

Slough Borough Council

Penalty Notices Guidance for Schools and Academies

This guidance should be read in conjunction with the DfE 'Working Together to Improve School Attendance – Guidance for maintained schools, academies, independent schools and local authorities' published in May 2022.

About this guidance

This guidance updates and replaces all previous guidance regarding penalty notices published by Slough Borough Council, herein after referred to as the Local Authority (LA). It applies equally to all children of statutory school age.

From 1st September 2013, new government legislation states that head teachers are no longer able to authorise any requests for children to be taken out of school *unless* they believe the circumstances are exceptional. Previously, head teachers were able to authorise up to ten days of leave from school for special circumstances, but the updated legislation is specific: requests for leave can *only* be granted in exceptional circumstances and family holidays do not fall into this category.

In law an offence occurs if a parent/carer fails to secure a child's regular attendance at a school where he/she is a registered pupil and if any absence is not authorised by the school. Penalty Notices supplement the existing sanctions currently available under Section 444, Education Act 1996 and orders made under Section 36, Children Act 1989, to enforce attendance at school where appropriate.

This guidance is intended to be of assistance to all parties involved in the penalty notice process including head teachers, attendance officers and clerical staff.

The Attendance Team should be the first point of contact for any queries that head teachers, attendance officers etc may have regarding the issue of non-attendance.

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1. Penalty Notice Regulations

Subsection (1) of section 23 of the Anti-Social Behaviour Act 2003 added two new sections (444A and 444B) to section 444 of the Education Act 1996. These sections introduced penalty notices as an alternative to prosecution and to enable parents to discharge potential liability of conviction for that offence by paying a financial penalty. The offence of irregular attendance has not changed.

The Education (Penalty Notices) (England) Regulations 2007 sets out the framework for the operation of the penalty notice scheme.

The Education (Penalty Notices) (England) (Amendment) Regulations 2012 increased the amount of the penalty to £60 if paid within 28 days and to £120 if paid within 42 days. Subsequently, the Education (Penalty Notices) (England) (Amendment) Regulations 2013 has shortened the timescales for payment of the penalties. The fine is £120 but this will be discounted to £60 if paid within 21 days. If payment is made after 21 days then this will revert to £120. These amendments came into force on 1 September 2013.

A parent/carer cannot be prosecuted for the offence for which the notice was issued until after the final deadline for payment has passed and cannot be convicted of that offence if the penalty is paid in accordance with the notice.

These procedures apply to the parents/carers of children of compulsory school age who are registered at a maintained school, academy, pupil referral unit, or any other alternative educational provision arranged under s19 of The Education Act 1996.

All those defined as a parent under section 576 of the Education Act are parents for the purposes of these provisions. As with prosecutions under section 444 Education Act 1996, a penalty notice may be issued to each parent liable for the offence (see below).

2. Parent/Carer

The Education Act defines “parent” as; all natural parents, whether they are married or not; *any* person who has parental responsibility for a child; and *any* person who, although not a natural parent, has *care* of the child. Having care of a child means that a person with whom a child lives and who looks after a child, irrespective of what their relationship is with that child, is considered to be a *parent* in education law. The Attendance Team will issue a penalty notice to all “parents” that the school provides information for. Therefore, schools should only provide information on parents that they wish a penalty notice to be issued to.

3. Circumstances when a Penalty Notice may be issued

A key consideration in deciding whether to issue a penalty notice will be whether it can be effective in helping to ensure regular attendance at school, or alternative provision (as appropriate).

A penalty notice is a suitable intervention in circumstances where a parent appears unwilling to take responsibility e.g. it can be used for persistent unauthorised lateness and also for planned, but unauthorised absences, such as a holiday in term time.

1. A specific period of unauthorised absence (i.e. without the Head Teacher’s permission) from school (e.g. a holiday in term time). If a Head Teacher does not authorise a request from a parent/carer for an absence, s/he must respond to the request directly. This response will constitute a valid Warning to the parent. In all cases, a minimum of 10

sessions in total (5 school days) of absence must have been accrued before a penalty notice is requested. The days of the absence period must be consecutive although 2 separate periods of less than 5 school days each may be bridged (by weekends, bank holidays, inset days etc.) as long as their aggregate is at least 5 school days.

2. Persistent unauthorised absence: where a minimum of 10 unauthorised absences have accrued during a 12-school week period. In such cases following the issue of a warning notice, a penalty notice can be issued. The 10 sessions need *not* be consecutive.
3. Unauthorised Lateness – i.e. arrival at school after the register has closed: where a minimum of 10 unauthorised late absences have accrued within a 12-school week period. In such cases following the issue of a warning notice, a penalty notice may be issued. During the 12 school weeks review period any other unauthorised absence will also be included in the 10 sessions. The 10 sessions need *not* be consecutive.
4. A combination of 10 unauthorised absences, whether caused by persistent absence (O code) or unauthorised lateness (U code) as outlined in 2 and 3 above.
5. An Excluded Pupil found in a public place during the school day: in all cases the attendance team will check whether the pupil was excluded at the time. If the criteria are satisfied, then a penalty notice will be issued (a school is *not* deemed by the **Education & Inspections Act 2006** to be a public place for the purposes of this legislation).
6. During a Truancy Sweep by the attendance team in conjunction with the Police: if a child is found out of school or at home, and the absence is unauthorised, a warning notice will be issued. Following the issue of the warning notice, if a further 10 sessions of unauthorised absence is accrued within a 12-school week period a penalty notice may be issued.

