



Legal Issues Bulletin

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Students under 18 years of age living independently of their parents – capacity to make their own decisions

While parents usually retain parental responsibility for their children up to the age of 18, it is also accepted that as children become older and more mature, they become more capable of making their own decisions about a wide range of issues. There is no specific law about when the views of a child take precedence over those of a parent or both parents.

Schools continue to have significant interaction with parents even after students turn 18 and become legally recognised as adults. Nevertheless students under the age of 18, for a variety of reasons, sometimes seek to make decisions themselves without the involvement of parents.

This bulletin provides advice on dealing appropriately with students and parents in these circumstances. Throughout this bulletin a reference to “parents” also includes carers.

Staff should also refer to [Legal Issues Bulletin 51 – School Counsellors, Confidentiality & the Law](#) and where there is involvement by counsellors.

Students living independently of parents

What is meant by the term “living independently”?

The phrase has a wide application and includes any situation where a student is living separately from their parents. It doesn't necessarily mean the student is financially independent or otherwise self-sufficient. It includes situations where the student is living with other relatives or friends, in hostels, refuges or other community facilities. Some students who are living independently indicate they no longer wish to have parents involved in decisions concerning their education. In some instances parents may object to the action taken by the student.

If a student under the age of 18 who is already enrolled indicates he or she is living independently from parents, what approach should be taken with permission notes or other school procedures that require signed parental consent?

Confirmation the student is no longer living at home should be obtained from parents or another responsible adult wherever practicable. Once confirmed, the student should be asked for details of an adult who can be a point of contact for issues such as excursion permission notes, emergencies etc. If the student is not able to nominate a suitable adult, a note of this should be made and any further dealings regarding school activities can be undertaken directly with the student. If concerns exist about potential risk of harm issues, the Child Wellbeing unit should be contacted for further advice.

Is there any age at which a student can be presumed incapable of living independently from his or her parents?

Technically no, though students of primary school age should be dealt with on the basis they are living with either their parents or carers who have responsibility for them. Staff who become aware of primary aged children living separately from their parents may well, depending on the circumstances, need to consider seeking further advice from the department's Child Wellbeing unit.

In relation to secondary students, the younger the student the more likely they should be presumed to be under the responsibility of their parents or carers. There is however no hard and fast rule and each case needs to be addressed on its own particular circumstances. Again, further advice from the department's Child Wellbeing unit may be appropriate.

What approach should be taken if parents object to the school dealing directly with a student?

The primary focus of the school is the education and on-going safety and well-being of the student. A number of factors need to be considered including the age and maturity of the student, any relevant disabilities or mental health issues which may impact on the student's ability to make an informed decision, any known history of the family dynamics and what, objectively, is in the best educational interests of the student. Subject to any potential risk of harm issues arising, the student and parents should be encouraged to resolve their differences. In relation to school students, support from the school counsellor may be appropriate to facilitate the involvement of any external agencies that may be able to offer assistance, such as mediating between the parents and the student. The ultimate decision on whether to continue dealing with the parents should be based on whether that approach is considered to be in the student's best interests. Whichever party is aggrieved by the final outcome may seek a review of the decision by the local school education director.

While any review decision should be focused on what is in the student's best interests, it is up to school education directors to determine how the review is undertaken, including whether advice or assistance from other sources, such as the Child Wellbeing unit, is appropriate.

What if parents ask that they continue to be provided with information about the student and the student objects to this happening?

Again, it is necessary to assess the age and maturity of the student including any known disabilities, learning difficulties or mental health issues, the nature of the information involved and what objectively is in the best interests of the student. Whatever decision is ultimately reached, the aggrieved party may seek a review of the decision by the local school education director.

Can't the student rely on the Privacy and Personal Information Protection Act to prevent the school from providing any information to his or her parents?

The Privacy and Personal Information Protection Act imposes certain restrictions on the use and disclosure of a student's personal information. Ordinarily this would mean information held by the school about a student should not be disclosed to parents without the consent of the student. However, the department's [Privacy Code of Practice](#) allows departure from those provisions and for information to be given to parents over the objection of the student if it is considered to be in the student's best educational interests to do so.

What approach should be taken if there is a dispute between a student and his or her parents about which school the student is to be enrolled in?

