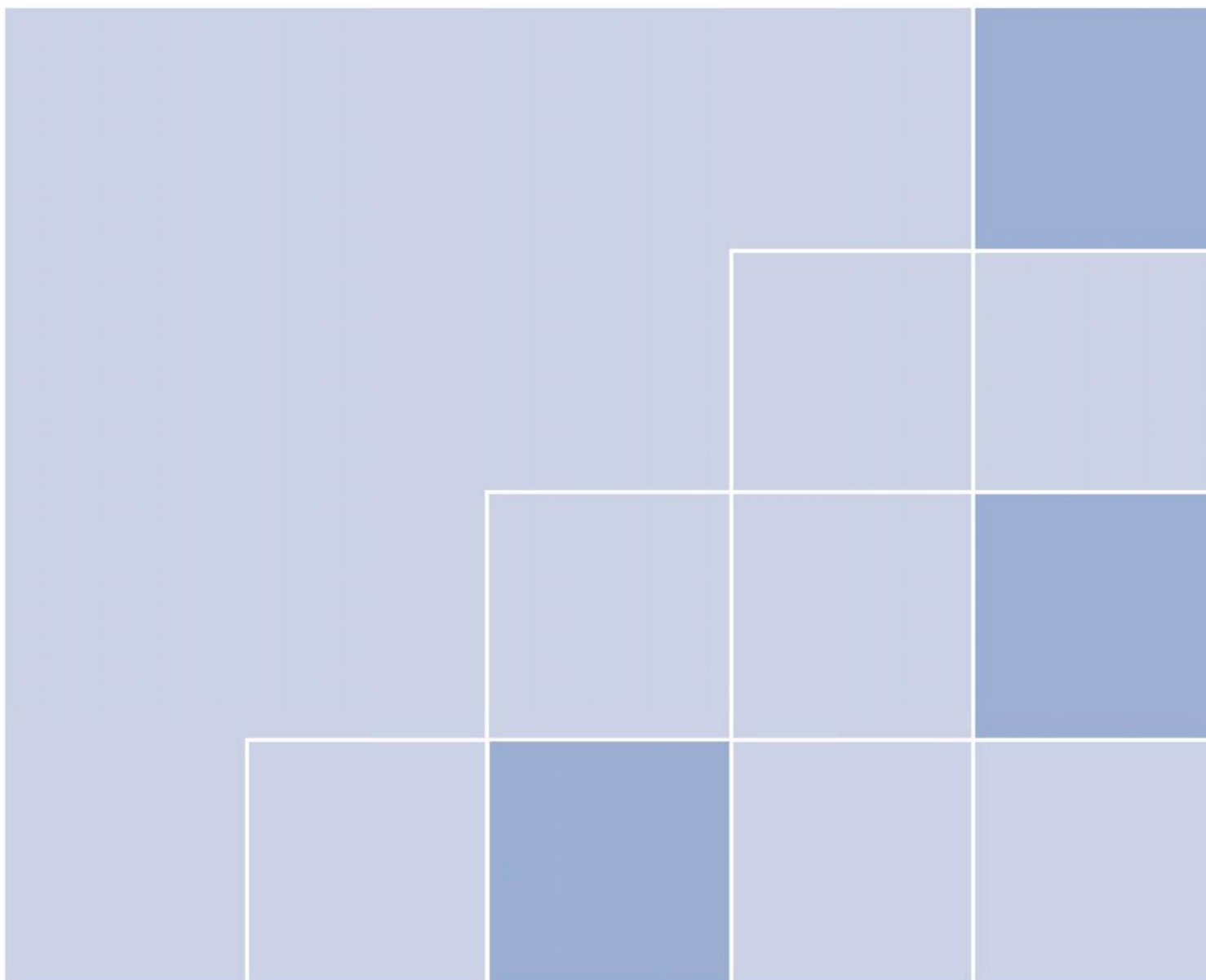


Dealing with Family Law Related Issues in Schools

Guidelines for school staff



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FAMILY LAW RELATED ISSUES IN SCHOOLS

Summary

These guidelines attempt to balance the rights and obligations of parents, children and schools under the *Education Act 2004* (ACT), the *Family Law Act 1975* (Cth) (FLA) and other legislation.

Key points emerging from the guidelines are as follows:

- Parents have a responsibility to provide schools with copies of any court orders that impact on the relationship between the family and the school.
- Where children are no longer living at home, the primary focus in decision-making, as far as schools are concerned, should be the continued educational needs of the child.
- Parental responsibility for some children may rest with the Director-General of the Community Services Directorate and advice in relation to issues affecting the child may need to be sought from the Office for Children, Youth and Family Services (OCYFS) in that Directorate.
- Where the views of a student are in conflict with those of his or her parents, decisions made should be based primarily on what is considered to be the best educational interests of the student.
- In the absence of any specific court orders, generally either parent has the capacity to enrol their children in school.
- Except in specifically defined circumstances, which are outlined in these guidelines, it is mandated that a student must be enrolled using the name that appears on his or her birth certificate.
- In the absence of specific court orders, each parent is entitled to:
 - know where their child is enrolled
 - participate in school related activities
 - have access to documentation relating to his or her child, subject to the provisions of privacy legislation and relevant Directorate policies and guidelines.
- In relation to children who live with one parent only, the guidelines distinguish between contact with a child in accordance with a “spends time with” order and incidental contact that arises as a result of a parent being present on a school site.
- Except in specifically defined circumstances, permission will not be given to parents or other people to remove students during the course of the school day.
- Persons other than parents (e.g. grandparents) may seek to play a role in the education of children but such participation is always subject to parental approval.
- These guidelines alert staff to the possible impact of domestic violence and protection orders (restraining orders) and the need to be careful when dealing with families subject to such orders.
- Staff should not place themselves in positions of danger when trying to resolve any problems that may arise, but rather should contact the police if necessary.
- Advice is provided on issues to be aware of when staff are requested to provide written statements or give evidence on behalf of families involved in family law related legal proceedings.

Illustrative examples based on cases that may be encountered by schools are included in the guidelines for assistance.

If staff require assistance with a family law related issue in their school, they should contact the Governance and Legal Liaison section on telephone 6205 0720 or 6205 9159, fax 6205 9453 or email det.legal.liaison@act.gov.au.

1. Abstract

- 1.1 This document sets out guidelines for dealing with family law related issues which impact on the operation of ACT public schools.

2. Applicability

- 2.1 These guidelines apply to all ACT public schools and any school related educational institutions or services established by the Minister under section 20 of the *Education Act 2004* (ACT) (**Education Act**).
- 2.2 Throughout these guidelines, the term “parent” includes carers and those with parental responsibility as defined in section 6 of the Education Act. For the purposes of these guidelines, a person can be considered to have the parental responsibility (custody) or care of a child even if there is no formal court order to that effect.

3. Related Documents

- 3.1 These guidelines support the [Family Law Policy](#).

4. Context

- 4.1 One of the primary objects of the *Family Law Act 1975* (Cth) (**FLA or Family Law Act**) is to ensure that children receive adequate and proper parenting to help them achieve their full potential.
- 4.2 In relation to parents, the legislation is directed to ensuring that they fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children. Parents share these duties. The legislation further anticipates that parents should agree about the future parenting of their children.
- 4.3 Subject to any court orders to the contrary, each parent has parental responsibility towards their children, which includes having the opportunity to participate in decisions that affect them.
- 4.4 In relation to children, the FLA indicates they have the right to know, and be cared for by both their parents regardless of whether their parents are married, separated, have never married or have never lived together. Generally, children have a right to spend time with and communicate with both their parents and with other people significant to their care, welfare and development on a regular basis. Court orders will outline arrangements that the court believes are in the best interests of the child.
- 4.5 It is important to note that the FLA is drafted in terms which indicate children have certain **rights** whereas the position of parents is couched in terms of **duties** and **responsibilities**.
- 4.6 Family relationships can also be subject to orders made under the provisions of the *Children and Young People Act 2008* (ACT) (CYPA). Such orders often mandate that the Director-General of the Community Services Directorate (CSD) undertake a supervisory role in respect of the welfare of any children.
- 4.7 Such orders may also refer to parental responsibility, residence, contact and specific issues for a child or young person. Orders such as enduring parental responsibility orders

are different in that a third person, usually a carer, will have all the responsibilities, to the exclusion of the Director-General of CSD. In such instances, the parents' role remains but the carer has the final decision making responsibilities.

