

Essex County Council - Education Department

Code of conduct - Penalty notices for school absence/suspended pupils

Applies from 1 September 2024

The purpose of this local code of conduct is to ensure that penalty notices for school absence are issued in a manner that is fair and consistent across Essex County Council's jurisdiction. The code sets out the arrangements for administering penalty notices in Essex and must be adhered to by anyone issuing a penalty notice for school absence in this area. The code complies with relevant regulations and the Department for Education's national framework for penalty notices as set out in the ['Working together to improve school attendance'](#) guidance.

Provisions set out within this Code of Conduct will apply to unauthorised absences recorded by schools within Essex County Council's jurisdiction from the start of the 2024/25 academic year.

N.B. Absences recorded prior to 19 August 2024 may be subject to the provisions set out within the previous, locally agreed, Code of Conduct.

Consultation

1. This code has been drawn up in consultation with Essex headteachers and governing bodies of state-funded schools and Essex police.

Legal basis

2. Penalty notices may be issued to a parent as an alternative to prosecution for irregular school attendance under s444 of the Education Act 1996. They can only be issued in relation to pupils of compulsory school age in maintained schools, pupil referral units, academy schools, Alternative Provision (AP) academies, and certain off-site places as set out in section 444ZA Education Act 1996. For penalty notices relating to suspended or excluded pupils, please refer to paragraph 35 (below) for the legal basis under which these penalty notices are issued.
3. The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
4. A penalty notice can only be issued by an authorised officer: i.e. a headteacher or a deputy or assistant head authorised by them, an authorised local authority officer or a police constable. Under the community safety accreditation scheme (CSAS), authority may be granted by the police to additional approved personnel, enabling penalty notices to be issued by such personnel, in line with the national framework for penalty notices and any locally agreed practices as set out within this code of conduct.

In Essex, via the CSAS, the following companies have received accreditation to issue penalty notices in line with this code of conduct:

- Aquinas School Attendance Provisions
 - Attendance Solutions Essex
 - The Next Chapter
5. The national framework for penalty notices is published in statutory guidance 'Working together to improve school attendance'. It provides further national guidance on the operation of penalty notice schemes for school absence in England.
6. The education-related provisions of the Anti-Social Behaviour Act 2003 apply to all parents who fall within the definition 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 a parent in education law.

Under this code of conduct, a penalty notice can be issued to each parent believed to be liable for the offence or offences.

Rationale

7. For pupils registered at one of the settings referenced in paragraph 3 above, regular attendance is a legal requirement and **Section 444 (1) and 444 (1A) Education Act 1996 and Section 36 of the Children Act 1989** already exist to enforce attendance through the Courts in appropriate circumstances. The legal responsibility for compliance with these Acts rests with the parents and courts have the powers to fine, imprison or impose various orders.
8. For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided.
9. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the Department for Education's 'Working together to improve school attendance' guidance, only resorting to legal enforcement when necessary. The aim is that the need for legal enforcement is

reduced by taking a supportive approach to tackle the barriers to attendance and intervening early before absence becomes entrenched.

10. Penalty notices will only be used in cases where support is not appropriate (e.g. a term time holiday) or where support has been provided and has either not been engaged with or has not worked.

When may a penalty notice for absence be appropriate?

11. The National Framework for Penalty Notices, which takes effect from 19 August 2024, sets out the maximum number of penalty notices which may be issued by a local authority to each parent, for each child, in any 3 year period.
12. All schools must consider whether a penalty notice is appropriate in each individual case where one of their pupils reaches the national threshold for considering a penalty notice. Schools should not have a blanket position of issuing or not issuing penalty notices and should make judgements on each individual case to ensure fairness and consistency across the country. Essex County Council supports all headteachers within Essex to exercise their discretion when considering the appropriateness of penalty notice fines, based on their knowledge of individual families' circumstances within their school community.
13. The threshold is 10 sessions of unauthorised absence in a rolling period of 10 school weeks. A school week means any week in which there is at least one school session. The threshold may be met with any combination of the following unauthorised absence codes – i.e. G (unauthorised leave/holiday taken during term time), O (unauthorised absence) and/or U (arriving late after registers have closed) codes. The following examples demonstrate how the national threshold of 10 sessions within a 10 school week period might be triggered (please note that this is not an exhaustive list):
 - 4 sessions (2 days) of holiday taken in term time plus 6 sessions of arriving late after the register closes all within 10 school weeks.
 - 10 consecutive sessions (5 school days) of holiday absence (G coded)
 - 6 sessions of unauthorised absence taken in one week and 1 further session of unauthorised absence, per week, for the next four weeks.
 - The period of 10 school weeks can also span different terms or school years. For example, 2 sessions of unauthorised absence in the Summer Term and a further 8 sessions recorded within the following Autumn Term.
 - 5 separate days of absence (10 sessions) taken over a number of weeks. For example, a pupil who fails to attend school on Fridays on five separate occasions within a 10 school week period.
14. If repeated penalty notices are being issued and they are not working to change behaviour, they are unlikely to be the most appropriate tool. The national framework for penalty notices sets out that **a maximum of 2 penalty notices per**

child, per parent can be issued within a rolling 3-year period. The national framework also sets out the escalation process which applies to such penalty notices. If the national threshold is met for a third time (or subsequent times) within 3 years, another tool should be used. In Essex, where a child's attendance has met the national threshold for a third time within 3 years and the parent/s have already been issued with 2 penalty notices within that period, consideration will be given to prosecution under section 444 Education Act 1996.

