



Havering
LONDON BOROUGH

***Penalty Notice Code of Conduct 2024/2025
for all
Havering Schools, Academies including
Alternative Provisions, Independent and
Free Schools***

***This policy reflects the Local Authorities responsibility for
safeguarding and promoting the welfare of children and
their educational attainment and achievement***

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| 2024/2025 - Complete review to comply with new DfE Working Together to Improve Attendance Statutory Guidance (August 2024) | All pages |

1. **Introduction**

Education (Penalty Notices) (England) (Amendment) Regulations 2024, which came into effect on 19th August 2024, set out the framework for the issuing of penalty notices. The Regulations require each Local Authority (LA) to draw up a Local Code of Conduct which sets out measures to ensure consistency in the issuing of penalty notices. This code of conduct should be read in conjunction with the following:

- Section 444 of the 1996 Education Act
www.legislation.gov.uk/ukpga/1996/56/section/444
- Section 103 of the Education and Inspection Act 2006
[Education and Inspections Act 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

2. **Purpose**

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 The London Borough of Havering. The code sets out the arrangements for administering penalty notices in Havering, 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.

3. Consultation

This code has been drawn up in consultation with the headteachers and governing bodies of Havering Schools / Academies and the Local Police force.

4. Legal Basis

- 4.1 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, AP academies, and certain off-site places as set out in section 444A(1)(b).
- 4.2 The Education (Penalty Notices) (England) Regulations 2007 (and subsequent amendments) set out how penalty notices for school absence must be used.
- 4.3 A penalty notice can only be issued by a Havering authorised officer.
- 4.4 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.
- 4.5 A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in section 576 of the Education Act 1996. Penalty notices will usually be issued to the parent or parents with day to day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).
- 4.6 Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the DfE'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.
- 4.7 The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:
 - support is not appropriate (e.g. a term time holiday) or where support has been provided and not engaged with or not worked, and
 - they are the most appropriate tool to change parental behaviour and improve attendance for that particular family.

5. Circumstances where a Penalty Notice may be issued

- 5.1 The key consideration in deciding whether to issue a Penalty Notice (PN) is whether it can be effective in helping to get the pupil back into school.
- 5.2 A penalty notice can only be issued in cases of unauthorised absence.
- 5.3 PNs offer a swift intervention that may be used to combat attendance problems before they become entrenched and where the LA considers that a prosecution would be inappropriate or unwarranted at that time. A PN can be a suitable intervention in circumstances where the parent is judged capable of securing their child's regular attendance but is not willing to take responsibility for doing so, for example where the parent has failed to engage with any voluntary or supportive measures proposed.
- 5.4 The normal response to a first offence should be a warning rather than a penalty. However, authorised officers have the power to issue a PN for a first offence in exceptional circumstances. This could be where the unauthorised absence was for an extended period and condoned by the parent (for example where the parent has taken their child on holiday during term time without authorisation).
- 5.5 The National Threshold that a PN can be issued is **10 sessions of unauthorised absence** which is 5 school days within a 10 week period (school time only).
- 5.6 A PN may be issued as an early alternative to prosecution or other forms of intervention as follows depending on the individual circumstances:
- A requirement that when the national threshold is met, schools make an assessment on a case-by-case basis whether a penalty notice can and should be issued. The following should be considered:
 - A. if support or further support is appropriate instead, and
 - B. whether there is a different tool or legal intervention that is more likely to improve attendance in this particular case.
 - A Notice to Improve will be issued where support is appropriate but not working or being engaged with, to give a parent a final opportunity to engage in support before they are issued with a penalty notice if it is appropriate in the individual case. The Notice to Improve can be issued by the school / academy or the Local Authority.
 - The parent has received a Notice to Improve of the possibility of a PN being issued and given a minimum of 15 school days to effect an improvement.
 - Where a pupil is found in a public place, in school hours without reasonable justification during the first 5 days of a fixed term or permanent exclusion.
- 5.7 In addition, in the following exceptional circumstances, a PN may be issued without formal written notification to the parent depending on the individual circumstances:
- where a parent has taken the pupil on holiday during term-time without the school's authorisation or (in cases where the school has authorised absence

for a holiday) has failed to return the pupil to school on the date agreed with the school

- As is currently the case for prosecutions, the LA Attendance Service will determine whether a PN should be issued following discussion with the school (or other agency) and upon receipt of a completed referral form.