- 4.8 Staff need to be alert to these circumstances to ensure the safety and well being of any child who is subject to the orders.

5. Policy Statement

- 5.1 The Education and Training Directorate (the Directorate) has an obligation, as far as practicable, to ensure that every child attending an ACT public school is provided with an opportunity to achieve his or her educational potential. In meeting this obligation, the Directorate relies to a significant degree on the cooperation and assistance of parents.
- 5.2 Integral to the cooperation between schools and parents is an expectation by the Directorate that if family breakdown does occur, parents reach agreement regarding those issues which are likely to have an impact on the school. In the event agreement cannot be reached, it is expected that parents will expeditiously take steps to obtain court orders relating to issues impacting on the school and provide to the school a copy of any orders obtained.
- 5.3 In meeting its obligations to students and parents the Directorate, while committed to the underlying philosophy of the Education Act, takes into account the following principles:
- everyone involved in the education of children of school age in the ACT is to apply the principle that every child has a right to receive a high-quality education (section 7(1) of the Education Act)
 - school principals should make decisions based primarily on what they consider to be in the best educational interests of the child
 - where parents cannot agree on what is in the child's best interests, it is the role of the court, not the school, to determine those interests
 - the school is not the appropriate place for family disputes to be resolved nor is it appropriate for school staff to resolve such issues
 - decisions should be made in an unbiased manner and as far as reasonably practicable, without favour to either parent
 - the obligations imposed by other legislation, such as the *Information Privacy Act 2014* (ACT) (**Information Privacy Act**) and child protection legislation (CYPA), as well as relevant policies, also need to be considered when dealing with family law related issues
 - where doubt arises in resolving any issues, the educational interests, safety and welfare of the child are to be the paramount considerations
 - decisions should be made on the basis of ensuring, as far as possible, the continued effective and efficient operation of the school.
- 5.4 **Principals should remind parents on a regular basis of the need to advise the school immediately of any change in family circumstances that may impact on the relationship between the family and the school.** Appendix 1 is an information sheet that can be provided to all parents upon enrolment which summarises the policy and makes clear the Directorate's position and what it expects from parents. Appendix 2 is an abridged version of the information sheet that can be utilised on an on-going basis in documents such as school newsletters and/or handbooks.

6. Definitions of Commonly Used Terms

- **“Access”** was replaced by “contact” after June 1996.
- **“Child”** for the purposes of the FLA, means a person under the age of 18 years.
- **“Components of parenting”** – is terminology introduced from 1 July 2006 which relates to matters previously addressed by *specific issues orders* (see below).
- **“Contact”** means contact that one or both parents or other specified people have with the child, including in accordance with a contact order. Contact includes spending time with the child, as well as communicating with the child. The word “communicate” is given a wide meaning and includes telephone calls, letters, email and other forms of electronic communication.
- **“Contact order”** is a court order made in favour of a person that allows that person to have contact with the children named in the order in accordance with the terms and any conditions of the order.
- **“Custody”** has the same meaning as a residence order coupled with parental responsibility for the day-to-day care of the child. (“Custody” is an old term used by the courts prior to June 1996.)
- **“Guardianship”** has the same meaning as parental responsibility for the long term care of the child. (It is an old term used by courts prior to June 1996.)
- **“Interim order”** is a temporary order made by a court, sometimes in urgent circumstances. It remains in force until the court makes a further or final order in respect of the matter, or if a date is specified in the interim order, until that date.
- **“Injunction”** is an order regulating the behaviour of a person and can be directed to various aspects of the family relationship. Usually injunctions restrict the interaction one parent may have with another but they may also restrict interaction with a child.
- **“Location order”** is an order made by a court requiring a person named in the order to provide information to the registrar of the court concerning the address of persons named in the order.
- **“Major long term issue”** is a term inserted into the FLA from 1 July 2006. While not exclusive, it refers to matters such as education (both current and future), including apprenticeships and vocational training, religious and cultural upbringing, the child’s health (not including day to day issues), the child’s name and any changes to the living arrangements that make it significantly more difficult to live with one parent. Both parents must be involved in any decisions concerning major long-term issues unless a court order specifies otherwise.
- **“Out of home care”** means children and young people who are in the care of the Director-General of CSD who have been placed in kinship care, foster care or residential care.
- **“Parent”** includes all people who have parental responsibility for a child.
- **“Parental responsibility”** in relation to a child means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children. Parental responsibility for child protection matters may be granted to the Director-

General of CSD or other persons.

- **“Parenting order”** is an order made by the court dealing with the issues of contact, residence, maintenance, or any other aspect of parental responsibility. Parenting orders can cover any or all of the following:
 - (a) Orders about parental responsibility and decision-making – in the absence of orders both parents have joint parental responsibility with each parent able to make decisions on day-to-day issues while the child is in their care. Some orders may separate certain elements of parental responsibility, for example, one parent may be responsible for religious education.
 - (b) Orders about whom the child is to live with – both parents (and other adults with parental responsibility) may have orders that the child is to live with them at different times.
 - (c) Orders about whom the child will spend time with or communicate with – these orders often deal with the frequency and type of communication that a child will have with a parent they do not live with. However, these orders can also include a child’s communication with other people such as grandparents.
 - (d) Orders about child maintenance – these are rare under the FLA as the maintenance arrangements for most children are now dealt with by the Child Support Scheme.
 - **“Parenting plan”** means an agreement in writing between the parents of a child that deals with issues of where a child lives, who a child spends time with or any other aspect of parental responsibility.
 - **“Recovery order”** is an order made by the court requiring a person to deliver a child to a person or persons named in the order.
 - **“Residence order”** is an order made by the court that directs with whom a child is to live from time to time. A residence order does not confer any other duties, obligations or responsibilities upon the parent or other persons with whom the child lives. Since 1 July 2006, any orders made by the court indicate who the child will “live with” rather than the “residence” of the child.
 - **“Specific issues order”** is an order made by the court dealing with any aspect of parental responsibility for a child other than contact, residence or maintenance. From 1 July 2006 these aspects of parental responsibility are known as the components of parenting.
- 6.1 In order to avoid any confusion when dealing with families subject to family or marital breakdown, principals should request that a copy of any court orders be provided, including a copy of any orders varying earlier orders that may have been previously provided to the school. Parents should be advised that the orders will only be used by the school to ensure the educational and welfare interests of the student are properly addressed.
- 6.2 Generally, it is for individual principals to determine where copies of court orders are kept and who has access to them. The collection, use, storage and disclosure of such orders must be in accordance with the *Information Privacy Act*.
- 6.3 As a minimum, a copy of any orders received should be retained with the student record and be included in any information forwarded to another ACT public school when a student changes schools. It is also important that relevant staff who may have occasion to perform the role of acting principal in the absence of the principal are also aware of and able to

access copies of the orders. Principals must also consider whether it is appropriate for any other staff that have supervision responsibilities to be made aware of the provisions of any orders.

