases to £120 if paid after 21 days but within 28 days of receipt of the notice. (Service by post is deemed to have been effective, unless otherwise proved, on the second working day after postage by first class post). Arrangements for payment are detailed on the Penalty Notice.

If a penalty is not paid in full by the end of the 28 day period, LB Newham will either prosecute for the offence for which the notice has been issued, or withdraw* the notice. The prosecution is not for non-payment of the notice but is a prosecution for irregular school attendance (Section 444(1) Education Act 1996). Therefore the reasons for issuing a PN need to accord with S.444 of the Education Act 1996 and associated legislation. There is no statutory right of appeal against the issuing of a Penalty Notice.

*A Penalty Notice can only be withdrawn either:

- a) where it was issued outside the terms of the local Code of Conduct
- b) Where it should not to have been issued or has been issued to the wrong person
- c) where the Penalty Notice contains material errors, or
- d) where after the expiry of 28 days the penalty notice is unpaid and the LA has not started legal proceedings or wishes to take such action under section 444.

All penalties paid to the LA will be used in the administration of the Scheme, and any associated legal proceedings.

8. Procedures for issuing Penalty Notices

The issue of Penalty Notices will be undertaken by staff authorised by Newham Council. Specimen warning letters, breach letters and an application for issue of a Penalty Notice and Checklist for schools have been prepared by the Newham Attendance Management Service