

7.12 Guidelines – Matrimonial Disputes

(not a policy – a guide)

Rationale: The school needs to adhere to legal dictates handed down by the courts in instances of matrimonial disputes.

Legal Definitions.

It is necessary to know how the law defines the difference between ‘custody’ and ‘guardianship’ and the rights which apply to both. Section 3 of the Guardianship Act 1968 defines these as follows:

“Custody” means the right to possession and care of a child. “Guardianship” means the custody of a child (except in the case of a testamentary guardian) and subject to any custody order made by the Court and includes right of control over the upbringing** of a child, and includes all rights, powers and duties in respect of the person and upbringing of a child that were at the commencement of this Act vested by an enactment of rule of law, in the guardian of a child and ‘guardian has a corresponding meaning.*

* a testamentary guardian is one appointed by a will or deed

** Section 2 of the Guardian ship Act 1968 defines “upbringing” as including education and religion.

Guardianship

While parents are living together, both of them retain custody and guardian ship rights. A biological father is usually the guardian of the child whether or not he has ever been married to the mother. While the court has the power to deprive a person of his or her guardianship of a child, this is very rare. If one parent has lost guardianship rights, a principal would be wise to see the Court Order authorising this.

Custody

When parents separate it is usual for one of them to be granted custody of the child. An increasingly common custody order is for one or joint or shared custody .In this case both parents, although separated, share the custodial responsibility, largely making their own arrangements about the day-to-day care of the child This order may be used where the parents live near each other and are still on reasonably good terms.

A parent who has custody does not for that reason, have sole control over the child’s education or the sole right to regulate, supervise and direct the life of that child. That is the function of guardianship.

Both parents, however, retain guardianship and the rights that belong to a guardian, regardless of the custody arrangements. (These, as they apply to the school context will be discussed below. Fig 1).

When parents have separated and custody arrangements have not been formalised, both parents have custodial and guardianship rights. If disputes over custody and access arise, it is not the responsibility of the school to arbitrate.

Access

A custody order by the Court will state which parent has the right to physical possession and day to day care of the child and day-to-day care of the child. It will

usually then define the rights of access to the child of the non-custodial parent. Some orders may define this in terms of specific times for access by the non-custodial parent. It has become increasingly common, however for courts, to simply order ‘reasonable access’ or ‘liberal access’. The custodial parent is not entitled to deny the other parent’s access within the terms of an agreement or court order.

Ward-ship

Under Section 9 of the Guardianship Act 1968, a child may be made a ward of the court, in which case the child is placed under the guardianship of the Court. Both parents, however also retain guardianship rights giving the child in effect three guardians. The court, nevertheless, can limit or over-rule the rights of parents. Physical control and care are entrusted to an agent of the court (who could be a parent, or any other person).⁹ of the Children and Young Persons Act 1974, the Director-General of Social Welfare may be appointed the guardian of a child to the exclusion of all others. While such an order is in force, parents do not have guardianship rights.

Fig 1. The Rights of the Guardian and the School

It would be advisable for the principal to outline to the custodial parent the rights of the non-custodial parent.

Unless a court rules otherwise, both parents, as guardians, are entitled to:

- a copy of their child’s reports
- a discussion of the educational progress of their child with the principal, and teacher in the same way as any other parent;
 - contribute to major educational decisions affecting the child. e.g. decide which school the child attends, special class admission, and access to religious instruction
- participate on the PTA/ BOT or any parent functions the school.
- See such official records about the child as are normally shown to parents. e.g. the record card, progress data.

It is the responsibility of the guardians to take the initiative in exercising these rights. The school should make reasonable efforts, however, to assist guardians to avail themselves of these entitlements

Because of their emotional involvement parents who have decided to separate often become highly concerned about their children, and highly suspicious of the actions of the other parent. Difficult situations can arise quickly and the principal/ teachers will have to rely on their own judgement in deciding what to do. It should be remembered that any dispute over the rights of separated parents in respect to their child’s schooling should be a matter settled between the parents themselves. It is not the job of school staff to adjudicate in such a dispute, nor to interpret a court order, since such matters ultimately can be settled by the courts under Section 13 of the Guardianship Act 1968.

School staff should not write statements for parents to use in court, that state that the living arrangements in either parent’s household are preferable to the other, or that homework is better supervised in one home than another



Parnell District School
Protocol – Lawyers with Children at School
A Guide for lawyers and School Staff

Children whose parents whose families are separated or undergoing matrimonial difficulties, are likely to have a lawyer to act for them under either the care of Children Act or the Domestic Violence Act.