4. Procedures for requesting a Penalty Notice

4.1 Requested / Planned Absence (e.g. a holiday – G Code)

The recent regulations from the Department for Education removed all references to “family holidays” and extended leave as well as the statutory threshold of ten school days. The amendments make it clear that head teachers may *not* grant any leave of absence during term time unless there are **exceptional circumstances**. Head teachers determine the number of school days that will be authorised for a child who is absent from school if the withdrawal from learning is to be granted.

Note: A Penalty Notice for a planned absence, i.e. holiday, can only be requested for absences of 10 or more consecutive sessions (5 days).

Procedure:

- (a) In all cases a parent wishing to request a withdrawal from learning during term-time should complete an Absence Request Form (Appendix 1 is an example of such a form).
- (b) Headteacher makes decision whether to authorise the absence or not, following the guidance of the Department for Education, which states this can be given in **exceptional circumstances only**. The Headteacher should then complete the form and sign and date it.
- (c) School returns the completed, signed and dated form to parents without delay. This form must include the warning information which can be found on page 2 of the Absence Request Form.

The school should keep a full copy on their file. We recommend that you also send back, with the signed form, a letter to the parent which outlines the decision made. (Appendix 2 is an example of such a letter).

- (d) A penalty notice should be requested for all parents who are liable; this includes a step-parent or other carer and can include an absent parent. **If the parents live at separate addresses, a letter stating the absence is unauthorised must be sent to both of them regardless of which parent made the request.**

If the absence request is not agreed this does not automatically mean that a penalty notice has to be requested. If the pupil is absent from school during the period of the request, it should be recorded as unauthorised. If the head teacher, then wishes to request a penalty notice, the following should be sent to the attendance team. These must be sent to attendance@slough.gov.uk .

- (i) An up to date registration certificate confirming absence and return;
- (ii) A full copy of the Absence Request Form, as signed by the parent and head teacher;
- (iii) Any other correspondence, confirmation of calls that have taken place between the parent and school in relation to the absence.
- (iv) Completed form ' Penalty Notice'.

Please send these within 30 days of the child's return to school

On receipt of the documentation, the Attendance Team will issue a penalty notice to each parent for each child provided the requested absence is at least **5 days (10 sessions)**. If the absence is 9 sessions, or less, it may remain *unauthorised* but do not send the request to the Attendance Team as we are unable to take any action.

Failure by a parent to pay the penalty notice may result in a prosecution. If a parent is found guilty by the Court of the offence, possible outcomes could be; a fine, costs and victim surcharge, conditional discharge, parenting order as set out by the Magistrates. The parent will also have a criminal conviction against their name.

It is vital, therefore, that schools consider carefully before authorising any absences as, should the local authority proceed to a prosecution, it is important that the local authority can demonstrate that the child's attendance is 'otherwise irregular'.

It is possible for a parent to receive more than one penalty notice per academic year.

In some cases, parents do not return a signed form.

Provided there is additional evidence it may still be possible to take action. For example, the parent may have sent an email or a letter to the school requesting the absence or simply refused to complete a form. Provided the information in relation to the issuing of penalty notices is publicised on your website, and/or included in your attendance policy, and/or sent out in newsletters (so there is no doubt parents are aware of the potential issue of a penalty notice) this should not prevent it being issued. In an instance where a parent does not request or inform you of a holiday being taken, a letter must be sent to them informing that the absence has not been authorised and providing them with the opportunity to discuss the matter with you so a decision can be made as to whether the

absence was due to an “exceptional circumstance”. Appendix 3 provides an example of the wording that could be used in the letter.

There may be occasions where a head teacher has reason to believe that a holiday has been taken or extended but a different reason, or no reason, has been provided by the parent. In these circumstances the head teacher should unauthorise the absence and ask the parent to provide evidence of the reason for absence, e.g. a GP appointment card or prescription, holiday booking form, flight tickets. If the parent provides evidence, the head teacher should then consider if the absence should be authorised.

If the head teacher receives no response and can provide supporting paperwork showing the evidence has been requested from the parent, a Penalty Notice can be requested.

We would encourage you to speak to the Attendance Team if there are any circumstances where you are not sure whether a Penalty Notice can be requested.

4.2 Persistent Unauthorised Lateness (U Code) and Unauthorised Absence (O Code)

Unauthorised absence and/or lateness after the close of registration, causes disruption in class. Consideration as to whether or not to issue a penalty notice for unauthorised absence and/or lateness should include whether the sanction will prove to be effective in improving attendance and eliminating lateness as an early measure to avoid the pattern becoming entrenched.