15. The three-year period and applicable escalation of fines begins from the date on which the first penalty notice is issued. For example, if the first penalty notice is issued on 18th September 2024, charged at £80 if paid within 21 days and doubling to £160 if paid between days 22 to 28, any second penalty notice issued to that parent in respect of that child, on or before the 17th September 2027, would be charged at £160, payable within 28 days. A third penalty notice could not be issued to that parent in respect of that child within the three-year timeframe and, in cases where the national threshold is met for a third or subsequent time, alternative action should be considered.

16. For the purposes of the escalation process, penalty notices issued under the provisions set out within paragraph 35 of this Code of Conduct (suspended or excluded pupils) will not be included. The following table sets out how previous penalty notices for unauthorised absence recorded after 19 August 2024, including those not paid and where prosecution was taken forward and the parent pleaded guilty or was found guilty, will count towards the national framework limit. Withdrawn penalty notices (see paragraph 18 below) and any penalty notices issued before 19 August 2024 will not count towards the 2 penalty limit per child, per parent within a rolling 3-year period.

Scenario	Counts towards the limit?
Penalty notice issued by any authorised officer and paid within 21 days	Yes
Penalty notice issued by any authorised officer and paid within 28 days	Yes
Penalty notice issued by any authorised officer but later withdrawn	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence but the Court found the parent not guilty	No
Penalty notice issued by any authorised officer. The penalty notice was not paid, and the local authority prosecuted for the original offence and the Court found the parent guilty	Yes

17. A penalty notice may be withdrawn by the local authority under the following circumstances:

- Where the local authority deems it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where the evidence does not support the issuing of a penalty notice;
- It appears to the local authority that the notice contains material errors;
- Where it has been issued to the wrong person named as the recipient.

Key considerations prior to the issue of a Penalty Notice for school absence

18. The following considerations will be made before issuing (or requesting that another authorised officer issues) a penalty notice to ensure consistency of approach:

In cases where support **is not appropriate** (for example, for holidays in term time), consider on a case-by-case basis:

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
- (For local authorities only) Is it in the public interest to issue a penalty notice in this case, given the local authority would be accepting responsibility for any resulting prosecution, under section 444 Education 1996, for the original offence in cases of non-payment?

In cases where support **is appropriate**, consider on a case-by-case basis:

- Has sufficient support already been provided? Sufficient support will usually include (as appropriate on a case-by-case basis):
 - Communication/s in writing, notifying parent/s of the concerns held in relation to their child's absence levels (steps need to be taken to ensure that each "parent" is in receipt of such correspondence). Where letters are hand-delivered to parents, accurate records of date/time/person to whom letter was delivered must be available;
 - Opportunities for parent/s to meet with school staff to share/discuss the barrier/s to regular attendance and identify support strategies which aim to achieve an improvement in attendance;
 - Use of the "Let's Talk: We Miss You" toolkit and the strategies suggested via this toolkit;
 - Agreed "attendance contracts" making clear the role of each relevant party in improving the child's attendance levels;
 - Referrals to wider support services;
 - Where safeguarding concerns are identified for a pupil/family, appropriate liaison between relevant agencies including social care, police, health, other educational establishments, etc.

- Is a penalty notice the best available tool to improve attendance and change parental behaviour for this particular family or would one of the other legal interventions be more appropriate?
- Is issuing a penalty notice in this case appropriate after considering any obligations under the Equality Act 2010?
- (For local authorities only) Is it in the public interest to issue a penalty notice in this case given the local authority would be responsible for any resulting prosecution, under section 444 Education Act 1996, for the original offence in cases of non-payment?

If the answer to the above questions is 'yes', then a penalty notice (or a **notice to improve** - see paragraphs 21 and 22 below) in cases where support is appropriate will usually be issued.

19. In deciding whether the support that has been provided is "sufficient", Essex County Council will take account of relevant information held in respect of the pupil and family concerned.

Notice to improve

20. A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued. If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not previously worked, a notice to improve should usually be sent to give parent/s a final chance to engage in support. An authorised officer can choose not to use one in any case, including cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has previously received one for a similar offence).

