

# **DURHAM LOCAL AUTHORITY**

## **PENALTY NOTICES AND EXCLUDED PUPILS**

### **PROTOCOL**

Making a difference where you live



## **Penalty Notices for Excluded Pupils Protocol**

### **1. Legal Basis**

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 when they are excluded. The duty came into force in September 2007.

The duty applies to the first five days of each exclusion in a school year. From the sixth consecutive day of each exclusion, the school, in the case of a fixed period of exclusion, or the Local Authority (LA) in the case of a permanent exclusion, will be responsible for arranging suitable full-time educational provision.

Section 105 of the Act enables a Penalty Notice to be issued where an offence is committed under Section 103.

Section 103(4) allows the parent a defence of reasonable justification.

The issuing of Penalty Notices must conform with all requirements of the Human Rights Act and all Equal Opportunities legislation.

The LA has the prime responsibility for developing the protocol within which all partners named in the Act will operate.

### **2. Rationale**

The key consideration in deciding whether to issue a penalty notice in the case of a parent who has failed to ensure their child is not found in a public place while excluded, is whether it will be an appropriate sanction for that failure.

A Penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing the child's whereabouts but is not willing to take responsibility for doing so. For example where the parent has failed to make adequate arrangements for the whereabouts of the child.

It will be for the parent to prove reasonable justification and they will need to demonstrate the reasons which necessitated the child's presence in a public place at the relevant time.

In accordance with the Department for Children, Schools and Families (DCSF) Guidance on Education - Related Parenting Contracts, Parenting Orders and Penalty Notices, school hours mean a school session or a break between sessions on the same school day. A public place means a highway or any place to which the public has access. A school is not classed as a public place for this purpose.

### **3. Circumstances where a Penalty Notice may be issued**

A Penalty Notice may only be issued in cases where a parent fails in their duty to ensure that their child is not present in a public place in the first five days of exclusion from school.

To ensure consistent and fair delivery of Penalty Notices, the following criteria for their use shall apply:

- The pupil concerned must be present during school hours in a public place when they are excluded from school.
- This applies to the first five days of exclusion.
- From the sixth consecutive day of the exclusion the school, in the case of a fixed period of exclusion, or the Local Authority in the case of a permanent exclusion, will be responsible for arranging suitable full-time provision and no Penalty Notice can be issued during this period.
- Schools and agencies must consider every aspect of a pupil's case, including the involvement of other professionals and the financial impact on the family, before judging whether or not to refer to the LA to issue a Penalty Notice.
- If a request to issue a Penalty Notice is received from a school or other relevant agency and it refers to a looked after child then the LA will discuss the request with the Corporate Director of Children and Adults Services prior to deciding whether to proceed with the request.
- Where families contain more than one poorly attending or excluded pupil, multiple issues may occur, but this should be subject to careful consideration and co-ordination.
- A maximum of three Penalty Notices will be issued in any twelve month period (one per term).

### **4. Procedure for Issuing Penalty Notices**

The LA will issue Penalty Notices in County Durham.

Penalty Notices will only be issued by post and never as an on the spot action; this is to satisfy that all evidential requirements are in place and to meet Health and Safety requirements.

The LA will receive requests to issue Penalty Notices from schools and other relevant agencies. These requests will be actioned provided that:

- all relevant information is supplied in a specified manner;
- the circumstances of the case meets all the requirements of this protocol.

The LA will respond to all requests within 10 school days of receipt and where all criteria are met will:

- issue a Penalty Notice through the post to the parent of the excluded pupil.

