



ST. PETER'S
Anglican Primary School

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Family Law Guide for Schools and their Staff



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VERSION CONTROL/CHANGE HISTORY

Version	Change	Author	Date
1.0	Creation of Policy	B Gorman	Feb 2014
2.0	Review and updated	Executive	March 2015

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"The School's policies, which are made from time to time, are made pursuant to the registration requirements set out in section 47 of the NSW Education Act and the Board of Studies, Teaching and Educational Standards."

Intended Use

This document is a guide which aims to summarise and explain the key concepts which commonly arise in family law matters encountered by schools. The document explains the general objects of the current legislation, common terms and frequently asked questions. The document is intended for school heads and their staff who would encounter these matters in their work at the school.



The Family Law Amendment (shared parental responsibility) Act 2006

Significant changes to Family Law were effected by the *Family Law Reform Act 1995* and later again in the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. It is hoped that this document will help you become more familiar with these changes and will suggest how you and your staff might best respond to the many difficult situations that could arise.

The Chief Features of the Legislation

- Introduce a new presumption of equal shared parental responsibility in raising children. The presumption means that both parents have an equal role in making decisions about major long term issues for the child.
- Its object is to ensure that parents meet all their responsibilities concerning the care, welfare, and development of their children.
- A basic principle is that, the best interests of the child are the paramount consideration in making decisions. Except where it would be not in a child's best interests, children have the right to know and be cared for by both their parents, this including the right to have regular contact with them.
- A basic premise is that parents should share duties and responsibilities for the care, welfare, and development of their children, and that they should agree about their future parenting.
- Whether or not a court order has been made, each parent has a parental responsibility and therefore the right to participate in decisions affecting the child.
- Where a parenting order provides the parents with equal shared parental responsibility, the court must consider making an order that a child spend equal time with each parent where it is reasonably practicable and in the best interests of the child.

Terminology

- Familiar terms like *residence orders*, *contact orders*, and *specific issues orders* have been replaced with references to whom the child lives with, spends time with and communicates with. These changes focus the court and the parties on parenting as the central issue and not 'ownership' of the child.
- A *contact order* allows a given person to have contact with the child(ren) named in the order. (This has replaced the term *access*).
- An *interim order*, generally given in urgent circumstances, remains in force until a final order is made.
- An *injunction* usually restricts the interaction between parents but can also restrict the interaction between the parent and the child.



- A *location order* requires a person to provide the court with the address of the person named in the order.
- A *parenting order* deals with any aspects of parental responsibility – most commonly, contact, residence, and maintenance.
- A *recovery order* requires a person to return the child to the person named in the order.
- A *residence order* determines with whom the child is to live. (Such an order, coupled with parental responsibility for the day-to-day care of the child, constitutes what used to be termed *custody*.)
- A *specific issues order* deals with any aspect of parental responsibility other than contact, residence, and maintenance.
- A *parenting plan* is a written agreement between the parents dealing with any aspect of parental responsibility.
- *Parental responsibility* refers to all the duties, powers, and responsibilities that by law parents have in relation to their children. (Responsibility for the long-term care of the child used to be called *guardianship*).

Other Terminology

- *Restraining Orders* is the term often used for apprehended violence orders or domestic violence orders under the provisions of the Crimes Act. These can prevent one parent from contacting the other parent or the child, and may prevent any approach to the child's school or other place where the child or other parent is likely to be. Unlike family law orders, restraining orders carry the possibility of criminal sanctions. If police become aware that a restraining order has been breached, they may arrest the offender without the need for a warrant.
- Both good behaviour bonds and bail conditions can impose conditions similar to those available under apprehended violence legislation.

What do I do if a Parent with Whom the Child Is Not Living Seeks Information (Reports, For Example) About the Child's Progress?

