

## Related Policies

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Nil

## Purpose

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This policy contributes to the Catholic Education Office's responsibility to comply with legislation, court orders, and to act appropriately when parents of students are no longer together.

## Policy

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In areas of Family Law, when Principals are unsure of what action to take, they should contact the Senior Officer: Child Protection and Legal Issues who will provide appropriate legal advice. School staff members who are unsure about Family Law matters should consult with their Principal.

Schools should take the general position that:

- parents have the primary responsibility for the welfare of their children
- parents must provide schools with current family law or other relevant orders where these exist
- parents have the primary responsibility to comply with their obligations under court orders
- it is not the school's responsibility to interpret Family Court orders when parents disagree
- it is not the school's responsibility to ensure that parents comply with their obligations of parental responsibility under Family Law
- schools will not 'take sides' in family law disputes.

## Definitions

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Terms such as 'custody' and 'access' and 'guardianship', are now replaced with the terms 'live with', 'spend time with' and 'communicate with'. Principals should adopt current terminology for the sake of consistency and clarity.

### Parenting plan

An agreement between separated parents about how their children will be cared for and supported after separation. Parenting plans are not orders, but Courts may have regard to recent parenting orders in their decision making process.<sup>1</sup> A Parenting Plan can include anything that parents need to agree on about their children. The Plan can be changed at any time with the agreement of both parents in writing.

### Parenting and consent order

An order which is made by agreement between the parties and has the heading 'by consent'. A consent order is a written agreement that is approved by the court. As the name implies, a consent order contains conditions that parents consent to, usually by negotiation. It can cover parenting arrangements for children (a 'parenting order') as well as financial arrangements. It has the full authority of a court order.

If parents cannot agree on the appropriate arrangements after separation, courts can make orders about parental responsibilities and particular arrangements.

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<sup>1</sup> *Family Law Act 1975* (Cth) s65DAB

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## Procedures

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### Issues dealt with in orders

When making parenting orders the basic presumption is that of equal shared parental responsibility.<sup>2</sup> That is, each parent has parental responsibility for each of their children until they are 18. This is not affected by changes in the parents' relationship, such as separation. An order may alter this or place conditions on it.

Parenting orders may deal with a range of issues.<sup>3</sup> In the school context, the main ones would include:

- with whom a child is to live
- the time a child is to spend with another person or other persons
- the allocation of parental responsibility for a child
- the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility
- the communication a child is to have with another person or other persons
- any aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

### What an order should look like

Schools will ensure that documents presented as court orders are legally binding orders. Generally a court order should:

- have a file or matter number at the top
- contain the names of the parties involved (applicant and respondent)
- be stamped by the court (usually towards the bottom of the front page)
- state the name of the court
- contain numbered orders in paragraphs
- generally be typed
- have the names and signature of parties and/or their lawyers at the end.

### Time limits

There may be some type of limit on an order. It may be a short term or 'interim' order, or the matter may be adjourned to a later date. In that case, schools will check with parents for a later version of the order. A 'Final' order will usually cover a period of years.

### Where there are no apparent court orders

Where there are no orders, there is a presumption that both parents have parental responsibility in relation to the child.<sup>4</sup> This means '*all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.*'<sup>5</sup> This applies unless it is displaced by a court order. That means that even if the child doesn't live with a particular parent, they are entitled to be part of the child's life.

In these cases schools will:

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<sup>2</sup> Family Law Act 1975 (Cth) s61DA

<sup>3</sup> Family Law Act 1975 (Cth) s64B(2)

<sup>4</sup> Family Law Act 1975 (Cth) s61C

<sup>5</sup> Family Law Act 1975 (Cth) s61B

- allow both parents to attend school functions, parent teacher interviews and similar occasions if they wish
- provide documentation and notices such as reports to both parents, regardless of which parent the child lives with.

#### Responding to subpoenas

Schools are frequently asked to provide documentation under a subpoena. Typically school reports, absentee records and other records for a child will be sought. A subpoena is in the nature of a court order and schools must comply within the specified timeframe if it is valid in every respect.

All subpoenas should be referred immediately to the CEO for assistance.

Staff may be issued with a subpoena to give evidence in court. It is necessary to comply with this. Staff should contact the Principal and/or Head of Human Resource Services for assistance. This is different from a *request* by a party to be a witness and provide evidence in court, which is generally not obligatory.

#### Updating documentation

Outdated or non-existent documentation can cause great stress. Schools should have the latest court orders or parenting plans on file at all times. At various times throughout the school year, schools should remind parents of the need to update family law documentation through reminders in newsletters.

## References

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Family Law Act 1975 (Cth)

## Forms

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