## 5. Procedure for Withdrawing Penalty Notices

Once issued, a Penalty Notice will only be withdrawn in the following circumstances:

- Proof has been established that the Penalty Notice was issued to the wrong person.
- After investigation of the circumstances, the parent has shown a defence of reasonable justification. (The question of reasonableness will depend on all circumstances of the individual case, but it should be recognised that in some circumstances it may be necessary for a pupil to be in a public place during school hours on a day when they are excluded. For example, the pupil may have a pre-arranged medical appointment or there may be a medical emergency which needs immediate attention. Similarly, there may be a pressing need for the parent to seek medical help and he/she may feel it inappropriate to leave the pupil alone in the home unattended and be unable to make alternative arrangements such as leaving the child with a friend or a relative.)
- The use of the Penalty Notice did not conform to the terms of this Protocol.

## 6. Payment of Penalty Notices

Arrangements for payment will be detailed on the Penalty Notice.

Payment of a Penalty Notice discharges the parent/carer's liability for the offence of failing to ensure that their child is not present in a public place on the days specified in a notice given to them (letter informing the parent of the exclusion).

The amount payable on issue of a Penalty Notice is £60 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 (a notice served by post is deemed to have been received on the second day after posting it by first class post).

The LA retains any revenue from Penalty Notices to cover enforcement costs (collection or prosecuting in the event of non-payment).

## 7. Non-Payment of Penalty Notices

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.

Prosecution is for the offence to which the notice relates rather than non-payment of the notice.

## 8. **Policy and Publicity**

Deployment of Penalty Notices as a sanction is included in the relevant LA documentation.

All school behaviour policies should include information on the deployment of Penalty Notices and this should be brought to the attention of all parents.

To assist with this the LA will include information on the use of Penalty Notices in promotional/public information material, but not the identification of individuals.

## 9. **Reporting and Review**

The LA will report at regular intervals to Head Teachers, Police and Community Safety Partnerships on the deployment and outcomes of Penalty Notices.

LA reports on behaviour matters will include Penalty Notice use.

The LA will review Penalty Notices use at regular intervals and amend the protocol as appropriate.

School Request for Consideration of the Issuing of a Penalty Notice for Excluded Pupil

School: ..... No: .....

Pupil Details:

Name: ..... D/B: ..... Year Group .....

Gender: ..... Ethnicity: .....

Address: .....

.....Tel. No: .....

Vulnerability status (please tick appropriate box(es):

Looked After Child:  English as an additional language:

School Action/School Action Plus/Statement:  Free School Meals

Social Work Involvement:  Young Carer:

Parent/Carer Details:

(1) Name: ..... (2) Name: .....

Address: ..... Address: ..... (if different) (if different)

Dates of Exclusion:

.....

These absences have been recorded by the school as unauthorised.

Date and time pupil was present in a public place:

.....

Details of sightings including exact place and name of witness: .....

.....

Please confirm copy of Exclusion Letter to parent has been forwarded to Pupil Casework.

Declaration:

I confirm that the details contained on this form are true to the best of my knowledge and belief.

Signed: ..... Date: ..... Head Teacher

Name: .....

Send to: Children and Adults Services (For the Attention of Pupil Casework) County Hall Durham DH1 5UJ or Fax: (0191) 383 3306

**Agency Request for Consideration of the Issuing of a Penalty Notice for Excluded Pupil**

School: ..... No: .....

**Pupil Details:**

Name: ..... D/B: ..... Year Group .....

Gender: ..... Ethnicity: .....

Address: .....

.....Tel. No: .....

Vulnerability status (please tick appropriate box(es):

Looked After Child:  English as an additional language:

School Action/School Action Plus/Statement:  Free School Meals

Social Work Involvement:  Young Carer:

**Parent/Carer Details:**

(1) Name: ..... (2) Name: .....

Address: ..... Address: .....  
(if different) (if different)

.....  
.....

**Name of Person Referring :** .....

Agency: ..... Te No: ..... Date .....

Date and time pupil was present in a public place:

.....

Details of sightings including exact place and name of witness:

.....  
.....

Send to: Children and Adults Services (For the Attention of Pupil Casework)  
County Hall  
Durham  
DH1 5UJ  
or Fax: (0191) 383 3306