Hampshire Services
HIAS SCHOOL IMPROVEMENT

SERVICES FOR SCHOOLS

Code of Conduct

Issuing Penalty Notices for unauthorised absence from school

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Code of conduct: Issuing Penalty Notices for unauthorised absence from schools (June 2019)

This local code sets out the procedures and terms under which Penalty Notices for unauthorised absence can, and should, be issued in Hampshire. It applies to statutory school age children from age 5 to age 16 and to all maintained schools and academies within the county of Hampshire. All *authorised persons* must issue

Penalty Notices in compliance with this code.

The code is to be read in conjunction with *Guidance for schools on available support and procedures for pursuing legal action against non-attendance at school* (May 2015).

Sanctions for periods of unauthorised absence are for use only where parental co-operation in securing good attendance is either absent or deemed insufficient to resolve the presenting problem. Penalty Notices will be issued before absence patterns become entrenched and where there is a reasonable expectation that to do so will secure improved school attendance.

1 Legal background

1.1 Sections 444A and 444B of the Education Act 1996 empower authorised officers of the local authority, headteachers (and deputy headteachers if authorised by them) and the police, to issue Penalty Notices to the parents in cases of unauthorised absence from school.

1.2 The Education (Penalty Notices) (England) Regulations 2007 (as amended) require the local authority, in consultation with all of the above, to develop a code of conduct for issuing Penalty Notices. Any person issuing a Penalty Notice for the unauthorised absence of a Hampshire child must do so within the terms of this *Code of conduct*.

1.3 The definition of a *parent* includes: all natural parents, whether they are married or not; any person or body who has parental responsibility for a child; and any person who, although not a natural parent, has care of a child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of their relationship with that child, is considered to be a parent in education law (see Section 576 of the Education Act 1996 and the Children Act 1989).

2 Rationale for issuing Penalty Notices

2.1 Regular and punctual attendance at school is a legal requirement, as well as essential if pupils are to maximise their educational opportunities.

2.2 In law, parents/carers are committing an offence if they fail to ensure the regular and punctual attendance of their child at the school at which the child is registered, unless the absence has been authorised by the school. Only schools have the power to authorise or grant a leave of absence. Further detail is available in Section 3 of *Promoting pupil attendance and recording absence* guidance.

2.3 A range of sanctions to enforce regular school attendance exist under Section 444 of the Education Act 1996 and Section 36 of the Children Act 1989. The purpose of a Penalty Notice is to offer a swift intervention for cases of unauthorised absence before the problem becomes too entrenched.

2.4 The purpose of the *Code of conduct* is to ensure that the Penalty Notices are issued consistently and fairly across the area that comes under the control of Hampshire County Council *("the County Council"*) and that suitable arrangements are in place for the administration of the scheme.

2.5 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act 1998 and all equalities legislation.

2.6 Designated officers of Hampshire County Council's Children's Services Department will automatically consider the use of Penalty Notices in all cases of unauthorised absence at the level defined below. If the absence meets any of the thresholds in Section 4, authorised persons in schools should either issue a Penalty Notice, issue a Penalty Notice warning letter, or make a referral into their local Attendance Legal Panel (ALP), co-ordinated by the Family Support Service. The panels meet monthly to consider the most appropriate interventions to improve school attendance in individual cases.

3 Before issuing Penalty Notices

3.1 Schools should take all reasonable steps to ensure good attendance without the use of Penalty Notices.

3.2 In cases where an authorised person has concerns about a pupil's attendance, s/he must ensure that contact has been made with the parent/carer in order to try to resolve any difficulties.

