
Amendment to Southend Borough Council's Code of Conduct under the Provision of the Education (Penalty Notices) Regulation 2004

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Guidance To Head Teachers And Attendance Leads

In February 2004, [section 23\(1\) of the Anti-Social Behaviour Act 2003](#) added sections [444A](#) and [444B](#) to the Education Act 1996. These sections enable Penalty Notices to be used as an alternative to prosecution and provide parents with the opportunity to discharge liability for conviction of an offence under section 444 by paying a financial penalty to the Local Authority.

The Access and Inclusion School Attendance Team fully complies with Article 6 and 8 of The Human Rights Act 1998 and ensure the application of penalty notices throughout the borough remain consistent, fair and transparent.

The key areas of the code of conduct that I would like to bring to your attention are:

- Penalty Notices for unauthorised absence can only be issued for an offence that the local authority is willing and able to prosecute in Magistrates Court for non-school attendance and where the action is proportionate to the level of absence.
- [Section 103 of the Education and Inspections Act 2006](#) places a duty on parents in relation to an excluded pupil. A parent has to ensure their child is not present in a public place during school hours, without reasonable justification, during the first five days of each and every fixed term or permanent exclusion. Section 105 allows for a Penalty Notice to be given to a parent guilty of an offence under Section 103 of the Act.
- Penalty Notices can be issued to all children in the same family unit exhibiting patterns of unauthorised absence.

All schools wanting to issue Penalty Notices under the Southend Code of Conduct as a deterrent to taking leave during term time, must evidence that all literature provided to parents, such as: school 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 leave is taken without permission. Schools must also ensure that once a parent has submitted a request for leave during term time which has not been agreed due to no evidence of exceptional circumstances, they must then provide parents with a warning letter. An example warning letter is attached with the updated Southend Borough Council's code of conduct.

Although the responsibility for authorising requests for leave of absence lies with the school, it is the Access and Inclusion School 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 are attached within this pack and can also be found on the Schools Learning Network. Further questions or guidance around the code of conduct can be given from the Access and Inclusion School Attendance Team– School Attendance Service.

Southend Borough Council's Code Of Conduct Under The Provision Of The Education (Penalty Notices) Regulation 2004

This is an amendment to the 2019 Southend Borough Council's code of conduct and relates to penalty notices for unauthorised absences and exclusions.

Code of Conduct under the Provision of [The Education \(Penalty Notices\) Regulation 2004](#) and subsequent [The Education \(Amendment\) Regulations 2013](#)

Rationale

Regular and punctual attendance of pupils at school is a legal requirement (section 7 of the Education Act 1996). Parents are responsible for ensuring that any child of compulsory school age receives full-time education that is suitable to the child's age, ability and aptitude and to any special educational needs the child may have.

A child is of compulsory school age at the beginning of the 1st term after their 5th birthday, so:

- children who turn 5 between 1st January and 31st March will be of compulsory school age at the beginning of the school term after 31st March;
- children who turn 5 between 1st April and 31st August will be of compulsory school age at the beginning of the school term after 31st August;
- children who turn 5 between 1st September and 31st December will be of compulsory school age at the beginning of the school term after 31st December.

A child remains of compulsory school age until the last Friday in June in the school year that they turn 16 (usually year 11).

Parents can be issued a Fixed Penalty Notice by Southend-on-Sea Borough Council for their child's non-attendance. Each parent can receive a fine for each of their children, of £60, which rises to £120 each if you do not pay within 21 days. If you do not pay the fine after 28 days you may be prosecuted for your child's absence from school.

Access and Inclusion – School Attendance Service will ensure a consistent, fair and transparent application of penalty notices throughout the borough, complying with the Human Rights Act 1998. This Code of Conduct will govern the issuing of penalty notices across the borough

Guidance and legislation:

Persons authorised to issue Penalty Notices in the Borough of Southend-on-Sea are officers from the Access and Inclusion Service, namely School Attendance and Inclusion Teams. In doing so, they will have full regard to the following legislation and any subsequent modifications:

- The Education (Penalty Notices) (England) Regulations 2007
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013 No. 757,

- The Race Relations (Statutory Duties) Order 2001
- Disability Discrimination Act 1995
- Data Protection Act 1998
- Children Act 1989
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Special Needs Code of Practice 2003
- Anti-social Behaviour Act 2003
- Ensuring School Attendance: Guidance on the Legal Measures to Secure Regular School Attendance 2003
- Education Act 1996
- Coronavirus Act 2020
- And any guidance issued by the Secretary of State in relation to School Attendance, Absenteeism and Penalty Notices

On 6 April 2017, in the case of [Isle of Wight Council v Platt \[2017\] UKSC 28](#), the Supreme Court ruled that the word 'regularly' means 'in accordance with the rules prescribed by the school.'

