

Penalty Notices Guidance for Schools and Academies

This guidance should be read in conjunction with the DFE Guidance¹ school attendance; statutory guidance and departmental advice” published in November 2013.

About this guidance

This guidance updates and replaces all previous guidance regarding penalty notices published by East Sussex County Council, herein after referred to as the Local Authority (LA). It applies equally to all children of statutory school age.

From 1st September 2013, new government legislation states that head teachers are no longer able to authorise any requests for children to be taken out of school *unless* they believe the circumstances are exceptional. Previously, head teachers were able to authorise up to ten days of leave from school for special circumstances, but the updated legislation is specific: requests for leave can *only* be granted in exceptional circumstances and family holidays do not fall into this category.

In law an offence occurs if a parent/carer fails to secure a child’s regular attendance at a school where he/she is a registered pupil and if any absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under Section 444, Education Act 1996 and orders made under Section 36, Children Act 1989, to enforce attendance at school where appropriate.

This guidance is intended to be of assistance to all parties involved in the penalty notice process including head teachers, attendance officers and clerical staff.

The Education Support, Behaviour & Attendance Service (ESBAS) should be the first point of contact for any queries that head teachers, attendance officers etc may have regarding the issue of non-attendance.

Contact details for queries relating to penalty notices:

Education Support, Behaviour & Attendance Service
Legal & Interventions Team
East Sussex County Council
2nd Floor St Mark's House
14 Upperton Road
Eastbourne
BN21 1EP

¹ Parental responsibility measures for school attendance and behaviour: Statutory guidance for maintained schools, academies, local authorities and the police

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1. PENALTY NOTICE REGULATIONS

Subsection (1) of section 23 of the Anti-Social Behaviour Act 2003 added two new sections (444A and 444B) to section 444 of the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and to enable parents to discharge potential liability of conviction for that offence by paying a financial penalty. The offence of irregular attendance has not changed.

The Education (Penalty Notices) (England) Regulations 2007 sets out the framework for the operation of the penalty notice scheme.

The Education (Penalty Notices) (England) (Amendment) Regulations 2012 increased the amount of the penalty to £60 if paid within 28 days and to £120 if paid within 42 days. Subsequently, the Education (Penalty Notices) (England) (Amendment) Regulations 2013 has shortened the timescales for payment of the penalties. The fine is £120 but this will be discounted to £60 if paid within 21 days. If payment is made after 21 days then this will revert to £120. These amendments come into force on 1 September 2013.

A parent/carers cannot be prosecuted for the offence for which the notice was issued until after the final deadline for payment has passed and cannot be convicted of that offence if the penalty is paid in accordance with the notice.

These procedures apply to the parents/carers of children of compulsory school age who are registered at a maintained school, academy, pupil referral unit, or any other alternative educational provision arranged under s19 of The Education Act 1996.

All those defined as a parent under section 576 of the Education Act are parents for the purposes of these provisions. As with prosecutions under section 444 Education Act 1996, a penalty notice may be issued to each parent liable for the offence (see below)

2. PARENT/CARER

The Education Act defines “parent” as; all natural parents, whether they are married or not; *any* person who has parental responsibility for a child; and *any* person who, although not a natural parent, has *care* of the child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a *parent* in education law.

3. CIRCUMSTANCES WHEN A PENALTY NOTICE CAN BE ISSUED

A key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to ensure regular attendance at school, or alternative provision (as appropriate).

A penalty notice is a suitable intervention in circumstances where a parent appears unwilling to take responsibility e.g. it can be used for persistent unauthorised lateness and also for planned, but unauthorised absences, such as a holiday in term time.

4. PROCEDURES FOR REQUESTING A PENALTY NOTICE

4.1 Requested / Planned Absence (e.g. a holiday)

The recent regulations from the Department for Education removed all references to “family holidays” and extended leave as well as the statutory threshold of ten school days. The amendments make it clear that head teachers may *not* grant any leave of absence during term time unless there are **exceptional circumstances**. Heads determine the number of school days a child can be away from school *if* the leave is to be granted.

