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Sheffield City Council
Code of Conduct for
Fixed Penalty Notices

November 2015
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School Attendance, Unauthorised Leave of Absence and Excluded Pupils Present in a Public Place during School Hours

The LA has the prime responsibility for developing a Code of Conduct within which all partners named in the Act will operate. The Multi Agency Support Teams in Children and Families Service delivers this LA responsibility.

1. Rationale:

1.1 Regular and punctual attendance of pupils at school is both a legal requirement and is essential in order for pupils to maximise the educational opportunities available to them. Sheffield City Council (the "LA") will continue to investigate cases of regular absence from school and following appropriate casework intervention, will instigate legal action if applicable. The Multi Agency Support Teams in Children and Families Service delivers this LA responsibility.

'Section 7 Education Act 1996 - parents are responsible for making sure that their children of compulsory school age receive efficient full time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have.'

1.2 In law, an offence occurs if a parent/carer or person with parental responsibility fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school.

1.3 Also in law, an offence occurs if a parent/carer or person with parental responsibility fails to ensure that their child is **not** present in a public place during school hours, without reasonable justification during the first 5 days of a fixed period of exclusion and for permanent exclusion.

1.4 Penalty Notices supplement the existing sanctions currently available under Section 444, Education Act 1996 or Section 36, the Children Act 1989 to enforce attendance at school where appropriate, subject to statutory defences.

1.6 Parents and pupils are supported at school and the LA will work to overcome barriers to regular attendance through a wide continuum 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.

1.7 Sanctions are never used as a punishment, only as a means of enforcing attendance where there is a reasonable expectation that their use will secure an improvement.

1.8 In order to comply with Human Rights legislation, it is essential that Penalty Notice Fines are issued in a consistent manner. This Code of Conduct will

govern the issuing of Penalty Notice Fines for Sheffield City Council, in respect of poor school attendance, unauthorised absence from school, for leave taken in term time and for Excluded pupils.

- 1.9 Schools should have regard to the Exceptional Leave during Term-time Policy and operate within the framework of the policy.

2. Legal Frameworks:

- 2.1 The Education (Penalty Notices) (England) Regulations 2007 came into force on 1 September 2007 and set out the form and content of the notices, how they are to be served and the level of penalty that applies.
- 2.2 The issuing of Penalty Notices must conform to all requirements of the Human Rights Act and Race, Equality and Disability Legislation.
- 2.3 The LA procedures apply to parents of children of compulsory school age who are registered at a maintained school, an Academy or Trust school, Pupil Referral Unit (Sheffield's Inclusion Centre), or at any registered alternative provision.

There are two circumstances in which penalty notices can be issued, these are school attendance and school exclusion. They both require the LA to be satisfied that the parents have committed an offence.

School attendance

- 2.4 Section 444 of the Education Act 1996 empowers designated LA Officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notices in cases where the parent fails to ensure regular attendance at school.* They can only be issued in circumstances when it is believed that the parents would be guilty of an offence under Section 444 of the Education Act 1996 or section 106 of the Education and Inspections Act 2006. The notices were introduced to provide a more efficient alternative sanction to criminal prosecution. Education (Penalty Notices) (England) Regulations 2007 govern the process for issuing and the content of penalty notices, and has been amended by the Education (Penalty Notices) (England) (Amendment) Regulations 2013. The 2007 Regulations are amended to decrease the period of time parents have to pay a penalty notice to enable swifter enforcement of unpaid notices.

** This includes a PRU, and alternative provision arranged by the LA.*

- 2.5 The Education (Pupil Registration) Regulations 2006 and 2013 Amendments, have removed the "right" of parents to request up to 10 days

leave in term-time. Headteachers can now only authorise leave in “exceptional circumstances”. This means that if a pupil is absent without authority, the parents are potentially committing an offence under Section 444(1) which triggers the power to issue a penalty notice.

