

NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING



DEALING WITH FAMILY LAW RELATED ISSUES IN SCHOOLS AND TAFE NSW

GUIDELINES FOR SCHOOL AND INSTITUTE STAFF

Implementation date: 2007

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Legal Services Directorate

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FAMILY LAW RELATED ISSUES IN SCHOOLS AND TAFE NSW

SUMMARY

These guidelines attempt to balance the rights and obligations arising under the *Education Act 1990* with those arising under the *Family Law Act 1975* and other legislation.

Key points emerging from the guidelines are as follows:

- Parents have a responsibility to provide the school or institute with copies of any court orders that impact on the relationship between the family and the school or institute
- Where children are no longer living at home, the primary focus in decision-making should be the continued educational needs of the child
- 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 the 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 the Department's Privacy Code of Practice
- In relation to children who live with one parent only, the guidelines distinguish between contact with a child in accordance with a contact order and incidental contact that arises as a result of a parent being present on a school or institute 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
- The guidelines alert staff to the possible impact of Apprehended Personal Violence 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 local 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

- Special provisions relating to the operation of pre-school and other children's services located in schools and institutes are also outlined.

A range of illustrative examples based on actual cases encountered by schools and Institutes are included in the guidelines for assistance.

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1. ABSTRACT

These guidelines provide advice for dealing with family law related issues which impact on the operation of schools and TAFE NSW.

2. APPLICABILITY

2.1 These guidelines apply to all NSW government schools and TAFE NSW institutes and campuses. As most issues in this area of law are likely to arise in the school setting, principals and schools are extensively referred to throughout the document. While the guidelines apply to TAFE NSW, the nature of the different student cohort attending TAFE means they may have less frequent application. Nevertheless, with the increasing diversity of TAFE NSW enrolment, and the more frequent occurrence of students being enrolled in both schools and TAFE, it is important for TAFE NSW staff to be aware of the guidelines. While the guidelines frequently refers to “child”, “principal” and “school”, within TAFE NSW appropriate substitute references should be assumed.

2.2 Throughout the guidelines, the term “parent” includes a guardian or other person who has the custody or care of a child, as outlined in the *Education Act 1990*. For the purposes of these guidelines, a person can be considered to have the custody or care of a child even if there is no formal court order to that effect subject to the child’s parents ending the care arrangements previously in place.

2.3 TAFE NSW children’s centre directors and principals of schools where pre-schools operate should refer to section 19 of this document regarding special requirements for child care centres and pre-schools.

3. SUPERSEDED DOCUMENTS

These guidelines replace *Family Law and the School – Second Edition (1997)*.

4. CONTEXT

4.1 One of the primary objects of the *Family Law Act 1975* (the 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 their children.
- 4.4 In relation to children, the Act 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 Act 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 Persons (Care and Protection Act) 1998*. Such orders often mandate that the Department of Community Services undertakes a supervisory role in respect of the welfare of any children. Staff need to be alert to these circumstances to ensure the safety and well-being of any children subject to the orders is met.

5. DEPARTMENT'S POSITION

- 5.1 The Department has an obligation, as far as practicable or appropriate, to ensure that every child attending a government school is provided with an opportunity to achieve his or her educational potential. In meeting this obligation, the Department 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 Department that when family breakdown does occur, parents reach agreement regarding those issues which are likely to have an impact on the school and inform the school of that agreement. 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 Department, while committed to the underlying philosophy of the Act, relies on the following principles –
- the education of a child is primarily the responsibility of the child's parents;

- generally, it will be assumed that both parents are involved in any decisions made concerning major long term issues impacting on the school;
- decisions should be made on the basis of ensuring, as far as possible, the continued effective and efficient operation of the school;
- the principal should make decisions based primarily on what he or she considers 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 *Privacy and Personal Information Protection Act 1998* and child protection legislation and policies also need to be considered when dealing with family law related issues;
- the continued effective and efficient operation of the school and a parent's obligations under the *Education Act 1990* (i.e. to ensure that their children of compulsory school age receive an education) takes precedence over any interests parents may assert they have under the Act;
- where doubt arises in resolving any issues, the educational interests, safety and welfare of the child are to be the paramount consideration.

5.4 Principals should remind parents on a regular basis of the need to advise the school immediately of any change in family circumstances which may impact on the relationship between the family and the school. Attached at Appendix 1 is an information sheet that can be provided to all parents, particularly upon enrolment, which summarises the guidelines and makes clear the Department's position and its expectations of parents. Attached at 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.