Procedure:

- (a) In all cases a parent wishing to request a leave of absence during term-time should complete a request form (Appendix A1).
- (b) The Head will then make the decision as to whether or not the circumstances justify authorisation, following the guidance of the Department for Education, which states this can be given in **exceptional circumstances only**.
- (c) That decision must be recorded on the form and sent back to the parent promptly. You may also send back with the signed form a suggested standard letter to the parent (Appendix A2).

If the absence is unauthorised and subsequently taken, the following should be sent to the ESBAS team (these documents can be sent to the team by email).

- (i) An up to date registration certificate confirming absence and return;
- (ii) A full copy of the request form, as signed by the parent and Head;
- (iii) Any other correspondence, confirmation of calls that have taken place between the parent and school in relation to the absence.

PLEASE AIM TO SEND THESE WITHIN 14 DAYS OF THE CHILD'S RETURN TO SCHOOL

Sending in this documentation will instigate a Penalty Notice being issued to each parent for each child provided the requested absence is at least **5 days (10 sessions)**. If the absence is 9 sessions, or less, it may remain *unauthorised* but do not send the request to ESBAS as we are unable to issue a penalty notice.

In some cases, parents do not return a signed form. Provided there is additional evidence it may still be possible to issue a penalty notice. For example, the parent may have sent an email or a letter to the school requesting the absence or simply refused to complete a form. **Provided the information in relation to the issuing of penalty notices is publicised on your website, and/or included in your attendance policy, and/or sent out in newsletters (so there is no doubt parents are aware of the potential issue of a penalty notice) this should not prevent it being issued.**

4.2 Persistent Unauthorised Lateness – U Code

Lateness after the close of registration causes disruption in class. Consideration as to whether or not to issue a penalty notice for lateness should include whether the sanction will prove to be effective in eliminating lateness as an early measure to avoid the pattern becoming entrenched.

Your school should have a policy on how long registers should be kept open; guidance specifies that registers can be kept open for up to 30 minutes from open to close, and times are adjustable to the school and to be agreed with school Governors. A pupil arriving after the register has closed should be marked absence with code U.

Schools should actively discourage late arrival, be alert to patterns of late arrival and seek an explanation from the parent.

Further clarification can be sought from Department for Education Guidance.²

Procedure:

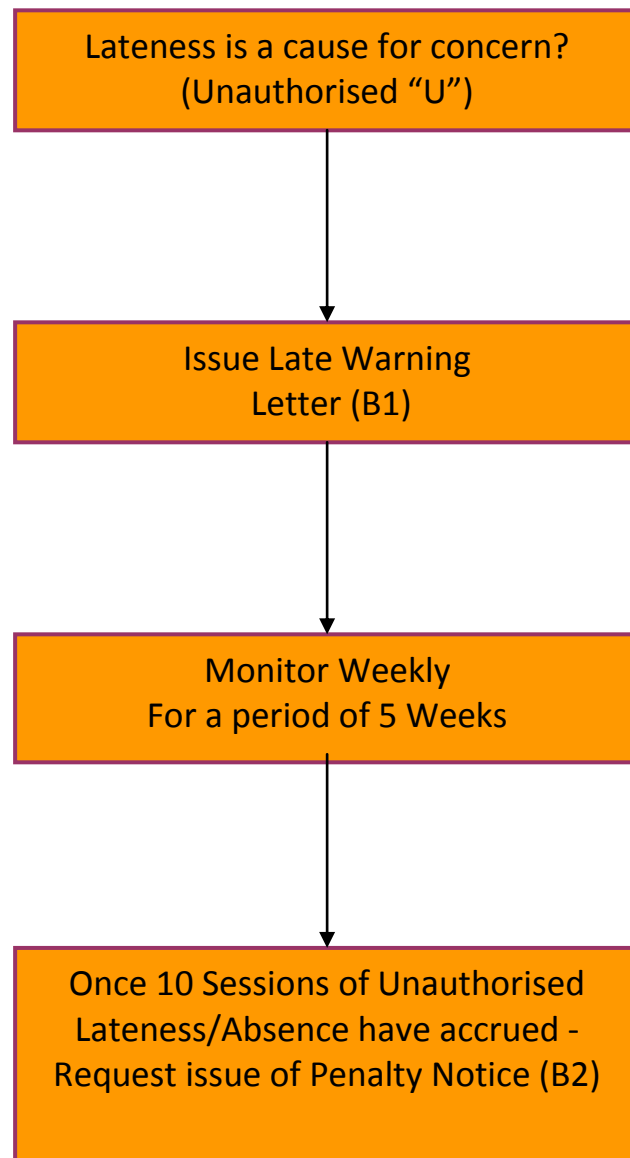
- (a) If unauthorised lateness is a cause for concern then the Late Warning Letter should be sent to the parents/carers (Appendix B1).
- (b) Attendance should be monitored weekly over a period of 5 weeks.
- (c) If 10 sessions of unauthorised lateness are then accrued during the 5 week period *following* the Warning Letter the Request Form should then be completed (Appendix B2), with the required documentation/evidence attached and then sent to ESBAS. A Penalty Notice will then be issued.