21. Local arrangements for the use of Notices to Improve across Essex are as follows:

- Schools across Essex may issue a Notice to Improve to any parent whose child's absence levels have triggered the national threshold for a penalty notice – i.e. 10 sessions of unauthorised absence in a rolling period of 10 school weeks.
- The Notice to Improve may be used to offer parent/s a final opportunity to engage with support and improve the attendance levels of the child concerned. Where a parent fails to engage with the offer of support during the Notice to Improve validity period **and/or** further unauthorised absences are recorded for the pupil **and/or** the pupil fails to make significant improvements in their attendance patterns, a penalty notice may be issued in line with this code of conduct.
- All Notices to Improve issued by Essex schools will have a validity period of 6 school weeks (a maximum of 30 school days) and will clearly list the attempts which have been made and support which has already been offered to resolve the absence concerns. Parents should be provided with

clear contact details for the staff member/s within the school that they should contact to access the support that remains available during the Notice to Improve validity period.

- Attendance records will be reviewed on a daily basis throughout the improvement period and, where further unauthorised absence is recorded, consideration will be given as to whether a penalty notice is to be issued. Schools are not required to wait until 30 school days have passed before considering a penalty notice – decisions will need to be taken on a case-by-case basis, based on the level of parental/pupil engagement and/or level of attendance improvement noted.
- Sufficient improvement during the Notice to Improve validity period may include evidence of no further unauthorised absences within the improvement period or a sufficient amount of improvement tailored to the specific family circumstances.

How authorised officers will work together

22. Authorised officers should work together to ensure that penalty notices are used when likely to be effective and change behaviour.

23. An authorised officer is a headteacher or someone authorised by them (a deputy or assistant head), a local authority officer or the police (including authorised officers accredited via CSAS). The LA should set out which authorised officers will issue penalty notices in their area (see paragraph 5 above).

24. Where a penalty notice is to be issued by Essex County Council or where agreement from the local authority is being sought as to the appropriateness for an authorised officer to issue a penalty notice, paragraphs 26 and 27 below set out the information that should be made available to the local authority.

25. For penalty notices being requested/considered on the sole basis of 10 sessions of G code (i.e. 5 days, consecutive or otherwise, of holiday taken during term time over a 10 rolling week period) the local authority, within 10 school days of the pupil having returned to school, must be in receipt of the following:

- A copy of the application made by parents relating to the period/s of absence that have been recorded using a G code;
- A copy of the written response sent by the school, advising that the absence would not be authorised and why the reason/s for absence were not deemed to be exceptional;
- A copy of the pupil's registration certificate, clearly showing that the national threshold has been met and that the appropriate coding has been used to allow for a penalty notice to be issued;
- Where no application for leave has been submitted by parent/s and the leave was taken without prior discussion/knowledge of the school (e.g. where a parent has called to report their child as too unwell to attend

school and the pupil is later found to have been absent due to a holiday during term time), the local authority should be provided with the communications between the school and parent/s, clearly showing that parents have been made aware of the school's intention to issue a penalty notice as a result of the unauthorised absences that have been recorded.

26. For penalty notices being requested/considered on the basis of 10 sessions of unauthorised absence (G, O and/or U coded - consecutive or otherwise) in a rolling period of 10 school weeks, the local authority must be in receipt of the following:

- Clear details of the “support first” approach which has been taken by schools/partners to identify the reasons for the pupil’s absence, any barriers impacting the pupil’s attendance and all support strategies which have been offered (whether engaged with by parent/s or not) to remove any such barriers;
- Copies of all letters/emails sent to the parent/s to advise of the concerns held in relation to their child’s absence levels;
- Copies of all letters/emails sent and/or details of all telephone calls which have been made to arrange meetings with the parent/s to establish the reasons for absence and identify what support may be needed to improve attendance patterns and prevent further unauthorised absence;
- A copy of any attendance contract/s which have been agreed with parent/s and whether these have been adhered to;
- A link to the school’s Attendance Policy which makes clear the escalation process which may be applied in cases of unresolved irregular school attendance, including the risk of legal action under this code of conduct/section 444 Education 1996;
- A copy of the Notice to Improve which has been issued, if applicable, to the parent/s (see paragraphs 21 and 22 above);
- Where a Notice to Improve has not been issued, schools will be required to share their reasons why;
- Where a Notice to Improve has not been issued, a copy of the letter to parent/s advising them that they are at risk of receiving a penalty notice, should further unauthorised absence be recorded for their child.

27. When receiving requests to issue a penalty notice or to consider the appropriateness for an authorised officer to issue a penalty notice, the expectations within paragraphs 26 and 27 above will apply equally. This is to ensure that the local authority is in a position, on a case-by-case basis, to apply consistent decisions in regards to the appropriateness of issuing a penalty notice under this Code of Conduct and to ensure that any necessary escalation of fine levels is adhered to.