Southend-on-Sea Borough Council does not use the word regular but specify below 90% attendance.

Section 576 education act 1996 - definition of a parent

For the purposes of this code, the term 'parent' is defined as:

- A biological parent of the child (even if they do not have Parental Responsibility and even if the child does not reside with that parent);
- any person who is not a parent but has Parental Responsibility for the child (for example through a Residence Order, Child Arrangements Order, Special Guardianship Order, Step-Parental Responsibility Order, Adoption Order or Care Order);
- 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.

Procedure for the issue of penalty notices:

The responsibility for issuing penalty notices within the borough of Southend-on-Sea lies solely with the Local Authority's Access and Inclusion Team. This is to ensure the following measures are applied consistently:

- avoiding duplicate notices being issued
- a notice is not issued when legal proceedings for an offence under section 444 of the Act are being considered or have started by the local authority
- the penalty notice is appropriate
- the maximum number of penalty notices that may be issued to one parent in any twelve month period have not been exceeded

Schools in accordance with the code of conduct, can issue warnings and make requests to the LA to issue a penalty notice. In Southend it has been agreed that Head Teachers and the Police will not issue penalty notices to parents.

The issue of penalty notices will be strictly administered by the Access and Inclusion Service to ensure independence of judicial intervention, proportionality and that the provisions of this code do not have a negative impact on the current forms of statutory intervention pursued by Southend-on-Sea Borough Council.

No Penalty Notice may be issued without prior written warning.

The key considerations are:

Penalty Notices for irregular attendance:

Whether, given the facts of the case the investigating officer 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 a place of education.

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.

That the notice has been issued only for an offence that the local authority is willing and able to prosecute and the action is proportionate to the level of absence

The Local Authority will always issue penalty notices by first class post.

The responsibility of the issuing of a penalty notice is within the statutory duties of the Access and Inclusion School Attendance Team. This is via a revenue collection which will ensure that the issue of Penalty Notices are closely monitored with the relevant financial penalty being imposed and collected.

In the case where the penalty has not been paid within 28 days of issue, the case may be escalated to prosecution for non-school attendance.

No one parent may receive more than one single penalty notice resulting from the unauthorised absence of 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. 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.

Penalty Notices for excluded children found in a public place:

The parent must have been notified in writing of their duty and provided with a written warning that a penalty notice could be issued where there are no measures in place to supervise their child and ensure that they are not in a public place during school hours.

Where a parent/carer fails in their duty to ensure a child is not in a public place, a penalty notice may be issued under S.105 Education and Inspections Act, unless the parent/carer can prove there was a reasonable justification.

If the pupil is identified in a public place and it is within the first five days of the exclusion and notified to the school, the school is to write to the parent/carer within ten school days and allow an opportunity to provide a justifiable reason. The supplied template letter in [Appendix G](#) should be used for this purpose.

The local authority officer will assess the facts and decide whether it is appropriate to apply for a penalty notice, based upon the information the school provides. The application for a penalty notice must be made within 21 school days of the sighting of the pupil.

The Local Authority will always issue penalty notices by first class post.

The responsibility of the issuing of a penalty notice is within the statutory duties of the Access and Inclusion Service, via revenue collection mechanisms, and will ensure that the issue of Penalty Notices are closely monitored with the relevant financial penalty being imposed and collected.

In the case where the penalty has not been paid within 28 days of issue, the case may be escalated to prosecution under Section 103 (3) of the Education and Inspections Act 2006. A maximum of three Penalty Notices (1 per term) will be issued in any twelve month period. A Penalty Notice will be issued to each parent of each excluded child found in a public place within the first 5 days of exclusion.

Circumstances when penalty notices might be issued

Unauthorised Absence/Truancy:

Schools can refer into the Access and Inclusion School Attendance Team when the referral criteria of below 90% attendance with 10% of unauthorised absence in the proceeding 10 weeks (during the current academic year) have been met.

Penalty notices may be issued following an Attendance Panel or Pupil Planning meeting where there has been assessment of unacceptable levels of unauthorised absence of 10 school sessions or more within an 10 week period (term time) prior to the panel meeting. A penalty notice would be issued after the first unauthorised absence after parent had received the warning letter and there is evidence that any plan identified at the panel meeting had been implemented.

Parents must have been issued with a Formal Warning Letter and given opportunities to inform the school of any factors impacting on their ability to ensure their child attends school regularly. Warning letters are valid for 10 school weeks.

Schools may hold their own Attendance Panel meeting once they have identified there has been an assessment of unacceptable levels of unauthorised absence of 10 school sessions or more within a 10 week period (term time) prior to the panel meeting. They must issue a Formal Warning letter ([Appendix D](#)) on schools headed paper that reflects the agreed plan and that states the sanctions that may be implemented. This warning will remain in place for 10 school weeks.

