CODE OF CONDUCT

EDUCATION PENALTY NOTICES

FOR UNAUTHORISED ABSENCE AND EXCLUSIONS

Introduction

Parents are responsible for ensuring full time, regular and punctual attendance of their child, who is of compulsory school age, suitable to their age, ability, aptitude and any special needs they may have at school or otherwise.

Regular and punctual attendance of pupils at school is both a legal requirement and essential for pupils to maximise their educational opportunities.

A child reaches compulsory school age on or after their fifth birthday. If they turn 5 between 1 January and 31 March they are of compulsory school age on 31 March; if they turn 5 between 1 April and 31 August they are of compulsory school age on 31 August. If they turn 5 between 1 September and 31 December, then they are of compulsory school age on 31st December.

A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

Regular attendance has been defined by the Supreme Court (6th April 2017) to mean "in accordance with the rules prescribed by the school".

Wirral Council seeks to ensure that every child and young person receives the maximum benefit from the education opportunities provided by the Local Authority.

Wirral Council expects that all schools have a whole school approach to attendance which ensures early intervention and support for students with attendance difficulties.

All schools must include respective reference to the possible use of legal action for unauthorised absence and being in public place when excluded within their school attendance and behaviour policy.

The Local Authority has the prime responsibility for the introduction of this protocol with schools and Merseyside Police being partners.

1. Legislation

1.1 This Code of Conduct will govern the issuing of education penalty notices across Wirral Council under Section 23 of the Anti-social Behaviour Act 2003 and subsequent legal amendments. The legislation gives designated LA officers, Head Teachers and the Police the power to issue Education Penalty Notices in cases of unauthorised absence from school. The responsibility for issuing Penalty Notices in Wirral will rest solely with Wirral Council.

1.2 The Education (Penalty Notices) (England) Regulations 2004, as amended, set out the framework for the operation of Education Penalty Notice Schemes.

1.3 The Education and Inspections Act 2006 Section 103 places a duty on parents to ensure their child is not present during school hours in a public place during the first five days of each and every fixed period or permanent exclusion from school.

1.4 The power to issue the Education Penalty Notices must be applied fairly and consistently taking in to consideration the requirements of the Human Rights Act 1998 and Equality Act 2010.

2. Who is a parent?

2.1 For the purposes of this protocol and other school attendance issues, a parent is as defined under section 576 of the Education Act 1996

- All natural parents, whether they are married or not;
- any person who, although not a natural parent, has parental responsibility (as defined in the Children Act 1989) for a child or young person;
- 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.
- Parents who do not ordinarily reside with the child may also be subject to Education Penalty Notices depending on the circumstances.

2.2 The Local Authority and school will decide who comes within the definition of a parent in respect of a particular pupil.

2.3 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.

3. Circumstances When Penalty Notices Will Be Issued

3.1 Penalty Notices will be issued by Wirral Council where any of the following occur:

(A) The child has had 10 or more sessions of absence in a period of no more than one term or two half terms and meets the terms of prosecution under Section 444 (1) of the Education Act 1996 and the Local Authority has previously issued a warning letter giving the opportunity to improve attendance over a 15 day period.

(B) The child has 10 sessions of unauthorised leave of absence in term time and the Headteacher has advised the parent in writing that the leave of absence does not constitute the Headteachers view of an exceptional circumstance.

(C) The child has taken leave of absence in term time without parents requesting authorisation from the school.

(D) The child arrives late after the registers are closed (using code U) on 10 or more separate occasions in any one term

(E) An exclusion has taken place and the parent has allowed the child to be present in a public place during school hours, without reasonable justification, during the first five days of a fixed or permanent exclusion.

In b), c) and d) subsequent unauthorised absence may not be subject to a penalty notice as the parent will be made aware that to repeat this would be committing an offence and the Local Authority may prosecute for a repeat offence.

3.2 Penalty Notices will be issued to each parent for each child. The exception to this would be were a parent has taken a child on unauthorised leave of absence without the consent of the other parent.

3.3 Where children in one family attend more than one school and request leave of absence the schools should agree the decision with each other. The Local Authority will not issue Penalty Notices if decisions made by schools about children in the same family are inconsistent.

3.4 The deadline for Penalty Notice requests for any academic year will be 31st August after the summer term. The only exception to this will be holidays taken in the last week of term in July with the deadline for these being the end of the first full week back in school in September.

3.5 Head Teachers or member of the SLT or the Attendance Lead may submit a request electronically to the ESWS using the appropriate proforma. It is vital that all details are double checked and are accurate in relation to the form as inaccuracies will result in the Penalty Notices either not being issued or withdrawn. All Full names of parents/ carers / guardians need to be included.

3.6 Wirral Council will issue Penalty Notice Warning letters on behalf of all schools and academies. Schools must ensure that before they request a warning letter that they have:

- Advised parents, in writing, at the start of the academic year (or when their child commences schools mid-term) of the need for regular attendance and the possible consequences of failing to do so.
- Can evidence the steps taken to support an improvement in attendance. This should include invitations to formal meetings which parents may have failed to attend.
- Maintain accurate registration records and a chronology of interventions and parental responses.
- Demonstrated consideration of the child's circumstances (including whether this is a child in need).

