



## Code of Conduct for Education Penalty Notices

May 2016

### Foreword

Reducing absence from school is a key priority nationally and locally. Missing school may damage a child's attainment levels, disrupts school routines and the learning of others and could possibly leave a pupil vulnerable to anti-social behaviour and youth crime. Above all, missing school can affect a child's life opportunities.

Every parent of compulsory school age children is legally required to ensure their child receives a suitable and efficient education either by enrolling them in a school and ensuring they attend or by taking responsibility for their child's education.

East Riding of Yorkshire Council takes its responsibility seriously to ensure all children attend school regularly and on time. Where this is not the case the Director of Children Family and Adult Services supports the Education Welfare Service (EWS) in making use of the enforcement procedures available to them.

Section 23 of the Anti-Social Behaviour Act gives powers to local authorities and other designated bodies to issue penalty notices where a parent is considered capable of, but unwilling to, secure an improvement in their child's school attendance.

The Principal Education Welfare Officer and Senior Education Welfare Officers have delegated powers for the issuing of attendance related penalty notices.

Penalty notices for unauthorised school absences are one enforcement tool schools and the Education Welfare Service may use. Schools and the Education Welfare Service ensure the criteria within this code are met before issuing a penalty notice. Schools and the Education Welfare Service work closely with other services to identify when penalty notices are appropriate for use.

### Introduction

This code includes background information that highlights the legislative rationale and the related work of the Education Welfare Service.

This code has been developed by the Education Welfare Service (East Riding of Yorkshire Council) for implementation of The Education (Penalty Notices) (England) Regulations 2007 (and amending Regulations 2012 and 2013). This code will ensure consistency in the issuing of attendance related penalty notices with the aim of improving school attendance and reducing the number of unauthorised school absences across the East Riding of Yorkshire.

This strategy links with:

- Education Welfare Service Access to Education Policy
- Primary and Secondary School Behaviour and Attendance Partnerships 'Absence from School for Exceptional Circumstances' policy and procedures
- East Riding of Yorkshire Council's Pledge to Looked After Children

## **Definitions**

**Parent** - Anyone who has parental responsibility for the child and/or any adult with day to day care and responsibility.

**Compulsory School Age** - A child becomes of compulsory school age on the first day of term following their fifth birthday and ceases to be of compulsory school age on the last Friday in June in the academic year of their sixteenth Birthday.

**Suitable Education** - Education which is suitable according to a child's age, ability and aptitude and to any special educational needs the child may have either by regular attendance at school or otherwise and:

- a) prepares the child for life in modern civilised society; and
- b) enables the child to achieve their full potential (Harrison and Harrison v Stevenson, Worcester Crown Court, 1981)

**Efficient Education** – is defined in case law as an education that 'achieves that which it sets out to achieve'.

**Full Time Education** - Normally means attendance between 21 and 25 hours a week depending on the age of the child. Ofsted previously recommended provision as:

Key Stage 1 - 21 hours per week

Key Stage 2 - 23.5 hours per week

Key Stage 3 - 24 hours per week

Key Stage 4 - 25 hours per week

**Penalty Notice** – Fine, at a rate determined by the Government which is increased if not paid within 21 days, imposed for unauthorised absence from school.

**Authorised Absence** - Absence from school authorised by the Head Teacher.

**Unauthorised Absence** - Absence from school that is not authorised by the Head Teacher.

**Academic Year** - A 12 month period commencing in September and ending in August.

**Punctual Attendance** - Arrival at school before the attendance register closes for the session, usually half an hour after the start of the school day or afternoon session.

**Session** - Each school day contains two sessions, the first session being the morning and the second session being the afternoon. Schools must provide 380 sessions (190 days) per year.

**Fixed Term Exclusion** - A set period of time that a pupil must not attend school due to a breach of the school's behaviour policy.

**Permanent Exclusion** - A pupil is permanently excluded from a school following a serious breach of the school's behaviour policy, and cannot return to the school.