School can then refer to Access and Inclusion School Attendance Team to issue the Penalty Notice on the first unauthorised absence after the parent has received the warning letter and there is evidence that any plan identified at the panel meeting had been implemented.

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 prior to the issue of a Penalty Notice.

Unauthorised leave during term time:

Amendments to the 2006 regulations remove reference to family holidays and extended leave as well as the statutory threshold of ten school days. The amendments make 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*). 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 Access and Inclusion School Attendance Team Leader will decide if the issuing of a penalty notice is appropriate.

The head teacher must have regard to the Department for Education's 'School Attendance, Statutory guidance and departmental advice, September 2013' when considering each request for a holiday.

Penalty Notices for term time holidays can be issued if:

- There have been 10 sessions (5 consecutive days) or more of unauthorised absence due to leave taken during an academic year;
- and
- Attendance is below 90% during the preceding 10 weeks before the leave was taken;

A large proportion of penalty fines can go unpaid; officers before issuing such a notice shall assess the likelihood of securing a conviction if the notice is not paid.

As in other cases, the necessary warning letters will precede the issue of a notice.

NB Under normal circumstances a penalty notice will not be issued in cases where a parent has received a previous conviction in respect of his/her child's absence from school without agreement from a line manager.

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 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 in the first five days of a fixed period or exclusion, the Access and Inclusion Service would issue a penalty notice if the pupil is on roll at a Southend school. Where the child is present in a public place and has been permanently excluded, it would be the authority where the child resides who would issue the penalty notice.

Administration of the penalty notice scheme:

Penalty Notices shall be issued in a prescribed manner and revenue from such notices shall be collected by the Local Authority via a payment collection provider allowing for various methods of payment. The officer issuing a penalty notice shall maintain accurate and up to date records.

A prosecution under [s 444\(1\) \(A\) Education Act 1996](#) and [Section 103 \(3\) of the Education and Inspections Act 2006](#) will be undertaken when sufficient evidence exists to warrant statutory intervention, the failure to pay a Penalty Notice will be used in evidence for prosecution of non-school attendance. There is not an opportunity to pay fines in instalments and there is no right of appeal to the penalty notice.

For any person to be prosecuted the elements of the above acts must be proven, the service cannot prosecute just because a notice has not been paid. The Rules of Evidence and Criminal Procedural Rules apply, any prosecution must meet the "evidential test" and the "public interest test" and must be proportionate otherwise a prosecution may not proceed.

Withdrawal of penalty notice:

There are only five exceptions when a notice may be withdrawn;

1. When it is issued to the wrong person
2. When issued outside the terms of the code of conduct
3. When an offence has not been committed
4. If a parent can prove it was delivered to the wrong address
5. Exceptional circumstances proven

Appendix A – Unauthorised Request for Leave – School letter example

Dear

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

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 holiday as the reasons stated on your application form are not deemed as exceptional.

If you decide to take your child/children out of school for this period you may be subject to a Penalty Notice issued by the Local Authority on your return. Under the Anti-Social Behaviour Act 2003, Section 23(1), the issuing of a Penalty Notice incurs a fine of £60.00 per child if paid within 21 days rising to £120.00 per child if paid after 21 days but within 28 days. (NB. In the case where the penalty 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

Xxx School.

Appendix B – Request to the Access and Inclusion School Attendance Team to hold an Attendance Panel or Pupil Planning Meeting (PPM)

ALL the below sections must be completed in order for us to process the request. (The request will be returned if not fully completed)

	To be completed by Head Teacher	Tick when checked (Senior Practitioner)
Name of child		
Date of birth		
Name of parent/s to be included in the Meeting		
Date of birth of parent/s		
Address		
Address of parent if different		
List below all measures taken to support the family to overcome the barriers to attending school		
Number of Letters sent to parents Number of Home visits conducted by School Number of phone calls made		
To be able to initiate an Attendance Panel or PPM all the above must be completed		
The referral criteria of below 90% with 10% of unauthorised absence in the proceeding 10 weeks (during the current academic year)		
Copy of all letters sent by school		
Copy of letter advising parents this will be escalated to the Local Authority		
Confirmation that all school policies are up to date with the new guidance		

in the Southend code of conduct and this has been shared with parents		
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I confirm that to the best of my knowledge the above information is accurate and that I wish for the Access and Inclusion School Attendance Team to call a Pupil Planning Meeting or Attendance Panel with a view to issuing a Penalty Notice to the parent/s of the above child in accordance with the guidelines issued in the Southend code of conduct (2014)

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

School..... Date.....

