

NEW SOUTH WALES
DEPARTMENT
OF EDUCATION
AND TRAINING



**GUIDELINES ISSUED UNDER PART 5A OF THE EDUCATION ACT 1990 FOR THE
MANAGEMENT OF HEALTH AND SAFETY RISKS POSED TO SCHOOLS BY A
STUDENT'S VIOLENT BEHAVIOUR**

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1. Introduction

1.1 Who issued the guidelines?

The guidelines have been issued by the Minister for Education and Training under Part 5A of the *Education Act 1990*.

1.2 Do the guidelines apply to all risk assessments undertaken in a school?

No the guidelines are not a general risk management manual.

The guidelines only apply when action is taken under Part 5A of the *Education Act 1990* to deal with a student whose violent behaviour poses a current risk to the health and safety of any person at a particular school.

1.3 Do the guidelines affect existing arrangements for exchange of information between schools and relevant agencies?

No. Existing arrangements for exchange of information such as by using section 248 of the *Children and Young Person's (Care and Protection Act) 1998* will continue to operate.

1.4 Why have the guidelines been issued?

Education plays a vital role in the life of children and young people enabling them to become functioning, contributing and valued members of the community. Because of this the parents of all children of compulsory school age must comply with the *Education Act 1990*'s requirements for their child's education and the Act provides that every child has a right to receive an education.

Violence can arise in many different contexts in society. Schools are among the safest locations in the community. Nevertheless, some of the individuals who have a history of, or propensity for, violent behaviour, are school students.

Prevention of violence in schools requires a long-term, systematic approach. This may require consideration of the behaviour of individuals, the impact of their behaviour on the learning opportunities and safety of themselves and others, and the culture of the whole school. Informed decisions need to be made in the interests of safety.

Further as employers educational authorities are required to take steps to ensure the health, safety and welfare of employees, students and other people at school and can be prosecuted for a breach of this duty¹.

Accordingly the *Education Act 1990* has been amended to provide:

¹ It is a defence to a prosecution if it was not reasonably practicable for the education authority to comply with the duty. It is also a defence if the commission of any offence was due to causes over which the educational authority had no control and against the happening of which it was impracticable for the educational authority to make provision.

- (a) schools with the power to obtain information about students with a history of violent behaviour from relevant agencies including other school systems in New South Wales (the information power); and
- (b) the Director-General of the Department of Education and Training with the power to direct that a student whose violent behaviour poses a risk at a particular government school only attend the government school that can safely manage that risk (the directions power); and
- (c) the Minister for Education and Training with a power to issue guidelines dealing with the information power and the directions power.

1.5 What is the information power?

Schools can request information from relevant agencies to assist them:

- (a) to assess whether the new or continuing enrolment of a particular student is likely to constitute a risk to the school because of that student's violent behaviour; and
- (b) to develop and maintain strategies to eliminate or control any such risk.

Details about the types of information that can be requested from individual relevant agencies are found in Schedule A of the guidelines.

An explanation of what is considered to be violent behaviour, how information is requested from a relevant agency and the way risk is assessed and managed can be found in Chapters 3, 4 and 5 respectively of the guidelines.

1.6 What is meant by relevant agencies?

Relevant agencies are the organisations that can be requested to provide relevant information to schools under the guidelines. These organisations are:

- (a) the Department of Human Services (Ageing, Disability and Home Care);
- (b) the Department of Human Services (Community Services);
- (c) the Department of Justice and Attorney General (Corrective Services);
- (d) the Department of Health (including Justice Health and Area Health Services);
- (e) the Department of Human Services (Juvenile Justice);
- (f) Police and Emergency Services NSW (NSW Police Force);
- (g) NSW government schools and non-governments schools registered under the *Education Act 1990* and
- (h) the Department of Education and Training (NSW TAFE Commission).

1.7 What is the direction power?

The directions power only applies to students in government schools.

The NSW Department of Education and Training has a range of powers and programs designed to provide a learning environment free from violence (including threats of violence) including the power of the Director-General to direct that a student who poses a

risk to any person at a government school because of his or her violent behaviour may only enrol in the government school specified in the direction.

Generally violence sufficient to warrant consideration of an enrolment direction will involve a history of incidents. Whether a single incident of violence will be sufficient to result in an enrolment direction is dependent upon the risk that is identified and whether that risk can be controlled or eliminated at the school selected by the parents.

An enrolment direction will be used in appropriate cases to ensure that students with potential and/or demonstrated violent behaviour are in the education setting which can best eliminate or control the risk posed by their behaviour and which will provide the student with support and access to curriculum.

An enrolment direction can only be issued if a written risk assessment and management plan indicates that the student can be safely accommodated at the new school.

It is anticipated that enrolment directions will be issued infrequently on those rare occasions that the student's parents have refused to accept the Department's recommendation about the student's enrolment.

Further information about the directions power is found in Chapter 6 of the guidelines.

1.8 Why doesn't the directions power apply to non-government schools?

The *Education Act 1990* gives children an entitlement to attend the local government school they are eligible to attend. There is no corresponding right to attend a non-government school under the Act.

The directions power was needed to make it clear that the entitlement to enrol in a local government school does not mean that a student who poses an unmanageable risk to their local government school because of their violent behaviour can nevertheless attend that school.

1.9 Do the guidelines only apply to students at point of enrolment?

No. The guidelines apply both at point of enrolment and after a student has started attending school.

1.10 Is compliance with the guidelines mandatory?

Yes.

The *Education Act 1990* provides that any person involved in the administration of, or having functions under, the guidelines **must** comply with them.

1.11 Who should use the guidelines?

The guidelines have been developed for use by people taking action under Part 5A of the *Education Act 1990* and in particular those:

- (a) persons involved in assessing the risk posed to schools by students with a history of violent behaviour and developing strategies to eliminate or control that risk;
- (b) staff of relevant agencies who provide information to schools;
- (c) staff of educational authorities and schools, who play a role under the guidelines;
- (d) the parents of a student being dealt with under the guidelines or another adult assisting the student during the enrolment direction process;
- (e) the student himself or herself and
- (f) decision-makers in government schools involved in the enrolment direction process or in a request for a review of an enrolment direction.

1.12 How are the guidelines structured?

Part A applies to all schools unless specifically indicated otherwise. It sets out the general principles to be applied by people using the guidelines, the role of key participants in the process under the guidelines, timeframes and the potential right to an advocate, support person or accredited interpreter.

Part B sets out:

- (a) how a student who poses a current risk of violent behaviour is identified;
- (b) how information relevant to the assessment and management of that risk is obtained from relevant agencies about that student; and
- (c) how risks are assessed and strategies developed to eliminate or control that risk.

Part C only applies to government schools and sets out:

- (a) how an enrolment direction is made;
- (b) how to seek an internal review of an enrolment direction; and
- (c) how to seek a review of an enrolment direction by the Administrative Decisions Tribunal.

Part D deals with the *Commonwealth Disability Discrimination Act 2002*, *Disability Standards for Education 2005*, the *Commonwealth Privacy Act 1988*, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*. It includes a Glossary that contains definitions of terms used throughout the guidelines.

Schedule A sets out the information schools and educational authorities can request from specific relevant agencies.

Schedule B sets out who can make requests for information on behalf of schools and educational authorities and what positions in agencies will receive them.

Schedule C contains template letters and flowcharts. The letters are intended as samples only and should be modified to meet the needs of the recipient though advice should be obtained before substantially departing from the letters. For example any written or oral information provided to the student must be appropriate for the student's age or development. This includes the need to make adjustments to communication where the student has a disability.

1.13 Do the policies and resource documents of the Department of Education and Training mentioned in the guidelines apply to non-government schools?

No. Unless a document is specifically identified as applying to a non-government school (such as the NCEC/ISCA Privacy Compliance Manual), non-government schools should seek advice from their schools authority about what policies apply to their school.

1.14 Government schools have a number of other policies, procedures and resource documents to comply with. What is the relationship between the guidelines and these other obligations?

(a) *Aboriginal Education and Training Policy and the Introductory Guide*

The Aboriginal Education and Training Policy, the Introductory Guide and associated material are to be read with the guidelines.

(b) *Code of Conduct*

The Department of Education and Training's *Code of Conduct* applies to all staff of the Department, including government school staff, taking action under the guidelines.

(c) *Complaints Handling Guidelines*

The Department of Education and Training's *Complaints Handling Guidelines* do not apply to a student or parent seeking a review of an enrolment direction. That review process is set out in Chapter 7 of the guidelines. All other complaints by parents or students about the way a matter under the guidelines has been dealt with by departmental staff should be dealt with under the *Complaints Handling Guidelines*.

Any staff who are dissatisfied with a decision made under the guidelines may make a complaint under the *Complaints Handling Guidelines*².

(d) *Enrolment of Students in NSW Government Schools: A Summary and Consolidation of Policy*

The guidelines take precedence over the Department of Education and Training's *Enrolment of Students in NSW Government Schools: A Summary and Consolidation of Policy* to the extent to which there is inconsistency between the two documents.

The *Department's enhanced enrolment procedures* continue to apply when the student is seeking enrolment at a government school and should be read with the guidelines when

² The awards covering teachers and school administrative and support staff both contain agreed dispute resolution procedures which can also be used by staff.

an application to enrol a student with a history of violent behaviour is received by a school.

- (e) *Occupational Health and Safety policies, resource documents and risk management support tools relating to the management of student behaviour*

The Department's *Occupational Health and Safety support tools* relating to the management of student behaviour should be read with the guidelines.

These support tools, which have been developed under the Department's *OHS Risk Management Policy*, can be found on the Department's website.

- (f) *Privacy Internal Review Procedures*

Privacy requirements that are not in conflict with the guidelines continue to apply.

A person who is dissatisfied with the way in which the Department has dealt with their personal information can make a complaint or may apply for an internal review under the *Privacy and Personal Information Protection Act 1998*.

That person may also have a right of external review by the Administrative Decisions Tribunal.

- (g) *Special Education Framework*

The Department's *Special Education Framework* should be read with the guidelines.

- (h) *Suspension and expulsion of school students procedures, Student Discipline in Government Schools and individual schools welfare and discipline policies*

These Department of Education and Training policies and procedures continue to apply to situations regarding student discipline.

The incident which gave rise to a suspension or expulsion or other form of school discipline, if violent, may also result in the commencement of action under the guidelines. Action under the guidelines is not intended to punish the student for violent behaviour but to ensure safety.

- (i) *School Attendance Policy*

The guidelines take precedence over the Department's *School Attendance Policy* to the extent there is inconsistency between the two policies.

- (j) *Other Departmental policy and guideline documents*

The guidelines take precedence over any other departmental policies, guidelines or similar documents, to the extent of any inconsistency.

1.15 How do the guidelines relate to the various privacy laws and policies?

- (a) *Non-government schools*

The National Privacy Principles in the Commonwealth *Privacy Act 1988* only apply to non-government schools with a turn-over of more than \$3 million.

The Health Privacy Principles and other privacy provisions in the *Health Records and Information Privacy Act 2002* apply to health information held by non-government schools in NSW with a turnover of more than \$3 million or if that school provides a health service such as counselling.

For further information about the impact of privacy legislation on non-government schools please refer to the joint NCEC/ISCA Privacy Compliance Manual or the non-government school's school authority.

(b) Government schools

The Information Protection Principles in the *Privacy and Personal Information and Protection Act 1998* and the Health Privacy Principles in the *Health Records and Information Privacy Act 2002* apply to NSW government schools and government agencies.

Under these laws agencies may seek exemptions from compliance with the privacy principles. The Department of Education and Training has a *Privacy Code of Practice* which enables it to depart from certain privacy principles. Part 5A of the *Education Act 1990* and these guidelines authorise further departures from the privacy principles.

Further information about the application of privacy legislation to the guidelines is found at Chapter 9 of the guidelines.

1.16 How do the guidelines interact with the Youth Conduct Order scheme?

An assessment of the suitability of a child who is referred for participation in the Youth Conduct Orders scheme is undertaken by the Case Coordinators Senior Officers' Group. The suitability assessment report must be accompanied by an interim conduct plan. One of the criteria considered when undertaking this suitability assessment is "education/vocation".

As part of its role in participating in this suitability assessment and developing the interim conduct plan the Department of Education and Training will:

- (a) notify the Case Coordinators Senior Officer Group if a referred child has been, or is in the process of being directed to enrol in a specified government school pursuant to *section 26H of the Education Act 1990* and provide the group with relevant information about that process.
- (b) outline any steps that may need to be taken to identify a suitable government school for the referred child. This includes the potential need to convene a placement panel as a preliminary step to enrolment in a specialised setting and any requirements imposed by occupational health and safety legislation to assess any risk posed by the referred child's enrolment and develop and implement strategies to minimise or control that risk while supporting the

referred child's continuing access to education. The Senior Officers Group will be provided with a proposed timetable for this action.

- (c) outline a proposal for the student's continuing access to education while a suitable education setting is being identified where the referred child's continued access to education has been disrupted.

Steps will be taken to ensure that any provision made for the referred child's education in any final conduct plan will be consistent with any measure identified to manage any risk posed by the referred child's enrolment including a direction on enrolment under section *26H of the Education Act 1990*.

2. GENERAL PRINCIPLES THAT MUST BE CONSIDERED WHEN TAKING ACTION UNDER THE GUIDELINES, THE ROLES PLAYED BY KEY PARTICIPANTS IN THE PROCESS TIMEFRAMES, NOTICE AND THE POTENTIAL ROLE OF INTERPRETERS, SUPPORT PEOPLE AND ADVOCATES

2.1 What general principles apply to action under the guidelines?

Everyone involved in action under the guidelines should be aware:

- (a) all participants are entitled to be treated with dignity and respect and to have their views considered;
- (b) violent behaviour can result from environmental factors (such as the wind or loud noises) and can communicate needs. This should be considered when developing strategies to eliminate or control risk arising from that behaviour though the fact that the student is using violent behaviour to communicate will not reduce the risk;
- (c) parents and students play a significant role under the guidelines unless exceptional circumstances apply. For further information about these circumstances see sections 5.14 and 5.15 of the guidelines;
- (d) staff of schools and educational authorities play a major role (this may include but is not restricted to classroom teachers, year advisors, school counsellors, school learning support officers, Aboriginal education officers, student welfare consultants and disability programs consultants). For further information about the role of staff see section 2.9 of the guidelines;
- (e) schools must do all that is reasonably practicable to assess and control health and safety risks posed by a student's violent behaviour. This process is assisted by school staff, parents and the student working together. Where relevant, advice from a student's doctor, psychologist or other health workers, staff of the educational authority and staff of other relevant agencies may be sought during the process by which risks are assessed and strategies are developed to eliminate or control those risks;
- (f) action under the guidelines requires, to the extent possible:
 - i. all participants understanding their roles, rights and responsibilities;
 - ii. all participants understanding that to modify behaviour it is first necessary to understand its function;
 - iii. staff of schools, relevant agencies and educational authorities having open channels of communication; and
 - iv. educational authorities and schools complying with any duties at common law and any statutory responsibilities including those under occupational health and safety legislation.

