

Medway Council

Education Penalty Notices

Code of Conduct

Revised December 2023



Children & Adults' Directorate
Education and SEND
Gun Wharf
Dock Road
Chatham
ME4 4TR
aassa@medway.gov.uk

1. Introduction

- 1.1 Regular and punctual attendance at school or alternative education provision is both a legal requirement and essential for pupils to maximise their educational opportunities.
- 1.2 Medway Council is committed to reducing persistent absences from school by providing a wide range of Early Help support and interventions so that children benefit fully from the education provided to them. As part of Education and SEND, timely and relevant support will be provided by schools to children who do not have maximum access to education due to family circumstances and other authorised reasons.
- 1.3 If support has not improved attendance and absences have not been authorised, (i.e. 10 sessions of unauthorised absence in a six-school week period) the situation will be addressed rigorously through legal measures including Penalty Notices. Sanctions of any nature are for use only where parental co-operation in the effort to support regular attendance is either absent or deemed insufficient to resolve the presenting problem.
- 1.4 Schools have the first responsibility to take effective action to improve attendance. They are supported in this by their Attendance Officer who is part of the Local Authority's Attendance Service. When the school has done all it can, over a period of time to improve attendance and there is little or no improvement, two options are available:-

Option one: where there is clear evidence of underlying problems in the family that require more intensive support, will be to make a Notification to Family Solutions (Early Help) or Social Care. This will lead to an assessment of the child's and family's needs and an Early Help Plan to support the family to make changes that will improve school attendance and other outcomes.

Option two: for the school, where there is evidence that the issue is a straightforward case of unauthorised absence, is to work with the Attendance Service after the school's own interventions have not succeeded in improving the pupil's attendance.

This may lead to further legal action if the absence from school does not improve.

- 1.7 The Local Authority prosecutes parents under Section 444 of the Education Act 1996, where unauthorised absences are most serious and the parents have failed their legal duty to ensure their children's attendance at school.
- 1.8 Under Section 23 of the Anti-Social Behaviour Act 2003 local authority officers, Headteachers and the Police have the discretionary power to request the Local Authority to issue Penalty Notices on their behalf, in the appropriate cases of unauthorised absence from school.
- 1.9 Penalty Notices may also be issued when parents have taken their children out of school for holidays in term-time without the school's authorisation. From 1st September 2013, Headteachers are unable to agree leave of absence during term-time unless they are satisfied that there are exceptional circumstances.

1.10 Exceptional circumstances could include:

- Service personnel returning from a tour of duty abroad where it is evidenced the parent will not be in receipt of any leave in the near future that coincides with school holidays.
- Where an absence from school is recommended by a health professional as part of a parent's or child's rehabilitation from a medical or emotional issue.

It is important to note that Headteachers can agree the absence of a child in exceptional circumstances and this discretion can be used also to determine the length of the authorised absence.

- 1.11 Penalty notices are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement.

1.12 Support to a family through Early Help or Social Care is not withdrawn as long as it is needed, even if there is a prosecution or Penalty Notice process in place. The needs of the family are assessed and the appropriate service offered.

2. Penalty Notice

- 2.1 The power of issuing a Penalty Notice provides an alternative to the prosecution of parents under Section 444 of the Education Act 1996 and enables parents to discharge the potential liability for conviction for that offence by paying a penalty of £60 per parent, per child, if paid within 21 days or £120 per parent, per child, if paid within 28 days.
- 2.2 Medway Council's Attendance Service discharges the responsibility for issuing Penalty Notices in Medway and taking other legal actions against parents or carers when appropriate.
- 2.3 Should the Penalty Notice remain unpaid or have been paid only in part at the end of the 28-day period Medway Council will prosecute the parents for the offence to which the notice relates.
- 2.4 Penalty Notices may only be issued in Medway in accordance with the terms of this Code of Conduct. The purpose of the Code of Conduct is to ensure that the power is applied fairly and consistently across Medway and that suitable arrangements are in place for the effective and efficient administration of the scheme.
- 2.5 In implementing this Code of Conduct Medway Council will liaise when appropriate with neighbouring education and police authorities.
- 2.6 In reviewing this Code of Conduct, Medway Council is consulting with Medway Headteachers and the Chief Officer of Kent Police. This complies with The Education (Penalty Notices) (England) Regulations 2007.

