

LEICESTERSHIRE CHILDREN & YOUNG PEOPLE'S SERVICE

CHILDREN'S NAMES/DISCLOSURE OF INFORMATION/PARENTAL RESPONSIBILITY

Contents

	<u>Paragraph</u>
Introductory Comments	1
Parental Responsibility	2 - 11
Changing a Child's Surname	
- Where a Court Order exists	12
- Where more than one person has parental responsibility	13
- Where one person has parental responsibility	14
Records	17
Disclosure of Information	18 - 23

Introductory Comments

1. This document was revised August 2010 following updated guidance from Leicestershire County Council – Legal Services. Please discard Administrative Memorandum No. 74 version.

Parental Responsibility (PR)

2. The Children Act 1989 introduced the concept of 'parental responsibility', which refers to a notional collection of rights, powers, duties and responsibilities. There is deliberately no prescription or definition concerning parental responsibility, the word 'responsibility' having been chosen to reflect 'the every day reality of being a parent'.

Who has Responsibility?

3. Where the child's father and mother are married to each other at the time of birth or marry later, they shall each have and maintain parental responsibility regardless of whether they remain married to each other.
4. In cases where the child's father and mother are not married to each other, the mother automatically has parental responsibility, although the father can acquire it, either by making a formal agreement with the mother (without resource to Court) or through a court order.

From 1st December 2003, unmarried fathers automatically acquire parental responsibility for their children if they are registered as the child's father on the child's birth certificate. (This is not retrospective in effect so that unmarried fathers whose name is on a birth certificate which pre-dates 1st December 2003 do not automatically have parental responsibility.)

5. Other people may acquire parental responsibility by
 - being appointed as a guardian by the court
 - virtue of a 'Residence Order'
 - the child being subject to a 'Care Order' or 'Interim Care Order', in which case the Local Authority would acquire parental responsibility to be exercised jointly with the parents.
 - a valid will can confer parental responsibility upon testamentary guardians on death of a person with parental responsibility
 - The Human Fertilisation and Embryology Act 2008 which also confers parental responsibility upon specific individuals - however if this matter is raised it would be best to seek legal advice as this is a complex area of law.
6. An 'Adoption Order' extinguishes the parental responsibility of the birth parents and transfers this to the adopting parents as if the child has been born to them. Following changes to the law the Adoption and Children Act 2004 enables step parents to acquire parental responsibility through adoption without extinguishing the other parents' parental responsibility.
7. Parental responsibility is severely limited by a child becoming a 'Ward of Court'.
8. Parental responsibility may be delegated, in whole or in part. Such an arrangement might occur owing to the parent being ill or out of the country. Nevertheless, this would still leave the parents with full responsibility for meeting parental duties, e.g. ensuring the child receives education.
9. Theoretically, there is no limit to the number of people who can have parental responsibility at the same time. For example, it is possible that after divorce and remarriage, a father, mother and step-father may all have parental responsibility (a step-father would have to apply for it). The Act enables any parent to take action in meeting his/her responsibilities without reference to the other, although it is clear that this does not affect any statutory provision requiring the consent of all those with parents' responsibility. Any independent action by a parent must not breach a court order. It must be noted that when the child is in care, the Local Authority is given power to determine the extent to which another person with parental responsibility may act.
10. When in doubt over legal claims regarding parental responsibility, it is important to seek documentary evidence. Details of any court orders affecting the child should be noted in the pupil's records.
11. Schools should take reasonable action to elicit details of both parents and persons with parental responsibility when registering a pupil. Their 'search' should not be exhaustive - asking the parents with whom the child resides should be enough. The names of both parents and those with parental responsibility should be recorded.

Changing a Child's Name

12. Where a Court Order exists

- 12.1 If a Residence Order or Care Order is in force in relation to the child, then 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 permission of the Court (Sections 13 and 33 Children Act 1989).

12.2 A Prohibited Steps Order (Section 8 Children Act 1989) may be in force imposing a specific restriction on the exercise of parental responsibility so that steps specified in the Order may not be taken without the consent of the Court. For example, an order may have been made stating that no person may change a child's name or cause the child to be known by a new name except with permission from the Court.

