Department of Education

GOVERNMENT OF WESTERN AUSTRALIA

Shaping the future

Guidelines for School Decision Making in Family Disputes

Version 1.2

D26/0903165
17 November 2026

CC BY

Contents

1. Purpose 3
2. Policy and procedure 3
3. Scope 3
4. Context 3
5. Guiding principles for school decisions 4
6. Enrolment 5
7. Names used for enrolment and name changing 5
8. Providing information about a student's enrolment 6
9. Release of care 6
10. Parent spending time and communicating with student during school 8
11. Parental involvement in school activities 8
12. Provision of school documentation; permission notes 9
13. Family members and other persons 10
14. Parenting Plans and Parenting Orders 11
15. Commonly used family law terms 12
16. Restraining orders 13
17. Inconsistencies between parenting orders and family violence restraining orders 14
18. Recovery and location orders 15
19. Police orders to produce 16
20. Communities orders 16
21. Bail conditions and conditional release orders 16
22. Involvement with court proceedings 16
23. Relevant resources 18

1. Purpose

1.1. The guidelines assist public schools to respond to family disputes that impact the educational program of a student and the operations of a school.

2. Policy and procedure

2.1. School Decision Making in Family Disputes policy and procedures

3. Scope

3.1. The guidelines apply to public schools and are based upon authority provided by the *School Education Act 1999* (WA) ('the SE Act').

3.2. The guidelines use the term 'parent' as defined in section 4 of the SE Act being a person with parental responsibility for a child.

a) They also refer to a 'family member' which means a person related to the student other than the parent.

b) For an Aboriginal or Torres Strait Islander child, this includes a person who is related to a child by way of extended family structures recognised by culture, including kinship systems.

3.3. The term 'school' is used in a broad sense to include the principal and the staff of the school.

4. Context

4.1. A dispute between family members can affect a student's educational program and the operations of a school. The focus of family law is the best interests of the child with parents and family members having responsibilities for the child. Subject to a court order to the contrary, each parent has responsibilities for their child until the age of 18.

4.2. The SE Act, like family law, provides for a student to have rights and for parents, the Department and a school to have obligations for the student.

4.3. The Department, principals and teachers have a statutory responsibility for the educational program and safety and welfare of a student while they are at or participating in a school program.

4.4. There is a duty of care to protect a student from unreasonable risk of harm while the student is in the care of a school or when releasing the student from care.

4.5. The principal of a school, in accordance with s63 of the SE Act has responsibility and authority to:

- manage and control the school, including all persons on school premises
- ensure the safety and welfare of students on school premises or involved in a school activity so far as that can reasonably be done.

4.6. In meeting their obligations, principals, teachers and other Department employees expect and rely upon the cooperation and assistance of parents and families.

5. Guiding principles for school decisions

5.1. The guidelines support decisions by a school that balance the duties owed to students with recognition of the involvement and responsibilities of the student's parent or family member.

5.2. Many aspects of the student's education require decisions. It is not the role of the school to resolve family disputes about those decisions. The school will be transparent with parents and family members, treat them in a respectful, fair and balanced manner but focus on providing a safe and supportive environment for a student to learn.

5.3. Collaboration between the school and parents or family members is the preferred means of making decisions for a student's education at the school. There is an expectation that parents and family members reach agreement about issues which are likely to have an impact on the student and school. doing so, the school expects parents and family members to act reasonably and in a respectful manner towards the school.

5.4. Where parents or family members are at odds about a student and school matters, the school will determine the most appropriate action by considering its obligations to the student for his or her learning needs, safety and welfare and the operations of the school. The schools will consider the position of the parents or family members and be transparent in its decision making.

5.5. If the parents or family members need to resolve a family dispute about a school matter, then the parents or family members can resolve the situation through whatever process or means they deem appropriate including obtaining family court orders. The process should not be considered the responsibility of the school.

5.6. Where court orders exist, they bind only the people subject to the orders, not the school. While a school may be referred to in the order, such as being a place for a child handover or what contact can be had with the school, the orders bind the person subject to the orders. Where possible and appropriate, the school will assist each person to meet their obligations under the order, but the school will not interpret, mediate or police a court order on behalf of one person against another.