- (g) in addition to the primary purpose of ensuring the safety of students, staff and visitors in schools, the following general principles must also be considered when taking action under the guidelines:
- i. parents have a right to choose any government school which their child is eligible to attend and which can safely accommodate the child unless the *Education Act 1990*, the guidelines or another law say otherwise;
 - ii. students are entitled to enrol at their designated local government school unless the *Education Act 1990*, the guidelines or another law otherwise provides;
 - iii. all reasonably practicable measures must be considered for adoption at the school selected by the parents to eliminate or control potential incidents of violent behaviour by the student;
 - iv. disengagement from the education system is regarded as a major predictor for poor educational and social outcomes including entering the juvenile justice system – therefore an outcome that leads to such disengagement should be avoided where possible; and
 - v. educational outcomes for a student who is dealt with under the guidelines, as for all other students, are to be optimised.

2.2 Do the objects and principles of the *Education Act 1990* continue to apply to the guidelines?

Yes. The objects and principles relevantly provide that:

- (a) every child has a right to receive an education;
- (b) it is the duty of the State to ensure that every child receives an education of the highest quality, a duty which it primarily fulfils through the provision of public education;
- (c) each child enrolled in a government school is to be assisted to achieve his or her educational potential;
- (d) educational disadvantages arising from the gender of a child enrolled in a government school or from the child's geographic, economic, social, cultural, lingual or other causes are to be mitigated; and
- (e) regard is to be had to the provision of education to and the special needs of:
 - i. Aboriginal children;
 - ii. children from non-English speaking backgrounds;
 - iii. children from rural communities, particularly small and isolated communities;

- iv. children with special abilities; and
- v. children with special learning needs and those with disabilities.

2.3 What additional principles apply if the student is an Aboriginal or Torres Strait Islander?

Schools and educational authorities are committed to improving the educational outcomes and wellbeing of Aboriginal students so that they can excel and achieve in every aspect of their education and training.

Aboriginal students have a right to fair, equitable, culturally inclusive and significant educational opportunities so that all students obtain a high quality education as a platform for enriching their life chances and achieving their full potential.

Any person making decisions about Aboriginal students under the guidelines must be able to demonstrate cultural competencies in Aboriginal Cultures.

The particular importance of an Aboriginal student being able to maintain contact with, and enjoy the support of, their local community is recognised and will be a key consideration in making decisions under the guidelines.

2.4 What does meeting the duty of care to students require?

Educational authorities owe all students enrolled in their schools, including a student with violent behaviour, a common law duty of care. This is separate from the duties under occupational health and safety legislation.

The action taken to meet this duty of care depends on the particular circumstances of the situation including the age, maturity and needs of the student concerned.

This is not a duty to provide an absolute guarantee of safety but requires that reasonable steps are taken to protect students from risks that are reasonably foreseeable.

Courts have attempted to explain this concept by stating that a foreseeable risk is one that is not "*far-fetched and fanciful*". For example it is reasonably foreseeable that a student directed by a teacher to pick up a syringe in a playground from an unknown source is exposed to risk of injury. Such a direction should not be given.

However it would be far-fetched and fanciful to conclude that students are exposed to the same risk if directed by a teacher to pick up a piece of paper on the playground because a syringe could possibly be wrapped up in that paper (provided of course that syringes have not previously been found wrapped in paper on the playground).

This duty extends to taking reasonable care to prevent students from injuring themselves, injuring others or damaging property. To meet this duty of care educational authorities must be able to demonstrate systems are in place to identify risks and precautions are taken to avoid or minimise those risks.

2.5 What role do parents play under the guidelines?

The term parent is broadly defined in the guidelines and includes a guardian or other person having the custody or care of a child.

The parents of a student with violent behaviour play a significant role in these processes unless the guidelines say otherwise. Further information about the role of parents during the written risk assessment and management plan process and the directions process can be found at sections 5.14 and 6.17-6.24 of the guidelines.

The parents of a student with a history of violent behaviour are an important source of information about their child. They are well placed to give context to incidents in the student's history that will assist in assessing and managing risks posed by the student's violent behaviour. This might include information about "triggers to the behaviour" and insights into the nature and function of the behaviour.

While all relevant factors should be considered, the context in which a violent incident in the student's past has taken place is an important factor in evaluating the current risk the student's past violent behaviour may pose.

Decision-makers under the guidelines must carefully consider what parents have to say when identifying, assessing and managing risk but are not necessarily required to adopt suggestions or requests from parents. Parents do not have a right of veto over a risk assessment or strategies that are developed by schools to eliminate or control risk.

More information about the role of parents can be found in the relevant chapters of the guidelines including:

- (a) The written risk assessment and management plan and the role parents play in that process (section 5.14);
- (b) The enrolment direction process and the role parents play in that process (section 6.17 to 6.24);
- (c) What happens when parents are not involved in the enrolment direction process or it is necessary to limit their involvement (section 6.22 to 6.24); and
- (d) The entitlement of a parent to the assistance of an advocate, support person or an accredited interpreter when action is taken under the guidelines (sections 2.14-2.16),

2.6 What role does the "other adult" play under the guidelines?

Where neither of the student's parents are involved in the enrolment direction process Section 261(3) of the *Education Act 1990* provides that at least one adult must be given:

- (a) access to the information that gave rise to the proposed enrolment direction;
- (b) written notice of the grounds for the proposed direction; and

- (c) an opportunity to make representations (whether oral or written or both oral and written) in relation to that information and the proposed direction.

This person is referred to in the guidelines as the “other adult”.

The student himself or herself can be the other adult if he or she is aged 18 or over.

Further information about the role of the other adult is found in Chapter 6 of the guidelines - see especially section 6.24.

2.7 What role do students play under the guidelines?

Students have the right to participate in decisions made about them under the guidelines unless the guidelines say otherwise. Further information about those circumstances can be found in sections 5.15 and 6.25-6.28 of the guidelines.

They must be given information that is relevant to the decision being made about them and the opportunity to express their views about that decision unless the guidelines say otherwise. Attempts must be made to provide the student with information in a format or at a level that is properly understood by the student.

There must be a factual basis for doubting a student’s capacity to participate in these processes. Decision-makers must not assume a student cannot make relevant decisions just because he or she has a particular disability.

A student’s age, while relevant, will not necessarily determine capacity to make a decision. It may be assumed that the younger the student, the lower the decision-making capacity but this assumption could be countered by the personal circumstances of the individual student.

A student’s capacity to be involved in the decision-making process may change over time. The ability to make decisions may be affected by factors that are pre-existing or acquired, temporary, episodic or chronic. Accordingly, regular consideration should be given to how to involve the student in the process.

Where a student has a disability the Commonwealth *Disability Discrimination Act 1992* and the *Disability Standards for Education* require that the student (or an associate) be consulted about whether learning adjustments or accommodations must be made to enable his or her enrolment and participation and whether this would be reasonable.

Learning adjustments and accommodations are important not only in terms of meeting any requirements of disability discrimination laws. Insofar as they reduce violent behaviours they are also relevant to meeting health and safety obligations under occupational health and safety legislation.

More information about the role of students can be found in the relevant chapters of the guidelines including:

- (a) The written risk assessment and management plan and the role the student plays in that process (section 5.15);

- (b) The role students play in the enrolment direction process (section 6.25 to 6.28); and
- (c) The entitlement of a student to the assistance of an advocate (section 2.17), support person (section 2.14) or an accredited interpreter (section 2.15).

2.8 What role do educational authorities and schools play under the guidelines?

Educational authorities and schools must, amongst other things:

- (a) fulfil their duties under occupational health and safety legislation to employees, students and visitors to school sites;
- (b) comply with any duties under the *Education Act 1990*, the common law duty of care and any other law including privacy laws;
- (c) as with all students, seek optimal educational outcomes for students affected by the guidelines; and
- (d) where a government school is involved understand that the Department is committed to collaborative decision making with Aboriginal Peoples, parents, caregivers, families and their communities.

2.9 What role do staff play under the guidelines?

Staff must:

- (a) fulfil their duties under occupational health and safety legislation to take reasonable care for the health and safety of other staff, students enrolled at the school and visitors to work sites who may be affected by the staff member's acts or omissions at work. This includes being familiar with their employer's policies and procedures for assessing and eliminating or controlling risk and reporting incidents of violent behaviour and ensuring that relevant information is provided to staff to assist in the management of that behaviour;
- (b) fulfil their common law duty of care by taking reasonable care that students enrolled at the school and visitors to school sites are not exposed to foreseeable risks to their health or safety while at school;
- (c) recognise and support individual student needs;
- (d) co-operate with their employer while at work so far as is necessary to enable their employer to meet its obligations under occupational health and safety legislation;
- (e) be familiar with and comply with the guidelines and take action under the guidelines in a timely fashion;
- (f) as with all students, seek optimal educational outcomes for students affected by the guidelines;

- (g) keep accurate records about actions taken under the guidelines, including reasons for decisions;
- (h) adhere to any code of conduct or statement of professional responsibilities when dealing with matters under the guidelines; and
- (i) comply with any duties under any other acts or laws such as the duty to:
 - i. report to the Department of Human Services (Community Services) when there are reasonable grounds to suspect that a child is at risk of harm;
 - ii. report “reportable conduct” to the Department of Premier and Cabinet (Ombudsman’s Office);
 - iii. make reasonable adjustments for students with a disability; and
 - iv. observe any requirements imposed by privacy legislation.

Failing to comply with relevant law, policy or the guidelines may result in action being taken to deal with that failure by the staff member’s employer in accordance with existing procedures.

2.10 Is there anything else that decision-makers need to take into consideration?

In addition to the issues identified in sections 2.1-2.3, 2.8 and 2.9, decision-makers under the guidelines will consider the potential impact of their actions and decisions on the safety, welfare and wellbeing of the student concerned, other students and staff.

Decision-makers under the guidelines must also carefully consider what parents, students or the other adult have to say when identifying, assessing and managing risk but are not necessarily required to adopt suggestions or requests from parents, students or the other adult. Parents, students and the other adult do not have a right of veto over a risk assessment or strategies that are developed by schools to eliminate or control risk.

2.11 How should timeframes under the guidelines be interpreted?

The timeframes set out in the guidelines are indicative to assist prompt action unless the guidelines say otherwise³. Where possible they should be adhered to but can be extended where there is good reason. That might include but are not restricted to:

- (a) school or public holidays;
- (b) obtaining specialist advice;
- (c) illness or misadventure of a relevant person; or
- (d) where agreed to by the parent or other adult and/or student.

Timeframes can also be expedited provided all persons involved in the process agree.

³ See for example section 6.16.3(h)

All persons involved in the processes under the guidelines should be advised promptly if there is a change in timeframes that affects their interests. The fact that an indicative deadline is not met, or that advice has not been given of a change in timeframe, does not, of itself, render invalid any decision made following such a delayed time line.

2.12 How is the date that a student, parent or other adult received notice under the guidelines determined?

Written notice of an enrolment direction, or any other document produced under the guidelines will be taken to have been given when the decision-maker's letter has been delivered to the last known address provided by the parent, other adult or student (or if the notice is posted, within three working days of a letter having been posted by express post or the equivalent).

2.13 What needs to be considered when communicating with parents, students or the other adult?

Consideration should be given to how to best communicate with parents and students about the issues dealt with in the guidelines before an attempt is made to contact them about action under the guidelines.

If communication difficulties are foreseeable a communication plan should be developed prior to contact being made with the parents about these issues. This plan would include consideration of whether or not the parent or student requires the support of an accredited interpreter or may wish to be represented by an advocate or accompanied by a support person.

A reasonable attempt must be made by staff to speak to parents, the student or other adult about the action that is being taken before written notice is provided to the student, student or other adult.

2.14 Can parents, the other adult or students have a support person when involved in the guidelines?

A student or parent may also seek the assistance of a support person throughout the processes outlined in the guidelines.

It is important that where a support person is involved they understand that their participation is as a witness or adviser and not as an advocate. A support person may ask that a meeting be paused if they want to speak privately to the parent or student.

Subject to an objection by the decision-maker on occupational health and safety grounds the support person may attend any meeting with a decision-maker if requested to do so by a parent or other adult and/or student.

A decision-maker or other person with a function under the guidelines can object to the involvement of the support person at a meeting if it is determined on reasonable grounds that the support person poses a risk to the health, safety or welfare of any other person at the meeting or if they would be otherwise excluded from the process because of the

guidelines⁴. There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility it will occur.

Staff who may be placed at risk by the support person's participation in the process must be consulted while that risk is being assessed.

If there is an objection to a particular support person participating in a meeting the student, or parent must be advised accordingly and given the opportunity to nominate another support person.

2.15 Can parents, the other adult or students have an accredited interpreter when involved in the guidelines?

An assessment of the need for an accredited interpreter or translated materials is to be made by the school at the time the parent or student becomes involved in the written risk assessment and management plan or enrolment direction process. Continuing consideration is to be given to this need throughout the process by decision-makers. Schools are to advise parents and students of the option of asking for an accredited interpreter.

An example of such a notification appears in Schedule A – Template Letter 4.

2.16 Can parents or the other adult have an advocate when involved in action under the guidelines?

Not all parents will require someone to speak on their behalf.

However there are some occasions where, for example, because the parent is of a non-English speaking background, has a disability, limited education or because of their culture where they may require some assistance.

There may also be other circumstances where an advocate should be permitted to speak on the parent or student's behalf in order to ensure that he or she is able to fully participate in the process.

Such requests are to be given careful consideration by the decision-maker who has called the meeting and should not be unreasonably refused.

Consideration must also be given by the decision-maker to whether the involvement of an advocate in the process presents a health and safety risk to any person involved in the process.

Staff who may be placed at risk by the advocate's participation in the process must be consulted while that risk is being assessed.

There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility that it will occur before an advocate is excluded from the process. If a parent or other adult's nominated advocate is excluded from the process he or she must be given an opportunity to nominate another advocate.

⁴ For example where one parent has been excluded from participating in the process by the guidelines he or she cannot be the support person of the other parent

If a parent considers that a request to be represented by an advocate has been unreasonably refused they are entitled to seek a review of that decision under the Department's Complaint Handling Guidelines.

Advocacy assistance for parents may be available from a range of organisations including Family Advocacy, the Disability Discrimination Legal Centre, People with Disability Australia and the Intellectual Disability Rights Service.

2.17 Can students have an advocate when involved in action under the guidelines?

Generally it would be expected that one or more parent or another adult would act as the student's advocate during these processes.

However there may be occasions where the student wishes to make separate suggestions or express different views from their parents.

In such circumstances the student can make representations themselves or request the support of an advocate.

Consideration must be given by the decision-maker to whether the involvement of an advocate in the process presents a health and safety risk to any person involved in the process.

Staff who may be placed at risk by the advocate's participation in the process must be consulted while that risk is being assessed.

There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility that it will occur before an advocate is excluded from the process. If a student's nominated advocate is excluded from the process he or she must be given an opportunity to nominate another advocate.

If a student considers that a request to be represented by an advocate has been unreasonably refused they are entitled to seek a review of that decision under the Department's Complaint Handling Guidelines.

