



Family Law Issues – Guidelines for Principals

Useful definitions

In these Guidelines:

'Parental responsibility' means all the duties, powers and responsibilities which parents ordinarily have for their children until they turn 18 years old. This includes making long term decisions concerning their welfare, education, religion and medical treatment.

'Lives with' means the place where a child resides during times specified in family court orders

'Time with' means the time which a child is to spend with persons specified in family court orders in accordance with conditions specified in the order

"Specific issues order" means an order of the court dealing with any aspect of parental responsibility other than contact, residence or maintenance

'AVO' means apprehended violence order

'DVO' means domestic violence order

Why does the school need to be informed about family situations?

Principals and teachers need to be informed of family situations including who the child/ren live with and spend time with (formerly "custody" or "residence" and "access" or "contact") arrangements so that they can avoid confusion and respond appropriately to families experiencing family breakdown. The school must have a copy of current family court orders and parents should ensure that the principal is kept up to date about any new court orders. Principals should ensure that the orders will be used to meet the child's educational needs.

Parents should also inform the school of parenting agreements as this information is needed by the school to appropriately decide what to do in some contentious situations, especially where either parent can't be contacted. However if parents make different assertions about what the agreement is or means, the school may require parents to provide court orders before it will act on incompatible assertions or requests.

Principals should keep current copies of court orders on the student record and ensure that the relevant acting principal is aware of them and has access to them. Where there are family related orders principals should ensure that the prescribed form is signed before children are removed from Australia.

The school is not expected to be the arbiter of contentious family issues but will work together with parents and the student to support the child's best educational interests.

When there are no Court orders

When making decisions affecting the child principals should always consider the best educational interests, age and maturity of a child.

Both parents have equal parenting responsibilities regardless of who the child lives with most of the time. Parental responsibility includes long term decision making for the welfare of the child, such as education, religion, health, name.

Enrolment and family differences

In the absence of court orders each parent has the capacity to enrol their child in a school and be provided with school related information. Principals should enrol a child if they are unaware of any dispute. The enrolment should proceed in accordance with information provided in the enrolment application.

Sometimes when parents break up, a parent will ask to enrol a child in a school when the child is already enrolled in another school and the other parent may not agree to the change of schools. In these circumstances parents should be asked to provide the school with directions from the court.

What information can the parents receive?

Unless they agree otherwise, or unless a court specifically orders otherwise, both parents retain the right to receive school reports, attend school functions, receive information and consent forms relating to their child and the right of contact with their children.

The school must take into account its contractual and privacy obligations when disclosing personal or sensitive information and may take into account the child's views or risk of harm when responding to parental requests for information. If in doubt principals should contact Human Resources at the Catholic Schools Office.

When principals are in a situation where the parents' views are in conflict they should take care not to take sides and at all times be guided by what is in the best educational interests of the child.

Parental contact with students

In the absence of a family court order, an AVO, or safety risks either parent may have contact with the student during the usual before and after school times, or designated times when parents are invited to visit the school such as sports carnivals, or where a parent is a volunteer providing assistance in the classroom. Parental attendance at school outside these times is limited as it would cause disruption to students and teachers. Parental contact at school will not normally be permitted.

When can a child's views be taken into account?

While parents retain parental responsibility for their children until they turn 18 years old it is generally accepted that as they become older and more mature, children's views will be taken into account in decisions that affect them. Where parents' views are in conflict with those of the student, principals may take the students' views into account, but their decision should be guided by what is in the best educational interests of the student. If in doubt principals should contact Human Resources at the Catholic Schools Office.

When there are Court orders

When making decisions about residence and contact, courts are guided by what is in the best interests of the child. Courts place increased emphasis on the need for both parents to be involved in their children's lives after separation through a range of provisions, including the introduction of a presumption in favour of equal shared parental responsibility. Courts also place greater emphasis on the need to protect children from exposure to family violence and child abuse.

If parents seek to involve schools in the interpretation of court orders, principals should seek support from Human Resources at the Catholic Schools Office. In some circumstances where parents seek to excessively involve the school in parental disputes, parents may be advised that the issues in dispute between them may need to be addressed in another venue as the school's primary mission is to provide education for the student.

Principals should provide a copy of current court orders to the Catholic Schools Office when making enquiries about family law related matters so that these can be taken into account when advice is provided.

Parents having contact with students during school time

Generally contact with parents occurs before and after school hours, or if the child needs to be taken to an appointment or cared for at home when sick. Schools are generally not appropriate places for contact visits.

Sometimes parents ask for contact during school hours or to pick up their child early. Schools may receive conflicting versions of events from parents and be faced with difficult decisions. Principals should consider the following when making decisions in these circumstances:

- Both parents involved in family breakdown retain responsibility for daily issues in the life of the children unless one is specifically excluded by an order of the court.
- An order granting residence at defined times to one parent only effectively denies contact to the other parent at those defined residence times. Residence is not the same as custody, which is an outdated term for the care and control of a child. When a child lives with one parent during defined times, the other parent may see the child at other times or as defined by family court orders. If a child happens to be in the possession of one parent that does not negate the other parent's responsibility for the child.
- Any difficulties the parents have concerning residence and contact needs to be settled by themselves or their legal advisers. The school should not become involved in parenting matters.

People who may seek information from the school

In relation to family matters the following people may ask for information relevant to the child's welfare and to court proceedings:

Independent children's lawyer - to gather information to be presented to the court

Family consultant - appointed by the court to screen for risk factors as people enter the court system and may prepare a report for the court

Single expert - psychologist, social worker or psychiatrist appointed by the court to prepare a report

Lawyer for one of the parents - it is expected that the information will be sought by subpoena and limited to defined records

Prescribed Bodies who can provide and request information under Chapter 16A of the Education Act.

Safety concerns in relation to family law issues

Procedures, such as the following, should be followed when dealing with residence or contact disputes involving breaches of a court order or other situations which may lead to potentially violent incidents at school:

Evacuation Procedures, Fire Drills and Lock Down

Relevant staff should be informed of an "alert" situation where a child who is the subject of a court order or family dispute may be placed in a situation of harm.

- There should be a pre-arranged "safe haven" for a staff member to take a child should there be real reason to fear for the child's safety. A school can refuse to comply with a valid court order providing for contact on these grounds only.

In general, when there is a breach of court orders, do not try to use force to deny access to a child but delay until those with authority to act (other parent, police) arrive.

When principals need legal advice, this can be accessed through Human Resources at the Catholic Schools Office.

Relevant agencies and departments

Government agencies that have responsibility for policies and services affecting families include:

- Family Assistance Office
- Centrelink
- Child Support Agency
- NSW Department of Community Services