5.7. In responding to a family dispute affecting a student and a school matter, the school will note the preference of each parent, the factual circumstances and the relevance of any court order. Where students are in the later years of compulsory education and are more mature, their views may also be considered.

5.8. Where the circumstances require action by the school, the school will be guided by considering and balancing:

- the best educational interests of the student
- the safety and welfare of students on school premises or involved in a school activity

- maintaining the day-to-day operation and management of the school, and all persons on school premises.

Collectively, these are the school's 'paramount considerations.'

5.9. Staff exercising their professional judgment in good faith and in accordance with the paramount considerations and the guidelines will be supported by the Department with respect to any legal proceedings.

6. Enrolment

6.1. A child is to be enrolled for each year of the compulsory education period for that child (SE Act s9). Kindergarten is non-compulsory and pre-primary is the first year of the compulsory education period. A parent who fails to enrol a child in the compulsory education period may be subject to a fine of up to $2,500.

6.2. A person wishing to make an application for enrolment at a school should provide details of the student's parents, any court orders which affect the care of the student and the name of the school where the student is currently enrolled or was last enrolled, if applicable (SE Act s16).

6.3. A school's decision to accept the enrolment is subject to the provisions of the SE Act and the Department's Enrolment in Public Schools Policy.

6.4. Under section 18 of the SE Act, the school can act on the enrolment application of one parent. There is no legal requirement for school staff to independently establish that a decision to enrol has been made jointly by both parents. The school will assume the enrolment is supported by both parents, unless advised otherwise.

6.5. Where a child is starting school for the first time and parents can't agree on which school they should attend, the Department's priority is for the child to be enrolled and attending school. Generally, the child is to be enrolled at the school chosen by the parent with whom the child predominantly lives.

6.6. Where a parent attempts to unilaterally change schools and there is a dispute about the enrolment, the continuity of a student's education should be a primary consideration.

6.7. If there is a known dispute between the parents, and the student is already enrolled and attending another school, the school may communicate with both parents and the other school. The preference is for the student to remain at their current school until the dispute is resolved through agreement or if necessary, a court order.

6.8. In any dispute between parents about enrolment, the focus of the Department and the schools involved is to provide for, to the greatest extent possible, minimal disruption to the student's education program and maximum attendance at school.

7. Names used for enrolment and name changing

7.1. Students should be enrolled under the name that appears on their birth certificate or change of name certificate.

- If a birth certificate cannot be produced because a child was born outside Australia, the name used for enrolment should be that on the child's passport, immigration documents, or other official records.

- If the enrolling parent/s say that proof of name cannot be produced, enrolment should be in the name indicated in a statutory declaration stating the name the child was first known by after birth.

- If the enrolling parent/s indicates that a proof of name document is not currently available but will be provided in the future, the student may be enrolled under the name given by the enrolling parent on the condition that supporting documentation will be submitted shortly. The parent should be advised that if this does not occur (by either parent) the status of the enrolment will be reviewed.

7.2. If parents are separated, one parent cannot change a child's name irrespective of the fact the child may live with that parent. Unless a parent has sole decision-making responsibility, generally both parents and the child need to consent to any proposed change of name. If parents cannot agree, a court will need to settle the dispute.

7.3. For school administration purposes, there is scope within the Department and school's records management system to recognise a student's preferred name for day-to-day schooling purposes. However, official records such as school reports and qualifications must use the student's legal name. If a parent is unhappy with the preferred first name used for a child at school, in the absence of agreement between the parties, court orders should be sought.

7.4. To access template letters for enrolment and name changes, refer to Assist with family disputes involving your students (staff only).

8. Providing information about a student's enrolment

8.1. If a person, parent or family member contacts the school to enquire whether a student is or is not enrolled at the school or a particular school, for the safety and welfare of the student, it is not for the school to provide that information. This is not the case if the school is required to provide the information by a court subpoena, police or government agency order.

8.2. The school should politely explain that it is has a duty of confidentiality for information that it holds and in the circumstances will not confirm or deny whether the student is enrolled at a school.

8.3. If the person is dissatisfied with the response, the school can refer the person to the Regional Education Office.

8.4. To access template letters about a student's enrolment, refer to Assist with family disputes involving your students (staff only).