6. Process for issuing PNs

6.1 The Attendance Service will be solely responsible for issuing PNs in Havering and will process requests for PNs from schools. Requests will be considered provided that:

- a 'request to the LA Attendance Service to issue a FPN' form is received and fully completed
- the requirements of this Code of Conduct are met
- the issue of a PN does not conflict with other intervention strategies in place or other enforcement sanctions already in process

6.2 The Attendance Service will respond to all requests within 10 school days and, provided the criteria in paragraphs 5-5.7 above are met, will Issue a PN by post if the required improvement has not been achieved.

7. Serving of Penalty Notices

7.1 A notice may be served by:

- Giving it to the recipient; or
- Leaving it at the recipient's usual or last-known address; or
- Sending it to the recipient at that address by post.

NB: service by post shall be deemed to have been effected, unless the contrary is proved, on the second working day after posting the notice by post.

8. Withdrawal of Penalty Notices

8.1 Under the Regulations, parents have no right of appeal against the issue of a PN.

8.2 The Regulations limit the circumstances in which an LA can withdraw a PN to the following:

- Where the notice ought not to have been issued; or
- Where the notice ought not to have been issued to the person named as the recipient; or
- Where the penalty has not been paid in full before the expiry of the period for payment but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued.

8.3 Where a PN has been withdrawn in accordance with the above, notice of the withdrawal will be given to the recipient by the Attendance Service. Except where

the PN is withdrawn under (c) above, any amount paid by way of penalty in pursuance of that notice will be repaid to the person who paid it; and no proceedings will be continued or instituted against the recipient for the offence in connection with which the withdrawn notice was issued or for an offence under S.444(1A) of the Education Act 1996 arising out of the same circumstances.

8.4 The Attendance Service will determine whether a PN should be withdrawn or whether a prosecution of the parent(s) should be instituted.

9. Maximum Number of Penalty Notices to be issued within 3 years

If repeated penalty notices are being issued and are not working to change behaviour they are unlikely to be the most appropriate tool.

- A national limit of 2 penalty notices can be issued to a parent for the same child within a rolling 3-year period, therefore at the 3rd (or subsequent) offence(s), another tool will need to be considered (such as prosecution or one of the other attendance legal interventions).
- If a second penalty notice is issued to the same parent for the same child within a rolling 3-year period, it will be charged at a higher rate of £160, with no option for this second offence to be discharged at the lower rate of £80.

10. Payment and collection of fines

10.1 All penalties will be paid to the LA which will retain the revenue to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. The penalty is £80 if paid within 21 days of receipt of the invoice. If payment is not received by the LA within 21 days, the cost of **£80 will increase to £160 for a further 7 days**. If the penalty remains unpaid prosecution will be considered.

10.2 Second penalty notice issued to the same parent for the same child within a rolling 3-year period being charged at a higher rate of **£160** with no option for this second offence to be paid at the lower rate of **£80**.

11. Prosecution for non-payment of fines

11.1 The parent cannot be prosecuted for the particular offence for which the notice was issued until after the final deadline for payment has passed 28 days after receipt of the invoice (see 10.1 above) and cannot be convicted of that offence if they pay a penalty in accordance with the notice.

11.2 If the penalty is not paid in full by the end of the 28-day period, the LA must either:

- Prosecute for the offence to which the notice applies; or
- Withdraw the notice (can only be done in limited circumstances – (see 8-8.6 above).

- Prosecute at the 3rd (or subsequent) offence(s)

NB: Unlike other penalty notice schemes the prosecution is not for non-payment. If there is a prosecution it will follow the usual procedures of a prosecution for irregular attendance. Prosecutions will be brought by the LA under section 444 of the Education Act 1996. In the case of a penalty notice for exclusions, the prosecution will be brought by the LA under Section 103 of the Education and Inspection Act 2006.

12. Arrangements for co-ordination between Havering LA and cross border LA's

12.1 The Regulations state that the penalty shall be paid (and any correspondence about the notice sent) to the LA in whose area is the school at which the recipient's child is a registered pupil. However, most attendance follow-up is carried out by the LA for the pupil's home address except where cross-border arrangements exist, 'Home' LAs requiring penalty notices to be issued should contact the 'school' LA.

12.2 Where pupils move between local authority areas, the Attendance Service can be contacted on crossborder.penaltynotice@haverling.gov.uk to find out if penalty notices have been issued previously.