



Government of South Australia

Department of Education and
Children's Services

DEALING WITH FAMILY LAW ISSUES IN PRESCHOOLS AND SCHOOLS

GUIDELINES FOR STAFF

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FAMILY LAW RELATED ISSUES IN PRESCHOOLS AND SCHOOLS

GUIDELINES FOR STAFF

1 INTRODUCTION

Substantial changes have been made to the field of family law, and especially to the *Family Law Act 1975 (Cwlth)* (“*The Family Act*”) in the past decade. The most notable of these have been the changes made to the law relating to children by the *Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cwlth)*, which came into effect on 1 July 2006.

**Each parent has:
equal responsibility
equal decision making**

Under the law, each parent has responsibility for their children, unless otherwise provided by court order. There is a presumption of equal shared parental responsibility. The presumption means that both parents have an equal role in making decisions about major long term issues, such as where a child goes to preschool or school or major health issues. The presumption does not apply if there are reasonable grounds for the court to believe that a parent of a child, or a person who lives with a parent of a child, has engaged in child abuse or family violence.

Exceptions

**Parents have shared
responsibility and
obligations**

The sharing of parental responsibility essentially creates an obligation on both parents to consult with each other and reach agreement on long term issues to do with a child, such as education, religion, culture, health and the child’s name.

**It is not our job to
resolve family disputes**

DECS recognises that some families experience breakdown. Issues surrounding family law can be highly contentious and staff may, find themselves in a difficult position as both parties seek the support of the preschool or school. DECS does not believe that preschools or schools are the place to resolve family disputes. Nor should preschool or school staff be involved in such disputes. Such situations should be treated sensitively and every effort should be made to ensure that preschool and school staff are not seen to take sides in family law disputes.

Don’t take sides

DECS has developed guidelines to help preschools and schools deal with family law related issues. **These guidelines attempt to balance the obligations and responsibilities of parents with the legal obligations of preschools/schools/staff.**

These guidelines are by no means a complete summary of all aspects of the law relating to family relationships but they should cover the majority of situations that will confront staff in their daily activities. All preschools and schools should contact Legislation and Legal Services Unit ([Appendix 3](#)) for particular support.

GUIDELINE SUMMARY

Each parent has:
equal responsibility
equal decision making

Exceptions
Violence or abuse

Court orders
Must be supplied
Must be current
Must be followed

Either parent can
Enrol their child
Access information
Join in activities

- Key points emerging from the guidelines are as follows:
- Except where there are issues of violence or abuse, the law presumes that it is in the best interest of a child for the parents to have equal shared parental responsibility. This does not mean that the child should spend equal time with each parent. Rather, equal shared parental responsibility means that both parents have an equal role in making decisions about important issues that affect their children, such as schooling and health care.
- Unless preschools or schools are informed otherwise (e.g. by being provided with a copy of court orders), they will assume that both parents retain a shared and equal parental responsibility for their children. This means that the preschool or school will recognise that each parent has equal duties, obligations, responsibilities and opportunities in relation to matters involving their children's education at the preschool or school. All preschool and school decisions will be consistent with court orders.
- In order to avoid any confusion when dealing with families subject to family breakdown, preschool directors or principals should request that parents or any other person seeking to rely on an order provide a copy of any court orders. If orders are subsequently varied by the court, copies of any new orders should also be requested and kept with student records.
- In the absence of any specific court orders, either parent has the capacity to enrol their children in a government preschool and school.
- In the absence of specific court orders, each parent is entitled to:
 - participate in preschool and school related activities at the director's and principal's discretion; and
 - have access to documentation relating to his or her child subject to the provisions of privacy legislation.
- Where the views of a student are in conflict with those of his or her parents, decisions made should be based primarily on what is considered to be the best educational interests of the student and taking into consideration the student's capacity and understanding to make a responsible decision.
- Where satisfactory evidence is provided about the identity of a parent and there are no orders applying, the parent has a right to know the enrolment location. This must be balanced against the child's safety and the duty of care to the student. More detail is included in these guidelines. Where any

doubts exist contact Legislation and Legal Services Unit for advice.

- Where the preschool or school does not have clear knowledge of identity or parentage schools and preschools should not release information about enrolments. In this case all enquiries should be directed to the Regional Office. Details of this process are included in these guidelines.
 - Except in specifically defined circumstances which are outlined in the guidelines, a student should be enrolled using the name that appears on his or her birth certificate.
 - Persons other than parents (e.g. grandparents) may seek to play a role in the education of children but such participation is always subject to parental approval or court orders.
 - Where non-parents, such as grandparents, aunts or others, are the child's carers the enrolment should be accepted. A statutory declaration to the effect that they are the carers may be requested by the preschool/school however enrolment should still occur even if this is not presented.
 - The guidelines alert staff to the possible impact of domestic violence restraining orders and the need to be careful when dealing with families subject to such orders.
 - Staff should not place themselves in positions of danger when trying to resolve any problems that may arise, but rather should contact local police if necessary.
 - Advice is provided on issues to be aware of when staff are requested to provide written statements or give evidence on behalf of families involved in family law related legal proceedings.
 - Regulatory provisions relating to the operation of a licensed child care centre are also outlined.
- Enrolment name**
- Non parent participation**
- Non parent carer**
- Domestic Violence**
- Worker safety**
- Written statements**
- Child Care**

If a problem arises that is not covered by these guidelines or if staff are unsure of their position in a particular matter and need reassurance or confirmation, then contact the Legislation and Legal Services Unit of DECS for appropriate advice.

3 **ABSTRACT**

These guidelines provide advice for dealing with family law related issues which impact on the operation of preschools and schools in the Department of Education and Children’s Services, South Australia (DECS).

4 **APPLICABILITY**

For all in preschools and schools 4.1 These guidelines apply to all DECS preschools and schools As most issues in this area of law are likely to arise in the preschool and school setting, preschool directors, principals, and staff are extensively referred to throughout the document.

Parent/Carer 4.2 Throughout the guidelines, the term “parent” includes a guardian or other person who has the care of a child, as outlined in the *Education Act 1972* (“the Education Act”). For the purposes of these guidelines, a person can be considered to have the care of a child even if there is no formal court order to that effect subject to the child’s parents ending the care arrangements previously in place.