Appendix C – Request to the Access and Inclusion School Attendance Team to issue a Penalty Notice following the schools Attendance Panel

	To be completed by head teacher	Tick when checked (team leader)
Name of child		
Date of birth		
Name of parent/s to be named on the Notice		
Date of birth		
Address		
Address of parent if different		
Dates Attendance Panel took place following unacceptable levels of unauthorised absence of 10 school sessions or more within an 10 week period (term time) prior to the panel meeting.		
Registration Certificate attached detailing current attendance		
Copy of warning letter issued by head teacher (attached)		
Confirmation that all school policies are up to date with the new guidance in the Southend 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 wish for the Access and Inclusion School Attendance Team to issue a Penalty Notice to the parent/s of the above child in accordance with the guidelines issued in the Southend code of conduct

(Head teacher signature)

(Date) (Printed name).....

(School)

Appendix D – Warning Letter to be issued at the schools Attendance Panel Meeting – School letter example

Dear (Parent/Carer)

Penalty Notice Warning Letter - The Anti-Social Behaviour Act 2003 Section 23(1)

This is to inform you that your child, [child's name], [DOB], a registered pupil at [.....] School is not in regular attendance at school.

Plan agreed at the Attendance Panel meeting:

-
-

In the event that your child has a further unauthorised absence in the next 10 school weeks the local authority will, without further reference to you consider issuing a penalty notice to each parent.

The Penalty notice is £60 for each child identified in this letter, to be paid within 21 days. If the penalty is not paid within the time scale the penalty will increase to £120 per child. If the higher penalty is not paid within 28 days, the Access and Inclusion School Attendance Team will 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.

Please contact me by [date] to discuss if there are any special circumstances that you feel should be taken into consideration before referring the case to the Local Authority for the issue of Penalty Notices.

Yours sincerely

Head Teacher

Appendix E – Request for issue of penalty notice for holiday taken in term time

ALL the below sections must be completed in order for us to process the request. (The request will be returned if not fully completed)

	To be completed by head teacher	Tick when checked (team leader)
Name of child		
Date of birth		
Name of parent/s to be named on the Notice		
Date of birth		
Address		
Address of parent if different		
Dates of holiday (10 sessions (5 consecutive days) or more of unauthorised absence due to leave taken during an academic year)		
Attendance is below 90% during the preceding 10 weeks before the leave was taken		
Copy of holiday 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 Southend code of conduct and this has been shared with parents		
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I confirm that to the best of my knowledge the above information is accurate and that I wish for the Access and Inclusion School Attendance Team to issue a Penalty Notice to the parent/s of the above child in accordance with the guidelines issued in the Southend code of conduct

(Head teacher signature)

(Date) (Printed name).....

(School)

Appendix F – Guidance to Head teachers on leave of absence

Example letter from Head teacher where no application received

Dear

Name: DOB:

School:

I have noted that had day's absence for the period..... I have reason to believe that this absence was due to a family holiday because. I have checked my records and can find no holiday application form 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 Access and Inclusion School Attendance Team may issue a penalty notice to each parent of £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 Access and Inclusion School Attendance Team will 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 unauthorised leave taken for a term time holiday.

Please contact me by..... to discuss if there are any special 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

Appendix G – Example letters for Head teachers regarding exclusion

Example letter from Head teacher where a pupil has been cited in a public place in the first five days of exclusion

Dear

Name: DOB:

School:

Further to my letter dated [insert date] regarding the period of exclusion for your son/daughter, you were advised that it is an offence for a parent/carer to allow their child to be present in a public place during school hours for the first five days of exclusion, (Section 103 of the Education and Inspection Act 2006).

Your son/daughter was seen

At [place]

On [date]

At [time]

Seen by [add details]

This was during the first five days of [name]'s exclusion from school. Before I request a penalty notice be issued to you, I invite you to provide me with the reason to support why your son/daughter was seen in a public place. Please either contact the school to speak with me directly or providing your reasons in writing within the next seven school days.

If I do not hear from you within that time, or if I do not consider your reasons to be a justified, a penalty notice will be sought under S.105 Education and Inspections Act 2006. A penalty notice imposes a fine of £60 if paid within 21 days, rising to £120 if paid between 22 days and 28 days. If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted under S.103 Education and Inspections Act 2006 and could receive a fine of up to £1,000.

Yours sincerely,

Head teacher

NB: All information regarding exclusion from school, including template letters, can be found on the Southend Borough Council [Exclusion from School](#) page. Direct links to model letters and protocols are in the links below.

[Southend Exclusions Model letters](#)

[Southend Exclusions Procedures and Protocols](#)

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”

The amendments to the 2006 Regulations remove any reference to family holidays, extended leave and the statutory threshold of ten school days.

The amendments make clear that head teachers may not grant any leave of absence (holiday) during term time unless there are exceptional circumstances

The 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

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 exceptional circumstance ruling applies, 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