- Unless there is a court order to the contrary, each parent has equal rights.
- If the parents have separated, reports should, of course, be forwarded to the one with whom the child is living. The school may also, if it wishes, send copies to the other parent, and, if it has done so and if the parent requests copies, the request should be complied with. You should ensure that any copy sent to the non-residence parent does not include address detail.



- If a court order gives sole control of educational matters to Parent A or denies Parent B responsibility for long term care, Parent B is not entitled to any information from the school about the child's education.
- What has been said about reports applies equally to photographs, any other documentation, and access to teachers.
- If someone other than a parent (a grandparent, perhaps) should seek access to school documents, you should use your own discretion based on what you know of the relationships involved and the attitude of the child. The same is true if a non-residence parent or some other person seeks to use the school as a means of delivering a letter or present or birthday card to the child.

What Should I do if a Non-Residence Parent Wants to Attend Some School Activity?

- Unless a specific court order to the contrary has been made, both parents may attend such activities. However, if you are aware that having both parents at the same activity is likely to lead to unpleasant confrontation and dispute, then, for the sake of the child and the activity itself, you may wish to persuade the parents to arrive at some compromise position whereby, though both attend, they won't be thrown together.
- If there is a court order that prohibits one parent from contact with the child, you must seek to ensure that that parent does not participate in any activity where the child will be present.

What Should I do if a Parent Sets Out Deliberately to Breach a Court Order by Attending a School Function?

- In the first instance, you should try to persuade the parent to back off.
- If the parent cannot be persuaded to leave the school, you have no option but to threaten that police will be called – and to call them if necessary. On no account should you or any member of staff try to physically bar or eject a parent.

How Should I Act if it appears that a Parent is seeking the Breach Restraining Orders?

- If the parent is seeking help in locating the child (or the other parent), no information should be given without the express approval of the other parent.
- If you become aware that a restraining order has been breached, you should certainly contact the police as well.

Can a Parent Demand That a Child's Surname be Changed on School Records?

- Provided that it is not for any fraudulent purpose, a person can be known by any name he/she wishes. However, if the child is already enrolled under the name shown on the birth certificate, records can be changed to another name if any one of the following conditions applies:



- a. both parents sign their assent;
 - b. a court order gives their assent;
 - c. the resident parent provides a statutory declaration to the effect that the child has had no contact with the other parent for five years and that that parent's whereabouts are unknown;
 - d. there is no proof of adoption.
- If a legitimate change has been affected and later the other parent expresses concern that the name has been changed, you should explain that any further change can be made only if there is a court order or an agreement signed by both parents.

How Should I Respond to a Request For Information About the Whereabouts of a Child Who is or was Enrolled at my School?

- Unless the identity of the caller is absolutely verified, no information whatever should be given over the phone.
- If an enquiry is made in person or in writing, the first thing to do is to establish the identity of the person making the request.
- Address details can be safely given to
 - a. the police, if they are conducting criminal investigations or seeking to execute a warrant or recovery order;
 - b. the Department of Community Services, if the address seems essential to their investigations concerning the child's welfare;
 - c. the court in response to a location order issued by the Family Court.
- You should refuse to give information to anyone else (including, for example, the parent who does not have responsibility for the child, or a solicitor or private inquiry agent) unless that person can produce an authority signed by the parent named in a parenting order or a residence order as being the one responsible for the care of the child.

What Should I do if I or One of my Staff is Requested to Provide a Written Statement or Affidavit Concerning the Child's Academic Progress, Behaviour, and Appearance at School?

- The request may come from someone independently representing a child in Family Court proceedings. If so, it should be remembered that the best interests of the child are always the court's first concern and therefore a high level of cooperation would seem desirable. However, comments should be restricted to those that can be made from your direct, personal observation.
- The request may come from a parent or a solicitor acting for a parent. If so, it is matter in which you or the teacher concerned should use your own discretion. You cannot be forced to provide a written statement; and, although you may well be told that the provision of such a statement will obviate any need for you to appear in court, no-one can guarantee that this will be so.