Child care centres 4.3 Preschool directors of licensed child care centres should also refer to section 19 of this document regarding additional regulatory requirements.

5 **CONTEXT**

Children rights 5.1 One of the primary objects of “*The Family Act*” is to ensure that children receive adequate and proper parenting to help them achieve their full potential.

Parents 5.2 In relation to parents, the legislation is directed to ensuring that they fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children. Parents share these duties. The legislation further anticipates that parents should agree about the future parenting of their children.

Duties 5.3 Subject to any court orders to the contrary, each parent has equal parental responsibility towards their children which includes having the opportunity to participate in long term decisions that affect their children

Responsibilities 5.4 Generally, children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development on a regular basis. Court orders will outline arrangements that the court believes are in the best interests of the child.

Guardianship children 5.5 “*The Family Act*” is drafted in terms which indicate children have certain rights whereas the position of parents is couched in terms of duties and responsibilities.

- 5.6 Family relationships can also be subject to orders made under the provisions of the *Children's Protection Act 1993*. Such orders often mandate that the Minister for Families and Communities assume the care and control of children in need of care and protection, and deal with matters relating to their care, protection, health, welfare or education. Staff need to be alert to these circumstances to ensure the safety and well-being of any children subject to the orders is met.

6 POLICY STATEMENT

Education needs parent support and cooperation

6.1 DECS is committed to the goal of enhancing care and public education in South Australia. The purpose of care and public education is to support all children and students to gain the knowledge, skills and attributes necessary to enable them to participate fully as confident and competent citizens in all aspects of society. In that endeavour, DECS' purpose is to engage every child and student so that they achieve at the highest possible level of their learning and wellbeing, through quality care and teaching. In meeting this goal, DECS relies to a significant degree on the cooperation and assistance of parents.

Parents are responsible to reach agreement.

6.2 Integral to the cooperation between preschools and schools and parents is an expectation by DECS that when family breakdown does occur, parents reach agreement or obtain court orders regarding those issues which are likely to have an impact on the preschool and school and inform the preschool and school.

Education is a parent responsibility

6.3 In meeting its responsibilities to students and parents, DECS relies on the following basic principles:

Decisions will involve both parents.

- the education of a child is primarily the responsibility of the child's parents or guardians
- generally, it will be assumed that both parents are involved in any decisions made concerning major long term issues impacting on the preschool and school
- where parents cannot agree on what is in the child's best interests, it is the role of the court, not the preschool and school, to determine those interests
- the preschool and school is not the appropriate place for family disputes to be resolved nor is it appropriate for preschool and school staff to resolve such issue
- where doubt arises, decisions should be made on the basis of ensuring, as far as possible, the continued effective and efficient operation of the preschool and school
- the obligations imposed by other legislation, such as child protection legislation and policies, also need to be considered when dealing with family law related issues;

Courts not schools adjudicate on disputes

Child protection may be relevant

6.4 The continued effective and efficient operation of the school and a parent's obligations under the *Education Act* (i.e. to ensure that their children of compulsory school are enrolled at a primary school or secondary school and that they attend school) takes precedence over any interests parents may assert they have. Preschool directors and Principals should remind parents on a regular basis of the need to advise the preschool or school immediately of any change in family circumstances which may impact on the relationship between the family and the preschool or school. Attached at Appendix 1 is an

Good communication:

At enrolment

When changes occur

In newsletters

[APPENDIX 1.2](#)

Enrol information
newsletter

information sheet that may be provided to all parents upon enrolment. This summarises the policy and makes clear the Department's position and its expectations of parents. **Appendix 2 is an abridged version of the information sheet that may be utilised on an on-going basis in documents such as preschool or school newsletters.**

7 DEFINITIONS OF COMMONLY USED TERMS

7.1 With recent changes to *the Act*, the terms used in Family Court orders have changed. However, as orders made prior to the amendments are still applicable, and given that the Youth Court of South Australia still uses such terms as custody and guardianship, it is of importance that preschool and school staff are aware of some of the commonly used terms on court orders.

“**Access**” has the same meaning as “contact”. It is an old term used by the Family Court prior to June 1996. It is a term still used by the Youth Court of South Australia in child protection matters.

“**Alternative care**” means care provided for a child on a residential basis by or through a government or non-government agency or in a foster home (including a foster home provided by a member of the child’s family), and includes care provided in a detention facility for a child who is held there in lawful detention and care provided under independent living arrangements made for a child under the guardianship and care of the Minister for Families and Communities.

“**Child**” for the purposes of the Family Act, means a person under the age of 18 years.

“**Components of parenting**” is new terminology introduced from 1 July 2006 which relates to matters previously addressed by specific issues orders (see below).

“**Contact**” means contact that one or both parents or other specified people have with children, including in accordance with a contact order. Since 1 July 2006, it relates to separate issues - time a child spends with a person and the time when a person may communicate with a child. The word “communicate” is given a wide meaning and includes telephone calls, letters, email and other forms of electronic communication.

“**Contact order**” is a court order made in favour of a person that allows that person to have contact with the children named in the order in accordance with the terms and any conditions of the order. From 1 July 2006, parenting orders made by the Family Court in respect of this issue will generally refer to the time a parent is able to spend with a child and the times the parent will be able to communicate with the child.

“**Custody**” is an old term no longer used by the Family Court. However it is a term still used by the Youth Court of South Australia in child protection matters.

“**Guardianship**” has the same meaning as parental responsibility for the long term care of the child. It is an old term used by the Family Court prior to June 1996. It is a term still used by the Youth Court of South Australia in child protection matters.

“Interim order” is a temporary order made by a court, sometimes in urgent circumstances. It remains in force until the court makes a further or final order in respect of the matter, or if a date is specified in the interim order, until that date.

“Injunction” is an order regulating the behaviour of a person and can be directed to various aspects of the family relationship. Usually injunctions restrict the interaction one parent may have with another but they may also restrict interaction with a child.

“Location order” is an order made by the court requiring a person named in the order to provide information to the registrar of the Family Court concerning the address of persons named in the order.

“Parent” includes a guardian or other person who has the custody or care of a child.