9. Release of care

9.1. The school is responsible for the safety of students while they are under the care of the school. It also has a duty not to release a student where it is known that releasing the student in the circumstances is likely to result in harm to the student.

9.2. Generally, either parent may pick up a student at the end of the school day. Parents may also pick up a student during the school day with the knowledge and permission of the school.

9.3. It should be recognised by parents that there is a requirement for the student to attend school unless they are excused for a valid reason such as illness, to attend appointments that can't be accommodated outside of school hours, or for religious or cultural observance.

9.4. Removal of a student during the school day should be pre-arranged, unless there are exceptional circumstances. Where there is no pre-arrangement, a school will need to use professional judgment and consider the circumstances when allowing the release.

9.5. If there are concerns about the parent's authority to collect the student from the school and there is uncertainty or concern if the student is released, then the school must exercise diligence in determining whether or not the student can be released.

9.6. If the school is aware that there is a dispute, particular arrangements or court orders between the parents, about the release of the student from school, then the school can contact the other parent, a relevant family member or responsible adult to determine the school's course of action.

9.7. If there are concerns that releasing the student is likely to result in harm to the student, the school must hold the student until the other parent or family members, or in extreme circumstances the police, have been consulted to determine what should be done.

9.8. Schools are generally aware of the student's family circumstances and which parent is involved with the school and collects the student during or after school and when this will occur. Where there is a dispute between parents or family members, and releasing the student does not raise safety concerns, it is not the role of the school to arbitrate the dispute or interpret or enforce court orders on behalf of one person or another. Those involved with such disputes should be advised to resolve the issue away from the school site.

9.9. Where a dispute about collecting a student results in disruptive behaviour on the school site, the principal can:

- call the police if there is an imminent risk to students or staff
- give such directions to either or both parents as necessary, to maintain good order and ensure the safety and welfare of persons on the premises. For example, to refrain from using abusive language or shouting (School Education Regulations 2000 (WA) ('The SE Regulations') r 69)
- order either or both parents to
    - leave the school premises and stay away for up to 24 hours or leave a particular part of the school premises and go to another part of the premises (SE Regulations r 75)
    - issue a prohibition order to either or both parents to stay away from the school for up to 60 days (SE Regulations r 78).

9.10. Where a parent arranges for someone else, such as a new partner or a grandparent, to collect a student on their behalf, and the other parent objects, the same considerations apply. Unless there are safety concerns, the school need only confirm that the individual collecting the student has been authorised to do so by someone the school knows normally collects the student.

9.11. To access template letters about release of care, refer to Assist with family disputes involving your students (staff only).

10. Parent spending time and communicating with student during school

10.1. A school is not a place of convenience for estranged parents, grandparents and family members to have individual time or meetings with a student. Such contact should occur outside of school hours and away from school premises.

10.2. A school should politely decline a request for personal meeting time with a student, noting the role of the school is to provide the student's educational program and operate as a school. This is the case regardless of whether there is family separation and court orders about a parent spending time with the student.

10.3. Similarly, school is not a place for information and material such as gifts, cards and letters to be channelled from a parent to a student. Again, if a parent seeks to leave material with the school to pass onto the student, schools should politely decline the request and ask the parent to make arrangements outside of school.

10.4. To access a template letter about contact with students, refer to Assist with family disputes involving your students (staff only).

11. Parental involvement in school activities

11.1. A school welcomes the participation of a parent in their child's educational program. Separated parents, like any parent, may speak to the principal and teachers about their child's education, volunteer and participate in all activities in which parents are normally involved.

11.2. The involvement of any parents in their child's educational program is managed by the school. This involvement is allowed by the school unless there is a specific court order that removes decision-making responsibility or authority to be involved in the child's life unless it is under supervised access outside of the school.

11.3. If a court order does not allow involvement, the school should not facilitate any involvement. It is for the parent or family members to adhere to the court order and failure to do so may be a matter for the police or Family Court. For example, if a Family Violence Restraining Order prohibits a parent from being in the proximity of the student or another student, the school should not allow the parent to participate in the event or attend school.

