

Brighton & Hove City Council Code of Conduct for issuing Fixed Penalties regarding School Attendance

The Education (Penalty Notices) Regulations 2007 (as amended)

Effective from September 2017

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- **GUIDANCE TO HEAD TEACHERS**
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Introduction to all Head teachers and School Attendance Leads

The Access to Education team is writing to draw your attention to Brighton & Hove City Council's revised Code of Conduct for the provision of administering Penalty Notices for non-school attendance and for unauthorised absence.

Section 23 of the Anti-Social Behaviour Act 2003 and section 103 of the Education and Inspections Act 2006 enable Local Authorities to issue penalty notices for certain offences. These notices can be used as an alternative to prosecution under section 444 of the Education Act 1996 and enable parents to discharge potential liability for conviction for that offence by paying a penalty. This Code of Conduct is issued under The Education (Penalty Notices) (England) Regulations 2007 (as amended). The Council's Access to Education team is authorised to act under this code and will strive to ensure the consistent, fair and transparent application of the policy regarding penalty notices throughout the City.

All schools wishing to issue penalty notices under this Code of Conduct must evidence that literature provided to parents relating to attendance; such as School Prospectus, Attendance and Behaviour Policies, Home School Agreements and website information etc. are readily accessible and include the warning that parents may be issued with a penalty notice for any unauthorised absence, including unauthorised term time holidays.

The responsibility for classifying an absence lies with the school; the Access to Education team will issue a penalty notice based on the school's classification and other evidence supplied with the referral. The Code of Conduct can also be found on Brighton & Hove City Council's website. Further questions or guidance around the Code of Conduct can be dealt with by the Access to Education team.

Gavin Thomas
Access to Education Manager

Code of Conduct issued under The Education (Penalty Notices) Regulations 2007

RATIONALE

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have. A child reaches compulsory school age at the start of the term on or after their fifth birthday, and continues to be of compulsory school age until the last Friday of June in the school year that they reach 16. Notices cannot therefore be issued to children in reception who have not yet reached compulsory school age.

It is essential for pupils to attend school regularly in accordance with the rules of the school. The Access to Education Team will investigate cases of irregular attendance and may prosecute for the attendance offence if appropriate.

Under the provisions 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. 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. There is no right of appeal by parents against a penalty notice once issued by the local authority.

LEGISLATION AND GUIDANCE

The Council's Access to Education team must have regard to the following legislation and guidance when applying the provisions of this Code: -

Data Protection Act 1998

Children Act 1989

Crime and Disorder Act 1998

Human Rights Act 1998

Education and Inspections Act 2006

Equality Act 2010

Education (Penalty Notices) (England) Regulations 2007

Education (Penalty Notices) (England) (Amendment) Regulations 2012

Education (Penalty Notices) (England) (Amendment) Regulations 2013

Special Educational Needs Code of Practice 2014

Education Act 1996

Police and Criminal Evidence Act 1984

'Parental responsibility measures for school attendance and behaviour': DfE Guidance November 2013

Isle of Wight v Platt Supreme Court Judgement April 2017

Definition of a Parent

The definition of parent is set out in section 576 of the Education Act 1996. This can include any person:

- (a) who is not a biological parent of the child but who has parental responsibility for them, or
- (b) who has care of the child,

Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately,

CIRCUMSTANCES WHEN PENALTY NOTICES CAN BE ISSUED

Unauthorised Absence/Truancy:

- Persistent late arrival at school (after the register has closed). (6 sessions within a period of 6 school weeks)
- Pupils whose attendance has not reached a satisfactory level during a 6 week period following intensive support.
- Where parents allow their child to be present in a public place during school hours without reasonable justification in a fixed term or permanent exclusion.
- 6 or more sessions of **unauthorised absence** within a term.(O coded)
- **All unauthorised holidays taken during term time.** The Local Authority recommendation is that this is for any unauthorised leave of six sessions (3 days) or more.

Unauthorised leave during Term Time

The Education (Pupil Registration) (England) (Amendment) Regulations 2013, state 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 refer to NAHT guidance when determining whether a leave of absence is authorised. <http://www.naht.org.uk/welcome/news-and-media/key-topics/parents-and-pupils/naht-issues-new-guidance-on-authorised-absence/>
This has been supported by the Supreme Court judgement of April 2017 on unauthorised holidays taken in term time.

Head teachers should determine the number of sessions a child can be away from school if the leave is granted. Where permission for term time absence is requested with sufficient notice and the decision is made not to authorise, a letter to the parent confirming that it has not been authorised must be sent by the Head teacher or designated representative including a warning that a penalty notice may be issued.

If a holiday is then taken without authorisation the school must complete a request, signed by the head teacher (or designated deputy), that consideration be given to the issue of a penalty notice. The request should be sent to the Access to Education team within two weeks of the pupil returning to school. The Access to Education team will then issue a penalty notice if appropriate.

The Access to Education team will issue penalty notices on behalf of schools and will always serve them by first class post. The team will also ensure that the issuing of penalty notices is closely monitored with the relevant financial penalty being imposed.

If the penalty notice has not been paid within the 28 day deadline the case may be escalated and consideration given to prosecution for the original attendance offence.

A parent may receive more than one separate penalty notice resulting from the unauthorised absence, but not in excess of 3 penalty notices for an individual child in any twelve-month period. A penalty notice will be issued to each parent of each child.

If an initial Fixed Penalty Notice has failed to secure an improvement in attendance, the Access to Education team reserves the right to proceed with prosecution, providing the necessary casework has been completed by the school. Each case will be considered on its own merit.

WITHDRAWAL OF PENALTY NOTICE

Penalty notices may only be withdrawn in the following circumstances:

- 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. if there are unforeseen exceptional circumstances the leave of absence may be authorised.

PROSECUTION FOR NON PAYMENT OF A FINE

The prosecution would not be for non- payment of the fine, but for the original offence of failing to ensure child's regular attendance at school. The Access to Education team may use the fact that a penalty notice has been issued and remains unpaid as evidence.

The Access to Education team would look at all the circumstances of the case when assessing the likelihood of securing a conviction for the original attendance offence.

If the decision is made to proceed with prosecution the parent or carer will be issued with a notice of intended prosecution (NIP) in the first instance; then as a matter of good practice, in any subsequent interviews with parents, the Local Authority will act in accordance with the spirit of the Codes of Practice set out in the Police and Criminal Evidence Act 1984 (PACE), ensuring that the parent understands the basis for the interview, their needs are taken into account, their rights are explained and the interviews are conducted fairly.

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 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” This has been strengthened by the Supreme Court ruling April 17 that “regular” attendance at school means “in accordance with the rules prescribed by the school”, rather than “with sufficient frequency”

Head teachers may not grant any leave of absence (e.g. for holidays) during term time unless there are exceptional circumstances

The Regulation 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 as there is no official definition.

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

The parent/carer must apply in writing to the school with sufficient notice

The letter/application must explain any exceptional circumstances and provide evidence as appropriate surrounding the request for the leave of absence.

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

The Head teacher will determine whether the request can be considered as an exceptional circumstance. If not, the application will be declined.

You will receive a written response from the Head teacher or their representative letting you know if your application has been approved provided sufficient notice was given to the school. If the holiday goes ahead without permission having been granted the absence will be recorded as unauthorised.

Only the Head teacher has the power to approve leave of absence applications. The decision will be made in accordance with the rules prescribed by the school.

Each academic year schools should 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.

- **What if I disagree with the Head teacher’s decision?**

The school will not review the decision unless there is previously undisclosed evidence regarding exceptional circumstances that was not available at the time of the original request.

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