“Parental responsibility”, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

“Parenting order” is generally made by the court dealing with the issues of contact, residence, maintenance or any other aspect of parental responsibility.

“Parenting plan” is an agreement in writing between the parents of a child that deals with the issues of contact, residence, maintenance or any other aspect of parental responsibility. (A parenting plan should be treated in the same way as a “parenting order”. However if a parent disputes the validity of the document contact Legislation and Legal Services Unit for advice.

“Recovery order” is an order made by the court requiring a person to deliver a child to a person or persons named in the order.

“Residence order” is an order made by the court that directs with whom a child is to live from time to time. A residence order does not confer any other duties, obligations or responsibilities upon the parent or other person concerned. Since 1 July 2006, parenting orders made by the Family Court will not refer to “residence” but rather will indicate who the child will “live with”.

Court Orders:

Always ask for them

7.2

In order to avoid any confusion when dealing with families subject to family or marital breakdown, preschool directors/principals should request that a copy of any court order or parenting plan be provided, including a copy of any orders varying earlier orders that may have been previously provided to the preschool and school. Parents should be advised that the orders will only be used by the preschool and school to ensure the educational and welfare interests of the student are properly addressed.

Must be current

Must be followed

Must show any variations

7.3

A copy of any orders received should be retained with the student record and be included in any information forwarded to another

Who needs to know?

Site process for appropriate sharing is needed!

Important

Confidentiality

Student needs

government preschool and school when a student changes preschools and schools. It is also important that relevant staff who may have occasion to perform the role of acting director/principal in the absence of the director/principal are also aware of and able to access copies of the orders. Preschool directors or principals must also consider whether it is appropriate for any other staff who have supervision responsibilities to be made aware of the provisions of any orders. **It is also important to keep in mind that any personal information about a student obtained by the preschool and school must only be used for the purpose it was collected.** That is, to assist in the process of enhancing learning, maintaining student health and welfare, educational planning, preschool and school administration and reporting to parents and students.

8 GENERAL ISSUES RELATING TO CHILDREN

Children are usually under 18 years

8.1 The Family Act provides that parents retain parental responsibility for their children until the age of 18 years. It also indicates that both parents must be involved in making decisions relating to major long term issues concerning their children.

8.2 While parents retain parental responsibility for their children up to the age of 18, it is generally accepted that as children become older and more mature, they are more capable of making their own decisions about a wide range of issues. In relation to family law related issues, the views of the child, particularly an older child, are generally taken into account by courts when determining issues affecting their relationships with their parents.

Rights

Child v parent

8.3 There is no specific law about when the views of a child might take precedence over those of a parent or both parents. A number of factors need to be considered including the issue being determined, the age and maturity of the child, the level of understanding of a child to make a responsible decision, and what, objectively, is in the best interests of the child.

Independent students

8.4 A child (under 18 years) has no absolute right to leave home. Each case depends on its facts - especially on the attitudes of the parents, the maturity of the child, and such factors as satisfactory accommodation, employment and a lifestyle that the authorities regard as reasonable. In making a decision, a court or the Department for Children, Youth and Family Services bases its actions primarily on what is in the best interests of the child [[Children's Protection Act 1993](#) s4(1)b].

In practice independent students generally have Centrelink support

8.5 Sometimes students under the age of 18 leave home and seek to live independently of their parents. This may occur with or without the permission of the parents. The students may arrange to live with the families of friends, older siblings, other relatives or in hostel type accommodation. While keen to continue with their school studies, they may indicate they do not want their parents to be informed about any issues arising from school.

8.6 An independent student is recorded in EDSAS as the person who is able to authorise school matters. Other adults are not able to assume guardianship over the young person unless this is established through court processes.

8.7 Though this situation involves sensitive issues, the primary focus of the school should be the continued education of the particular student.

8.8 Preschool directors or principals should always have regard to age, maturity and capacity of a student to make responsible decisions when determining what action needs to be taken in respect of students who indicate they intend to live independently

Mandatory Report

of their parents. It may also be necessary to consider making a mandatory report to the Department Families and Communities, if the director/principal or other staff member has reason to suspect that the student is at risk of harm.

Protection of children under 15 years and homeless

8.9 The *Children's Protection Act* provides that a person can make a report to the Department of Families and Communities Community Services that a child who is under 15 years of age is of no fixed address. A similar report can be made in respect of a child who is of compulsory school age (i.e. a child of or above the age of 6 years but under the age of 16 years) but has been persistently absent from school without satisfactory explanation of the absence. Reports can also be made if the guardians of the child are unable to care for and protect the child, and unable to exercise adequate supervision and control over the child.

Compulsory attendance for children 6-16 years

8.10 Preschool directors/principals may be faced with situations where the views of the student are in conflict with their parents. While it is important that preschool directors or principals take into account the views of the student where appropriate, at all times any decision made must be one that is in accordance with any court orders or in accordance with any legislation or policy. Principals should consider the views of the student in these situations when the level of maturity and age suggest that the child is capable of making considered choices. Where any doubt exists, the director/principal should contact the Legislation and Legal Services Unit for appropriate advice.

Guardianship children

8.11 In cases where the Minister for Families and Communities has guardianship of a child, questions about educational issues, including the provision of information, should be directed to the Department for Families and Communities. (each student in this situation has an assigned social worker)

