

## School Penalty Notice Code of Conduct.

### Report of the Head of Service of Education and Learning

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Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

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#### 1) Recommendation

That the Cabinet / Committee be asked to:

(a) To urgently review, agree and approve the **School Penalty Notice Code of Conduct** for unauthorised irregular attendance at school or exclusion from school following recent revision and amendments.

#### 2) Background / Introduction

It is a legal requirement under section 7 of the Education Act 1996 that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability and aptitude and to any special educational needs that they may have.

The purpose of a Code of Conduct is to ensure that Penalty Notices are applied consistently and fairly across the local authority area and that arrangements for their issue and administration are suitable.

#### 3) Proposal

The following changes have been made:

1. In 2022, new DfE Guidance 'Working Together to Improve Attendance' was issued. This is likely to become statutory in 2024. Some criteria has changed in the guidance for example:
  - The number of sessions cited over a period of time.
  - How many Penalty notices can be issued in a 12-month period
  - 'Fast track to prosecution' as written in our current Code of Conduct, is a term no longer being used. **These changes have been added to the revised Code of Conduct.**

2. Point 3 of the current Code of Conduct states: *'Penalty notices offer a means for swift intervention which the County Council will use to combat truancy problems before they become entrenched'*. However, not all Penalty Notices are issued for truancy. **This has now been made clear in the revised Code of Conduct.**
3. The current Code of Conduct does not mention Section 7 Education Act 1996 stating *'it is a legal requirement that parents of children of compulsory school age ensure that their children receive full-time education that is suitable to their age, ability, and aptitude and to any special educational needs that they may have'*. **This has now been added to the revised Code of Conduct.**
4. To date, Penalty Notices have not been issued consistently and fairly across Devon and therefore needs to be explicit in the Code of Conduct so it can be applied fairly across Devon. **This has now been made clear in the revised Code of Conduct.**
5. The current Code of Conduct does not state the legislation it applies to: *'The Education (Penalty Notices) (England) Regulations 2007/1867 (as amended) and applies to all schools and academies in Devon (except for independent schools)'*. **This has now been added to the revised Code of Conduct.**
6. The current code of Conduct does not state the Human Rights Act year. **This has now been added to the revised Code of Conduct.**
7. The current code of Conduct does not refer to the Equality Act 2010. **This has now been added to the revised Code of Conduct.**
8. The current code of Conduct mentions – *'Section 576 Education act 1996 for definition of parents'*, however it needed to be more transparent. **This definition has been made clear in the revised Code of Conduct.**
9. The criteria for Holiday absences regarding a suitable warning for parents **has been added.**
10. The revised Code of Conduct outlines clearly when a penalty notice can be issued for example:
  - when a pupil is found in a public place.
  - When a pupil is absent for a holiday
  - When a pupil is absent for other reasons
11. The revised Code of Conduct is clear with when the local authority may need to escalate to legal prosecution instead of a penalty notice
12. The revised Code of Conduct now clearly states when a child is of compulsory school age.

#### **4) Options / Alternatives**

The law requires that to be compliant the Local Authority is required to have a School Penalty Notice Code of Conduct.

Without the School Penalty Notice Code of Conduct in place for the start of the Academic year 2023-24 the Local Authority will be unable to issue penalty notices and therefore unable to discharge its statutory duty.

## **5) Consultations / Representations / Technical Data**

Following consultation with the DfE Attendance Advisor in February 2023 an amendment to the Code of Conduct has been recommended.

Amendments have been put forward as outlined in the above proposal. These changes were sent out to the police and headteachers for consultation.

The consultation was sent to the Police on the 16 August 2023 and closed on 5<sup>th</sup> September 2023 with no questions or responses. The consultation was shared with Headteachers on the 5<sup>th</sup> September 2023 with a closing date of 25<sup>th</sup> September 2023.

We received three responses to the headteacher consultation with queries about the Code of Conduct. Some queries were raised about parts of the document which had not been part of the material change, others were outside the scope of the consultation process and were questions around regulation. All questions were responded to and addressed the concerns raised.

Following the consultation process we are keen to add a final paragraph to the code of conduct to outline the fact that it has been produced in consultation with Schools and the Police.

