

# Education Enforcement Code of Conduct

February 2019

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## 1. Introduction

This code of conduct sets out the procedures and terms under which Penalty Notices for unauthorised absence are issued by Solihull Education Enforcement Team. It applies to statutory school age children and to all maintained schools, academies and alternative provision within Solihull. It reflects the current legislative framework for penalty notices issued for unauthorised absences including guidance on Leave of Absence.

## 2. Leave of absence

*The Education (Pupil Registration) (England) (Amendment) Regulations 2013* have amended Regulation 7 of the 2006 Regulations to prohibit the proprietor of a maintained school granting leave of absence to a pupil except where an application has been made in advance and the proprietor considers that there are exceptional circumstances relating to the application.

### Procedure for requesting a planned absence

- All leave of absence requests will be considered by the head teacher and are expected to be unauthorised unless the circumstances are exceptional. A parent/carer should complete an absence request form and submit this to the school in line with schools on Absence policy. School will respond to the request in line with the schools own Absence Policy. If school is aware of any language difficulties that may preclude a request form being completed, appropriate support will be offered to the parent/carer.
- DFE guidelines make clear that leave of absence during term time should be regarded as exceptional. This was re enforced by the Isle of Wight Supreme Court Judgement dated April 2017 which confirmed that children are expected to attend school every day that it is open to them unless the reason for their absence is exceptional and unavoidable (e.g. illness). The Head teacher can decide to authorise an absence based on the evidence provided to them where they consider that the absence is unavoidable.
- If a parent/carer considers that they require their child to have a leave of absence for exceptional circumstances they should complete the absence request form which can be obtained from the school office . There is a requirement that parents/carers provide evidence of the exceptional circumstances and may be required to meet with the head teacher.

- If the head teacher deems that the reasons for the request are exceptional and authorises the absence, a letter confirming that the request has been authorised will be sent to the parent/carer.
- If the head teacher deems that the reasons are not exceptional, the leave of absence will not be authorised. A letter informing the parents of this decision for each child and warning of the legal implications of the absence will be sent to each parent. The letter provided in this guidance must be used.
- If once notified in writing of the decision to not authorise the leave of absence and the absence is taken, it will be marked as an unauthorised absence on the pupils register. If the trigger of 10 unauthorised absences (sessions) is met then the absences should be referred immediately to the Education Enforcement Team for consideration and could result in the issue of a fixed penalty notice.

The Education (Pupil Registration) Regulations 1995 states that where a pupil has been granted extended leave of absence and subsequently fails to return to school within 10 school days of the expiry of the agreed period of absence and the failure is not due to sickness or any other unavoidable cause, his / her name may, following consultation with the local authority, be deleted from the admissions register.

### 3. The use of unauthorised absence codes

*'Both staff and pupils should see the taking of registers as an integral and key part of the school day, as indeed was intended in law. Particular attention should be paid to accurate registration and to the preservation and security of registers. In this connection, headteachers need to bear in mind that registers may be used as evidence in cases where parents are being prosecuted for school attendance offences and that inappropriate authorisation of absences may compromise subsequent court proceedings.'*

*The Education (Pupil Registration) Regulations 1995 (SI 2089)*

In short, the register should be an accurate reflection of a pupil's attendance. The decision on whether or not to authorise a particular absence rests with the head teacher.

The following unauthorised mandatory absence codes should be used where the head teacher deems an absence to be unauthorised.

<b>N</b>	<p>This is the default mark given to absences for which no explanation has been received or no decision taken as to what mark accurately reflects the absence. This mark may not be used in any legal context.</p> <p>If no reason is provided after a reasonable period of time it should be replaced with code <b>O</b>.</p>
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	<b>N</b> should not be left showing on a pupil's attendance record indefinitely.
<b>O</b>	Unauthorised absence (e.g. shopping, birthday 'treat', couldn't get up etc.)
<b>G</b>	Family Holiday (not agreed)
<b>O</b>	Unauthorised absence – absence from school without authorisation
-	This represents a missing mark, it is therefore impossible to know whether or not a particular pupil was present or absent. This counts statistically as an unauthorised absence.

If a case is to be moved into the legal arena (including penalty notices) by the local authority this will require evidence of unauthorised absences. In cases that go to court, the register is in effect a statement by the head teacher and if the register is questioned in court the head teacher will have to answer any questions that may be raised.

In cases where a pupil's poor attendance is due to reported vague or minor illness schools should consider writing to the parent/carer suggesting that future absences will be marked unauthorised (**O**) unless the absence is confirmed by some form of medical evidence (i.e. doctor's note; appointment card; copy of prescription etc).

#### 4. Penalty notice code of conduct

### SOLIHULL MBC CHILDREN'S SERVICES AND SKILLS

#### EDUCATION ENFORCEMENT

#### Penalty Notice Code of Conduct

Code of Conduct under the Provision of The Education (Penalty Notices) Regulation 2004 and Subsection (1) Section 23 Anti-Social Behaviour Act 2003; Statutory Instruments 2004, 181; 2005, 2029.

