

# Thurrock Council

## Penalty Notice code of conduct for unauthorised absence from school

### Foreword

The law entitles every child of school age to an efficient full-time education. It is the legal responsibility of every parent to ensure their child receives that education (Section 7, Education Act 1996).

The Department for Education (DfE) document 'Working Together to improve school attendance, May 2022' states "Improving attendance is everyone's business. The barriers to accessing education are wide and complex both within and beyond the school gates and often specific to individual pupils and families."

Schools will work with children, families, the local authority and other partners to identify barriers to good attendance and offer support as appropriate. In cases where this offer of support fails to improve a child's attendance, statutory action may become necessary. This Penalty Notice code of conduct sets out the circumstances in which a Penalty Notice application can be made.

**"Education is the most powerful weapon we can use to change the world"**

– Nelson Mandela



Sheila Murphy, Corporate Director of Children's Services

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Implementation from: September 2022

# 1. Introduction

- 1.1. This is the Code of Conduct for issuing Penalty Notices in cases of unauthorised absence from any school or alternative provision in Thurrock. It is intended to comply with the relevant law, to be easy to use and to ensure that Penalty Notices are administered fairly across the local authority.
- 1.2. It applies to all schools within Thurrock, including academies, free schools and establishments where alternative provision is arranged under Section 19 of the Education Act 1996. It is effective from **1 September 2022**.
- 1.3. Each local authority must draw up a Code of Conduct to ensure consistency in the issuing of Penalty Notices within its area. Penalty Notices must also be issued in accordance with the Human Rights Act 1998 and the Equality Act 2010. All prosecutions are brought by the local authority. The School Attendance Support Team will be able to clarify queries.

# 2. Background

- 2.1. Regular and punctual attendance at school is a legal requirement (Section 7 of the Education Act 1996) for pupils and is essential if pupils are to maximise the opportunities available to them. It is a parent's responsibility to ensure that their child attends regularly.
- 2.2. A child is of compulsory school age from the start of the term after their 5th birthday up until the last Friday of June in year 11.
- 2.3. An offence occurs if either:
  - a parent fails to ensure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school
  - an excluded child is found in a public place, without reasonable justification, during the first 5 school days of a formal exclusion from school
- 2.4. Section 576 of the Education Act 1996 defines 'parent' as "*all natural parents, whether they are married 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; and any person who, although not a natural parent, has care of a child or young person. Having care of a child means that person with whom the 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.*"
- 2.5. Schools have a range of strategies available to them to encourage good attendance. The local authority is required by law in some circumstances to take statutory action to improve attendance and as a last resort may prosecute.
- 2.6. A Penalty Notice is an alternative to prosecution and offers parents the opportunity to discharge their responsibility for the period of non-attendance by payment of a penalty rather than by prosecution through the Criminal Court. The use of a Penalty Notice should be considered at the earliest opportunity; if it is believed it will address the non-attendance before it becomes entrenched.

**Penalty Notice applications by relevant schools and partners in respect of Year 11 pupils will be accepted up until the end of Spring Term 1 only. This is due to time limitations for prosecution should the Penalty Notice remain unpaid after 28 days.**

### **3. Compliance with the code**

- 3.1. 3.1 Penalty Notices issued in Thurrock must comply with this code. Failure to do so may result in the Penalty Notice being invalid and ultimately withdrawn.
- 3.2. 3.2 The following partners have been consulted on this Code of Conduct and agree to its provisions:
- Thurrock Council (the LA)
  - governing bodies, head teachers and principals of Thurrock schools
  - Essex Police

### **4. Circumstances in which a Penalty Notice may be issued**

#### **Irregular Attendance**

- 4.1. Penalty Notices can only be issued in respect of unauthorised absence, when the following criteria are met:
- at least 12 sessions of unauthorised absence are recorded against the pupil's name within 120 available sessions (one session is a half day)
  - parents must first be sent a letter warning that a Penalty Notice could be issued and allowing them 30 school days to evidence a commitment to improving their child's attendance (Appendix A)
  - we recommend that the warning is sent before the criteria are met; at 8-10 unauthorised sessions – after 30 days, if no further unauthorised absences are incurred it is hoped the Penalty Notice warning has been effective in improving attendance
  - absences will only be included up to the end of the warning period

The Penalty Notice application must be submitted within two school weeks of the end of the 30 day warning period.

