



Somerset
Council

Penalty Notice Code of Conduct

August 2024

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This Penalty Notice Code of Conduct meets Somerset Council's statutory requirement to have a published Code of Conduct in line with the Education (Penalty Notice) (England) Regulations 2007.

This Code of Conduct comes into effect on 19 August 2024 alongside updated statutory guidance and legislation, and will be updated every two years.

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Consultation

This Code has been written in consultation with head teachers and governing bodies of state-funded schools in Somerset and Avon and Somerset Police.

Introduction

This Code of Conduct has been written to ensure the legal, fair and consistent use of penalty notices for irregular attendance across all schools within Somerset. It sets out the arrangements for administering penalty notices in Somerset and must be adhered to by anyone issuing, or considering issuing, a penalty notice for school absence in this area.

The code complies with relevant legislation, regulations and the Department for Education's national framework for penalty notices as set out in the statutory guidance Working Together to Improve School Attendance:

- [Working Together to Improve School Attendance 2024](#)
- [Education \(Penalty Notices\) \(England\) Regulations 2007](#)
- [Education Act 1996](#)
- [Education and Inspections Act 2006](#)
- [Equality Act 2010](#)

Rationale

All children have the right to suitable, full-time education that is appropriate to their ability and needs. As such, parents have a legal duty to ensure their child's [regular attendance at school](#) and failing to do so can be considered a crime under Section 444 of the Education Act.

The Education Act and subsequent statutory guidance also places a legal duty on local authorities to consider its use of statutory powers to protect every child's right to their education, including the use of penalty notices.

Regular attendance at school is fundamental in allowing children to engage with their education and get the best from it. Every absence means a child misses vital lessons and experiences, and also limits their ability to fully benefit from future lessons.

Research published by the Department for Education in 2022 found pupils with higher levels of attainment at Key Stage 2 and Key Stage 4 also had higher sustained levels of attendance.

Regular or prolonged absence from school also impacts significantly on children's social development and can prevent them from taking part in key experiences at school.

For the most vulnerable pupils, regular attendance is also an important protective factor and often the best opportunity for needs to be identified and support provided. Poor school attendance can increase children's vulnerability and place them at greater risk of harm.

Supporting Good School Attendance

Regular absence from school can indicate a child's needs are not being fully met, or that they need additional support. Where difficulties arise with school attendance, professionals should take a 'support first' approach in line with the statutory guidance Working Together to Improve School Attendance, only resorting to legal enforcement when necessary.

Taking a supportive approach reduces need for legal enforcement identifying and tackling the barriers to attendance and intervening early before absence becomes entrenched.

The national framework for penalty notices is based on the principles that penalty notices should only be used in cases where:

- unauthorised term-time leave has been taken (and support is not appropriate), or
- support to improve irregular attendance has been provided and not engaged with or not worked, and
- they are the most appropriate tool to change parental behaviour and improve school attendance.

Legal Basis

Penalty notices can be issued in relation to children of statutory school age that are registered pupils at maintained schools, Academy schools and pupil referral units, as set out in Section 444 of the Education Act. They may also be used where a child is required to attend alternative provision that has been provided by the Local Authority.

Penalty notices can be issued when one of the following offences has been committed:

Section 444 of the Education Act 1996

A parent has failed to ensure the regular school attendance of their child, who is of compulsory school age. This may follow a period of unauthorised term-time leave or irregular attendance when effective support has been put in place to improve attendance.

Section 103 of the Education and Inspections Act 2006

A child is seen to have been in a public place without reasonable justification during a time when they are suspended or excluded from school. This only applies during a time when a child is formally suspended or excluded from school and the school is open to pupils.

Paragraph 11 of Working Together to Improve School Attendance provides a clear definition of "regular" school attendance, stating that a "child must attend every day that the school is open, except in a small number of allowable circumstances such as being too ill to attend or being given permission for an absence in advance from the school."

The amended [Education \(Penalty Notices\) \(England\) Regulations 2007](#) set out how penalty notices for school absence must be used.

A penalty notice can only be issued by an authorised officer. In Somerset, this applies only to authorised officers within Somerset Council.

The national framework for penalty notices is published in the statutory guidance Working Together to Improve School Attendance. It provides further national guidance on the operation of penalty notice schemes for school absence in England.

