

Hertfordshire County Council

**Penalty Notices
Unauthorised Absence
(Truancy)**

Hertfordshire Code of Conduct

and

**Guidance for Schools
and Academies**

April 2019

**(Revision 22 March 2020)
COVID-19**

COVID-19 – ADVICE FROM THE SECRETARY OF STATE – 22 MARCH 2020

(until further notice)

The Secretary of State has written to Directors of Children’s Services setting out the department’s expectation that no parent is penalised for their child’s non-attendance due to Covid-19. Based on this information the Hertfordshire Local Authority:

- Will suspend any penalty notice action or prosecutions for Covid-19 related absence with immediate effect.**
- Will not issue new Penalty Notice applications and any cases from 16th March 2020 will be withdrawn.**

1. Local Code of Conduct – Penalty Notices for Unauthorised Absence (Truancy)

Introduction

Section 23 of the Anti-Social Behaviour Act 2003 empowers the police, designated Local Authority Officers and Headteachers and Deputy and Assistant Headteachers authorised by them to issue penalty notices in cases of unauthorised absence (truancy) of pupils of statutory school age.

The government requires Local Authorities to issue a Code of Conduct to which all parties involved must adhere. Penalty notices may be issued only in accordance with the terms of the Code of Conduct.

The purpose of the Code of Conduct is to ensure that:

- the powers are applied consistently and fairly
- duplicate notices are not issued
- issuing a notice does not conflict with proceedings proposed or being taken by the Local Authority under section 444 of the Education Act 1996
- suitable arrangements are in place for the administration of the penalty notice scheme.

The Law

Section 23 of the Anti-Social Behaviour Act 2003 added sections 444A and 444B to section 444 of the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and enable parents to discharge potential liability for that offence by paying a penalty. The Education (Penalty Notices) (England) Regulations 2007 set out the framework for the operation of the scheme.

All those defined as a parent under section 576 of the Education Act 1996 are considered to be parents for the purpose of these provisions.

As with prosecutions under section 444 of the Education Act 1996 a penalty notice may be issued to each parent liable for the offence in respect of each child.

Penalty notices apply to parents of children of compulsory school age who are registered pupils at maintained schools, academies, Pupil Referral Units (Education Support Centres), City Technology Colleges, Studio Schools, UTCs and any other alternative education provision arranged under section 19 of The Education Act 1996.

Parents cannot be prosecuted for the offence for which the penalty notice was issued until after the final deadline for payment has passed and the penalty remains unpaid.

Parents cannot be convicted of that offence if the penalty is paid in accordance with the notice.

The Local Authority will retain any revenue from penalty notices to cover the administration of the scheme and any legal actions arising from it.

Rationale

Regular and punctual attendance is a legal requirement for pupils registered at schools, academies or other maintained or alternative provision.

A penalty notice may be a suitable intervention in circumstances of unauthorised absence where the school considers a parent is capable of securing their child's regular attendance. It may be particularly effective at an early stage before attendance problems become entrenched.

Circumstances in which a penalty notice may be issued

- Penalty notices may only be issued in cases of unauthorised absence
- The pupil must have at least **15 sessions** (half days) unauthorised absence in the current and/or previous term
- The school must have sent a formal warning letter to each parent separately, dated, addressed and on school headed paper. This must be sent by first class post.
- The purpose of the warning letter is to give a parent the opportunity to prevent further unauthorised absence, so should be sent as soon as unauthorised absence occurs.
- The formal warning letter must have been sent in the same term that the application for Penalty Notice is made.
- The school/academy/police or Local Authority Attendance Officer considers that issuing a penalty notice could avoid further absence
- Issuing a penalty notice does not conflict with any other legal action being taken
- Separate notices are issued to each parent in respect of each child.
- A maximum of **two** separate penalty notices will be issued to a parent within any twelve month period
- Penalty notices will be issued for pupils of compulsory school age, up to the end of the autumn term of year 11 – this is in order to ensure sufficient time to prosecute unpaid Notices
- A penalty notice will not be issued in respect of a pupil who is looked after by the Local Authority without the prior agreement of the Attendance Team Manager on behalf of the County Lead for Attendance
- Government guidance is clear that a Penalty Notice should not be issued unless the Local Authority is prepared to prosecute if it remains unpaid. The information contained in the application will form part of the evidence in any subsequent prosecution and therefore must be fully completed. If it is not, the Local Authority may decide not to issue the Notice.