## **Vision**

It is our vision that children of compulsory school age attend school regularly and on time and do not accrue unauthorised absences from school during their academic career. This will ensure children reap the optimum benefit from the education provided by schools in East Riding of Yorkshire.

## Background and Context

School attendance in East Riding of Yorkshire is generally good; however between 2007 and 2012, schools in other local authorities were improving at a faster rate than schools in East Riding of Yorkshire.

The tables below show a comparison with the East Riding of Yorkshire's statistical neighbours over the last four academic years where data from the DfE is available.

From 2012/13 the DfE started collecting 6 half terms attendance data, split into two half terms each for autumn, spring and summer. Previously the DfE only collected 5 half terms attendance data, excluding the final half term in summer. The DfE stopped collecting 5 half terms attendance data from 2014/15 and now only collects 6 half terms attendance data. All of the available data is included below.

Persistent Absence % 2011/2012	2011/12			
	ERYC (5 terms)	Stat Neigh (5 terms)	Regional (5 terms)	National (5 terms)
Primary	2.6	2.7	3.4	3.1
Secondary	8.2	7.1	8.0	7.4
Special	7.6	14.5	16.7	16.3
<b>Overall</b>	<b>5.3</b>	<b>4.9</b>	<b>5.6</b>	<b>5.2</b>

Overall Absence % 2011/2012	2011/12			
	ERYC (5 terms)	Stat Neigh (5 terms)	Regional (5 terms)	National (5 terms)
Primary	4.1	4.1	4.4	4.4
Secondary	6.1	5.8	6.1	5.9
Special	6.5	8.9	9.6	9.6
<b>Overall</b>	<b>5.0</b>	<b>5.0</b>	<b>5.2</b>	<b>5.1</b>

Persistent Absence % 2012/2013	2012/13							
	ERYC (5 terms)	ERYC (6 terms)	Stat Neigh (5 terms)	Stat Neigh (6 terms)	Regional (5 terms)	Regional (6 terms)	National (5 terms)	National (6 terms)
Primary	2.4	2.1	2.6	2.4	3.3	2.9	2.7	2.7
Secondary	6.4	6.4	6.1	6.2	7.1	7.3	6.5	6.5
Special	12.3	11.6	14.5	14.4	17.0	17.0	16.2	16.2
	<b>4.3</b>	<b>4.2</b>	<b>4.4</b>	<b>4.3</b>	<b>5.1</b>	<b>5.0</b>	<b>4.6</b>	<b>4.6</b>

Overall Absence % 2012/2013	2012/13							
	ERYC (5 terms)	ERYC (6 terms)	Stat Neigh (5 terms)	Stat Neigh (6 terms)	Regional (5 terms)	Regional (6 terms)	National (5 terms)	National (6 terms)
Primary	4.3	4.3	4.5	4.6	4.7	4.8	4.7	4.7
Secondary	5.6	5.7	5.7	5.8	6.1	6.2	5.9	5.9
Special	7.9	7.5	9.9	9.1	9.9	9.8	9.6	9.6
	<b>4.9</b>	<b>5.0</b>	<b>5.1</b>	<b>5.2</b>	<b>5.4</b>	<b>5.4</b>	<b>5.3</b>	<b>5.3</b>

Persistent Absence % 2013/2014	2013/14							
	ERYC (5 terms)	ERYC (6 terms)	Stat Neigh (5 terms)	Stat Neigh (6 terms)	Regional (5 terms)	Regional (6 terms)	National (5 terms)	National (6 terms)
Primary	1.3	1.1	1.7	1.6	2.2	2.0	2.1	1.9
Secondary	4.6	4.6	4.9	5.1	5.7	5.9	5.2	5.3
Special	4.9	4.9	11.4	11.4	15.4	15.4	14.6	14.6
	<b>2.8</b>	<b>2.8</b>	<b>3.3</b>	<b>3.3</b>	<b>3.8</b>	<b>3.8</b>	<b>3.6</b>	<b>3.6</b>

