

# YOUR CHILD'S EDUCATION – WHO GETS TO DECIDE? SOME TIPS FOR SEPARATED PARENTS

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Issues regarding school enrolment and getting children ready for school can often ignite disagreement and disputes between parents who are separated or divorced. Where the channels of communication have broken down, it is commonly the case that schools are called on by parents to be the facilitator or arbiter of their dispute. You should be aware, however that it is not the school's responsibility to act as a facilitator in disputes. This is irrespective of whether there are family court orders in place.

## Parental Responsibility

What some parents do not realise (or accept) is that decisions regarding a child's current and future education, religion and changing their child's name are all "major long-term" decisions, which ordinarily need to be made jointly by both parents.

The Family Law Act provides a "presumption" that both parents have "shared parental responsibility". This includes jointly making decisions about "major long-term issues". When the court makes a parenting order, the "starting point" is that both parents have equal "shared parental responsibility". This is not to be confused with the determination that the court must then make in regards to whether the time that the child spends with each parent should be, "equal time" or "significant and substantial time".

The "shared parental responsibility" presumption will exist unless the court is satisfied that it should not. Or unless a statutory "exception" exists, i.e. one of the parents is found to have abused the child, or has been the perpetrator of family violence. If the exception applies, then the court will usually make an order granting sole parental responsibility over "major long-term issues" to the other parent.

## Enrolment

Decisions to remove a child from and/or enrol a child in a school, serious behavioural problems (e.g. suspensions and expulsions), and academic achievement are all examples of "major long-term issues", relating to a child's education which should be considered jointly by both parents (absent an order for sole parental responsibility).

If you sign an enrolment contract at a school unilaterally, without the other parent's involvement or consent, and the matter later comes before the court, your action in doing so may seriously affect your credibility in the court's eyes. The court considers such action demonstrates a lack of willingness and ability to involve the other parent in the child's upbringing and facilitate the relationship between the child and the other parent.

In addition, you should be aware that if only one parent signs the enrolment application, the school's contractual relationship is only with that parent. This means the school will generally be unable to look to the other parent for payment of the tuition fees (irrespective of any oral/informal agreement between the parents about fees).

On the other hand, if you are the parent who is refusing to agree for a child to attend a particular school, it is also important to note that a school is not precluded from accepting the enrolment of the child simply because only one parent signed the application. It is not a matter for schools to ensure that parents comply with their obligations of parental responsibility under Family Law.

## Access to School Information

It is important to be aware that, generally speaking the “resident” parent will receive information from the school such as student reports, student photographs and other documents regarding the child. If communication between separated parents has deteriorated, commonly such information is not passed onto the “non-resident” parent.

In such cases, it is appropriate for parents to request that the child’s school provides to the “non-resident” parent a copy of the child’s report cards, newsletters or any other written report in respect of the child. By ensuring that the school itself is the conduit of information, you are likely to avoid future conflict between parents who have not passed on or relayed information appropriately. Be aware that the school may render an administrative charge for duplicating information, which should ordinarily be shared, failing which the school is likely to request that it be paid by the “non-resident” parent requiring the duplicates.

However, if there is a specific order for one parent to have sole parental responsibility, the school is not obligated to, and will not, provide the other parent with access to school information in respect of the child *unless* they have a written authority from the parent who has sole parental responsibility.

## Changing a Child’s Name

It is also very important to be aware that changing a child’s name is a ‘major long-term issue’ which needs to be made jointly by both parents.

If you change your child’s name unilaterally, for example when you enrol a child at a school, without the other parent’s consent, and the other parent brings the matter before the court, your unilateral decision will also seriously affect your credibility in the court’s eyes.

Be aware that the court does not make orders changing a child’s name lightly and only do so after consideration of a number of factors which are designed to determine the best interests of a child.

## Conclusion

It is important to try and discuss the above issues with the other parent well in advance of the school year commencing so that, if agreement is not reached, you have sufficient time to seek independent legal advice from a specialist Family Law solicitor regarding what steps you should take moving forward.

Always remember it is not the school’s responsibility to try be a facilitator in a dispute, interpret or decipher Family Court orders, or to act as a policeman and judge when parents disagree about matters pertaining to their child’s education.