



**Amendment to Southend  
Borough Council's Code of  
Conduct under the  
Provision of the Education  
(Penalty Notices)  
Regulation 2004**



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## APPENDICES

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## **To all Head teachers and School Attendance Leads**

I am writing to draw your attention to the update of Southend Borough Council's code of conduct for the provision of administering Penalty Notices for non-school attendance.

The Code of Conduct is issued under the Provision of The Education (Penalty Notices) Regulation 2004 and Subsection (1) Section 23 Anti-Social Behaviour Act 2003. Early Help Family Support Service is authorised to operate this code and will ensure the administration of justice of the necessary process and in order to fully comply with Article 6 and 8 of The Human Rights Act 1998 and ensure the consistent, fair and transparent application of penalty notices throughout the borough.

The keys areas of the code of conduct that I would like to bring to your attention are:

- Penalty notices can only be issued for an offence that the local authority is willing and able to prosecute in Magistrates Court for non-school attendance and the action is proportionate to the level of absence
- Penalty notice fines and payment timeframes have changed
- New guidance and powers to issue Penalty notices for leave taken in term time
- Penalty notices can be issued to all children in the same family unit exhibiting patterns of poor unauthorised attendance

All schools wanting to issue penalty notices under the Southend code of conduct as a deterrent to taking leave during term time, must evidence that all literature provided to parents, such as: School Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters and website information includes the warning that parents may be issued with a penalty notice if leave is taken without permission. Schools must also ensure that once a parent has submitted a request for leave during term time which has not been agreed due to no evidence of exceptional circumstances, that they then provide parents with a warning letter. An example warning letter is attached with the updated Southend Borough Council's code of conduct.

**Although the responsibility for authorising requests for leave of absence lies with the school, it is the Early Help Family Support Service who will make the decision on whether to issue a penalty notice based on the evidence supplied by the school.**

The code of conduct and appendices are attached within this pack and can also be found on the Schools learning network. Further questions or guidance around the code of conduct can be given from the Early Help Family Support Service.

Kind regards

# **Southend Borough Council's Code of Conduct under the Provision of the Education (Penalty Notices) Regulation 2004**

**This is an amendment to Southend Borough Council's code of conduct and relates to penalty notices for absences.**

**Code of Conduct under the Provision of The Education (Penalty Notices) Regulation 2004 and Subsection (1) Section 23 Anti-Social Behaviour Act 2003**

## **RATIONALE**

Regular and punctual attendance of pupils at schools is, under section 7 of the Education Act 1996, a legal requirement, parents being responsible for ensuring that any child of compulsory school age receives full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have. Compulsory school age is defined as: Commencing at the start of term on or after a child's fifth birthday and concluding on the last Friday in June of the child's year 11 in which the pupil becomes 16. It is also essential for pupils to attend school regularly in order to maximise the opportunities available to them. Early Help Family Support Service investigates cases of irregular attendance and instigates statutory intervention where appropriate.

Under the provisions of subsection (1) of section 23 of the Anti-social Behaviour Act 2003, in certain cases of unauthorised absence a penalty notice may be issued to the parent(s)/carer(s) responsible. Under these provisions the penalty is £60 if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt.

Early Help and Family Support Service will ensure the administration of justice of the necessary process and in order to fully comply with Article 6 and 8 of The Human Rights Act 1998 and ensure the consistent, fair and transparent application of penalty notices throughout the borough. This Code of Conduct will govern the issuing of penalty notices across the borough.

## **GUIDANCE AND LEGISLATION**

Early Help Family Support Service is authorised to operate this code and must have regard to the following legislation and guidance: -

The Race Relations (Amendment) Act 2000  
The Race Relations (Statutory Duties) Order 2001  
Disability Discrimination Act 1995  
Data Protection Act 1998  
Children Act 1989  
Crime and Disorder Act 1998  
Human Rights Act 1998  
Special Needs Code of Practice 2003

### **Section 576 Education Act 1996: Definition of a Parent**

The education-related provisions of the Anti-social Behaviour Act 2003 apply to all parents who fall within the definition set out in this section of the Education Act 1996. This defines 'parent' as:

- All natural parents, whether they are married or not.
- Any person who, although they are 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 a child or young person – having care of a child or 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.