Responsibilities of the Local Authority for issuing penalty notices

Primary responsibility for issuing penalty notices rests with the Local Authority and may not be delegated. Schools, academies and the police may issue penalty notices if they wish to do so but any notices issued by them **must** comply with the Local Authority Code of Conduct and a copy of any penalty notice issued must be provided to the Local Authority.

In Hertfordshire all parties agree that the Integrated Service for Learning Attendance Teams administer the scheme and issue penalty notices on behalf of police, schools, academies and other settings to ensure fairness and consistency and in the event that subsequent legal action may need to be taken.

The Local Authority receives applications to issue penalty notices from schools, academies and the police. Penalty notices will be issued provided that:

- the circumstances of the absence meet the requirements of the Code of Conduct
- the information is provided in the specified manner
- the request is received not more than 10 school days after the final absence cited

The Local Authority retains revenue from the scheme to cover the costs of issuing and enforcing notices and prosecuting recipients who do not pay.

Appealing against the issue of penalty notices

There is no statutory right of appeal once a penalty notice has been issued. The Local Authority may withdraw a notice if it has been issued incorrectly. If the penalty notice has been issued in accordance with Hertfordshire's Code of Conduct there is no facility to overturn the decision to issue the notice.

Effect of issuing penalty notices

If the penalty is not paid in full before the expiry of the period for paying it the Local Authority named in the notice shall either institute proceedings against the recipient for the offence or shall withdraw the notice. The School/Academy will be required to provide a witness statement and must be prepared to attend court if required.

Payment of penalty notices

The amount payable is £60 (per parent) if paid within 21 days or £120 (per parent) if paid after 21 days but within 28 days of receipt of the notice.

Separate notices are issued to each parent in respect of each child.

Penalty notices are sent by first class post and are deemed to have been received on the second day after posting.

Arrangements for payment are detailed on the penalty notice and payment by cheque, postal order and by debit/credit card is accepted.

Withdrawal of penalty notices

The Local Authority may withdraw penalty notices in circumstances where it determines that the notice:

- has not been issued in accordance with the Code of Conduct
- ought not to have been issued
- ought not to have been issued to the person named as the recipient
- has not been paid but it is not appropriate to prosecute the recipient for the offence

Prosecution of unpaid penalty notices

If the notice remains unpaid after the expiry of the payment period and the Local Authority has not withdrawn the notice, the Local Authority will prosecute for the offence under section 444 of the Education Act 1996.

All decisions to prosecute (or not) rest with the Local Authority.

2. Responsibilities of schools and academies for penalty notices

Before using penalty notices schools and academies must have the agreement of their governing bodies.

Schools and academies should publicise their use of penalty notices, for example through their websites, newsletters and attendance policy (if used) to ensure that parents are aware of the consequences of failing to ensure their child's regular attendance.

Schools and academies must establish who is liable to receive any penalty notice. If it is both parents, then any correspondence should be addressed to each parent separately. This is important because penalty notices will be issued to each parent separately.

A formal letter advising each parent separately of their child's unauthorised absence and warning that a penalty notice will be issued if the unauthorised absence reaches 15 sessions in the current and or previous term is sent by the school/academy. The letter must be sent in the same term as the application for Penalty Notice is made. The formal warning letter is included (appendix A).

If the unauthorised absence continues and subsequently reaches 15 sessions within the requisite time period and the school/academy decides to apply to the Local Authority to issue a penalty notice they must do so within **10 school days of the final absence**.

Applications for penalty notices must be made using the standard application form **appendix B**. Each section of the application form must be fully completed to include details of work undertaken by the school to address absences. The information contained in the application will form part of the evidence in any subsequent prosecution and must include -

- a copy of the warning letter sent to parents
- a copy of the attendance certificate **appendix C** signed and dated by the head teacher

- a copy of the registration certificate (from SIMS) for the relevant period.