Applications submitted after this date and/or inaccurate or incomplete applications will be rejected and returned to the sender.

#### **Unauthorised Leave of Absence (term-time holiday)**

The Education (Pupil Registration) (England) Regulations 2006 were amended in 2013 so that references to family holiday (including reference to head teachers allowing up to 10 school days for a term-time holiday) and extended leave were removed. The amendments make clear that head teachers may not grant any leave of absence during term-time unless there are exceptional circumstances. Head teachers should determine the number of school days the child may be away from school if the leave is granted.

- 4.2. Penalty Notices can only be issued in respect of unauthorised absence and must meet the following criteria:

- if a head teacher does not authorise a request from a parent for term-time leave of absence and the parent takes the leave – in such circumstances, it is good practice for the school to notify parents of the intention to apply for a Penalty Notice and how the action conforms to the school's attendance policy
- there must be at least 10 consecutive sessions of unauthorised term-time leave

It is expected that the school's position on unauthorised leave and the use of Penalty Notices will be clearly communicated to all parents through the School Attendance Policy and newsletters. This is considered to be adequate warning therefore no individual warning letter is needed. However, it is good practice to inform parents that the absence was not authorised and of the intention to ask for a Penalty Notice to be issued.

The Penalty Notice application must be submitted within four school weeks of the pupil's return to school following the unauthorised leave of absence.

Applications submitted after this date and/or inaccurate or incomplete applications will be rejected and returned to the sender.

## **Exclusions**

Where a pupil of compulsory school age who has been excluded from school, either for a fixed period or permanently is found to be present in a public place during school hours in the first five days of the exclusion, without reasonable justification. The parent must have been notified in writing by the school at the time of the exclusion of this and the days to which it applies.

It is expected that the school has challenged the parent at the time and recorded evidence of this will be provided with the Penalty Notice application.

## **5. Who can issue a Penalty Notice**

5.1. In accordance with this Code of Conduct a Penalty Notice will only be issued by the following individuals:

- authorised local authority officers – in Thurrock, these are currently members of the School Attendance Support Team
- head teachers, in respect of pupils registered at their school may make application to the local authority to issue
- deputy and assistant head teachers, as authorised by their head teachers may do the same
- a Police Officer or Police Community Support Officer (PCSO) in the case of an excluded pupil being in a public place

## **6. Procedure for Issuing a Penalty Notice**

6.1. Schools will adopt a policy that ensures parents receive an appropriate warning in relation to any unauthorised absence or persistent lateness.

6.2. Prior to issuing a Penalty Notice in respect of irregular attendance it is a requirement that a final warning letter be sent to the parent allowing the parent 30 school days to evidence a commitment to improving their child's attendance.

- 6.3. Attendance will be monitored by the school. If, after schools have followed a robust attendance management process, there is no satisfactory improvement in the levels of attendance application can be made for a Penalty Notice to be issued.
- 6.4. When issuing a Penalty Notice the authorised individual must ensure that there is sufficient evidence for a prosecution under section 444(1) or 444(1a) of the Education Act 1996. For the avoidance of doubt, a Penalty Notice issued under the provisions of this Code will be sufficient for a prosecution under, at the very least, section 444(1) of the Education Act 1996.
- 6.5. Penalty Notices are issued per parent per child.
- 6.6. No more than 1 Penalty Notice in respect of irregular attendance will be issued to a parent within a 12 month period. If the law continues to be broken around school attendance consideration should be given to other action including immediate prosecution through the Criminal Court under Section 444(1) or 444(1a).
- 6.7. There is no limit to the number of Penalty Notices that can be issued in respect of unauthorised leave of absence (term-time holiday).
- 6.8. There is no limit to the number of Penalty Notices that can be issued in respect of Exclusions.
- 6.9. To ensure all evidential requirements are in place and to safeguard officers; Penalty Notices will not be issued as 'on the spot' action and will only be issued via First Class Post.
- 6.10. Once a person is issued with a Penalty Notice they must pay a penalty. This is set by regulation at £60 if paid within 21 calendar days (after the date of issue), rising to £120 if paid after 21 calendar days but within 28 calendar days.
- 6.11. Penalty Notices must be paid in full. Instalment payment is not acceptable.
- 6.12. If the recipient fails to pay in full within 28 calendar days the local authority will prosecute for the offence to which the notice applies, save for in very limited circumstances when the notice may be withdrawn.