Advocacy assistance for students may be available from a range of organisations including Family Advocacy, the Disability Discrimination Legal Centre, the National Children and Youth Law Centre, People with Disability Australia and the Intellectual Disability Rights Service.

3. IDENTIFYING A STUDENT WHO POSES A RISK TO A SCHOOL BECAUSE OF HIS OR HER VIOLENT BEHAVIOUR

3.1 How is “violence” defined in the guidelines?

“Violence” is not restricted to physical acts. For example, aggressive and persistent verbal bullying that might place individuals (particularly young or vulnerable students) at risk of psychological harm is considered violent for the purposes of the guidelines.

Violence does not have to be intentional to give rise to risks and can include:

- (a) any behaviour that seriously interferes with the physical or psychological health, safety and wellbeing of staff, students and/or others who may be at a school site;
- (b) seriously inappropriate sexual behaviour that could cause physical or psychological harm to the reasonable person;
- (c) serious and credible threats to commit violence;
- (d) verbal abuse of others on the grounds of any personal characteristic protected by the *Anti-Discrimination Act 1977* (such as race, gender, sexuality and other characteristics) that could cause physical or psychological harm to the reasonable person;
- (e) aggressive behaviour which is non-contact in nature and persistently aggressive or abusive language directed to staff, students or others. When assessing the risk posed by abusive language (such as swearing in class), consideration must be given to the surrounding context when the level of risk is assessed – for example a student’s use of offensive language in the classroom would be dealt with under the school’s discipline policy but would not, by itself, be grounds for an enrolment direction; and
- (f) physical damage to property or the learning environment (where such conduct may cause those present to fear harm).

3.2 What are some examples of violent behaviour that may need to be addressed under these guidelines?

Some examples of incidents that may lead to a reasonable conclusion that a student’s behaviour may need to be addressed in terms of the guidelines include:

- (a) physical attacks (for example, punching, hitting, kicking, biting, pinching, hair pulling, scratching or spitting);
- (b) carrying a prohibited weapon, firearm or knife;
- (c) grabbing someone’s breast or buttocks without consent;
- (d) attacks using an implement such as scissors or pens;

- (e) throwing projectiles in a way that deliberately or recklessly causes physical harm (not including participation in sporting matches played according to the rules);
- (f) physical aggression or violence towards animals (for example animals kept on school site for curriculum purposes) and the physical surroundings such as the school's flora and infrastructure (such as fences, classrooms etc); and
- (g) self-harming behaviours.

3.3 Does the behaviour have to involve physical violence?

No. The following behaviours may, with or without demonstrating physical violence, be relevant to identifying a student whose behaviour needs to be addressed in terms of the guidelines provided they could cause psychological harm to the reasonable person:

- (a) persistent verbal bullying including repeated use of statements intended to humiliate and/or provoke another to an act of violence such as "you won't hit him because you're a loser";
- (b) damage to information technology systems;
- (c) repeated sexual harassment or use of racist, sexist or homophobic language or language mocking the disability of a student, member of staff or visitor to a school;
- (d) written abuse including writing threatening or abusive letters, graffiti targeting individuals or particular groups, bullying or harassment using text messages or email, posting on internet sites, making inappropriate videos, photographs or sound recordings and/or sharing or texting them and posting them on websites;
- (e) threats and intimidation; and
- (f) physical and technological stalking.

3.4 Why is violence broadly defined in the guidelines?

The guidelines adopt a broad definition of violence. This is not to suggest everything falling within the definition will require strategies to be developed to eliminate or control risk or justify an enrolment direction. It does acknowledge, however, a broad range of circumstances may require an assessment of any risk posed by the student's violent behaviour. It also recognises that harm can be caused by the accumulating effect of many of these behaviours over time.

3.5 Why is self-harming behaviour included in the definition of violent behaviour?

Schools and educational authorities are required to manage the risk posed by a student's violent behaviour to the student himself or herself, other students and staff.

Students who engage in self-harming behaviour clearly pose a potential risk to themselves and steps must be taken to manage that risk. Witnessing self-harming behaviour can also pose a risk of psychological injury to other students, particularly if they are young and vulnerable, and to staff. On occasions other students may also replicate the self-harming behaviour. Staff may also be placed at risk when attempting to deal with a student who is engaged in self-harming behaviour.

Principals must seek advice from their school counsellor (or another appropriately qualified staff member of the educational authority) when developing and implementing strategies to deal with the student's self-harming behaviour. Depending upon the individual circumstances appropriately qualified professionals from outside of the school or educational authority may also be able to assist in this process.

3.6 What sources of information about violent behaviour may assist in identifying ongoing risk to health and safety?

Potential sources of information include:

- (a) information provided by the student's parents, a family member, friend or neighbour either when the student applies to enrol or later;
- (b) information provided by staff such as a report of an incident by a classroom teacher;
- (c) information provided by the student to school staff such as a member of the school's welfare team;
- (d) information reported by another student;
- (e) information obtained from records such as a student counselling file;
- (f) information obtained from schools in other sectors (for example that a government school may obtain from a non-government school) or from other relevant agencies;
- (g) information from another credible source such as the police; and
- (h) records of incidents at school or during a school related activity.

3.7 What steps will be taken to verify information provided by another student or a community member?

Reasonable attempts must be made to evaluate the validity of the information received from another student consistent with the steps that a principal would take when dealing with an alleged school discipline issue.

On rare occasions a family member or neighbour may provide information to a school about a student alleging that the student has a history of violent behaviour for vexatious purposes.

Where reasonably practicable attempts will be made to verify the information received from a community member before it is used as part of the written risk assessment and management plan.

Further, unless the guidelines say otherwise⁵, the student and their parents will be advised of the information that has been provided during the written risk assessment and management plan process and given an opportunity to respond to that information.

3.8 What is the relevance of the student having a disability?

If the student has a disability schools and educational authorities have a legal obligation to provide the student with reasonable adjustments to ensure the full participation of the student in education services and programs on the same basis as a student without a disability. Where reasonable, learning adjustments should be made to programs, teaching methods and accommodations provided to ensure the student's full participation.

There is a concurrent legal obligation to ensure the health and safety of staff and students at school.

The fact a student has a particular disability **does not** constitute reasonable grounds for it to be determined that he or she is a risk to the health and safety of people at schools. It is the **actual violent behaviour** (or propensity for violent behaviour) of the **actual** student that needs to be considered in assessing whether the student poses a risk of violence and not whether such behaviour is associated with a disability.

Further information about students with a disability may be found in Chapter 9 of the guidelines.

3.9 What is the relevance of a student having been a client of the Departments of Justice and Attorney General (Corrective Services) or Human Services (Community Services or Juvenile Justice)?

The fact that a student is or has been a client of the Department of Justice and Attorney General (Corrective Services) or the Department of Human Services (Community Services or Juvenile Justice) **does not**, in itself, constitute reasonable grounds to determine that they are a risk to the health and safety of people at schools. For example recognition will be given to the fact that custody is a difficult and unusual environment when assessing the student's behaviour while in custody.

Many students with prior involvement with the Department of Justice and Attorney General (Corrective Services) or Human Services (Community Services or Juvenile Justice) will not have a history of violent behaviour and will not be subject to this process. Other students with a history of violent behaviour will have had no prior involvement with the Departments of Justice and Attorney General (Corrective Services) or Human Services (Community Services or Juvenile Justice).

⁵ See sections 5.14 and 5.15

3.10 What is the relevance of the student being an Aboriginal or Torres Strait Islander?

If the student is an Aboriginal or Torres Strait Islander the principal of a government school must consult with an Aboriginal Community Liaison Officer about who in the Aboriginal community may be able to provide the school with information about the student's community and any circumstances that may shed insight on the behaviour. Non-government schools should seek the advice of their proprietor about the course of action to take.

Parental consent must be obtained before the principal talks to that community member. In government schools the principal may ask for the assistance of the Aboriginal Community Liaison Officer or Aboriginal Education Officer in obtaining that consent.

Further information about the principles that apply if the student is an Aboriginal or Torres Strait Islander is found in section 2.3 of the guidelines.

3.11 What is the relevance of a recent incident involving the violent behaviour of the student?

A recent incident involving the violent behaviour of the student will require an assessment of the risk posed by that behaviour.

This may require the school or the educational authority to obtain relevant information about the student.

Parental consent is not required before information held by one part of an organisation is provided to another part of the organisation (for example parental consent is not required for a student's records to be provided by one government school to another or where information is shared between non-government schools operated by the same Board of Studies registered proprietor).

If it is necessary to request information about the student from a relevant agency these requests should be made in accordance with the process set out in Chapter 4 of the guidelines.

4. **OBTAINING RELEVANT INFORMATION FROM RELEVANT AGENCIES ABOUT A STUDENT WITH A HISTORY OF VIOLENT BEHAVIOUR**

4.1 Does privacy legislation prevent relevant information being collected, used or disclosed in accordance with the guidelines?

No. The guidelines authorise the collection, use or disclosure of relevant information irrespective of any provision in the privacy legislation to the contrary provided it is done in accordance with the guidelines.

For dealings with personal and health information which are not governed by the guidelines existing privacy requirements continue to apply.

The appropriate application of the privacy principles depends on the individual staff members being clear as to the purpose of collecting, using and disclosing personal and health information under the guidelines.

4.2 When should information be requested from a relevant agency?

Information should only be requested under the guidelines from relevant agencies in circumstances where a student poses a risk to the health and safety of people at a school because of the student's violent behaviour and there is reason to assume records from the agency may assist in undertaking an adequate risk assessment.

Information requests must not purely be a "fishing expedition". Rather, there must be something that points to the likely existence of further information being held by the particular agency the information is being sought from.

The information may be obtained under the guidelines **solely for the purpose** of:

- (a) assessing whether the new or continuing enrolment of a particular student at a school is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student himself or herself), and
- (b) developing and maintaining strategies to eliminate or minimise any such risk while endeavouring to support the student's educational needs. This will include a consideration of strategies that are already working (in the current educational situation and/or at home) to eliminate or minimise risk where those strategies are made known.

Information about how to identify a student with a history of violent behaviour is found in Chapter 3 of the guidelines. Information about how to prepare a written risk assessment and management plan can be found in Chapter 5 of the guidelines.

4.3 What risk is being managed under the guidelines?

The current risk of harm posed by a student's past violent behaviour to the student himself or herself, other students, staff and visitors to a school site.

Information relevant to the identification, assessment and management of risk to all those people can be obtained from relevant agencies provided that there is a reasonable expectation that the information will assist and provided that it is information of the kind set out in Schedule A of the guidelines for that agency.

4.4 When can information about a student with a history of violent behaviour be requested by a school or an educational authority?

Information can be requested once the potential risk posed by the student's violent behaviour is identified and the school is reasonably satisfied that the agency may hold that information. This could take place prior to enrolment or after the student has started attending school.

A school or educational authority must have reasonable grounds to believe that the student is seeking enrolment at a school prior to making a request for information.

Details of the information that can be sought from relevant agencies are found at Schedule A to the guidelines.

Details of who can make and receive information requests are found at Schedule B to the guidelines.

An information request and covering letter to a relevant agency are at Schedule C, Template Letters 2 and 2A.

4.5 Should the need to obtain information be discussed with the parents or student prior to writing to them about that need?

Yes. Where practicable reasonable attempts must be made to discuss the need for information from a relevant agency, including how it will be used, with the parent or student (unless the guidelines say otherwise⁶) before the school writes to the parent or student seeking their consent to the information being obtained.

4.6 Should the parents or students consent be sought prior to requesting the information from a relevant agency?

A school or educational authority must notify a parent, and where practicable the student, that information is being sought from a relevant agency. The parent and student should be given an opportunity to consent to the information being obtained, unless the guidelines say otherwise, before a school or educational authority requests the information from a relevant agency. The parent and student must also be advised of what may happen if consent is not given (that is that the request for information can be made without their consent).

A parent or student will be regarded as having been provided with notice and the opportunity to consent when the relevant letter has been delivered to the last known address that the parent or student has provided to the school. A sample letter providing notice and seeking consent is at Schedule C, Template Letters 1 and 1A.

⁶ See sections 5.14 and 5.15

A copy of any response that is obtained from a student or parent to the request for their consent will be provided to the relevant agency by the person requesting the information provided it is received before the request is made.

4.7 What happens if a parent or student declines or fails to give his or her consent?

If the parent or student does not give consent within 5 working days of being notified of the intention to seek the information, a request may be made of a relevant agency to obtain relevant information. The relevant agency will be advised that consent has not been obtained despite being requested and provided with the reasons why (if known).

4.8 What kind of information may or must (if any) be sought from relevant agencies?

The information to be sought from relevant agencies will be that which is of practical assistance to schools in:

- (a) assessing whether or not a student's history of violent behaviour constitutes a current risk (because of his or her violent behaviour) to the health or safety of any person in a learning environment; and
- (b) developing and maintaining strategies to eliminate or minimise any such risk while endeavouring to support the student's educational needs. This will include a consideration of strategies that are already working (in current educational situation and at home) to eliminate or minimise risk.

This is the sole purpose for which information can be obtained from relevant agencies under Part 5A of *the Education Act 1990* and the guidelines.

The information to be provided by any relevant agency under the guidelines can only be information of the kind set out in Schedule A of the guidelines for that agency.

4.9 Is a relevant agency required to create information in response to an information request?

No. A relevant agency is only required to provide information that it has in its possession or under its control.

4.10 Is there any kind of information that must not be given to schools or an educational authority?

Information must not be provided if its disclosure is prohibited by:

- (a) section 20G, 20P or 23 of the *Health Administration Act 1982* which relate to Quality Assurance Committees, Root Cause Analysis Teams and specially privileged information within the meaning of that Act respectively; and
- (b) section 29(1)(f) of the *Children and Young Persons (Care and Protection) Act 1998* which relates to mandatory reporting; and
- (c) a court order. This could include an order by the court that specifically prohibits the disclosure of information to any person.

4.11 Are there any other circumstances in which a relevant agency may refuse to provide information requested of them?

A relevant agency may refuse to provide the information requested if it is not information of the kind set out in Schedule A of the guidelines for that agency.

4.12 Can information be provided to relevant agencies about the student when a request is made?

A school or educational authority may provide a relevant agency with information about a student to assist the agency to respond to the request.

4.13 What is the duty of the relevant agency that receives that request?

A relevant agency has a duty to provide information which has been sought by a school or educational authority if that agency has the information in its possession or under its control, provided the information that has been requested:

- (a) is of the kind set out in Schedule A of the guidelines for that agency; and
- (b) is not information that is not to be released as referred to in section 4.10 above.

4.14 Can more than one person request information from a relevant agency about a student?

It is possible that more than one person will request information about a particular student from a relevant agency.

Best endeavours will be undertaken to prevent relevant agencies receiving multiple requests for information about the same student simultaneously.

It is noted, however, that it is possible that a parent may seek enrolment in more than one school (for example in a government and non-government school) leading both schools to request information about the student from the agency.

4.15 What will happen to the information once it is provided?

The information will be used to assess any current risk posed by the student to people at the school and develop strategies to manage that risk in accordance with the process set out in the guidelines.

