



Guidance

Home & Community

Headteachers of all schools
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Schools, "Parents" and "Parental Responsibility"

Related Documents:

Legislation: Education Act 1996 (Section 576). Children Act 1989

Superseded documents:

DES Circular PPY102: SCHOOLS AND THOSE WITH PARENTAL RESPONSIBILITY FOR A CHILD

Overview

This guidance explains to schools who is a parent for the purposes of education legislation; provides a brief description of court orders which settle areas of dispute about a child's care or upbringing and which can limit an individual's parental responsibility; and sets out some general principles to guide schools as to who they must involve in issues about a child's education and who they must keep informed about school matters.

Action

Schools to apply this guidance when dealing with non-resident parents who wish to be involved in their children's education.

Further information

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INTRODUCTION

1. Schools are required by law to have a wide range of dealings with pupils' parents. The question "Who are a pupil's parents?" is, however, not always as straightforward as it sounds. In addition, schools can often find themselves caught up in disputes between a number of adults who each claim to have parental responsibility for a particular child.

2. This note:

- explains who is a parent for the purposes of education legislation;
- provides a brief description of court orders which settle areas of dispute about a child's care or upbringing and which can limit an individual's parental responsibility; and
- sets out some general principles to guide schools as to who they must involve in issues about a child's education and who they must keep informed about school matters.

3. This is intended as helpful guidance for schools but should not be treated as a complete and authoritative statement of the law.

DEFINITION OF "PARENT"

4. Section 576 of the Education Act 1996 defines "parent" to include:

- all natural parents, whether they are married or not; and
- any person who, although not a natural parent, has *parental responsibility* for a child or young person; and
- any person who, although not a natural parent, *has care* of a child or young person.

PARENTAL RESPONSIBILITY

5. Having *parental responsibility* means assuming all the rights, duties, powers, responsibilities and authority that a parent of a child has by law. People other than a child's natural parents can acquire parental responsibility through:

- being granted a residence order;
- being appointed a guardian;
- being named in an emergency protection order (although parental responsibility in such a case is limited to taking reasonable steps to safeguard or promote the child's welfare); or
- adopting a child.

6. In addition, a local authority can acquire parental responsibility if it is named in the care order for a child, although any person who is a parent or guardian retains parental responsibility and may exercise it providing their actions are not incompatible with the care order. While the care order is in force, the local authority can refuse contact with the parent and does not have to seek parental consent. Children can also be "accommodated", whereby there is a joint arrangement between the parents and the local authority that the latter will look after the child. This does not, however, involve a court order and the parents can withdraw from the arrangement if they choose to do so.

7. The parental responsibility of one party does not stop simply because another person is also given it. So, in some cases several people may be regarded, for the purposes of education law, as being the "parent" of a child.

CARE OF A CHILD

8. Having *care of* a child or young person means that a person who the child lives with and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law.

COURT ORDERS AND PARENTAL RESPONSIBILITY

9. Court orders under section 8 of the Children Act 1989 (often called section 8 orders) settle areas of dispute about a child's care or upbringing, and can limit an individual's parental responsibility. There are two types of order which are concerned with particular issues and which still allow everyone with parental responsibility to participate in all other major decisions about a child's education:

- A **prohibited steps order** imposes a specific restriction on the exercise of responsibility. This means that no step specified by the court which a parent could take in meeting his/her parental responsibility, can be taken without the consent of the court. Examples would be one parent taking the child abroad for an extended period or preventing the child from attending a form of religious worship against the wishes of the other parent.
- A **specific issue order** is an order giving directions for the purpose of determining a specific question which has arisen, or may arise, in connection with any aspect of parental responsibility. An example would be an order allowing one parent to agree to a pupil changing school against the wishes of the other parent.

10. Other types of order, which do not relate to particular issues, are:

- A **residence order**, which says where and with whom a child should live, and gives the holder parental responsibility for the child (if he or she does not already have it).
- A **contact order**, which instructs the person with whom the child is living to allow another person to visit the child, have the child to visit or stay with him or her, or have contact by letter or telephone.

11. Where a court is satisfied that it serves the child's welfare to do so, it can make a **care order** which gives parental responsibility to a local authority. In such circumstances, the local authority has a duty to consult the parents about (for example) which school the child should attend, as they continue to share parental responsibility; but it is for the local authority to decide what is in the child's best interests.

¹Parental responsibility is defined in the Children Act 1989. If the parents of a child were not married to each other when the child was born, the mother automatically has parental responsibility but the father does not, even if he is named on the birth certificate. He can, however, subsequently acquire parental responsibility by various legal means.

