

### RATIONALE

1. Section 7 of the Education Act 1996 states that parents are responsible for ensuring that their of compulsory school age receives efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have and, where that education is being provided at a school, parents must ensure their child's regular attendance at the school.
2. 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 academic year in which the pupil turns 16. In Dudley Metropolitan Borough Council's (the LA) area, the Education Investigation Service instigates statutory intervention on behalf of the LA, when it is notified that a pupil has the relevant level of unauthorised absence

***NB: This code does not apply to children of compulsory school age who are not registered at a school.***

3. Section 444A of the Education Act 1996, as amended, and its associated regulations specify the cases of unauthorised absence that can result in a Penalty Notice being issued to a child's parents or carers. Under these provisions the Penalty Notice is **£60**, if paid within **21** days of receipt, rising to **£120**, if paid after **21** days, but within **28** days of receipt.
4. This Code of Conduct will govern the issuing of Penalty Notices across the Borough and, when applying its contents, the EIS will ensure that the rights of the individuals affected are not compromised by complying with Article 6 and 8 of the Human Rights Act 1998.
5. The issue of a Penalty Notice affords parents the opportunity of discharging their liability to conviction for a criminal offence under section 444 of the Education Act 1996 by payment of the fine, but where the fine is unpaid the prosecution can proceed.

### GUIDANCE AND LEGISLATION

The LA's Constitution delegates responsibility for this Code to the Strategic Director for People, who must have regard to the following:

- The Human Rights Act 1998;
- The Equality Act 2010, which prohibits discrimination on the basis of a person's age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage, civil partnership, pregnancy and maternity;
- The Data Protection Act 1998;
- The Children Act 1989;
- The Crime and Disorder Act 1998;
- The Criminal Proceedings and Investigations Act 1996;
- The Police and Criminal Evidence Act 1984; and
- The Education Act 1996.

## Section 576 of The Education Act 1996, Defines a 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; and
- 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.

## GENERAL CONDITIONS FOR THE ISSUE OF PENALTY NOTICES

6. The issue of Penalty Notices will be strictly administered by the EIS to ensure the **independence** of this legal intervention and to ensure that the provisions of this Code of Conduct do not have a **negative impact** on any other forms of statutory intervention being pursued by the EIS.
7. The Attendance and Behaviour Policies of maintained schools and academies within the Borough should inform parents of the rules for an unauthorised leave of absence in term time and should state that:
  - (a) Parents **MUST** apply in writing through the schools application form for any leave of absence to be authorised in term time;
  - (b) Any authorisation is at the head teacher's discretion or his/her designate; and
  - (c) An unauthorised leave of absence in term time may result in a penalty fine.
8. A school or academy may notify the EIS that the circumstances required to justify the issuing of a Penalty Notice for a leave of absence, if the school or academy does not have reasonable grounds to believe that the pupil is unable to attend the school by reason of sickness or any unavoidable cause and:
  - An application has been refused and leave is then taken;
  - No application has been made and leave is taken; or
  - Leave has been granted but extended leave is taken without the additional absence being authorised by the school.
9. Where a Penalty Notice relates to an unauthorised leave of absence in term time it will be sufficient to establish that parents should have been aware through a school or academy policies, of Penalty Notices and unauthorised leave of absence in term time.
10. The first time that a parent is referred to the EIS for their child's unauthorised absence (not a leave of absence in term time) a written warning is usually issued and, where possible, the EIS will endeavour to communicate with the parent through home visits, in order to ensure the parent is advised of the use of Penalty Notices.
11. For a Penalty Notice to be issued the following must be considered:
  - a) The parent has failed to comply with their legal duty by ensuring that their child, who is registered at a school or academy to attend "regularly" in accordance with any

legislation or case law at that time or they have failed to follow any policy or rule identified within the behaviour or attendance policy relating to leave of absences in term time.

- b) That unauthorised absence is recorded within the register is commensurate with the level required by this Code of Conduct and the EIS' standard referral criteria for intervention, in place at any time.
  - c) Historic absence may be taken into consideration when issuing the Penalty Notice, but not in excess of a 12 month period.
  - d) The LA is **willing and able to prosecute should** the fine remain unpaid. The EIS' investigating officer or their supervisor is satisfied that it is a proportionate response.
12. The EIS will always issue Penalty Notices by post, but they may be delivered by hand if an officer determines the risk appropriate.
13. No parent should ordinarily receive more than two separate Penalty Notices in any twelve-month period.
14. The EIS may receive referrals or complaints with regard to cases where the issue of Penalty Notices may be appropriate, this could be from the Police or other agencies and shall consider these requests, providing the sufficient evidence is supplied and the level of unauthorised absence is consistent with the level required by this Code of Conduct.