28. Upon receipt of referrals submitted by schools, police or authorised officers, the local authority will carry out all necessary checks and where the local authority

has been asked to issue the penalty notice/s, this will be actioned as soon as all necessary checks have been made. In cases where an authorised officer is seeking to issue a penalty notice the local authority will advise, within 5 working days, whether they are in agreement with the penalty notice/s being issued. Checks made by the local authority will include:

- Whether any previous penalty notices have been issued to the parent in respect of the child/ren concerned in order to provide clear advice in regards to the fine level which is to be applied.
- Whether there are any prosecution cases pending in respect of the family to ensure that duplication is avoided and appropriate escalation of legal response is considered.
- Whether there is clear evidence of a “support first” approach, in line with the “Working together to improve school attendance” statutory guidance. Where sufficient evidence has not been provided the local authority, as the independent prosecutor, will not support the issuing of a penalty notice.

29. Whoever is seeking to issue the penalty notice should make a decision as to whether proportionate support has been provided, and whether that support has worked or not. Where there is dispute, authorised officers are expected to defer to the local authority’s judgement about whether sufficient support has been provided before issuing a penalty notice.

Payment of Penalty Notice fines

30. Arrangements for payment will be detailed within the Penalty Notice.

- The first penalty notice issued to the parent for a child will be charged at £80 if paid within 21 days, rising to £160 if paid between days 22 and 28.
- Where it is deemed appropriate to issue a second penalty notice to the same parent for the same pupil within 3 years of the first offence, the second notice is charged at a flat rate of £160 and is payable within 28 days. **There is no reduced sum available in this instance.**
- Part payments or payment plans are not acceptable and fines must be paid in full within 21 or 28 days, at the rate specified within the penalty notice.
- Payment after the deadline may be accepted in exceptional circumstances. In this situation, the higher amount of £160 is usually payable and must be paid immediately and in full.
- When paying a penalty notice fine, parents are essentially agreeing to an out of court settlement in respect of the unauthorised absences to which the notice refers. Payment in full against the penalty notice discharges the parent’s legal responsibility for the period of unauthorised absence outlined

in the Notice and the parent cannot be subsequently prosecuted for that period.

- Any revenues collected through the system must be ring-fenced to administer the penalty notice system and prosecute for the original offence in cases of non-payment. If a surplus remains after the system has been administered and any non-payers have been prosecuted, this can be spent on the local authority's attendance support offer.

31. The local authority will inform the school about whether penalty notices are paid, withdrawn or have proceeded to prosecution, due to non-payment. A dedicated portal is available within Essex for schools to access such updates and this will be updated regularly, to ensure that schools have access to the most up-to-date information in relation to the fines which have been issued to parents of pupils on their school roll.

32. Where pupils move between local authority areas, Essex County Council can be contacted on **crossborder.penaltynotice@essex.gov.uk** to find out if penalty notices have been issued previously, so that appropriate escalation of fines may be applied in line with the national framework for penalty notices.

33. Penalty notices will be issued to the parents of children registered at Essex schools/academies, irrespective of their registered home address. This also means that follow-up prosecutions where parents fail to pay their penalty notice fine or to improve their child's attendance will extend to families resident outside of Essex. Essex County Council will notify the 'home' local authority of all pupils resident outside of Essex, if a prosecution is undertaken as a result of irregular attendance at an Essex school. Penalty Notices will not be issued by Essex County Council to parents whose children are not on the roll of an Essex school.

Suspended/Excluded Pupils

34. When a child is suspended/excluded from school, the parent will be responsible for ensuring that their child is not found in a public place during normal school hours on the first 5 days of each and every fixed period suspension or permanent exclusion (section 103 Education and Inspections Act 2006).

35. When requesting a penalty notice in respect of a suspended/excluded pupil, schools must be able to evidence that the following criteria have been met/considered:

- The excluding school must have notified the parent informing them of their duty and warning that a penalty notice could be issued;
- Where there is more than one person liable for the offence, a separate penalty notice may be issued to each person;

- Where a pupil is present in a public place during the first 5 days of a fixed period suspension, Essex County Council would issue a penalty notice if the school is in their local authority area;
- Where the child has been permanently excluded, the responsibility for issuing a penalty notice would fall to the local authority in which the child resides.

36. Penalty notices issued under this Code of Conduct in respect of suspended/excluded pupils, will be charged at £60 if paid within 21 days, doubling to £120 if paid between days 22 to 28.

37. A maximum number of two suspension/exclusion penalty notices may be issued by Essex County Council to each parent, for each child, within any rolling 12 month period.

Code of Conduct Review Arrangements

38. This code of conduct will next be reviewed in the summer term of the 2025/26 academic year, unless local needs or changes to the national framework require otherwise.