To assist, a flow chart is displayed on the next page.

NB - it is possible to have a *combination* of U codes and O codes meeting the 10 session criteria during this period – the Warning Letter covers this position.

² School Attendance - Departmental advice for maintained schools, academies, independent schools and local authorities - October 2014

FLOW CHART PENALTY NOTICE FOR LATENESS



ABSENCE REQUEST DURING TERM TIME

NOTICE TO PARENTS / CARERS

Dear Parents / Carers

The Department for Education (DfE) has amended the regulations and guidance in relation to absences in term-time. There is no automatic right to take your child out of school during term time.

From 1st September 2013, government legislation no longer enables head teachers to authorise requests for leave for children to be taken out of school unless there are considered to be **exceptional circumstances**. It is for the Head Teacher to determine the number of days a child can be away from school *if* the leave is granted. If you consider that your request falls into this category you will need to complete the form on the reverse of this notification. A response will be sent to you as soon as possible. If the absence requested is not considered to be an exceptional circumstance, and you nevertheless take your child out of school, the absence will be recorded as unauthorised in line with guidance from the DfE and the County Council.

This means that, in the case of an unauthorised absence, the Education Support, Behaviour & Attendance Service will be notified and a Penalty Notice will be issued. Please note that Penalty Notices are issued to *each* parent for *each* child taken out of school. A Penalty Notice is a fine of £60 which increases to £120 if not paid within the first 21 days. If the Penalty Notice remains unpaid this will result in further legal intervention.

All absence requests must be completed on the attached form, letters will not be accepted. This should be returned to the school a minimum of 14 days *before* the start of the absence.

Any absence from school will disrupt your child's learning. You may consider some absences to be educational but your child will still miss out on the teaching that their classmates will receive. Children returning from an absence are unprepared for the lessons which build on the teaching they have missed. Teachers then have to give more time to help individual children catch up on missed work. This poses a potential risk of the under achievement of other students in the class. This is something we *all* have a responsibility to avoid.

I hope you will support our efforts to raise attendance and attainment at our school.

Yours sincerely

Head Teacher

REQUEST FOR LEAVE OF ABSENCE DURING TERM TIME

If, after reading the letter on the reverse, you consider you have exceptional circumstances to request a leave of absence during term time, please complete this form and return to the school at least 14 days before the date you wish to remove your child from school.

Pupil Name Tutor Group/Class

Home Address

First day of absence Date of return to school

Total number of days missed

Exceptional circumstances are as follows:-

.....
.....
.....
.....