11.4. Sometimes both parents may wish to attend a school event such as an assembly or sports carnival, but court orders require the parents to be apart. In such cases, the school can assist each person to comply with the order that

binds them. This may be by having arrangements that allow them to attend from an alternative entrance or be away from each other for the event or attend at a different time.

11.5. In managing such situations schools can consider, if it is considered necessary, the history of conflict between the parents, whether their presence would complicate arrangements and put unreasonable demands on school resources, create concerns for the safety and welfare of other people on the school site, and whether their presence will disrupt the good order of the school. The school's primary concern should always be the prevention of disputes which impact on the safety of those onsite.

11.6. If a situation becomes unworkable or unsuitable for the school, the school should consider requesting both parents not attend. If a disruption does occur while the parents are attending, the principal can exercise the authority they have to deal with the situation including ordering one or both parents to leave the school site.

11.7. Sometimes, one parent may object to the other parent taking part in a school activity if it falls on a day they do not usually spend time with the student. However, a parent's involvement in school activities or volunteering is generally not limited to the time they 'spend with' or 'communicate with' the student under a family law agreement or court order. For example, a parent may see or briefly speak to their child while attending a school assembly or working in the canteen. This type of interaction is considered incidental to the parent's primary purpose for being at the school.

11.8. For a school activity where it is in the interest of the student for the parent to participate and other student's parents participate, the mere objection of one parent is not sufficient reason for the school to deny participation. In the absence of a specific order preventing participation, the school should hold genuine concerns for the safety, well-being or best educational interests of the student, other students, staff or visitors before preventing parent participation in a school activity.

12. Provision of school documentation; permission notes

12.1. In usual circumstances, a student's school documentation is provided to the parent with whom the student is primarily residing. If the non-residential parent requests access to the student's records – such as attendance details, school reports or newsletters - the school may provide these. However, the school should ensure that no personal information about the other parent is disclosed, including their address or contact details.

12.2. The material provided to the non-residential parent can be limited to documents that the school considers to be significant and relevant to the student's educational program and progress at the school. Documents of a minor day-to-day operational nature need not be provided.

12.3. Access to day-to-day reporting systems of the school should in the first instance be provided to the parent with the day-to-day responsibility for the student. If the other parent requests access to the system, the school should consult the other parent and determine whether access is administratively workable and appropriate or if there are court orders that would limit access.

12.4. In the absence of a court order, both parents are able to access relevant information about the students education from the school. If a court order removes a parent's responsibility for the long-term care of a child, or grants one parent sole responsibility for educational matters, the other parent is not entitled to any documentation or information about their child from the school.

12.5. If a parent or a person acting on their behalf, including a lawyer, requests copies of correspondence between the other parent and the school, the school should deny the request unless there is a court order to provide the documentation.

12.6. Both parents have the right to be listed as parent/contact upon enrolment. Additional emergency contacts should be determined by parental agreement wherever possible. In the event that parents can't agree, the school will give preference to the parent with whom the child predominantly resides.

12.7. Permissions for excursions and other school activities should be obtained from the parent the school usually contacts for day-to-day matters. If a dispute arises and the other parent objects to the student's participation, the school can consider the reasons for the objection in the context of its primary and overriding obligations to the student.

12.8. If there is a dispute between parents about notifications and permissions and the school determines that a workable arrangement is not possible, the school may deal exclusively with one parent. Section 122 of the SE Act allows the school to do this, but in doing so the school should endeavour to be transparent with both parents.

12.9. To access template letters about requests for information or evidence, refer to Assist with family disputes involving your students (staff only).

13. Family members and other persons

13.1. Other individuals such as grandparents or extended family members may wish to be involved in a student's school life. While family law recognises a child's right to maintain meaningful relationships with people significant to their care, welfare and development, this can sometimes lead to conflict at school. In such cases, it is the primary caregiver who has the relationship with the school and responsibility for the student – who determines the extent of family members and other persons involvement with the school.

13.2. School is not the appropriate place for interaction or contact between students and family members and other persons. Similarly, schools may receive requests from family members and other person's seeking access to school photographs or other material relating to a student. Such requests should be politely declined, with the individual advised to arrange access through the student's responsible caregiver.