9 ENROLMENT

- Enrolment is a shared parent responsibility**
- 9.1 Enrolment in a school is regarded as a major long term issue. In the absence of any court orders to the contrary, any decision about enrolment must be made jointly by both parents. A school's decision should, subject to the Education Act and Departmental policy, accord with the parents' decision. **There is no requirement however for school staff to independently establish that any decision to enrol in a particular school has been made jointly by the parents.**
- DECS focus**
- 9.2 Sometimes parents cannot agree about the preschool and school at which their child is to be first enrolled. DECS have primary focus to engage every child and student so that they achieve at the highest level of their learning and wellbeing, through quality care and teaching. **In circumstances where parents are in disagreement, the child is to be enrolled in the preschool and school chosen by the parent with whom the child is then living.**
- Parent caring for the child chooses the school**
- 9.3 A parent may attempt to enrol a child in circumstances where the child is already enrolled in another preschool and school, either in South Australia or interstate. Sometimes the other parent does not agree that this change should occur. The child may have been living with the non-enrolling parent or there are other court orders indicating that they have responsibilities in relation to the child.
- 9.4 If preschool directors/principals are unaware of any dispute between parents regarding enrolment, enrolment should proceed in accordance with relevant requirements and guidelines.
- Pre-existing enrolments**
- 9.5 If it is known that a dispute does exist between parents and the child is already enrolled in a preschool and school elsewhere, preschool directors/principals should seek advice from the Legislation and Legal Services Unit.
- 9.6 **At the time of enrolment, DECS personnel should ask if there are any court orders or parenting plans in place.** This is part of the enrolment forms. If there are court orders or parenting plans, DECS personnel must request a copy for their records. Court orders must have the court seal and/or be certified by the Registrar of the court. While the request should be made, in the absence of documents the enrolment should proceed.
- Do not refuse to enrol**
- 9.7 In relation to children for whom the Minister for Families and Communities has been granted guardianship, normally it would be expected that an officer from the Department of Families and Communities, and/or the carer or person representing the designated agency providing care be in attendance at the time of enrolment. It is the responsibility of the Department for Families and to inform the director/principal of the aspects of any relevant Youth Court order as well as the name, address and contact details of persons authorised as signatory for medical treatment, preschool and school excursions etc.
- Copies of orders must be requested and retained**
- Guardianship children**
- Specific details of any management plans are**

needed

Preschools and schools should request copies of orders as with other carers.

10 NAME USED FOR ENROLMENT AND NAME CHANGING

Enrolment still proceeds even if documentation is incomplete or absent.

10.1 The name provided at enrolment should be used by the school/preschool. While staff should ask the enrolling adult for proof of identify if there is doubt the enrolment should proceed.

10.2 Preschool/school records should only be changed if appropriate evidence such as birth certificate is provided.

Preschool school record changes?

10.3 With parent and child agreement, according to age, it may be appropriate for a child to be referred to under another name. The school record should show both the legal and preferred name.

10.4 Where a parent requests a change of name the preschool/school should:

Possible Evidence

Documents

Birth certificate

Passport

Immigration papers

Adoption Order

Specific court orders

Witness protection

- request verification of the person's identity as a parent if the person is unknown
- be provided with reliable evidence such as a birth certificate
- contact the enrolling parent to request that parents come to an agreement. In the absence of agreement the child should be enrolled by their legal name

10.5 Preschools/schools should contact the Legislation and Legal Services Unit to clarify these matters where any doubt exists.

See [Appendix 3](#)

11 RELEASING ENROLMENT DETAILS

11.1 Preschool directors or principals may be requested to provide confirmation that a child is enrolled in a particular preschool/school. The requests may also seek details of private addresses and or contact telephone numbers. The requests can come from a number of sources including parents, other family members, solicitors, private inquiry agents, police officers, the Department for Families and Communities or by virtue of a court order.

Parents have a right to know the site of enrolment with conditions.

11.2 Actions the director/principal should take if an unknown parent seeks to confirm that a child is enrolled in a particular preschool or school:

Possible Evidence

Documents

Birth certificate

Passport

Immigration papers

Adoption Order

Specific court orders

Witness protection

- indicate to the person making the inquiry that no attempt to access school records can be made until the following information is provided and verified appropriately
- verify (if unknown to the staff) the identify of the parent requesting the information. This proof should be an identification with a photograph such as a drivers licence. A credit card would be insufficient without further evidence
- request evidence that the person is the parent of the child. This normally requires a birth certificate in the name of the child or a Medicare card with both parent and child's name recorded or a court order with the person listed as the parent of the child
- the parent with whom the child normally resides may be contacted to assist with the identity and to ask whether there are any orders that should be taken into account. This parent should be told that if it is the case that there are no orders then the parent making the enquiry has a right to know that the child is enrolled and that any issues are between the parents. They need to reach consensus or seek orders
- the preschool and school should check the school transfer records from the previous school as this may provide confirming information about this parent, or the director/principal of the previous preschool/school should be contacted seeking additional information
- in some cases it may be appropriate to seek information from the child, but this may not be desirable unless the child is older and well known to staff
- the school and preschool should always advise the enrolling parent that the enquiry has been made.

Consent is needed for all other details

Caution!

If satisfactory information is provided to the preschool/school then verification of the enrolment should be made.

- Under no circumstances should the address or contact details of a child or a parent be given to the other parent. Details of any emergency contacts should also be withheld.

- Where a person asserts he or she is the parent of a child at the preschool or school, is unknown to the staff and is unable or unwilling to provide the required verifications, then the director/principal should explain that student records cannot be accessed without the authority of the Regional Office.
- Telephone requests**
- Special care needs to be applied in relation to telephone requests for information. The school/preschool should request that appropriate information be posted or faxed to the school before releasing any information about enrolment.
- Regional Office**
- 11.3 If a person, seeking information about enrolment contacts the Regional Office the following information should be obtained by the Regional Office:
- The full name and date of birth of the child;
 - The full name, date of birth and address of the parent making the request;
 - Adequate identification of the person, such as a drivers licence with photograph;
 - Verification of the parental relationship – usually a birth certificate in the name of the child or a Medicare card with both parent and child names;
 - Whether there are court orders, parenting plans or restraining orders applicable. Copies will be required.
- 11.4 The Regional Office should check the school transfer records from the previous school as this may provide confirming information about this parent, or the principal of the previous school should be contacted seeking additional information.
- In some cases it may be appropriate to seek information from the child, but this may not be desirable unless the child is older and well known to staff.
 - The parent with whom the child normally resides may be contacted to assist with the identity and to ask whether there are any orders that should be taken into account. This parent should be told that if it is the case that there are no orders then the parent making the enquiry has a right to know that the child is enrolled and that any issues are between the parents. They need to reach consensus or seek orders.
 - If the Regional Office is satisfied that the person is the parent and there are no legal constraints known, the Office can inform the parent about the enrolment status of the child. **Under no circumstances should the address or contact details of a child or a parent be given to the other parent. Details of any emergency contacts should also be withheld.**
 - The Regional Office will need to exercise its discretion if convinced that to inform the parent is likely to place the child in jeopardy, but in the absence of orders this information would

need to be clear and significant.

