



Department  
for Education

# **Understanding and dealing with issues relating to parental responsibility**

**Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses**

**January 2016**

# Contents

Summary	3
About this departmental advice	3
Review date	3
Who is this advice for?	3
Main points	3
Defining ‘Who is a parent?’	4
What is Parental Responsibility?	4
Key effects of a father acquiring parental responsibility:	5
Court Orders and Parental Responsibility	6
General principles for schools and local authorities	7
Information Sharing	7
Obtaining consent	9
Medical Treatment – Seeking Consent following Accident or Injury	9
Safeguarding	9
Changing a Surname	10
Parent Governors	11
Administration	11
Conclusion	12
Further information	13
Useful resources and external organisations	13
Other relevant departmental advice and statutory guidance	13

# Summary

## About this departmental advice

This is departmental advice from the Department for Education. It is non-statutory, and has been produced to help recipients understand their obligations and duties in relation to the rights and responsibilities of parents as defined by education legislation.

It is intended as helpful guidance for schools and local authorities but should not be treated as a complete and authoritative statement of the law. In this guidance we are careful to differentiate between legal requirement and good practice. We use 'must' where a school has a duty. We use 'can' where a school has a power (not a duty) under statutory or common law. We use 'should' for advice on good practice.

## Review date

This advice will next be reviewed before January 2019, subject to any legislative changes.

## Who is this advice for?

This guidance is for:

- School leaders, school staff and governing bodies in all local authority maintained schools, maintained nursery schools, academies and free schools;
- Local authorities; and
- Diocesan Boards

## Main points

Schools are required by law to have a wide range of dealings with pupils' parents and can find themselves caught up in disputes between a number of adults, each claiming to have parental responsibility for a particular child.

Some basic guidelines are given in this document. These provide general guidance however schools may want to take their own independent legal advice about any particular individual set of circumstances.

The terms 'resident' and 'non-resident' parent are used to distinguish between parents who do and do not live with a child.

## Defining 'Who is a parent?'

It is important that schools and local authorities are aware that parents may be recognised differently under education law than under family law.

For the purposes of education law, section 576 of the Education Act 1996 defines a 'parent' as:

- all natural (biological) parents, whether they are married or not;
- any person who, although not a natural parent, has parental responsibility for a child or young person (this could be a step-parent, guardian or other relative);
- any person who, although not a natural parent, has care of a child or young person.

A person has care of a child or young person if they are the person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child.

## What is Parental Responsibility?

In family law<sup>1</sup>, parental responsibility means all the rights, duties, powers, responsibilities and authority that a parent has in relation to the child. People other than a child's natural parents can acquire parental responsibility through:

- being granted a child arrangements order determining that the child should live with him or her, or if the court determines that a parent should only spend time with the child, the court may also decide to grant parental responsibility;
- 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);
- adopting a child;
- (in the case of step-parents) in agreement with the child's mother (and other parent if that person also has parental responsibility for the child) or as the result of a court order.

Civil partners have parallel (as far as possible, identical) rights to married people. The same provisions for married people apply to them in terms of acquiring (i.e. in the case of adoption, agreement with their civil partner or by an order from the court) or holding parental responsibility.

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<sup>1</sup> Section 3(1) of the Children Act 1989

Where a child's father and mother were married to each other at the time of the child's birth they each have parental responsibility for the child. Where the parents are not married to each other, the child's father can gain parental responsibility:

- by registering the child's birth jointly with the mother;
- by subsequently marrying the child's mother; or
- through a 'parental responsibility agreement' between him and the child's mother which is registered with the court; or
- by obtaining a court order for parental responsibility.

In addition, a local authority can acquire parental responsibility if it is named in the care order for a child.

More than one person can hold and exercise parental responsibility for a child. 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 as being the 'parent' of a child.

### **Key effects of a father acquiring parental responsibility:**

- he becomes a 'parent' for the purposes of adoption legislation and can therefore withhold consent to an adoption;
- he can object to the child being accommodated in local authority accommodation and remove the child from local authority adoption;
- he will automatically be a party to care proceedings;
- he can appoint a guardian;
- he can give valid consent for his child's medical treatment;
- he has a right of access to his child's health records;
- he can withdraw a child from sex education and religious education classes and make representations to schools concerning the child's education;
- his consent is required if the child's mother seeks to remove the child from the jurisdiction;
- he can sign a child's passport application and object to the granting of a passport;
- he has sufficient rights in relation to a child to invoke the international child abduction rules;
- he can consent to the marriage of a child aged 16 or 17.

## Court Orders and Parental Responsibility

Court orders under section 8 of the Children Act 1989 (often called section 8 orders) settle areas of dispute in relation to the exercise of parental responsibility or a child's care or upbringing, and can limit how an individual exercises their parental responsibility.

There are two types of section 8 orders which can be made to address particular issues:

- 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.

*For example: one parent wants to take the child abroad for an extended period or prevent 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.