Throughout this document, references to 'parent' mean 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.

### **PROCEDURE FOR THE ISSUE OF PENALTY NOTICES**

The issue of penalty notices will be strictly administered by Early Help Family Support Service to ensure independence of judicial intervention, proportionality and that the provisions of this code do not have a negative impact on the current forms of statutory intervention pursued by the Early Help Family Support Service. No penalty notice may be issued without prior written warning.

#### **The key considerations are:**

Whether, given the facts of the case the investigating officer believes that the issuing of a penalty notice will be effective in helping to ensure that the parent secures the regular attendance of the child at a place of education.

The parent is judged capable of securing their child's regular attendance at school but is not taking responsibility for doing so, for example failing to engage in voluntary or supportive measures.

**That the notice has been issued only for an offence that the local authority is willing and able to prosecute and the action is proportionate to the level of absence**

The Local Authority will always issue penalty notices by first class post.

The responsibility of the issuing of a penalty notice is within the statutory duties of the Early Help Family Support Service, via revenue collection mechanisms, will ensure that the issue of penalty notices are closely monitored with the relevant financial penalty being imposed and collected.

In the case where the penalty has not been paid within 28 days of issue, the case may be escalated to prosecution for non-school attendance.

No one parent may receive more than one separate penalty notice resulting from the unauthorised absence of an individual child in any twelve-month period. A Penalty notice will be issued to each parent of each child exhibiting the relevant patterns of unauthorised absence. Therefore within any twelve month period each parent can receive a separate penalty notice for each child that exhibits the relevant pattern of unauthorised absence and, where appropriate, in respect of more than one child.

## **CIRCUMSTANCES WHEN PENALTY NOTICES MIGHT BE ISSUED**

### **Unauthorised Absence/Truancy:**

Penalty notices may be issued following assessment of unacceptable levels of unauthorised absence of 20 school sessions or more within a 24 week period (term time)

In addressing the issue of parentally condoned absence, penalty notices may offer a prompt and potentially effective deterrent to unauthorised absence at a point, which may not be as easily accessed through existing enforcement provisions. Parent/carers will receive a warning letter prior to the issue of a penalty notice.

### **Unauthorised leave during Term Time**

Following amendments to the 2006 regulations in the Education (Pupil Registration Regulations) (England) (Amendment) Regulations 2013. These amendments described below came into force on 1st September 2013.

Amendments to the 2006 regulations remove reference to family holidays and extended leave as well as the statutory threshold of ten school days. The amendments make clear that head teachers may not grant any leave of absence during term time unless there are exceptional circumstances (*no definition is given within this legislation*). Head teachers should determine the number of sessions a child can be away from school if the leave is granted.

Schools must ensure that all literature provided to parents, such as Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters and website information includes the warning that parents may be issued with a penalty notice if a holiday is taken without permission.

If the decision is made not to authorise, a letter to the parent confirming that a leave of absence has not been authorised must be sent by the Head teacher and include a warning that a penalty notice may be issued.

If a holiday is then taken without authorisation the school will complete a request signed by the head teacher (or designated deputy), for consideration of issuing a penalty notice and send it to Early Help Family Support Service Senior Practitioner within two weeks of the pupil returning to school. Early Help Family Support Service the Senior Practitioner will decide if the issue of a penalty notice is appropriate.

The head teacher must have regard to the Department for Education's 'School Attendance, Statutory guidance and departmental advice, September 2013' when considering each request for a holiday.

