

STATUTORY CODE OF PRACTICE
The County Attendance Team
Children Education and Families
Directorate

**Issuing Penalty Notices for unauthorised
absence from schools**

August 19 2024

Local code of conduct for issuing penalty notices for school absence 2024

1. The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Oxfordshire County Council. The code sets out the arrangements for administering penalty notices in Oxfordshire and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the 'Working together to improve school attendance' guidance.

Legal basis

2. Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, AP academies, and certain off-site places as set out in section 444A(1)(b).
3. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
4. A penalty notice can only be issued by an authorised officer: that is, a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable.
5. The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance'. It provides further national guidance on the operation of penalty notice schemes for school absence in England.
6. A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty notices will usually be issued to the parent or parents with day to day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Rationale

7. Research published by the Department for Education in May 2022 found pupils with higher attainment at KS2 and KS4 had lower levels of absence over the key stage compared to those with lower attainment.
 - Pupils who did not achieve the expected standard in reading, writing and maths in 2019 had an overall absence rate of 4.7% over the key stage, compared with 3.5% among pupils who achieved the expected standard and 2.7% among those who achieved the higher standard.
 - Pupils who did not achieve grade 9 to 4 in English and maths GCSEs in 2019 had an overall absence rate of 8.8% over the key stage, compared with 5.2% among pupils who achieved a grade 4 and 3.7% among pupils who achieved grade 9 to 5 in both English and maths.
8. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
9. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal enforcement is reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.
10. The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
 - support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
 - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

When may a penalty notice for absence be appropriate?

11. When the national threshold has been met: when a school becomes aware that the national threshold has been met, they must consider whether a penalty notice can and should be issued or not. The national threshold has been met when a pupil has been recorded as absent for 10 sessions (usually equivalent to 5 school days) within 10 school weeks¹, with one of, or a combination of the following codes:

¹ A school week means any week (Monday to Sunday) in which there is at least one school session. The 10 school-week period when the national threshold applies may span different terms or school years (e.g. 2 sessions of unauthorised absence in the Summer Term and a further 8 within the Autumn Term).

- (a) code G (the pupil is absent without leave for the purpose of a holiday),
- (b) code N (the circumstances of the pupil's absence have not yet been established),
- (c) code O (none of the other rows of Table 3 in regulation 10(3) of the School Attendance (Pupil Registration) (England) Regulations 2024 applies), and
- (d) code U (the pupil attended after the taking of the register ended but before the end of the session, where no other code applies)

12. During or following a truancy sweep: the LA or Police can issue a penalty notice, requests for consideration of a penalty notice fine must be made to the County Attendance Team within 10 days of the offence taking place.
13. When a pupil of compulsory school age is in a public place during school hours without reasonable justification during the first 5 school days of a fixed period or permanent disciplinary exclusion, under section 105 of the Education and Inspections Act 2006
14. In an individual case the local authority (or other authorised officer) believes a penalty notice would be appropriate, they retain the discretion to issue one before the threshold is met.
15. If repeated penalty notices are being issued and they are not working to change behaviour they are unlikely to be most appropriate tool. The national framework for penalty notices sets out that a maximum of 2 penalty notices per child, per parent can be issued within a rolling 3-year period. If the national threshold is met for a third time (or subsequent times) within 3 years, the County Attendance Team will consider other legal interventions available to Oxfordshire County Council to ensure attendance at school.
16. For the purpose of the escalation process, previous penalty notices include those not paid (including where prosecution was taken forward if the parent pleaded or was found guilty) but not those which were withdrawn.

Penalty Notices must not be issued when:

17. A pupil is 'Looked After' (as defined by law in the Children Act 1989), as other interventions should be used. In Oxfordshire, we use the term Child/ren We Care For.
18. It is clear that any legal and other requirements have not been complied with.

Key considerations prior to the issue of a Penalty Notice for school absence

19. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

In cases where support is not appropriate (for example, for holidays in term time), consideration must be given on a case by case basis:

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010
- The Local authority is satisfied that the school's attendance policy articulates the use of the Penalty Notice process.
- **(For local authorities only)** Is it in the public interest to issue a penalty notice in this case given the local authority would be accepting responsibility for any resulting prosecution for the original offence in cases of non-payment?

In cases where support is appropriate, consideration must be given on a case-by-case basis:

- Has sufficient support already been provided? Sufficient support will usually include:
- The use of a Strengths and Needs form to identify areas of need which may be impacting on school attendance and allow for appropriate support and intervention to be put in place, use of the Child and Family Developmental checklist, use of the Day in My Life tool to understand the lived experience of the child, a meeting with parent/carer/child with a view of implementing a formal attendance contract and liaison with relevant colleagues such as Health, Children's services and Police
- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010

(For local authorities only)

A penalty notice issued for any offence that begins prior to the 19th August 2024 will be issued under the existing rules. Therefore, it will:

(a) be charged at the existing rate of £60 per parent per child rising to £120 per parent per child if the Penalty Notice is not paid in full by day 21 from receipt of the Penalty Notice.

(b) not count towards the escalation whereby a second penalty notice within 3 years is charged at a flat rate of £160 and there is a limit of 2 penalty notices within 3 years and

(c) should be issued in line with Oxfordshire County Council's existing thresholds for the 2023-24 academic year.