A school's Attendance Policy should state how long registers are kept open; best practice is that registers can be kept open for a maximum of 30 minutes from the start of registration. Each school sets its own registration length and this needs to be agreed by the Governing Board or equivalent. A pupil arriving after the register has closed should be marked absent with code U, which counts as a whole session absence.

Where a pupil is absent from school without prior authorisation or notification from the parent (i.e. illness), the absence should be marked with code O.

Schools should actively discourage absence and late arrival. Schools should also be alert to patterns of absence and late arrival and seek an explanation from the parent and offer support where necessary.

Further clarification can be sought from Department for Education Guidance.

Appendix 1

Withdrawal from Learning Application: For Exceptional Circumstances

Did you know that across the year there are just 190 school days? That means there are already 175 days set aside for weekends, holidays, family visits and rewarding days out. We believe every school day counts to give your child the greatest opportunity of attaining a good education and to support a happy and healthy future. With 175 days already marked out as 'non-school-days', you should have an exceptional reason to withdraw your child from school. The following are considered illegitimate reasons and are likely to be rejected and unauthorised:

- **trips to visit family/friends**
- **your child's birthday**
- **cheaper family holidays**

- **tickets to sports/culture events**

100% is recognised as an expected level of school attendance. If your child is out of school for 3 days each term, then their attendance is below 95% and they're spending more days out of school than in it!

From a young person's perspective, missing schools means:

- **Missing out on fun projects and school activities**
- **Struggling to catch up on work**
- **Disconnecting with school friends**

The Department for Education guidelines are clear that family holidays cannot be authorised.

Your child has the right to a full-time education and the opportunities that this can bring. We hope that you will work in partnership with us to make sure that your child attends school every day, allowing them access to the education they deserve. The law states that parents do not have the right to take their child out of school during term time. Having read these notes if you still wish to apply, please complete the below **IN ADVANCE** of the requested dates

To be completed by parent/carer:

Childs Name:

Tutor Group/ Class:

Date of withdrawal from learning: ../ .. / ..

Date of return to learning: ../ .. / ..

Total number of learning days missed:

Reason withdrawal from learning is requested:

Please ensure you are giving at least 14 day's notice of the proposed absence.

I understand that if the request is unauthorised the school will notify and share this form and any subsequent letter with Slough Borough Council Attendance Service. A legal intervention may be instigated in the form of a Penalty Notice. If a Penalty Notice is issued it will be to each parent for each child taken out of school and that this is a fine of £60 which increases to £120 if not paid within the first 21 days. I understand that if I do not pay this will result in legal action.

Name of Parent/Carer:

Signed:

Date:

Home Address:

Please ensure you are giving at least 14 day's notice of the proposed absence.

This form will be submitted to the head teacher for review. A senior member of staff may conduct a telephone interview with you to discuss the request and to confirm the decision.

Head teacher decision:

Date of telephone interview:

Date decision form sent home:

Authorised: Your request has been authorised for the following dates: .../.../... to .../.../...

Unauthorised: Your request has been unauthorised for the following dates: .../.../... to .../.../...

Head teacher signature:

Date:

Appendix 2

A suggested/example letter already used by some schools. To return to parents with the counter-signed request form when an absence has been declined

Dear Parent/Carer

Thank you for your recent request for an absence in term time. I will not be authorising your request as I do not consider the reason provided for the requested absence to be exceptional circumstances.

I realise that you will be disappointed by my decision, but Government guidance means that, as a head teacher, I am no longer able to authorise any requests for children to be taken out of school unless there are exceptional circumstances. [*optional if a holiday* “and family holidays do not fall into this category”]

The consequence for your child taking an absence during this period is that it will be recorded as unauthorised and that we may request a Penalty Notice to be issued by the local authority to each parent / carer for each child should the child be absence during the requested period.

Should you wish to present further evidence of exceptional circumstances, please contact me **before** the absence is taken.

Please note that once a Penalty Notice has been issued there is no right of appeal.

Yours sincerely

Head Teacher

Appendix 3

A suggested/example letter, to send to parents where it is believed a holiday has been taken but was not requested in advance.

Dear Parent/Carer

I am writing in regard to **[pupil]'s** absence between **[dates]**.

It is our understanding that **[pupil]** was on holiday during these dates. This letter is to advise you that I am unable to authorise this as time off in term time is for exceptional and unavoidable circumstances.

Government guidance means that, as a Head Teacher, I am no longer able to authorise any requests for children to be taken out of school unless there are exceptional circumstances and family holidays do not fall into this category.

Should you wish to present evidence of exceptional circumstances for the absence, please contact me by **[date]** so that the information can be considered. If I do not hear from you by this date we will request a Penalty Notice be issued by the local authority. **Please note that if a Penalty Notice is issued this will be to each parent (for each child) incurring a fine of £60 which increases to £120 if not paid within 21 days.**

Once a Penalty Notice has been issued there is no right of appeal.

Yours sincerely

Head Teacher