3. Before Referring Cases for Penalty Notices

- 3.1 Schools should take all reasonable steps to ensure good attendance before the use of Penalty Notices, [following DFE Working Together to Improve School Attendance guidance](#)
- 3.2 Each Penalty Notice may potentially lead to prosecution which requires a case to pass the evidential and public interest tests. Therefore, in cases where a school has concerns about a pupil's attendance, the school's authorised person for attendance must ensure that contact has been made with the parent or carer in order to try to resolve any issues and difficulties to avoid having to proceed with a prosecution, which

failing all other efforts should be used as a last resort. All the contacts and interventions must be recorded.

3.3 If the issuing of a Penalty Notice is under consideration the authorised person should, in most cases, arrange for a Penalty Notice warning letter, signed by the Headteacher, to be sent to the parent or carer. 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 or her child's regular attendance; in particular, warning that further unauthorised and persistent absence 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 result in a significant improvement in attendance, the authorised person should consider every aspect of a pupil's circumstances before deciding whether to request Medway Council's Attendance Service to issue a Penalty Notice.

3.5 If a request for leave of absence is declined by the school and the unauthorised absence meets the thresholds in Section 4.2, the school should make parents aware that a request will be made to the Local Authority to issue a Penalty Notice.

4. Circumstances where a Penalty Notice may be issued:

A Penalty Notice can only be issued in cases of unauthorised absence or where an excluded child is found in a public place during school hours.

4.1 Unauthorised absences

4.1.1 Parents and pupils are supported by schools and alternative education provision and by Medway Council to overcome barriers to regular attendance through a range of assessment and intervention strategies. Sanctions of any nature are for use only

where parental co-operation in this process is either absent or deemed insufficient to resolve the presenting problem.

4.1.2 Sanctions are used as a means of enforcing attendance where there is a reasonable expectation that their use will secure improvement.

4.1.3 Penalty Notices can only be issued in cases where a pupil of compulsory school age has been absent or late for a period, or periods, of time and the absence or lateness has not been authorised by the school or shown improvement as a result of actions taken by the school.

4.1.4 After a school has taken the steps set out in Section 3, the relevant case may be referred directly to Medway Council's Attendance Service to issue a Penalty Notice for any unauthorised absence where the pupil has been

- absent for 10 or more half-day sessions (five school days) without authorisation in a six-week period – these do not need to be consecutive
- persistently late (coded U) for 10 or more sessions after the register has been closed
- unauthorised absence for any public examinations of which dates are published in advance
- unauthorised absence for any formal school assessments, tests or examinations where the dates have been published in advance

unless the issuing of a Penalty Notice in these circumstances would conflict with other sanctions already being processed.

4.2 **Unauthorised Term-Time Leave (including leave for family holiday):** Any parent/carer who takes a child out of school for term-time leave of 10 or more sessions (5 days), not authorised by the school (under exceptional circumstances), may receive a Penalty Notice. In deciding whether to refer a case for the sanction of a Penalty Notice, the Headteacher should have evidence of parents being warned about a potential Penalty Notice.

4.3 **Exclusion:** Where a child is found in a public place during school hours of day one to five of any fixed term or permanent exclusion.

