

Subject:

**Parental Responsibility :
Guidance for Schools**

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Audience:

- Principals and Senior Teachers of all grant-aided schools;
- Education and Library Boards - Education Welfare Service;
- Council for Catholic Maintained Schools;
- and
- Teachers' Unions.

Summary of Contents:

This Circular informs schools about the law on parental responsibility and provides advice on the action required by schools in respect of a person or persons who acquire parental responsibility for a pupil.

Status of Contents:

Advice
Information for schools

Related Documents:

The Children (NI) Order 1995 -
An Introductory Guide for
Schools

Superseded Documents:

None

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Not applicable

DENI Website:

This Circular is also available on
<http://www.deni.gov.uk>

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PARENTAL RESPONSIBILITY : GUIDANCE FOR SCHOOLS

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PARENTAL RESPONSIBILITY : GUIDANCE FOR SCHOOLS

Introduction

1. The Children (NI) Order 1995, which came into operation in November 1996 , places the welfare of the child at the heart of all decision making. The Order aims to strengthen the relationship between parents and their children even if parents have separated or are divorced, and even if the courts have said that there should be no direct contact.
2. The Children (NI) Order contains a definition of parental responsibility, states who automatically has this responsibility and sets out how it may be acquired by others through the courts. The possibility of others acquiring parental responsibility clearly has implications for schools - parents, and by extension those who acquire parental responsibility, have various rights under current education legislation and may wish to exercise them.
3. This Circular has two purposes:-
 - to inform schools about the law on parental responsibility; and
 - to advise on the action required by schools in respect of a person or persons who acquire parental responsibility for a pupil.

PARENTAL RESPONSIBILITY AND THE LAW

What is parental responsibility ?

4. Parental responsibility is defined in the Children (NI) Order as ‘ all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’. In the context of education, for example, parental responsibility confers on a parent the right to express a preference for the school their child should attend and the responsibility to ensure regular attendance at school.

Who automatically has parental responsibility ?

5. A mother always has parental responsibility and the only exception to this is when an adoption or a freeing for adoption order is made.
6. Parents who were married at the time of the child’s birth or parents who were married at the time of the child’s adoption have parental responsibility and retain it regardless of separation or divorce at some later date.

7. Where a child's father and mother were not married to each other at the time of the child's birth, then only the mother automatically has parental responsibility for the child. If the child's parents subsequently marry then the father automatically acquires parental responsibility.

Who can acquire parental responsibility ?

Unmarried Fathers

8. The person most likely to acquire parental responsibility rights is a father who remains unmarried to the child's mother. There are three ways in which this might be done:-
 - by making a Parental Responsibility Agreement with the mother. This is intended to be a simple method by which parents may share parental responsibility without going to court. Such an agreement to be recognised must follow a prescribed format and be registered with the Office of Care and Protection at the Royal Courts of Justice. Such an agreement can only be brought to an end by the court;
 - by applying to the court for a Parental Responsibility Order - this places him in the same position as a married father, sharing parental responsibility with the mother; or
 - by having a Residence Order made in his favour. When the court decides that a father is entitled to have his child live with him it will always make a Parental Responsibility Order at the same time. This Parental Responsibility Order will remain in force after the Residence Order ceases.

Others

9. People other than parents may acquire parental responsibility. Anyone in whose favour a Residence Order is made will have parental responsibility while the order remains in force. Most usually a residence order is made in favour of a relative, for example grandparents or a step-parent.
10. A Health and Social Services Trust acquires parental responsibility while an Interim or Final Care or an Emergency Protection Order is in force.

Can parental responsibility be shared by more than one or two parties ?

11. More than one person can have parental responsibility for the same child at the same time and neither parent will lose parental responsibility solely because someone else acquires it through a court order. This means, for example, that upon divorce a father does not lose parental responsibility even if a step-parent acquires it under a residence order. In this situation the mother, step-father and father all share responsibility and, subject to not acting in a way that is incompatible with a court order, each will be able to exercise their responsibilities independently of each other.
12. When a Health and Social Services Trust obtains an Interim or a Final Care Order or an Emergency Protection Order in respect of a child it acquires parental responsibility while the order remains in force. While parents do not lose parental responsibility in this situation, the Health and Social Services Trust is given the power to determine, with certain restrictions, the extent to which another person with parental responsibility may act.

What happens if those with parental responsibility disagree ?

13. Any person who holds parental responsibility can act alone and without the other or others in meeting that responsibility. There is every expectation that those with parental responsibility will consult together and reach an agreement on any decisions affecting the child, however there is no legally enforceable duty to consult.
14. Where there is disagreement between those with parental responsibility on any course of action affecting the child, application can be made to the court by any of the parties for a decision. The court is required when considering disputes about parental responsibility to consider the ascertainable wishes and feelings of the child in the making of any decision about the child. Depending on the circumstances a decision can be obtained by :-
 - a Specific Issue Order - here the court will give directions for determining a specific question which has arisen in connection with any aspect of parental responsibility for a child. For example, the court could determine which school should be the preferred option for a child; or
 - a Prohibited Steps Order - here the court will specify action which cannot be taken by a parent with parental responsibility. For example, an order could be obtained to prevent a person with parental responsibility removing a child from a particular school.