3.7 In the first instance the response from the Education Social Welfare Service may be a Warning Letter to the parents emphasising that attendance must improve within 15 school days. Further unauthorised absence within this 15 day period may lead to the issuing of an Education Penalty Notice.

4. Leave of absence

4.1 In the case of leave of absence in term time schools must ensure that they have advised parents, in writing, at the beginning of each academic year of the school policy on leave of absence.

4.2 School will also need to provide a copy of the written leave of absence request submitted by parent and a copy of any response sent to the parent along with an attendance certificate. This paperwork must clearly show the date the request was discussed with the parents.

4.3 Any requests for a Penalty Notice should be submitted as soon as possible after the leave of absence has started and should not be submitted before the leave of absence or saved until the end of term.

4.5 Headteachers are responsible for determining whether leave of absence is authorised or not and whether a penalty notice should be issued. Schools should work together to achieve consistency within and across Locality Partnerships and other mechanisms in relation to leave of absence.

4.6 Penalty notices will be issued to each parent for each child. The exception to this would be were a parent has taken a child on unauthorised leave of absence without the consent of the other parent.

4.7 Where children in one family attend more than one school and request leave of absence the schools should agree the decision with each other. Wirral Council will not issue Penalty Notices if decisions made by schools about children in the same family are inconsistent.

4.8 Warning letters will not be issued for leave of absence.

5. Excluded pupils

5.1 A Penalty Notice for excluded students may only be issued where it can be wholly established that:

- The student has been excluded (either fixed-term or permanently) from a school, Academy or alternative provision in the LA area and that the school or alternative provider has followed all agreed processes in notifying parents and the LA.
- The student has been permanently excluded from a school outside the LA area but is a resident of the LA.
- The parent/carer received notice of their responsibility for the first five days of the exclusion, those five 'specified days of exclusion' were clearly identified and the possible consequences of failing to adhere to this were explained.
- The student was present in a public place within the first five days of a fixed or permanent exclusion.
- The parent cannot prove that the student was present in a public place with reasonable justification.

5.2 Referrals for notices relating to exclusions will only be accepted from Police and Police Community Support Officers. This provision is in addition to the independent powers of Merseyside Police and does not fetter their discretion. In some circumstances consideration may also be given to the use of an Acceptable Behaviour Contract in consultation with the Anti-Social Behaviour Team.

5.3 For the purposes of this protocol:

- school hours means a school session or a break between sessions on the same school day
- a public place means any highways or other place to which the public have access but does not include a school
- the days of an exclusions are known as the specified days

6. Persistent Lateness

In the case of persistent lateness the school will have to demonstrate that the parent has been invited in to school to discuss this and sent correspondence warning them that as a result of arriving late after registers are closed on 10 separate occasions (and using Code U in the school register) a Penalty Notice may be issued. Schools should be clear about what time their registers close and again this should be included in Attendance Policies.

7. Withdrawal of Penalty Notices

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

- it ought not to have been issued
- It ought not to have been issued to the person named as the recipient
- It contains a material error
- It has not been paid in full, and the LA has not, and does not intend to, instigate proceedings

8. Payment Of Penalty Notices

8.1 Arrangements for payment will be detailed on the Penalty Notice.

8.2 Payment of the Penalty Notice discharges the parent liability for the period in question and they cannot subsequently be prosecuted under Section 444 of the Education Act 1996 for the period covered by the Penalty Notice.

8.3 Payment of a Penalty Notice is £60 if paid within 21 days and £120 if paid after this time but within 28 days.

8.4 The Local Authority retains any revenue from the Penalty Notices to cover enforcement costs.

9. Non-payment Of Penalty Notices

Non-payment of a Penalty Notice will result in the withdrawal of the notice and will trigger a prosecution of parents by the Education Social Welfare Service under Section 444 Education Act 1996.

10. Right of appeal

In accordance with Department for Education Guidance there is no right of appeal but where a parent wishes to contest the issuing of a Penalty Notice they should contact the Education Social Welfare Service (as outlined on the Penalty Notice) and/or opt to face proceedings in the Magistrates' Court, where all of the issues relating to their Penalty Notice can be fully debated.

11. Policy And Publicity

All School Attendance Policies should include information on the use of Penalty Notices and this will be brought to the attention of all parents. The LA will include information on the use of Penalty Notices in promotional/public information material.

12. Reporting And Review

The Education Social Welfare Service will report to partners on the deployment and outcomes of Penalty Notices and will review this protocol at regular intervals.