Relevant agencies should be aware that the relevant information provided will be passed on to the parents, and where practicable, the student unless the guidelines say otherwise⁷.

Relevant agencies should indicate any concern that they may have about that occurring to the school or educational authority at the time the information is provided.

⁷ See sections 5.14 and 5.15

4.16 Can information be passed on from one school to another without a request for information being made?

Personal information or health information about the student needs to be treated with sensitivity and in accordance with privacy principles unless non-compliance with a particular principle is authorised by the guidelines. Apart from the action identified in the guidelines, it should be treated as confidential and is subject to any relevant privacy laws.

Information about a student's violent behaviour may be provided by one school to another school at which the student concerned is enrolling (for example by a non-government school to a government school) without a request for information having been made by the new school. The information about the student must be relevant to assessing the risk posed by the student's violent behaviour or developing or maintaining strategies to eliminate or control that risk at the new school. The first school must be reasonably satisfied that the student has sought, or is likely to seek, enrolment at a specific new school. An example of this would be a student who is transitioning from primary school to high school.

There is no duty under the guidelines to pass on information about a student to the new school, unless the new school requests it under the guidelines or transition of the information is otherwise required by policy or law. **For example the policies of the Department of Education and Training require that this information be passed from one government school to another when it is known that a student is going to enrol at another government school.**

4.17 How must information be used, disclosed and stored?

Information must be used, disclosed and stored in accordance with the processes set out in the guidelines. Further information about this is found in Chapter 9 of the guidelines.

4.18 What happens to the information if the student's parents decide the student is not to be enrolled in the school or an application to enrol is declined?

If parents of a student decide not to enrol him or her in the school, or a school decides as a result of a written risk assessment and management plan to decline an enrolment then the information obtained under the guidelines should not be used or disclosed to any person unless required or allowed by law ⁸ or authorised by the guidelines.

Information should be kept until the student turns 24 (which is commonly the point at which the student's entitlement to commence legal proceedings as a right will expire).

⁸ An example of where use or disclosure would be allowed by law would be where the information is relevant to a subsequent risk assessment of the student's application to attend another school (in such circumstances it should be forwarded to the new school in accordance with section 4.16 of the guidelines) or in accordance with any relevant policy, manual or Code. For government schools this includes disclosures permitted under the Department of Education and Training's *Privacy Code of Practice*. Non-government schools should refer to the NCEC/ISCA Privacy Compliance Manual for further information about this issue.

5. UNDERTAKING WRITTEN RISK ASSESSMENT AND MANAGEMENT PLANS

5.1 Does this chapter of the guidelines apply to government and non-government schools?

This chapter applies to **government schools** when taking action under the guidelines.

With the exception of sections 5.14 (consultation with parents) and 5.15 (consultation with students) this chapter will only apply to non-government schools that have not established their own risk assessment and risk management process.

Sections 5.14 and 5.15 apply to non-government schools by virtue of section 26E of the *Education Act 1990* which gives parents and students a right to be consulted during the written risk assessment and management plan process.

Non-government schools and parents and students of those schools should confirm with their school proprietor whether the rest of this chapter of the guidelines will apply to them or not.

5.2 Why is it necessary to assess the current risk posed by a student's violent behaviour and if required, develop a written risk assessment and management plan?

This is required under occupational health and safety legislation.

5.3 What is a written risk assessment and management plan?

Under the guidelines a written risk assessment and management plan refers to the:

- (a) assessment of the risk posed by the violent behaviour of a student that has been undertaken in accordance with the guidelines; and the
- (b) development and implementation of strategies to control or eliminate that risk.

It is noted that on occasions it will be impracticable to prepare a written risk assessment and management plan when managing risks. For example a risk assessment may be undertaken by school staff shortly after a violent incident has taken place and immediate steps taken to manage that risk by, to use a simple example, separating the students concerned. Long-term strategies to manage any ongoing risk of violence will however be dealt with in a written risk assessment and management plan.

5.4 When will a written risk assessment and management plan be required?

Commonsense needs to be used when determining when a written risk assessment and management plan will be required.

For example, if two kindergarten students are pushing each other in class lines resulting in one falling and grazing her knee and requiring a bandaid, the risk of further violent behaviour on these facts is low and a written risk assessment and management plan would not usually be required.

On the other hand, if a student had shown a sustained pattern of bullying and intimidating smaller children involving both physical violence and verbal taunts and this did not improve with disciplinary, counselling or other interventions the risk of the student behaving violently towards other students or staff may be considered to be moderate or high requiring a written risk assessment and management plan to be undertaken.

5.5 Should the personal circumstances of each student be taken into account when undertaking the written risk assessment and management plan?

Yes. When assessing the current risk that past violent behaviour might pose to people at a school the personal circumstances of each student must be taken into account when determining if the student's violent behaviour poses a risk to anyone.

This includes the student's age, current (or changed) living arrangements, needs, abilities, family context, cultural values, existing interventions in place to support them such as medication and other individual circumstances (such as whether the incident is "out of character" or may have been attributable to external factors such as exposure to domestic violence in the home).

Schools must also consider whether any previous attempts to support the student and modify the behaviour were adequate and whether different or further measures may control or eliminate the risk posed by the student's violent behaviour.

Consideration must also be given to:

- (a) family or external supports that might reduce the risk;
- (b) any relevant behavioural needs or diagnosed behavioural conditions, observed violent behaviour and/or relevant violent incidents that have occurred (and their frequency); and
- (c) triggers to violent behaviour and strategies to de-escalate violent behaviour.

Such considerations may be of assistance when evaluating the level of risk posed by the violent behaviour and identifying the strategies that may be used to eliminate or control that risk.

The risk may be reduced if no violent behaviour has been exhibited over a reasonable period of time and/or a review of the written risk assessment and management plan has concluded that risk management strategies have controlled or eliminated the violent behaviour.

What will constitute a "*reasonable period of time*" is difficult to quantify and may depend on the particular circumstances including the severity of the harm caused and whether a reduction in behaviour can be validly measured. For example if the student is enrolled in a distance education centre and studying at home it will be more difficult to be satisfied that the risk of violence posed by the student to people at school has been reduced.

As a general 'rule of thumb', an absence of violent behaviour from a student physically attending school for a school year would generally indicate that risk of violent behaviour may have been reduced.

Consideration must be given to whether the reduction in risk is attributable to the success of the controls that have been put in place under the written risk assessment and management plan and whether the risk of violent behaviour may become higher if the controls are removed (for example if the student attended a different school).

Whatever information is obtained about a student's past behaviour, it is important to assess it in terms of its current relevance. Past violent behaviour may or may not give rise to a current risk of violent behaviour dependant upon the particular circumstances. The context of past behaviour may be relevant. It may be that past violent behaviour in a different context is very unlikely to be repeated in the school context.

5.6 What else should be considered when undertaking a written risk assessment and management plan?

When preparing a written risk assessment and management plan of any hazard arising from an incident involving a student's violent behaviour appropriate consideration should be given to a range of circumstances including as appropriate:

- (a) the seriousness of the incident, including the severity of any injuries caused or the magnitude of any threats;
- (b) the role played by the student in the incident together with his or her understanding of the violent behaviour including whether that behaviour has changed over time;
- (c) whether appropriate supports were in place at the time of the incident by considering the facts of the individual incident and looking at what happened and (if practicable) why it happened;
- (d) the extent to which the physical and social environment of the place at which a violent incident occurred may have contributed to that incident;
- (e) whether the incident was isolated or whether there are any patterns of repetition, or an escalating gravity of such incidents;
- (f) the context in which the incident took place such as whether or not the student was provoked;
- (g) the time that has elapsed since the incident took place;
- (h) any indications the student's violent behaviour has changed, been managed or modified since the incident;
- (i) qualified medical opinions about the causes and function of the student's behaviour, how it might be managed in the learning environment and the impact of that behaviour on others; and
- (j) any significant change in the student's personal circumstances such as a change of living arrangements which may have an impact on the risk posed by the student's violent behaviour.

5.7 Who undertakes the written risk assessment and management plan?

The principal of the school selected by the parents of the student with a history of violent behaviour must ensure that a written risk assessment and management plan dealing with the risk posed to any person at that school is undertaken.

This task can be undertaken at the principal's request by a suitably qualified member of staff assisted by other staff of the school or educational authority but the principal remains responsible for the outcome of the written risk assessment and management plan.

5.8 What is the basis for the written risk assessment and management plan?

The plan is to be based on the information available to the principal and is to be undertaken in accordance with the Department's support tools relating to the management of student behaviour which have been developed under the Department's Occupational Health and Safety Risk Management Policy unless the school is an Education Training Unit in a Department of Human Services (Juvenile Justice) or Department of Justice and Attorney General (Corrective Services) facility. In those circumstances the existing policy/process in place for those units will continue to apply.

5.9 How long should the written risk assessment and management plan take to develop?

How long this process will take will depend on the individual case, so timeframes are indicative but it is generally expected that unless the assessment is being conducted as part of a planned transition months before the enrolment is to commence (such as when students progress from Year 6 to Year 7) it should take no more than two school weeks for a principal to complete the first draft of a written risk assessment and management plan including the assessment or any risk and development of proposed risk management strategies.

If it appears it will take longer than two school weeks to assess the risk and, if practicable, develop strategies to control or eliminate that risk the parent and student should, unless the guidelines say otherwise⁹ be advised of this in writing and given an indication of when the risk assessment will be completed unless the guidelines say otherwise¹⁰.

A sample letter advising a parent/student of a delay is found in Schedule C – Template Letter 6.

5.10 Why does the written risk assessment and management plan need to be in writing?

It is important that the written risk assessment and management plan be documented so that there is a record of the process that clearly outlines the outcomes of the process and that legal requirements have been met.

⁹ See sections 5.14 and 5.15

¹⁰ As above

5.11 What factors should be considered when developing a written risk assessment and management plan?

5.11.1 How is the school environment taken into consideration?

The physical environment of the school must be considered, including its location (is it near a highway), setting (is it set in bushland), fencing, buildings, playground, sports oval, furniture, classroom equipment and classroom arrangement.

Consideration must be given to the students who already attend the school, the staff who work there and the school community.

Other factors that must be considered include who is most at risk from the violent behaviour (for example the student himself or herself? other students? the teacher?).

5.11.2 What kinds of school activities need to be considered?

The written risk assessment and management plan must cover each activity that the student is involved in at school or in connection with the school. These activities might include:

- (a) the full range of classroom activities including experiments and other practical exercises;
- (b) the playground;
- (c) excursions including overnight excursions;
- (d) assemblies;
- (e) sport (both at the school and in other environments); and
- (f) work experience and work placement.

5.11.3 What kind of school management factors need to be considered?

School management factors need to be considered (for example school system policies, classes, playground arrangements, emergency management and response plans, level of supervision or school learning support officer support).

5.11.4 When should external experts become involved?

Schools should consider whether another person or agency could be asked to provide information or advice that would contribute to the written risk assessment and management plan. The contribution will relate to information and advice provided to assist in assessing and managing risks but agencies cannot direct that certain strategies be implemented by a school.

This could include relevant specialist staff of the educational authority, representatives of other agencies such as the Department of Human Services (Ageing, Disability and Home Care), the Health Department and the Department of Human Services (Community

Services), non-government service providers such as Centacare or the Marist Youth Services, representatives of groups identified by the parent or student or any clinical staff working with the student.

It could also include a person identified by the regional Aboriginal Education Consultative Group or by an Aboriginal Community Liaison Officer (in government schools) where the student is an Aboriginal.

It is a matter for those persons or agencies to determine the extent to which they should become involved. Where advice is sought from a person or agency that is not a relevant agency within the meaning of section 26C of the *Education Act 1990* parental and or student consent must be obtained.

5.12 What happens if it is considered necessary to obtain a diagnosis of a student as part of the written risk assessment and management plan process?

If it is necessary to obtain a diagnosis of any condition a student may have as part of this process the consent of the parents should be sought. If the parents do not consent to this taking place the assistance of the regional student welfare team should be sought by the principal of a government school. Non-government schools should discuss the matter with their schools authority.

5.13 Should school staff be consulted during the written risk assessment and management plan process?

Yes.

Care **must** be taken to ensure that staff are adequately consulted about risks to their health, safety and welfare at work in accordance with occupational health and safety legislation.

Consultation with staff which enables them to contribute to the making of decisions affecting their health and safety at work is a **mandatory** requirement of occupational health and safety legislation and will be undertaken consistent with those provisions.

The facts of each case will need to be considered in order to determine who is at risk and therefore who should be provided with information relevant to the risk and consulted about the strategies that are being developed to eliminate or control the risk.

However it must be recognised that while staff **must** be told what is necessary to ensure their safety; all staff will not necessarily need to know all available information. For example the school counsellor may need to know that a student has a history of sexual abuse in order to provide input into the assessment of risk and development of strategies to deal with that risk while the classroom teacher may only need to know how the student behaves and how to manage that behaviour.

5.14 Should the parents of a student with a history of violent behaviour be consulted about a written risk assessment and management plan?

Parents must be given the opportunity to contribute to the written risk assessment and management plan unless the guidelines say otherwise.

Risk assessment is the first stage of the written risk assessment and management process. It involves identifying risks and evaluating their likelihood, frequency and severity.

Risk management involves devising strategies to eliminate or control an identified risk. Under the guidelines this process of risk assessment and risk management is referred to as the written risk assessment and management plan.

Parents can contribute to this process by, for example providing information to the school that will help the school to assess the risk such as information about the frequency with which violent behaviour occurs. They can also contribute to the development of risk management strategies by, for example, suggesting strategies that work at home to control the violent behaviour.

This does not mean that parents have the role of actually assessing the risk or deciding what strategy is adopted by the school to eliminate or control the risk posed by a student with violent behaviour. They do not have a power of veto over the assessment or any strategy identified to control or eliminate the risk.

Parents are to be advised of their entitlement to an advocate, support person or the assistance of an interpreter in the consultation process for the written risk assessment and management.

Further information about the availability of an advocate, support person or the assistance of an accredited interpreter can be found in sections 2.14 to 2.16 of the guidelines.

Sample letters consulting with parents and students about the risk assessment process are at Schedule C – Template Letters 4 and 5.

5.14.1 Are there any circumstances in which a parent might be excluded from the written risk assessment and management plan process or have their involvement limited in some way?

