**Education Inclusion Services**

**Local Code of Conduct Education Fixed Penalty Notice**

September 2024



## Contents

Legal Framework Page 1

Rationale Page 2

Policy and Publicity Page 3

Monitoring and review Page 4

Appendix 1 Page 5

Appendix 2a Page 9

Appendix 2b Page 11

Appendix 3 Page 12

Appendix 4 Page 15

Appendix 5 Page 17

Appendix 6 Page 20

## Legal Framework

* 1. The law empowers designated Local Authority (LA) Officers to issue Fixed Penalty Notices to the parents of children who have unauthorised absence from schools that fall within Blaenau Gwent. The issuing of FPNs will remain the responsibility of the Education Welfare Service (EWS) in response to requests made by head teachers, their nominated deputies, and the Police.

The rules governing the implementation of these powers and the factors that should be considered when issuing a Fixed Penalty Notice are outlined in:

* The Education Act 1996.
* The Education & Inspections Act 2006.
* The Education (Penalty Notices) (Wales) Regulations 2013
* Rights of Children and Young Persons (Wales) Measures 2011
* United Nations Convention on the Rights of a Child (the right to an education)

Blaenau Gwent is responsible for developing a protocol within which all partners will operate and as part of the statutory duties for ensuring school attendance it is appropriate that the EWS will deliver this responsibility on behalf of the local authority.

1. **Rationale**
   1. Section 7 of the Education Act 1996 states that:

“The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable to his age, ability aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise.”

* + 1. Regular and punctual attendance at school or alternative provision is a legal requirement and is essential to enable children to maximise their educational attainments and opportunities available to them.
    2. Evidence shows that children with poor attendance are unlikely to succeed academically and they are more likely not to be in education, employment, or training (NEET) when they leave school. NEET young people are likely to have a history of non- attendance and persistence absences in years 10 and 11.
    3. Section 444 of the Education Act 1996 makes it a criminal offence for a parent’s failure to secure their child’s attendance at the school at which they are registered and where absences are not authorised.
    4. The definition of “parent” includes all biological parents, whether they are married or not and includes any person who, although not a biological parent, has the parental responsibility and/or care for a child or young person.
    5. Targeted intervention plays a vital role in resolving issues of poor school attendance, however where this fails to have the desired effect there are several sanctions available to Local Authorities (LAs) to try and secure improvements.
  1. Fixed Penalty Notices are one of the sanctions available for this offence and offer a means of suitable and effective intervention for improving levels of unauthorised absences, before they become entrenched and persistence absences, whilst reducing the need for lengthy and costly prosecutions.
  2. Fixed Penalty Notices and other sanctions will only be used where parental co-operation with this process is either absent or deemed to be insufficient to resolve the problem. They will be used to support parents to meet their legal responsibilities and only where there is a reasonable expectation that their use will secure improved school attendance.

1. **Policy and Publicity.** 
   1. School Attendance Policies will include information on the issuing of Fixed Penalty Notices, and this will be brought to the attention of parents.
2. **Monitoring and review.**

Blaenau Gwent local authority will monitor and evaluate the effectiveness of Fixed Penalty Notices annually and amend its general enforcement strategy as appropriate. Reports will be made available to Consortium Directors, Local Authority Heads of Service and Committees, and the Welsh Government as required.

**Appendices**

|  |  |
| --- | --- |
| Appendix 1 | Protocols and procedures in relation to Fixed Penalty Notices |
| Appendix 2a | Example advisory/warning letter – unauthorised absence |
| Appendix 2b | Medical advisory notice |
| Appendix 3 | Fixed Penalty Checklist |
| Appendix 4 | Penalty Notice request - Unauthorised Leave of absence or irregular attendance |
| Appendix 5 | Penalty Notice pro-forma |
| Appendix 6 | Relevant legislation |

**Appendix1**

**Protocols and procedures in relation to Fixed Penalty Notices**

**Issue of a Fixed Penalty Notice**

* A Fixed Penalty Notice can only be issued in cases of unauthorised absence.
* Fixed Penalty Notices will be restricted to one notice per parent of a pupil in a rolling term.
* In cases where there is more than one poorly attending pupil in a family, notices may be issued for more than one child.

