

# **Brighton & Hove City Council Code of Conduct The Education (Penalty Notices) Regulations 2007 (as amended)**



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## **To all Head teachers and School Attendance Leads**

I am 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.

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 and enables 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 Behaviour and Attendance Team is authorised to act under this code and will ensure the consistent, fair and transparent application of the policy regarding penalty notices throughout the City. There are several recent legislative updates that I would like to bring to your attention:

- Penalty notices will only be issued for an offence that the local authority is willing and able to prosecute for in the Magistrates Court for non-school attendance and the action is considered proportionate to the level of absence
- Penalty notice fines and payment timeframes have changed to 21 & 28 day timeframes
- New legislation regarding the circumstances in which leave of absence may be granted in term time together with new statutory guidance issued by the Department for Education
- Penalty notices may be issued to all children in the same family unit exhibiting patterns of poor unauthorised attendance

All schools wishing to issue penalty notices under this this Code of Conduct must evidence that all literature the team provided to parents, such as School Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters and website information including the warning that parents may be issued with a penalty notice if leave is taken without permission. Schools must also ensure that if a parent has had their request for leave during term time refused because of lack of evidence of exceptional circumstances, parents are issued with a warning letter.

Although the responsibility for authorising requests for leave of absence lies with the school, it is the Council's Behaviour and Attendance Team who will make the decision on whether to issue a penalty notice based on the evidence supplied by the school. The Code of Conduct and appendices is attached within this pack and can also be found on Brighton & Hove City Council's website. Further questions or guidance around the Code of Conduct can be given by the Council's Behaviour and Attendance Team

Kind regards

Gill Manton  
Attendance Lead

# **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 order to maximise the opportunities available to them. The Council's Behaviour and Attendance Team investigate cases of irregular attendance and instigate statutory intervention where 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 Behaviour and Attendance 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

### **Definition of a Parent**

The Anti-social Behaviour Act 2003 uses the definition of parent set out in section 576 of the Education Act 1996. This defines 'parent' as:

- All natural parents, whether they are married or not.
- Any person who, although they are not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person.
- Any person who, although not a natural parent, has care of a child or young person – having care of a child or young person means that a person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

Throughout this document, references to 'parent' mean each and every parent coming within the definition, whether acting jointly or separately, and should not be taken to mean that provisions only apply to 'parent' in the singular.

### **KEY CONSIDERATIONS WHEN ISSUING PENALTY NOTICES**

- (1) Whether, given the facts of the case, the Administrative officer in the Behaviour and Attendance Team believes that the issuing of a penalty notice will be effective in helping to ensure that the parent secures the regular attendance of the child at their registered place of education.
- (2) Whether the parent is judged capable of securing their child's regular attendance at school but is not taking responsibility for doing so, for example failing to engage in voluntary or supportive measures.
- (3) Whether the notice has been issued for an offence that the local authority is willing and able to prosecute for and that any action is deemed to be in the public interest.

The Behaviour and Attendance 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 and collected.

If the penalty notice has not been paid within 28 days of issue the case may be escalated and consideration given to prosecution for non-school attendance.

A parent may receive more than one separate penalty notice resulting from the unauthorised absence, but not in excess of 3 penalty notice for an individual child in any twelve-month period. A Penalty Notice will be issued to each parent of each child exhibiting the relevant patterns of unauthorised absence. Therefore within any twelve month period each parent can receive a separate penalty notice for each child that exhibits the relevant pattern of unauthorised absence and, where appropriate, in respect of more than one child.

## CIRCUMSTANCES WHEN PENALTY NOTICES MIGHT BE ISSUED

### Unauthorised Absence/Truancy:

- Persistent late arrival at school (after the register has closed).
- Pupils whose attendance has not reached a satisfactory (90% attendance – 2015 threshold) level during a 6 week period following intensive support i.e. truancy patrol.
- 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.
- Penalty notices **will** be issued following assessment of **poor attendance** which the LA considers to be 4 sessions or more within a term. This does **not** relate to unauthorised holidays but any other unauthorised absence.
- Penalty notices **will** be issued for all unauthorised **holidays taken during term time**.

In addressing the issue of parentally condoned absence, penalty notices may offer a prompt and potentially effective deterrent to unauthorised absence at a point, which may not be as easily accessed through existing enforcement provisions. Parent/carers will receive a warning letter from the school prior to the issue of a penalty notice.

### Unauthorised leave during Term Time

The Education (Pupil Registration) (England) (Amendment) Regulations 2013, which came into force on 1st September 2013. They remove reference to holidays and extended leave as well as the statutory threshold of ten school days. The amendments now make it clear that head teachers may not grant any leave of absence during term time unless there are exceptional circumstances (*no definition is given within this legislation*). However, the NAHT guidance suggests the following as circumstances which might be considered to be exceptional:

- Bereavement
- Serious illness of a close family member
- Wedding within the immediate family
- Service personnel returning from a long tour of duty

Head teachers should determine the number of sessions a child can be away from school if the leave is granted.