Note: This is regardless of whether the penalty notice is issued before or after the 19th August 2024.

The County Attendance Team will consider if it is in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution for the original offence in cases of non-payment.

If the answer to the above questions is 'yes', then a penalty notice (or a notice to improve in cases where support is appropriate) will usually be issued.

The LA will also give consideration to the following to support decision making.

- History of non-attendance
- Level of unauthorised absence
- Attendance of any siblings
- Parental engagement
- Actions taken by the school
- Professional involvement

Notice to Improve

20. A Notice to Improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a notice to improve should usually be sent to give parents a final chance to engage in support. An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).
- Schools or Local Authority will issue the notice to improve after support (if appropriate) has been implemented and prior to a penalty notice being issued (if appropriate)

- The Notice to Improve should be issued with an identified improvement period of 6 weeks (60 sessions) in order to achieve sustained change. However, if unauthorised absence continues, the Local Authority will consider issuing a penalty notice after 3 weeks (30 sessions).
- If no further unauthorised absences within the improvement period are recorded after receipt of the Notice to Improve or there is a sufficient amount of improvement giving consideration to circumstances and the needs of the child/family.
- The issuing party (School or LA) are responsible for monitoring attendance over the identified Notice to improve period.
- The Headteacher or someone authorised by them must ensure that the pupil's registration certificate is correctly coded.

In addition:

A warning letter may not necessarily be considered appropriate for unauthorised holiday if the unauthorised absence was not expected by the Head Teacher.

Procedure for issuing Penalty Notices

21. In Oxfordshire, the County Attendance Team will issue Penalty Notices. If the correct procedure is not followed by schools, the County Attendance Team has discretion to decline the request or advise further action to be taken before a Penalty Notice is issued. This will avoid the possibility of inconsistent use of Penalty Notices across the county.
22. Penalty Notices will only be issued by first class post and never as an on the spot action (e.g. during a truancy sweep). This is to ensure that correct procedures are followed and to ensure staff safety.
23. Where schools, the police or neighbouring local authorities consider the issuing of a Penalty Notice is appropriate, this request will be investigated and actioned by the County Attendance Team
24. The County Attendance Team should respond to all requests within 10 working days of receipt, and where all criteria are met, will issue a Penalty Notice within 10 days.
25. Any school wishing to utilise the Penalty Notice tool to improve attendance needs to articulate this possibility in their school Attendance Policy which needs to be reviewed regularly, ratified by Governors and available to parents

How authorised officers will work together

26. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.
27. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police.
28. Where the school or police request that the LA issues the penalty notice, they need to:
 - Schools must use the Establishment Portal to refer
 - Police will need to notify the County Attendance Team via email to crossborder.penaltynotices@oxfordshire.gov.uk identifying information may include, name, date of birth, School roll, time and place the pupil was found in public during school hours.
29. Whoever is requesting the penalty notice should make a decision as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority's judgement about whether sufficient support has been provided before issuing a penalty notice.

30. The LA will inform the school about whether penalty notices are paid, withdrawn or prosecuted for non-payment. They will do this by directly emailing the referring party.
31. Where pupils move between local authority areas, **Oxfordshire** can be contacted on **crossborder.penaltynotice@oxfordshire.gov.uk** to find out if penalty notices have been issued previously.
32. Where pupils attend school in **Oxfordshire** but live in a different Local Authority, Oxfordshire will seek to confirm existing support arrangements (if any) for the pupil and family with the home Local Authority prior to the issue of a Penalty Notice

Procedure for the Withdrawal of Penalty Notices

33. Once issued, a Penalty Notice must only be withdrawn in the following circumstances:
- proof has been established that the Penalty Notice was issued to the wrong person;
 - that it contains material errors;
 - the Penalty Notice ought not to have been issued.

Payment of Penalty Notices

Arrangements about how to pay are outlined in Penalty Notice documentation.

34. Timely payment of a Penalty Notice discharges the parents' liability for the offence specified on the Penalty Notice. This means the parent cannot be prosecuted subsequently for the same period. However, the issue of an earlier Penalty Notice (or failure to pay) may be relevant to what action is taken over subsequent offences and this information may be given in evidence in any later court proceedings in accordance with relevant legal provisions.
35. The Penalty is £80 if paid within 21 days of receipt of the notice, increasing to £160 if paid between day 21 and day 28. This amount is prescribed by the Education Penalty Notices (England) Regulations 2007. Failure to pay a Penalty Notice within the prescribed period may result in prosecution for the underlying offence of failure to secure regular school attendance.
36. Any second penalty notice issued to the same parent for the same child within a rolling 3-year period will be charged at a higher rate of £160 with no option for this second offence to be discharged at the lower rate of £80. (The three-year period begins from the date of the first penalty notice issued on or after 19 August 2024)

37. The County Council retains any revenue from Penalty Notices. This is used to off-set the cost of early intervention and prevention attendance work with parents and schools.

Signed



Joanna Goodey
Education Inclusion Manager

Dated: 25 June 2024

This Code of Conduct will be reviewed April 2025 or earlier in the event of a change in the pertinent legislation