There will be no restriction on the number of times a parent may receive an advisory letter or warning of a possible Fixed Penalty Notice and it will be at the discretion of the EWS whether to issue a notice on one or both parent/carers. However, it would not be acceptable to issue ‘warnings’ repeatedly without making further investigations of the wider circumstances.

**Fixed Penalty Notices may be considered appropriate when:**

* At least 10 sessions (5 school days) are lost due to unauthorised absence during the current term. These do not need to be consecutive.
* Persistent late arrival at school, i.e. **after the register has closed**, in the current term. “Persistent” means at least 10 sessions of late arrival.
* Truancy, where the child has come to the attention of the Police during school hours for being absent from school, without an acceptable reason.

**Considerations and Assessment as to whether a Fixed Penalty Notice should be issued.**

Head Teachers, their nominated deputies, and the Education Welfare Service

(EWS) will consider the following when determining whether a Fixed Penalty Notice should be issued:

* Level of absence.
* Any Equalities considerations relating to the child or family (as listed in the Council’s Strategic Equality Plan).
* Any Additional Learning Needs (ALN). LAs should consider whether attendance problems may be related to a pupil’s ALN. Schools should be able to demonstrate that they have made appropriate provision for the pupil’s needs, which may include consideration to support through an Individual Development Plan.
* History of the attendance issues and action taken.
* Welsh Government (WG) Guidance.
* Effectiveness of Fixed Penalty Notice as a tool for obtaining compliance.
* Level of parent engagement/cooperation.
* Any substantial adverse effect a fine will have on the welfare of the family.

**Procedure for Issuing Fixed Penalty Notices**

The designated officer(s) within the EWS will be the only individuals permitted to issue Fixed Penalty Notices, which will ensure consistent and equitable delivery and allow schools to maintain good relationships with parents and ensure that they reinforce any other enforcement sanctions.

Fixed Penalty Notices will never be issued as an instant action, e.g. during a Truancy Sweep. This will enable officers to ensure that all evidential requirements are in place and limit the health and safety risks to individuals.

**Requests for issue of a Fixed Penalty Notice**

Where schools, Police or neighbouring LAs request the issue of a Fixed Penalty Notice, their request will be investigated and actioned by the EWS, provided that:

* The circumstances of the case meet the criteria specified in this Code of Conduct.
* The pupil is registered within a school within Blaenau Gwent.
* All necessary evidence is provided to the EWS to establish whether an offence under Section 444(1) or 444(1A) of the Education Act 1996 or Section 108 of the Education and Inspections Act 2006 has been committed.
* Issuing a Fixed Penalty Notice would not conflict with another intervention strategy already in place or another enforcement sanction already being processed and there is a reasonable expectation that the use of a Fixed Penalty Notice would improve the child’s school attendance.

**Responding to requests for the issuing of a fixed penalty notices**

Following the advisory notice (Appendix 2) issued by the school or Police, parents have a period of 15 school days within which to respond. During this time, the pupil must have no unauthorised absence. This information can be included in the formal written warning letter, where one has been issued.

The EWS will respond to all requests from schools or Police within 10 school days of receipt of a request. When satisfied that all the relevant criteria have been met the LA will then issue a fixed penalty notice.

**Monitoring and Review**

All Fixed Penalty Notices will be entered onto a database maintained by individual LAs to ensure that no duplicate Fixed Penalty Notices are issued and to evaluate the effectiveness of the process.

**Excluded Pupils**

The basis of the fixed penalty notices powers does not extend to excluded pupils. Section 108 of the Education and Inspections Act 2006 came into force in October 2010 and amends section 16 of the Crime and Disorder Act 1998 to extend Police powers for the removal of excluded pupils to designated premises, if a child or young person excluded from school is found in a public place in a specified area during a specific period and during school hours.

**Procedure for the Withdrawal of Fixed Penalty Notices**

Once issued, a Fixed Penalty Notice can only be withdrawn if the EWS is satisfied that:

* The Fixed Penalty Notice was issued to the wrong person.
* The use of the Fixed Penalty Notice did not conform to this Code of Conduct.
* The Fixed Penalty Notice was delivered to the wrong address.
* The evidence demonstrates that the Fixed Penalty Notice should not have been issued, e.g. medical evidence

**Right of appeal**

There is no statutory right of appeal, but where a parent contests the issuing of a Fixed Penalty Notice, they can submit any complaints to the EWS and/or opt to face proceedings in the Magistrates’ Court under section 444 of the Education Act 1996, where all the issues relating to their Fixed Penalty Notice can be heard.

