



Legal issues bulletin

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Changing the way a student's name is used and recorded by schools

Frequently when a family break up occurs one of the parents will change their family name. When a parent does change their family name, it is commonly a wish that any children living with the parent also be known by the new family name. This may be contrary to the wishes of the other parent who may also retain parental responsibility for the child.

There may also be other reasons that a change to the way a student's name is used and recorded by a school is requested including when a transgender student requests that their first name is changed to reflect their identified gender.

What is the the law in relation to names?

Provided it is not for a fraudulent purpose, a person over the age of 18 can be known by any name they wish and the exclusive use of the new name is all that is required to effect the change. Contrary to popular belief, a deed poll does not of itself change a person's name - it is merely evidence of the change in the name. A bank account, passport or driver's licence in the new name serves a similar purpose. The use of a new name can occur despite the person's birth certificate indicating a different name.

What about birth certificates?

Most people will have access to a birth certificate which records the details of their birth as provided to the Registrar of Births, Deaths and Marriages, who has administrative responsibility for registering all changes of name in NSW. In relation to children, usually the information has been provided by one or both parents. Subject to meeting certain requirements imposed by the Registrar, a person over the age of 18 can change the name recorded on the certificate. If an application for a name change is accepted, any extract copy of the birth certificate will be in the new name. Any full certificate issued will include details of the original name and any subsequent changes.

What is the position in relation to children and young persons?

Children and young people under 18 cannot change their own name either by common usage or by amendment of their birth certificate. Generally both parents need to consent to any proposed change of name. If parents are separated, one parent cannot change a child's name unless sole parental responsibility has been granted to that parent by a court. If there is only one parent named on a birth certificate, that parent is also able to apply for a change of name for the child or young person.

If a parent wishes to change the name of a child, the parent must either obtain the consent of the other parent or obtain a court order unless the other parent is deceased. A court will only make such an order if it is satisfied the change is in the best interests of the child.

What if a student who is enrolled or seeking enrolment in a government school is over the age of 18?

Students aged 18 years or more are entitled to be enrolled in whatever name they choose.

What is the position in relation to people under the age of 18 who are enrolled or are seeking enrolment in a government school NSW?

Generally, school documents in relation to students under the age of 18 must indicate the birth certificate name of the student. Alternatively, where a birth certificate cannot be provided, records should be in the name indicated in the alternate documentation relied upon to seek enrolment (e.g. statutory declaration, passport, immigration papers). It is under this name the student is officially enrolled. If however, one of the following conditions applies, principals can enrol students under an alternate name or change existing records to indicate the new name:

- A signed consent from both parents indicating approval to use the new name is provided.
- A court order is provided authorising the use of the new name.
- A statutory declaration is provided by the enrolling parent indicating that the child has had no contact with the other parent and his or her whereabouts are unknown. While there is no specific legal requirement regarding a time period, it is considered advisable and in keeping with established practice to apply a five year time span for non-contact with the other parent.
- A birth certificate has been issued in the new name.
- Proof of adoption is provided.
- A signed consent from one parent and proof that the other parent is deceased. This can take the form of a statutory declaration by the enrolling parent or a death certificate.
- The department of Family and Community Services is responsible for the care of the child and that department indicates the use of a new name for the child is appropriate.
- Evidence is provided that the parent and/or any child are subject to witness protection or some other similar scheme designed to ensure their safety and the use of a new name for the child is necessary to maintain the safety and well-being of the parent and or child.

It is also possible to change the way the student's first name is used and recorded by the school in circumstances where that student has identified as transgender.

What if a student under the age of 18 has identified as transgender and wants to change the way their first name is used and recorded by the school?

If both parents consent to change the way the first name is used and recorded by the school, that name can be used and recorded as the child's first name.

If either or both parents object to the change to the way the first name is recorded by the school, the principal needs to make a decision about what is in the child's best interests. This decision should have regard to the age, capability and maturity of the student and can be informed by advice from a health care professional about the potential impact on the student's wellbeing of declining to use and record the student's preferred first name.

The school's records including electronic recording systems can also be updated to reflect the student's identified gender at the time the name is changed.

Further information about the enrolment of transgender students is found in [legal issues bulletin 55 – Transgender students in schools – legal rights and responsibilities](#)

What record keeping requirements apply to this situation?

It is critically important to maintain appropriate official records of decisions that are made to enrol students under a name that is different from that on their birth certificate. This includes records of any documents that are provided to authorise the use of the name, minutes of meetings and, where relevant, reports of health care professionals supporting the student concerned. ERN and any other record keeping systems in the school must be updated to reflect the new name.

Schools must observe any requirements imposed by privacy legislation with all records being kept secure and accessible only to those staff who need to see them. Staff should contact the [Records Management Centre of Expertise \(CoE\)](#) if they have specific records-related queries.

Commonly asked questions

Q. If an application for enrolment has a different name to that on a birth certificate what name should the student be enrolled under?

A. If any of the criteria for using a different name are met the name on the application for enrolment document can be used, otherwise the birth certificate name must prevail.

Q. If a birth certificate has a different name to that on a passport, what name should the student be enrolled under?

A. If any of the criteria for changing the student's name are met, the passport name can be used otherwise the birth certificate name must prevail.

Q. If there is no birth certificate or other document establishing a birth name, what can be accepted by the school to enrol a student under a particular name?

A. In the absence of other relevant documents (e.g. bank accounts, passport, Medicare card), a statutory declaration should be obtained from the enrolling parent or student that provides details of why a birth certificate is not available. It should also indicate the name to be used for enrolment purposes is the one that has been used since the student was born.

Further advice

The variety and complexity of circumstances surrounding family law related issues, including requests for changes of name, means that principals may encounter situations which are exceptional or otherwise not readily accommodated within these guidelines. If this occurs you should contact with Legal Services.

Principals should also refer to the department's [Dealing with Family Law related Issues in Schools– Guidelines for School Staff \(2007\)](#) for guidance on a range of matters involving family law disputes.

About Legal Services

Legal Services is here to support our government schools. [Staff can contact Legal Services by email or phone.](#)

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.