Excluded pupils

- 2.6 Section 103 of the Education & Inspections Act 2006 places a duty on Parents to ensure that their child is not present, during school hours, in a Public place when they are excluded from school. A public place means any highway or other place to which the public has access. A school is not a public place for this purpose.

This duty applies to the first five days of each exclusion on disciplinary grounds from a school in England, whether for a fixed term or permanently, where notice has been given to a parent of the pupil.

Section 105 of the Education and Inspection Act 2006 empowers designated LA officers, Head Teachers (and Deputy and Assistant Head Teachers authorised by them) and the Police to issue Penalty Notice, if they believe that the parents of a pupil of compulsory school age have committed an offence under Section 103 (an excluded pupil is present in a public place during school hours.)

3 Consideration of Requests:

- 3.1 Schools must consider every aspect of a pupil’s case before considering whether a Penalty Notice fine would be appropriate. This must include strategic discussions with the Attendance and Inclusion Officer (SWQ) and any other attendance-support staff who have involvement with, or have knowledge of the pupil/family.
- 3.2 Before instituting proceedings for an offence under s443 (failure to comply with a school attendance order) or s444 (failure to secure regular attendance) a LA shall consider whether it would be appropriate (instead of or as well as instigating proceedings) to apply for an education supervision order with respect to the child.
- 3.3 The following would need to be taken into account when considering requests:
- All relevant information, supporting documentation and correspondence with the parent/carer should be supplied, taking into consideration mitigating circumstances/statutory defences;
 - If there are any significant concerns with regard to the welfare or safeguarding of the child, the matter will be referred for further consideration as to whether it would be appropriate to consider applying

other options such as referral to Social Care rather than issuing a Fixed Penalty Notice fine.

- The circumstances of the pupil's absence meets all the requirements of this Code of Conduct;
- Family circumstances/ability to pay is set against the likelihood of securing an improved attendance, by issuing a Penalty Notice fine;
- The issue of a Penalty Notice fine does not conflict with other intervention strategies in place, or other enforcement sanctions already being processed.

Please refer to Sheffield's School Guidance for the Management of Attendance (August 2013) for further detail.

4. Definitions

4.1 For the purposes of Sheffield's Code of Conduct a "parent" is defined under Section 576 EA 1996 as:

- All natural parents married or unmarried.
- Any person who is not a natural parent of the child but has parental responsibility for the child. (as defined in the Children Act 1989)
- Any person who, although not a natural parent has care of a child or young person with whom the child lives and who looks after the child, irrespective of the relationship with the child.

4.2 For the purposes of Sheffield's Code of Conduct "compulsory school age is defined as commencing at the start of term on or after the child's fifth birthday and concluding on the last Friday of June in the school year in which the pupil becomes 16.

5 Issuing penalty notices for poor attendance

5.1 A Penalty Notice fine can only be issued in cases of **unauthorised absence**, for a child who is of compulsory school age when the unauthorised absence is recorded.

5.2 The issuing of a Penalty Notice fine is considered appropriate in the following circumstances:

- Parentally-condoned absences;
- Unexplained absence i.e. no reason given for absence;
- Persistent late arrival at school (after the register has closed);
- Excluded pupil present in a public place during the school hours of the school where the pupil is on roll.

- 5.3 A Penalty Notice warning letter for irregular attendance will only be issued to a family once in any one academic year. All people with parental responsibility/day to day care may be issued with a Penalty Notice Warning Letter.
- 5.4 Other than in specific circumstances* the liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued and given a maximum of 15 school days to effect an improvement. If no improvement is shown then a Penalty Notice may be issued.