WHAT SCHOOLS SHOULD DO

General principle

12. **Everyone who is a *parent*, as defined above, has a right to participate in decisions about a child's education**; even though, for day to day purposes, the school's main contact is likely to be a parent with whom the child lives on school days. School and LEA staff must treat all parents equally, unless there is a court order limiting an individual's exercise of parental responsibility. Individuals who have parental responsibility for, or care of, a child have the same rights as natural parents, for example:

- to receive information from the school (e.g. copies of the governors' annual report, pupil reports and attendance records);
- to participate in activities (e.g. vote in elections for parent governors);
- to be asked to give consent (e.g. to the child taking part in extra-curricular activities);
- to be told about meetings involving the child (e.g. a governors' meeting on the child's exclusion).

Administration

13. It follows from this that head teachers should ask parents or guardians the names and addresses of *all* parents when they register a pupil. These details, where known, must be included in the admission register. They should also be included in manuscript or computerised pupil records (which need to be kept up to date) and be available to the pupil's teachers. The information should be forwarded to any school to which the pupil moves.

14. Details of court orders should also be noted in a pupil's record. Such information will be necessary when decisions need to be made about who can give parental permission for a school visit, or be contacted if the child is ill, as well as what to do in more difficult situations - for example, if a parent, rather than a foster-parent, comes to collect a child in local authority care from school.

15. Problems can arise following the break down of a marriage in relation to the surname by which a child is known. A mother with whom a child resides following divorce may ask the school to change the child's name in its records, perhaps to her maiden name. The basic legal position, however, is that she is not allowed to change the child's surname without the consent of the father or of anyone else who has parental responsibility for the child. In such circumstances, a school should be cautious about making such a change in its records unless there is evidence - independent of the parent seeking to make the change - that consent has been given. The clearest evidence would, of course, be something in writing from the 'other parent' giving consent to the change.

Provision of information to parents

16. In cases where the school does not know the whereabouts of a parent with whom the pupil does not live - referred to here as a 'non-resident' parent - it should make the resident parent aware that the non-resident parent is entitled to be involved in the child's education; and request that information is passed on to the non-resident parent. If, in extreme cases, the resident parent refuses to share information with the non-resident parent and also refuses to provide contact details so that the school can deal directly with the non-resident parent, the school can do nothing more. It would clearly be unreasonable to expect schools to expend resources searching for non-resident parents. However, if the non-resident parent subsequently contacts the school and requests access to information, the school should provide it to that parent direct - after taking reasonable steps to satisfy itself that the individual *is*, in fact, the child's parent.

Obtaining parental consent

17. Schools may be uncertain about the lengths to which they should go to seek parental consent in relation to extra-curricular activities, school trips, and the like. Unless *either* the decision is likely to have a long term and significant impact on the child *or* the non-resident parent has informed the school that he wishes to be approached for consent in all such cases, there should be no difficulty with the school seeking consent just from the resident parent.

18. In cases where the school considers it necessary to seek consent from both parents, it is possible that one gives consent and the other withholds it. This puts the school in a difficult situation, as the last thing it will want is to be placed in a position where it has to arbitrate between parents who are at odds with each other; but, nevertheless, a decision must be made. The safer decision would be to take the view that parental consent has *not* been given to the child undertaking the activity in question. Such an approach safeguards the position of the school, ensuring that it is not exposed to any potential civil liability if (for example) the child is injured while on the school trip.

19. If challenged in such a case by the parent who was happy to give consent, the school should explain that, because the other parent has explicitly asked to be consulted separately, it is obliged to treat the views of both parents equally. It is not taking sides but needs to protect itself against possible legal action. The school might want to suggest that the parent seeks independent legal advice about obtaining a court order setting out exactly what decisions each parent can make in respect of the child.

20. Schools are also uncertain sometimes about the position where a child has an accident and consent may be needed for emergency medical treatment. The Children Act provision that people who do not have parental responsibility but nonetheless have care of a child may "do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare" applies in such cases. It would clearly be reasonable for the school to take a child who needs to have a wound stitched up to hospital, but the parents - including any non-resident parent who has asked to be kept informed of events involving the child - should be informed as soon as possible. If, however, any decision needs to be made about alternative types of treatment, the hospital will need to discuss options with the parents. Schools will clearly not want to take responsibility for making decisions in relation to elective surgery - and it is very unlikely that hospitals would want them to do so.

Conclusion

21. The welfare of the particular child will be the paramount consideration for schools. Situations will arise from time to time, however, where a parent's action or proposed action conflicts with the school's ability to act in the best interests of the child. In such cases, school staff should try to resolve the problem with that parent but should avoid becoming involved in any conflict.