

Schools and family law

The Legal and Industrial Relations Section receives a great number of queries from teachers and principals in relation to the legal obligations of schools as they relate to certain aspects of family law. Set out below are some of the most common queries along with some general guidelines on how to deal with them:

Q. Who is the legal guardian(s) of a child?

A. In a marital relationship, both the mother and father of the child are legal guardians. This remains the case even after a marriage breakdown/separation. In a non-marital relationship and where a parental agreement or Court Order does not exist, the father is not considered to be a legal guardian. A parental agreement is a joint statutory declaration made by the mother and father of a non-marital child who wish the father to become a guardian of the child along with the mother. Legally, the mother is always the legal guardian of the child unless a State agency (eg a Health Board) intervenes to remove the child from her care.

Q. In a situation where parents are separated/divorced are both

parents entitled to receive school reports and attend parent teacher meetings?

A. Each parent has a right to be informed of and to attend parent teacher meetings and to receive school reports unless there is a Court Order in place preventing them from doing so. Teachers should attempt to facilitate separate meetings if both parents cannot attend together, and should generally act in a fair and even-handed way in respect of both parents.

Q. What are the obligations of a teacher in relation to providing a report or statement about a particular child involved in a family law dispute to a third party eg a solicitor, psychologist?

A. Teachers are under no legal obligation to provide any reports about a child if they are requested to do so by a solicitor or a psychologist or any other third party. However, teachers are obliged to respond when they have been subpoenaed by a Court. Advice should be sought on each case as it arises.

Q. Where a teacher decides to provide a report or is requested to do so by Court, what should such a report about a child contain?

A. Teachers should generally be expected only to comment in relation to the teaching/learning situation, for example, in relation to the child's attendance, progress or other school related matters. Teachers should note that they are not psychologists or social workers and as such, their professional expertise relates to the teaching and learning situation only. As a general guideline, any report provided by a teacher or principal should take the form of an end of year report.

Q. What happens if a teacher is requested to attend Court to give evidence about a child?

A. Teachers should be aware that they are not obliged to attend Court unless under summons or subpoena. However, they may attend Court voluntarily if they wish. This is a matter of professional judgement, and the teacher may wish to contact the chairperson of the board of management or the INTO on the matter. It is generally recommended, however, that teachers should insist on being subpoenaed to attend Court. This indicates that the teacher is not volunteering information

and would not normally wish to become involved in the case. When in Court, teachers should only be expected to comment on the teaching/learning situation responding in a bona fide and honest manner.

Q. Where parents are separated and in dispute about access/custody, how should a school approach the situation?

A. As a matter of practice, schools should advise the parents concerned that the school has no role and will not become involved in any such dispute. Access and custody are matters which should be resolved by the parents (in Court if necessary) outside of school. That being said, as a general rule schools should comply with the wishes of the parent who has de facto, ie day to day, control of the child eg in the event of a dispute over issues such as the collection of children.

If you have any further queries on these or other issues, there is information available on our website (www.into.ie) in the Legal and Industrial Relations Section. Further specific advice should be obtained in each instance.

Positive Staff Relations

Positive staff relations are the key to a productive and satisfying working environment. The INTO continues to emphasise the importance of having a working culture which promotes open and constructive dialogue, where issues are aired in a transparent and fair manner and where difficulties arise, as they inevitably will, these are addressed promptly and effectively.

The Organization is regularly involved in an informal manner in assisting or advising schools regarding staff relations. Where problems persist, INTO and Management have agreed proce-

dures to provide a fair opportunity for matters to be addressed. These procedures are contained in the booklet *Working Together*. The booklet contains:

- 1 Some examples of the difficulties which, from time to time may beset school staffs, including lack of consultation in decision making, DES circulars not being distributed, alleged bullying, inability of staff to collaborate.
- 1 Recommended good practices which, inter alia, look at internal staff communication and processes of decision making, unacceptable behaviour and conflict resolution.
- 1 The legal provisions pertain-

ing to harassment including sexual harassment.

- 1 A specific procedure to address adult bullying which relies on the definition of bullying as adopted by a Government task force; and
- 1 A process to address staff relations which includes a mediation facility. Both INTO and Management have agreed and trained a professional team of mediators who are available to assist schools experiencing staff relations difficulties. Schools who may wish to access this service should contact their INTO District Representative. In many cases staff relations

problems have existed for a long time and we recognise that any one publication or set of procedures in themselves, may not solve all difficulties. Additional ingredients such as goodwill, flexibility, staff support and ongoing effort to reach a settlement and willingness to work towards a framework for resolution are essential. Other initiatives such as training or counselling may also be appropriate.

Any teacher who requires further information on any of these matters, including mediation, should contact his/her INTO District Representative or Head Office.