- If the Regional Office is unclear about the identity of the parent they should refuse to provide any information.

Confirmation of enrolment to lawyers inquiry agents	11.5	Similarly, unless there are court orders that deny a particular parent any parental responsibility for the child, confirmation of enrolment can also be provided to a lawyer or private inquiry agent acting on behalf of that parent. A signed authority from the parent authorising the release of information to the lawyer or private inquiry agent must be provided before confirmation is given.
School Documents	11.6	All school documents are owned by the Minister. Before any documents are released to any other party the preschool/school should contact Legislation and Legal Services Unit for advice. <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">Again, address, contact details and emergency contact information must not be provided without appropriate consent.</div>
Centrelink	11.7	If police are conducting criminal investigations and the information sought is essential for those investigations, the information should be provided. Requests for information by Centrelink or Families and Communities must be made formally in writing. Upon receipt of the request the director/principal should contact Legislation and Legal Services Unit for advice before releasing any information.
	11.8	If served with a location order issued by the court, the details sought in the order must be provided in accordance with the terms of the order. Preschool directors and principals should seek the assistance from the Legislation and Legal Services Unit in such an event.
	11.9	If preschool directors or principals are aware that a parent has obtained a domestic violence restraining order against the other parent assistance should be sought from the Legislation and Legal Services Unit.
Age of child	11.10	While confirmation of enrolment can generally be provided to parents, there may be circumstances where it will not be in the child's best interests for such information to be released. As a general rule, staff may only withhold personal information about an individual under 18 years of age from his or her parent if they reasonably believe that the disclosure of the information would be prejudicial to his or her health, safety or welfare. There may also be situations where older, more mature students object to such confirmation of enrolment being provided to a parent. In these situations the director/principal should contact the Legislation and Legal Services Unit before confirming enrolment.
Others seeking information	11.11	Sometimes grandparents, siblings, step-parents or other close relatives who are not the carer may contact preschools and schools seeking information about children who are enrolled. In the absence of consent or an order giving them the right to information from the residential parent or parents, such requests should be politely declined. If, however, they are the carer/enrolling adult information can be released.
Parent priority		

Freedom of Information
officer

If any doubt arises concerning the release of address or contact details, preschool directors or principals should contact Legislation and Legal Services Unit or the DECS Project Officer - Freedom of Information ([see Appendix 3](#))

12 COLLECTION OR CONTACT WITH CHILDREN

Parents collecting children

12.1 As a general proposition, preschool and school is not the appropriate place for a parent to have contact under a court order with his or her child. Generally, such contact should occur outside of preschool and school hours and away from preschool and school premises. In the absence of any court orders, generally either parent has the capacity to pick up children during preschool and school hours (subject to the parents' obligation that their children of compulsory school age receive an education) or at the end of the preschool and school session/day.

School or preschool is not appropriate for court ordered contact

12.2 While preschools and schools are not normally places for contact visits, contact can be permitted to occur at the discretion of the director/principal and subject to the following:

- The contact is to take place at a time which does not unduly interfere with the normal operation of the preschool and school;
- There are no genuine concerns for the safety or well being of the child, other students and or staff;
- If considered necessary, the views of the other parent are sought.

The child's wishes

12.3 Irrespective of the outcomes of any other inquiries made, if the child does not want to see the parent, contact should not be allowed to occur at the preschool and school premises.

12.4 Occasionally a parent who has limited contact with his or her child will seek to have telephone contact, leave birthday cards, presents, letters or other material with the preschool and school so that it can be given to the child. As a general proposition, the preschool and school ought not to be used for such purposes. Section 10.2 provides further advice.

13 **PARENT SEEKING TO REMOVE A CHILD FROM THE PRESCHOOL/SCHOOL**

13.1 Preschool directors and principals need to exercise caution when dealing with a parent who arrives at the preschool and school during the course of the preschool and school day seeking to remove a child.

13.2 Reference should always be made to any court orders or parenting plans on file to establish the nature of the relationship between the parent and the child and identify any directions which apply.

- If orders specify particular courses of action they should be followed.
- If the school/preschool do not know this parent then they should:
 - Not allow the child to go with the parent
 - Establish the identify and parent relationship with photo ID such as a drivers licence and birth certificate (same procedure as 9.2 in terms of information gathering and use of the Regional Office if required)
 - seek the views of the other parent.
 - If there is disagreement then the child should remain at school until the enrolling parent (the parent who normally collects the child) arrives to collect the child.

What does the order say?

Be sure information is accessible for decisions

Contact the Legislation and Legal Services Unit if there are any doubts.

13.3 Where the parent is known to the preschool or school the Principal or Director should consider the following:

- If a current order exists this should be followed.
- Where the preschool/school has an understanding of the family relationships and has no reason to believe that the child's safety is at risk the preschool/school should allow the child to leave with the parent. It would be advisable to contact the other parent, to inform them, and to ask that telephone or written information be provided in advance when changes to the collection of the child are to occur to support the preschool and school.
- While there may be no issue about the identity of the parent intending to remove the child, the preschool and school is obligated to consider the child's safety and welfare.

A parent can remove their child

Child safety must still be considered

If serious doubts exist about the child's safety and welfare, the preschool/school should contact the Families SA or police.

Refusing a request

13.4 If there are court orders which prohibit or otherwise restrict a parent's access or contact with their child on particular days or times, the director/principal must decline a request for the release of the child from preschool and school premises by that parent at that time. The school should inform the parent that contact with the other parent will be made seeking advice. If this advice is that the child cannot be released then the parent will be asked to leave the school. If the parent refuses to leave the site or becomes agitated or aggressive in any way, he or she should be warned that failure to leave the premises will lead to police being called. If the parent continues to remain despite the warning, the police should be contacted immediately.

Contact the other parent

Police support

13.5 Whilst preschool and school staff should do all they can to safeguard the interest of children in their care and control, they must also have due regard for their own personal safety. If a director/principal is satisfied that a person has trespassed, misbehaved or committed or threatened to commit any other offence at a DECS site, the director/principal should call the police.

