Hampshire Services
INCLUSION SUPPORT SERVICE

SERVICES FOR SCHOOLS

Information on Penalty Notices for non-attendance at school

Education Act 1996, section 444A

Advice for parents and carers

Applied from 19 August 2024

Penalty Notices and the Education Act 1996

Section 444A of the Act gives powers to the local authority, and headteachers to issue Penalty Notices in circumstances where it is believed that a person has committed an offence under Section 444(1); that is, where a child fails to attend regularly at their registered school.

Penalty Notices and the Education and Inspections Act 2006

Section 105(1) of the Education and Inspections Act 2006 gives powers to the local authority, headteachers and the police to issue Penalty Notices where it is believed that a person has committed an offence under Section 103(3) of the Education and Inspections Act 2006: that is, where a child is seen in a public place in the first five days of a fixed term or permanent exclusion from school.

What is a Penalty Notice?

A Penalty Notice is a fine which may be issued as an alternative to prosecution. If it is paid it does not require a court appearance and does not result in a criminal record.

Who can be issued with a Penalty Notice?

Where absence warrants the issuing of a Penalty Notice, anyone with Parental Responsibility, or having day to day care of the child can be issued with one Penalty Notice for each of the children with unauthorised absence. If two parents have two children this may result in four Penalty Notices, two Penalty Notices per parent.

How is a Penalty Notice issued and how much is the fine?

Penalty Notices are either posted to your home or delivered to you by hand. If you have received a First Penalty Notice, you either have up to 21 days to pay £80 or failing that a further 7 days to pay £160. If you have received a second Penalty Notice because you previously received a Penalty Notice in respect of the same child in the preceding three-year period, you have up to 28 days to pay £160 with no option for this second offence to be discharged at the lower rate of £80.

If you receive a Penalty Notice as your child was seen in a public place in the first five days of a fixed term or permanent exclusion, you either have up to 21 days to pay £60 or failing that a further 7 days to pay £120. If you fail to make any payment within the timescales provided the local authority will consider commencing proceedings in the Magistrates' Court for the original offence.

What if my child has further unauthorised absence from school?

If you pay the Penalty Notice and your child has further unauthorised absences additional legal action may be taken. For example, in the event that a Penalty Notice has previously been served to you at a higher rate of £160 due to unauthorised holiday, should your child have any future unauthorised leave this may result in further legal action for you, such as prosecution or an Education Supervision Order.

When are Penalty Notices issued?

As set down by the Department for Education, Penalty Notices can be issued for unauthorised absence. In Hampshire, Penalty Notices are issued when a pupil has had 10 or more half-day sessions (equivalent to five school days) of unauthorised absence, in the last 10 school week period, which may span different terms or school years. The authorised person retains the discretion to issue a Penalty Notice before the threshold is met under certain circumstances.

Unauthorised absence is absence not approved by the school and will be coded on your child's attendance record as one of the following:

O – unauthorised absence
U – late after close of registration
G – non-approved leave of absence (holiday).

What if my child is missing school but was not on holiday?

If your child is absent from school and the school uses the O code (unauthorised absence) or U code (late after registration closes), they may consider issuing a Penalty Notice. However, before doing so, the school must show that they have tried to offer support. This is usually done by sending a letter called a Notice to Improve. If you receive a Notice to Improve, it is very important that you read it carefully and respond. Engaging with the school at this stage can help avoid a Penalty Notice being issued.

What if my child has mixed absence codes?

Penalty Notices can be issued when a child has 10 unauthorised sessions of absence within a 10-week school period. If most of these sessions are coded as G (unauthorised holiday), the school may also include O and U coded sessions to reach the 10-session threshold.
In some cases, the authorised officer may issue a Penalty Notice even before the threshold is met if they believe the absences were deliberately timed to avoid a Penalty Notice—for example, during weeks with inset days or bank holidays.

What if my child is on a reduced hours provision?

A reduced hours provision is a formal agreement between the school and family to support a child's specific needs by reducing their time in school.
However, if a leave of absence is requested and refused and then the child is still removed from their sessions (and so is not absent in accordance with the agreement), the pupil is required to attend all sessions and schools should code the entire period as unauthorised.

What if my child is excluded from school?

If your child is excluded from school for a fixed term or permanently, a Penalty Notice may be issued if you allow your child to be present in a public place during school hours without reasonable justification during the first 5 days of a fixed term or permanent exclusion**.** This Penalty Notice fine is £60 if paid within 21 days of the date of posting and £120 if paid after this but within 28 days of the date of posting**.**

Is a warning given?

A warning is not necessary for an unauthorised holiday absence.

If your child has an **ongoing** pattern of unauthorised absence, then you will normally receive a Notice to Improve letter. This Notice will advise you about the extent of your child's absence and set out the support that is being offered. It will also warn you that if your child's attendance does not show a significant improvement, usually within a three-to-six-week period, and if this improvement is not maintained thereafter, a Penalty Notice may be issued without further warning.

Further support, advice and guidance is available from:

The Department for Education

· www.gov.uk/school-attendance-absence/overview
· Working together to improve school attendance (applies from 19 August 2024)

Hampshire County Council

· https://www.hants.gov.uk/educationandlearning/behaviour-attendance-parents

Is there an appeal process?

There is no statutory right of appeal. Once a Penalty Notice has been issued, it can only be withdrawn if it can be shown that it was issued in error.

If you are unhappy that you have been issued with a Penalty Notice, this must be raised with your child's school as it is the school Headteacher who makes the decision on issuing a Penalty Notice in most instances.

How do I pay?

Details of payment arrangements are included in the Penalty Notice. You must ensure that you include your Penalty Notice reference number on any payment method so the payment can be tracked. Failure to do so may result in the Penalty Notice being recorded as unpaid. Full payment is required within prescribed timescales - see *'What Happens If I Do Not Pay?'* below. Payment in part or by instalments is not possible. Late payments will not under any circumstances discharge criminal liability for the offence and you may be liable for prosecution. Any late payments received will be refunded.

What happens if I do not pay?

If you fail to make any payment within the timescales provided, the local authority will consider commencing proceedings in the Magistrates' Court for the original offence of failing to ensure regular attendance under s444 Education Act 1996.

If convicted there are a number of possible sentences, including a fine of up to £1,000 (in the case of a prosecution under section 444(1)) or a fine of up to £2,500 and/or a period of up to three months' imprisonment (in the case of a prosecution under section 444(1A)).

In respect of exclusion Penalty Notices, if you fail to make any payment within the timescales provided, the local authority will consider commencing proceedings in the Magistrates' Court for an offence under Section 105(1) Education and Inspections Act 2006.

If convicted there are a number of possible sentences, including a fine of up to £1,000.

Can I get help if my child is not attending school?

Yes. The school is available to provide advice and support and signpost you to other support agencies in the locality.