Parents must be consulted during the written risk assessment and management plan process unless:

- (a) it is considered on reasonable grounds that involving the parent in the written risk assessment and management plan process would not be in the best interests of the student. For example one or more parents will not be involved in the written risk assessment and management plan process or will have their involvement limited:
 - i. where the student is not living at home for his or her protection and the parent is unaware of the student's location. *In such circumstances the parent will not be involved in the process;*
 - ii. where a health care professional (such as a school counsellor) has indicated that there are reasonable grounds to believe it may be harmful to the student's health or safety for certain material (e.g. that held on a counselling

file) to be released to the parent and that the potential for harm to the student of the information being disclosed outweighs the benefits of the parents being informed. *In such circumstances the parent will not be provided with the information;*

- iii. the student lives in out of home care and is legally under the parental responsibility of the Minister for Community Services or is under the care of the Director-General of the Department of Human Services (Community Services) and that Department has advised that the information should not be provided to a person who would normally have parental responsibility for the student. *In such circumstances the parent will not be provided with the information;*
 - iv. the parent is the subject of a court order that limits either directly or indirectly the extent to which the parent participates in the student's education. *In such circumstances the parent will not be involved in the process or they will have limited involvement consistent with the order of the court;*
 - v. the student is an adult and has indicated that he or she does not want their parents involved in the process. The decision-maker must be reasonably satisfied that the student understands the implications of a decision to exclude the parent(s). *In such circumstances the parents will be excluded from the process; or*
 - vi. the student is not an adult but has objected to the parent being involved in any part of the process and it is not considered to be in the student's best interests for his or her parents to be involved. *In such circumstances provided the decision-maker is of the view that the student has sufficient understanding of the issue to make the decision to exclude the parent, the parent will not be involved in the written risk assessment and management plan process.*
- (b) It is considered on reasonable grounds that it would be contrary to the public interest to consult with the parent about the written risk assessment and management plan. For example a parent will not be consulted:
- i. where police have advised that disclosure of the information could compromise an on-going investigation or operation or the ability to obtain a conviction. *In such circumstances the parent will not be provided with the portion of the information that could have that effect;*
 - ii. where police have advised that disclosure of the information may pose an unacceptable risk to the safety, welfare or wellbeing of a person as a foreseeable consequence. *In such circumstances the parent will not be provided with the portion of the information that could have that effect;*
 - iii. where police have advised that disclosure of the information may reveal confidential police methodologies or practices. *In such circumstances the parent will not be provided with the portion of the information that could have that effect;*

- iv. if following a risk assessment it has been concluded that disclosure of the information could reasonably be expected to pose a risk of violence to staff of a school or a relevant agency, other students or any other person. There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility that it will occur. Staff who may be placed at risk by the person's participation in the process must be consulted while that risk is being assessed;

In such circumstances the strategies set out in section 5.14.2 of the guidelines must be attempted. If these strategies are not appropriate to manage the risk the parent will not be involved in the process; or

- v. to preserve the confidentiality of information that has been provided by staff or students about the student, where it is considered necessary to promote and maintain a safe and disciplined learning environment. *For example one student may make a report to school staff that another student has a weapon in her locker or a staff member may report seeing a student put a weapon in the student's bag. If the weapon is found in the student's locker or bag a written risk assessment and management plan would be undertaken. The name of the student or staff member who provided the information may be withheld if there were objectively reasonable grounds to believe that disclosure of that person's name would place him or her at risk of harm. In such circumstances the parent will not be provided with the relevant parts of the information concerned.*

5.14.2 What attempts should be made to address concerns about a parent's involvement in the written risk assessment and management plan process?

Attempts must also be made to address any concern prior to making a decision to exclude a parent from the development of the written risk assessment and management plan. The risk must be current and substantiated (for example by a letter issued to the parent under the *Inclosed Lands Protection Act 1901*). Staff who may be placed at risk by the parent's physical participation in the process must be consulted when the risk is assessed.

This may result in a modification being made to that process.

For instance where the parent poses a risk of harm to staff he or she might be provided with the relevant information, given a copy of the draft written risk assessment and management plan and given an opportunity to provide written feedback on the plan and participate in telephone or video conferences (where the latter facility is available) but would not participate in any face to face meetings.

5.15 Should the student be consulted about the written risk assessment and management plan?

Students must be consulted during the written risk assessment and management plan process unless the guidelines say otherwise. Students are entitled to have their views taken into account. Attempts must be made to provide information to the student in a format or at a level that is properly understood by the student.

Risk assessment is the first stage of the written risk assessment and management plan process. It involves identifying risks and evaluating their likelihood, frequency and severity.

Risk management involves devising strategies to eliminate or control an identified risk. Under the guidelines this process of risk assessment and risk management is referred to as the written risk assessment and management plan.

Students may be able to contribute to the risk assessment by, for example, providing information to the school that will help the school to assess the risk such as information about the reason the violent behaviour occurs. They can also contribute to the development of risk management strategies by, for example, suggesting strategies that calm them down.

This does not mean that students have the role of actually assessing the risk or deciding what strategy is adopted by the school to manage risk posed by a student with violent behaviour. They do not have a power of veto over the assessment or any strategy identified to control or eliminate the risk.

Students are to be advised of their entitlement to an advocate, support person or the assistance of an accredited interpreter in the consultation process for the written risk assessment and management plan.

Further information about the availability of an advocate or support person or the assistance of an accredited interpreter can be found in sections 2.14-2.15 and 2.17 of the guidelines.

The age of a student will be a relevant fact to consider but not necessarily determinative of an individual student's capacity to make a decision.

Decisions about the extent to which students are involved depend on the maturity, age and needs of the individual student. This decision must be made on a case by case basis. A student's participation in this process should only be doubted if there is an objective factual basis for such a doubt. Decision-makers must not assume that a student should not participate in the process because they have a particular disability or are of a particular age.

It is acknowledged that a student's participation in the process may change over time. The ability to make decisions may be affected by factors that are pre-existing or acquired, temporary, episodic or chronic. Accordingly continuing consideration should be given to involving the student throughout the process.

Where a student has a disability, the *Disability Standards for Education 2005* requires that the student (or an associate) be consulted about whether adjustments must be made to enable their enrolment and participation and whether an adjustment is reasonable.

Students must be consulted when a written risk assessment and management plan is developed about the risk their violent behaviour poses to the health and safety of people at schools unless the guidelines say otherwise.

Students must also be consulted if it proves necessary to develop a strategy to eliminate or minimise a risk of violence they pose unless the guidelines say otherwise.

5.15.1 Are there any circumstances in which a student might be excluded from the written risk assessment and management plan process or have their involvement limited in some way?

Students will be provided with all information that is provided by a relevant agency and be otherwise involved in the process under the guidelines unless:

- (a) by virtue of their age, maturity or needs it is concluded on a reasonable basis that they are unable to meaningfully contribute to the process. *In such circumstances they will not be involved in the process;*
- (b) where a health care professional has indicated that there are reasonable grounds to believe it may be harmful to the student's health or safety for the material to be released to the student. An example of this may be a report of a condition that the student has not been told that they have. *In such circumstances the student will not be provided with the information in question;*
- (c) where police have advised that disclosure of the information could compromise an on-going investigation or operation or the ability to obtain a conviction. *In such circumstances the student will not be provided with the portion of the information that could have that effect;*
- (d) where police have advised that disclosure of the information may pose an unacceptable risk to the safety, welfare or wellbeing of a person as a foreseeable consequence. *In such circumstances the student will not be provided with the portion of the information that could have that effect;*
- (e) where police have advised that disclosure of the information may reveal confidential police methodologies or practices. *In such circumstances the student will not be provided with the portion of the information that could have that effect;*
- (f) it is considered on reasonable grounds that to provide the information would be contrary to the safety, welfare and/or wellbeing of the student (whether or not a child), any children or a class of children, any school staff member or any other person. *In such circumstances the student will not be provided with the portion of the information that could have that effect;* or
- (g) following a risk assessment it has been concluded that the student's physical participation in the process could reasonably be expected to pose a risk of violence to school or agency staff, other students or any other person. There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility that it will occur. Staff who may be placed at risk by the person's participation in the process must be consulted while that risk is being assessed. *In such circumstances the strategies set out in section 5.15.2 of the guidelines must be attempted. If these strategies are not appropriate the student will not be involved in the process.*

5.15.2 What attempts should be made to address concerns about a student's involvement in the development of the written risk assessment and management plan process?

Attempts must also be made to address any perceived risk prior to making a decision to exclude a student from the process. This may result in a modification being made to the written risk assessment and management plan consultation process.

For instance where the student poses a risk to staff if he or she attends a meeting with staff he or she might be provided with the relevant information, given a copy of the draft written risk assessment and management plan and given an opportunity to provide written feedback on the plan and participate in telephone conferences but would not participate in any face to face meetings.

5.16 Does the requirement to consult with students mean that they must be consulted under the guidelines before action is taken with respect to the student's violent behaviour under the schools welfare or discipline policy?

No. Where such action is appropriate the relevant discipline and welfare policy will be followed as a separate process to action under the guidelines.

5.17 What approach should be taken to the written risk assessment and management plan in a school?

A systemic approach to risk management is the key to ensuring workplace safety. It includes ongoing hazard identification, implementation of controls and monitoring of their effectiveness and procedures for applying risk management to all safety related decisions.

The Department of Education and Training has developed a web-based documentation management system for OHS resources to provide schools with the capacity to systematically address hazards in their workplace.

This includes a risk management process for *Student Behaviour*, including Management Guidelines and key steps. The Student Behaviour Management Intervention (SBMI) model for Student Behaviour is designed to support students and staff to maximise student learning and ensure a safe working and learning environment. Through the process, strategies are developed to eliminate violent behaviour or its risk in the context of student needs and the environment.

The core business of schools is providing quality learning for all students in a safe environment. This requires balancing as far as practicable the learning needs of other students with the needs of the student whose violent behaviour is the subject of the written risk assessment and management plan. The majority of violent behaviours encountered can be managed sufficiently by implementation of the school's student welfare and discipline policies.

However, when violent behaviour is identified as a potential risk to the health and safety of the student, other students, staff or others on the school site, further steps are required to assess the risk and implement strategies to eliminate or control the behaviour safely.

5.17.1 What is the process for assessing and managing risks in schools?

A systematic process for assessing and eliminating or controlling risks associated with student behaviour needs to be followed. This process, which may require input from appropriate regional specialist staff, requires the following steps to be taken. (Some of these steps may need to be taken more than once and they do not necessarily have to be taken in this order):

- (a) **collection of** all relevant information related to the student’s violent behaviour. For new enrolments, refer to information from previous settings and relevant agencies where applicable;
- (b) **consultation** with all stakeholders such as parents, students (unless the guidelines say otherwise) and staff at each stage of the process and concerning the process as a whole and the identification of learning adjustments and accommodations. (If the student has a disability, he or she (or an associate) must be consulted about any adjustment proposed). For further information about consultation with staff, parents and students please refer to sections 5.13, 5.14 and 5.15 of the guidelines;
- (c) **identifying behaviour** that may pose a risk of harm to other students, staff, the student himself or herself or property. This risk can be physical or psychological;
- (d) **analysing the context and function of the behaviour.** Examine where, when, why and how events, situations or objects trigger the behaviour; and
- (e) **assessing risks** using the risk assessment matrix to determine how serious each identified behaviour might be and to prioritise actions to manage the behaviours.

5.17.2 How is the severity of the harm that may be caused assessed?

It is necessary to assess the frequency and duration of the behaviour and identify the severity of the harm that may occur.

The Risk Assessment and Rating table below provides some guidance about how to assess risk. Government schools can obtain further information from the Department’s Occupational Health and Safety support tools.

Likelihood or frequency of behaviour occurring	Duration
<ul style="list-style-type: none"> • Seldom • Occasionally • Weekly • Daily • ** per day • Other: 	<ul style="list-style-type: none"> • 0-1 min • 1.5 min • 5-10 min • Up to 1 hour • Over 1 hour • Constant • Other:

<p>Severity and extent of harm that may occur</p> <ul style="list-style-type: none"> • Death or permanent disability • Long term illness or serious injury • Medical attention and time off • First aid needed • Time to recover • Other 	<p>Prioritise</p> <p>High risk – deal with immediately</p> <p>Moderate risk – deal with as soon as possible</p> <p>Low risk – deal with when able to do so</p>
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5.17.3 What controls can be used to eliminate or control risks?

In eliminating or controlling risks develop risk management strategies using the hierarchy of controls such as:

5.17.3.1 Student focused strategies including:

- (a) curriculum content; and
- (b) provision of positive behaviour support.

5.17.3.2 School environmental strategies including:

- (a) work premises;
- (b) work practices;
- (c) systems of work (organisational strategies); and
- (d) professional training needs of staff.

5.17.4 What other steps need to be taken?

- (a) **documenting the risk management plan** using the risk management plan proforma for student behaviour, guidance and sample plans;
- (b) **monitoring and reviewing** the effectiveness of the implemented strategies;
- (c) **communicating all relevant information to staff** to the extent that is necessary to protect the health and safety of others at the school taking into account the student's right to confidentiality and the legal requirement to inform and consult with staff who may be at risk;
- (d) **communicating relevant information to parents and the student** unless the guidelines say otherwise¹¹;
- (e) **communicating some information to other students** where it is appropriate and necessary in order to ensure safety;

¹¹ See sections 5.14 and 5.15

- (f) **investigating** all incidents or near misses and modifying the written risk assessment and management plan as necessary; and
- (g) **in government schools referring the issue to regional student services staff** if the risk cannot be eliminated or controlled within the expertise or capacity of the school. For example involvement may be sought from:
- i. the Disability Programs Consultant or equivalent;
 - ii. the Student Welfare Consultant or equivalent; or
 - iii. other person(s) nominated by the regions.

These staff may facilitate the review and enhancement of the written risk assessment and management plan identifying the support required including other agency or medical referrals, positive behaviour supports and training needs of staff through a jointly facilitated and documented action plan; and

- (h) **evaluating** the effectiveness of a revised plan in consultation with staff, parents and students.

5.17.5 When might an Educational Setting and Support Assessment be undertaken?

Educational Setting and Support Assessments are conducted in government schools in situations identified by principals in consultation with regional staff as requiring further intervention beyond the expertise or capacity of that government school. In such circumstances a request for an Educational Setting and Support Assessment is referred to the school education director for referral to the relevant student services coordinator.

A team of trained regional student support staff conduct an Educational Setting and Support Assessment (“educational assessment”) in consultation with the school.

An action plan is developed and a copy is provided to the principal’s supervisor, principal, classroom teacher and other relevant staff. Affected staff should be consulted about this action plan before it is implemented and consideration must be given to whether or not it is necessary to consult the parent and/or student.

The educational assessment intervention is implemented, monitored and reviewed in conjunction with the principal and the principal’s direct supervisor.

A resolution process for the educational assessment must be followed if agreement on the educational assessment outcomes is not reached.

5.18 Should a parent or student be notified of the outcome of a written risk assessment and management plan?

The parent and student are to be notified in writing of the outcome of a written risk assessment and management plan unless the guidelines say otherwise¹².

A sample letter notifying a parent of the outcome of a written risk assessment and management plan process is found in Schedule C – Template Letters 7, 8 and 9.

5.19 When should the written risk assessment and management plan be reviewed?

The outcomes of a written risk assessment and management plan conducted under the guidelines are to be reviewed on a regular basis so that account may be taken of changes in behaviour (both positive and otherwise). It must also be reviewed:

- (a) if further relevant information is obtained; or
- (b) if a relevant incident occurs; or
- (c) if any significant change occurs to the student's learning environment.; or
- (d) it is apparent that the risk management plan is not controlling the risk.

5.20 Is it necessary to consult with parents, students and staff during the review process?

Yes. Consultation with staff whose health and safety may be affected is mandatory.

Consultation with parents and students should be undertaken unless the guidelines say otherwise¹³.