Overall Absence % 2013/2014	2013/14							
	ERYC (5 terms)	ERYC (6 terms)	Stat Neigh (5 terms)	Stat Neigh (6 terms)	Regional (5 terms)	Regional (6 terms)	National (5 terms)	National (6 terms)
Primary	3.4	3.5	3.6	3.6	3.9	3.9	3.8	3.9
Secondary	4.8	4.9	5.0	5.0	5.3	5.4	5.1	5.2
Special	6.3	6.2	7.9	7.9	9.3	9.3	9.0	9.0
	<b>4.0</b>	<b>4.1</b>	<b>4.3</b>	<b>4.3</b>	<b>4.5</b>	<b>4.6</b>	<b>4.4</b>	<b>4.5</b>

Persistent Absence % 2014/2015	2014/15			
	ERYC (6 terms)	Stat Neigh (6 terms)	Regional (6 terms)	National (6 terms)
<b>Primary</b>	1.3	1.8	2.4	2.1
<b>Secondary</b>	4.8	5.1	6.2	5.4
<b>Special</b>	9.4	12.5	16.3	15.4
	<b>2.9</b>	<b>3.4</b>	<b>4.2</b>	<b>3.7</b>

Overall Absence % 2014/2015	2014/15			
	ERYC (6 terms)	Stat Neigh (6 terms)	Regional (6 terms)	National (6 terms)
<b>Primary</b>	3.6	3.8	4.2	4.0
<b>Secondary</b>	5.1	5.2	5.5	5.3
<b>Special</b>	7.4	8.3	10.1	9.4
	<b>4.3</b>	<b>4.5</b>	<b>4.8</b>	<b>4.6</b>

## School Attendance

When a school become concerned about a child's school attendance they may refer to the Education Welfare Service for a more in depth investigation of the reasons for the absences and support may be offered to the family to secure an improvement. Where this improvement does not take place the Education Welfare Service may use enforcement measures. These could include:

### Fast track to prosecution

It is an offence under Section 444, Education Act 1996 if a "parent"<sup>1</sup> without reasonable justification, fails to secure a child's attendance at a school at which they are a registered pupil and that absence is not authorised by the school.

A prosecution can be bought under Section 444 of The Education Act 1996, against a parent in the Magistrates' Court if they do not fulfil their duties as mentioned above.

The following prosecutions in the Magistrates' Court do not include those relating to penalty notices:-

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<sup>1</sup> A "parent" is defined as "...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". Section 576 of the Education Act 1996. Code of Conduct for Education Penalty Notices May 2016

	No of cases referred to EWS	No of cases prosecuted
2010-2011	840	20 cases
2011-2012	529	21 cases
2012-2013	712	29 cases
2013-2014	733	31 cases
2014-2015	786	35 cases

### **Voluntary attendance and behaviour related parenting contracts**

Section 19 of the Anti-Social Behaviour Act 2003 enables parenting contracts to be issued. These are formal written agreements between parents and the local authority. The Education Welfare Service has the responsibility for the provision of attendance related parenting contracts in East Riding of Yorkshire. Education Welfare Officers are the designated officers who will plan, implement, monitor and review parenting contracts for attendance related issues.

Numbers of voluntary parenting contracts entered are as follows:

2010-2011	8 parenting contracts
2011-2012	17 parenting contracts
2012-2013	12 parenting contracts
2013-2014	18 parenting contracts
2014-2015	10 parenting contracts

### **Penalty notices**

The Education Welfare Service introduced penalty notices to parents for 10 or more unauthorised absence sessions from school in January 2005. A Code of Conduct was developed and was based on The Education (Penalty Notices) (England) Regulations 2004. This code is to replace and update procedures in accordance with legislation and learning from practice:

- The Education (Penalty Notices) (England) (Amendment) Regulations 2012
- The Education (Penalty Notices) (England) (Amendment) Regulations 2013
- The Education (Pupil Registration) (England) (Amendment) Regulations 2013

Section 103 of the Education and Inspection Act 2006 places a duty on parents to ensure their child, if excluded from school and within the first five days of this exclusion, is not out in a public place. Section 105 allows for a penalty notice to be issued to a parent guilty of an offence under Section 103.