1. All lawyers should make initial contact with the school through the principal, possibly by phone, and confirm in writing. (possibly by email)
2. At the first visit the school expects to receive evidence of the lawyer's appointment as counsel for the child (i.e. a copy of the letter of appointment from the Family Court is sufficient). Alternately the lawyer is required to state who they are representing. The lawyer should also provide proof of their identity, and a general indication of the type of information they are seeking. Lawyers representing a child operate within the Official Information Act 1982 or the Privacy Act 1983. If a formal court order to interview the child is in place, this should be shown to the principal at this time.
3. Subsequent contacts with school staff should also be made through the principal.
4. The child's lawyer should update the school as to the current status of any orders, and update the school if there are any changes to court orders. e.g. the issue of a protection order.
5. The child's lawyer may meet with the child at school with the permission of the principal. The school is often seen as a place where a child is less likely to be influenced by a parent.
6. On rare occasions the child's lawyer may contact the school without reference to the parents, if he/she is concerned that the parent(s) may coach, upset or otherwise influence the child prior to the lawyer making contact with the school.
7. The school recognises the value of a child seeing their lawyer on their own, however if the child expresses reluctance to meet the lawyer, the school will make a teacher (usually the class teacher) available to make the child feel more comfortable. In ideal circumstances the staff member will be briefed as to the level of support that might be required.
8. School staff may also be interviewed by the child's lawyer, by appointment, after consultation with the principal, and share such information as promotes "the best interests of the child." State schools are required under the Official Information Act (as opposed to the Privacy Act) to release information unless "there is good reason to withhold it". Teachers should be made aware by the lawyer that their information may be disclosed to all those involved at the court proceedings and their comments should be framed in non-judgemental and neutral terms.
9. School staff will provide academic and progress information in writing (e.g. school report) but will not become character witnesses for either parent, or put

in writing any comments on the child's socialisation/ family relationships. Staff have been instructed not to sign any avadavat about a child without prior consultation with the principal.

10. It is acknowledged that consent for disclosure of information from the school is not a legal pre-requisite, but that lawyers will often seek this consent as a matter of courtesy. The consent of the child is also not a legal pre-requisite to the school releasing information; however consent is often sought depending on the child's age and maturity.
11. At the conclusion of the interview the lawyer will as a matter of general courtesy advise the school as far as practical about the outcome of any proceedings. This would include advice of any special circumstances which might affect the rights of one or other parent to information about their children, or to visit the school
12. If the school is contacted by parent, guardians or their lawyers for information this school will channel all such requests through the child's lawyer, to ensure the child's rights are protected and to reduce the possibility of putting the school staff in the position of having to take sides.
13. The school will contact the child's lawyer in the event of any dispute, or if the need for clarification arises.
14. The school would expect that the child's lawyer would inform the school of any warrant to enforce custody and or access orders under the Children, Young Persons and their Families Act 1989. In normal circumstances the school would expect the lawyer to be involved in the execution of this warrant, so as to cause a minimum of disruption to the school and the child.

Refer also to School Trustees document below.

Vital facts for schools when dealing with separated parents

When parents separate it can make life very difficult for staff at the children's schools.

We recently had a query from a principal about how to deal with parents who were at war with each other. The principal was particularly concerned about the school's obligations where there is a protection order in force under the Domestic Violence Act.

There are five basic issues that you need to be aware of:

1. Guardianship rights

If a parent is a guardian of a child they have the right to be informed of any major events in their child's life. This generally includes where the child goes to school, whether they have any serious medical issues, and what type of religious upbringing they are to have.

A mother is automatically a guardian of her child. At this stage, a father is only a guardian of a child if he was married to the mother, or living with the mother at the time of the child's birth. However, a law change in July this year, will make it easier for fathers to be guardians. The only way you will know whether or not a father is a guardian is if you ask the parents.

You should inform guardians of issues relating to vaccinations, and also provide guardians with school reports and newsletters. [Refer to s.77 and definitions in s92, *Education Act 1989*.]

2. Is there a right to be involved in school activities?

In general, both parents should be advised of school trips, concerts, sporting events, and any other events involving the children. However, there are two situations where this information should not be provided:

- (a) if the Court has made an order that one of the parents is not allowed to have any contact with the child; or
- (b) if the Court has granted a protection order against one of the parents.

You will need to rely on the parents or social workers to advise of any Court orders.

3. Protection orders

If a protection order is in place between parents, it means that one parent cannot contact the other, or be in

the same place. In most cases a protection order also includes the children and means that one parent cannot contact the children either. Where there is a protection order in place protecting one of your pupils you must have a copy of the order for your records. If the restricted parent comes to the school, you should call the police immediately, and tell the police about the protection order.

4. Access issues

We were recently asked how to deal with a situation where a parent, who was told by the Court he could not have access with his child, was hanging around the school gate.

You are not required to enforce Court orders which state a parent is to have contact with the children at specific times only. You are not responsible for monitoring who is waiting at the school gate. However, if you are aware of a problem, then you should take the following action:

- (a) advise the parent who has the care of the children that the other parent has been at the school and discuss with them how to handle the situation;
- (b) if necessary the parent trying to see the children should be asked not to come to the school;
- (c) if the parent returns, arrange for a trespass order to be served, although this will not be effective if the parent does not actually come onto the school ground;
- (c) if the parent persists after receiving the trespass order call the police and refer them to the relevant Court orders.

5. Liability

You are not liable for any problems that occur between parents on school grounds.

If you are concerned about the safety of a child at the school you should call the police.

**DO NOT LET THE SCHOOL PLAYGROUND BECOME
A MATRIMONIAL BATTLEFIELD**
Contact STA HELP (0800 782 435)