5.21 Does a parent or student have an entitlement to a support person, accredited interpreter or advocate?

Parents and students have an entitlement to a support person. Entitlement to an advocate or accredited interpreter will depend on the circumstances. Further information about support persons, accredited interpreters and advocates can be found in sections 2.14-2.17 of the guidelines.

¹² See sections 5.14 and 5.15

¹³ See sections 5.14 and 5.15

6. ISSUING AN ENROLMENT DIRECTION

A. Preliminary issues

6.1 Which schools does the enrolment direction process apply to?

The enrolment direction process only applies to students seeking enrolment at or already attending a government school. A student **cannot** be directed to attend a non-government school under this process.

6.2 Why doesn't the enrolment direction process apply to non-government schools?

The *Education Act 1990* gives children an entitlement to attend the local government school they are eligible to attend. There is no corresponding right to attend a non-government school under the *Education Act 1990*.

The directions power was needed to make it clear that this entitlement to enrol in a local government school does not mean that a student who poses an unmanageable risk to their local government school because of their violent behaviour can nevertheless attend that school.

6.3 What is an enrolment direction?

The Director-General may direct that a student is only to be enrolled in the government school specified in the direction (“an enrolment direction”).

This means that a student who is already attending the government school selected by their parents will have to stop attending that school and enrol at the government school to which he or she has been directed if they want to remain in the government school system.

If they are not enrolled at a school the enrolment direction will mean that they can only enrol in the government school identified in the direction if they want to enrol in the government school system.

A flow-chart of the enrolment direction process is in Schedule C of the guidelines.

6.4 When can an enrolment direction be issued?

An enrolment direction can be issued before or after the student has started attending a government school where the Director-General believes, on reasonable grounds that the existing enrolment or that proposed by the parents, would constitute an unacceptable risk because of the student's violent behaviour to the health or safety of any person at that school.

It is expected that parents will usually accept a recommendation about the student's enrolment from the Department meaning that making an enrolment direction will be a last resort. Existing mechanisms for arranging the enrolment of students at particular government schools (such as the process followed when a student is expelled) will continue to be utilised where appropriate.

No enrolment direction will be issued in circumstances where the student has already enrolled voluntarily in the new school in accordance with a recommendation made under the guidelines.

6.5 Is it necessary to undertake a written risk assessment and management plan prior to issuing an enrolment direction?

Yes. An enrolment direction can only be issued after the final decision-maker has concluded, after considering the written risk assessment and management plan, that the risks posed by the student's violent behaviour cannot be adequately controlled at the school selected by the parents.

Parents and students should be consulted during the written risk assessment and management plan process unless the guidelines say otherwise¹⁴.

It is mandatory to consult staff whose health and safety may be affected by the enrolment during the written risk assessment and management plan process.

6.6 Is it necessary to ensure that the new school can safely accommodate the risk posed by the student's violent behaviour prior to issuing an enrolment direction?

Yes. The duty to assess any risk posed by a student with a violent behaviour at a school exists at all government schools including schools for specific purposes (including behaviour schools).

No enrolment of a student with violent behaviour should proceed at any government school unless a written risk assessment and management plan indicates that the ongoing risk posed by the history of violent behaviour can be safely managed at the new school.

Parents and students must be consulted about this second (and any subsequent) written risk assessment and management plan unless the guidelines say otherwise. See sections 6.17- 6.24 and 6.25-6.28 of the guidelines for further information about the role of parents and students in this process.

6.7 Can the Director-General delegate his or her power to issue an enrolment direction?

The Director-General may delegate the power to make an enrolment direction. It is anticipated that this power will be delegated to Deputy Directors-General and to the General Manager with state-wide responsibility for student services or equity programs.¹⁵

6.8 Is the student, parent or other adult involved in the enrolment direction process entitled to the services of an accredited interpreter?

The potential entitlement to an accredited interpreter is dealt with in section 2.15 of the guidelines.

Schools are to advise parents and students of the option of asking for an accredited interpreter.

¹⁴ See sections 6.21-24 and 6.27-28

¹⁵ Or equivalent levels within the Department.

An example of such advice can be found in Schedule C -Template Letter 4.

6.9 What is the role of a support person during the enrolment direction process?

Information about the role of a support person is found in section 2.14 of the guidelines.

6.10 Can parents have an advocate during the enrolment direction process?

Information about the potential entitlement of a parent or other adult to an advocate is found in section 2.16 of the guidelines.

6.11 Can students have an advocate during the enrolment direction process?

Information about the potential entitlement of a student to an advocate is found in section 2.17 of the guidelines.

6.12 How should timeframes under the guidelines be interpreted?

Information about timeframes can be found in section 2.11 of the guidelines.

6.13 How is the date that a student, parent or other adult received notice under the guidelines determined?

Information about service of notices and other documentation can be found in section 2.12 of the guidelines.

6.14 Who provides school work to the student while the enrolment direction process is underway?

If the student is currently enrolled at a school it is the responsibility of the principal of that school to arrange for school work to be provided to the student similar to the arrangements that are put into place when students are placed on a long suspension.

Once the enrolment direction is issued it becomes the responsibility of the new school to provide school work to the student unless the two schools otherwise agree.

B. The Direction Process

6.15 What kinds of government schools can a student be directed to?

An enrolment direction can be issued with respect to any facility conducted by the State for the purposes of educating students from Kindergarten to Year 12.

A student can be directed to enrol under the guidelines in:

- (a) a government school established by the Minister under section 27 of *the Education Act 1990* of the type listed in section 29 of the *Education Act 1990*;
- (b) a mainstream government school with placement in a support class;
- (c) a government school for specific purposes including behaviour schools;

- (d) a tutorial centre established by the NSW government,
- (e) a suspension centre established by the NSW government; or
- (f) a distance education centre established by the NSW government.

A reference to a school in chapters 6 and 7 of the guidelines includes all of these facilities.

6.16 What roles do various departmental staff play during the enrolment direction process?

The following steps must be carried out before an enrolment direction can be issued:

6.16.1 What role does the principal play in the enrolment direction process?

- (a) A written risk assessment and management plan must be prepared in accordance with the steps set out in Chapter 5 of the guidelines. This assessment is to be based on the information available to the principal and is to be undertaken in accordance with the Department's Occupational Health and Safety policies relating to the management of student behaviour and Legal Issues Bulletin no 40 or its successor documents.
- (b) Consideration must be given to how best to communicate with the parents, students and other adult about the enrolment direction process and where necessary a communication plan should be prepared.
- (c) Staff must be consulted during the written risk assessment and management plan process.
- (d) All reasonable measures that could be taken at the school selected by the parents to address the risk should be considered during the written risk assessment and management plan process.
- (e) Students and parents should be consulted during the written risk assessment and management plan process unless the guidelines say otherwise¹⁶. Where possible these processes should be discussed with the parent, student or other adult before any letters are sent. Sample letters consulting parents about this process are found in Schedule C – Template Letters 4 and 5.
- (f) The principal of the school selected by the parents must consider seeking:
 - i. the region's help, where appropriate, to support the student's enrolment at the school selected by the parents. Such help may include the provision of expert advice and funding; and

¹⁶ See sections 6.21-6.24 and 6.27-6.28

- ii. help from State Office, where appropriate, to support the student's enrolment at the school selected by the parents. Such help may include the provision of expert advice and funding.
- (g) To proceed to the next step the principal of the school selected by the parents must have concluded, based on the written risk assessment and management plan, that the student's violent behaviour poses an unacceptable risk to health and safety of persons at that school including the student himself or herself, staff, other students or visitors to the site. Once that conclusion has been reached the principal must notify his or her line manager (currently the school education director) accordingly.

6.16.2 What role does the school education director¹⁷ play in the enrolment direction process?

- (a) If the principal has decided to proceed to the next step, the school education director is to be promptly notified by the principal of the outcome of the written risk assessment and management plan. If the student is not yet enrolled in the school selected by the parents the principal must notify the school education director that consideration is being given to declining the application to enrol.

The school education director may arrange for an Educational Setting and Support Assessment of the student's needs to be undertaken and must consider whether or not to endorse the outcome of the written risk assessment and management plan (and any decision to decline the enrolment).

- (b) The parent and the student must be advised of the impact of the written risk assessment and management plan process by the principal on the student's enrolment at the government school. Where practicable this should be discussed with them prior to any letters being sent. The content of the letter will vary depending on whether or not the student is already enrolled in a government school. A sample letter advising the parents of the outcome of the risk assessment in each situation is in Schedule C – Template Letters 7, 8 and 9.
- (c) The school education director will then write to the parent and student about the enrolment direction process unless the guidelines say otherwise¹⁸. A sample letter from the school education director to the parent is in Schedule C – Template Letter 10.
- (d) If the parent is not involved in the process it is **mandatory** for another adult to be given access to the information that may give rise to the proposed direction, written notice of the direction and an opportunity to make representations (whether oral or written or both oral and written) in relation to the information and the proposed direction.
- (e) The school education director may, where practicable, discuss alternate enrolment options with the parents and student (making it clear that any confirmation of any enrolment options will be subject to a written risk

¹⁷ Or successor position

¹⁸ See sections 6.21-6.24 and 6.27-6.28

assessment and management plan at the new school and, where relevant, consideration by a placement panel) unless the guidelines say otherwise. Contact with the parents should generally be made within **5** working days of the completion of the risk assessment.

- (f) If these discussions prove unsuccessful, or the parents cannot be contacted within this time period, the school education director may contact his or her line manager (currently the regional director) requesting that consideration be given to the making of an enrolment direction. Relevant material in support of this request should be forwarded to the regional director by the school education director at this time.

A letter from the school education director to parents and students is at Schedule C, Template Letter 10.

6.16.3 What role does the regional director¹⁹ play in the enrolment direction process?

- (a) The regional director for the region in which the school selected by the parents is located must review the documents submitted by the school education director and decide whether or not to proceed to the next step in the process. To proceed to the next step the regional director must be satisfied the risk posed by the student's violent behaviour cannot be sufficiently eliminated or controlled at the school selected by the parents.
- (b) If the regional director is not satisfied that the matter should proceed to the next step of the process he or she may:
- i. seek further information; or
 - ii. return the matter to the school education director for further consideration; or
 - iii. take any other action he or she considers necessary.
- (c) If proceeding to the next step of the process the regional director must arrange for a government school to be identified at which the risk posed by the student's history of violent behaviour can be adequately managed. This may involve consultation with another regional director or State Office or the implementation of a regional placement process.
- (d) A written risk assessment and management plan must be undertaken of the risk posed by the student's violent behaviour at any potential new school in accordance with the steps set out in Chapter 5 of the guidelines. **School staff must be consulted during this process.** Students and parents should also be consulted about the written risk assessment and management plan unless the guidelines say otherwise²⁰. A sample letter inviting parents or students to contribute to this written risk assessment and management plan process is at Schedule C –Template Letter 11.

¹⁹ Or successor position

²⁰ See sections 5.14 and 5.15

- (e) Sometimes more than one government school may be able to enrol the student. In such circumstances options for enrolment at all of those schools can be discussed with the parent and the student but it must be made clear enrolment will not proceed at any school unless a written risk assessment and management plan has concluded the risk posed by the student's violent behaviour can be sufficiently addressed at that school.
- (f) The regional director must confirm that any potential new school is a practical alternative to the school selected by the parents. Factors to be considered when determining whether a government school is a practical alternative include available places at that school, whether the school is within a reasonable travelling distance from the student's residence and, where the student has a recognised disability, whether school student special transport services is required, and if so, whether it is likely to be approved.

These issues should be discussed with the parent (or the other adult) and student and the assistance of State Office may be sought, if necessary, in providing reasonable accommodation to any student with disabilities.

- (g) The regional director must recommend to the parents (or other adult) and the student in writing that the student be enrolled at the new school(s). Where practicable this should be discussed with the parents, (or other adult) and student prior to the letter being sent. In some circumstances a potential government school may be in another region. Consultation with that region, and if necessary State Office, is to take place before any recommendation is made to the parents. A sample letter containing the recommendation of the regional director to the parents or students is at Schedule C – Template letter 12.
- (h) This recommendation will be taken to have been declined or disregarded by the parents if no response, either oral or in writing has been provided to the regional director about his or her recommendation within five working days of it being given to the parent and student. **This is a strict timeframe.** Please refer to section 2.12 of the guidelines for information about when notice can be deemed to have been given to a parent or student.
- (i) The regional director must consider any reasons provided by the parent, other adult or student for declining the recommendation. If the regional director is still of the view that:
 - i. the enrolment of the student at the school selected by the parents would constitute an unacceptable risk (because of the student's history of violent behaviour) to the health or safety of any person (including the student); and
 - ii. enrolment at the new school is still appropriate;

the regional director may refer the matter to the final decision-maker and recommend that he or she make an enrolment direction. A sample letter making this recommendation to the regional director is at Schedule C – Template letter 14.

- (j) When referring the matter to the final decision-maker the regional director must:
- i. identify the school to which it is proposed the student be directed. If more than one government school has been discussed as an option for the student's enrolment then the regional director must identify the most suitable option for the student's enrolment. Information about that government school including what distinguishes it from the school selected by the parents, any special programs that it offers and the school's welfare and discipline policies should also be provided to the final decision-maker;
 - ii. provide the grounds and reasons for the proposed direction;
 - iii. specify the period it is proposed the enrolment direction will be in force together with any proposed review periods;
 - iv. provide details of the recommendation made to the parents or student and of any reasons the parents or students gave for disregarding or declining the recommendation; and
 - v. provide any other documentation that the regional director considers relevant to the issue of an enrolment direction.

Unless the guidelines say otherwise²¹ parents and students are to be advised that this recommendation has been made. A letter from the Regional Director to the parents or student advising them that the final decision-maker has been requested to make an enrolment direction is at Schedule C – Template letter 13.

C Role of Parents

A reference in this section to a parent includes a reference to another adult where they have a role to play in the enrolment direction process.

6.17 What role do parents play when consideration is being given to an enrolment direction?

The final decision-maker must give at least one parent access to the information that gave rise to a proposed enrolment direction, written notice of the grounds for the proposed direction and an opportunity to make written and/or oral representations in relation to the information and the proposed direction unless the guidelines say otherwise²².

If no parent is involved in the process or a parent's involvement is limited by the guidelines, another adult **must** be given the access, notice and opportunity to make representations that parents would otherwise have²³.

²¹ See sections 6.21-6.24 and 6.27-28

²² See sections 6.21-6.24

²³ If the student is over the age of 18 he or she can be the other adult

6.18 What form of notice must be given to a parent about a proposed enrolment direction?

Unless the guidelines say otherwise²⁴ the final decision-maker is to write to the parent(s) or another adult (in the language in which the parent or another adult usually communicates with the school) about a proposed enrolment direction within 5 working days of the proposal being received from the Regional Director.

