

Penalty Notice Protocol

Owner:	Portsmouth LA
Author:	Richard Harvey
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1. Legal Basis

Sections 444A and 444B of the Education Act 1996 as amended by section 23 of the Anti Social Behaviour Act 2003 empowers designated Local Authority (LA) officers, headteachers (and deputy and assistant headteachers authorised by them) and the police to issue Penalty Notices in cases of unauthorised absence from school.

The Education (Penalty Notices) (England) Regulations 2004 came into force on 27th February 2004 and prescribed the necessary details of the operation of the penalty notice scheme. These regulations have now been amended by Statutory Instrument 2007 No.1867 The Education (Penalty Notices) (England) Regulations 2007.

The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate.

2. Rationale

Regular and punctual attendance at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

In law an offence occurs if a parent fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under Sec 444, Education Act 1996 or Sec 36, the Children's Act 1989 to enforce attendance at school where appropriate.

It was agreed following consultation with headteachers and the police that the issue of Penalty Notices would only be through the Attendance Monitoring Service.

Parents and pupils are supported by the school to overcome barriers to regular attendance through a wide continuum of assessment and intervention strategies. Sanctions of any nature are for use only where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

3. Circumstances where a Penalty Notice may be issued

A Penalty Notice can only be issued in cases of unauthorised absence. In cases where families contain more than one poor-attending pupil, multiple issues may occur but this will be the subject of careful consideration and co-ordination. There will be no restriction on the number of times a parent may receive a formal warning of a possible issue of a Penalty Notice.

The education-related provisions of the 2003 Act apply to all parents who fall within the definition set out in this section of the Education Act 1996. The 1996 Act 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' 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.

The issuing of a Penalty Notice is generally considered appropriate in the following circumstances:

- following 10 sessions of unauthorised absence in a term
- parentally-condoned absences
- unauthorised leave of absence in term-time
- unauthorised delayed return from extended holidays without prior school agreement
- late arrival at school after the register has closed

To ensure consistent delivery of Penalty Notices the following criteria will generally apply:

- At least 10 sessions (5 school days) lost to unauthorised absence by the pupil during the current term.
- The liable parent will receive a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 30 school days to effect an improvement.
- The deliberate taking of a leave of absence in term time without/against school permission (where it can be clearly demonstrated that the parent understood that permission had not/would not be given) will result in a Penalty Notice being issued to each liable parent.

The school must consider every aspect of a pupil's case before considering whether a Penalty Notice would be appropriate.

The maximum number of Penalty Notices that may be issued will be no more than two penalty notices per child during each school year.

4. Procedure for issuing Penalty Notices for irregular attendance

The Attendance Monitoring Service will issue Penalty Notices in Portsmouth. This will ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.

Penalty Notices will only be issued by post and never as an on-the-spot action; this is to ensure that all evidential requirements are in place and to meet Health and Safety requirements.

The Attendance Monitoring Service will receive requests to issue Penalty Notices from schools, police and neighbouring LAs. These requests will be actioned provided that:

- all relevant information is supplied in the specified manner
- the circumstances of the pupil's absence meets all the requirements of this Protocol
- the issuing of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.

The Attendance Monitoring Service will respond to all requests within 10 school days of receipt, and where all criteria are met will:

- issue a formal written warning to the parent of the possibility of a Penalty Notice being issued
- set a period of 30 school days within which the pupil must have no unauthorised absences.
- issue a Penalty Notice through the post at the end of the 30 school day period if the required level of improvement has not been achieved.
- in the case of an unauthorised leave of absence in term time, a Penalty Notice will be issued to each individual parent, where appropriate, without a formal warning.

5. Procedure for withdrawing Penalty Notices

Once issued, a Penalty Notice will generally only be withdrawn if the LA determines:

- proof has been established that the Penalty Notice was issued to the wrong person
- the use of the Penalty Notice did not conform to the terms of this Protocol
- that the Penalty Notice contained material errors

Where a Penalty Notice has been withdrawn, a notice of the withdrawal must be given to the recipient and any amount paid by way of penalty shall be repaid to the person who paid it. No proceedings shall be issued under section 444 of the Act or continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued.

6. Payment of Penalty Notices

Arrangements for payment will be detailed on the reverse of the Penalty Notice invoice.

Payment of a Penalty Notice discharges the parent's criminal liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Penalty Notice.

Payment of a Penalty Notice within 21 days is £60 and payment after this time but within 28 days is £120.

The LA retains any revenue for Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

7. Non-payment of Penalty Notices

Non-payment of a Penalty Notice will result in a prosecution under the provisions of Sec 444, 1996 Education Act.

8. Policy and Publicity

All school Attendance Policies should include information on the deployment of Penalty Notices and this will be brought to the attention of all parents.

The LA will include information on the use of Penalty Notices and other attendance enforcement sanctions in promotional/public information material.

9. Reporting and Review

The termly reports to the Departmental Management Group and the Behaviour and Attendance Group on attendance matters will include Penalty Notice use. This is a mechanism for disseminating outcomes on the use of Penalty Notices to schools and the police.

The Attendance Monitoring Service will review Penalty Notice use at regular intervals and amend the general enforcement strategy as appropriate.

The Attendance Monitoring Service will maintain a database to ensure there is no duplicate issuing of notices and that the maximum number of penalty notices issued to a parent in a year is not exceeded.