

# Marital Breakdown

## *implications for schools*

An INTO study group has examined the practical and legal issues that arise for schools in dealing with cases of marital breakdown. This article provides advice and assistance to teachers in clarifying their roles and responsibilities in such cases.

The separation of parents following marital breakdown is extremely traumatic for the parties involved. This is particularly true where children are concerned. Schools should approach the issue of marital separation with the utmost sensitivity and with a clear focus on the well being of the children when under their care.

Occasionally where the separated parents are in dispute with each other conflicting demands can be made on the teachers in the school where their children are enrolled. Arising from increasing queries from members in this area and in response to a resolution on same adopted at the 1996 Annual Congress the CEC established a study group to examine some of the legal and practical issues that arise in such cases. The following general principles prepared by the Study Group may be of assistance to teachers in clarifying their roles and responsibilities in such cases.

### Introduction

In a marital relationship both parents are joint guardians of the children.

In a non-marital relationship the mother is automatically the guardian of any children. It is open to the natural father to be appointed a guardian through the courts.

Parental separation can occur in a

number of ways for example:

- 'de facto' separation: no formal/legal arrangements in place for custody/access to children;
- custody and access of children set out in a mediation agreement (no formal legal standing);
- Separation Agreement/Deed of Separation (negotiated between both parties solicitors);
- District Court Orders for Custody and Access;
- Decree of Judicial Separation (Circuit and High Court) may deal with custody/access;
- Foreign Divorce/Decree;
- Irish Decree of Divorce.

It is important to note that the issue of schooling may not be explicitly dealt with in every case whether in the Separation Agreement or in the Court Order.

In many cases the issue of custody is agreed between the parties without the necessity of court orders and expert reports.

### Key Principle: Once a parent always a parent

Parents, although separated following marriage breakdown, remain the legal guardians of their children. In cases of marital breakdown the issues of custody and access arise. This may be resolved with both parents sharing joint custody, or with one parent having or being awarded custody and the other parent having access.

Court Orders in relation to children are never final.

Irrespective of the issue of custody in marriage breakdown, parents remain as joint guardians of their children and their legal obligations and rights as guardians remain unaltered.

Essentially the issue of guardianship supersedes that of custody.

Custody may be defined as the daily care and control of the child. The right of custody is only one of the rights that arise from the guardianship relationship between parent and child.

Guardianship gives both parents a say in all matters affecting the welfare of their child/children whether physical, religious, moral, social, educational – irrespective of the issue of custody. As guardians, parents continue to have rights in relation to the upbringing of their child.

### Practical Implications

(a) In cases of separation, Separation Agreements and Court Orders, details relating to custody of children, access, etc. are generally considered private to the parties involved and are not copied to school authorities. The guardianship relationship remains unaltered.

(b) Because of the guardianship relationship and the say it gives both parents in matters affecting the welfare of their children both parents, unless precluded by Court Order, continue to have a right to:

- consult with class teachers;
- attend parent teacher meetings;
- have access to the normal end of year school reports;
- be notified of meetings of parents, etc.

It is not necessary for schools to go to extraordinary lengths to duplicate the normal arrangements that apply. However, schools should show some flexibility in this regard, e.g. if the normal practice is to invite parents to a parent teacher meeting by sending a note

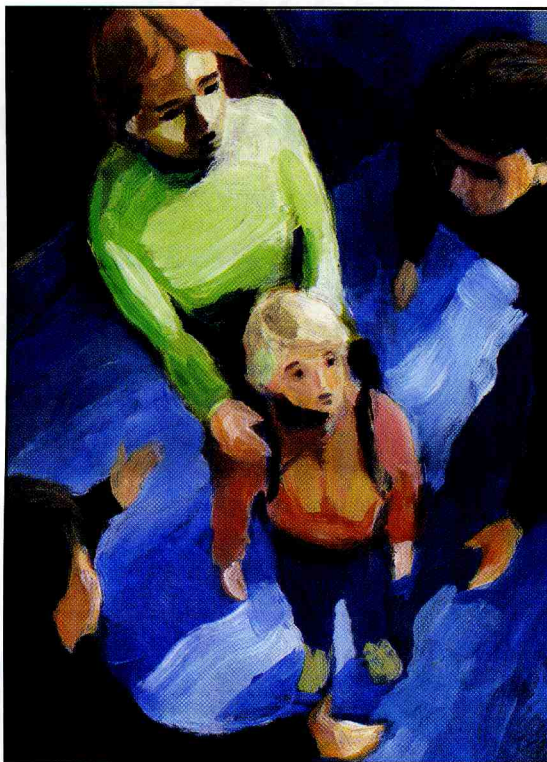
home via the child, then it may be appropriate to send two such notes, one to each parent. Where it is not possible for parents to attend together schools should be receptive to this issue.

It is important that school staffs exercise good judgment in these matters. Separated parents should not be treated differently to parents in working marriage relationships. Separated parents should not be discriminated against. The school's focus should be the best interest of the child rather than on the circumstances of the marital or non-marital relationship as the case may be.

(c) Where custody and/or the collection/delivery of children are in dispute and brought to their attention teachers should:

- seek direction from the Board of Management on how to handle the situation;
- endeavour to comply with the request of the parent who has to all intents and purposes 'de facto' control of the children;
- refrain from giving guarantees to either parent regarding handing over of children at the end of the school day etc.
- avoid becoming embroiled in the marital dispute and place the onus on the parent to collect the children at the end of the school day.

(d) During school hours children are under the control of the principal and staff who are in 'loco parentis'. Where a parent seeks to use the school as a



venue for informal access to his/her children the principal could decline the facility and if appropriate, refer the matter to the Board for direction if a difficulty or problem arises.

(e) Appropriate information, relevant to the child, regarding family structure, etc. may be passed on from teacher to teacher within the school as part of normal professional communications and such information should be treated confidentially.

(f) Increasingly, teachers are being requested by a range of professionals (social workers, psychologists, probation officers etc.) to provide written reports on pupils. It is essential, therefore, that Boards of Management would have an agreed procedure for dealing with such matters. In this context the following guidance is offered:

In all cases the authority of the Board of Management should be respected and the Board should be fully appraised by the principal of all relevant developments;

Any reports provided should relate to the type of information a teacher is

professionally capable of giving and be within the teacher's area of expertise. The report may be similar in content to the normal end of year school report and supported by verifiable data (attendance, test results etc.) where required. The focus of the report should be on the pupil and not on the circumstances of the parental relationship;

The terms of the report should be discussed with

other colleagues who have a responsibility for the child (remedial teacher etc.) and with the principal teacher.

Generally, the prior written consent of parents should be sought where outside agencies are seeking a report on a child. There may be circumstances where it may not be appropriate to obtain the prior written consent of the parents (e.g. cases involving alleged child abuse whether sexual, emotional or physical).

(g) In custody/access cases where a solicitor acting for one parent seeks a written report from a teacher the general principles outlined above would also apply.

In the absence of procedures in the school for such matters the consequences of a teacher voluntarily responding to a solicitor's letter needs to be carefully considered. The report may subsequently be produced in the course of any legal proceedings and the teacher may be called as a witness and cross examined on their report. If a teacher decides not to respond voluntarily to a solicitor's letter the teacher maybe subpoenaed to attend court.