Head Teachers are able to authorise absence only in exceptional circumstances in line with The Education (Pupil Registration) (England) (Amendment) Regulations 2013. These exceptional circumstances are outlined in the 'Absence from School for Exceptional Circumstances', primary and secondary behaviour and attendance partnership policy and procedures

Where a Head Teacher does not authorise an absence a penalty notice may be issued.

Between 2010 and 2013 (academic years), the primary and secondary behaviour and attendance partnerships followed a 'Term Time Holiday' policy. The impact of which is illustrated below:

	2009 – 2010 Number of days lost	2010 – 2011 Number of days lost	Reduction or Increase (in days)	2011 – 2012 Number of days lost	Reduction or Increase (in days)
East Riding of Yorkshire (all schools)	47,615	32,266	-15,349	29,220	-3,046
National Average (152 Local Authorities)	34,548	33,800	-748	32,791	-1,009
Statistical Neighbour Average	65,941	62,024	-3,917	61,432	-592
Neighbouring Authorities Average	32,172	31,289	-883	30,073	-1,216

This policy, due to legislative changes was replaced in September 2013 with the ‘Absence from School for Exceptional Circumstances’, primary and secondary behaviour and attendance partnership policy and procedures. The impact of which is illustrated below.

	2012 – 2013 Number of days lost	2013 – 2014 Number of days lost	Reduction or Increase (in days)	2014 – 2015 Number of days lost	Reduction or Increase (in days)
East Riding of Yorkshire (all schools)	40,701	26,357	-14,344	28,032	1675
National Average (152 Local Authorities)	44,827	28,874	-15,952	26,735	-2139
Statistical Neighbour Average	83,383	47,497	-35,885	41,898	-5599
Neighbouring Authorities Average	55,970	36,278	-19,692	36,784	507

For a breakdown of the number of penalty notices issued see ‘Implementation and Resources’ section on page 9.

### Linkages to Corporate Priorities

Our corporate priorities are:

**Maximising our potential/Promoting health, wellbeing and independence** – working with others to support sustainable economic growth and strong communities, ensuring the East Riding is a great place to invest in, live, work and visit. – helping people to stay healthy, strong and fit for the future

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*The East Riding of Yorkshire Council aims to work with schools, commerce, industry and families to optimise the educational opportunities that are available to young people in our authority and ensure that children are able to fully access and connect with their community.*

**Supporting Vulnerable People, reducing inequality** - protecting from harm, promoting independence and better life chances and choices for all

*Children with higher levels of absence are generally less likely to achieve than those who attend school full time. This Code of Conduct aims to be balanced and fair in administering Education Penalty Notices regardless of ethnicity or cultural and religious beliefs. It also aims to take into account situations regarding school attendance that are specific to our region.*

**Reducing costs, raising performance** – developing our workforce and working with partners to provide excellent service, effective governance and value for money.

*28,032 school days are lost due to absence from school for exceptional circumstances in our region every year. This means that teaching and support staff and agencies are unable to work at their full potential and maximise the opportunities available to our school age population. The Code of Conduct aims to ensure that schools can work more efficiently.*

## **Priority Areas**

Our priorities are to:-

- Provide a consistent approach to the issuing of penalty notices across East Riding of Yorkshire.
- Decrease the number of school days lost due to unauthorised absences within East Riding of Yorkshire.
- Improve the overall attendance of young people attending schools in East Riding of Yorkshire.
- Improve attainment at KS2 and KS4 through regular attendance.
- Continue to improve the administrative processes involved in issuing penalty notices.
- Work closely with the local authority legal services to ensure a streamlined procedure to deal with non-payment of penalty notices.