## **6) Strategic Plan**

Clearly explain how the proposal, scheme or policy aligns with the vision and priorities in the Council's Strategic Plan 2021 – 2025 - <https://www.devon.gov.uk/strategic-plan>

Be ambitious for children and young people

- 6.1 Every child has a right to access education and it is the parent's legal responsibility to ensure their children of compulsory school age receives a suitable full-time education. Regular attendance at school allows learners to make the most of their education, improving their life chances into adulthood. Attending an education setting is not just about learning, it is about developing positive relationships, being encouraged to take advantage of available opportunities and safe places where additional support can be accessed.
- 6.2 For our most vulnerable learners, regular attendance is an important protective factor and education settings are often the safest place for those children. Education settings, where relational approaches are at the

heart of their environment, provide the best opportunities to narrow the gap for our under-served learners and families.

- 6.3 The link between attendance and attainment is well established by research and outlined further in 3.2 below.

Attendance of 90% may appear to be high, it is not. Attending only 90% of sessions equates to; one day absent a fortnight, four weeks absent per academic year and half an academic year if this absence is maintained for a five-year period.

- 6.4 Research has shown associations between regular absence from school and a number of extra-familial harms for example:

- crime - 90% of young offenders had been persistently absent from school
- serious violence - 83% of knife possession offenders had been persistently absent from school

Irregular attendance at school is often an indicator of wider issues that could lead to an increase in suspensions, exclusions, crime, mental health difficulties, medical absences, and exploitation.

## **7) Financial Considerations**

The Service employs two legal officers and an administrator. Although the salaries for these posts are funded from income from Penalty Notices as set out in Regulation 23 The Education (Penalty Notices) (England) regulations 2007, it is important to note that decisions taken on whether to issue Penalty Notices are taken by Headteachers in schools in line with paragraph 81 in the DFE Working together to improve school attendance 2023 guidance.

We don't see the policy changes to have an impact on current staffing levels or income, however this will be kept under review, in the longer term we may see legal costs and income reduce.

## **8) Legal Considerations**

The Code of Conduct does require amendment to be fully compliant with Regulation 14 of the Education (Penalty Notices) (England) Regulations 2007. Without doing so renders the Local Authority unable to issue penalty notices.

### **1.1.1 Requirement to draw up code of conduct**

14. Each local education authority must draw up a code of conduct which sets out measures to ensure consistency in the issuing of penalty notices, including—

- (a) means of avoiding the issue of duplicate penalty notices;

(b) measures to ensure that a penalty notice is not issued in respect of an offence when proceedings for that offence under section 444 of the 1996 Act (or an offence under subsection (1A) of that section arising out of the same circumstances) or section 103(3) of the 2006 Act, as the case may be; are contemplated or have been commenced by the local education authority:

(c) the occasions when it will be appropriate to issue a penalty notice for an offence.

(d) a maximum number of penalty notices that may be issued to one parent in any twelve-month period; and

(e) arrangements for co-ordination between the local education authority, neighbouring local education authorities where appropriate, the police and authorised officers<sup>(1)</sup>.

## **9) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)**

There are no environmental impact considerations.

## **10) Equality Considerations**

Where relevant, in coming to a decision the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct.
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding

in relation to the protected characteristics (age, disability, gender reassignment, marriage and civil partnership (for employment), pregnancy and maternity, race/ethnicity, religion or belief, sex and sexual orientation).

A decision maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

In progressing this particular scheme / proposal, an Impact Assessment has been prepared which has been circulated separately to Cabinet Members and also is available on the Council's website at <https://www.devon.gov.uk/impact/published>

## **11) Risk Management Considerations**

No risks have been identified

## **12) Summary / Conclusions / Reasons for Recommendations**

To be compliant with The Education (Penalty Notice) (England) Regulations 2007 as amended by The Education (Penalty Notices) (England) (Amendment) Regulations 2012 and The Education (Pupil Registration) (England) Regulations 2013 amendments are required to the School Penalty Notice Code of Conduct.

The changes to this policy have already been implemented by the teams involved. Acceptance by cabinet will reflect these changes to enable to authority to be fully compliant.

### **Name**

Rachel Shaw – Interim Head of Education

### **Electoral Divisions: All**

Cabinet Member for [\[insert title\]](#): Councillor [\[insert name\]](#) [\[only on Cabinet/Scrutiny Reports\]](#)

### **Local Government Act 1972: List of background papers**

Background Paper: Previous Code of Conduct

Date: undated

File Reference: [DCC Code of Conduct.pdf](#)

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