6. DEFINITIONS OF COMMONLY USED TERMS

- 6.1
- "Access" has the same meaning as "contact". It is an old term used by courts prior to June 1996.
 - "Child" for the purposes of the Act, means a person under the age of 18 years.
 - "Components of parenting" – is new terminology introduced from 1 July 2006 which relates to matters previously addressed by specific issues orders (see below)

- “Contact” means contact one or both parents or other specified people have with children, including in accordance with a contact order. Since 1 July 2006, it relates to separate issues – time a child spends with a person and the time when a person may communicate with a 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. From 1 July 2006, any orders made by the court in respect of this issue will generally refer to the time a parent is able to spend with a child and the times the parent will be able to communicate with the child.
- “Custody” has the same meaning as a residence order coupled with parental responsibility for the day to day care of the child. It is an old term used by 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 the 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 new term inserted into the Act from 1 July 2006. While not exclusive, it refers to matters such as education (both current and future), 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. “Education” includes apprenticeships and vocational education training. Both parents must be involved in any decisions concerning major long term issues.
- “Out of home care” means children and young people who –

(i) are subject to an order of the court that allocates parental responsibility to the Minister for Community Services, or for whom the Director-General of the NSW Department of Community Services has guardianship or care responsibility, or
(ii) children in the parental responsibility of the Minister (where that includes residence) by an interstate transfer, or wards of another State/Territory for whom the Minister is providing services while they are in NSW.

- “Parent” includes a guardian or other person who has the custody or care of 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.
- “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 plan” means an agreement in writing between the parents of a child that deals with the issues of contact, residence, maintenance 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 person concerned. Since 1 July 2006, any orders made by the court will not refer to “residence” but rather will indicate who the child will “live with”.
- “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 the 1 July 2006 these aspects of parental responsibility are known as the components of parenting.

6.2 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 is 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.

6.3 Generally, it is for individual principals to determine where copies of court orders are kept and who has access to them. 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 government 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 who have supervision responsibilities to be made aware of the provisions of any orders.

- 6.4 Changes to the Act in July 2006 altered the meaning of the term “contact”, as indicated in paragraph 6.1. These guidelines will continue to use the term “contact” in a general sense. Principals should note however that when dealing with disputes or other issues concerning contact, they will need to consider that two separate concepts may be involved – i.e. the time one parent is spending with a child and the times when the parent may otherwise communicate with the child.

7. GENERAL ISSUES RELATING TO CHILDREN

- 7.1 The Act provides that parents retain parental responsibility for their children up until the age of 18 years. The Act also indicates that both parents must be involved in making decisions relating to major long term issues concerning their children. 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 *Children and Young Persons (Care and Protection) Act 1998* defines a “child” as being someone under the age of 16 and a “young person” as someone aged 16 or 17.
- 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. It may also be necessary to give consideration to making a report to the Department of Community Services 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.
- 7.7 It should be noted that the *Children and Young Persons (Care and Protection) Act 1998* provides that a person can make a report to the Department of Community Services of the fact that a child (i.e. someone under the age of 16) is homeless. A similar report can be made in respect of young people (i.e. people aged 16 or 17), provided the young person consents.
- 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. In relation to privacy matters for example, the Department's [Privacy Code of Practice](#) allows principals to disclose information to a student's parents if it is believed that such disclosure is in the best interests of the student. If a decision is made contrary to the student's request, the Privacy Code of Practice allows for the student to seek a review of that decision.
- 7.9 In cases where the Minister for Community Services has either sole parental responsibility over a child or parental responsibility for educational issues, decisions in respect any educational issues, including the provision of information, may be directed to the relevant designated agency (i.e. DoCS or other authorised agency) if requested.

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 1990* and Departmental 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 Department's primary focus is to ensure that all children of compulsory school 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 in circumstances where the child is already enrolled in another school, either in New South Wales or interstate. This situation can occur 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.
- 8.5 If it is known that a dispute does exist between the parents and the child is already enrolled in a school, principals should utilise the short term and part time attendance provisions of the Department's *Enrolment of Students in Government Schools – A Summary and Consolidation of Policy* document. This will allow time for any dispute between the parents to be resolved either by agreement or by court order. The relevant section of the enrolment policy is set out below for assistance –

“Short Term and Part-time Attendance of Students

A student should be enrolled in one school only at any given time. For a variety of reasons, such as parents visiting a locality for a brief period or a student being involved in an integration program, a student enrolled at a particular school may need to attend another school for a short period of time.