7. General Issues Relating to Children

- 7.1 The FLA provides that parents retain parental responsibility for their children up until the age of 18 years. Persons under the age of 18 are generally referred to as children, though some specific Acts may also refer to young persons – for example, the CYPA defines a “child” as being someone under the age of 12 and a “young person” as someone who is 12 years or older but not yet an adult.
- 7.2 While parents retain parental responsibility for their children up to the age of 18, it is generally accepted that as children become older and more mature, they are more capable of making their own decisions about a wide range of issues. In relation to family law related issues, the views of the child, particularly an older child, are generally taken into account by courts when determining issues affecting their relationships with their parents.
- 7.3 There is no specific law about when the views of a child might take precedence over those of a parent or both parents. A number of factors need to be considered including the issue being determined, the age and maturity of the child and what, objectively, is in the best interests of the child.
- 7.4 Sometimes students under the age of 18 leave home and seek to live independently of their parents. This may occur with or without the permission of the parents. The students may arrange to live with the families of friends, older siblings, other relatives or in hostel type accommodation. While keen to continue with their school studies, they may indicate they do not want their parents to be informed about any issues arising from school.
- 7.5 Though this situation involves sensitive issues, the primary focus of the school should be the continued education of the particular student. In this regard, the principal should endeavour to obtain from the student involved the details of an adult who can be a point of contact for the school in relation to issues such as permission notes, emergency contact etc. If the student in question is not able to provide details of an adult, a note of this should be made and any further dealings regarding school activities can be undertaken directly with the student.
- 7.6 Principals should always have regard to age and maturity when determining what action needs to be taken in respect of students who indicate they intend to live independently of their parents. Principals should consider whether it is appropriate to arrange for assistance for the student in resolving any on-going difficulties the student may be experiencing with the parents, for example, by referring them to the school counsellor or other support bodies.
- 7.7 It may also be necessary to give consideration to making a report to the Office for Children, Youth and Family Support in accordance with relevant child protection legislation and policy guidelines if the principal or other staff member has reason to suspect that the student is at risk of harm. Under section 356 of the CYPA a teacher must make a report if they reasonably suspect that a child or young person has suffered or is suffering sexual abuse or non-accidental physical injury. Voluntary reports may also be made where a

person believes or suspects that a child or young person is in need of care and protection.

- 7.8 Principals may be faced with situations where the views of the student are in conflict with their parents. While it is important that principals take into account the views of the student where appropriate, at all times any decision made must be one that the principal believes is in the best educational interests of the child. For additional information, refer also to the Directorate's [Access to Student Records](#) policy, [Access to Student Records Procedures](#), [Access to Student Records – Guidelines for Staff](#) and School Legal Information Manual topic [Independent Students](#).
- 7.9 In cases where the Director-General, CSD, has either sole parental responsibility over a child or parental responsibility for educational issues, decisions in respect of any educational issues, including the provision of information, may be directed to Care and Protection Services, CSD.

8. Enrolment

- 8.1 Enrolment in a school is regarded as a major long-term issue. In the absence of any court orders to the contrary, any decision about enrolment must be made jointly by both parents. A school's decision should, subject to the *Education Act 2004* and Directorate policy, accord with the parents' decision. There is no requirement however for school staff to independently establish that any decision to enrol in a particular school has been made jointly by the parents.
- 8.2 Sometimes parents cannot agree about the school at which their child is to be first enrolled. The Directorate's primary focus is to ensure that all children of compulsory age are either enrolled in and attending school or are registered for and receiving home schooling. In circumstances where parents are in disagreement, the child is to be enrolled in the school chosen by the parent with whom the child is then living.
- 8.3 On occasion, a parent will attempt to enrol a child where the child is already enrolled in another school, either in the ACT or interstate. This situation can arise when families break up and one parent moves to a new location. Sometimes the other parent does not agree that the enrolment should take place. This can be in circumstances where the child may have been living with the non-enrolling parent or there are other court orders indicating that they have responsibilities in relation to the child.
- 8.4 If principals are unaware of any dispute between parents regarding enrolment, action should proceed to accept the enrolment in accordance with relevant policy requirements.
- Enrolment should also occur in situations where the principal is aware of a dispute and the child is not already enrolled in a school.
- 8.5 If it is known that a dispute does exist between the parents and the child is already enrolled in a school, principals may allow the child to continue to attend school pending resolution of the dispute which should be resolved either by agreement or by court order.
- 8.6 Any action taken by principals in relation to a dispute regarding enrolment should at all times be based on an approach that is directed to the best and continued educational interests of the child.
- 8.7 In relation to children for whom the Director-General, CSD, has responsibility for

educational issues, normally it would be expected that an officer from the Office for Children, Youth and Family Support (OCYFS) and/or the carer or person representing the designated agency providing care be in attendance at the time of enrolment. It is the responsibility of OCYFS or the designated agency to inform the principal of the aspects of any relevant Children's Court order as well as the name, address and contact details of persons authorised as signatory for medical treatment, excursions, etc.

Case study 1

A mother arrives at a school seeking to enrol her child. She indicates she has recently separated from her husband. There are no court orders in place. She is unaware of her husband's view on enrolment at the school but believes there is a good chance he will object. The child has not previously been enrolled in a school.

In this situation, the enrolment should proceed and the parent advised that in the best interests of her child, she should obtain agreement from her husband about child related issues or seek court orders.

Case study 2

A mother seeks to enrol her child in school. There is a court order indicating that the child lives with her and she lives in the school's priority enrolment area. She advises the school that the child was previously enrolled at a non-government school but this has now ended. The father of the child contacts the school and advises that the child is not to be enrolled because he does not consent to the enrolment at the ACT public school. He asserts that the child is still enrolled at the non-government school and is adamant that the enrolment should not proceed.

Confirm with both parents that there are no specific issues orders made by the court regarding the type of school that the child should attend and that the enrolment at the non- government school has come to an end. If there are no such specific issues orders, the enrolment should proceed and the parents advised that they should make their own decisions about whether to seek an order from the court in relation to which school the child should be enrolled.

9. Name used for Enrolment and Name Changing

- 9.1 Provided it is not for a fraudulent or improper purpose, a person over the age of 18 can be known by any name they wish and the exclusive use of the new name is all that is required to effect the change. Subject to meeting certain requirements imposed by the Registrar of Births, Deaths and Marriages, people over the age of 18 can also change the name that is recorded on their birth certificate and have a new certificate issued in their new name.
- 9.2 Children and young people under the age of 18 cannot, of their own volition, change their name either by common usage or by amendment of their birth certificate. Generally both parents and the child need to consent to any proposed change of name. If parents have separated, one parent cannot change a child's name irrespective of the fact that the child may reside with that parent. If a child's parents cannot agree, ultimately a Court may have to settle the dispute.
- 9.3 Where a child is adopted, information about the child is recorded by the Registrar of Births, Deaths and Marriages. Birth certificates can subsequently be issued for adopted children, which will indicate their name following the adoption.
- 9.4 Generally, students under the age of 18 must be enrolled in and be known by the name

which appears on their birth certificate, except:

- if a birth certificate cannot be produced because a child was born outside Australia, enrolment should be in the name indicated in a passport, immigration papers or other documentation which indicates the name the child was first known by after birth.
- if the enrolling parent says that a birth certificate, passport or immigration papers or other documentation cannot be produced, enrolment should be in the name indicated in a statutory declaration as to the name the child was first known by after birth.
- if the enrolling parent says that a birth certificate is not currently available, but will be available in the future, the child can be enrolled under the name that the enrolling parent says will appear on the birth certificate on the understanding that the parent will provide a copy of the certificate, as soon as practicable. The parent should be advised that if a birth certificate is subsequently provided (by either parent) indicating a different name to that advised to the school, the school's records will be changed accordingly. Parents should be given a reasonable time (say 2 weeks) to produce the birth certificate.

9.5 The name by which a child is known is regarded as a major long-term issue (*refer to definition on page 7*) to be determined, in the absence of any court order, by both parents. **Enrolment can occur in an alternate name or changes can be made to existing records** to indicate a different name to that appearing on the birth certificate or other relevant enrolment documentation **only if one of the following conditions apply:**

- a signed consent from both parents indicating approval to use the new name is provided.
- a court order is provided authorising the use of the new name.
- a statutory declaration is provided by one parent indicating that the child has had no recent contact with the other parent **and** the other parent's whereabouts is unknown. While there is no specific legal requirement regarding a non-contact period, it is considered appropriate, and in keeping with established practice, to define "no recent contact" as meaning no contact for at least five years.
- a signed consent from one parent **and** proof that the other parent is deceased. This can take the form of a statutory declaration by the enrolling parent or a death certificate.
- a birth certificate has been issued in the new name.
- proof of adoption authorising the new name is provided.
- evidence is provided that the parent and/or child are subject to witness protection or some other similar scheme designed to ensure their safety and the use of the new name for the child is necessary to maintain the safety and well being of the parent and/or child.
- where the child is in the care of the Director-General of CSD, the consent of the Director-General must also be sought.

