

EDUCATION LAW UPDATE

KCC Legal Services

2008

ISSUE 1

This Education Law Update has been produced by the KCC's Litigation, Employment & Education Team. It features three articles which address some of the common legal issues that schools encounter.

These articles aim to provide a practical guidance to schools. They are not intended to provide legal advice. The circumstances of each problem are different and legal advice will vary in accordance with the circumstances. KCC Legal Services offers an insurance scheme (Schools Legal Insurance Scheme) which for an upfront annual premium of £350 allows schools to access 5 hours legal advice on the full range of legal issues faced by schools. If more than 5 hours advice is required by a school subscribing to the scheme, additional legal time will be charged at a very competitive rate. If you require legal advice please contact any of the education lawyers at the end of this newsletter.

Who Is A Parent?

It is a fact of modern life that children are living in ever more complicated family structures and so it is not surprising that schools often ask the question, "who is a parent for the purposes of allowing access to information about a child"?

Section 576 of the Education Act 1996 defines the meaning of the word "parent" to include the following:

- (i) both birth parents of the child (irrespective of whether they were married at the time of the birth); or
- (ii) those who have acquired parental responsibility for the child (for example a grandparent, relative, new partner of the birth parent or even a local authority); or
- (iii) those who have care of the child, this can be anyone who is looking after the child on a day to day basis and with whom the child lives irrespective of whether they are a birth parent or have parental responsibility.

When deciding whether or not to release information about a child a school is required to establish that the individual requesting the information is a parent as defined above. With the birth parents this will usually be obvious as the mother's name will be and the father's name should be on the birth certificate. When the father's name doesn't appear and the school is approached by someone claiming to be the birth father the school is advised to obtain confirmation from the mother that he is the birth father.

Where someone approaches the school who is not the birth mother or father claiming to have parental responsibility they will need to

demonstrate to the school how they have obtained parental responsibility. Normally there will be a court order explaining this. Similarly, if someone approaches the school claiming to have care of the child they should be asked to demonstrate how this is so.

When the school is approached by a person about whom the school has not been informed by the known parent (usually the child's mother) the school should check the identity of the person with the parent to check their authenticity and also to establish whether the person still has parental responsibility or care (as the case may be) and also whether there are any court orders in existence preventing that person having information about or contact with the child.

When it is established that a person is a parent, that person is entitled to the information which would form part of the educational record of the child. But that person would not be entitled to any information about any third party, including any other parent. It is recommended that in difficult cases that a school should take legal advice before making a disclosure.

Finally, what happens where the school receives different instructions from two or more "parents"? Best advice is that if there is no court order in place giving one parent care and control to think what is in the best interests of the child. This will normally accord with the wishes of the parent who has day to day care and control of the child.

MARK RADFORD – SENIOR SOLICITOR

CHANGING THE NAME OF A CHILD

A child's birth must be registered within 42 days. Parents who are married both have the power and duty to register their child's name. Once registered, the child's name can be changed provided that those with parental responsibility consent to the name change.

Parental responsibility is a legal term that means having all the legal rights, duties, powers, responsibilities and authority. This includes the power to determine a child's education, where the child lives and the name of a child. Parental responsibility cannot be surrendered or transferred but it can be shared. In exceptional cases courts can reverse parental responsibility. It is regarded as good practice to inform an unmarried father of any major decisions in a child's life involving parental responsibility. Major disagreements between unmarried parents should be brought before a court for determination.

A surname is merely a name by which a person is known and can be changed by the simple assumption of the use of another name. A Deed Poll, authenticated by a notarial instrument or other declaration is evidence of the maker's intention to change his or her name. Although these are the most convenient commonly used formal means of evidencing a name change, they are not necessary. It is good practice to execute a deed or other notarial instrument to avoid any later confusion. In changing the name of a child however different principles apply to the first and other names of the child (the child's "given names") and the child's surname.

A summary of the legal position which applies to the changing of the surname of a child classed as a minor under the age of 16 is as follows:

- i. Where one person retains parental responsibility for a child (for example the natural mother), this person may legally determine and change a child's name without any other permission or consent.
- ii. Where two or more people have parental responsibility for a child then only one of those persons can lawfully change the surname, if all other persons having parental responsibility consent or agree.
- iii. Where two or more people have parental responsibility for a child and

either a resident order or a care order is enforced then only one of those persons can lawfully a change the surname of a child if the other person having parental responsibility consents in writing.

- iv. In any other situation an appropriate court order is required.

For a child over 16 his or her consent may be necessary to change their surname or given name.

The changes to a child's surname will only be effected if the changes are made with the consent of those having parental responsibility, or otherwise on application to the court by an unmarried natural father. The same would apply if the father is not the child's natural father and is not married to the child's mother at the time of the child's birth. If the mother only retains parental responsibility for the child then she may be entitled to change a child's surname. It is again good practice that any other interested party(s), in particular the natural father who does not have parental responsibility is contacted and in the event of a disagreement the matter can be brought before a court.