**Payment of Fixed Penalty Notices**

Arrangements for payment will be detailed on the Penalty Notice. Payment of a Fixed Penalty Notice discharges the parent’s liability for the period in question and they cannot subsequently be prosecuted under other enforcement powers for the period covered by the Fixed Penalty Notice.

If the Fixed Penalty Notice is paid within 28 days, the penalty payable is £60, or £120 if paid between 29 and 42 days. Payments will not be accepted from parents after 42 days has elapsed and cannot be paid either by instalments.

Individual LAs will only be able to retain enough revenue from the Fixed Penalty Notices, to cover administration costs for the process of issuing Fixed Penalty Notice, the surplus is to be surrendered to the Welsh consolidated fund.

**Non-Payment of Fixed Penalty Notices**

Non-payment of a Fixed Penalty Notice will result in prosecution for the period covered by the Fixed Penalty Notice under Section 444 of the Education Act 1996.

**Equalities and Welsh Language**

The issuing of Fixed Penalty Notices must comply with other related legislation and regulations, to ensure that they are used in a fair and consistent manner and have paid due regard to the circumstances of the child/children and families involved. These include, but are not limited to the following: -

* Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011
* Welsh Language (Wales) Measure 2011
* Human Rights Act 1998

Councils’ Strategic Equalities Plan covers the full range of issues that may need to be considered, depending on the individual case.

**Appendix 2a**

**NOTICE TO IMPROVE**

School attendance is hugely important. For your child to gain the full benefit from their education, for their learning, wellbeing, and wider development, they need to attend on time, every day possible.

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school or an alternative provision the child’s parent may be guilty of an offence under s.444 Education Act 1996

You, **«FORENAME» «SURNAME»** are a parent/carer of **«Students\_Name»**, (called in this notice “the pupil”) who is a registered pupil at **«School\_Name»**.

The school have offered support to you and your family to try and help improve «Students\_Name»’s attendance, including:

1. **Telephone calls.** The school have communicated with you to understand why your child was absent and to offer their support with any issues your child may be having.
2. **An Attendance Overview Letter**. The school wrote to you, letting you know about «Students\_Name»’s attendance, the impact of their continued absence, and inviting you to contact the school to discuss the situation further.
3. **An Attendance Improvement Meeting Invite**. The school invited you to a meeting to discuss your child’s unauthorised absences and to offer support to ensure that their attendance improved. You were notified of the consequences should your child continue to have unauthorised absence.

Unfortunately, despite the support that was offered to your family, attendance remains a cause for concern. Between **«WARNING\_START\_DATE»** and **«WARNING\_END\_DATE»** the pupil failed to attend regularly at **«School\_Name»**, which resulted in 10 sessions (half days) or more of unauthorised absences being recorded. Please see the attached registration certificate for details.

**You now have fifteen school days (3 weeks) in which to improve your child’s attendance. During this time, your child must show significant improvements in attendance and avoid having any unauthorised absences from school during this period. Should we not see sufficient improvement and further unauthorised absences take place during this period, a Penalty Notice may be issued. A penalty notice is charged at £120 if paid within 42 days. There is usually the opportunity to pay a reduced amount of £60 if paid within 28 days.**

**NB – A Penalty Notice may be issued as soon as an unauthorised absence is recorded.**

If you wish to discuss this notice, or discuss what further support is available, please contact our team as soon as possible:

Contact Name

**Name of Team/Service**

Address

Telephone:

Yours sincerely

(Name)

(Job Title)

(School Name)

**Appendix 2b**

Medical advisory notice for Blaenau Gwent schools

To reply please contact:

Tel:

Fax:

Email:

Date:

Dear <<Parent name>>

Name of pupil: ...................................................................... Date of birth: ........................................................

School: ....................................................................................................................................................................................................