9.6 If a change of name for a student is effected on the basis of one of the above conditions being met and a parent objects to the change or a parent or other person requests a further change, the parent or other person should be advised that any further change will only be made if one of the conditions in paragraph 9.5 is met.

9.7 There will be some students who are currently known by names other than those which appear on their birth certificates as a result of action taken in accordance with previous

Directorate guidelines. Students should continue to be enrolled and be known by these names. It is also recognised the taking of action under previous policies may occasionally result in situations where siblings at the same school have different surnames. If a parent indicates they are not happy with either of these situations, he or she should be advised that it is their responsibility to take appropriate action that will allow a change of name to occur – i.e. obtaining a court order or otherwise satisfying the conditions of paragraph 9.5.

- 9.8 A child's first name, like his or her surname, is regarded as a major long-term issue. It is not unusual however for children to use alternative first names or nicknames at school. It is neither unlawful nor unusual for school staff to refer to children by those alternative first names even though all official documentation at the school and issued by the school may be in the name recorded on the birth certificate. Care should be taken to ensure the child consents to the use of a nickname and that it is not likely to be offensive.
- 9.9 Whether or not an alternative first name is used by school staff when addressing individual students is a decision to be made by the staff based on the circumstances of specific cases. Of paramount importance is the welfare of the child and the practicalities associated with maintaining a safe, secure and happy school environment for both staff and students. Factors that would be taken into account when determining if staff should refer to students by an alternative first name include:
- the views of the student
 - the views of both parents
 - the name used by fellow students when interacting with the child concerned
 - the potential problems arising from using a name to which the child may not or will not respond
 - what is in the best educational interests of the child?

Consideration regarding the use of first names may also involve obtaining the views of the Director-General of CSD if the child is in the care of the Director-General of that Directorate.

- 9.10 If a parent is unhappy with issues concerning the name used for his or her children at school he or she should be advised that, in the absence of any agreement with the other parent, redress through the courts should be sought.

10. Advising parents and other people that children are enrolled in a particular school

- 10.1 Principals may be requested to provide confirmation that a child is enrolled in a particular school. The requests may also seek details of private addresses and or contact telephone numbers. The requests can come from a number of sources including parents, other family members, solicitors, private investigators, police officers, OCYFS or under a court order.
- 10.2 Unless a school is aware there are court orders that deny a particular parent any parental responsibility for the child, generally a school can tell a parent that his or her child is enrolled in a particular school, as long as the school reasonably believes the person to be the parent. Under no circumstances should the address or contact details of a child or a parent be given to the other parent without the first-mentioned parent's consent. Details of any emergency contacts should also be withheld unless a school is satisfied those persons consent to their details being provided. Refer also to paragraph 11.6

- 10.3 Similarly, unless there are court orders that deny a particular parent any parental responsibility for the child, confirmation of enrolment can also be provided to a lawyer or private inquiry agent acting on behalf of that parent. However, a signed authority from the parent authorising the release of information to the lawyer or private investigator must be provided before confirmation is given. Address, contact details and emergency contact information must not be provided without appropriate consent.
- 10.4 If police are conducting criminal investigations and the information sought is essential for those investigations, the information can be provided. Similarly, requests for information should be provided to officers from OCYFS in CSD in response to a request for information under section 821 of the CYPA or where the release of such information is otherwise authorised, such as where the Director-General of CSD has parental responsibility for the child. Details must also be provided to agencies such as Centrelink upon receipt of any “Notice to Produce Information” or similar directive.

For further information, refer to [Privacy in the School Legal Information Manual](#) and contact Governance and Legal Liaison on 6205 0720 or 6205 9159 if there is any doubt on the obligation to provide information.

- 10.5 If served with a location order issued by the court, the details sought in the order must be provided in accordance with the terms of the order. Advice should be obtained from Governance and Legal Liaison, telephone 6205 0720 or 6205 9159.
- 10.6 Where a person asserts he or she is the parent of a child at the school, but is not known to school staff, then the principal is entitled to ask the person for proof of identification (such as a driver’s licence) **and** proof they are the parent (e.g. child’s birth certificate, court order) before releasing any information confirming the enrolment of the student. Special care needs to be applied in relation to telephone and email requests for information. For example, if a staff member receives a telephone or email request for information about a student and the staff member cannot be certain the person has parental responsibility for the child, they should not confirm any details about the child, including whether they are enrolled at the school. The person requesting the information should be advised no information can be provided and any request should be put in writing to the Governance and Legal Liaison section in the Directorate at the following address:

Manager
Governance and Legal Liaison
ACT Education & Training Directorate
GPO Box 158
CANBERRA ACT 2601

- 10.7 If principals are aware that a parent has obtained a protection order against the other parent, the release of any information confirming the enrolment of the children at a school should have regard to the nature of the order and the views of the parent in whose favour the order is made. If the child is specifically named as a protected person in the protection order, confirmation of enrolment must not be given.
- 10.8 While confirmation of enrolment can generally be provided to parents, there may be circumstances where it will not be in the child’s best interests for such information to be released. There may also be situations where older, more mature students object to such confirmation being provided to a parent. In these cases, principals should have regard to

their obligations under the *Information Privacy Act* and [Access to Student Records policy](#), [Access to Student Records Guidelines for Staff](#) and [Independent Students](#) prior to making a final determination about whether the confirmation of enrolment should be provided. In particular, they must consider the best interests of the child.

- 10.9 The provision of enrolment information to either parent of a child in care may not be appropriate for some children in the care of the Director-General of CSD. Advice should be sought from OCYFS.
- 10.10 Sometimes grandparents, siblings or other close relatives may contact schools seeking information about children who are enrolled. In the absence of consent from the residential parent or parents, such requests should be politely declined.
- 10.11 **If any doubt arises concerning the release of address or contact details, principals should contact Governance and Legal Liaison (telephone 6205 0720 or 6205 9159) for further advice.**

Case study 3

A father telephones a school wanting to know if his children are enrolled. The school records indicate that the children have recently transferred to another school. Court orders are in place, which indicate the children are to reside with the mother and that she has responsibility for the day-to-day care and control of the children. There is a contact order giving the children contact with the father.

Unless the staff member is satisfied as to the identity of the caller, no information of any kind should be provided. If his identity is established, the father can be advised of the school to which the children have transferred. Neither school should provide any address or other contact details.

Case study 4

A father comes to the school and wants to know if his child is enrolled at the school. Staff are aware that the parents have separated and that the mother has a protection order against the father. The mother has been subject to domestic violence in the past and the protection order has provisions which direct the father not to contact or otherwise interfere with the mother. There are no specific orders in relation to the child.

Provided the mother agrees, the father can be advised that the child is enrolled at the school. Contact details must not be provided. Care should be exercised when the father first approaches the school, to ensure the father is not inadvertently informed the child is enrolled, for example by the school indicating they will need to check with the mother.

Case study 5

A father telephones a school to find out if his child is enrolled. The mother has recently enrolled the child after separating from the father. There is a history of domestic violence and there is a protection order in place concerning both the mother and the child. The protection order indicates the father is not to have any contact with the mother or child except through a third party and is not to come within 50 metres of either the mother or child. The mother has indicated she fears for her and the child's safety if the father finds out where they are.

In view of the history of violence between the parents, the nature of the court orders, the fact the child is specifically named in the order and the expressed

fears of the mother, no confirmation of the enrolment should be provided without the express consent of the mother. The father could be asked to put his request in writing to Governance and Legal Liaison.

11. Parents picking up children after school or having contact/removing them during school hours (refer to section 6 regarding the meaning of “contact”).