I understand that if the request is unauthorised the Education Support, Behaviour & Attendance Service will be notified of the absence taken and a Penalty Notice will be issued. I understand that a Penalty is issued to each parent for each child taken out of school and that this is a fine of £60 which increases to £120 if not paid within the first 21 days. I understand that if I do not pay this will result in legal action.

Name of Parent/Carer making application

Signed Dated

(Please ensure you are giving at least 14 day's notice of the proposed absence)

✂-----

Pupil Name Tutor Group

☐ **AUTHORISED:** Your request has been authorised for the following dates: ____/____/____ to ____/____/____

☐ **UNAUTHORISED:** Your request has been unauthorised for the following dates: ____/____/____ to ____/____/____

This means that it is not considered that the circumstances you describe are exceptional.

If you proceed to take the absence a Penalty Notice/s will be issued.

Signed Head Teacher Date ____/____/____

A suggested/example letter, already used by some schools, to return to parents with the counter-signed request form when an absence has been declined

Dear Parent/Carer

Thank you for your recent request for an absence in term time. I will not be authorising your request as I do not consider the reason provided for the requested absence to be exceptional circumstances.

I realise that you will be disappointed by my decision, but Government guidance means that, as a Head Teacher, I am no longer able to authorise any requests for children to be taken out of school unless there are exceptional circumstances. [**OPTIONAL IF A HOLIDAY** “and family holidays do not fall into this category”]

The consequence for your child taking an absence during this period is that it will be recorded as unauthorised and that we will request a Penalty Notice to be issued by the local authority to each parent / carer for each child.

Should you wish to present further evidence of exceptional circumstances, please write to myself **before** the absence is taken.

Please note that once a Penalty Notice has been issued there is no right of appeal.

Yours sincerely

Head Teacher

LATE WARNING LETTER

NB Separate letters to be addressed to each parent

Dear Parent

[Student Name]

WARNING OF POTENTIAL ISSUE OF PENALTY NOTICE

We are concerned to note that there is a pattern of lateness emerging in relation to **[Student Name's]** arrival time at school. In order to avoid this becoming a serious problem we would urge you to ensure that **[Student name]** arrives punctually each day and registers promptly.

Arrival after the close of registration is an unauthorised absence. Regular attendance, which includes punctuality, is not only an important educational requirement but is also a legal requirement.

Our school/college day starts at **[Time]** a.m. and our register closes at **[Time]** a.m. Arrival after this time is classed as an unauthorised absence. Any student arriving late not only disrupts their education but also the education of other students. Therefore, in bringing this concern to your attention we hope you will do everything possible to improve **[Student's name]** punctuality and contact us if there are any issues you would wish to discuss.

Please be advised that if punctuality does not improve and a further 10 sessions of lateness, and any other unauthorised absence, accrues during the next 5 weeks, we will refer the matter to the Education Support, Behaviour & Attendance Service and a Penalty Notice will be issued. Please note that if a Penalty Notice is issued this will be to each parent (for each child) incurring a fine of £60 which increases to £120 if not paid within 21 days.

As indicated above, if there are any issues you would wish to discuss please do not hesitate to make contact.

Yours sincerely

APPENDIX B2

REQUEST TO ESBAS TO ISSUE A PENALTY NOTICE / UNAUTHORISED LATES**Parent/Carers Name:****Address:****Pupil Name:** **Year:****School:****Date of Birth:****Absence Details:**

Date of Warning Letter:

Number of unauthorised lates/absences:

Period (dates) from: to

(MINIMUM 10 SESSIONS OVER 5 WEEK PERIOD FOLLOWING ISSUE OF WARNING LETTER)**Evidence attached:**☐ Warning letter dated:☐ Registration Certificate:☐ Any additional evidence:**Signed:****(Head teacher)****Dated:****Print Name:**

Please return to:

Pat Messer, ESBAS - 2nd Floor, St Marks House, 14 Upperton Road, Eastbourne, East Sussex, BN21 1EPTel: 01273 481967 - Email: legal.interventions@eastsussex.gov.uk