A parent includes any person who is not a parent but who has parental responsibility for the child or who has care of the child, as set out in [Section 576 of the Education Act 1996](#).

Penalty notices will usually be issued to the parent or parents with day-to-day responsibility for the pupil's attendance or the parent or parents who have allowed the absence (regardless of which parent has applied for a leave of absence).

Local Arrangements for Issuing Penalty Notices

By agreement between schools, Somerset Council, and Somerset and Avon Police, all penalty notices relating to attendance and children being present in a public place while suspended or excluded are issued by Somerset Council.

If a headteacher or police officer believes an [offence has been committed](#) and that it would be appropriate for a penalty notice to be issued, they may request a penalty notice as outlined in this Code of Conduct.

Appropriate use of Penalty Notices

Penalty notices serve as an alternative to prosecution under Section 444(1) of the Education Act 1996 and Section 103(3) of the Education and Inspections Act 2006. They allow parents to avoid formal prosecution by paying a financial penalty.

Penalty Notices for Unauthorised Absence from School

The national threshold is met when a pupil has been recorded as absent for 10 sessions (usually five school days) within a rolling 10 school week period with any combination of the following codes:

Code G	The pupil is absent from school for the purposes of a holiday, leisure, or recreational activity without the school's authorisation.
Code N	The reason for the pupil's absence has not yet been established.
Code O	The pupil was absent and none of the codes in Table 3 of the School Attendance (Pupil Registration) (England) Regulations 2024 applies.
Code U	The pupil arrived late after the registers closed, but before the end of the session, and no other absence code applies.

A school week means any week (Monday to Sunday) that includes at least one school session.

When a child's unauthorised absence has met the national threshold, schools should consider whether a penalty notice should be requested.

Penalty Notices for being Present in Public while Suspended or Excluded

A penalty notice may be appropriate when a pupil is present in a public place:

1. during school hours
2. within the first five days of a formal suspension or exclusion
3. without reasonable justification.

A school is not deemed to be a public place for this legislation.

Alternatives to Penalty Notices

If repeated penalty notices are being issued to a parent and they are not working to change behaviour they are unlikely to be most appropriate tool.

The national framework for penalty notices sets out that a maximum of two penalty notices per child, per parent can be issued within a rolling three-year period. If the national threshold is met for a third time (or subsequent times) within three years, other interventions must be considered. This includes when penalty notices are known to have been [issued by other local authorities](#) within that period.

The tools used will vary depending on each family's circumstances, but may include:

- multi-agency support
- statutory support frameworks
- prosecution
- parenting order
- attendance order
- education supervision order

Only penalty notices issued on or after 19 August 2024 will count towards the national threshold, whether they are paid or not. [Withdrawn penalty notices](#) do not count towards the national threshold.

Considerations before Issuing a Penalty Notice

To ensure the consistent and appropriate use of penalty notices, the following considerations must be considered before requesting a penalty notice:

Unauthorised Term-Time Leave

Schools can request a penalty notice relating to unauthorised term-time leave when a child has 10 or more sessions of unauthorised term-time leave have been taken in a rolling 10 school week period.

- ✓ Would issuing a penalty notice be appropriate in line with the national threshold and Penalty Notice Code of conduct?
- ✓ Are the unauthorised absences only related to unauthorised term-time leave and G coded?
- ✓ Is issuing a penalty notice appropriate in the context of the Equality Act 2010?

Irregular Attendance

Schools can consider requesting a penalty notice for irregular attendance when a child has 10 or more sessions of unauthorised absence in a rolling 10 school week period and appropriate support has been provided.

- ✓ Does the child have at least 10 unauthorised absences in the last 10 school weeks?
- ✓ Has sufficient support been provided, including attendance letters and an attendance agreement?
- ✓ Has a [notice to improve](#) been issued?
- ✓ Would a penalty notice be an appropriate tool to improve attendance and change parental behaviour?
- ✓ Is issuing a penalty notice appropriate in the context of the Equality Act 2010?