ACTION BY SCHOOLS

What does this mean for schools ?

15. It means that anyone who has parental responsibility for a pupil is entitled to exercise the full range of rights contained in current education legislation. That said, it should be noted that during the period November 1996 to December 1997, some 143 Parental Responsibility Orders were made in Northern Ireland and a further 151 during 1998. This is a very small number considered against a school age population of some 350,000 pupils and does indicate that dealing with cases of Parental Responsibility Orders in respect of pupils will not be a regular matter for the majority of schools.

Must schools find out about all persons who have parental responsibility for a pupil ?

16. No. Schools do not need to take any special action to find out about all persons who have parental responsibility for their pupils. It is a matter for the person(s) who have parental responsibility to ensure that they are in a position to exercise their rights. This means that any person acquiring parental responsibility rights must contact the school and make appropriate arrangements.

What action should a school take if an approach is made about parental responsibility rights ?

17. Before any action can be taken to accommodate a request to exercise parental responsibility rights schools will need to:-
 - confirm that the person has parental responsibility;
 - establish which rights will be exercised independently or on a shared basis; and
 - make the necessary administrative arrangements.
18. Any approach about the exercise of parental responsibility rights should be handled sensitively by a school as the circumstances which have given rise to the request may indicate home difficulties for a pupil. For this reason it is recommended that clarifying the position would be best done by means of a personal interview with a member of a school's senior management team, preferably the principal.

How can parental responsibility be verified ?

19. It is entirely reasonable, against the broader concerns about child protection, for a school to ask for verification that the person making the approach has parental responsibility.
20. Where a 'parental responsibility agreement' has been made with the pupil's mother, the father should be able to produce a copy of the agreement for inspection. Where a Parental Responsibility Order has been made, a copy of the Order with details of the court at which it was made, the date and the names of the child(ren) concerned should be produced for inspection.
21. If there are any concerns about the validity of these documents assistance and help in verifying the details should be sought from the Education Welfare Service .

How should the position on exercise of rights be established ?

22. Current education legislation provides parents with a range of rights which they can choose to exercise. A list of those which are current is attached at Appendix A. Exercise of all rights may not be appropriate in all cases, for example, if the approach is from a Social Services Trust then involvement in the election of a parent governor would not be necessary.
23. It is also important to establish if these rights are to be exercised independently or on a shared basis. This information can provide a helpful insight into the pupil's circumstances and can give early warning about potential areas of difference concerning the pupil's education. It may also require a school to undertake more than one meeting with parent(s) and those with parental responsibility at decision points in a pupil's educational career, for example at transfer to secondary level education stage.

What administrative action should be taken ?

24. When a school has verified parental responsibility and established the position in respect of education rights, then appropriate arrangements should be made to ensure that these rights can be exercised. It is a matter for each school to determine these in the context of their own organisation and systems and the arrangements noted on the pupil's record. .

What happens if those with parental responsibility disagree about an educational decision?

25. A school will have a view on the most appropriate educational decision for a pupil based on its experience and knowledge of the pupil and therefore may not be perceived as 'neutral' by one of the parties. In such a situation, a school may wish to consider organising a meeting of all concerned and inviting a 'neutral party', for example an officer from the Education Welfare Service to chair the discussion. If, after a discussion no agreement is reached then advice can be given about the need to seek a Specific Issue Order.

Further information and advice ?

26. More detailed information about matters covered in this Circular or advice with a specific case is available from the Education Welfare Service.

PARENTAL RIGHTS UNDER CURRENT EDUCATION LEGISLATION

Parents have a right to :

- be consulted during the statutory assessment and statementing process where a pupil has special educational needs and giving any necessary approvals;
- express preference in respect of school admission;
- appeal against admission decisions;
- request that a pupil be withdrawn from religious education and collective worship;
- receive pupil's annual report;
- appeal against an expulsion decision by school authorities;
- be invited to meetings with teachers to discuss pupils' progress;
- request that a pupil is not entered for an examination;
- receive regular communications from schools, for example advice leaflets, dates of holidays, school trips;
- receive the Governors' Annual Report to parents and be invited to Annual Parents' Meetings;
- be nominated as a candidate and to vote the election of parent governor;
- be a member of any Parents' Association;
- vote in ballots to change the school's status to Grant Maintained Integrated or Controlled Integrated;
- give permission for school trips/after school activities/medical and dental examinations;
- receive copies of the school's curriculum and discipline policies;
- have access to the school's own records on the individual pupil [see Education (Pupil Records) Regulations (NI) 1998]; and
- be consulted prior to a general inspection of the school.