The letter from the final decision-maker shall include:

- (a) advice that it is proposed that the student be directed to enrol at a certain government school together with the grounds for issuing the proposed direction and an explanation of what the direction means for the student in practical terms;
- (b) information about the new school including what distinguishes it from the school selected by the parents and any special programs that it offers and the school's welfare and discipline policies;
- (c) a copy of all the information that has been provided to the final decision-maker in support of the proposed direction (unless the guidelines say otherwise)²⁵;
- (d) where appropriate, advice that the parents are entitled to request the assistance of an accredited interpreter if they need one;
- (e) advice about how long the proposed enrolment direction would last and of any proposed review periods;
- (f) advice that the parents can write to the final decision-maker giving their views about both the proposed enrolment direction and the information being considered. An address for any written material is to be provided in this letter and the parent is to be advised that they have **no less than 10 working days** from the date of the final decision-maker's letter to respond to the recommended enrolment direction; and
- (g) advice that parents may talk to the final decision-maker (unless the guidelines say otherwise). Parents should be advised that they may be entitled to an advocate and may have a support person at such a meeting and that they must provide the name of that person to the final decision-maker before the meeting takes place.

The final decision-maker is to take any information provided by the parent into account when deciding whether to make an enrolment direction.

A sample letter from the final decision-maker to the parent or student inviting submissions from them is at Schedule C – Template letter 15.

²⁴ See for example section 6.21

²⁵ If the parents are given limited information then the other adult is to be provided the information in full

6.19 What happens if only one parent can be contacted?

Best endeavours are to be made to consult with both parents unless the guidelines say otherwise²⁶. If it is not possible to contact both parents within 3 working days consultation will proceed with the parent who has been contacted.

6.20 What happens if no parents can be contacted?

If no parent can be contacted another adult is to be given access to the information on which the proposed enrolment direction is based, written notice of the grounds for that direction and the opportunity to make representations in relation to the information and the proposed direction.

If the student is aged 18 or over he or she can be that adult.

6.21 When won't parents be involved in the enrolment direction process?

A parent will be excluded from the process for the same grounds and reasons as are set out in section 5.14 of the guidelines.

6.22 What happens if a parent is only given certain information or their involvement in the process is modified in some way?

If no parent is involved in the process, or a parent's involvement is limited in some way, a least one other adult must be given full access to the information that gave rise to the proposed direction, given written notice of the grounds for the proposed direction and given an opportunity to make a response.

6.22.1 What kind of information should be used to support the making of an enrolment direction?

The information that is used to support the making of an enrolment direction should be accurate and relevant.

6.22.2 How should information that would disclose the identity of a person who made reports to the Department of Human Services (Community Services) be treated?

Information that would disclose the identity of a person who had made a report to the Department of Human Services (Community Services) under Chapter 3, Part 2 of the *Children and Young Persons (Care and Protection) Act 1998* will not be used to support an enrolment direction.

Documents that contain this kind of information can be edited to remove the information before being provided to the final decision-maker.

²⁶ See sections 6.21-6.24

6.22.3 What special provision is made for information that has been provided by Police and Emergency Services NSW (NSW Police Force)?

Where police have advised that:

- (a) disclosure of information may compromise an ongoing police investigation or operation or the ability to obtain a conviction or reveal confidential police methodologies or practices; or
- (b) provision of information may pose an unacceptable risk to the safety, welfare or wellbeing of any person as a foreseeable consequence;

the police must be consulted by schools before using that information as the basis of an enrolment direction.

Where the police advise that no person can be provided that information it must not be used as a basis for an enrolment direction.

6.22.4 Can edited documentation be provided to parents or another adult?

Only if that edited material has been used as the basis of the enrolment direction. For example:

- (a) a medical report could contain information about the symptoms a staff member is experiencing as a consequence of an injury attributable to a violent incident. *In such circumstances the final decision-maker could be advised that a staff member has been injured but should not be provided with confidential medical information about the staff member unless the staff member has consented to the information being provided to the final decision-maker in the knowledge that it will also be disclosed to the parent or other adult, or*
- (b) a qualified health care professional, including a school counsellor, may indicate that in his or her professional opinion it would be harmful to the student's health or safety for certain information (for example disclosures made by the student about their family to a school counsellor and retained on the counselling file) to be released to the parents. *In such circumstances advice should be obtained from the school counsellor about whether the information can be provided to the other adult. If advice is received that the information should not be provided to the parent or other adult it must not be used as grounds for the enrolment direction. In making a decision whether to rely on the information it is necessary to be reasonably satisfied that the benefit using the material outweighs any detriment to the student of the information being disclosed; or*
- (c) information may identify other students or their parents in a way that could involve significant stress or harm for the other student or their parents (for example where another student has provided the principal with confidential information about the involvement of the student in a violent incident at school). *In such circumstances the documents provided to the final decision-maker should have names and other identifying details of informants deleted.*

6.22.5 How might concerns about the parent's physical participation in the process dealt with?

Concerns may be raised about the parent's physical participation in the enrolment directions process when that person's participation poses a risk to the health or safety of any person involved in the process.

The risk must be current and substantiated (for example by a letter issued to the parent under the *Inclosed Lands Protection Act 1901*). Staff who may be placed at risk by the parent's physical participation in the process must be consulted when the risk is assessed.

In such circumstances the parent might be given the relevant information and an opportunity to provide a written response to the proposed direction and the information but not participate in a face to face meeting with staff of the Department including the final decision-maker. Instead arrangements could be made for the parent to speak to the final decision-maker over the telephone or use could be made of video conferencing facilities (where available) if they wish to make oral representations to the final decision-maker.

If accommodations cannot be made to the way in which a parent physically participates in the enrolment direction process, arrangements must be made for another adult to be involved in the process.

6.23 What happens if a student requests that a parent not be involved in the enrolment direction process?

Parents will usually be involved in the enrolment directions process. However students may request that their parents not be involved in the process. This does not give a student an unqualified right to exclude their parents.

It is necessary for the decision-maker to be reasonably satisfied the student has adequate understanding and maturity to request the exclusion of the parent from the process and that it is in the student's best interests for the parent not to be involved.

If the student is under the age of 18 and their parents are excluded from the process at the student's request another adult must be involved in the enrolment direction process.

6.24 What happens if parents are not involved in the enrolment direction process?

Section 261(3) of the *Education Act 1990* provides that at least one adult must be given access to the information that gave rise to the proposed direction, written notice of the grounds for the proposed direction and an opportunity to make representations (whether oral or written or both oral and written) in relation to both the information and the proposed direction. If the student is 18 or over he or she can be that adult.

The student is to be given the opportunity to nominate the other adult. Where a student's capacity to make that nomination changes over time (for example due to mental illness) the student should be allowed to give "future directives" about decisions to be made

about them²⁷ (for example a future directive giving permission for a trusted adult to speak on their behalf).

The role of the other adult is to act in the student's best interest. He or she must consent to undertake that role and must not be a member of staff of the Department, including the school, unless related to the student.

Where the student has not nominated another adult the student must be consulted about the choice of the other adult and best endeavours must be directed towards obtaining the student's consent (or that of another person who is lawfully able to give consent on the student's behalf) to that person playing the role. In circumstances where consent is, in the view of a decision-maker, unreasonably withheld the other adult will nevertheless be requested to assist the student.

If the student does not nominate the other adult, consultation should take place with an appropriately qualified person in another agency or the community to identify a suitable person.

For example, if the student is Aboriginal consultation may take place with an appropriate elder in the Aboriginal community provided that that elder does not consider they have a conflict of interest in providing that advice. Decision-makers must consult with the regional Aboriginal Education Consultative Group about the suitability of that adult when an Aboriginal student is involved in the process.

The other adult may be a relative or family friend (provided they are over the age of 18), a Department of Human Services (Community Services) case worker, psychologist, medical practitioner, or other suitable person.

If after a risk assessment conducted by the school or the Department it is concluded that the other adult nominated by the student poses an unacceptable risk to any person involved in the processes under the guidelines someone else must be found to be the other adult. There must be supporting evidence of this risk and the decision-maker must be satisfied that there is a real possibility that it will occur.

Staff who may be placed at risk by the other adult's participation in the process must be consulted while that risk is being assessed.

In all cases the other adult must declare in writing that they do not have a conflict of interest in representing the student's interests prior to participating in the process and agree to keep information obtained in the performance of that role confidential.

A sample declaration of re conflict of interest and confidentiality is found in Schedule C – Template Letter 3.

D. Role of Students

6.25 What role do students play when consideration is being given to an enrolment direction?

²⁷ Subject to the decision-maker being satisfied that the student has the relevant capacity at the time he or she is making such a "future directive".

The student is to be given access to the information that gave rise to a proposed enrolment direction, written notice of the grounds for the proposed direction and an opportunity to make written or oral representations in relation to both the information and the proposed direction unless the guidelines say otherwise²⁸.

Any written or oral information provided to the student must be appropriate for the student's age or development. This includes the need to make adjustments to communication where the student has a disability.

6.26 What form of notice must be given to a student about a proposed enrolment direction?

Unless the guidelines say otherwise the final decision-maker is to write to the student about a proposed enrolment direction within five working days of the request being received from the regional director. Attempts must be made to provide this information in a format or at a level that is properly understood by the student.

The letter from the final decision-maker shall include:

- (a) advice that it is proposed that the student be directed to enrol at a certain school together with the grounds for issuing the proposed direction and an explanation of what the direction means for the student in practical terms;
- (b) information about the new school including what distinguishes it from the school selected by the parents, and any special programs that it offers and the school's welfare and discipline policies;
- (c) a copy of the information that has been provided to the final decision-maker in support of the proposed direction unless the guidelines say otherwise²⁹;
- (d) where appropriate advice that the student is entitled to request the assistance of an accredited interpreter;
- (e) advice about the length of time it is proposed the enrolment direction be in place and of any proposed review periods;
- (f) advice that the student has an opportunity to write to the final decision-maker about both the proposed direction and the information that gave rise to that proposed direction. An address for any written material is to be provided in this letter and the student is to be advised that they have no **less than 10 working days** from the date of the final decision-maker's letter to respond to the recommended enrolment direction; and
- (g) advice that the student may talk to the final decision-maker about both the proposed enrolment direction and the information that gave rise to that proposed direction. The student should be advised that they may have a support person or advocate at such a meeting and that they must provide the name of that person before the meeting takes place.

²⁸ See sections 6.27-6.28

²⁹ See sections 6.21-6.24

A sample notice of a proposed enrolment direction can be found in Schedule C – Template Letter 15.

6.27 When won't students be involved in the enrolment direction process?

Students must be consulted during any enrolment direction process focused on them and provided with relevant information about the proposed enrolment direction unless the student lacks the capacity, because of age, maturity, disability or any other reason, to gain any meaningful understanding of the process.

A student's capacity to gain a meaningful understanding of the information can only be doubted if there is an objective factual basis for such doubt. Decision-makers should not assume a student can't understand information because they have difficulty communicating verbally or are of a particular age.

6.28 Are there situations in which the student will be provided with only certain information or their involvement in the process may be modified in some way?

A student will be excluded from the process for the same grounds and reasons as are set out in section 5.15 of the guidelines.

6.28.1 What special provisions have been put in place for information provided by Police and Emergency Services NSW (NSW Police Force)?

Certain information will not be provided to the student as part of the process where police have determined that:

- (a) disclosure of that information may compromise an ongoing police investigation or operation or the ability to obtain a conviction or reveal confidential police methodologies or practices; or
- (b) provision of that information may pose an unacceptable risk to the safety, welfare or wellbeing of any person as a foreseeable consequence.

6.28.2 How should information that would disclose the identity of a person who made reports to the Department of Human Services (Community Services) be treated?

Information must also not be provided that would disclose the identity of a person who had made a report to the Department of Human Services (Community Services) under the *Children and Young Persons (Care and Protection Act) 1998*.

6.28.3 What else needs to be considered when dealing with information during the enrolment direction process?

Other concerns could be raised about providing the student with certain information that is before the final decision-maker. For example:

- (a) a medical report could contain information about the symptoms a staff member is experiencing as a consequence of an injury that is attributable to a violent incident. This could be relevant in assessing the level of risk that the student's

violent behaviour poses. *In such circumstances the student should be advised that a staff member has been injured but will not be provided with confidential medical information about the staff member,*

- (b) a qualified health care professional, including a school counsellor, may indicate that in his or her professional opinion it would be harmful to the student's health or safety for certain information (for example a report about the student's psychological condition) to be released to the student. *In such circumstances a decision may be made to not provide that information to the student. The final decision-maker must be reasonably satisfied the risk of harm to the student of disclosing the material outweighs the benefit of providing the information to the student before making this decision;* or
- (c) information may identify other students or their parents in a way that could involve significant stress or harm for the other student or their parents (for example where another student has provided the principal with confidential information about the involvement of the student in a violent incident at school). *In such circumstances a document may be provided to the student with names and other identifying details of informants deleted.*

6.28.4 How are concerns about the student's physical participation in the process dealt with?

Concerns may be raised about the student physically participating in the enrolment direction process.

The process will be modified where it has been concluded following a risk assessment that the student may pose an unacceptable risk to the safety, welfare or wellbeing of any person involved in the enrolment direction process if they meet with departmental staff during the process. The risk must be current and substantiated (for example by a suspension from school for violent behaviour directed towards that staff member).

Staff who may be placed at risk by the student's physical participation in the process must be consulted when the risk is assessed. The student is to be consulted about that risk assessment unless the guidelines say otherwise³⁰.

In such circumstances the student might be given the relevant information and an opportunity to provide a written response to the proposed direction and the information but will not participate in a face to face meeting with staff of the Department including the final decision-maker. Instead arrangements could be made for the parent to speak to the final decision-maker over the telephone or use could be made of video conferencing facilities (where available).

E Issuing the Enrolment Direction

6.29 What are the final decision-maker's options when considering an enrolment direction?

³⁰ See section 5.15

The final decision-maker is not bound by the regional director's recommendation. He or she must make what he or she considers is the best decision based on the material before him or her. Specifically the final decision-maker may:

- (a) issue the enrolment direction as recommended;
- (b) ask for consideration to be given to a different recommendation;
- (c) return the matter to the regional director with instructions to obtain further information or take any other action;
- (d) indicate that the student should be enrolled at his or her local school or (another school for which the student is eligible if agreed to by the parents);
- (e) recommend to the Minister that there is sufficient reason to refuse the student admission to all government schools under section 34(4) of the *Education Act 1990*; or
- (f) take any other reasonable and practicable action he or she considers appropriate.

The final decision-maker is to consider any written and oral submissions of the student, parents or other adult prior to deciding whether or not to make an enrolment direction and is to advise the parent, other adult and student in writing of his or her decision.

6.30 What form should the enrolment direction take?

The enrolment direction must be in writing and must contain:

- (a) the grounds for issuing the direction and an explanation of what the direction means for the student in practical terms;
- (b) information about the new school including any special programs that it offers and the school's welfare and discipline policies;
- (c) advice of the length of time it is proposed the enrolment direction be in place and of any proposed review periods; and
- (d) advice about how to seek an internal review of the enrolment direction.

A sample letter setting out the final decision-maker's decision is in Schedule C – Template Letter 16.

F. Post direction processes

6.31 Should the need for the enrolment direction to remain in force be reviewed?

The need for an enrolment direction to remain in force is to be considered as part of a regular review of the written risk assessment and management plan by the principal of the new school.

