

Family Law and Schools

Family Law and the Enrolment of Students

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Enrolment of a student – family law considerations

Schools are commonly faced with a situation where parents, who are separated or divorced, are in dispute over whether their child may be enrolled at the school. One parent wishes the child to be enrolled at the school while the other parent objects to the enrolment. Often both parents express their wishes regarding the enrolment of the child to the school directly.

In light of the amendments made to the *Family Law Act 1975* which commenced on 1 July, 2006, this article considers what documents a school should request from separated or divorced parents when faced with a dispute regarding the enrolment of their child. It also discusses what a school should look for in any document received from the parents and entered into on or after 1 July, 2006.

If the school is aware that there is a conflict between separated or divorced parents about whether their child should be enrolled at the school, the school should obtain from the parents any Orders made by a Court or any parenting plan signed by the parents in relation to the care of the child. A parenting plan is an agreement between the parents of a child that is in writing, is signed by the parents, is dated and deals with matters relating to the care of child.

What if the parents do not have a parenting plan or Orders?

Despite being divorced or separated, both parents have complete parental responsibility for their child jointly and severally. This means either parent can make the decision to enrol their child at a school independently of the other parent. Accordingly, the signature of only one parent to the enrolment application is all that is necessary. However, from a practical point of view, it is in the school's interests to ensure both parents consent to the enrolment of the child at the school. This may reduce conflict with the other parent in future and possibly stop the other parent withdrawing the child from the school. It is also a good idea for the school to have both signatures on the enrolment form so that both parents are responsible for the payment of the school fees.

For these reasons it is recommended that schools advise the parents that the child will not be enrolled unless they either:

- (a) agree to the child attending the school and both sign the enrolment form; or
- (b) obtain Orders or sign a parenting plan which clearly sets out who has the right to make the decision about where the child attends school and the parent with the right signs the enrolment form.

What if the parents do have a parenting plan or Orders?

If the parents do have a parenting plan or Orders, the school should obtain a copy of the document(s) to determine whether the parenting plan or Orders set out who has the right to make the decision about where the child attends school. The school also needs to know how to decide whether Orders prevail over a parenting plan or vice versa.

Who has the right to make the decision about where the child attends school?

The school should check the parenting plan and/or Orders to see if they say the decision, regarding where the child attends school, can be made:

- 1. by both parents jointly;
- 2. by either parent independently of the other parent; or
- 3. solely by one parent.

Sometimes the documents will clearly set out that one parent or another has the right to decide where the child attends school or that the decision must be made jointly.

Alternatively, the documents may not specifically set out who has the right to make the decision about where the child attends school, but may instead use wording such as, “the mother has the right to make decisions about major long term issues” or “the parents share parental responsibility.”

The definition of major long term issues in the *Family Law Act 1975* includes the child’s education. Accordingly, parents with the right to make decisions about major long term issues also have the right to decide where the child attends school. In most cases the documents will say the decision must be made by both parents jointly.

If the school has a copy of Orders (this does not apply to a parenting plan) and the Orders say that:

- (a) parental responsibility is shared between the parents; and
- (b) the exercise of that parental responsibility requires the parents to make decisions about major long terms issues,

the Orders require any decision about major long term issues, such as the decision about where the child attends school, to be made by the parents jointly. This means they must consult with each other and make a genuine effort to come to a joint decision.

If the parenting plan and/or Orders do not say who has the right to make decisions about where the child attends school, the situation is the same as if the parents did not have a parenting plan

or Orders. That is, each parent can, independently of the other, decide where their child will attend school.

If the parents have either a parenting plan or Orders which set out who has the right to decide where the child attends school, the school should accept for enrolment purposes the signature(s) of the parent or parents who have the right to make the decision.

When there are Orders and a parenting plan, which prevails?

If the parents have a parenting plan and Orders and both documents set out who has the right to decide where the child attends school, the school should carefully check the dates of the parenting plan and the Orders. If the Orders were made after the parenting plan, the Orders prevail. On the other hand, if the parenting plan was made after the Orders, the parenting plan prevails unless the Orders specifically say that they may only be varied by subsequent court orders.

If after examining Orders or a parenting plan the school is in doubt about who has the right to decide where the child attends school, the school should obtain legal advice on the terms of the Orders or the parenting plan.

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