When any penalty notice request is submitted, the Local Authority must consider the checks outlined above, as well as:

- ✓ Has the national threshold been met?
- ✓ Would issuing a penalty notice comply with the national framework and Penalty Notice Code of Conduct?
- ✓ Has the request been made within three school weeks of the last unauthorised absence?
- ✓ Is it reasonable to believe that issuing a penalty notice would improve the child's attendance?

If all the tests laid out above are met, a penalty notice may be requested and will usually be issued.

Where it is appropriate to offer support to improve attendance, the following should be considered on a case-by-case basis:

- In-school attendance support
- Attendance meetings
- Attendance contract
- Pastoral support plan
- Early Help Assessment
- Notice to Improve

Schools should be aware that any penalty notice request may result in legal action being taken against the parent in relation to the original offence. Schools accept the possibility that they may be required to provide witness statements or give evidence in court in relation to the child's unauthorised absence from school.

Notice to Improve

A notice to improve is not required where a penalty notice is being considered following 10 or more sessions of unauthorised term-time leave in a rolling 10 school week period.

A notice to improve is a final opportunity for a parent to engage in support and improve attendance before a penalty notice is issued in cases where attendance support may be required.

If the national threshold has been met and support is appropriate but offers of support have not been engaged with by the parent or have not worked, a notice to improve should usually be sent to give parents a final chance to engage in support.

In most cases, a notice to improve will be issued by the school following their efforts to work with the family to improve attendance. If appropriate, a notice to improve may be issued by an authorised officer from the Local Authority.

Every notice to improve will:

- outline clear expectations about improved attendance
- contain a clear improvement period of no less than three and no more than six school weeks (the exact duration will depend on each case)
- outline what might trigger a penalty notice to be issued (usually one or more unauthorised absences within the improvement period)
- outline how attendance will be monitored and reviewed.

Schools will continue to monitor the pupil's attendance following the issue of a notice to improve and may request a penalty notice if sufficient improvement is not made, in line with the table in [Considerations before Issuing a Penalty Notice](#).

An authorised officer can choose not to issue a notice to improve in cases where support is appropriate, but they do not expect a notice to improve would have any impact on a parent's behaviour (e.g. because the parent has already received one for a similar offence).

Requesting a Penalty Notice

Penalty notice requests must be made using the [Request a Penalty Notice](#) form within three school weeks of the last unauthorised absence.

Unauthorised Absence from School (Section 444)

To request a penalty notice, schools are required to:

1. Check the pupil has at least 10 unauthorised absences in a rolling 10 school week period
2. Ensure appropriate support has been offered and/or put in place (unless the absences relate solely to term-time leave)
3. Complete the [Request a Penalty Notice](#) form
4. Include the relevant documents and evidence to support a notice being issued (you will be prompted to attach these to the form when you are completing it).

Being Present in Public while Suspended or Excluded (Section 103)

To request a penalty notice, headteachers and police officers are required to:

1. Obtain a formal statement from each of the witnesses on headed paper clearly outlining when and where the child was seen.
2. Submit all signed statements along with the request for a penalty notice using the [Request a Penalty Notice](#) form.

More detailed information is available in [Appendix A](#) (Section 444), [Appendix B](#) (Section 103) and [Appendix C](#).

Somerset Council will consider all requests for penalty notices within three school weeks, providing:

- ✓ the request was submitted using the correct online form
- ✓ the relevant information was supplied with the request,
- ✓ the pupil's absence meets the terms of this Code of Conduct,
- ✓ issuing a penalty notice will not conflict with ongoing support or interventions,
- ✓ the school has made clear to parents it will consider the use of statutory attendance frameworks,
- ✓ there is evidence the school has made every effort to support the family to improve attendance (where applicable).

Any requests that do not comply with the terms outlined above will be declined and returned to the requester.

The decision to issue a penalty notice will be made in line with the table in [Considerations before issuing a Penalty Notice](#) and rests solely with Somerset Council's authorised officers.

Schools will be notified of the outcome of penalty notice requests:

- if they are declined, and why (see [Considerations before Issuing a Penalty Notice](#))
- if they are issued (the school will receive a copy for its records)
- if they are paid (after the 28-day payment period has elapsed)
- any further action taken in relation to the original offence (if they are not paid)
- if they are withdrawn.