- 11.1 As a general proposition, school is not the appropriate place for a parent to have contact under a court order with his or her child. Generally, such contact should occur outside of school hours and away from school premises. In the absence of any court orders, generally either parent has the capacity to pick up children during school hours (subject to the parents’ obligation that their children of compulsory school age receive an education) or at the end of the school day.
- 11.2 While schools are not normally places for contact visits, contact can be permitted subject to the following:
- the child does not object to seeing the parent
 - there are no court orders provided to the school which prevent the contact from occurring
 - the contact is to take place at a time which does not unduly interfere with the normal operation of the school
 - there are no genuine concerns for the safety or well being of the child, other students and/or staff
 - if considered necessary, the views of the other parent are sought.
- 11.3 Irrespective of the outcomes of any other enquiries made, if the child does not want to see the parent, contact should not be allowed to occur on the school premises.
- 11.4 Occasionally, a separated parent who has limited contact with his or her child will seek to have telephone contact, leave birthday cards, presents, letters or other material with the school so that it can be given to the child. As a general proposition, the school ought not to be used for such purposes (refer also to paragraph 14.1 regarding contact by other persons). **Any court orders should be checked to establish whether this issue is dealt with in the order.**
- 11.5 However, depending on the principal’s knowledge of the relationships and specific circumstances, the principal can use his or her discretion to, for example:
- deliver the material to the other parent at the end of the school day
 - if the child is considered to be mature enough to make his or her own decision, ascertain the child’s views on accepting the material and, if appropriate, provide the material to the child
 - provide the material to the child and ask that he or she take it home and give it to the other parent.
- 11.6 Principals need to exercise caution when dealing with a parent with whom the child does not live who arrives at the school during the course of the school day seeking to remove a child. As a general proposition, the parent should be told that the appropriate place for a child during school hours is at school and the parent should be told to come back at the end of the school day. Reference should always be made to any court orders on file to ascertain the nature of the relationship between the parent and the child. Depending on the nature of any court orders, it may also be appropriate to attempt to contact the other parent to ascertain his or her views on the request being made. Similarly, if no court

orders are in place, it may be appropriate to seek the views of the other parent prior to giving permission for the child to be removed. If the Director-General of CSD has responsibility for the child, OCYFS should be contacted for advice.

- 11.7 If, when the parent with whom the child does not live wants to take the child out of school:
- the parent not in attendance at the school objects to the request for removal being made or cannot be contacted, or
 - the child indicates he or she is not willing to leave with the parent at the school, or
 - the child becomes distressed when told that the parent is at the school seeking to take them away, or
 - the principal has reason to believe that the child's safety may be at risk if removed by the parent, the parent at the school should be advised that permission to remove the child will not be given. He or she should be encouraged to resolve the issue with the other parent away from the school site. He or she should be asked to leave the school site.
- 11.8 If the parent refuses to leave the school site or becomes agitated or aggressive in any way, he or she should be warned that failure to leave the premises may lead to police being called. If the parent continues to remain despite the warning, the police should be contacted.
- 11.8.1 Principals are automatically "authorised persons" with the authority to direct a person to leave the school premises for the purpose of section 147 of the Education Act. For further information, refer to the [Unwelcome Visitors to the School – Authorised Persons Handbook](#) (June 2005).
- 11.9 Sometimes issues arise in relation to picking up children after school. Such disputes may sometimes lead to confrontations between the parents at the school in front of other parents, students and staff. Parents should be advised that such confrontations are inappropriate at the school site and may lead to police being called.
- 11.10 One parent may have contact with his or her child over the weekend or for a number of days during the week. This contact may include a provision that the contact is to commence from the conclusion of the school day. Sometimes that parent will arrange for another person, such as a new partner or grandparent to pick up the child on their behalf and the other parent objects to the arrangements made.
- 11.11 It is inappropriate for school staff to become involved in resolving these types of disputes. In the absence of a court order precluding a particular person from contact with the child, principals need only satisfy themselves that the person in attendance at the school to pick up the child is authorised to do so by the parent who is permitted to collect the child. The parents should be advised of the need to resolve the issue between themselves prior to any confrontation occurring at the school site. If the principal has reason to believe that a confrontation will occur at the school, the parents should be advised about possible police involvement in the event any confrontation does occur.

Case study 6

A father arrives at the school and asks to see his child. The father has had limited contact with the school during the course of the child's enrolment. The school is not aware the family has separated or of any court orders in place affecting the family.

Provided the child does not object to seeing the father, the contact occurs at a time that does not unduly disrupt the school routine and/or is in accordance with any relevant school policy on parental contact during the school day, the father can be given the opportunity to see the child. If the child objects or the principal has grounds to believe the safety or well-being of the child is at risk, the father's request should be denied. The contact should also be arranged so that any potential embarrassment the child may experience is minimised.

Case study 7

The parents of a child have separated and court orders are in place allowing the father to spend time with the child on weekends and during school holidays. The father comes to the school and seeks to remove the child on the basis that the child is required to attend a medical examination. The principal is aware that some degree of animosity has existed between the parents though there is no suggestion the child has any problems being in her father's company.

The principal should attempt to contact the mother to obtain her approval for the action proposed by the father. If the mother cannot be contacted or does not agree that the child should be allowed to go, the father's request should be denied. Both parents should be advised that such disputes need to be resolved away from the school site.

Case study 8

A mother contacts the school and advises the principal she objects to her ex-husband's current partner picking up their child after school. The father usually has contact every weekend commencing 3pm Friday in accordance with a court order and it has been the usual practice for the child to be picked up by the father's partner as the father is at work. The mother advises that the contact order indicates the father is to pick up the child and that to prevent the partner from picking up the child, she intends to come to the school prior to the end of the school day in order to pick up the child. There is no suggestion the child does not want to go with the mother.

The principal should remind the mother of her obligations under the Education Act regarding her child's attendance at school and attempt to persuade the mother not to remove the child from school prior to the end of the school day. If, however, she insists on taking the child, the principal is not in a position to prevent this from occurring. In the absence of orders to the contrary, there is nothing to prevent the father from nominating his partner or any other person as being able to collect the child on his behalf.

Case study 9

A child is enrolled by his father in Kindergarten. Some weeks later, the mother arrives at the school during the course of the school day with her new partner seeking to take the child with her. The mother provides copies of court orders which indicate she has responsibility for the long term care, welfare and development of the child, that the father has contact at specified times and both parents have care responsibilities when the child is with them. The child informs the principal that though he loves his mother, he is afraid of his stepfather because he had hurt both him and his mother on previous occasions. The principal contacts the father who indicates the child is not to be released to the mother and that he will come immediately to the school. He confirms the orders presented by the mother are the current orders relating to their relationship. The mother insists on taking the child.

In view of the information provided by the child, the principal should not allow the mother to remove the child from the school even though the court orders are in

her favour. Both parties should be requested to resolve their differences away from the school site and if necessary, seek new court orders. The principal will also need to consider whether the information provided by the child requires further action in accordance with the CYP Act. Staff should consider their obligations under the CYP Act in terms of making a child protection report. For further information, refer to the Directorate's [Child Protection and Reporting Child Abuse and Neglect in ACT Public Schools](#) policy, [Child Protection and Reporting Child Abuse and Neglect – Guidelines](#) which should be read in conjunction with the Community Services Directorate publication [Keeping Children and Young People Safe – a guide to reporting child abuse and neglect in the ACT](#).

12. Parental Access to School Documentation

- 12.1 In many instances parents who have separated will both seek to play an active part in the education of their child. Sometimes a parent will not agree that the other parent has a right to receive information about their child's education.
- 12.2 In the absence of a court order, each parent has equal obligations, duties and responsibilities in respect of their child. To fulfil those obligations, duties and responsibilities, it is reasonable that each parent is able to access relevant information that may issue from a school concerning their children's education.
- 12.3 Where the parents have separated and there is an order that the children live with one parent or, in the absence of court orders, the children live with one of the parents, school documentation should be forwarded to the parent with whom the child is living.
- 12.4 If a request for a copy of school documentation is made by the other parent, copies of the material should be provided unless there are orders that deny the non-residential parent any parental responsibility for the child. Principals should ensure that any material sent to non-residential parents does not include address or other contact details of the other parent. Refer also to paragraph 10.2 regarding specific requirements in relation to enrolment documentation.
- 12.5 Documents of a minor administrative nature such as notices that the school canteen will be closed or that specific minor school activities are cancelled need not normally be included in the material sent to non-residential parents. Provision of this type of material is at the discretion of the principal.
- 12.6 The material provided to parents with whom the child does not live would include copies of documentation that is considered significant by the principal and which is ordinarily provided to the parent with whom the child lives. This includes school reports, test results, school welfare and discipline documentation, school newsletters, notices regarding major excursions, school photographs or major school activities. Principals must ensure that any documentation requested by parents with whom the child does not live is provided in sufficient time to allow the non-residential parent to attend school activities, order school photographs and the like.
- 12.7 While principals may ask parents with whom a child is not living to contribute to the costs of forwarding school documentation, it is stressed that any contribution is purely voluntary. Provision of the material must not be denied on the basis that a contribution has not been made.
- 12.8 If a court order is made that denies parental responsibility for the long term care of a

child or gives sole responsibility for educational matters to one parent, the other parent is not entitled to any documentation or information about their child from the school.