Parent confrontations

13.6 Sometimes issues arise in relation to picking up children after preschool and school. Such disputes may sometimes lead to confrontations between the parents at the preschool/school in front of other parents, students and staff. Parents should be advised that such confrontations are inappropriate at the site and may lead to police being called.

Authorisation for collecting a child

13.7 One parent may have contact with his or her child over the weekend or for a number of days during the week. This contact may include a provision that the contact is to commence from the conclusion of the preschool and school day. Sometimes the contact parent will arrange for another person, such as a new partner or grandparent to pick up the child on their behalf and the other parent objects to the arrangements made.

Identify and record details of those authorised to collect children.

13.8 It is inappropriate for preschool and school staff to become involved in resolving these types of disputes. In the absence of a court order precluding a particular person from contact with the child, preschool directors or principals need only satisfy themselves that the person in attendance at the preschool and school to pick up the child is authorised to do so by the contact parent. The parents should be advised of the need to resolve the issue between themselves prior to any confrontation occurring at the preschool and school site. If the director/principal has reason to believe that a confrontation will occur at the preschool and school, the parents should be advised about possible police involvement in the event any confrontation does occur.

Consider seeking police support if a confrontation occurs

14 **PARENTAL ACCESS TO PRESCHOOL AND SCHOOL DOCUMENTATION**

- What if parents disagree?**
- 14.1 In many instances parents who have separated will both seek to play an active part in the education of their children. Sometimes a parent will not agree that the other parent has a right to receive information about their children's education.
- No order - equal access**
- 14.2 In the absence of a court order, each parent has equal obligations, duties and responsibilities in respect of their children. To fulfil those obligations, duties and responsibilities, it is reasonable that each parent is able to access relevant information that may issue from a preschool and school concerning their children's education.
- This includes newsletter, reports and attendance details.**
- This means copies are sent directly to each parent.**
- Court order – sole responsibility**
- 14.3 If a court order is made that denies parental responsibility for the long term care of a child or gives sole responsibility for educational matters to one parent, the other parent is not entitled to any documentation or information about their child from the preschool and school. If there is any doubt contact the Legislation and Legal Services Unit.
- Orders restricting material, information**
- Parent permissions**
- 14.4 Permission notes for participation in preschool and school activities, such as excursions, can be an area of dispute between parents. Many excursions and other off-site preschool and school activities are organised well in advance. Generally, permission notes should be obtained from the parent whom the preschool and school usually contacts regarding day to day issues or the parent with whom the child will be residing at the time of the event. Relevant material should also be provided to the other parent where that parent has asked to be provided with preschool and school documentation though it is not necessary to obtain consent from that parent.
- Excursions, Daily issues**

15 **PARENTAL INVOLVEMENT IN PRESCHOOL AND SCHOOL ACTIVITIES**

Each parent has equal access to activities

15.1 Where there are no court orders to the contrary, both parents may attend preschool and school organised activities. Each parent maintains parental responsibilities and is able to visit the preschool and school and speak to the director/principal and teachers about their child's education and participate in all activities in which parents are normally involved.

**Exceptions
Specific orders apply
Disturbance occurs**

15.2 It is only when a parent causes a disturbance, upsets the preschool and school routine or refuses a reasonable request to leave that a director/principal should act to exclude that parent from the preschool and school.

15.3 Where court orders have been made, parents should not be excluded from preschool and school activities unless subject to a specific order which makes their attendance inappropriate.

Be aware of context, history

15.4 Preschool directors or principals must always have regard to any known history of animosity between the parents before deciding whether both parents should participate at the same time in the preschool and school activity. The primary concern must always be the prevention of disputes which will impact on the efficient and effective operation of the preschool and school and jeopardise the safety and well being of persons on the site.

Safety and wellbeing are fundamental

15.5 Leaders should make reasonable attempts to arrive at a compromise position so that both parents can actively participate in activities. Extensive periods of time must not be spent in trying to arrive at a compromise nor should preschool directors or principals act as conciliators in family disputes. Leaders should use their judgment based on their knowledge of the relationship between the parents, attitudes of the children and the educational importance of the activity under question in determining what compromise is appropriate to pursue.

**Seek compromise
However**

15.6 Parents often seek to become involved in a range of preschool and school activities, such as canteen duties, reading classes or assistance on excursions or sporting activities. Involvement in these activities will often bring the parents into contact with their children and in some cases this contact will be outside times of contact specified in court orders. **Where involvement would contravene a court order, then participation in the activity should be denied.**

Canteen and sports

15.7 Other court orders (e.g. a domestic violence restraining order) may be in place that make the contact inappropriate. If genuine concerns exist for the safety of the child, other students and/or staff if the contact occurs LLSU should be contacted. If the parent's participation will unduly complicate arrangements for the so as to unreasonably divert the resources of the preschool and school then participation in the activity should be denied.

Is it too complicated to accommodate?

16 **DEALING WITH PERSONS OTHER THAN PARENTS**

Grandparents
New partners
Family friends

16.1 While the Family Act recognises the right of children to maintain on-going relationships with people significant to their care, welfare and development, this sometimes results in conflicts at preschool and school between parents and other family members. For example grandparents may wish to speak with their grandchild or ask staff to deliver birthday cards and the like to them at preschool and school. Such requests may be objected to by one of the parents. (Refer also to paragraph 11.4 regarding contact by parents)

Prime responsibility is to child and parents

16.2 Preschool directors or principals must exercise caution in dealing with such issues. Any official relationship that is created as a result of children attending government preschools and schools is between the individual preschool and school and the parents. While other persons such as grandparents may wish to maintain a close involvement with children attending preschool and school, they cannot rely on any formal relationship with the preschool and school that permits them any interaction with those children while they are at preschool and school. Contact between a child and a non-residential parent and other relatives should be organised for times outside of preschool and school hours and away from preschool and school premises. For children who are facing difficult family circumstances, preschool and school should be a safe haven into which family problems do not intrude.

16.3 In the absence of parental consent, the director/principal should deny any such requests.

Parents should deal with others for contact and information not sites

16.4 Similarly, preschool directors or principals may receive requests from grandparents and other relatives seeking to obtain copies of preschool and school photographs or other material relating to children in the preschool and school. Such requests should be politely denied and the person advised that access to such material must be organised through the parents. Where grandparents or others are party to an order which applies and is current the order should be followed.