3.3 If the issuing of a Penalty Notice is under consideration for ongoing poor attendance the authorised person should, in most cases, arrange for a Penalty Notice warning letter to be sent to the parent/carer. This should be on the Hampshire County Council Penalty Notice warning template. The letter should include:

- details of the pupil's absence
- an offer to meet with the parent to discuss the concerns and to provide advice and support in an attempt to resolve any difficulties
- a statement of the legal responsibilities of the parent regarding attendance
- the consequences for the parent in failing to ensure his/her child's regular attendance; in particular, warning that further unauthorised absences could result in a Penalty Notice or prosecution
- an expectation that, after receipt of the warning letter, the level of attendance will significantly improve and that this improvement will be maintained.

3.4 If this warning and the offer of support does not affect a significant improvement in attendance, the authorised person should consider every aspect of a pupil's circumstances before deciding whether to issue a Penalty Notice.

3.5 The Department for Education (DfE) guidance indicates that a Penalty Notice can be issued without warning, for example, where a parent takes a child on holiday during term time without the school authorising the absence. Parents should be made aware of this through the school website, school attendance policy, newsletters etc. If a request for leave of absence is declined by the school and the unauthorised absence meets the thresholds in Section 4.2, parents should know that a Penalty Notice will be issued..

4 Circumstances in which a Penalty Notice may be issued

4.1 Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late and the absence or lateness has not been authorised by the school.

4.2 After taking the steps set out in Section 3, Hampshire County Council or the schools in Hampshire should issue a Penalty Notice for any unauthorised absence where the pupil has been:

- absent for 10 or more half-day sessions (five school days) of unauthorised absence in the last 100 possible school sessions – these do not need to be consecutive

- persistently late (coded *U*) for 10 or more half-day sessions after the register has been closed – these do not need to be consecutive.
- persistently late before the close of the register (coded *L*), for 10 or more school sessions (these do not need to be consecutive) - unless the issuing of a Penalty Notice would conflict with other intervention strategies in place or other sanctions already being processed.

4.3 Penalty Notices are intended to be used in tackling parentally condoned absence, where it is reasonable to expect that the parent can ensure the child's regular attendance, but s/he is not willing to take responsibility for doing so, eg where a parent is not co-operating with advice or support offered to help improve his or her child's attendance.

4.4 If, after a warning letter has been issued, there is sufficient irregular attendance to merit a Penalty Notice, it must be issued unless there are exceptional reasons against taking this action.

5 Who may issue a Penalty Notice?

5.1 The Family Support Service managers are the designated officers responsible for issuing Penalty Notices on behalf of Hampshire County Council Children's Services Department.

5.2 In schools, the Headteacher is the authorised person, in accordance with DfE guidance. The Headteacher may wish to identify a Deputy or Assistant Headteacher to become the authorised person and to sign the Penalty Notice. However, the Headteacher maintains overall responsibility and his or her signature is **required** on the pupil registration certificate.

5.3 Every school must inform Hampshire County Council who the authorised school persons are (Section 2.5 of Hampshire County Council's *Guidance for schools on support and procedures for pursuing legal action for non-attendance at school* (May 2015).

5.4 All schools' attendance policies will include information about the use of Penalty Notices and whether they wish to issue their own Penalty Notices or have officers within the Children's Services Department issue them on their behalf. This information should also be drawn to the attention of all parents.

5.5 The police should decide who, within the police or agents acting on their behalf in relation to Penalty Notices, should issue Penalty Notices.

6 Procedure for issuing a Penalty Notice

6.1 If the warning letter has not solved the problem or if the school has refused to authorise absence due to holiday – which will almost always be the case – the authorised person should make a record of his/her considerations and decision and issue a Penalty Notice.

6.2 The notes should be completed on the declaration forms within SIMS. All of this documentation should be returned to the Family Support Service within 24 hours of the Penalty Notice being issued. Every school must ensure that the local authority is informed of the issuing of a Penalty Notice so that it can track payment and so that it can complete the statutory annual return to the DfE (Section 4 of *Guidance for schools on the available support and procedures for pursuing legal action against non-attendance at school* (March 2015)).

6.3 Any Penalty Notice issued must be issued to each parent liable for the offence and should be sent by First Class post.