Sometimes students enrolled in a school by their parents leave home and seek to enrol in another school. The parents may object and demand the student remain enrolled in the original school. A decision should be made on what is in the best educational interests of the student. From a practical perspective, refusing the student's request may mean the student doesn't go to school anywhere. Principals should avoid this as far as reasonably possible. Subject to any risk of harm issues arising, the student and the parents should be encouraged to reach agreement on the issue.

Pending any resolution of the dispute, principals can rely on the short term attendance provisions of the department's [Enrolment of Students in NSW Government Schools – A Summary and Consolidation of Policy](#) to allow the student to attend his or her school of choice while remaining enrolled at the original school. A final decision on which school the student will be enrolled in should be based on the best educational interests of the student and any relevant legislative provisions that may be applicable – e.g. the student's right to be enrolled in his or her local school.

What approach should be taken in respect of these issues if the student in question is in out of home care under the supervision of the department of Family and Community Services or a non-government organisation?

There are some decisions that can be made by the authorised carer and others that can only be made by the agency with case management. Principals should refer to the [Check List for School Principals – Who can make decisions on behalf of students in statutory out of home care](#) for further guidance.

The agreement of the organisation with case management for the student should be sought before acquiescing to the request made by the student.

Medical Treatment

At what age can a student make their own decisions about medical treatment?

Medical decisions concerning students under the age of 18 are usually made by or involve both the student and the student's parents. However a child aged 14 years or more may consent to his or her own medical treatment provided they adequately understand and appreciate the nature and consequences of the procedure or treatment. Parental permission is not required in such circumstances.

If a student under the age of 18 confides he or she needs help in seeking, or proposes to seek, medical advice or intervention but does not want parents to know, do I have an obligation to advise parents?

Much depends on the individual circumstances, including the age of the student, the particular medical issue involved, the maturity of the student, any known disabilities or mental health issues and the known history of the relationship between the student and parents. While it is important to ensure the continued trust and confidence of both the student and parents, this needs to be balanced against any welfare and safety issues arising if parents are advised or not advised. Prior to making a final decision, it may be appropriate to gain the assistance of relevant departmental personnel (e.g. school counsellor, district guidance officer or Child Wellbeing unit) and or external agencies to assist in determining any potential risks and providing guidance and support for the student. As far as practicable, the focus should be on the student advising parents so they are both informed and engaged in a supportive role for the student. The ultimate decision should be in the student's best interests after taking into account any risk assessment of the circumstances.

A student under the age of 18 has requested that a trusted member of staff accompany him or her to a doctor for the purpose of undergoing a medical procedure which he or she wishes to keep secret from parents. Should the request be supported?

Staff should avoid accompanying students in these circumstances. The student should be counselled about the importance of having parental support, subject to any potential risks. Any assistance provided to the student should be focused on this objective, again subject to any identified risks. If appropriate the details of external support agencies should be provided to the student. Any decision to advise parents should be based on an objective risk assessment of the circumstances, taking into account the issues previously referred to.

Issues giving rise to potential safety issues for the student

If a student under the age of 18 confides with a staff member about a matter that gives rise to a potential risk to the student and he or she asks that parents not be told what should I do?

Sometimes students confide with staff about issues that give rise to concerns about their on-going safety or well-being, such as

- Illegal drug use or other criminal behaviour
- Misuse of alcohol or prescription drugs
- Self-harm and suicidal ideations or tendencies
- Inappropriate and/or illegal (i.e. when one or both people involved is under the age of 16) sexual activity

Any presumption of confidentiality is negated where there is a legal basis to disclose information such as an imminent health and safety risk. Immediate consideration should be given to contacting an appropriate person to seek advice – e.g. school counselling staff, Child Wellbeing unit, Community Services, police, or other government agencies. Any notification to parents should take into account any advice received and an assessment about how the best interests of the student will be met.

Change of Name

Can a student under the age of 18 change their name without the agreement of their parents?

A student under the age of 18 cannot change his or her name without the consent of both parents or an order of the court. In the absence of parental consent or court order, the birth certificate name should be used. For further information see [Legal Issues Bulletin No. 20 – Changing the Name of Students in Schools](#).

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.