13.3. Stepparents may play an active role in a student's school life; however, their involvement is based on the arrangement with the responsible adult for the student. While a stepparent may act with the parent's authority as their 'agent', it is not their role to act independently and against the wishes of the student's parents.

13.4. A stepparent may attend school events such as assemblies, parent-teacher interviews or sports carnivals. If this leads to objections from the other parent,

the school should confirm that the responsible parent agrees with the stepparent's presence.

13.5. To access a template letter about contact with students, refer to Assist with family disputes involving your students (staff only).

14. Parenting Plans and Parenting Orders

14.1. When parents separate, the arrangements they make can impact many aspects of their child's life, including their education.

14.2. Parents are responsible for informing the school of changes in family circumstances that could impact on the school's relationship with the parents and/or the student. If court orders are obtained by one or both parents, the parent should provide a copy to the school.

14.3. For some parents, separation is reasonably amicable, and they are able to work out arrangements between themselves. Other families may have difficulty reaching an agreement and may engage in more formal arrangements such as parenting plans or parenting orders.

14.4. Parenting Plans are written agreements between the parents of a child which deal with matters such as decision-making responsibility and arrangements for children. Because they are voluntary, parenting plans can be changed at any time so long as both parents agree to the change. While not legally enforceable, a parenting plan can be considered by the court if parenting orders are subsequently made.

14.5. Parenting Orders are legally enforceable orders made by the Family Court. They can be made by an agreement between the parties (Consent Orders) or after a court hearing. Parenting orders typically determine matters such as:

- who the child can live with – '**live with**' orders (previously known as residence/custody orders).
- the time the child can spend with each parent and sometimes others– '**time with'** orders (previously known as contact/access orders).
- the communication the child is to have with each parent, and sometimes others, via telephone calls, letters, electronic communication etc – '**communication**' orders (previously part of contact orders).
- decision making powers between the parents, and sometimes others – '**decision-making responsibility'** orders (previously known as 'parental responsibility orders').

14.6. Principals can request current parenting orders from the court file by making a written request to the Family Court of WA using their Department of Education email to family.court@justice.wa.gov.au. When making the request, principals should provide:

- the names and addresses of the parents
- the names and birth dates of the child/ren
- if known, the Family Court of WA file number.

14.7. Whether parents have reached an agreement, made a parenting plan, or are subject to parenting orders, it is important to recognise that those arrangements bind the parents, not the school. The school will take note of the agreement, plan or order and will support parents and family members in meeting their obligations. However, it is the responsibility of the parents, not the school, to ensure compliance by the other party. The school is not responsible for interpreting, managing, enforcing or mediating any such arrangements or orders on behalf of either parent.

14.8. To access template letters about parenting plans or parenting orders, refer to Assist with family disputes involving your students (staff only).

15. Commonly used family law terms

15.1. **Consent Orders** are written orders made by a court based on the agreement of the parties. A court considers the child's best interest when making a consent order. Consent orders have the same legal force as orders made after a court hearing or trial.

15.2. **Final Orders** are court orders made by consent, or after a hearing, that conclude the issues in the case. If final orders have been made, the parties cannot re-litigate the issues unless the court is satisfied that there are changed circumstances making this appropriate.

15.3. **An Independent Children's Lawyer** is a legal practitioner appointed by the court to help the court form a view on the child's best interests. They will gather information, including from the school, consider what is in a child's best interest and provide evidence to the court that will help with a decision in parenting order cases.

15.4. **Interim Orders** are court orders that apply for a limited period, typically until the court has the opportunity to make final orders after a full hearing.

15.5. **Decision-Making Responsibility** (previously known as parental responsibility) is a legal term used to describe the responsibility parents have to care for their child and the power parents have to make decisions about major long-term issues for their child. Major long-term issues include (but are not limited to) issues regarding:

- the child's education (both current and future)
- the child's religious and cultural upbringing
- the child's health
- the child's name
- changes to the child's living arrangements that make it significantly more difficult for the child to spend time with a parent.
- Unless the court makes an order removing it, each parent has parental responsibility for their child until they are 18 years of age. This responsibility is not affected by relationship changes and continues regardless of whether parents are married, in a de-facto relationship, are separated, divorced, re-married, re-partnered or have never lived together.