Dear parent/carer,

I am concerned to note that your child has already had 10 days medical absence this term. Currently ………………has been absent for …………. % of this school term/year. So that you have a clear picture of the extent of the absence, I am enclosing a copy of the pupil registration certificate.

Frequent absences may have a serious effect on your child’s educational progress and the extent of your child’s absence because of illness now gives concern to his/her school, and I am sure, to yourself/yourselves.

As a result, no further absences will be authorised without supporting medical evidence. Please note we do not need a sick note or GP letter but evidence such as a dated appointment card, a white label from prescribed medication or a prescription slip.

Should your child’s absence be recorded as unauthorised I would remind you that you could receive a Fixed Penalty Notice or other intervention as appropriate.

If you wish to discuss these matters further, please do not hesitate to contact school or myself.

Yours sincerely,

Head teacher.

**Appendix 3**

**Penalty Notice (PN) Request Checklist**

The criteria detailed below is to be considered best practice guidance for schools when considering the use of a penalty notice and does not replace existing legislation nor associated evidential burden.

**Before completing form**

 Has the period for which the PN is requested been recorded as unauthorised?

 Are there any missing marks or coding irregularities?

 Does coding on the register accurately reflect the dates for which the PN is being requested?

 Is the reason for the request indicated on the form e.g. unauthorised holiday or unauthorised absence?

 Have the parents/carers been informed that they could receive a PN.

**Criteria for issuing PN.**

• 5 days or more continuous unauthorised absence.

• Can be used as a sanction for irregular attendance. A PN may be used in this instance where a pupil accumulates 10 sessions of unauthorised absence within a 13-week period.

**Documentation to accompany irregular attendance request.**

 Attendance certificate ensuring all absences are coded as unauthorised e.g. no ‘N’ codes.

 Evidence of actions taken and all relevant information as required on the request form.

 Evidence that the parent/carer has been notified that they may receive a PN (this can be within documentation of school website, in behaviour policy, in newsletters to parents etc.

**(If Leave of Absence Request Form is completed by parent/carer)**

**** Copy of request for leave of absence received from parent/carer and signed by all relevant parent/carers and any letter pertaining to that request.

 Signed evidence that school have informed parent/carer in writing that absence will be unauthorised and that this could lead to a PN being issued.

 Reasons for not authorising the holiday should be clearly stated to parent/carer.

 Up to date registration certificate showing the period of absence as unauthorised ‘G.’

**(If Leave of Absence Request Form has not been completed by parent**/carer)

 Up to date attendance certificate showing the period of absence as unauthorised ‘G’ and the date of return.

 Evidence as to why the school believe that the absence was for the purpose of a leave of absence.

 Signed copy of letter to parent from the head teacher stating that the absence will be coded as unauthorised as it is believed to be for the purposes of a leave of absence without exceptional circumstance and that this could lead to a PN being issued.

** Completing contact form**

* Parents’ full name and surname. Please include parents’ date of birth where known.
* If there are two parents, details of both parents should be completed.
* Address should be checked.
* A PN will be issued individually to both parent/carers.

** The request form should only be submitted once the child has returned to school. If the child fails to return, then the school should follow their Missing child procedures.**

** Documentation provided by the school which supports the request for a PN by the Local Authority can be used as evidence should any legal action be taken. All cases where there is non-payment of the PN would be considered for a prosecution under s.444 of the Education Act 1996.**

** If the case proceeds to a prosecution school staff may be required to provide a written witness statement and may be required to give evidence in court.**

**Appendix 4**

**FIXED PENALTY NOTICE REQUEST**

**UNAUTHORISED ABSENCE - Section 444, Education Act 1996**

Information contained in the form will be used in legal action under the above Act relating to non-attendance at school if an Education Penalty Notice is issued and remains unpaid. I request that the Local Authority consider issuing a Penalty Notice to the parent(s)\* of the following pupil:

**Pupil Details**

Registered School…………………………………………………………………………………

Name of Pupil …………………………... ……………. DOB ……………. Year ………

Address…………………………………………………………………………………….

……………………………………………………………………………………………….

**Parent 1**

Full name ……………………………………………………………… DOB………...

Address…………………………………………………………………………………….

**Parent 2**

Full name…………………....……………. ….. …………………………DOB………....