- 12.9 In providing information to parents with whom a child does not live, principals must also have regard to their obligations under the *Information Privacy Act*. The provision of school reports to the non-residential parent should always be on the basis that it is in the best interests of the child. While the provision of reports to both parents will in most cases be in the child's best interests, circumstances may arise where it is appropriate to deny provision of school material to the non-residential parent.
- 12.10 Permission notes for participation in school activities, such as excursions, can be an area of dispute between parents. Many excursions and other off-site school activities are organised well in advance. Generally, permission notes should be obtained from the parent the school usually contacts regarding day-to-day issues. Relevant material should also be provided to the other parent where that parent has asked to be provided with school documentation though it is not necessary to gain consent from that parent.
- 12.11 If both parents play an active role in day-to-day issues involving the student, the relevant material should be provided to both parents. Signed consent forms can then be obtained from one or both parents.
- 12.12 If parents disagree about their child's participation in an excursion or other school activity, they should be encouraged to resolve the dispute away from the school. If the parents cannot agree, the principal must make a decision based on the specific circumstances, with particular emphasis on the educational value from participating in the activity and the interests of the student generally. Principals should also take into account the views of the student.

Case study 10

A father approaches the school and asks that copies of his child's school reports be provided to him. He is separated from his wife and court orders indicate there is a residence order and a specific issues order which gives his wife sole parental responsibility for the day to day care of the child. There is a contact order in relation to the child seeing the father. The mother has told the school that she does not want her husband to be given the child's school reports.

In the absence of any specific circumstances which make the provision of the reports inappropriate, the father should be provided with copies of the material sought. The fact the mother objects to him receiving them is not sufficient reason to deny providing a copy.

Case study 11

A father, who is a non-residential parent, seeks copies of his child's school reports. There are no court orders in place. The mother objects to the father being provided with a copy. The principal is aware that in the past, the father has acted violently towards the child when he has received reports that indicated the child was not performing satisfactorily. The child is 15 years old and has made it known she is fearful of what might happen if her father is provided with a copy of her latest report.

In view of the circumstances, particularly the history of violence, it is reasonable to determine that provision of the reports would not be in the best interests of the child. The principal should indicate to the father that a copy of the reports will not be provided.

Case study 12

The school is organising a three-day interstate excursion to occur in term 3. The parents are separated and though they both have regular interaction with the school and teachers, the separation has been acrimonious and disputes about school issues often arise. In term 1, the father indicates an objection to the excursion occurring on the proposed dates as it conflicts with his contact with the child as set out in a court order. He indicates that he does not consent to the child going on the excursion if the dates remain unchanged. The dates cannot be changed and the mother wants the child to go.

Resolution of this issue is the responsibility of the parents and they should be encouraged to come to an agreement. If this does not occur, the principal can make a decision based on the educational value of the trip and the student's interests generally. If the principal believes the student should attend, the consent from the mother can be relied upon. The principal can also take into account the views of the student in coming to a decision.

13. Parental Involvement in School Activities

- 13.1 Where court orders have not been made, both parents may attend school-organised activities. Each parent maintains parental responsibilities, is able to visit the school and speak to the principal and teachers about their child's education, and participate in all activities in which parents are normally involved.
- 13.2 It is only when a parent causes a disturbance, upsets the school routine or refuses a reasonable request to leave that a principal should act to exclude that parent from the school. In this regard, principals should refer to the [Unwelcome Visitors to Schools – Handbook](#) (June 2005) for procedures that can be followed if a person behaves in an offensive or disorderly way on school premises.
- 13.3 Where court orders have been made, parents should not be excluded from school activities unless subject to a specific order which makes their attendance inappropriate.
- 13.4 Principals must always have regard to any known history of animosity between the parents before deciding whether both parents should participate at the same time in the school activity. The primary concern must always be the prevention of disputes which will impact on the efficient and effective operation of the school and jeopardise the safety and well being of persons on the site.
- 13.5 Principals should make reasonable attempts to arrive at a compromise position so that both parents can actively participate in school activities. Extensive periods of time must not be spent in trying to arrive at a compromise nor should principals act as conciliators in family disputes. Principals should use their judgment based on their knowledge of the relationship between the parents, attitudes of the children and the educational importance of the activity under question in determining what compromise is appropriate to pursue.
- 13.6 Parents often seek to become involved in a range of school activities, such as canteen duties, reading classes or assistance on excursions or sporting activities. Involvement in these activities will often bring the parents into contact with their children and in some cases this contact will be outside times of contact specified in court orders.
- 13.7 If other court orders (e.g. a protection order) are in place that make the contact inappropriate or genuine concerns exist for the safety and well-being of the child, other

students and/or staff if the contact occurs, (or if the parent's participation will unduly complicate arrangements for the activity so as to unreasonably divert the resources of the school) then participation in the activity should be denied.

- 13.8 Generally, parents should not be denied the opportunity to participate in school activities on the basis they may have some contact with their children that is incidental to the primary purpose for which the parent is on the school site. For example, the fact that a parent may be sitting in an audience at a school concert or may see their child in the playground while working in the school canteen should not be considered contact within the meaning of family court orders.
- 13.9 Depending on the circumstances, principals may need to consider contacting a parent to ascertain his or her views of the other parent attending school activities. It should be noted however that mere objection to participation in the activity is not a sufficient reason to deny participation. In the absence of a specific order which would prevent participation, there must be genuine concerns held for the safety, well being, or the best educational interests of the child, other students and/or staff in order to justify preventing the participation of a parent.

Case study 13

A parent requests permission from the school to attend parent/teacher interviews. There are no court orders in place and the other parent, with whom the child lives, is aware of the approach and objects to the request.

The parent should be given the opportunity to attend the interview. If the principal is aware that the presence of both parents at the same time at the school is likely to lead to a disturbance, attempts should be made to arrive at a compromise position that allows both to attend the interviews at different times. If a compromise position is not possible, both parents should be allowed to attend the interviews on the understanding that in event of a disturbance, depending on the circumstances, either or both parents may be required to leave the premises.

Case study 14

Separated parents attend a school concert night. There is a residence order that the child lives with one parent, the other has contact and the residential parent has made it known he/she objects to the other parent attending the concert. During the course of the evening they come into contact and a disturbance occurs. Upon investigation, it is determined that the residential parent has caused the disturbance.

If the residential parent does not agree to behave appropriately, he or she should be asked to leave the school site. If the disturbance is serious enough, the principal has the right to ask the parent to leave immediately. Refer to the [Unwelcome Visitors to Schools – Handbook](#) (June 2005).

Case study 15

A mother seeks to undertake canteen duties at the school. She has a child at the school who lives with the father in accordance with a residence order made by the court. The mother has contact with the child on weekends only, in accordance with a contact order. There is a real possibility she and the child will come into contact with each other at the school. The father is aware of the approach made by the mother and objects. There are no other court orders in place that make the participation inappropriate and the father cannot offer any real safety concerns.

The mother should be given the opportunity to undertake the canteen duties on

the understanding that any contact the mother has with the child will be limited to that which is reasonably incidental to the canteen duties. Any private one-on-one contact between the child and the mother should not occur.

