

# Wandsworth Borough Council

## PENALTY NOTICE CODE OF CONDUCT

### 1. PURPOSE

1.1 The purpose of this code of conduct is to ensure that the powers are applied consistently and fairly across the Wandsworth area and that suitable arrangements are put in place for the administration of the scheme.

1.2 This Code of Conduct is agreed between:

- Wandsworth Borough Council (The Local Authority)
- Governing Bodies and Headteachers of Wandsworth Schools
- The Wandsworth Division of the Metropolitan Police Service
- The Youth Service

in accordance with The Education (Penalty Notices) (England) Regulations 2004 sections 12 to 14.

### 2. LEGISLATION

2.1 Section 444A and 444B of the Education Act 1996 as inserted by The Anti- Social Behaviour Act 2003 section 23(1) enables authorised personnel to issue penalty notices to the parents of absent or truanting pupils. It enables the parent concerned to avoid liability for conviction for an offence under s444 (1) by paying to the local authority a penalty defined in the notice.

### 3. CIRCUMSTANCES WHERE A PENALTY NOTICE MAY BE ISSUED

3.1 The normal response to a first offence should be a warning rather than a penalty. However, the Authorised Officer [see (4) (i) below] has the discretion to issue a Penalty Notice for a first offence in exceptional circumstances. For instance:

- (a) where the unauthorised absence was for an extended period and allowed by the parent; or
- (b) where the parent has chosen to take their child on unauthorised leave during term time; or
- (c) Persistent lateness (unauthorised) after the register has closed and the child's attendance has fallen below 85%.
- (d) where a parent has condoned unauthorised absence identified during a truancy sweep.
- (e) Where a child has been excluded from school (fixed-term or permanent) and is found in a public place during school hours without reasonable justification within the first five days of the exclusion period.

The main consideration for issuing a penalty notice will be whether it is an effective mechanism in getting the pupil who is truanting back into school or alternative education provision.

- 3.2 Where the school or alternative education provider has previously referred the pupil to the Education Welfare Service and casework is in progress **(for exceptions see para: 3.1 above)**.
- 3.3 A Penalty Notice is a suitable primary 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. It will be particularly useful as a sanction at an early stage before attendance problems become entrenched and where the Local Authority considers that a prosecution would be too heavy-handed. A Penalty Notice may be issued to each parent in respect of each of their children who meet the criteria set out in this section.
- 3.4 Where there is an issue as to whether authorisation was sought by the parents, the school or education provider will be required to provide clear written evidence that the parents were provided notice in advance of the school's refusal to authorise the request for absence and, if not complied with, a penalty notice might be issued.
  - i. Where a child's overall attendance falls below **80% in a given period (6 weeks is proposed)** without reasonable justification.
  - ii. Where a child's overall attendance falls **below 90% in a given period (10 or more sessions of absence is proposed)** without reasonable justification and a specific issue is involved e.g. unauthorised term-time holiday or stopped by a truancy patrol.

- iii. Where Parenting Contracts or Orders have been unsuccessful or not complied with.
- iv. Where parents are unwilling to sign a contract.
- ix. The Education Welfare Service will determine whether a notice should be issued following receipt of a completed data entry form. The form will contain a section where the circumstances of the offence and the reasons for requesting a notice can be set out.
- x. There is no right of appeal [but see 4 below]

3.5 The Authority must have regard to the ability of the **parent/carer** to pay and other factors. Multiple Penalty Notices may be issued by agreement with its partners, but generally no more than three Penalty Notices per child will be issued during each school year.

#### **4. Withdrawal of Penalty Notice**

4.1 A penalty notice can only be withdrawn in the following circumstances:

- i. where it ought not to have been issued, i.e. it was issued outside the terms of the code of conduct or where no offence has been committed; or
- ii. where it has been issued to the wrong person; or
- iii. 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.

4.2 Where a penalty notice has been withdrawn in accordance with the above:

- iv. notice of the withdrawal shall be given to the recipient;
- v. except where the notice is withdrawn under point (iii) above, any amount paid by way of penalty in pursuance of that notice shall be repaid to the person who paid it; and

vi. no proceedings shall 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.

**5. Arrangements for co-ordination between Wandsworth Local Authority, Neighbouring Local Authorities where appropriate and the Police.**

- 5.1 The Authorised Officer for the purpose of section 444A(1) of the Education Act 1996 and section 105 of the Education and Inspections Act 2006, shall be the Education Welfare Service Courts Officer or, in their absence, the Head of Participation and Performance, on behalf of the Director of Children's Services.
- 5.2 Wandsworth Education Welfare Service will draft a protocol for cross-borough co-ordination covering both penalty notices and parenting contracts/orders, consult our neighbouring Local Authorities and share the information with our partners.
- 5.3 A steering group will be constituted to monitor the operation of the regulations and to modify and adapt the code of conduct in the light of experience. Representatives of Headteachers, Governors, the Police and the Youth Service will be invited to participate.
- 5.4 The Head of Participation and Performance will negotiate appropriate arrangements for revenue collection with another part of the Local Authority already engaged in such activities.
- 5.5 All schools should have effective systems and procedures for encouraging regular school attendance, which should be set out in an attendance policy covering Penalty Notices and Parenting Contracts (see DfE Guidance). The Education Welfare Service will assist schools with this process where required.