Where this period is no more than one term, or in the case of a student involved in a special placement of no more than 2.5 days per week, the student should not be enrolled, but regarded as being on a short term attendance. The home school should maintain the student's name on an attendance register, with a note to the effect that the student is attending another school.

The school the student attends for a short term (the host school) must keep a record of the student's attendance and notify the home school at the end of the stay or, in the case of part-time attendance, at the end of each term.”

- 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 Minister for Community Services has responsibility for educational issues, normally it would be expected that an officer from the Department of Community Services (DoCS), 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 DoCS 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, school excursions etc.

Case study 1

A mother arrives at a school and applies 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 alternatively seek court orders.

Case study 2

A father applies to enrol his children at school X. He advises that he has separated from his partner and the children are living with him at the moment. He advises the children are currently enrolled in school Y. When school Y is contacted, the principal of school X is advised the father has not returned the children in accordance with the mother's expectations and the mother does not agree to the enrolment at X taking place. There are no court orders in place.

The father should be advised that in light of the apparent dispute between himself and his ex-partner, formal enrolment will not take place until either an agreement is reached with his ex-partner or relevant court orders are obtained. The children will however be allowed to attend school X under the short term attendance provisions. This can continue for up to one school term which should allow sufficient time for the matter to be resolved.

Case study 3

A father applies to enrol his child in school. He indicates that there is an order that the child lives with her mother as well as other orders relating to the day to day care of the child. The child is of teenage years and has expressed a desire to live with the father despite the court orders that she live with her mother. The mother objects to the child being with the father or enrolling in the school. The child is currently enrolled in another school.

The father should be advised that enrolment will not be allowed at this time but the child will be permitted to attend in accordance with the short term attendance provisions of the enrolment policy. In the absence of any agreement able to be reached with the mother, the father should be advised to seek amended court orders as quickly as possible.

Case study 4

A mother applies to enrol her child in school. There is a court order indicating that the child live with her and she lives in the school's intake 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 DET 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 orders made by the court regarding the type of school that the child should attend .If there are no such orders, the enrolment should proceed and the parents advised that they should consider whether it will be necessary for either of them 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 changed 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 the Family 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 that:
- 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, 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. 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.

9.5 The name by which a child is known is regarded as a major long term issue to be determined, in absence of a 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;
- the Department of Community Services or a designated agency is responsible for the care of the child and the Department indicates in writing that the use of a new name for the child is appropriate; or
- 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.

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 that which appear on their birth certificates as a result of action taken in accordance with previous Departmental 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 alternate first names or nicknames at school. It is neither unlawful nor unusual for school staff to refer to children by those alternate 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 alternate 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 alternate 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.
- 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.
- 9.11 Schools may receive requests from Centrelink and other government agencies to confirm the enrolment details of specific students. Because of the application of these guidelines, sometimes the name the student is enrolled in at the school will be different to that on Centrelink records. Provided there is no doubt regarding the identity of the student, principals in confirming the relevant details, should where applicable, indicate in any response that the student is enrolled at the school in a different name.

Case study 5

The name appearing on the birth certificate of an enrolling student, aged 5, is Edward James Williams.

Depending on all of the circumstances, school staff may refer to that student by one or more of the following names – Edward, Ed, Eddie, Ted, or Teddy (but not, for example "Big Ted"). In some circumstances the child and family may alternatively wish the child to be known as James or Jim. All official documentation issued by the school would be in either the full birth certificate name of Edward James Williams or alternatively Edward Williams.

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 inquiry agents, police officers, the Department of Community Services or by virtue of a court order.
- 10.2 Unless a school is aware that there are court orders that deny a particular parent any parental responsibility for the child, generally confirmation can be provided to a parent that his or her child is enrolled in a particular school. 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 satisfied those persons consent to their details being provided.
- 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. A signed authority from the parent authorising the release of information to the lawyer or private inquiry agent 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 the Department of Community Services in response to a request for information under section 248 of the *Children and Young Persons (Care and Protection) Act 1998* or where the release of such information is otherwise authorised, such as where the Minister for Community Services has parental responsibility for the child. Relevant details must also be provided to agencies such as Centrelink upon receipt of any "Notice to Produce Information" or similar directive.
- 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.
- 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) before releasing any information confirming the enrolment of the student. Special care needs to be applied in relation to telephone requests for information.