Applications should be sent to the Attendance Team for the area in which the child goes to school via Herts/Schools FX.

Penalty notices will be issued if they meet the requirements of the Code of Conduct and full information is given.

Schools/academies should be aware that if the penalty remains unpaid and the Local Authority prosecute for the offence they will be required to complete a witness statement for the court and if the parent contests the case will be required to attend court as a prosecution witness.

There is no statutory right of appeal against the issuing of a penalty notice. Therefore it is important that all information is accurate and parents have been warned they are at risk of a penalty notice being issued against them. A sample penalty notice is included as **appendix D**.

Appendix A – PLEASE NOTE A SEPARATE LETTER SHOULD BE SENT TO EACH PARENT AND ANYONE ELSE TO WHOM A WARNING/NOTICE IS TO BE SENT

LETTERS TO BE SENT BY 1ST CLASS POST ON SCHOOL HEADED PAPER & DATED

Suggested penalty notice warning letter –

Dear

The Education (Penalty Notices) (England) Regulations 2007

Name of pupil ----- Registered at----- (school name)

This is a formal warning that you are at risk of being in breach of the regulations stated above -----(child's name) has been absent from school and the absence(s) has/have not been authorised.

Should the number of unauthorised absence sessions reach 15 or more in the current and/or previous term you will be in breach of the regulations and the Local Authority may issue you with a penalty notice.

Should you be issued with a notice this requires you to pay a penalty of £60 within 21 days, rising to £120 if paid after 21 days but within 28 days. Each parent is liable to pay a separate penalty and penalty notices are issued for each child to whom the absence relates.

Payment of the penalty enables you to discharge your liability for the offence for the period in question of failing to ensure your child's regular attendance at school (Section 444, The Education Act 1996).

Failure to pay the penalty means you are liable to prosecution for the offence, by summons to appear before the local Magistrates Court. On conviction you may be liable for a fine of up to £1,000 per parent. This is a criminal offence which carries a criminal record. The Local Authority will ask for costs of £125 to be awarded against you.

If you fail to ensure your child attends regularly and 15 sessions of unauthorised absence is reached a penalty notice will be issued. **You will not receive a further warning before the penalty is imposed.**

If you believe there are legitimate reasons for your child's absence please contact me within 5 working days to discuss the matter.

Yours sincerely

_____(Name)

_____ (Designation)

Appendix B – PLEASE NOTE THAT A SEPARATE APPLICATION SHOULD BE COMPLETED FOR EACH PARENT AND ANYONE ELSE TO WHOM A WARNING/NOTICE IS TO BE SENT. THE INFORMATION CONTAINED WITHIN THIS APPLICATION FORM MAY ALSO BE USED AS PART OF ANY LEGAL ACTION TAKEN SO EACH SECTION MUST BE FULLY COMPLETED

**Hertfordshire County Council
Children’s Services
Integrated Services for Learning
Attendance Team**

Application for a Penalty Notice to be issued

Name of person requesting issue of Penalty Notice:	
Position: (Head, Deputy or Assistant Head only)	
Contact details:	
Name of person completing application:	

Pupil’s Name:	
Date of Birth:	
School Year Group:	
School/Academy:	
Parent full name:	
Address:	
Telephone:	

Please confirm the following:	
1. You have read the Code of Conduct and this application complies	Y/N
2. Should the Notice remain unpaid and the Local Authority prosecutes, please confirm who will provide a witness statement and/or attend court as required – Name: _____ Designation: _____	
3. You have sent each parent the Factsheet with the warning letter	Y/N

Date of warning letter:
Please attach copies of: 1. Warning letter

- 2. Certificate of attendance signed by the head teacher
 - 3. Up to date SIMS (or equivalent) printout – Registration Certificate
- Please note that applications will not be processed if the necessary information is not attached***

THE FOLLOWING SECTIONS MUST BE COMPLETED

1. Information on supportive measures offered to family. ***Please include dates of any meetings and/or contact held with parents to address poor attendance***

2. Information on the parent(s) failure to co-operate:

3. Has the pupil been referred to or discussed with the Local Authority Attendance Officer? Yes/No – **if yes, please give details**

Does the pupil have any additional needs e.g. SEND?