*For example: an order allowing one parent to agree to a pupil changing school against the wishes of the other parent.*

A **child arrangements order** is also a section 8 order and sets out the arrangements relating to who a child is to live with and when, and arrangements relating to who a child is to spend time with or otherwise have contact with. It replaces the former residence and contact orders.

Parents should therefore ensure that schools are provided with a copy of the most recent Court order in place, so that the school's duties in respect of child safeguarding are supported.

Schools should note that a Court order limiting a parent's exercise of their parental responsibility does not necessarily prevent or restrict a school from continuing to carry out their duties under education law (see below for examples).

While such cases are rare, in very limited circumstances, the Court can also make an order to terminate parental responsibility (that has been acquired) under section 4(3) of the Children Act 1989.

More information about [Court orders and pre-proceedings](#) is available online.

## General principles for schools and local authorities

School and local authority staff must treat all parents equally, unless there is a Court order limiting an individual's exercise of parental responsibility. Everyone who is a parent, as defined under education law (whether they are the resident parent or not, with or without parental responsibility – see, [Defining Who is a Parent](#)) has a right to participate in decisions about a child's education and receive information about the child (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).

Individuals who have parental responsibility for, or care of, a child have the same rights as natural parents; for example:

- to receive information, e.g. pupil reports;
- to participate in statutory activities; e.g. vote in elections for parent governors;
- to be asked to give consent; e.g. to the child taking part in school trips;
- to be informed about meetings involving the child; e.g. a governors' meeting on the child's exclusion.

All parents also have legal obligations; for example: to ensure that a child of compulsory school age receives a suitable full-time education<sup>2</sup>.

Where a parent's action, or proposed action, conflicts with the school's ability to act in the child's best interests, the school should try to resolve the problem with that parent but avoid becoming involved in conflict. However, there may be occasions when a school needs to decline requests for action from one or more parents.

In cases where schools cannot resolve the conflict between separated parents, they should advise the aggrieved parent to pursue the matter through the Family Court.

## Information Sharing

It is important that schools balance the requests of parents with their legislative duties. Having parental responsibility does not allow a parent to obstruct a school from carrying out their duties under legislation.

***For example:*** a natural parent, with parental responsibility, informs their child's local authority maintained school that they do not wish their child's step-parent, who does not have parental responsibility but does have care of the child, to receive educational information about that child. The school should inform the natural parent that they cannot comply with that request.

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<sup>2</sup> S.7 of the Education Act 1996 – <https://www.gov.uk/government/publications/school-attendance>

*Under The Education (Pupil Information) (England) Regulations 2005, schools are required to provide access to, or copies of a child's educational record to parents upon request. Therefore, if the school were to abide by the request of the natural parent they would be in breach of their obligations under education law.*

**To note:** under the principles of the Data Protection Act 1998 (the DPA 1998), children and young adults can assume control over their personal information and restrict access to it, should they be of sufficient age or maturity to exercise their will in this matter. However, this control is not extended to cover information which is held within a pupil's educational record. Parents are entitled to request access to, or a copy of their child's educational record, even if the child does not wish them to access it. This applies until the child reaches the age of 18. This is however, subject to information that the school could not lawfully disclose to the child him/herself under the DPA 1998 or in relation to which the child him/herself would have no right of access under that Act.<sup>3</sup>

**For example:** *a non-resident parent who has limited contact with their children, contacts the school to find out how well they did in their exams. Neither the children nor the resident parent wishes to share that information and informs the school of this. The school refuses to release the information on the basis that the children are sufficiently mature to have control over their personal information. The school has therefore breached education law by failing to provide information to which the non-resident parent is entitled.*

Requirements on academies differ slightly and are derived from the Education (Independent School Standards) Regulations 2014 (Part 6 f). Under these Regulations, academies must provide an annual written report of each registered pupil's progress and attainment in the main subject areas taught, to the parents of that registered pupil (except that no report need be provided where the parent has agreed otherwise).

In cases where the school does not know the whereabouts of a non-resident parent, it should make the resident parent aware that the other parent is entitled to be involved in their child's education and request that information is passed on.

If the resident parent refuses to share information with the other parent and also refuses to provide contact details so that the school can deal direct with the non-resident parent, the school can do nothing more. It should be noted, however, that the resident parent may be genuinely unaware of the non-resident parent's whereabouts.

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.

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<sup>3</sup> Education (Pupil Information) (England) Regulations 2005 (SI 2005/1437), regulation 5(4)



## Obtaining consent

Where schools need parental consent to outings and activities, headteachers should seek the consent from the resident parent unless the decision is likely to have a long-term and significant impact on the child, or the non-resident parent has requested to be asked for consent in all such cases.

In cases where the school considers it necessary or has been asked to seek consent from both parents, it is best for the school to assume that parental consent has not been given unless both parents have given consent. Such an approach ensures that the school has treated the views of each parent equally and will also help to safeguard the position of the school in terms of exposure to any potential civil liability where, for example, the child is injured while on a school trip.

Schools should avoid becoming involved in any disagreement between parents but might want to suggest that where parents cannot agree they seek independent legal advice about obtaining a Court order setting out exactly what decisions each parent can make in respect of the child (a Specific-Issue or Prohibited Steps Order as appropriate).