- 10.7 If principals are aware that a parent has obtained an apprehended violence order (AVO) 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 AVO, 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 *Privacy and Personal Information Protection Act 1998* and the Department's [Privacy Code of Practice](#) 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 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.
- 10.10 If any doubt arises concerning the release of address or contact details, principals should contact the Department's FOI & Privacy Unit on 9561 8151 for further advice.

Case study 6

A father telephones a city school wanting to know if his children are enrolled. The school records indicate that the children have recently transferred to another school in the country. 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 7

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 an AVO against the father. The mother has been subject to domestic violence in the past and the AVO has provisions which direct the father not to contact, molest 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.

Case study 8

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 an AVO in place concerning both the mother and the child. The AVO 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.

- 11. PARENTS PICKING UP CHILDREN AFTER SCHOOL OR HAVING CONTACT/REMOVING THEM DURING SCHOOL HOURS** (refer to paragraph 6.4 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 to occur 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 inquiries made, if the child does not want to see the parent, contact should not be allowed to occur at 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).
- 11.5 However, depending on the principal's knowledge of the relationships and specific circumstances, including any court orders that may exist, 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 make contact with 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 Minister for Community Services has responsibility for the child, the Department of Community Services or designated agency should be contacted for advice.

11.7 If –

- 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.

11.9 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 the contact 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 contact parent. 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 9

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 have 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 10

The parents of a child have separated and court orders are in place allowing the father contact 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 11

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. 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 12

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 long term care, welfare and development of the child, 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 step father 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 relevant child protection procedures.

12. PARENTAL ACCESS TO SCHOOL DOCUMENTATION AND PROVISION OF PERMISSION NOTES

- 12.1 In many instances parents who have separated will both seek to play an active part in the education of their children. Sometimes a parent will not agree that the other parent has a right to receive information about their children's education.
- 12.2 In the absence of a court order, each parent has equal obligations, duties and responsibilities in respect of their children. 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 the children live with one parent, by virtue of a court order or otherwise, 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 non-residential 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 any 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 non-residential parents should 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 and major school activities such as school plays, presentation nights, parent teacher nights and arrangements for school photographs. Principals must ensure that any documentation requested by non-residential parents 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 non-residential parents 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 non-residential parents, principals must also have regard to their obligations under the *Privacy and Personal Information Protection Act 1998* and the Department's [Privacy Code of Practice](#). 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 obtain 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 a student'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 13

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 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 14

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 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 and that he should seek the relevant information from the mother.

Case study 15

A mother asks the school to provide her with copies of her child's school reports. The child has until recent times resided with her but now lives with the father. The principal is aware that the child has left the mother over a domestic dispute. The mother has always played an active role in the child's education. The father indicates that the child is not happy with the mother, has no intentions of returning and has said she does not want the mother to receive copies of the reports. The father is ambivalent to the mother receiving the reports but wants to support the child's decision. The child is 16.

The history of involvement by the mother in the child's education makes it arguable that it is in the best interests of the child to allow that involvement to continue despite the child's objections. If the principal determines it is in the best interests of the child to provide the information to the mother, prior to providing the information, the child should be given an opportunity to seek a review of the decision in accordance with the Department's [Privacy Code of Practice](#). This review is undertaken by the principal. If unhappy with the ultimate decision of the principal, the child has a further right of review to the School Education Area Director.

Case study 16

The school is organising a three day trip to Canberra 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 and 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 provisions of [*Legal Issues Bulletin No. 31*](#) in relation to the procedures to be followed if a parent is to be excluded.
- 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. an AVO) 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 – rather this should be considered as incidental contact.
- 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 17

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 18

Separated parents attend a school concert night. There is a residence order that the child lives with one parent, the other enjoys 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.

The residential parent should be asked to leave the school site in the absence of any undertaking to behave appropriately. If the disturbance is serious enough, the principal has the right to ask the parent to leave immediately. Failure to leave when requested to do so by the principal exposes the parent to possible further action by the principal in accordance with the Inclosed Lands Protection Act 1901 and possible police involvement. (Refer to [Legal Issues Bulletin No. 31](#)).

Case study 19

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 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 20

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 which 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 contact 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 21

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 contact 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 22

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 23

Parents have separated and the father has re-married. The father has weekend contact with his child from the first marriage. His child and his step-son from his current marriage both attend the same school and are in the same class. He often attends the school to pick up his step-son. 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 step-son. 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 step-son) 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 step-son 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 step-son.