** If a parent is capable of securing regular attendance but not willing to take responsibility or failure to engage with strategies and agencies, then a Penalty Notice may be issued without notification;*

** No formal warning is given in the case of leave of absence*

- 5.5 Some schools may wish to issue their own Penalty Notice warning letters. All cases to be considered should be discussed and agreed first with the Attendance and Inclusion Officer (SWQ), prior to the warning letter being sent out.
- 5.6 For poor Attendance the LA will acknowledge all requests within 10 school days of receipt and where all criteria are met will:
- Issue a formal written warning to the parent/carer of the possibility of a Penalty Notice fine being issued *
 - In the same letter set a period of 15 school days within which the pupil must have no unauthorised absence*
 - Issue a Penalty Notice fine through the post at the end of the 15 day period if the required level of improvement has not been achieved.

6. Issuing penalty notices for pupils present in a public place.

- 6.1 Excluded pupil present in a public place (during the school hours of the school where the pupil is on roll), without justification during the first five days of each and every fixed period or permanent exclusion. The liable parent/carer will receive a formal warning of the possibility of a Penalty Notice being issued, after the first time a pupil is present in a public place.
- 6.2 If a parent/carer of an excluded child fails to ensure the attendance of the child at the alternative provision provided by the school or LA, from the sixth day of fixed period exclusion or permanent exclusion, the parent will be liable under the irregular attendance provisions.
- 6.3 In the case of an excluded pupil, in order for a parent/carer to incur either form of legal responsibility, the school must give them notice informing them of their duty to ensure their child is not present in a public place, the days when their duty applies, and as appropriate, of the arrangements for alternative provision. Ordinarily these notices will be combined with the notice the school must issue when a child is excluded.

- 6.4 Before a Penalty Notice fine is issued to the parent/carer of an excluded pupil, consideration must be given to every aspect of the case, such as:
- number of occasions the child has been present in a public place,
 - the parent's actions (or inactions) which led to the child being in a public place at a prescribed time,
 - the parent's justification if any,
 - The parent's attitude to having failed to meet their statutory responsibility.
- 6.5 It will be for a parent to prove reasonable justification. A justification that is capable of being reasonable will depend on points of fact and proof.
- 6.6 A medical emergency may be more straightforward: hospital records, doctor's certificates etc. can be used as evidence. Other justifications, such as the pupil shopping for food or clothes, are unlikely to be classed as reasonable. However, every case should be considered on its merits and all relevant evidence provided taken into account.

In the case of requests to issue a Penalty Notice fine, where the excluded pupil is found in a public place (during school hours where the pupil is on roll), the liable parent/carer will receive a Penalty Notice warning letter. The letter will outline the possibility of a Penalty Notice fine being issued if the pupil is present once again in a public place, during the remaining days of the exclusion.

7 Issuing Penalty Notice fines for Unauthorised Leave of Absence

- 7.1 All Sheffield Schools are required to develop documentation relating to the school's Unauthorised Leave of Absence Policy. This documentation should be made available to parents to ensure that they are fully aware of the procedure for notifying school of Unauthorised Leave of Absence and are made aware of possible prosecution if leave is not authorised. It is recommended that this information is made available in a variety of media, including the school's website.
- 7.2 All Sheffield schools wishing to use Penalty Notices for Unauthorised Leave of Absence should ensure that they follow their own policy in regard to responding to parents.
- 7.3 A penalty notice can be issued where a child has not returned to school on an expected and agreed date and no satisfactory explanation has been given.
- 7.4 Each parent/carer can be issued with a Penalty Notice. If the fines remain unpaid, the parent/carer may be taken to court, if repeated periods of term time leave are taken parents may be prosecuted under the higher charge of an 'aggravated offence' (Education Act '96 s444(1A)).