12.3 A Specific Issue Order (Section 8 Children Act 1989) may have been made requiring that a child be known, or continue to be known, by a particular surname.

13. Where more than one person has Parental Responsibility

13.1 In the case of married parents (or where more than one person has parental responsibility), once the child has been given a name, neither parent (or person with parental responsibility) is entitled to change it without the consent of the other (Re PC (Change of Surname [1997])). It is not strictly necessary for the consent of the other party to be in writing although in practical terms it would be prudent to have such consent in writing as evidence of it.

14. Where one parent has Parental Responsibility

14.1 Where only one parent has parental responsibility for a child that person has the right lawfully to change the child's surname without any other permission or consent. However, good practice makes it clear that other interested parties, in particular a father who does not have parental responsibility, should be contacted for his views, and in the event of a disagreement the matter should be brought before the Court for determination.

15. If a school receives a request for a change of surname, the request should be treated with caution. The school should not be seen to condone a change of name in breach of the Children Act 1989 and/or relevant case law. Enquiries should therefore be made of the parents submitting the request to ensure that the child's name has been lawfully changed. The school should seek evidence, such as written confirmation from the other parent or a court order that consent or proper authority for a change of name has been given.

16. In the absence of any proper order or authority for the name change, the school should inform the parent that the school cannot alter its records or call the child by a new name until the proper steps have been taken.

Records

17. Where a change of surname does take place, it may be advisable for school records to contain the original surname and the surname by which the child is now to be known.

Disclosure of Information

18. As well as obligations under the Data Protection Act 1998 in relation to disclosure, the Education (Pupil Information) (England) Regulations 2000 state that parents are entitled to access to information about their children kept within the school's educational records files, although there are exceptions in relation to what might be disclosed. Section 576 Education Act 1996 defines 'parent' to include:-

- all natural parents, whether they are married or not;
 - any person who, although not a natural parent, has parental responsibility for a child;
 - any person who, although not a natural parent, has care of a child or young person.
 -
19. Any parent has a right to access to educational information about the child, and a right to say if they believe part of the record is inaccurate. This means that divorced parents are entitled to information about their child whether or not they have day to day care of the child or whether or not they have contact with him/her. This includes the rights, for example:
- to receive information from the school (e.g. copies of the Governors' annual report, pupil reports and attendance records);
 - to participate in activities (e.g. voting in election for parent governors);
 - to be asked to give consent (e.g. to the child taking part in extra curricular activities);
 - to be told about meetings involving the child (e.g. Governors' meetings on the child's exclusion).
 -
20. The right of access is to an educational record which is defined as any record of information which is processed by or on behalf of the Governing Body or a teacher in relation to the pupil in question and has been supplied by any of the following:-
- any LA employee
 - any teacher at the school
 - the pupil to whom the record relates
 - the parent of that pupil
21. The Headteacher upon receipt of a written request by a parent (as defined above) for disclosure must within 15 school days make the record available for inspection free of charge to the parent. Upon receiving a written request by a parent for a copy of the pupil's educational record, the Headteacher must make such a copy and provide the same to the parent within 15 school days. A charge (not exceeding the cost of supply), may be made at the level prescribed by the Governing Body.
22. In addition to the above, in the case of a pupil in a final year of a key stage, the Headteacher must, if requested by the pupil's parents, make available to the parents information consisting of the pupil's attainment levels in each attainment target in any of the foundation subjects. Again, this request must be complied with within 15 school days.
23. The above duties overlap substantially with the obligations under the Data Protection Act 1998 in relation to subject access request which is subject to a separate Admin Memo which relates to disclosure of information to both parents and pupils.
24. However in all cases where there is a request for disclosure it would be prudent for the Headteacher to check that there is no lawful reason to withhold the information. For example, is there a court order in place restricting disclosure or would any person need to seek an emergency order to protect either the

carer or the child from risk of harm if the child's whereabouts became known. These cases are likely to be rare and again, legal advice should be sought.