- Parents are encouraged to talk to each other and make joint decisions in their child's best interest. While this can be challenging after separation, it remains ideal. If there are no court orders regarding parental responsibility, each parent may make decisions independently. However, where court orders are in place, parents are legally required to comply with the terms of those orders.

15.6. **Sole Decision-Making Responsibility**: If an order provides for sole decision-making responsibility it means that one parent has the legal authority to make all major long-term decisions about their child's life without needing to consult with the other parent. If a school is provided with such an order, the school is to act at the direction of the parent with sole responsibility for the child.

16. Restraining orders

16.1. Restraining orders are court orders designed to prevent violence, harassment, or inappropriate contact between individuals. Unless varied or cancelled, a final restraining order usually lasts for 2 years against an adult, and up to 6 months against a child or young person. If a person breaches the terms of a restraining order, they commit a criminal offence and may be fined or imprisoned.

16.2. There are 3 types of restraining orders in Western Australia under the *Restraining Order Act 1997*:

- **Family Violence Restraining Orders (FVROs)** are only possible where individuals are, or were in, a family relationship.
  - A FVRO restrains a person from either committing an act of family violence, exposing a child to family violence or behaving in a way that causes a protected person to be fearful of family violence.
  - Family violence is not just physical violence or threats of violence. It can also include forms of financial, emotional and psychological abuse, behaviour that coerces or controls the protected person, or behaviour that causes them to be afraid.
  - Like VRO's, FVROs can be issued on an interim or final basis.
  - Conduct Agreement Orders (CAO) can be used to resolve an application for a FVRO. A CAO is the name given to an FVRO that has been made with the consent of the Respondent (the Person Bound) without making any admissions of family violence. If a CAO is made, it has the same legal status as a FVRO. Like FVROs, it is a criminal offence to breach a CAO.
  - All FVRO's issued in any Australia state or territory are valid and enforceable nationwide. Schools should treat interstate FVRO's in the same manner as those issued in Western Australia.
- **Violence Restraining Orders (VROs**): VROs and MROs apply to individuals who don't have a family relationship with each other.
  - A VRO restrains a person (the respondent or when the order is made, the person bound) from either committing an act of abuse,

breaching the peace, causing fear, damaging property or intimidating another person (known as the person seeking to be protected or person protected when an order is made).

- Initially, VROs are issued on an interim basis following a court application by the person protected. The respondent has 21 days to object to the VRO. If there is no objection then the court can issue a more permanent VRO which can be up to two years.

- If there is an objection, the VRO will go to a hearing before the court. Both parties appear before the court, at which time the court will determine whether the VRO continues or is dismissed.

- **Misconduct Restraining Orders (MROs**) deal with 'nuisance' behaviours whereas FVROs and VROs are concerned with acts of violence or abuse.

  - An MRO may be issued when a person behaves in an intimidating or offensive manner which may lead to a breach of the peace or damage to property.

  - An MRO is only issued after a court hearing at which both parties put their position to the court.

16.3. A Restraining Order may be issued specifically to protect a child, or it may be made for an adult and include provisions that extend protection to a child.

16.4. Restraining orders bind the parties named in the order. While the school will recognise the orders and support the parties in meeting their obligations, it is not the role of the school to interpret, enforce, or mediate the terms of a restraining order on behalf of either parent.

16.5. If a restraining order prohibits a person from approaching another individual on school grounds or from attending the school entirely, and staff become aware of a potential breach, the school may inform the protected person. However, it is not the school's role to contact police unless there are immediate concerns for the safety of someone on the school premises.

16.6. If a parent's behaviour disrupts the good order of the school or becomes abusive or violent, the principal can also issue directions as outlined in section 9.9 of these guidelines or contact the police.

16.7. To access a template letter about restraining orders, refer to Assist with family disputes involving your students (staff only).

17. Inconsistencies between parenting orders and family violence restraining orders

17.1. In situations involving family violence or allegations of family violence, it is common for both family court orders and family violence restraining orders (FVROs) to be in place at the same time.

17.2. In Western Australia, FVRO's can be issued either by the Magistrates Court or the Family Court of Western Australia. Occasionally, both a family law order and an FVRO are made by the same court, which can help reduce confusion.