Any other relevant information

Please send this application **within 10 school days of the last absence** to the Attendance Team Manager for the area where the school is based.

West Area Attendance Team – Watford & Three Rivers, Dacorum & St Albans, Hertsmere
Attendance Team Manager, Post Point AP 1102, Apsley 2, Brindley Way, Hemel Hempstead
HP3 9BF

East Area Attendance Team – East Herts & Broxbourne, North Herts & Stevenage, Welwyn & Hatfield
Attendance Team Manager, Room 127, Ground Floor, County Hall, Pegs Lane, Hertford SG13
8DF

All applications to be sent via Herts/Schools FX as follows –

I hereby certify that the above named child is a registered pupil at (name of school/academy) and that the above is an accurate record of his/her attendance.

Signed:

Head teacher

Date:

Appendix D – Example – In Hertfordshire the Integrated Service for Learning Attendance Teams administer the scheme and issue penalty notices on behalf of police, schools, academies and other settings to ensure fairness and consistency and in the event that subsequent legal action may need to be taken.

PENALTY NOTICE
S.444A EDUCATION ACT 1996

Please read these notes carefully

PART 1

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his/her parent is guilty of an offence under s.444 Education Act 1996.

To: Parent name
Of: Parent address

You are the parent of <<pupil name>> (called in this notice “the pupil”) who is a registered pupil at << school name>>
Between (date) and (date) the pupil failed to attend regularly at <<name of school>>.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60 / £120 in accordance with the table overleaf. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence set out in this notice.

Payment should be made within 21 days. If paid after 21 days but within 28 days the penalty is doubled to £120. For payment details please see over.

No reminders will be sent. If payment is not received by () you will be liable for prosecution for the offence and could be subject to a fine of up to £1,000.

This notice is issued by:

Date of issue.....

Signed.....

PART 2

Pupil's Name:

Please complete the following and return this notice with your payment to County Lead for Attendance, Room 134, Hertfordshire County Council, County Hall, Hertford SG13 8DF

Name:

Address:

I attach payment in the sum of £

Signed:

Date:

Payment of **£60** should be received by (). **No reminders will be sent.** After this date the penalty rises to **£120**. This should be received by () after this date you will be liable for prosecution for the offence and could be subject to a fine of up to **£1,000**.

A cheque or postal order (made out to Hertfordshire County Council) should be sent to Room 134, Hertfordshire County Council, County Hall, Hertford SG13 8DF.

If you wish to pay by Debit/Credit Card please contact 01992 555407/8 quoting 742300/26084, your child's name, school and the reference number <<IES reference number>> Without this information your payment may not be processed correctly and you risk prosecution in relation to the non-payment of this fine.

Note

1. Local Code of Conduct

This notice is issued in accordance with a local Code of Conduct drawn up by Hertfordshire County Council. Any correspondence about the code should be addressed to: the County Lead for Attendance, Room 134, County Hall, Hertford, SG13 8DF telephone 0300 123 4043

2. Withdrawal

This notice may be withdrawn by Hertfordshire County Council if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local Code of Conduct. If you believe that the notice was wrongly issued you should contact the County Council to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The County Council will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable for prosecution for the offence that your child has failed to attend school regularly.

3. Payment

You should complete the notice above and send or deliver it to Hertfordshire County Council at the address given. If you wish to pay in person you must make an appointment or it will not be possible to receive your payment. If you wish to pay by Debit/Credit Card please contact 01992 555407/8 quoting 742300/26084, your child's name, school and reference number. Without this information your payment may not be processed correctly and you risk prosecution in relation to the non-payment of this fine.

4. Prosecution

If you do not pay the penalty, and the notice is not withdrawn, you will be liable for prosecution for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you will be advised to seek legal representation; in some cases you may be entitled to legal aid. Information on obtaining legal advice and legal aid can be obtained from Community Legal Advice 0845 345 4345 Mon- Fri 9.00 am – 8pm Sat 9.00am – 12.00 pm or from www.direct.gov.uk