Step-parents

16.5 While step-parents often are closely involved in preschool and school related matters pertaining to their step-children, any such involvement is always with the consent (either expressed or implied) of the step-parent's spouse or partner, who is a parent of the child. This parent is entitled to withdraw that consent at any time. Information is not usually provided to step-parents unless they attend as support person with the parent. If however, a step-parent has formally adopted the step-child (in which case there will be an adoption order), the adoptive step-parent has the same rights and status as the parent.

Adoption

- Guardianship of the Minister**
- 16.6 In some cases the Minister for Families and Communities may hold parental responsibility over a child and therefore the Department of Families and Communities will have the right to make decisions in relation to the child. In such cases, authorised carers can request and be provided with information relating to student progress at any time. Any request by a person not having the care or custody of the child must not be agreed to without the prior approval of the Department for Families and Communities.
- Centrelink**
- 16.7 Similarly, Centrelink is authorised by Commonwealth legislation to seek information in respect of a range of social security related issues. Requests from Centrelink seeking information about parents and/or children should therefore be complied with. The request should be made formally in writing. Consult Legislation and Legal Services Unit if this occurs.
- Privacy**
- If in doubt seek advice from Freedom of Information Officer**
- 16.8 Provision of information in these circumstances will not be a breach of any privacy legislation.
- [\(Appendix 3\)](#)

17 RESTRAINING/OTHER ORDERS – THEIR EFFECT

What is a restraining order?

17.1 A restraining order is an order made by a magistrate which prevents someone from coming in contact with or behaving in certain ways towards another person. Such orders can limit the contact one parent has with another parent and/or children. A family member who has reasonable fears of domestic violence may be able to obtain a restraining order under the *Domestic Violence Act 1994*. A restraining order may also be granted under the *Summary Procedure Act 1921* by persons who are not a family member. Restraining orders carry criminal sanctions if breached.

Who applies?

17.2 Where a child needs protection, a parent, guardian or a person with whom the child normally resides can apply for a restraining order. Where the court consents, children who have reached 14 years can make their own applications for an order.

Breached orders

17.3 If a restraining order is made that prevents a person from approaching or attending a preschool and school and staff become aware that the order is being breached, preschool directors or principals should immediately contact the police.

Contact police

Multiple orders

17.4 Situations can arise where both a Family Law order and a restraining order are operative at the same time. While the courts will endeavour to ensure such orders do not conflict, there will be occasions when a conflict does occur. If a conflict does occur, preschool directors or principals should seek advice from Legislation and Legal Services Unit.

Conflicting orders

17.5 Sometimes a parent may be subject to bail conditions pending the completion of criminal matters before the court. Such bail conditions can vary but may be similar to restraining order conditions and may be involve schooling.

17.6 If preschool directors or principals become aware of breaches of bail conditions or good behaviour bonds, they should contact the police and the Legislation and Legal Services Unit immediately.

18 **WHAT IF PARENTS DELIBERATELY BREACH ORDERS**

It is not our job to resolve family disputes

18.1 It cannot be stressed too highly that it is not the role of the DECS personnel to act as an adjudicator in disputes between parents in family law matters.

Actions to take

18.2 If a parent insists on conducting himself or herself at preschool and school in a way that is inconsistent with any court order the views of the other parents, if not already known, should be sought. If the other parent does not consent to the behaviour that is contrary to the court orders, attempts should be made to persuade the parent in breach not to pursue the course of action intended.

If conduct continues

18.3 If the parent continues to insist on conduct at the preschool and school that is inconsistent with the court order, the parent should be informed that they must leave the preschool and school or police will be called. **Under no circumstances should preschool directors or principals allow themselves or other staff to be placed in a position of danger when trying to resolve any problems that may arise. Staff are not expected to physically restrain parents.** If parents abuse staff, use or threaten to use physical violence or refuse to leave the premises when directed to do so, the police should be immediately contacted.

Safety

19 **RECOVERY ORDERS AND LOCATION ORDERS**

Responding to police
Read the warrant
Record identify of police
Assist police

19.1 Police may sometimes attend a preschool and school with a warrant or a recovery order issued by a court for the return of children who may be enrolled at the preschool and school. Preschool directors or principals should view the details of the warrant, confirm the identity of the police officer(s), check the details referring to the child provided by the police and then assist the police in fulfilling their obligations under the warrant. This may mean allowing the police to collect the children from the preschool and school or advising them of their location if they are not at the preschool and school.

Police take priority

19.2 Provided police have a warrant or recovery order, this assistance should be provided irrespective of any objections that may be made by the child concerned.

Sensitive processes
Supporting the child

19.3 If police do attend in such circumstances, preschool directors or principals and staff should act with sensitivity and regard for the dignity and potential fears of the children concerned and for the well being of other children and staff at the preschool and school. Police should be asked to wait in the director's and principal's office or general office area rather than proceeding directly to a classroom. Where children display fear or incomprehension about being taken by police, every effort should be made to work with the police to reassure the children that they are safe.

19.4 **Location orders** may also be occasionally served on DECS or individual preschools and schools. Upon receipt of such orders, preschool directors or principals should **refer the matter to the Legislation and Legal Services Unit.**

Children from overseas?

Abduction?

19.5 The Australian Government may also from time to time seek assistance from DECS in locating children who have been abducted from overseas, generally by a parent, and who are believed to be residing in Australia. Prior to commencing action to have such children returned to their rightful home, the Commonwealth authorities need to ascertain an address for the children so that appropriate legal proceedings can be commenced against the parent. These matters should be referred to the Legislation and Legal Services Unit.

Immediately Contact
Legislation and Legal
Services Unit

Under no circumstances should any information be provided to the child in question or his or her parent about the request for information being received.