However, most parenting matters are handled by the Family Court while most FVROs are typically issued by the Magistrates Court.

17.3. Although courts aim to avoid making conflicting orders, inconsistencies do sometimes occur. In those cases, a family court order takes precedence over a restraining order to the extent that there are direct inconsistencies between the orders.[1] For example, a FVRO may make it unlawful for one parent to come within 50 metres of the school, yet the family court order says the same parent is to collect the child from school on certain days and times. In that case, the parent can legally enter the school grounds at those specified times to comply with the family court order. However, visiting the school outside those times would still breach the FVRO.

17.4. If a FVRO is made subsequent to a family court order, the Magistrates Court does have the power to resolve any inconsistency between the two, so it's important to look at the later order.[2]

17.5. In either case, it is not for the school to attempt to interpret or enforce the orders or, if there is a dispute between the parents about which order prevails, to make decisions on behalf of either party. Parents should be encouraged to resolve the matter between themselves, and principals should seek advice from their regional office or the Legal and Legislative Services directorate.

17.6. Where doubt arises in resolving any issues, the educational interests, safety and welfare of the students is always to be the paramount consideration.

18. Recovery and location orders

18.1. A recovery order is an order made by the Court in a family law case for the return of a child. It gives the Police the power to search for, locate, and remove a child from the person keeping the child. Typically, a recovery order is made by the court in urgent situations when there is a risk for the child if they remain in the care of the person keeping them.

18.2. Police may sometimes attend a school with a recovery order for a child who may be enrolled at the school. Schools should view the details of the order, confirm the identity of the police officers, check the details referring to the child and then assist the Police in fulfilling their obligations under the order. This may mean allowing the Police to collect a student from the school with a parent present or advising them of their location if they are not at school.

18.3. A location order is an order of the Court which requires a person to provide to the Court information they have, or which they obtain, about a child. Location orders may be occasionally served on the Department, or an individual school. Upon receipt of such orders, schools should contact Information Access or Legal and Legislative Services who will coordinate the response.

[1] The *Family Law Act 1975* s68Q (Cth) for married couples and *Family Court Act 1997 s175 (*WA) for de facto couples) state that a family court order overrides a conflicting FVRO to the extent of any inconsistency.

[2] It can do this by exercising its power to revive, vary, discharge or suspend the family law order. Section 68R *Family Law Act 1975* and s167 *Family Court* Act WA.

19. Police orders to produce

19.1. A Police Officer can provide a school with an 'Order to Produce' a record or document for the purpose of a criminal investigation. If the order relates to a current student, the school should coordinate the response. If the order relates to a former student, the school should take a copy of the order and email it to Information Access at informationaccess.subpoenas@education.wa.edu.au who will coordinate the response.

20. Communities orders

20.1. The Department of Communities is authorised to take action where it believes that a child is exposed to abuse or neglect of a serious kind. The Police may attend a school with a warrant issued by the Children's Court which authorises them to take a student into provisional care and protection.

20.2. The school should view the details of the order, confirm the identity of the Police Officer, check the details referring to the child and then assist the Police in fulfilling their obligations under the order. This may mean allowing the Police to collect the children from the school, without a parent or family member being present or advising the Police of the child's location if she or he is not at school.

20.3. Upon receipt of such a warrant, the school should take a copy of the warrant and note the details of the school's compliance with the carrying out of the warrant.

20.4. In some circumstances, both the family law system and the child protection system will be involved in a child's life. The law provides that the child protection system takes precedence over the family law system. An order made by the family court cannot override the operation of the child protection system.

21. Bail conditions and conditional release orders

21.1. Sometimes a parent may be subject to bail conditions pending the completion of criminal matters before the court. Bail conditions can vary widely and may be similar in terms to those available under a restraining order.

21.2. Additionally, courts can place persons on a Conditional Release Order (CRO), also known as a Good Behaviour Bond, at sentencing. CROs may restrict the activities of persons and can include conditions similar to those available under a restraining order.

21.3. If the school becomes aware of breaches of bail conditions or CROs, they should deal with the matter in the same way as outlined for restraining orders.

22. Involvement with court proceedings

22.1. A party to a court proceeding can:

- subpoena school records
- summons a witness, including a school staff member, to attend a trial and give evidence.