6.4 An authorised person has discretion when deciding whether to issue one or more parents of a child with a Penalty Notice. This is to enable account to be taken of the specific circumstances in individual cases (see frequently asked questions: *Guidance for schools on the available support and procedures for pursuing legal action against non-attendance at school* (March 2015).

6.5 If a penalty notice has previously been issued and in the opinion of the Headteacher has been ineffective in addressing the absenteeism the case should be referred to ALP

6.6 In families where more than one child is not attending regularly, or has requested leave of absence, the issuing of multiple Penalty Notices (one for each child) will need to be carefully considered. The authorised person may need to liaise with another authorised officer of any sibling's school before making a final decision. It would be the local authority's expectation that, where two siblings have high attendance but have the same period of unauthorised leave of absence, parents are issued with a Penalty Notice for the absence of both children.

6.7 If the unauthorised absence is continuing but the authorised person decides not to issue a Penalty Notice, s/he should refer the case to the local ALP.

6.8 Where an authorised person recommends that the County Council should issue a penalty notice they should refer the case to the local ALPs via the Family Support Service. The panel will consider the recommendation to issue a Penalty Notice as well as any alternative means of intervention it may take. This would include the offer of family support, a parenting contract, referral to another agency or parental prosecution.

7 Payment of Penalty Notices

7.1 Arrangements for the payment will be detailed on the Penalty Notices themselves. Penalties are to be paid to Hampshire County Council. For detailed guidance see Section 4 of *Guidance for schools on the available support and procedures for pursuing legal action against non-attendance at school* (March2015).

7.2 If paid within 21 days of deemed service the penalty is £60. If not paid within 21 days, the penalty is automatically increased to £120 to be paid within 28 days.

7.3 Any revenue resulting from payment of penalties will be retained by the County Council and is used to cover the enforcement costs, ie costs associated with the issue, collection or prosecution, in the event of non-payment, of Penalty Notices. Payment of a penalty discharges a parent's liability for the period in question and means that they cannot subsequently be prosecuted under any other enforcement powers for the period covered by the Penalty Notice.

8 Non-payment of Penalty Notices

8.1 The non-payment of a penalty within the prescribed period of time will result in the Family Support Service Managers and authorised person who issued the notice, to consider next steps. It is likely that non-payment will lead to a prosecution under Section 444, Education Act 1996. The prosecution cannot be for the non-payment of the Penalty Notice but must relate to the original unauthorised absence.

9 Withdrawal of a Penalty Notice

9.1 There is no statutory right of appeal against the issuing of a Penalty Notice. Furthermore, once issued, a Penalty Notice can only be withdrawn if it is established that it ought not to have been issued or that it contains material errors e.g where it has been issued outside of the terms of the *Code of*

conduct, where no offence has been committed or where it has been issued to the wrong person.

9.2 Where an authorised person withdraws a Penalty Notice, s/he must notify the Family Support Service manager explaining the reasons for the withdrawal.

10 Other roles and responsibilities

10.1 The Family Support Service managers will monitor the use of Penalty Notices and will report at regular intervals to the Children's Services Department Management Team (CSDMT), and on the deployment and outcomes of the use of Penalty Notices.

10.2 Annual training will be offered to all authorised persons in schools. This will help ensure consistent and equitable delivery and allow cohesion with other enforcement sanctions.

10.3 The Inspector/Adviser - Behaviour & Attendance will complete the DfE annual census return (PRA) on the issuing of warnings and Penalty Notices.

10.4 Through the Inspector/Adviser - Behaviour & Attendance, the ALP will provide annual feedback to headteachers and the police (and neighbouring local education authorities (LEAs) where appropriate) on the use of Penalty Notices in Hampshire and resulting outcomes.

10.5 Where it appears to the County Council that the *Code of conduct* requires amendment, the Children's Services Department will consult headteachers, the police, and any other person or body it deems appropriate, regarding the proposed changes.