Case study 16

A father seeks to assist in reading classes at the school. It is inevitable that by undertaking this activity, the father will come into contact with his child who attends the classes. It is not possible to structure the reading classes to avoid the contact. Court orders are in place that give the child contact with his father on a limited basis and under supervision at weekends. There has been a history of domestic violence against the mother and the child. The father has been known to act erratically in the past but has not caused any problems at the school for some time. The mother objects to the father participating in the reading classes.

In view of the history surrounding the behaviour of the father and the terms of the order, the principal is entitled to deny the father the opportunity to participate in the reading classes. If it was a large school and the reading classes could be arranged in a way that would mean contact between the father and the child would not occur, the father could be given permission to participate on the basis he would not be involved with his child.

Case study 17

A father volunteers to assist at the school swimming carnival as a timekeeper. He expresses a desire to assist the school and to see his children compete in the carnival. He is subject to court orders which limit his contact to every second weekend and alternate school holidays. The carnival is on a weekday and there is a possibility contact between the father and the children may occur. The mother intends to attend the carnival as well and objects to the father being there. She indicates that the father's presence at the carnival may have a negative impact on the children though cannot be specific as to why. The father has in the past made himself known to the school and has not caused any problems previously.

The father should be given the opportunity to attend on the understanding that any time the father has with the child will be limited to that which is reasonably incidental to attendance at the carnival. Both parents should be counselled as to the need to conduct themselves appropriately at all times.

Case study 18

A mother undertakes canteen duties at her child's school. This brings her into contact with the child. There are court orders making the father solely responsible for the long-term welfare and care of the child. The child lives with the father and the mother has defined contact with a provision that indicates that the mother may have contact outside the specified times. The father advises the school that the continued contact between the mother and the child at the school is causing stress to the child and he asks the principal to deny the mother the opportunity to work in the canteen. The mother insists the orders allow her the contact.

Depending on the age of the child, the principal may need to interview the child to ascertain his or her views on the matter. If the principal is satisfied that the child is stressed as alleged, the mother should be advised that she will be allowed to undertake the duties on the condition she not approach, speak to or serve the child. The child should also be advised of the conditions and be required to approach other persons in the canteen.

Case study 19

Parents have separated and the father has re-married. On weekends the father has weekend contact with his child from the first marriage. His child and his stepson from his current marriage both attend the same school and are in the same class. The father often attends the school to pick up his stepson. This often results in seeing his son at the school and they may also briefly speak to each other during the course of the father picking up his stepson. The mother objects to this occurring and requests the principal to direct the father not to come to the school as it is in breach of the contact order.

The father has a legitimate reason to be at the school (i.e. to pick up his stepson) and in the absence of any inappropriate behaviour by the father, he is entitled to continue to do this. The fact the father may have incidental contact with his son while picking up his stepson does not matter. The principal however should counsel the father about the need to not deliberately seek out his son or engage in any extended contact with him other than that which is reasonably incidental to him picking up his stepson.

14. Dealing with persons other than parent

- 14.1 While the FLA recognises the right of children to maintain on-going relationships with people significant to their care, welfare and development, this sometimes results in conflicts at school between parents and other family members. For example, grandparents may wish to speak with their grandchild or ask staff to deliver birthday cards or other items to them at school. Such requests may be objected to by one of the parents (refer also to paragraph 11.4 regarding contact by parents).
- 14.2 Principals must exercise caution in dealing with such issues. While other persons such as grandparents may wish to maintain a close involvement with children attending school, they cannot rely on any relationship with the school that permits them any interaction with those children while they are at school. Contact between a child and a non-residential parent and other relatives should be organised outside of school hours and away from school premises. For children who are facing difficult family circumstances, school should be a safe haven into which family problems do not intrude.
- 14.3 Principals should exercise their discretion in determining whether or not the request of the person will be met. Any action taken will depend largely on the knowledge of the relationship between the parties. Principals may need to consider strategies similar to those outlined in paragraph 11.5.
- 14.4 Similarly, principals may receive requests from grandparents and other relatives seeking to obtain copies of school photographs or other material relating to children in the school. Such requests should be politely denied and the person advised that access to such material must be organised through the parents.
- 14.5 While step-parents are often closely involved in school related matters pertaining to their stepchildren, any such involvement is always with the consent (either expressed or implied) of the step-parent's spouse or partner, who is a parent of the child. The residential parent (who is the spouse or partner of the step – parent) is entitled to withdraw that consent at any time. However, if a step-parent has formally adopted the stepchild (in which case there will be an adoption order), the adoptive step-parent has the same rights and status as the parent).

- 14.6 In some cases, the Director-General of CSD may hold parental responsibility over a child and therefore CSD or another designated agency will have a supervisory role in relation to the child. In such cases, authorised carers and their supervising agencies can request and be provided with information relating to student progress at any time. Any request by a person not having the care or custody of the child must not be agreed to without the prior approval of OCYFS.
- 14.7 Similarly, Centrelink is authorised by Commonwealth legislation to seek information in respect of a range of social security related issues. Requests from Centrelink seeking information about parents and/or children should therefore be complied with (refer to [Privacy Module in the School Legal Information Manual](#)).
- 14.8 Provision of information in these circumstances will not be a breach of any privacy legislation.

15. Domestic violence and protection orders and other types of court orders that may regulate the relationship between parents

- 15.1 Domestic violence and personal protection orders are orders made under the [Domestic Violence and Protection Orders Act 2008 \(ACT\)](#). Such orders can limit the contact one parent has with another parent and/or children. Domestic violence and personal protection orders carry criminal sanctions if breached. Workplace protection orders can also prevent a person from being on school premises or within a certain distance of the school.
- 15.2 In making a personal protection order in favour of the protected person, the court may include the child of the protected person under the terms of the order. The order may allow some contact under family law orders. Children living with a protected person are also sometimes separately named in the order as protected persons (i.e. as separate applicants for the order).
- 15.3 There are a variety of orders that can be made by the court when considering an application for a protection order. Most commonly, the orders made will include:
- not to approach, contact, harass, threaten or otherwise interfere with the protected person
 - not to approach or come within a certain distance of the protected person's place of residence or work
 - not to approach the school or other specified premises at which the protected person may from time to time attend for education
 - not to approach or contact the protected person except for the purpose of arranging or exercising contact in accordance with a FLA order.
- 15.4 An order prohibiting a parent from approaching, contacting, harassing, threatening or otherwise interfering with a child does not of itself prevent that parent from having contact with the child. For example, the child may be able to initiate contact with the parent against whom the order is made. The specific order will be determinative in the circumstances.
- 15.5 If an order is made that prevents a person from approaching or attending a school and staff become aware that the order is being breached, the principal should consider whether the protected person needs to be informed. If immediate concerns are held for the safety of any child or other person on the site, principals should immediately contact

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the police.

- 15.6 Situations can arise where both an order under the FLA and a personal protection order are operative at the same time. While the courts will endeavour to ensure such orders do not conflict, there will be occasions when a conflict does occur. If a conflict does occur, principals should rely on whichever order is most likely to afford the person in whose favour the protection order has been made the most protection. Principals should encourage parents to seek clarification from the court in the event inconsistencies between orders arise. Sometimes a parent may be subject to bail conditions pending the completion of criminal matters before the court. Bail conditions can vary widely and may be similar in terms to those available under a protection order.
- 15.7 Courts are also empowered to place persons on good behaviour bonds following completion of cases. These bonds may restrict the activities of persons and can include conditions similar to those available under a protection order.
- 15.8 If principals become aware of breaches of bail conditions or good behaviour bonds, they should deal with such matters in the same way as outlined in paragraph 15.5.

Case study 20

The mother of a child at the school advises the principal that there is an order that her child live with her. The father is allowed contact at specified times. She also advises the school that she has a protection order against the father. The protection order does not cover the child. The father contacts the school and advises that he wishes to attend some school functions at which the mother will be present. The mother advises the school that under the terms of the protection order he cannot do this.

Ask for a copy of the protection order to clarify the orders. Depending on the terms of the protection order, it may be necessary to advise the father that he cannot attend the school activity if the mother will be there. If the protection order does not specifically prevent the father from attending he should be advised that he will be able to attend the activities on the basis that he complies with any relevant terms of the order while on school premises.