22.2. A school must comply with a subpoena for records. However, the subpoena cannot require the school to generate a record. The school's obligation is to provide existing records that fall within the scope of the subpoena. The records are provided to the court, not the party that applied for the subpoena. If it receives a subpoena for school records, the school should contact Information Access who will coordinate the response and provide the documents to the court. Contact 9264 5275 or email informationaccess.subpoenas@education.wa.edu.au.

22.3. In addition to subpoenas for records, school staff may be asked by parents or family members to give evidence at court or provide a sworn statement about their knowledge of students and schools. A request can be:

- voluntary, which is not a court order and you do not need to comply
- a summons or subpoena which is a court order – you must comply as part of your responsibilities and duties as a Department employee.

22.4. Before a summons is issued, you may be requested to provide a written statement on a voluntary basis. Such requests may require comments or opinion about the performance, behaviour and appearance of the student at school.

22.5. It is up to individual staff as to whether or not they provide assistance beyond the provision of existing records. If staff wish to provide a statement, comments should be objective and restricted to those based on personal and direct observation. Personal comments about the fitness of respective parents or the merits of the court proceedings should be avoided. If staff are requested to sign a statement prepared by a parent, family member or their solicitor, they should only agree to sign the statement once they are completely satisfied with its contents.

22.6. Assurances are sometimes given that if a statement is provided, the staff member will not be required to attend court. Generally, such assurances cannot be relied upon as there is no guarantee that a court appearance will not be necessary. It may be the case that the other party will require attendance at court.

22.7. If a staff member is requested to give evidence and no summons is issued, there is no obligation on the staff member to provide that evidence in court or via a sworn statement. If a staff member decides to give evidence voluntarily, they:

- must acknowledge that they are not acting as a representative of the Department but as a witness of fact
- should not use Department documents or files unless they have been subpoenaed by the Court

At all times, the staff member must remain objective and impartial and not provide their personal opinions on the matter.

22.8. If a staff member receives a summons to give evidence in court and/or provide a sworn statement (affidavit):

- the information they provide should reflect their role as a principal, teacher or staff member

- staff are not official spokespersons of the Department

- they should provide evidence that is based on their employment duties and their own observations
  - it should not be biased and should not draw conclusions about things outside of their experience of a student's education
  - evidence should be objective and impartial to the intentions of the parties who have requested the information or issued the summons.
- the staff member will be regarded as being on duty if their attendance at court arises because of their employment at the school.

22.9. In Family Court Proceedings, an Independent Children's Lawyer (ICL) can be appointed by the court to act on behalf of children. The ICL's role is to represent the best interest of a child.

22.10. ICLs gather information, consider what is in a child's best interest and provide evidence to the court that will help with a decision in parenting order cases.

22.11. School staff can be a valuable source of information for ICLs. The school may receive a request for school records or written reports with personal observations. In the absence of a court order, the school is not obligated to provide information to the ICL, but it is important to consider all requests and provide information where possible.

22.12. Prior to providing any information to the ICL, staff should confirm the solicitor's appointment and that the ICL has parents' written consent to accompany with their request or family court order. The school must have approval from parents before releasing school information and records under s242(1) of the SE Act.

22.13. While the school may be requested to provide a written report with personal observations, it is often best to provide school records only as evidence of a student's wellbeing and progress at school. This helps staff stay neutral and maintain working relationships with parents and family members.

22.14. To access template letters about requests for information or evidence, refer to Assist with family disputes involving your students (staff only).

23. Relevant resources

- Flyer – Understand family disputes and the impact on schooling – refer to Assist with family disputes involving your students (staff only)
- Online Leadership Institute modules - – Professional Development –- The Leadership Institute
  - Module 1 – Family Court – Essential Information.
  - Module 2 – Family Court Issues in Schools.
- Family Relationships Online – Children and family law | Family Relationships Online
- Family Court of Western Australia – www.familycourt.wa.gov.au/p/parenting.aspx

- Family Court of Australia – Children: Overview | Federal Circuit and Family Court of Australia
- Legal Aid Restraining Orders – Restraining orders | Legal Aid WA.
- Being a witness at court – Give evidence at court (staff only)