## **7. Circumstances in which a Penalty Notice may be withdrawn**

- 7.1. A Penalty Notice may be withdrawn by the local authority in any case in which the authority determines that:
  - it has not been issued in accordance with the Code of Conduct
  - it ought not to have been issued to the person named as the recipient
  - it appears to the local authority that the notice contains material errors
  - the Penalty Notice has not been paid in full after 28 calendar days of issue, but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued
- 7.2. The decision to withdraw the notice must be confirmed in writing to the recipient of the original notice.

## 8. Non-payment of Penalty Notices

- 8.1. If the Penalty Notice is not paid in full by the end of the 28 calendar day period, the local authority must either prosecute for the offence to which the notice applies or withdraw the notice.
- 8.2. The prosecution **is not for non-payment of the notice** but is a prosecution for irregular school attendance under section 444(1) or 444(1a) of the Education Act 1996.
- 8.3. In the event of a prosecution, the School Attendance Support Team will prepare the court paperwork. The head teacher/principal will be required to sign the Certified Extract and schools are expected to co-operate with this process in respect of any questions or clarification needed.
- 8.4. In the event of a prosecution, and in particular if the defendant enters a 'not guilty' plea, head teachers/school staff must be available to appear as a witness for the prosecution and be prepared to give evidence in court.

## 9. General points

- 9.1. Schools must apply to the local authority (currently the School Attendance Support Team) to issue a Penalty Notice on its behalf.
- 9.2. Applications must be signed by the head teacher/principal, or their authorised deputy.
- 9.3. Applications must include a copy of the initial warning letter (where appropriate) and the Pupil Attendance Record pertaining to the Penalty Notice period. Schools must be prepared to provide a copy of the Pupil Attendance Record showing all tracked changes if requested.
- 9.4. For Penalty Notices issued in the case of unauthorised leave of absence, or absences in excess of the period determined by the head teacher, clear documentary evidence must be provided that demonstrates that the parent understood that permission had not/would not be given.
- 9.5. Penalty Notice Applications must be sent via secure email or AVCO to [sast@thurrock.gov.uk](mailto:sast@thurrock.gov.uk) – all necessary documentation should be sent as 1 attachment and not as separate files.
- 9.6. There are no restrictions on the number of times a parent may receive a formal warning that a Penalty Notice may be issued.
- 9.7. It is not appropriate to issue a Penalty Notice if this conflicts with other legal action already being taken or, in most cases, where the pupil is in the care of the local authority.
- 9.8. Where a Police Officer or Police Community Support Officer stops an excluded pupil in a public place during the school day and the pupil has no reasonable justification to be there a request can be made by the officer for the School Attendance Support Team to issue a Penalty Notice. The School Attendance Support Team will establish, as soon as practicable, whether the relevant criteria are met, and if so, will issue the Notice.
- 9.9. The local authority retains sums paid in respect of Penalty Notices, and these go towards the cost of administering the scheme and resulting legal action. In the unlikely event that

the local authority receives more income from Penalty Notices than it spends on administering the scheme, the excess income must be paid to the Secretary of State.

- 9.10. The School Attendance Support Team will maintain a record of all applications and outcomes.

## 10. Appeals

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

If a parent wishes to challenge whether their child's absence(s) ought to have been authorised they must contact the school directly. The local authority is unable to 'pause' the process and parents are encouraged to make payment at the reduced amount of £60 whilst liaising with the school. Should the Head teacher decide to retrospectively authorise the absence(s) the School Attendance Support Team must be informed, and the Penalty Notice withdrawn. If payment of the Penalty Notice has been made, a full refund will be arranged.

- 10.2. Parents who believe the Penalty Notice has been issued outside of the Code of Conduct may, make written representation to the Principal Education Engagement Officer, via email to [sast@thurrock.gov.uk](mailto:sast@thurrock.gov.uk) setting out reasons why a Penalty Notice should not have been issued. This must be made within 10 calendar days of the date of the notice.