14. DEALING WITH PERSONS OTHER THAN PARENTS

- 14.1 While the Act 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 and the like 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. Any official relationship that is created as a result of children attending government schools is between the individual school and the parents. While other persons such as grandparents may wish to maintain a close involvement with children attending school, they cannot rely on any formal 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 for times 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 often are closely involved in school related matters pertaining to their step-children, 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 is entitled to withdraw that consent at any time. If however, a step parent has formally adopted the step child (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 Minister for Community Services may hold parental responsibility over a child and therefore the Department of Community Services or other designated agency will have a supervisory role in relation to the child. In such cases, authorised carers and their supervising designated 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 the relevant Government agency.
- 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.
- 14.8 Provision of information in these circumstances will not be a breach of any privacy legislation.

Case study 24

A child is experiencing educational and behavioural difficulties at school. The principal believes it is in the best educational interests of the child for him to see the school counsellor. The biological parents have separated and the residential parent is in a de-facto relationship. The biological father believes the child's problems arise from his ex-wife's current relationship. The wife's de-facto partner has always been involved in the child's education at the school and fully supports the principal's suggestion that the child see the counsellor. The mother does not want the child to see the counsellor.

Despite the objections of the child's mother, there would be nothing to prevent the counsellor from having an initial interview with the child to determine if any on-going support plan is required. If the child's safety and wellbeing is significantly at risk it would be important for the school counsellor to approach the child regardless of any parental objection.

Case study 25

Parents are divorced and the mother has re-married. The children of the marriage live with the father and the mother has contact every weekend commencing Friday 3pm. It has been the usual practice for the mother's current spouse to pick up the children on Fridays at the school. The father objects to the step-father picking up the children and insists the school not release the children into the care of the step-father. Instead, he insists on the principal arranging for the children to be placed on the school bus so that they can return to the father's residence.

The parents should be advised that this is an issue that needs to be resolved by them. Until an alternative agreement is reached between the parents, they should be advised that the step-father will be allowed to pick up the children after school.

15. APPREHENDED VIOLENCE ORDERS AND OTHER TYPES OF COURT ORDERS THAT MAY REGULATE THE RELATIONSHIP BETWEEN PARENTS

- 15.1 Apprehended personal violence orders and apprehended domestic violence orders (AVOs) are orders made under the *Crimes Act 1900*. Such orders can limit the contact one parent has with another parent and/or children. AVOs carry criminal sanctions if breached.
- 15.2 Unless otherwise ordered by the court, an AVO includes standard orders that prohibit a person from intimidating or stalking the protected person (i.e. the person seeking the order) and intimidating any person with whom the protected person has a domestic relationship.
- 15.3 In making an AVO in favour of the protected person, the court typically will make a specific order that indicates the persons with whom the protected person has a “domestic relationship” are also covered by the other terms of the AVO. Children have a “domestic relationship” with the parent with whom they reside, but the terms of the AVO frequently contemplate that the children will have contact with the person subject to the AVO. 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).
- 15.4 There are a variety of orders that can be made by the court when considering an application for an AVO. Most commonly, the orders made will include –
- not to assault, molest, 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 Family Law Act order.
- 15.5 An order prohibiting a parent from assaulting, molesting, harassing, threatening or otherwise interfering with a child does not of itself prevent that parent from having contact with the child. It should also be noted that a school is not regarded as a workplace of a student.
- 15.6 If an AVO 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 the police.

- 15.7 Situations can arise where both a Family Law Act order and an AVO 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 Family Law Act order relating to the time a child is to spend with a person is inconsistent with an AVO, the provisions of the Family Law Act order will prevail. Principals should seek advice from the Legal Services Directorate in relation to any other conflict issues that arise in respect of Family Law Act orders and AVOs.
- 15.8 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 the apprehended violence order scheme.
- 15.9 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 the apprehended violence order scheme.
- 15.10 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 15.6.

Case study 26

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 an AVO against the father. The AVO 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 AVO he cannot do this.

Ask for a copy of the AVO to clarify the orders. Depending on the terms of the AVO, it may be necessary to advise the father that he cannot attend the school activity if the mother will be there. If the AVO 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 Department 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 immediately contacted.