#### 4.1 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 efficient full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs

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the child may have. Compulsory school age is defined as: commencing at the start of term commencing on or after a child's fifth birthday and concluding on the last Friday in June of the school year 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.

The Education (Pupil Registration) (England) (Amendment) Regulations 2013 have amended Regulation 7 of the 2006 Regulations to prohibit the proprietor of a maintained school granting leave of absence to a pupil except where an application has been made in advance and the proprietor considers that there are exceptional circumstances relating to the application.

Commencing on 27<sup>th</sup> February 2004, under the provisions of subsection (1) of section 23 of the Anti-social Behaviour Act 2003, it will now be possible that in certain cases of unauthorised absence a truancy 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. Non-payment will result in prosecution for non-school attendance under Section 444(1) Education Act 1996.

Solihull MBC will ensure the smooth administration of the necessary process and in order to fully comply with legislation on Human Rights will also ensure the consistent, fair and transparent application of fixed penalty notices throughout Solihull. This Code of Conduct will govern the issuing of penalty notices across the borough.

## **4.2 Guidance and legislation**

Persons authorised to operate this code 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 2015
- Education Act 1996
- Anti-social Behaviour Act 2003
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013

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### **4.3 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' 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.

### **4.4 Circumstances where a penalty notice may be issued**

The issuing of penalty notices is considered appropriate in the following circumstances where the minimum trigger criteria have been met. Subject to these threshold criteria being met the local authority may consider issuing a penalty notice in the following circumstances.

- In cases of absence from school, or a place of alternative educational provision, when the pupil has been taken on a 'leave of absence' in term time and the absence has not been authorised by the school (education provider) and the school have followed the local authority policy.

In such cases each parent will receive a separate penalty notice for each child taken out of school.

Should a parent fail or refuse to pay a penalty notice then the evidence provided by the school registration certificate (or that of alternative education provider) will be the primary information laid before the court.

- In the early stages of concerns about a pupils unauthorised absence with a pupil and parent/carer where the Education Enforcement Officer may be of the opinion that the issuing of a penalty notice is appropriate e.g. where a parent/carer continually fails to provide an explanation for a pupil's absence.

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- The Education Enforcement Team will assess any referrals or requests for the issuing of a penalty notice received from schools, police or other local authorities. Where levels of unauthorised absence have reached the appropriate thresholds the issue of a penalty notice may be considered as an alternative to pursuing other forms of intervention.

#### **4.5 Procedure for the issue of penalty notices**

- The issue of penalty notices will be administered by Solihull MBC in order to fully comply with legislation on Human Rights will also ensure the consistent, fair and transparent application of fixed penalty notices throughout Solihull and to ensure that provisions of this code do not have a negative impact on the range of forms of statutory intervention pursued by Solihull MBC. Therefore, no penalty notices will be issued without the issue of relevant warning notices and the pursuance of relevant assessment of the case.
- Where a request for leave of absence has been made and the school have sent written notification to parents that the absence will be unauthorised a penalty notice will be issued where the trigger of 10 sessions of unauthorised absence is met.
- In all other cases of unauthorised absence accrued over time and following a referral from school a warning letter will be issued by the Education Enforcement Team prior to a penalty notice. The trigger for a warning letter will be at least 10 sessions of unauthorised absence.

A penalty notice may be issued, following a referral from school, subsequent to a warning letter, if there are a further five sessions or more unauthorised absences.

- The Education Enforcement Team will issue penalty notices by first class post as there may be considerable health and safety implications involved in the operation of a hand / face-to-face delivery mechanism.
- The responsibility of the issue of fixed penalty notices will be retained by the local authority and held within the Education Enforcement Team. The Education Enforcement Team, in conjunction with the current council revenue collection mechanisms, will ensure that the issue of penalty notices is 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 Education Enforcement Team will instigate statutory action under section 444 (1) of the Education Act 1996.

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- No one parent will receive more than two separate penalty notices resulting from the unauthorised absence of an individual child in any twelve month period. Penalty notices will be issued to each parent of the child exhibiting the relevant patterns of unauthorised absence and where appropriate, in respect of more than one child. Should further unauthorised absences be accrued the local authority will consider legal action under S441a of the Education Act.
  - The Education Enforcement Team will receive referrals with regard to cases where the issue of penalty notices may be considered appropriate from schools in Solihull; pupil referral units and other providers of alternative educational provision; the police; other agencies and neighbouring authorities as appropriate.

#### **4.6 Procedures for withdrawing penalty notices**

A penalty notice may be withdrawn by the local authority in any case in which the local authority determines that:

- a) It should not have been issued
- b) It should not have been issued to the person named as the recipient.
- c) contains material errors

Where a penalty notice has been withdrawn in accordance with the above, a notice of the withdrawal shall be given to the recipient and any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it.

No proceedings shall be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under Section 444(1/1A) of the Education Act 1996 arising out of the same circumstances.

#### **4.7 Payment of penalty notices**

- The truancy penalty notice includes details of how to pay
- The local authority will produce an auditor's statement as part of the usual audit procedure showing that income received from fines does not exceed enforcement as defined. The surplus, if any, must be surrendered to the consolidated fund.

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## 5. Contact us

For further information please contact:

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