**This does not apply to those parents who believe the absence should be authorised (see point above).** The parent will be notified of the outcome in writing, within 5 working days of the submission, and a copy sent to the school. The local authority is unable to 'pause' the process and parents are encouraged to make payment at the reduced amount of £60 whilst their representation is considered. If it is concluded that the Penalty Notice was issued outside of the Code of Conduct, the Penalty Notice will be withdrawn, and any payments made refunded in full.

## 11. Relevant legislation

### Anti-social Behaviour Act 2003:

- <https://www.legislation.gov.uk/ukpga/2003/38/section/23>

### Children's Act 1996:

- <https://www.legislation.gov.uk/ukpga/1989/41/contents>

### Crime and Disorder Act 1998:

- <https://www.legislation.gov.uk/ukpga/1998/37/section/16>

### Education Act 1996:

- Section 444A – <https://www.legislation.gov.uk/ukpga/1996/56/section/444A>
- Section 444B – <https://www.legislation.gov.uk/ukpga/1996/56/section/444B>
- Section 576 – <https://www.legislation.gov.uk/ukpga/1996/56/section/576>
- Section 7 – <https://www.legislation.gov.uk/ukpga/1996/56/section/7>
- Section 19 – <https://www.legislation.gov.uk/ukpga/1996/56/section/19>

**Education and Inspections Act 2006:**

- <https://www.legislation.gov.uk/ukpga/2006/40/section/103>

**Equality Act 2010:**

- <https://www.legislation.gov.uk/ukpga/2010/15/contents>

**Human Rights Act 1998:**

- <https://www.legislation.gov.uk/ukpga/1998/42/contents>

**The Education (Penalty Notices) (England) Regulations 2004:**

- <https://www.legislation.gov.uk/uksi/2004/181/made>

**The Education (Penalty Notices) (England) (Amendment) Regulations 2013:**

- <https://www.legislation.gov.uk/uksi/2013/757/made>

## **12. Data protection**

We will use the information you have supplied us to provide an appropriate, timely and effective service. We may share your personal data between our services and with partner organisations, such as government bodies and the police. We will do so when it is of benefit to you, or required by law, or to prevent or detect fraud. To find out more, go to [thurrock.gov.uk/privacy](http://thurrock.gov.uk/privacy). Get free internet access at libraries and community hubs.



# Appendix A – example Penalty Notice Warning Letter

School details

Date

Parent Name and Address

\*(Warning Letter should be issued per parent per child)

**CRIMINAL JUSTICE AND COURTS SERVICES ACT 2000  
ANTI SOCIAL BEHAVIOUR ACT 2003  
EDUCATION ACT 1996  
CHILDREN ACT 1989**

**The Education (Penalty Notices) (England) (Amendment) Regulations 2013**

Dear

**PENALTY NOTICE WARNING to parent of **Child Name (DOB: )**  
Education Provision: **Name of School****

We have been working with you to encourage improved school attendance for your child.

Elaborate here on what support has been offered and whether this has been accepted and what the outcome was.

For example: We have offered to complete with you a CAF (Common Assessment Framework) to seek additional support for you and your family however you declined/failed to engage with the support offered to you.

You signed a parenting contract containing actions that you, **Child Name** and the school would take in order to improve your child's attendance, but you have failed to adhere to do this.

Any other support offered, please detail here.

Unfortunately **Name of Child**'s attendance has not improved to a satisfactory level. I am enclosing a copy of the most recent attendance printout for your information.

It is your legal responsibility under section 7 of the Education Act 1996 to ensure that your child attends school regularly and punctually and failure to do so may result in statutory action being taken against you.

In this case; the first action will be to make an application to the local authority to issue you with a Penalty Notice.

The Penalty, which can be issued per parent per child, is £60 and must be paid within 21 days. If paid after 21 days but within 28 days the penalty is doubled to £120. Such payment will mean you will no longer be criminally liable for the period of poor attendance. Non-payment will result in a prosecution in the adult criminal court.

You now have a period of 30 school days in which to evidence your commitment to ensuring your child's regular attendance. Further unauthorised absences may result in the Penalty Notice being issued without any further reference to you.

Yours sincerely

Head teacher/Principal

School Name

**Font in red with grey background indicates either a field to be completed or examples of possible details to include. This should be in black ink and this instruction, as well as other instructions or options not pertaining to this case; must be deleted and not left in the letter.**