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 Department or individual schools. Upon receipt of such orders, principals should provide any relevant details to the appropriate court outlined in the order.
- 17.5 The Commonwealth Government may also from time to time seek assistance from the Department 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 the Legal Services Directorate 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.
- 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 are required to comply with its directions – i.e. either produce documents or attend to give evidence or both.
- 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 If a staff member receives a subpoena to give evidence in court, the staff member will be regarded as being on duty if the evidence arises because of his or her employment at the school. Staff should refer to [Legal Issues Bulletin Number 18 – Giving Evidence in Court and Tribunal Proceedings](#) and [Bulletin Number 25 – Subpoenas](#) for further information.

19. SPECIAL PROVISIONS RELATING TO TAFE CHILDREN'S CENTRES AND GOVERNMENT PRE-SCHOOLS

TAFE children's centres

- 19.1 TAFE children's centres are subject to the provisions of the *Children's Services Regulation 2004* (the Regulation) which outlines the Department of Community Services' requirements for the licensing and operation of children's services in New South Wales. Managers of TAFE children's centres need to be aware that the Regulation imposes the following obligations in relation to parental interaction with children at those centres, some of which vary from the provisions of this policy –

- parents have the right of contact with their children at any time the child is at the centre;
- if a parent is forbidden by court order from having contact with a child, that parent must not –
 - be given any information concerning the child;
 - be allowed to enter the premises of the children's centre while the child is attending the centre;
 - be permitted to collect the child from the centre.
- only parents or persons authorised **in writing** by a parent of the child are permitted to collect the child from the centre. If this is not possible, alternative arrangements to ensure the safety and welfare of the child must be made before the child can be permitted to leave the premises.

- 19.2 While the provisions of these guidelines will substantively apply to TAFE children's centres, to the extent that any inconsistency may arise between the guidelines and the Regulation, the Regulation is to prevail.

DET School-based Prior to School Services

- 19.3 While not currently subject to the provisions of the Regulation, it is anticipated that DET pre-schools and early intervention support classes may be covered at some stage in the future. If the Regulation ultimately extends its operation to DET prior to school services, the provisions outlined above in relation to TAFE children's centres will apply equally to those DET services.

20. RESPONSIBILITIES AND DELEGATIONS

Principals and institute managers must ensure that these guidelines are readily accessible to all employees. There are no delegations necessary for the implementation of these guidelines.

21. TIMEFRAMES

These guidelines take effect from 2007.

22. ASSOCIATED DOCUMENTS

While this document is the primary source document for guidelines on dealing with family law related issues, the following documents also assist in its application –

- [Legal Issues Bulletin No. 11 - Apprehended Violence Orders Update](#)
- [Legal Issues Bulletin No. 18 – Giving Evidence in Court and Tribunal Proceedings](#)
- [Legal Issues Bulletin Number 25 – Subpoenas](#)
- [Legal Issues Bulletin Number 31 – Inclosed Lands Protection Act 1901 Update](#)
- *The Department's [Privacy Code of Practice](#)*
- *The Department's [Privacy Bulletins](#)*
- *TAFE [Release of Student Information Policy, May 2003](#)*

23. FOR FURTHER INFORMATION

The officer responsible for these guidelines is the Director of Legal Services, telephone 9561 8538 or fax 9561 8543.

24. APPENDICES

- Information for Parents and Students – Family Law Issues and the Department of Education and Training
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APPENDIX 1

INFORMATION FOR PARENTS AND STUDENTS

FAMILY LAW ISSUES AND THE DEPARTMENT OF EDUCATION AND TRAINING

The Department recognises that some families are subject to family breakdown. In meeting its obligations to students and parents, the Department relies on the following principles -

- the education of a child is primarily the responsibility of the child's parents;
- decisions should be made on the basis of ensuring the continued effective and efficient operation of the school;
- generally, it will be assumed that both parents have been involved in any decisions made concerning major long term issues impacting on the school;
- school decisions are based on what is considered to be in the best interests of the child;
- 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 *Privacy and Personal Information Protection Act 1998* 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 1990* to ensure their children of compulsory school age attend school or received 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 Department has developed a detailed policy to assist schools to manage family law related issues. The main features of the policy are summarised below –

- in the absence of any court order to the contrary, generally either parent can enrol a child in a government 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

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-mails to parents, information sheets, student diaries, websites), it is up to individual principals to determine how the information is provided and on what frequency.

Important information for parents and students.

The Department 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 and have been involved in making any decisions regarding their children's education. 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 which have the potential to impact on the relationship between the school and your family, you are required to advise the school immediately. This includes providing copies of any court orders that may be obtained.