WIRRAL

Children and Young People's Department

Education Social Welfare Service
Birkenhead Town Hall
Hamilton Square
Birkenhead CH41 5BR

REQUEST FOR EDUCATION PENALTY NOTICE - SCHOOLS

Anti-Social Behaviour Act 2003 and
Education Act 1996 and Education & Inspections Act 2006

ALL INFORMATION ON THIS FORM MUST BE ACCURATE AND IF ANYTHING CHANGES DURING THE PROCESS THE ESW SERVICE MUST BE NOTIFIED

Pupil Forename		Pupil Surname	
Address Post Code			
Date of Birth		Ethnic Origin	
Unique Pupil No (UPN)		School Year	
Is this child currently known to social care?		YES / NO	
Is this child currently in the TAF process?		YES / NO	

REASON FOR REQUEST FOR EDUCATION PENALTY NOTICE. PLEASE TICK APPROPRIATE BOX		
	WARNING	FPN
UNAUTHORISED ABSENCE		
PERSISTENT LATENESS		
UNAUTHORISED LEAVE OF ABSENCE REQUESTED		
UNAUTHORISED LEAVE OF ABSENCE NOT REQUESTED		
HOLIDAY DATES		
HAS THERE BEEN A PREVIOUS REQUEST FOR AN FPN THIS YEAR		

Information contained in the form may be used in legal action under Section 444 of the 1996 Education Act or Section 105 of the 2006 Education & Inspections Act if a Penalty Notice is issued and remains unpaid after 28 days.

I am writing to request that the Local Authority consider issuing a Penalty Notice to the parent(s) of the pupil named above.

Parent 1 (as much information as possible must be given in order for any prosecution following non-payment)

Title		Forename		Surname	
Address Post Code					
Tel No			Relationship to Pupil		
Parent's Date of Birth					
Parental Responsibility:		YES / NO *(Delete if not applicable)*			
Does the child live with this parent?		YES / NO			
Is this parent involved in the day to day care of the child?		YES / NO			

Parent 2

Title		Forename		Surname	
Address Post Code					
Tel No			Relationship to Pupil		
Parent's Date of Birth					
Parental Responsibility:		YES / NO *(Delete if not applicable)*			
Does the child live with this parent?		YES / NO			
Is this parent involved in the day to day care of the child?		YES / NO			

School Name	
School Tel No.	
Contact Name	
Designation	

I can confirm that all our attendance registers are marked in accordance with the guidance issued by the DfE and that the use of Penalty Notices is included in our school attendance policy.

In making this request, I confirm that such action would not conflict with other intervention strategies already in place or other enforcement measures already being processed.

I attach a certificate of attendance and the appropriate evidence in accordance with the requirements of the Wirral Code of Conduct for Education Penalty Notices.

Dated this day of 20	
Signed:	Name:

WIRRAL

Children and Young People's Department

Application for Leave During Term Time

Parents/Carers must ask permission for their child to be absent during term time, and it is at the Headteacher's discretion to decide whether or not the absence will be authorised. The Headteacher may authorise leave during term time for *exceptional circumstances only*. If leave is taken without permission, or no application is made, parents/carers risk being issued with an Education Penalty Notice.
Parents/Carers wishing to apply for their child to have leave of absence from school should complete this form and return it to school for authorisation at least two weeks before the proposed leave.

PARENT'S/CARER'S SECTION					
Surname of child				**First name**	
Date of birth		**Year**		**Class**	
Full name of parent (1)					
Address of parent (1)					
Postcode				**Telephone No.**	
Full name of parent (2)				**Telephone No.**	
Address of parent (2)					
Do you consider this request to be due to exceptional circumstances? If so, please outline the reasons why					
Departure and return date					
Would your child miss any national tests or examinations?					**Yes / No**
Has she/he had leave during term-time in the last 12 months? (If so, please give dates, reasons, and number of school days leave)					**Yes / No**
Are there any other siblings? If yes please state their name and the school they attend					**Yes / No**
Parent/Carer signature			**Date**		

SCHOOL SECTION			
Holiday in Term Time	(i) **approved** _____ school days		(ii) **not approved** _____ school days
Reasons			
Date discussed with parent/ carer and/or date informed of approval/ non-approval			
Headteacher's signature		Date	

Exceptional Circumstances

The Department for Education has not issued any guidance to Head Teachers on what constitutes "exceptional circumstances" in relation to requests from parents for family holidays taken in term time. Each case should be viewed on its own merits.

Wirral Head Teachers have indicated they may view the following circumstances as exceptional:

- where parents conditions of employment preclude them from taking holidays during school holiday time or prescribe holidays must be taken in school time, for example, serving members of the armed forces or where there is a factory shut-down
- cases involving a terminally ill child. Head Teachers may also wish to consider carefully issues in relation to family members with a terminal illness
- family members with a disability although this may not always be considered exceptional taking in to account the NAHT guidance below
- holidays funded by charities
- absences in relation to recognised religious festivals.

Advice in relation to families from ethnic minorities can be provided by Minority Ethnic Achievement Service [MEAS]. Education Social Welfare Service can also be contacted for further discussion.

Guidance from NAHT suggested that the principles for defining exceptional are rare, significant, unavoidable and short with unavoidable meaning an event that could not reasonably be scheduled at another time.