5 Procedure for Issuing Penalty Notices

- 5.1 Medway Council's Attendance Service will issue all Penalty Notices for all unauthorised absences and exclusions. This ensures consistent and equitable delivery, avoids duplication of Penalty Notices, helps to maintain good school and alternative provision relationships and ensures that there is no conflict with other enforcement sanctions.
- 5.2 Penalty Notices will only be issued by post and never as an on-the-spot action; this will satisfy that all evidential requirements are in place and meet Health and Safety requirements.
- 5.3 Medway Council Attendance Service will receive requests to issue Penalty Notices from schools and alternative education providers, Kent Police and neighbouring Local Authorities. These requests will be actioned provided that:
- the school has taken the necessary steps as detailed in Section 3
 - all relevant information is supplied in the specified manner,
 - the circumstances of the pupil's absence or presence in a public place or non-attendance meets all the requirements of this Code of Conduct,
 - the issuing of a Penalty Notice does not conflict with other intervention strategies in place or other enforcement sanctions already being processed.
- 5.4 Medway Council Attendance Service will respond to all requests within 15 school days of receipt and where all criteria are met we will:
- 5.4.1 in cases of exclusion, issue a letter to parents or carers giving 10 school days in which to provide Medway Council with a reasonable justification for their child's presence in a public place during school hours.
- 5.4.2 in the case of a pupil's leave of absence in term-time that has not been authorised by the school or alternative education provider, a Penalty Notice may be issued (Amendments to the 2006 regulations remove references to family holiday and extended leave. The amendments make clear that Headteachers may not grant any leave of absence during term-time unless there are exceptional circumstances. Headteachers should determine the number of school days a child can be away from school if the leave is granted.)

- 5.5 Schools and alternative education providers should ensure that policies regarding Leave of Absence in Term-Time are widely and regularly publicised to parents and carers and that reasons for refusal to grant permission are confirmed in writing. Medway Council will issue Penalty Notices, for unauthorised leave in term-time, where the supporting evidence provided clearly details the reasons permission has not been granted.
- 5.6 If a pupil with unauthorised leave of absence in term-time has a sibling (or siblings) attending another school, it is good practice that relevant schools co-ordinate their decisions in order to ensure a consistent approach.
- 5.7 The use of Penalty Notices are restricted to three per pupil per parent/carer per academic year.
- 5.8 Not more than twelve may be issued per pupil per parent per academic year for being found in a public place whilst excluded.
- 5.9 In the case of a period of unauthorised leave for the purpose of a family holiday in term-time a Penalty Notice may be issued on more than one occasion.
- 5.10 A Penalty Notice may be issued to each parent liable for the offence or offences. The legal definition of a parent is contained in Section 576 of the Education Act 1996 and refers to any adult who is a natural parent, someone with Parental Responsibility or someone with whom the child lives and who looks after the child, irrespective of his or her relationship with the child.
- 5.11 In cases where families contain more than one poor-attending pupil multiple issues of Penalty Notices may occur.
- 5.12 There is no restriction on the number of times a parent or carer may receive a formal warning of a possible issue of a Penalty Notice for unauthorised absences.

6. Procedure for Withdrawing Penalty Notices

- 6.1 Penalty notices can only be withdrawn in the following circumstances:
- where it has been established the Penalty Notice was issued to the wrong person or the Local Authority deems that the Penalty Notice should not have been issued;

- the Penalty Notice did not conform to the terms of this Code of Conduct;
- the Penalty Notice contains material errors.

7. Appeals

- 7.1 There is no statutory right of appeal against the decision to issue a Penalty Notice and the sole authority to authorise absences lies with the Headteacher and their decision is final.
- 7.2 The Education (Pupil Registration) (England) Regulations do not allow Headteachers to give retrospective authorisation for absence.

8. Payment of Penalty Notices

- 8.1 Arrangements for payment will be detailed on the Penalty Notice.
- 8.2 The payment of a Penalty Notice discharges the parent's or carer's liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the same period.
- 8.3 Payment of a Penalty Notice within 28 days is £120 reduced to £60 if paid within 21 days of receipt of the Notice.
- 8.4 Medway Council retains any revenue from Penalty Notices for the administration of the scheme and its enforcement.

9. Non-Payment of Penalty Notices:

Non-payment of a Penalty Notice may result in prosecution under the provisions of Section 444 of the Education Act 1996 or prosecution under Section 103 of the Education and Inspections Act 2006.

10. Publicity:

All schools and alternative education provisions intending to use Penalty Notices must draw this to the attention of parents and carers on a regular basis and publish details of the scheme in their Attendance Policy.

11. Reporting and Review:

Review of this Code will take place every three years or more often if required by local strategic priority and legislative changes. A review may involve consultation where it is considered appropriate.