Address…………………………………………………………………………………….

The expression “parent,” in relation to a child or young person, includes any person who is not a parent of the child but who has parental responsibility for him or her, or who has care of the child.

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 can also confirm that the governing body of this school has reviewed its attendance policy and agreed that this school will request the Local Authority to issue a Fixed Penalty Notices in appropriate cases.

Is this a request for an unauthorised leave of absence or for irregular attendance?

How has the parent been contacted regarding the unauthorised absences?

School Meeting Letter  Telephone Call

Is the family known to other Services, e.g.: Children’s Services, YOS, and CAMHS?

Yes / No

Are there any notable circumstances to consider, e.g.: mental health, bereavement, family dynamics/domestic violence? Yes / No

If yes, please give full details:

Signed ………………… Designation …………………… Date:

**Please enclose an up-to-date registration certificate** **and evidence as stated in the FPN checklist**

**Appendix 5**

**FIXED Penalty Notice [S.444A EDUCATION ACT 1996]**

Please read the notes below carefully.

**Part 1**

If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, or fails to attend regularly at alternative provision, the child’s parent/guardian is guilty of an offence under s.444 Education Act 1996.

To: (Title)

(Forenames)

(Surname)

Of: (address)

(Postcode)

You are a parent/guardian of (name and address of child) (called in this notice “the pupil”) who is a registered pupil at (name of school).

On (date/dates)/ between (date) and (date) the pupil (name) failed to attend regularly at the (Name of) 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 this penalty within the time limits set out below, no further action will be taken against you in connection with the offence as set out in this notice.

Payment should be made within 28 days. If paid after 28 days but within 42 days, the penalty is doubled to £120. Payment should be made to ***insert office details*** for payment and can be made in person during office opening hours, ***insert opening hours*** or by posting this notice with a cheque or postal order.

Late or part payments will not be accepted, and no reminders will be sent. If payment is not received by (insert date 42 days from date of issue), you will be prosecuted for the offence and could be subject to a fine of up to £2,500.

This notice is issued by ***name, official particulars of the post*** within ***insert name of LA.***

Date of issue: .......................................................................................

**Part 2**

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

***Insert Name & Address of LA***

Name: .......................................................................................................

Address: ...................................................................................................

I attach payment in the sum of £...............................................................

Signed: .....................................................................................................

Date: .........................................................................................................

**NOTES**

**Contact details.**

If you have any queries about this notice, please contact ***insert contact details, job title and department of contact, telephone number, fax number and address.***

**Amount of penalty**

The amount of the penalty is as follows:

If paid within 28 days £60 If paid between 29 and 42 days £120.

**Code of conduct**

This notice is issued in accordance with a local code of conduct (we should include the full title together with its date or Edition) drawn up by The Blaenau Gwent and ***insert L A.*** Any questions or correspondence about the code should be addressed to ***name of contact, department within authority address and telephone phone number.***

**Withdrawal**

This notice may be withdrawn by ***inset LA name*** if it is shown that it should not have been issued to you or has not been issued to you in accordance with the SEWC code of conduct. If you believe that the notice was wrongly issued you must contact the issuing Local Authority as soon as possible to ask for it to be withdrawn, stating why you believe the notice to have been incorrectly issued.

The issuing Local Authority will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable to prosecution for the offence.

**Payment**

You should complete the notice above and send or deliver it to the address given above.

**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.

**Appendix 6**

Relevant legislation that relates to Fixed Penalty Notices includes:

**The Children Act 1989**

The definition of “parent” means all biological parents, whether they are married or not; and includes any person who, although not a biological parent, has parental responsibility and/or care for a child or young person.

**The Education Act 1996**

Section 7 Duty of parents to secure education of children of compulsory school age.

Section 8Definition of compulsory school age.

Section 444Offence: Failure to secure regular attendance at school of registered pupil.

Section 444A Penalty notice in respect of failure to secure regular attendance at school of registered pupil.

Section 444B Penalty notices: supplemental.

Section 444ZA Application of section 444 to alternative educational provision

Section 576 Meaning of “parent”

**Education & Inspections Act 2006**

Section 103 Duty of parent in relation to excluded pupil.