If the mother has parental responsibility for the child then she may be entitled to change a child's name without anybody else's consent. If the mother was married to the child's natural father at the time of the child's birth then the natural father will also have parental responsibility and his consent will be needed to legally change a child's surname which will include any change to a double barrelled name. If this cannot be resolved between the mother and father then it should be referred to the court. If not married to the natural father at the time of the child's birth, then although the mother is entitled to change the name without the father's consent it would be good practice to consult him.

SHEJAL PATEL - SOLICITOR

Practical tips and pitfalls for schools when entering into contracts

10 practical considerations when entering into a contract:

1. It sounds obvious, but remember to read the terms and conditions that are being presented to you for acceptance thoroughly before signing any agreement. The principle of “buyer beware” applies – i.e. it’s up to you to check the agreement!
2. Make sure the basic elements of the contract are reflected in any terms and conditions supplied to you: this should include as a minimum the price, details of how and when payment is to be made, quantity of goods or details of the service to be provided, and details of the delivery schedule and/or contract length. It is of course better practice to negotiate and agree terms, rather than having them provided to you. At the outset of negotiations, remember to record in writing the identity of the person(s) who are able to enter into a contract with the supplier. This prevents against an expensive contract being inadvertently entered into when the Head is away!
3. If you are able to do so – try and negotiate more advantageous terms – for example ask for free training on the photocopier – or a period of free support with any IT systems. Consider utilising collective bargaining power:- Under the Education Act 2002, governing bodies of maintained schools have the power to form companies to purchase services or facilities for its school and any other participating schools.
4. Look out for exclusion clauses – these are clauses that seek to exclude one party from liability. Insist that any clauses seeking to exclude the seller’s liability for defective goods, for breach of contract or for losses due to negligence are removed. A trader cannot exclude liability for death or personal injury resulting from negligence.
5. If terms and conditions are not supplied, try and agree written terms and conditions. These should include confirmation of who is entering into the contract (the “parties”), what the obligations of each party are under it (specify the “scope” as far as

possible), details of how the agreement can be terminated and the consequences of early termination in addition to the basic elements mentioned at 2, above.

6. Where goods are supplied, you are entitled to require that the goods correspond with the seller’s description, are of satisfactory quality – safe, in working order, free of defects and are fit for the purpose intended.
7. Where services are supplied, you are entitled to require that these are carried out with reasonable care and skill, within a reasonable time and for a reasonable charge.
8. Remember that keeping contemporaneous notes of what has been said and done and/or photographs can be useful supporting evidence should contracts break down.
9. If the supplier’s liability has not been limited by reasonable exclusion clauses and the goods supplied aren’t fit for purpose, are of unsatisfactory quality or don’t match the seller’s description, you should be able to reject them within a reasonable time thereafter. If services aren’t carried out with reasonable skill, you are entitled for the work to be redone at no extra cost.
10. If in doubt, seek legal advice – preferably at the outset of negotiations – rather than after a problem arises. Once a problem does arise, you may be surprised to learn that claims for breach of contract up to £5,000 are dealt with in the small claims court. Whilst this should be a simple procedure accessible to non-lawyers, if you do chose to instruct a lawyer, you will not be able to recover your legal fees for such representation, even if you win your case.

Other considerations to remember:

Schools must ensure compliance with EU procurement regulations for goods and services contracts that are in excess of defined financial thresholds (currently £139,839) – seek specialised legal advice if this is the case.

KATHERINE CURL - SOLICITOR

EDUCATION LAWYER PROFILES

Abdus Choudhury, Team Leader

Tel: 01622 694489

Email: abdus.choudhury@kent.gov.uk

Abdus qualified as a barrister in 1996. He is the leader of the Litigation Employment & Education Team. Abdus undertakes work in all areas of his Team's practice but has particular expertise in judicial review, employment and education law. Abdus advises education authorities on the proper discharge of their functions generally and discharge of their specific responsibilities towards children. He has advised schools in relation to contractual disputes, disputes with parents and school neighbours, discrimination claims, staff issues including tribunal claims as well as governance matters.

Shejal Patel (Sage), Solicitor

Tel: 01622 694675

Email: shejal.patel@kent.gov.uk

Sage qualified as a Solicitor in 2003. He has extensive experience of education, employment and public law gained in the private sector which he is now able to apply for the benefit of his public sector clients. Sage advises on appeals to the SENDisT, on school transport appeals, exclusion appeals and judicial reviews. He has also defended a number of claims to the IAP where disability discrimination has been alleged.

Mark Radford, Senior Solicitor

Tel: 01622 694396

Email: mark.radford@kent.gov.uk

Mark qualified as a solicitor in 1991. He is a senior solicitor in the Litigation Employment & Education Team. Mark undertakes work in all of his Team's practice areas but has particular expertise in employment law, education law and construction disputes. Mark advises education authorities on the proper discharge of their functions generally and discharge of their specific responsibilities towards children. He has advised on matters as diverse as transport policies, contractual disputes, compromise agreements, fixed penalty notices for excluded pupils, discrimination claims and diverse staffing issues.

Kate Curl, Solicitor

Tel: 01622 696782

Email: katherine.curl@kent.gov.uk

Kate qualified as a Solicitor in 2002.

Kate has provided legal advice on general contracts in schools, secondary school admissions and judicial reviews. Kate has a great deal of experience in employment law and has assisted numerous schools with various employment law issues and tribunal claims.