8. In all circumstances the following applies:

- 8.1 The Local Authority will issue all Penalty Notice fines in Sheffield. This will ensure consistent and equitable delivery, retain school-home relationships and allow cohesion with other enforcement sanctions. It will also prevent Penalty Notice fines being issued in circumstances where criminal proceedings are contemplated or have been commenced, with respect to the same period of absence.
- 8.2 Penalty Notice fines will only be issued by post and never as an on the spot action. This is to ensure that all evidential requirements are in place and to meet Health and Safety requirements.
- 8.3 The LA will receive requests to issue Penalty Notice fines from schools, South Yorkshire Police and neighbouring LAs. These requests will be considered by the Attendance and Inclusion Officers (SWQ) with advice taken from the Legal Service where required.
- 8.4 Regardless of which agency is named or recognised lead professional involved in the case, the decision on actions to be taken rests with the Local Authority. The Social Work Qualified Attendance and Inclusion Specialist (SWQA&I) execute this duty on behalf of Sheffield City Council.

9. Procedure for Withdrawing Penalty Notices:

- 9.1 Once issued, a Penalty Notice fine will only be withdrawn in the following circumstances:
 - If proof has been established that the Penalty Notice fine was issued to the wrong person
 - When the use of the Penalty Notice fine did not conform to the terms of this Code of Conduct, or otherwise ought not to have been issued
 - If it contains material errors i.e. wrong address
 - Where after 28 days the Penalty Notice fine is unpaid and the LA does not wish to bring legal proceedings under s444
 - If the school has not shown regard to the guidance in the Exceptional Leave During Term-time Policy, or has departed from the guidance without good reason.

Where appropriate and practical, discussion will take place with the school before withdrawal of the notice.

10. Payment of Penalty Notices:

- 10.1 Amendments to the 2007 regulations have reduced the timescales for paying a Penalty Notice fine. Payment must be made of £60 within 21 days, or £120 within 28 days. This brings attendance Penalty Notice fines into line with other types of Penalty Notices and allows local authorities to act faster on prosecutions.
- 10.2 Arrangements for payment will be detailed on the Penalty Notice.
- 10.3 Payment of a Penalty Notice fine discharges the parent/carer from criminal liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers, for the period covered by the Penalty Notices.

11. Non-payment of Penalty Notices:

- 11.1 Non-payment of a Penalty Notice fine will result in the withdrawal of the Notice and will trigger the fast-track prosecution process under the provisions of Section 444, 1996 Education Act. The fact that a Penalty Notice fine has been issued and unpaid can be used as evidence in a subsequent prosecution. The parent will be informed of the action to be taken. The prosecution can only be for the original offence and not for the non-payment of the penalty notice.

12. Policy and Publicity:

The utilisation of Penalty Notices as a sanction for failing to ensure that a child is not present in a public place, during school hours, when excluded from school, forms part of the Local Authority's response to exclusions. All policies in schools relating to school exclusion should include information on the utilisation of Penalty Notices and this sanction should be brought to the attention of all parents.

- 12.1 Deployment of Penalty Notice fines as a sanction is included in the Local Authority's Attendance Strategy.
- 12.2 All school Attendance Policies will include information on the deployment of penalty notice fines and this will be agreed by Governors and brought to the attention of all parents.
- 12.3 The LA will include information on the use of Penalty Notice fines and other attendance enforcement sanctions in promotional/public information material.

13 Administration of the Scheme:

- 13.1 The Local Authority is responsible for the overall administration of penalty notices. The Code of Conduct ensures that the powers are applied

consistently and fairly across the Local Authority area and that suitable arrangements for the administration of the scheme have been made.

14. Reporting and Review:

- 14.1 The LA will review the use of Penalty Notice fines at regular intervals and amend the general enforcement strategy as appropriate, producing reports on this area of activity as required.

15 Retention of receipts and revenue collection:

- 15.1 The LA retains revenue from the penalty notice payments to cover the costs for issue and enforcement and for costs related to the prosecution of unpaid penalty notices.

16 Contacting the Local Authority

- 16.1 For information and advice regarding this Code of Conduct or any other attendance related issue please contact:

Strategic Lead for School Attendance,
People Portfolio
Commissioning, Inclusion and Learning service
Floor 7 North Wing
Moorfoot Building
Sheffield S1 4PL