20 **REQUESTS THAT STAFF GIVE EVIDENCE IN FAMILY LAW PROCEEDINGS.**

- Don't take sides**
- 20.1 Staff may be asked by parents involved in family law proceedings to provide written statements or affidavits regarding the performance of children at preschool and school. These requests may involve not only details about academic progress but also comments about the behaviour and appearance of the children.
- If subpoenaed staff must comply**
- If served with a subpoena, staff are required to comply with its directions – i.e. either produce documents or attend to give evidence or both. Immediately contact the Legislation and Legal Services Unit for support and advice in preparing an appropriate response. All documents are the property of the Minister for Education. Teaching staff can only provide information based on their professional experience or expertise. Personal comments or observations about the perceived fitness of respective parents or the merits of individual court proceedings should be avoided.
- First Contact:
Seek Legislation and Legal Services Unit direction**
- If no subpoena staff politely refuse**
- 20.2 Where parents or lawyers request information, in the absence of a subpoena, preschools and schools should politely refuse the request. Documents and information normally supplied by schools to parents should be supplied. Staff should avoid taking sides or becoming involved in family law matters unless required by the court.
- 20.3 Where any request is made by lawyers for information about any child advice from Legislation and Legal Services Unit should be sought first.
- Appearing in court
Seek Legislation and Legal Services Unit advice**
- 20.4 In seeking statements and affidavits from staff, assurances are sometimes given that if the statement or affidavit is provided, the staff member will not be required to attend court. Such assurances usually cannot be relied upon and there is no guarantee that a court appearance will not be ordered.

21 **REGULATORY PROVISIONS RELATING TO LICENSED CHILD CARE CENTRES**

Register requirements	21.1	Licensed Child Care Centres are subject to the provisions of the <i>Children's Services Act 1985</i> and the Children's Services (Child Care) Regulations 1998, which imposes certain obligations on licensees and operators of child care centres in South Australia. A licensee of a child care centre must: <ul style="list-style-type: none">• keep a register containing the name and address of the person from whom the child was received and the name and address of the person who will collect the child, and the time of arrival and departure of the child each day• ensure that a child departing from the centre is given into the care of a guardian or of a person authorised in writing by a guardian to collect the child from the centre, or if this is not possible, alternative arrangements to ensure the safety and welfare of the child must be made before the child can be permitted to leave the premises• keep on the register the details of any court orders relating to guardianship of and access to the child and of any parenting orders issued in relation to the child• ensure that a child departing from the centre is not given into the care of a person in contravention of a court order.
Collecting children		
Orders recorded on register		
Process in place for collection of children		
No orders means equal access	21.2	In the absence of any court orders, it will be assumed that both parents retain a shared and equal parental responsibility for their children.
Contact police if safety is an issue.	21.3	If a parent is forbidden by court order from having contact with a child, that parent must not: <ul style="list-style-type: none">• be allowed to enter the premises of the children's centre while the child is attending the centre or• be permitted to collect the child from the centre. <p>If in doubt contact Legislation and Legal Services Unit for direction</p>

22 **RESPONSIBILITIES AND DELEGATIONS**

All employees must have access to these guidelines

Preschool directors and principals must ensure that these guidelines are readily accessible to all employees. There are no delegations necessary for the implementation of these guidelines.

23 **FOR FURTHER INFORMATION**

Need advice?

The officer responsible for these guidelines is the Manager: Legislation and Legal Services Unit.

If you have further questions or would like advice contact Manager Legislation and Legal Services Unit, see Appendix 3

24 **APPENDICES**

24.1 **Appendix 1**

Enrolment information to parents and carers.

24.2 **Appendix 2**

Newsletter information to parents and carers.

24.3 **Appendix 3**

Contacts, Resources, Associated Documents.

APPENDIX 1

This information should be provided at the time of enrolment and at the annual renewal of parent information.

INFORMATION FOR PARENTS/CARERS AND STUDENTS

FAMILY LAW ISSUES

We recognise that some families are subject to family law issues. In meeting our obligations to students and parents, we rely on the following principles:

- the primary responsibility of DECS is to provide education and care for all children enrolled at DECS schools and preschools
- unless particular advice is provide to the preschool/school, it will be assumed that both parents are involved in any major school/preschool decisions concerning their child;
- where parents cannot agree on what is in the child's best interests, it is the role of the court, not the preschool/school, to determine those interests;
- the preschool/school is not the appropriate place for family disputes to be resolved nor is it appropriate for parents to seek out staff to resolve such issues
- preschools/schools will make decisions, which focus on the best interest of children while obeying the law, DECS directives, and guidelines to maintain a stable learning environment.

To avoid any confusion, parents should advise the preschool and school immediately if any changes in family circumstances occur which have the potential to impact on their children or the preschool or school. If court orders are obtained by one or both parents, parents should provide a copy of the orders to the preschool and school as soon as possible.

If there are no court orders or parenting plans - the preschool and school will assume that both parents retain a shared and equal parental responsibility for major decisions about their children.

APPENDIX 2

The following notice should be provided to parents on a regular basis. While it is suggested that the notice can be incorporated into preschool and school documents such as **newsletters, e-mails to parents, information sheets, student diaries, and websites**, it is up to individual preschool director's and principal's professional judgement and knowledge of their school community to determine how the information is provided, the detail and the frequency.

Important information for parents and students.

We recognise that some families will be subject to family breakdown.

If there are no court orders or parenting plans the school/preschool will assume that:

- both parents have a shared and equal responsibility for major decisions about their children (eg which school the children attend); and
- both parents are entitled to information about the children (eg school reports, newsletters)
- the day to day care of the children is the responsibility of the parent with whom the children are residing at the time (eg consent for excursions).

Please keep us informed if there are any changes in your family situation, which may affect communications between the preschool and school and your family.

Please provide copies of any court orders immediately any changes occur. This will help us to support your child in the best way possible.

APPENDIX 3

Legislation and Legal Services Unit Support

Manager	tel: 8226 1659 fax 8410 1866
LLSU Claims Manager	tel: 8226 1555 fax 8410 1866
Freedom of Information Project Officer -	tel: 8226 1555 fax 8410 1866
Other Agency Contacts	
DECS Special Investigations Unit	tel: 8226 0135 fax 8226 1708
Child Protection	tel: 8463 6564 fax: 8463 6620

Resources – Associated Documents

[Legislation and Legal Services Web Page](#)

Ancillary workers and the law

[Law for Leaders](#)

[Responding to concerns from parents and care givers](#)

[Protective practices for staff in their interactions with students](#)

[Management of Child and Student Records](#)

[Information Privacy Principles](#)

[Documentation – Recording the Facts](#)