## **Penalty Notices for term time holidays can be issued if**

- **There have been 10 sessions (5 consecutive days) or more of unauthorised absence due to leave taken during an academic year; AND**
- **Attendance is below 90% (unauthorised absence) during the preceding 12 weeks before the leave was taken;**

A large proportion of penalty fines can go unpaid; officers before issuing such a notice **shall assess the likelihood of securing a conviction if the notice is not paid.**

As in other cases, the necessary warning letters will precede the issue of a notice. **NB** Under normal circumstances a penalty notice will not be issued in cases where a parent has received a previous conviction in respect of his/her child's absence from school without agreement from a line manager.

### **ADMINISTRATION OF THE PENALTY NOTICE SCHEME**

Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected by the Local Authority via a payment collection provider allowing for various methods of payment. The officer issuing a penalty notice shall maintain accurate and up to date records.

A prosecution under s 444(1) (A) Education Act 1996 will be undertaken when sufficiency of evidence exists to warrant statutory intervention, the failure to pay a Penalty Notice will be used in evidence for prosecution of non-school attendance. There is not an opportunity to pay fines in instalments and there is no right of appeal to the penalty notice.

For any person to be prosecuted the elements of s444 must be proven, the service cannot prosecute just because a notice has not been paid. The Rules of Evidence and Criminal Procedural Rules apply, any prosecution must meet the "evidential test" and the "public interest test" and must be proportionate otherwise a prosecution may not proceed.

### **WITHDRAWAL OF PENALTY NOTICE**

There are only five exceptions when a notice may be withdrawn;

- a. when it is issued to the wrong person
- b. when issued outside the terms of the code of conduct
- c. when an offence has not been committed
- d. If a parent can prove it was delivered to the wrong address
- e. Exceptional circumstances proven

***Updated January 2018***

## APPENDIX A - Guidance to Head teachers on leave of absence

### APPLICATION FOR LEAVE OF ABSENCE DURING TERM TIME

The current law does not give any entitlement to parents to take their child out of school during term time. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 prohibits Head teachers granting leave of absence to a pupil except where an application has been made in advance and the Head teacher considers that there are exceptional circumstances relating to the application.

Taking your child out of school during term time could be detrimental to your child's educational progress. A pupil who takes 10 days absence will only attain 94.7% attendance in the year. 10 days absence also means the pupil will miss 50 hours of education.

If the absence is not authorised and the holiday is taken, the case will be referred to the Early Help Family Support Service who may issue a Penalty Notice for £120 (or £60 if paid within 21 days) to each parent for each child taken out of school.

**Please complete one application per child.**

Name of Child	
D.O.B:	
Class:	
Date of First Day of Absence:	
Date of Return:	
Number of Days Requested:	
Parents Name:	
Parents DOB:	

***Important: A letter must be attached to this request, outlining the 'exceptional circumstances' for which a leave of absence is being applied for.***

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Name: \_\_\_\_\_

**School/office use only**

Attendance percentage preceding 12 weeks:			
Number of sessions absence this academic year	Auth	Unauthorised	Total

**APPENDIX B - Unauthorised Request for Leave – School letter**

Dear

Thank you for your letter regarding your request to take xx out of school for the purposes ..... from xx to xx.

I have considered your application and regret to inform you that your application for leave has not been granted.

The Department for Education advises that leave of absence can only be granted in **exceptional circumstances**. I am unable to authorise this holiday as the reasons stated on your application form are not deemed as exceptional.

If you decide to take your child/children out of school for this period you may be subject to a Penalty Notice issued by the Local Authority on your return. Under the Anti-Social Behaviour Act 2003, Section 23(1), the issuing of a Penalty Notice incurs a fine of £60.00 per child if paid within 21 days rising to £120.00 per child if paid after 21 days but within 28 days. (NB. In the case where the penalty has not been paid within 28 days of issue, the case may be escalated to prosecution in Magistrates Court for non-school attendance)

I have included a leaflet which has been issued by the Local Authority in relation to Penalty Notices for poor school attendance and unauthorised leave during term time.

Yours sincerely,

Head teacher  
Xxx School.