Schools must ensure that all literature provided to parents, such as Prospectus, Attendance and Behaviour Policies, Home School Agreements, Newsletters and website information includes the warning that parents may be issued with a penalty notice if a holiday is taken without permission.

If the decision is made not to authorise, a letter to the parent confirming that a leave of absence has not been authorised must be sent by the Head teacher and include 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 Behaviour and Attendance Team within two weeks of the pupil returning to school. The Behaviour and Attendance Team will then issue a penalty notice if appropriate.

Penalty Notices for term time holidays may be issued if

- Unauthorised holidays have been taken within the term time;  
Or
- Excessive delayed return from holiday without prior school agreement (beyond one additional school day).

### **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 Council may use the fact that a penalty notice has been issued and remains unpaid as evidence.

The Behaviour and Attendance 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 then as a matter of good practice, in any 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.

## APPENDIX A - Unauthorised Request for Leave – School letter

Dear

Thank you for your letter regarding your request to take ..... out of school for the purposes ..... from ..... to .....

I have considered your application and regret to inform you that your application for leave has not been granted.

The Department for Education advises that leave of absence can only be granted in **exceptional circumstances**. I am unable to authorise this leave as the reasons stated on your application form are not deemed to be exceptional.

If you decide to take your child/children out of school for this period, the Local Authority will issue you with a Penalty Notice under section 23 of the Anti-Social Behaviour Act 2003. Upon receipt of a Penalty Notice you will be liable to pay a fine of £60 per child if paid within 21 days rising to £120 per child if paid after 21 days but within 28 days. (NB. In the case where the penalty notice has not been paid within 28 days of issue, the case may be escalated to prosecution in Magistrates Court for non-school attendance)

I have included a leaflet which has been issued by the Local Authority in relation to Penalty Notices for poor school attendance and unauthorised leave during term time.

Yours sincerely,

Head teacher

..... School.

## APPENDIX B Request for issue of penalty notice for holiday taken in term time

### Checklist

	To be completed by head teacher
Name of child	
Date of birth	
Name of parent/s	
Date of birth	
Address	
Address of parent if different	
<ul style="list-style-type: none"> <li>• Unauthorised holidays have been taken within the term time; OR</li> <li>• Excessive delayed return from holiday without prior school agreement (beyond one additional school day).</li> </ul>	
<ul style="list-style-type: none"> <li>• Persistent late arrival at school (after the register has closed)</li> </ul>	
<ul style="list-style-type: none"> <li>• Pupils whose attendance has not reached a satisfactory level during a 6 week period following intensive support i.e. truancy patrol.</li> </ul>	
Copy of leave request from parent (attached)	
Copy of warning letter issued by head teacher (attached)	
Confirmation that all school policies are up to date with the new guidance in the Brighton & Hove City Council's code of conduct and this has been shared with parents	

I confirm that to the best of my knowledge the above information is accurate and that I request the Behaviour and Attendance Team issue a Penalty Notice to the parent/s of the above child in accordance with the guidelines issued under the Brighton & Hove City Council's Code of Conduct (2015)

School..... Head teacher (signature)..... (Printed name).....

Date.....

Agreement of team leader that all requirements have been met and the penalty can be issued. (Signature)..... (Printed name).....Date.....

### **APPENDIX C - Guidance to Head teachers on leave of absence**

Example letter from Head teacher where no prior application received from parent

Dear

Child's Name:                      DoB:

School:

I have noted that ..... had ..... day's absence for the period.....

I have checked my records and can find no application for leave from you regarding this absence.

The current law does not give any entitlement to parents to take their child out of school during term time. The Education (Pupil Registration) (England) (Amendment) Regulations 2013 prohibits Head teachers granting leave of absence to a pupil except where an application has been made in advance and the Head teacher considers that there are exceptional circumstances relating to the application.

If leave of absence is not authorised, and is taken without permission, the Behaviour and Attendance Team will issue a penalty notice to each parent for £60 for each child to be paid within 21 days. If the penalty is not paid within the time scale the penalty will increase to £120. If the higher penalty is not paid within 28 days, the Behaviour and Attendance Team may then institute legal proceedings against you in the magistrate's court under Section 444 of the Education Act 1996 for failing to ensure your child attends school regularly.

As I have not been given a reason for this absence, I have taken the decision to record it as an unauthorised leave of absence.

Please contact me by..... to discuss if there are any exceptional circumstances that you feel should be taken into consideration before I apply to the Local Authority for the issue of Penalty Notices.

Yours sincerely,

Head teacher

## 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 the 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”*

### **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. The NAHT guidance on exceptional circumstances refers to:

- Bereavement
- Serious illness of a close family member
- Wedding within the immediate family
- Service personnel returning from long tour of duty

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

The parent/carer with whom the child resides must apply in writing to the school. The letter/application must explain the exceptional circumstance 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 exceptional circumstances. If not the application will be declined.

Only the Head teacher has the power to approve leave of absence applications. When making the decision the protocols and criteria laid down in the school’s attendance policy must be followed.

Each academic year schools 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.

You will receive a written response from the Head teacher (or the Deputy) letting you know if your application has been approved. If the holiday goes ahead after the application has been declined the absence will be recorded as unauthorised.