## **A PENALTY NOTICE MIGHT BE ISSUED FOR**

### **General Unauthorised Absence**

15. Where unauthorised absence levels indicate that child has less than 90% attendance a Penalty Notice may be used.

### **Following Pupil Watch / Truancy Sweeps**

16. Parents who are interviewed during, or following, a truancy sweep or pupil watch exercise or where instances of truancy are identified, may be subject to a Penalty Notice. Each case will be assessed on an individual basis and full account will be taken of the pupil's overall levels of unauthorised absence.

### **Unauthorised absence in term time**

17. Where schools or academies have a rule on absence in term time (above) and the head teacher has received written notification of a request for a leave of absence and it has been refused, or a leave of absence has been taken for 10 sessions or more, without seeking the absence to be authorised a penalty fine may be issued in conjunction with, or in isolation of any other absence.

In 2015 the DfE published statutory guidance for local authorities, school leaders, school staff, governing bodies and the police in relation to School Attendance: Parental Responsibility Measures.

The guidance relating to the Local Authority's Code of Conduct identifies that unauthorised absence due to holidays taken during term without the school's permission can trigger the issuing of a fixed penalty notice of £60 (if paid within £21 days of receipt) , rising to £120 if paid after 21 days but within 28 days.

Since September 2103 head teachers have only been allowed to make a discretionary decision to allow term time absence for holidays *in exceptional circumstances*. If an event can reasonably be scheduled outside of term time then it would not be normal to authorise absence. ***Absence during term time for holidays is therefore not considered an exceptional circumstance.***

Exceptional circumstances are not specified in the DfE guidance; however advice from the National Association of Head teachers identifies the following possible exceptional circumstances:

- Absences to visit family members are not normally granted during term time if they could be scheduled for holiday periods or outside school hours. Children may however need time to visit seriously ill relatives
- Absence for a bereavement of a close family member is usually considered an exceptional circumstance but for the funeral service only, not extended leave
- Absences for important religious observances are often taken into account but only for the ceremony and travelling time, not extended leave
- Consideration of the needs of the families of service personnel, if they are returning from long operational tours that prevent contact during scheduled holiday time
- Schools have a duty to make reasonable adjustments for students with special educational needs or disabilities
- Families may need time together to recover from trauma or crisis.

The guidance also identifies that it is acceptable to take a student's previous record of attendance into account when making decisions. It is also important to note that head teachers can determine the length of the authorised absence as well as whether absence is authorised at all.

In order for a penalty notice to be issued:

- The rules must be laid out, available and communicated to parents (attendance/behaviour policy)
- Parents must be warned that a PN may be issued (policy, newsletters, leave application, warning notices)
- The leave application must have been refused and communicated
- The absence must be unauthorised and subsequently taken
- If parents take the leave without making an application it has to be proven that unauthorised leave was taken.

## ADMINISTRATION OF THE PENALTY NOTICE SCHEME

18. Penalty Notices shall be issued in a prescribed manner. Any revenue generated will be collected through the LA's scheme, allowing for various methods of payment.
19. Where a prosecution under section 444 of the Education Act 1996 is being undertaken, a parent's failure to pay a Penalty Notice may be added to the evidence collated by the EIS to prove the offence.
20. There is no mechanism within either legislation or this Code of Conduct for:
  - (a) The use of debt collection procedures to pursue a parent who fails to pay a Penalty Notice;
  - (b) For parents to pay the Penalty Notice in instalments; or
  - (c) For parents to appeal against the issuing of a Penalty Notice, except in the circumstances described in paragraph 22 below.
21. For any person to be prosecuted the relevant elements of section 444 of the Education Act 1996 must be proven; the EIS cannot prosecute just because a Penalty Notice has not been paid. Therefore, the Rules of Evidence and Criminal Procedural Rules apply and any prosecution must meet the "*evidential test*" and the "*public interest test*", otherwise a prosecution may not proceed.
22. A Penalty Notice may be withdrawn in a number of circumstances, including:
  - a) When it should not have been issued;
  - b) When it has been issued to the wrong person;
  - c) When it has been issued in breach of the terms and conditions of this Code of Conduct;
  - d) When it contains significant or fundamental material errors;
  - e) When a parent can prove that it was delivered to the wrong address;
  - f) When the school or academy has received medical evidence that causes it to decide to authorise some or all of the absence and the referral criteria is no longer met; or
  - g) When it is no longer in the public interest to proceed with the Penalty Notice.
23. The LA shall produce an annual audited statement of the revenue collected from Penalty Notices.
24. Any such revenue may only be used to cover the costs incurred by the LA in issuing and enforcing Penalty Notices and prosecuting recipients who do not pay. Any surplus monies must be paid to the Secretary of State for Education, as there is to be no profit margin in the use of such fines and they may not be used as a revenue making exercise.

### Review

25. This Code of Conduct will be reviewed annually to ensure that it can service the school attendance landscape and any changes in legislation or case law.

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