Children Moving between Local Authorities

In cases where a child has moved home or school between local authorities, every effort will be made to check whether any penalty notices have been issued by that authority.

In line with national guidance, any local authorities wishing to check whether a parent has been issued a penalty notice can do so by emailing the relevant information to CrossBorder.PenaltyNotice@somerset.gov.uk.

The local authority in which a child attends school has the authority to issue penalty notices. Where a child attends school in Somerset but lives in another local authority, Somerset Council will work with that authority to determine whether a penalty notice is appropriate and any alternative support or intervention that may be more suitable.

When a Penalty Notice is Issued

In line with the legislation and this Code of Conduct, penalty notices will be issued to parents only when it is appropriate to do so.

In line with the Education (Penalty Notices) (England) Regulations:

- penalty notices have a 28-day payment period,
- if paid within 21 days, the reduced amount of £80 is payable (see note below)
- after 21 days, the full amount of £160 is payable,
- penalty notices will be sent First Class post,
- the 28-day payment period will start two days after it is issued to allow for postage.

If a parent is issued a second penalty notice relating to the same child within the three-year window, the reduced payment of £80 is not available.

A copy of the Penalty Notice will be sent to the child's school.

How to Pay a Penalty Notice

Every penalty notice issued has a unique reference number, which is required for payment.

Opting to pay a penalty notice discharges the parent of their liability for the offence listed. There is no statutory right to appeal a penalty notice.

Details about how a penalty notice can be paid are provided on the Penalty Notice itself and also at www.somerset.gov.uk.

Part payments or instalments cannot be accepted and will result in the Penalty Notice being considered unpaid after the 28-day payment period.

Opting not to pay a penalty notice may result in the parent being prosecuted for the offence listed.

Withdrawing Penalty Notices

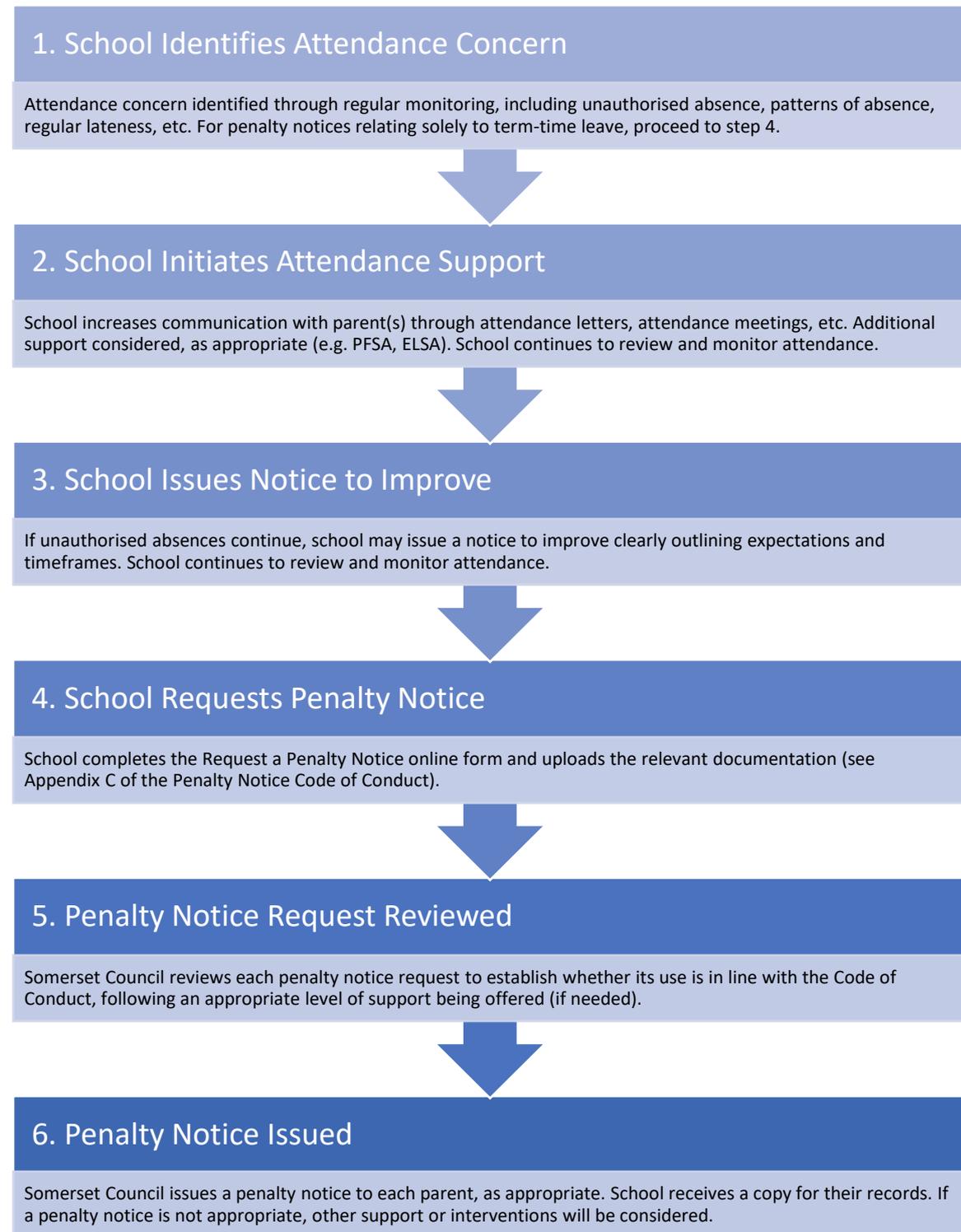
A penalty notice may only be withdrawn if:

- it was issued containing material errors,
- it should not have been issued,
- it was issued to the wrong person, or
- a parent is prosecuted for the related offence and found to be not guilty.

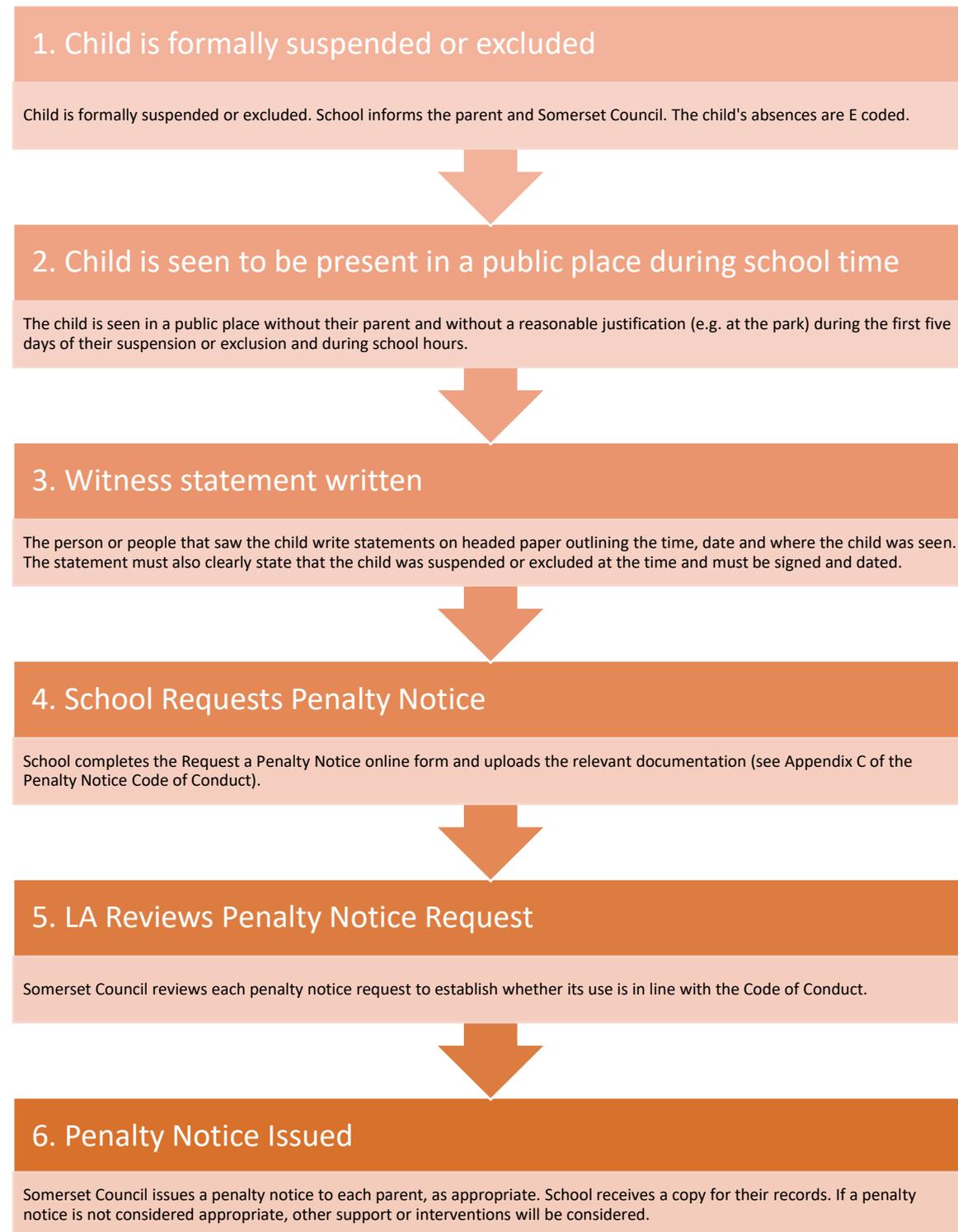
If a penalty notice is withdrawn, the recipient of the notice and school will be informed in writing.