**APPENDIX C Request for issue of penalty notice for holiday taken in term time Checklist**

**ALL** the below sections must be completed in order for us to process the request. (The request will be returned if not fully completed)

	To be completed by Head Teacher	Tick when checked (Senior Practitioner)
Name of child		
Date of birth		
Name of parent/s to be included in the Notice		
Date of birth of parent/s		
Address		
Address of parent if different		
Dates of holiday (10 sessions (5 consecutive days) or more of unauthorised absence due to leave taken during an academic year)		
<b>To be able to issue a Penalty Notice all the above must be completed</b>		
Attendance is below 90% unauthorised absence during the preceding 12 weeks before the leave was taken? (What is the %)		
Copy of holiday request from parent (attached)		
Copy of warning letter issued by head teacher (attached)		
Confirmation that all school policies are up to date with the new guidance in the Southend code of conduct and this has been shared with parents		

I confirm that to the best of my knowledge the above information is accurate and that I wish for the Early Help Family Support Service to issue a Penalty Notice to the parent/s of the above child in accordance with the guidelines issued in the Southend code of conduct (2014)

Head teacher (signature)..... (Printed name).....

School..... Date.....

Agreement of Senior Practitioner that all requirements have been met and the penalty can

be issued (Signature)..... (Printed name).....

Date.....

#### **APPENDIX D - Guidance to Head teachers on leave of absence**

Example letter from Head teacher where no application received for TTH

Dear

Name: DoB:

School:

I have noted that ..... had ..... day's absence for the period..... I have reason to believe that this absence was due to a family holiday because. .... I have checked my records and can find no holiday application form from you regarding this absence.

The current law does not give any entitlement to parents to take their child out of school during term time. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 prohibits Head teachers granting leave of absence to a pupil except where an application has been made in advance and the Head teacher considers that there are exceptional circumstances relating to the application.

If leave of absence is not authorised, and is taken without permission, the Early Help Family Support Service may issue a penalty notice to each parent of £60 for each child to be paid within 21 days. If the penalty is not paid within the time scale the penalty will increase to £120. If the higher penalty is not paid within 28 days, the Early Help Family Support Service will then institute legal proceedings against you in the magistrate's court under Section 444 of the Education Act 1996 for failing to ensure your child attends school regularly.

As I have not been given a reason for this absence, I have taken the decision to record it as unauthorised leave taken for a term time holiday.

Please contact me by..... to discuss if there are any special circumstances that you feel should be taken into consideration before I apply to the Local Authority for the issue of Penalty Notices.

Yours sincerely,

Head teacher

## **FREQUENTLY ASKED QUESTIONS**

### **Am I entitled to take my child out of school for a family holiday?**

**No.** Parents have a legal duty to ensure that their children attend school or the alternative provision on a regular basis.

The Education Act 1996 makes it a criminal offence for a parent to *“fail to secure their child’s regular attendance at the school”*

The amendments to the 2006 Regulations remove any reference to *family holidays, extended leave and the statutory threshold of ten school days.*

The amendments make clear that **Head teachers may not grant any leave of absence (holiday) during term time unless there are exceptional circumstances**

The amendments give **parents no entitlement** to take their child out of school for a holiday in term time. The Head Teacher and Governing Body will determine what the exceptional circumstances are

### **If we decide to take a holiday during term time what should we do?**

The parent/carer with whom the child resides must apply in writing to the school  
The letter/application must explain the exceptional circumstance surrounding the request for the leave of absence

### **What will the school do then?**

The Head teacher will determine whether the exceptional circumstance ruling applies, if not the application will be declined.

Only the Head teacher has the power to approve leave of absence applications. When making the decision the protocols and criteria laid down in the school’s attendance policy must be followed.

Each academic year, schools inform parents/carers via a letter, newsletter or some other communication; that they may receive a Penalty Notice if their child has unauthorised absences in term time.

You will receive a written response from the Head teacher (or the Deputy) letting you know if your application has been approved.

If the holiday goes ahead after the application has been declined the absence will be recorded as unauthorised