16. What to do if parents deliberately breach court orders

- 16.1 It cannot be stressed too highly that it is not the role of the Directorate or its schools to act as an adjudicator in disputes between parents in family law matters.
- 16.2 If a parent insists on conducting himself or herself at school in a way that is inconsistent with any court order, the views of the other parent, if not already known, should be sought. If the other parent does not consent to the behaviour that is contrary to the court orders, attempts should be made to persuade the parent in breach not to pursue the course of action intended.
- 16.3 If the parent continues to insist on conduct at the school that is inconsistent with the court order, the parent should be informed that they must leave the school or police will be called. **Under no circumstances should principals allow themselves or other staff to be placed in a position of danger when trying to resolve any problems that may arise. Staff are not expected to physically restrain parents.** If parents abuse staff, use or threaten to use physical violence or refuse to leave the premises when directed to do so, the police should be contacted immediately.

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17. Recovery Orders and Location Orders

- 17.1 Police may sometimes attend a school with a warrant or a recovery order issued by a court for the return of children who may be enrolled at the school. Principals should view the details of the warrant, confirm the identity of the police officer(s), check the details referring to the child provided by the police and then assist the police in fulfilling their obligations under the warrant. This may mean allowing the police to collect the children from the school or advising them of their location if they are not at the school.
- 17.2 Provided police have a warrant or recovery order, this assistance should be provided irrespective of any objections that may be made by the child concerned.
- 17.3 If police do attend in such circumstances, principals and staff should act with sensitivity and regard for the dignity and potential fears of the children concerned and for the well being of other children and staff at the school. Police should be asked to wait in the principal's office or general office area rather than proceeding directly to a classroom. Where children display fear or incomprehension about being taken by police, every effort should be made to work with the police to reassure the children that they are safe.
- 17.4 Location orders may also be occasionally served on the Directorate or individual schools. Upon receipt of such orders, principals should contact Governance and Legal Liaison (telephone 6205 0720 or 6205 9159) for advice.
- 17.5 The Commonwealth Government may also from time to time seek assistance from the Directorate in locating children who have been abducted from overseas, generally by a parent, and who are believed to be residing in Australia. Prior to commencing action to have such children returned to their rightful home, the Commonwealth authorities need to ascertain an address for the children so that appropriate legal proceedings can be commenced against the parent.
- 17.6 These matters are coordinated by Governance and Legal Liaison (telephone 6205 0720 or 6205 9159) and will usually result in a request being made to all schools to provide any relevant information about the children to the Commonwealth. It is important that such requests are acted upon as quickly as possible and under no circumstances should any information be provided to the child in question or his or her parent about the request for information being received.

18. Requests that staff give evidence in family law proceedings

- 18.1 Staff may be asked by parents involved in family law proceedings to provide written statements or affidavits regarding the performance of children at school. These requests may involve not only details about academic progress but also comments about the behaviour and appearance of the children. Care should be taken to ensure any information provided is accurate and given in accordance with the *Information Privacy Act*. For example, a parent (or their representative) may ask staff for information about the other parent. In this situation, staff should not provide information about the second parent.

- 18.2 In the absence of being served with a subpoena, it is up to individual staff as to whether or not they provide assistance to parents in these matters. In the absence of a subpoena, staff cannot be forced to provide assistance in any way. If served with a subpoena, staff should immediately contact Governance and Legal Liaison (telephone 6205 9159). Reference can also be made to the [School Legal Information Manual- Court Processes and Procedures Module](#).
- 18.3 If staff consider it appropriate to provide a statement or affidavit as requested, comments should be restricted to those based on direct observation or hearing of the person making the statement or affidavit. Teaching staff are also at liberty to provide information based on their professional experience or expertise. Personal comments or observations about the perceived fitness of respective parents or the merits of individual court proceedings should be avoided. Staff should only agree to sign any statement or affidavit once they are completely satisfied with its contents.
- 18.4 Sometimes requests will be received from lawyers who are acting on behalf of children (as opposed to either of the parents) in contested family law proceedings between parents. Staff should be aware that the best interests of the child is always the court's primary concern and any request made on behalf of a child who is independently represented should be subject to a high level of cooperation. Prior to providing any information, staff should endeavour to obtain confirmation of the lawyer's appointment – confirmation can include a letter from the solicitor, a copy of a court order or a letter from the court registry confirming the appointment.
- 18.5 In seeking statements and affidavits from staff, assurances are sometimes given that if the statement or affidavit is provided, the staff member will not be required to attend court. Such assurances usually cannot be relied upon and there is no guarantee that a court appearance will not be necessary. It may be the case that the lawyers for "the other side" will require attendance at court.
- 18.6 Staff should refer to Court Processes and Procedures in the [School Legal Information Manual- Court Processes and Procedures Module](#) for further information.

19. Appendices

1. Information for Parents and Students – Family Law Issues and the Education and Training Directorate (see page 29).
2. Important Information for Parents and Students (see page 30).

20. Further Assistance and Advice

For general advice concerning family law matters and schools, schools should contact Governance and Legal Liaison on 6205 0720 or 6205 9159.

Appendix 1 - Information for Parents and Students – Family Law Issues and the Education and Training Directorate

The Directorate recognises that some families are subject to family breakdown. In meeting its obligations to students and parents, the Directorate takes into account the following principles:

- everyone involved in the education of children of school age in the ACT, is to apply the principle that every child has a right to receive a high-quality education
- decisions should be made on the basis of what is considered to be in the best interests of the child and on the basis of ensuring, as far as possible, the continued effective and efficient operation of the school
- where doubt arises in resolving any issues, the educational interests, safety and welfare of the child are to be the paramount considerations
- where parents cannot agree between themselves on what is in the child's best interests, it is the role of the court, not the school, to determine those interests
- the school is not the appropriate place for family disputes to be resolved nor is it appropriate for school staff to resolve such issues
- decisions should be made in an unbiased manner and as far as reasonably practicable, without favour to either parent
- the obligations imposed by other legislation, such as the *Information Privacy Act 2014* and child protection legislation (the *Children and Young People Act 2008*), as well as relevant policies, also need to be considered when dealing with family law related issues
- the continued effective and efficient operation of the school and parents' obligations under the *Education Act 2004* to ensure their children of compulsory school age attend school or receive home schooling take precedence over any interests parents may assert they have under the *Family Law Act 1975*.

Parents have a responsibility to advise the school immediately if any changes in family circumstances occur which have the potential to impact on the relationship between the school and the parents and/or students. If court orders are obtained by one or both parents, a copy of the orders should be provided to the school as soon as possible.

In the absence of any notification to the contrary (such as a court order), it will be assumed that both parents retain a shared and equal parental responsibility for their children. This means that the school will recognise that each parent has equal duties, obligations, responsibilities and opportunities in relation to matters involving their children's education at the school.

The Directorate has developed detailed guidelines to assist schools to manage family law related issues. The main features of the guidelines are summarised below:

- in the absence of any court order to the contrary, generally either parent can enrol a child in an ACT public school
- except in specifically defined circumstances, a child must be enrolled using the name that appears on his or her birth certificate
- in the absence of court orders to the contrary, each parent is entitled to know at which school his or her child is enrolled
- generally, each parent will be given the opportunity to participate in school related activities, including teacher/parent interviews and can have access to school documentation relating to his or her child
- unless specifically authorised by a residential parent, children will not be permitted to leave school during the course of a school day.

Appendix 2 - Important Information for Parents and Students

The following notice should be provided to parents on a regular basis. While it is anticipated the notice can be incorporated into a variety of school documents (e.g. newsletters, e-mail messages to parents, information sheets, student diaries, websites), it is up to individual principals to determine how the information is provided and with what frequency.

Important information for parents and students

The Directorate recognises that some families will be subject to family breakdown. In the absence of any notification to the contrary, it will be assumed that both parents retain a shared and equal parental responsibility for their children. This means that the school will recognise that each parent has equal duties, obligations, responsibilities and opportunities in relation to matters involving the school.

If any changes occur in your family relationships, that have the potential to impact on the relationship between the school and your family, you are asked to advise the school immediately. This includes providing copies of any court orders.

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