

**ESSEX CODE OF CONDUCT  
PENALTY NOTICES FOR PARENTS OF TRUANTS AND PARENTS OF PUPILS  
EXCLUDED FROM SCHOOL  
ANTI SOCIAL BEHAVIOUR ACT 2003 SECTION 23**

The purpose of this local code of conduct is to ensure that the powers are applied consistently and fairly across the local authority area and that suitable arrangements are in place for the administration of the scheme.

The Government requires Local Authorities to issue a code of conduct  
The Essex code has been agreed following consultation with:

- Essex Local Authority – Missing Education & Child Employment Service
- Representatives from Governing Bodies and Headteachers of Essex Schools
- Essex Police Service

in accordance with the Education (Penalty Notices) Regulation 2007, Anti Social Behaviour Act 2003) section 23 subsection (1) and Sections 103 to 105 of the Education and Inspections Act 2006; Education (Pupil Registration) (England) (Amendment) Regulations 2013

Anyone issuing a penalty notice to a parent\* of a child of statutory school age on roll at an Essex school, must do so within the terms of this code.

### **Legislation**

The Anti Social Behaviour Act 2003 inserts into the Education Act 1996 Section 444A and Section 444B enabling authorised personnel to issue penalty notices as an alternative to prosecution under Section 444 and enable parents to discharge potential liability for conviction for that offence by paying a penalty.

Section 444(1) of the Education Act 1996 provides that if a child of compulsory school age 'fails to attend regularly' at the school where he is a registered pupil, his parent is guilty of an offence. On the 6<sup>th</sup> April 2017, in the case of Isle of Wight Council v Platt the Supreme Court judgement ruled that the word 'regularly' means 'in accordance with the rules prescribed by the school'

Section 103 of the Education and Inspections Act 2006 places a duty on parents to ensure that their child is not present during school hours in a public place during the first 5 days of exclusions. Section 105 of the Act enables a penalty notice to be issued under Section 103.

### **Authorisation to issue penalty notices**

Primary responsibility for issuing penalty notices rests with the Local Authority (LA). It has been agreed that the Missing Education & Child Employment Service, on behalf of Essex LA, will usually issue penalty notices. The Service will administer the scheme from any funds obtained as a result of issuing penalty notices.

Headteachers (and deputy headteachers and assistant headteachers authorised by the head teacher) and police, and persons accredited by the police are all able to issue the notices under the Act, although there is no requirement for them to do so. In Essex it has been

agreed that the Police will not issue penalty notices to parents of truants, but persons accredited by them may do so. Schools will not generally issue penalty notices but where a Headteacher (or their designated deputy) or accredited person decides that a penalty notice is to be served, they must email [ME&CE.legal@essex.gov.uk](mailto:ME&CE.legal@essex.gov.uk) to ascertain if there is any current legal action. A response will be sent within 24 hours. This will avoid a penalty notice being issued when the Local Authority is instigating legal intervention proceedings for irregular school attendance.

### **Circumstances in which a penalty notice may be issued**

Penalty Notices apply to pupils of statutory school age which finishes in year 11. Essex partners have agreed to use penalty notices for the following circumstances:

- **Penalty notices for irregular school attendance /leave of absence \*\***

Penalty notices may be issued where there has been at least 10 sessions of unauthorised absence during the previous ten school weeks. This includes unauthorised late arrivals, coded U, which count as unauthorised absence for the whole session.

In addition to the above criteria, due to the importance of pupils settling into school at the commencement of the school year, penalty notices may also be issued if there have been at least 6 consecutive sessions of unauthorised leave of absence during the first two weeks of September due to a term-time holiday.

#### Number of penalty notices which can be issued for truancy/unauthorised absence

Discretion will be used to enable up to two penalty notices to be issued to each parent for each child within a twelve month period. If the law continues to be broken around school attendance the Missing Education and Child Employment Service legal intervention process will be used.

- **Pupil identified during a school attendance and exclusion sweep**

School attendance and exclusion sweeps take place in Essex and children stopped are often with parents condoning the absence.

If the Headteacher does not authorise the absence of a pupil stopped by a Local Authority Investigation Officer and Police Officer on a sweep and there has been at least 10 unauthorised absences for that pupil during the preceding 10 schools weeks, school will issue a warning letter to the parent within 14 days. If there are any further absences that are not authorised by the head teacher, during the next 6 schools weeks the school will complete a request, signed by the Headteacher (or their designated deputy), for issue of a penalty notice and send to the Missing Education and Child Employment Service . The Missing Education and Child Employment Service may then issue a penalty notice.

#### Number of Penalty Notices which can be issued for pupils identified during a school attendance and exclusion sweep.

Essex will issue no more than two penalty notices to a parent in a twelve month period for pupils identified on a school attendance and exclusion sweep. If the law continues

to be broken around school attendance the Missing Education and Child Employment Service legal intervention process will be used.

- **Excluded children**

When a child is 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 five days of each and every fixed period or permanent exclusion. (Section 103 Education and Inspections Act)

The excluding school must have issued notice to 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 notice may be issued to each person.

Where a pupil is present in a public place in the first five days of a fixed period exclusion the Essex Local Authority would issue a penalty notice if the school is in their area. Where the child has been permanently excluded, it would be the authority where the child resides.

Number of penalty notices which can be issued for exclusion

Essex will issue a maximum of 5 penalty notices per parent for each child during a 12 month period.

Number of penalty notices which can be issued for unauthorised leave of absence

Essex will issue no more than two penalty notices to a parent in a twelve month period for unauthorised leave of absence. If the law continues to be broken around school attendance the Missing Education and Child Employment Service legal intervention process will be used.

**Payment of Penalty Notice**

The penalty for each parent is £60 for each child if paid within 21 days of receipt of the notice, rising to £120 if paid after 21 days but within 28 days of receipt of the notice (service by post is deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by first class post).

All penalties are paid to the LA and revenue generated is retained to administer the system and contribute towards S444 prosecutions.

If the penalty is not paid in full by the end of the 28 day period Essex Missing Education and Child Employment Service will either prosecute for the offence to which the notice applies or withdraw the notice. The prosecution is not for non-payment of the notice but is a prosecution for irregular school attendance – Education Act 1996 Section 444 (1)

There is no statutory right of appeal against the issuing of a penalty notice.

### **Withdrawal of Penalty Notice**

A penalty notice can be withdrawn in the following circumstances:

- Where 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
- The notice contains material errors
- Where it has been issued to the wrong person or the parent can prove it was delivered to the wrong address

### **Co-ordination between the LOCAL AUTHORITY and its local partners**

The Missing Education and Child Employment Service and its local partners will review this Code of Conduct regularly.

*\* **All** those defined as a parent under Section 576 Education Act 1996 are parents for the purpose of these provisions. This means that all natural parents, whether they are married or not; any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person; and 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. Parent means 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.*

*As with prosecutions under Section 444 Education Act 1996 a penalty notice may be issued to each parent liable for the offence.*

Introduced September 2004.

Revised December 2008

Revised February 2010

Revised September 2012

Revised July 2013 for implementation from 1<sup>st</sup> September 2013

Revised February 2014

Revised March 2015 for implementation from 1<sup>st</sup> September 2015

Revised July 2017 for implementation from 1<sup>st</sup> October 2017

Revised November 2017

**\*\*** truancy/unauthorised absence is absence from school without permission or good reason and the absence is unauthorised by the school.