## **Description of Development of the Code of Conduct for Education Related Penalty Notices**

This code was developed by the Education Welfare Service and is based on legislation and guidance provided by the Government and The East Riding of Yorkshire ‘Absence from School for Exceptional Circumstances Policy’. This policy was developed by working groups of the primary and secondary school behaviour and attendance partnerships and consulted on by all schools. This was supported by officers from the local authority and sent to every school in East Riding of Yorkshire to be considered and adopted by governing bodies.

## **Implementation and Resources**

The Principal Education Welfare Officer and Senior Education Welfare Officers have delegated responsibility for the issuing of penalty notices. The case work created by this process and any resulting prosecution is managed by the Senior Education Welfare Officers.

Income from penalty notices issued in line with this Code of Conduct will be used to fund the administrative costs of the scheme.



Academic Year	Type of Penalty Notice Issued	Number Issued	Income £
<u>2010-2011</u>	10 sessions unauthorised absence	203	44 Withdrawn 106 Improved attendance 10 Prosecuted 4 Referred to legal and warning letter sent 35 Paid @ £50 4 Paid @ £100  <b><i>Total = £2,150</i></b>
	Found in public place during exclusions	4	No Income; all NFA.
	Unauthorised term time holidays	433	69 Withdrawn 13 Prosecuted 40 Referred to legal and warning letter sent 303 Paid @ £50 8 Paid @ £100  <b><i>Total = £ 15,950</i></b>
<b>TOTAL for year</b>		<b>640</b>	<b>£ 18,100</b>
<u>2011-2012</u>	10 sessions unauthorised absence	199	115 Withdrawn 18 Prosecuted 9 Referred to legal and warning letter sent 53 Paid @ £50 4 Paid @ £100  <b><i>Total = £3,050</i></b>
	Unauthorised term time holidays	570	144 Withdrawn 18 Prosecuted 37 Referred to legal and warning letter sent 365 Paid @ £50 6 Paid @ £100  <b><i>Total = £18,850</i></b>
<b>Total for year</b>		<b>769</b>	<b>£21,900</b>
<u>2012-2013</u>	10 sessions unauthorised absence	93	10 Withdrawn 24 Prosecuted 23 Referred to legal and warning letter sent 1 Paid @ £20 35 Paid @ £50 0 Paid @ £100  <b><i>Total = £1,770</i></b>

	Unauthorised term time holiday	1,081	150 Withdrawn 29 Prosecuted 127 Referred to legal and warning letter sent 4 Paid @ £25 762 Paid @ £50 9 Paid @£100  <b><i>Total = £39,100</i></b>
<b>Total for year</b>		<b>1,174</b>	<b>£40,870</b>
<b>2013-2014</b>	10 sessions unauthorised absence	45	12 Withdrawn 2 Prosecuted 12 Referred to legal and warning letter sent 19 Paid @ £60 0 Paid @ £120  <b><i>Total = £1,140</i></b>
	Unauthorised term time holiday	2,359	186 Withdrawn 15 Prosecuted 211 Referred to legal and warning letter sent 1 Paid @ £50 1,943 Paid @ £60 3 Paid @ £120  <b><i>Total = £116,990</i></b>
<b>Total for year</b>		<b>2,404</b>	<b>£118,130</b>
<b>2014-2015</b>	10 sessions unauthorised absence	39	16 Withdrawn 3 Prosecuted 8 Referred to legal and warning letter sent 12 Paid @£60 0 Paid @£120  <b><i>Total = £720</i></b>
	Unauthorised term time holiday	2,656	237 Withdrawn 5 Prosecuted 244 Referred to legal and warning letter sent 2,168 Paid @£60 2 Paid @£120  <b><i>Total = £130,320</i></b>
<b>Total for year</b>		<b>2,695</b>	<b>£131,040</b>

Penalty notices may be used in a range of situations where unauthorised absence occurs, as in the table below:

<b>A Penalty Notice may be issued in the following circumstances</b>	<b>Is a warning given?</b>
1. Unauthorised absence from school, where a pupil has accrued 10 or more unauthorised absence sessions (two sessions per school day) spread over a 13 week period.	A formal warning is issued to inform parents that if further unauthorised absences occur within the following 15 school days from the date of the letter a penalty notice will be issued.
2. Unauthorised absence from school, where a pupil has accrued 10 or more consecutive unauthorised absence sessions (two sessions per school day) and the parent did not follow the schools request for 'Absence from School in Exceptional Circumstances' procedure.	Parents will be made aware of the school's policy by the school in the school's newsletter. This is the warning of potential liabilities for penalty notices.
3. Where a parent takes their child out of school for an unauthorised term time holiday and the pupil accrues 10 or more consecutive unauthorised absence sessions (two sessions per school day)	Parents should follow the procedure for requesting exceptional leave set down by their child's school. Parents will be made aware of the school's policy by the school; this may be in the school's newsletter but will also be included on the 'Absence from School for Exceptional Circumstances' request form. These are the warnings of potential liabilities for penalty notices.
4. Where a child is found by a police officer or a police and community support officer, unsupervised by an adult in a public place during the first five days of a fixed term or permanent exclusion from school.	Parents are advised in the exclusion letter sent from their child's school that their child should not be in a public place during the first five days of the exclusion and that should their child be found in a public place, a penalty notice may be issued.
5. Overt truancy, where a child has been found out of school during school hours without permission. This can be during an organised truancy sweep or where found by a police officer or police and community support officer whilst carrying out their daily duties	On receipt of a referral from the police or when a child has been found truanting from school, the local authority will consider the child's overall school attendance. If the child has accrued 10 or more sessions of unauthorised absence within the last 13 weeks an immediate penalty notice will be issued.

In all of the above circumstances each parent with day to day care and responsibility will receive a penalty notice for each of their children who have accrued unauthorised absence.

In most cases (except for circumstance 4) a pupil will have accrued 10 or more unauthorised school sessions (i.e. 5 school days) within the preceding 13 week period before a penalty notice is considered.

There is no limit to the number of times a formal warning may be given of the possibility of a penalty notice being issued, though the local authority will restrict the issuing of penalty notices to two, per parent, for each of their children in any one academic year.

Each school should consider every aspect of a child's case before considering whether a penalty notice would be appropriate.

A penalty notice is sent to the parent's home address by post and instructions on the methods of payment are detailed on the invoice and accompanying letter. Payment has to be made in full as there is no provision for payment by instalments. The period for payment of the penalty notice is £60 if paid within the first 21 days, increasing to £120 if paid within 28 days from the date of the accompanying letter.

After 28 days, if the fine remains unpaid, the local authority is required to consider proceedings in the Magistrates' Court against the parent for the original offence of unauthorised absence from school by the child. If proven, this can attract a range of fines up to £1,000 and/or a range of disposals such as parenting orders or community sentences depending upon circumstances.

Payment of the penalty notice in full discharges the parent of the offence for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the penalty notice. However it may be the case that a prosecution might be considered for further periods of poor attendance not covered by the penalty notice, depending upon the circumstances. If this is an issue, parents are advised to work closely with their child's school and support agencies such as the Education Welfare Service.

There are certain criteria which allow for the penalty notice to be withdrawn by the local authority:

- If this has been issued in error; or
- If it has been issued outside of this Code of Conduct;
- If it contains material errors;
- If it has not been paid in full but the local authority does not intend to take legal proceedings;
- 'Following successful prosecution under Section 444 of The Education Act 1996'.

There is no statutory right of appeal once a notice has been issued.

### **Arrangements for Monitoring, Evaluation, and Review**

The Principal Education Welfare Officer will be responsible for instigating reviews of this code and it will be reviewed if legislation or practice dictates.

The review will include:-

- Analysis of current academic year school attendance data with data for previous years;
- Analysis of the number of penalty notices issued, paid and any resulting prosecutions;
- Evaluating the cost of implementation of the penalty notice process against improved attendance;
- Review the circumstance under which Head Teachers will, and will not, authorise absence from school;
- The effectiveness of the policy in reducing the number of school days missed due to exceptional circumstances.