Can a Person be forced Against His/Her Will to Appear in Court Proceedings?

- The short answer is yes. The person seeking information may issue a subpoena attendance.
- If anyone has to give evidence in an official capacity, that person will be regarded as being on duty while in attendance at the court. The party issuing the subpoena may be asked to pay the cost of any casual relief necessary to “cover” the absent person. However, non-payment of such costs cannot be taken as a reliable reason not to attend in accordance with subpoena.

What Should I do if the Police call at the School in Order to Remove a Child?

- First, you should read carefully the official papers that the police will bring – the warrant or recovery order – check the details referring to the child.
- If everything appears to be in order (as it almost certainly will be), you should assist the police in whatever way seems appropriate – either by allowing them to remove the child or, if the child is not at the school, telling the police where he/she is.
- Though you will, of course, act with sensitivity so far as the child and the other students are concerned, you must provide assistance to the police irrespective of any objections that the child may make.

What are the Common Questions that need to be asked if there is a Family Break-Up?

- Q. How do I establish such matters as parentage and parental responsibility, where the child will be living, and with whom the child may have contact?
- A. *A birth certificate will establish parentage. A court order will establish the rest.*
- Q. Do letters from solicitors have any legal standing so far as the matters raised in Q1 are concerned?
- A. *No.*
- Q. Can an old Family Court be relied on?
- A. *Unless you know of a later one, it is all you can rely on. If a parent gives you details of a newer court order but does not produce a copy, you should explain that you will have to rely on the old order unless you can be provided with a stamped copy of the new one.*
- Q. Is it only natural parents who are granted parental responsibility, residence, and so on?
- A. *No. Occasionally other relatives (a grandparent, say, or an older sibling) may be granted such rights.*



- Q. If an order allows contact with the non-residence parent, should that contact be allowed while the child is in school?
- A. *This is a matter for your discretion but, generally speaking, contact is better arranged during one of the breaks or after school. It is advisable that you tell the residence-parent what has been arranged.*
- Q. How should I respond if a non-residence parent with either no contact or only limited contact seeks to work in a voluntary capacity at the school?
- A. *You should be wary. If the voluntary work would be likely to breach any contact order made by the court, the request must be denied. The same is true if it seems likely that the presence in the school of the non-residence parent would lead to confrontation of some kind. However, if the voluntary work will not necessarily breach any contact order, and if the residence-parent is agreeable, then the non-residence parent's request can be accommodated.*
- Q. If there is a shared – residence arrangement in place, which parents signs absentee/permission notes and receives reports/notices from the school?
- A. *The parent with whom the child lives during the week.*
- Q. If there are no court orders in place but I know that the family has broken up and that the child lives with one parent as the other parent is an alcoholic or given to violence, can I refuse the latter contact with the child or access to information from a teacher?
- A. *No, but contact with the child should only be with the child's consent.*
- Q. If the alcoholic or violent parent seeks to remove the child from the school, can I stop this?
- A. *No, not unless there is a court order. The best you can do is to notify the other parent in the hope that any dispute will be resolved away from the school.*
- Q. If there alcoholic or violent parent comes to the school to attend some public event – a sporting fixture, say, or a concert – and the other parent is distressed by this, should I seek to ask the alcoholic or violent parent to leave?
- A. *No, if that parent is not causing any trouble.*
- Q. If a parent who is seeking parenting orders wants to discuss the child's progress and behaviour, must I or my staff enter into such discussion?
- A. *You should treat this parent the same as you would treat any other parent.*
- Q. If a subpoena requires documents to be produced, must they be originals?
- A. *Usually, clear photocopies are acceptable but you should have this confirmed by the party who issued the subpoena. "Conduct money" (usually between \$20 and \$30) to cover the costs of assembling the documents should be made available by the party issuing the subpoena, but the subpoena must be complied with regardless of whether such money is forthcoming.*