Withdrawn penalty notices do not count towards the [maximum number permitted](#) in a rolling three-year period.

Appendix A – Penalty Notice Flow Chart (Section 444)



Appendix B – Penalty Notice Flow Chart (Section 103)



Appendix C – Procedure for Requesting a Penalty Notice

Penalty notices must be requested using the [Request a Penalty Notice](#) form within three school weeks and include the relevant attachments.

Circumstance	Conditions	Information Required with the Request
<p>A child has 10 or more unauthorised term-time leave absences in a rolling 10 school week period.</p> <p>Section 444 of the Education Act 1996</p>	<p>10 or more unauthorised absences in a rolling 10 school week period that are G coded.</p> <p>The rolling 10 school week period can span more than one school term.</p>	<ul style="list-style-type: none"> ✓ The request for leave (if made) ✓ Letter from school advising that leave would/has not been authorised ✓ The child's Registration Certificate showing the unauthorised absences as G codes ✓ Any additional evidence that might support a decision to issue a Penalty Notice
<p>A child has 10 or more unauthorised absences in a rolling 10 school week period.</p> <p>Section 444 of the Education Act 1996</p>	<p>10 or more unauthorised absences in a rolling 10 school week period.</p> <p>Support has been offered and a Notice to Improve has been issued:</p> <ul style="list-style-type: none"> ✓ appropriate support has been offered in line with the child's needs, ✓ the school has issued a Notice to Improve, ✓ attendance has not improved, ✓ a penalty notice will not compromise any support already in place. <p>The rolling 10 school week period can span more than one school term.</p>	<ul style="list-style-type: none"> ✓ Evidence outlining the how the school has supported the child or their family to improve attendance, including: attendance concern letters and an attendance agreement ✓ The child's Registration Certificate showing at least 10 unauthorised absences in the 10-week period ✓ A copy of the Notice to Improve issued during the rolling 10 school week period
<p>A child has been present in a public place during school hours while suspended or excluded without reasonable justification.</p> <p>Section 103 of the Education and Inspections Act 2006</p>	<p>A child is seen to have been in a public place without reasonable justification during a time when they are suspended or excluded from school:</p> <ul style="list-style-type: none"> ✓ the child was formally suspended or excluded at the time ✓ the child was seen during normal school hours ✓ when seen, the child did not seem to be in public for any justifiable reason (e.g. attending a medial appointment). <p>For the purposes of this legislation, the school is not considered to be a public place.</p>	<ul style="list-style-type: none"> ✓ A signed statement on headed paper outlining: who has written the statement and their relationship to the child, the date, time and location the child was seen to be in public, what they appeared to be doing, that the child was suspended or excluded at the time they were seen ✓ The formal suspension or exclusion letter ✓ The child's Registration Certificate showing relevant suspension or exclusion (E codes) ✓ Any additional evidence that might support a decision to issue a penalty notice