## Appendix 1

### Penalty Notice

#### S.444A EDUCATION ACT 1996

Please read the notes overleaf carefully.

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence under s.444 (1) Education Act 1996.

To: Ms Another Example

Of: 2 Sample Drive, Nowhere, London, SW18 2BB

ID Number

200

You are a parent of Another Example who is a <sup>1</sup>registered pupil at Wishbone Primary School.

Between **Date** and **Date** Another failed to <sup>2</sup>attend regularly at the school.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is **£60**. If you pay the penalty you will discharge any liability for the offence detailed above.

**Payment should be made within 21 days. If paid after 21 days but within 28 days,**

**the penalty is doubled to £120.** Payment should be made to Wandsworth Borough Council and can be made in person at Wandsworth Town Hall or by posting this notice, with a cheque or postal order made payable to Wandsworth Borough Council, to:

Education Welfare Service,  
Wandsworth Council,  
TheTown Hall,  
Wandsworth High Street,  
London SW18 2PU

If payment is received after 28 days, or you do not pay the penalty, you may be prosecuted for the offence of failing to ensure that your child attends school regularly and punctually and could be subject to a fine of up to £2,500 and/or 3 months in prison.

Issued by: **Name of Officer** (Legal Welfare Education Officer)

Signature: ..... Date of Issue: November 22, 2021

Please complete the following and return this notice with your payment to the address given above:

Name: \_\_\_\_\_

Address \_\_\_\_\_

I attach payment in the sum of £60.00 (sixty pounds)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

#### **NOTES**

##### **Code of conduct**

This notice is issued in accordance with a local Code of Conduct drawn up by Wandsworth Local Authority.

Any questions or correspondence about the notice or the code should be addressed to Education Welfare Service, Wandsworth Borough Council, The Town Hall, Wandsworth High Street, London SW18 2PU Tel: 020 8871 8306

##### **Amount of penalty.**

The amount of the penalty is as follows:

<b>When paid</b>	<b>Penalty</b>
Within 21 days	£60
Within 28 days	£120

### **Right of Appeal.**

There is no right of appeal.

### **Withdrawal.**

Wandsworth Local Authority may withdraw this notice if it is shown that it should not have been issued to you. The Local Authority (LA) may also consider withdrawing it if you do not or cannot pay the amount shown by the due date but you must contact the LA to ask for it to be withdrawn. The LA will consider your request and may decide to withdraw the notice or to prosecute you for the offence that your child has failed to attend school regularly.

### **Payment.**

You should complete the notice overleaf and either send it with your payment or deliver it to the LA at the address given between 9.00am and 4.30pm.

### **Prosecution.**

If you do not pay the penalty, and the notice is not withdrawn, you will be prosecuted for the offence of failing to ensure your child's regular attendance at school. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you would be advised to seek legal representation; in some circumstances you may be entitled to legal aid.

<sup>1</sup> Compulsory school age is defined as beginning from the start of the term commencing on or after the child's fifth birthday. A child continues to be of compulsory school age until the last Friday of June in the school year that they reach sixteen.

<sup>2</sup> Schools are required to take an attendance register twice a day: at the start of the morning session and once during the afternoon session. The register shows whether the pupil is present, engaged in an approved educational activity off-site, or absent. The register must show whether any absence is authorised or unauthorised. Authorised absence is where the school has either given approval in advance for a pupil of compulsory school age to be away, or has accepted an explanation offered afterwards as satisfactory justification for absence. All other absences must be treated as unauthorised.

<sup>3</sup> Schools, not parents, authorise absence. Schools must adhere to DfE Guidelines in authorising absence. Schools should be consistent in applying the same rules in authorising absence.

Wandsworth Borough Council  
Education Welfare Service

Penalty Notice Referral Form

(Please ensure the form is fully completed)

School / Police / EWO <i>please delete two</i>	Name of Referrer (EWO)	
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Establishment <i>e.g. school name / police station</i>	
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Full Name of Child		
First Name:	Last Name:	Date of Birth:
Address of Child:		
Ethnicity of Child:	SEN: Yes/No	Disability: Yes/No

Full Name of Parent 1 (Mr, Miss, Mrs, Ms)	First Name	Last Name
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Full Name of Parent 2 (Mr, Miss, Mrs, Ms)	First Name	Last Name
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Address of Parent 1:	Postcode	
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Address of Parent 2:	Postcode	
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Period of absence for which a penalty notice is requested	<i>From Week beginning(Date)</i>	<i>To Week Ending (Date)</i>
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Specific reasons for believing a penalty notice is appropriate:
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I certify that during the period indicated above, the school was open for \_\_\_\_ sessions during which time the named pupil attended for \_\_\_\_sessions. \_\_\_\_ of the \_\_\_\_ absences were **unauthorised** by the school.

Referrer's Signature:.....Date:.....:

Line Manager's Signature:.....Date:.....