## Medical Treatment – Seeking Consent following Accident or Injury

Schools may experience problems when a child has had an accident and consent may be needed for emergency medical treatment. The Children Act 1989<sup>4</sup> provides 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’.*

This would allow schools to act *‘in loco parentis’*, i.e. in place of a parent, or allow them to seek consent from a parent who may not hold parental responsibility.

It would clearly be reasonable for a school to take a child who needs to have a wound stitched up to hospital, but the parents, including the non-resident parent who has asked to be kept informed of events involving the child, should be informed as soon as possible.

## Safeguarding

All schools must have regard to the [Keeping Children Safe in Education](#) (KCSIE) statutory guidance which explains what schools and their staff must do to safeguard their pupils.

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<sup>4</sup> Section 3 Children Act 1989

Safeguarding is defined as '*protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes*<sup>5</sup>.'

The guidance emphasises that everyone who comes into contact with children and their families has a role to play in safeguarding children. School and college staff are particularly important as they are in a position to identify concerns early and provide help for children, to prevent concerns from escalating.

If a child is in immediate danger or is at risk of harm a referral should be made immediately to children's social care and or the police as appropriate. All schools should have a designated safeguarding lead (full job description is provided in Annex of KCSIE).

It will be for the school, on a case by case basis, to consider the level of information (if any) that is provided to parents where referrals have been made to children's social care. The designated safeguarding lead working with children's social care should generally lead on any decisions with regards to information sharing safeguarding concerns with parents. Information sharing should always be in the best interests of the child.

## Changing a Surname

A change of surname is a private law matter and should be resolved between parents. Where the parents have divorced, schools should ensure that the surname by which a child is known should not be changed without written evidence (independent of the parent seeking to make the change), that consent has been given by the 'other parent' or by anyone else who has parental responsibility for the child.

Regulation 5(1)(a) of the Education (Pupil Registration) Regulations 2006 requires a school to record the full name of every pupil in alphabetical order in the admissions register. This is generally interpreted to be the child's full legal name and not any other name that the child is known by.

However, there may be circumstances where a name change has already been effected by the school and it would not be in the best interests of the child, who might be known by a new name, to refer back to a different name. Ultimately it is a matter of policy for the school to decide but the best interests of the child must be the paramount consideration when making a decision.

Where a child is subject to a special guardianship order there are particular considerations in cases where a school receives a request to use a different surname for a pupil.

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<sup>5</sup> <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

Section 14C(3) of the Children Act 1989 (CA 1989) states that:

*‘While a special guardianship order is in force with respect to a child, no person may cause the child to be known by a new surname.....without either the written consent of every person who has parental responsibility for the child or the leave of the court.’*

Schools must therefore decline requests from special guardians for a child to be known by a different surname unless the above criteria are met.

## Parent Governors

Schools must not restrict eligibility to nominate, vote or otherwise participate in parent governor elections, to parents holding parental responsibility. Under the School Governance (Constitution) (England) Regulations 2012, ‘parent’ includes not just those with parental responsibility but natural parents and anyone who cares (or has cared for) a child.

Schools should contact the National Governors Association if they require further advice on this issue.

## Administration

Headteachers should:

- ask parents or guardians for contact details, including names and addresses, of all parents when they register a pupil;
- ensure that names and addresses of all parents, where known, are included in the admission register and also in pupil records and are available to the pupil’s teachers;
- ensure that the school has details of who to contact in the case of an accident or medical emergency;
- ensure that contact details, including names and addresses, of all parents are forwarded to any school to which the pupil moves;
- ensure that details of Court orders are noted in a pupil’s record.

Such information will be necessary when decisions need to be made about who can give parental consent 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.

Schools should also be mindful to protect the private data of each parent from any other and avoid inadvertent disclosure. **For example:** *annual attendance registers generally include the resident parent’s address or the school may copy one parent into what they have sent the other, thereby disclosing their email or postal address.*

This is particularly important given that some parents will have been, or may be at risk of being, a victim of domestic violence.

## **Conclusion**

The welfare of the child must be the paramount consideration for schools. In the event of a concern being raised where the school is unclear how to act, independent legal advice should be sought to ensure that a parent's rights and responsibilities are not infringed and the actions of the school are compliant with education law.

## Further information

### Useful resources and external organisations

- [The Children Act 1989](#)
- [The Education Act 1996](#)
- [The Education \(Pupil Registration\) Regulations 2006](#)
- [The Education \(Pupil Information\) \(England\) Regulations 2005](#)
- [Children and Families Act 2014](#)
- [Court Orders and Pre-Proceedings](#)
- [Ministry of Justice](#) (this department is now responsible for government policies relating to private family law. The Department for Education retains policy responsibility for public family law.)
- [National Governors Association](#)

### Other relevant departmental advice and statutory guidance

- [Health and safety guidance](#)
- [Best Practice Advice for School Complaints Procedures 2016](#)
- [Governance Handbook](#)



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