Where the principal concludes after a review of the written risk assessment and management plan that the enrolment direction should be varied or revoked he or she may notify the school education director of his or her view. If the school education director concurs he or she may ask the regional director to seek a variation or revocation of the enrolment direction.

Further information about the process for varying or revoking an enrolment direction can be found at Chapter 7 of the guidelines.

6.32 What happens if a student continues to be a risk after the enrolment direction expires?

If it is concluded the student still poses a risk to a school selected by the parents after the term of an enrolment direction has expired, a new enrolment directions process may commence.

6.33 What happens if the student is no longer considered a risk after the expiration of an enrolment direction?

The student or his or her parents can seek enrolment at any school which the student is eligible to attend and which can safely accommodate him or her.

6.34 What happens if a parent, student or other adult wants to apply for an internal review of an enrolment direction?

This is done by requesting a variation or revocation of an enrolment direction.

The process for seeking a variation or revocation of an enrolment direction is found in Chapter 7 of the guidelines.

6.35 Is it possible to obtain an external review of an enrolment direction?

Yes provided an internal review of the decision has been undertaken. Information about the review of an enrolment direction by the Administrative Decisions Tribunal is provided in chapter 8 of the guidelines.

6.36 What happens if the Department's employees wish to complain about a failure to issue an enrolment direction or the terms and conditions under which a direction has been issued?

Staff may make a complaint under the *Complaints Handling Guidelines*. The awards covering teachers and school administrative and support staff both contain agreed dispute resolution procedures which can also be used by staff.

7. REQUESTING AN INTERNAL REVIEW OF AN ENROLMENT DIRECTION

7.1 Which schools does the review process apply to?

The review process only applies to government schools.

7.2 In what circumstances can the Director-General review the enrolment direction and decide whether to vary or revoke it?

The Director-General may review the enrolment direction and decide whether to vary or revoke it:

- (a) at the request of the student concerned; or
- (b) at the request of the parent of the student (or where another adult is involved that adult); or
- (c) on his or her own initiative, for example in response to a request for variation or revocation of the enrolment direction made by a regional director.

7.3 What is meant by varying or revoking an enrolment direction?

If an enrolment direction is varied some part of it will be changed. This could mean for example that it is in force for a shorter or longer period or the student is directed to enrol at a different school.

If an enrolment direction is revoked it will be withdrawn.

7.4 Can the power to vary or revoke an enrolment direction be delegated?

The Director-General may delegate the power to vary or revoke an enrolment direction to a member of staff of the Department. This person must not be directly subordinate to the final decision-maker and must have had no previous substantive dealings with the specific matter under review. A reference in this chapter to the Director-General includes a reference to that delegate.

7.5 What is the effect of requesting a review of an enrolment direction?

A request for a review (whether a variation or revocation of the enrolment direction) does not stop the direction taking effect. Starting to attend the new school does not mean a parent or student cannot request a review of the enrolment direction and have it duly considered.

7.6 How should timeframes under the guidelines be interpreted?

Information about timeframes can be found in section 2.11 of the guidelines.

7.7 How is the date that a student, parent or other adult received notice under the guidelines determined?

Information about service of notices and other documentation can be found in section 2.12 of the guidelines.

7.8 What process is followed when a request is made by a parent, other adult or student for a review of an enrolment direction?

The following process should be followed:

1. A parent, other adult or student may seek the variation or revocation of an enrolment direction by the Director-General or delegate unless the guidelines say otherwise³¹. This person is known as the applicant.
2. The first request for a variation or revocation of an enrolment direction is to be made **within 10 working days** of the applicant being notified of the enrolment direction. Generally this request should be in writing but it can be made orally. For information about requests for reviews outside of this time period go to section 7.13 of the guidelines.
3. Where an oral request for review is made the basis for the request is to be recorded by staff of the government school, other staff of the Department of Education and Training or some other person. Where some other person records the request it should be provided to the new school without delay and a copy of the request should be given to the applicant who should be asked to confirm its accuracy.

The request for a review of an enrolment direction must identify the basis upon which the request is being made. The request can be based on an alleged flaw in the process followed when the enrolment direction was issued (such as that there was a failure to consult with the parent where consultation was required by the guidelines) or on the merits of the decision (such as that it was not necessary to direct the student to enrol at the new school) or both. A sample request for a review of an enrolment direction is in Schedule C – Template Letters 17 and 18.

4. If the student has a disability then the Director-General or delegate must comply with any relevant requirements of the *Disability Discrimination Act 1992* and the *Disability Standards for Education 2005*.
5. The Director-General is to write to the applicant **within 5** working days of receiving the request for a review acknowledging receipt and setting out a proposed timetable for dealing with the request.
6. The Director-General should provide the final decision-maker with a copy of the request for review of the enrolment direction and require them to respond **within 10 working days**.

³¹ See for example sections 6.21-6.24 of the guidelines

7. The applicant is to be provided with a copy of any documentation provided to the Director-General by the final decision-maker, unless the guidelines say otherwise³².
8. The applicant is to be given **10** working days in which to comment in writing on the material provided by the Director-General under step 1 and/or provide further information to the Director-General in support of the request for a variation or revocation of the enrolment direction. A sample seeking submissions from the applicant is in Schedule C – Template Letter 19.
9. The Director-General may also seek advice (including legal advice) from staff of the Department. The person providing the advice must first be satisfied that he or she is not in a conflict of interest when providing that advice. For example the staff member providing the advice should not have provided advice on the same issue to the final decision-maker.
10. The applicant may ask to speak to the Director-General about the decision within 7 working days of the Director-General receiving the documentation referred to in paragraph 8.
11. The applicant may have a support person and may have access to an accredited interpreter when meeting with the Director-General. The applicant may be represented by an advocate at the meeting if the Director-General is satisfied that it is appropriate in the circumstances. The applicant or their advocate, where relevant, cannot cross question the Director-General about the proposed direction during this interview but may speak about why the decision to direct the student to a certain type of government school should be varied or revoked.
12. The Director-General is to:
 - (a) consider any relevant material submitted by the applicant and other relevant material provided to him or her during this process; and
 - (b) advise the applicant of the outcome of their request for a variation or revocation of the enrolment direction and what this means for the student in writing and provide reasons for this decision within **7** working days. A sample letter advising the applicant of the outcome of a request is in Schedule C – Template Letter 20.

7.9 What happens when consideration is being given to the review of an enrolment direction at the initiative of the Director-General?

1. The Director-General is, unless the guidelines say otherwise³³, to:
 - (a) notify the parent, other adult or student that consideration is being given to the variation or revocation of the enrolment direction;

³² See section 6.21-6.24 and 6.27-6.28

³³ As above

- (b) advise the parent, other adult or student of the reasons that this action is being contemplated and of the proposed timetable for dealing with the matter; and
 - (c) provide the parent, other adult or student with a copy of the material that has been provided in support of the proposed variation or revocation of the enrolment direction.
2. Steps 6 to 12 of the process set out in section 7.8 are then to be followed with the student, parent or other adult enjoying the rights and entitlements of the applicant.
 3. The person who initiated the process is to be advised of the Director-General's decision and the reasons for that decision.

7.10 In what circumstances will a parent or student be unable to participate in the review process or have their right of access to information or participation in the process subject to modifications or restrictions?

The same processes applied during the enrolment direction process will determine whether the student or parent will participate in the variation or revocation process, the information they will be provided and any modifications that need to be made to the process. See for example sections 5.14, 5.15, 6.21-6.24 and 6.27-6.28 of the guidelines.

7.11 What happens if a student requests that a parent not be involved in the review process?

This request will be dealt with in the same way as a request made by the student during the enrolment direction process – see sections 6.23-6.24.

7.12 What role does the other adult play in the review process?

Where the other adult has been involved in the enrolment directions process instead of the student's parent the other adult has the same right to seek a variation or revocation of an enrolment direction as a parent otherwise would have had.

7.13 Can an application be made for a review of an enrolment direction outside of the time period outlined in section 7.8?

A parent or a student can apply for a variation or revocation of an enrolment direction if the new school confirms that the student has demonstrated a documented history of improved behaviour for a period of **not less than** 2 school terms from the date the enrolment direction was issued or the last request for variation or revocation was finalised whichever is the later date.

The Director-General retains the discretion to agree that a review be undertaken outside of this time frame if:

- (a) there has been a significant change to the student's circumstances sufficient to warrant a review at a different time; or

- (b) there are reasonable grounds to believe that the parent or student was not able to comply with the original timetable for the review.

8. REVIEW OF AN ENROLMENT DIRECTION BY THE ADMINISTRATIVE DECISIONS TRIBUNAL

8.1 Can an enrolment direction be externally reviewed?

Yes.

Section 107(1) (e1) of the *Education Act 1990* provides that the Administrative Decisions Tribunal may review a decision to make an enrolment direction. This review can be sought after an internal review of the decision has been undertaken under chapter 7 of the guidelines.

Section 108(1) (a1) of the *Education Act 1990* provides that the Administrative Decisions Tribunal may recommend to the Minister that the enrolment direction be varied or revoked.

8.2 What is the Administrative Decisions Tribunal and what does it do?

The Administrative Decisions Tribunal provides an independent, external review of administrative decisions and deals with other types of cases, such as discrimination complaints and professional misconduct inquiries.

8.3 Is there any appeal against a decision of the Administrative Decisions Tribunal?

The Tribunal has an Appeal Panel which hears appeals from decisions made by the Divisions of the Tribunal. An appeal can be made in relation to any matter of law, or (subject to the Tribunal's leave) on the merits of the case.

8.4 How does someone get the Administrative Decisions Tribunal to review the enrolment direction?

An application form should be lodged, together with any supporting documents and the prescribed fee, if any.

8.5 Where can further information about the Administrative Decisions Tribunal be found?

Information about the Administrative Decisions Tribunal can be found on its website -

http://www.lawlink.nsw.gov.au/lawlink/adt/ll_adt.nsf/pages/adt_aboutus#aboutus4

Information is also available from the Administrative Decisions Tribunal by telephone on (02) 9223 4677 or at their offices at Level 5, 111 Elizabeth Street Sydney NSW 2000.

PART D RELEVANCE OF OTHER LEGISLATION, RESOLVING DISAGREEMENTS, MEMORANDA OF UNDERSTANDING, GLOSSARY OF KEY TERMS, FLOWCHARTS and SAMPLE LETTERS

9. RELEVANCE OF DISCRIMINATION LEGISLATION AND PRIVACY LEGISLATION TO ACTION UNDER THE GUIDELINES

A. What is the relevance of the Commonwealth *Disability Discrimination Act 1992* and *Disability Standards for Education 2005* and equivalent State legislation?

9.1 What needs to be kept in mind if the student has a disability?

All students should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment which values and encourages participation.

The guidelines only apply to students who pose a current risk to schools because of their violent behaviour. This is a very small proportion of the students enrolled in NSW schools. Only a small number of students with a disability will have a history of violent behaviour. It **must not** be assumed that because a student has a disability relating to behaviour he or she will be violent.

9.2 Does the *Commonwealth Disability Discrimination Act 1992* and the *Commonwealth Disability Standards for Education 2005* apply to the guidelines?

Yes.

9.3 When do the *Disability Standards for Education 2005* need to be considered?

The requirements of the Standards must be met at **all times** that decisions are made under the guidelines.

9.4 How should the *Disability Standards for Education 2005* be applied?

The Standards require reasonable steps to be taken to ensure that students with disabilities are provided with opportunities to realise their individual potential through participation in education and training on “the same basis” as students without disabilities, and that they are not subject to unlawful discrimination.

Where necessary, reasonable adjustments must be made to enable students with disabilities to participate in education on the same basis as students without disabilities. This is done by making learning adjustments and accommodations.

The Standards set out a process for schools to show they have met this obligation. This process includes:

- (a) consulting the student (or an associate);

- (b) considering whether an **adjustment** through learning adjustments and accommodations where necessary to ensure the maximum participation of students with disabilities;
- (c) if an adjustment is necessary, identifying a reasonable adjustment; and
- (d) making the reasonable adjustment.

A reasonable adjustment is a measure to help a student with a disability participate in education on the same basis as other students. An adjustment is **reasonable** if it achieves this purpose while taking into account the student's learning needs and balancing the interests (including safety) of all parties affected including those of the student with the disability, the school, staff and other students.

Decisions about admission and enrolment must be made on the basis that reasonable adjustments will be made where necessary so the student with a disability is provided with opportunities and choices comparable with those available to students without disabilities.

The Standards require schools to give proper consideration to the individual needs of a student with a disability. Where such a disability has behavioural attributes it is still necessary to fairly consider the need for reasonable adjustments to support the student.

This includes consideration of the need to ensure a safe working and learning environment for all students and staff and any modifications to be made to the school.

9.5 What about NSW discrimination law?

If schools meet the requirements of the Standards it is expected that the requirements of any equivalent State laws would be met.

9.6 Where can schools, parents and students go if they require further help?

Further advice about the Standards is available to government schools from the Legal Services and Disabilities Programs Directorates.

Non-government schools should consult their school authority for advice.

Advice for parents or students may be available from a range of organisations including Family Advocacy, the Disability Discrimination Legal Centre, the National Children and Youth Law Centre, People with Disability Australia and the Intellectual Disability Rights Service.

B. What is the relevance of other discrimination legislation?

9.7 What needs to be kept in mind about discrimination generally?

All persons exercising a function under the guidelines must ensure that they do not unlawfully discriminate against any person on the grounds of race, sex, marital status, disability, homosexuality, age, transgender, carer's responsibilities or any other relevant ground of unlawful discrimination.

Government schools should seek advice from the Legal Services Directorate as to how the various “grounds of discrimination” apply in the context of government schools.

Non-government schools should seek advice from their school authority as to how the various “grounds of discrimination” apply in the context of non-government schools.

C. Is it still necessary to comply with the privacy legislation when taking action under the guidelines?

9.8 What privacy legislation applies to government and non-government schools?

The *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* apply to NSW government schools and other public sector agencies.

The Commonwealth *Privacy Act 1988* and the *Health Records and Information Privacy Act 2002* apply to certain non-government schools.³⁴

Advice on this legislation for non-government schools is set out in the joint NCEC/ISCA Privacy Compliance Manual which is available on the Catholic Education Commission website.

9.9 What is the impact of the guidelines upon privacy legislation?

The guidelines have the force of law and as such any privacy requirements, such as limits on disclosure in the privacy or health principles will give way to any requirement in the guidelines. This is provided for by section 26F of the Education Act 1990, section 25 of the *Privacy and Personal Information Protection Act 1998* and in the relevant sections of the *Health Records and Information Privacy Protection Act 2002*³⁵ or *Commonwealth Privacy Act 1988*.

9.10 What is the importance of considering individual circumstances when applying privacy principles?

The appropriate application of the privacy principles depends on the individual staff members being clear as to the purpose of collecting, using and disclosing personal and health information under the guidelines.

9.11 How may personal information and health information be dealt with under the guidelines?

Relevant personal information or health information about the student will be collected and used and may be disclosed when action is taken under the guidelines. A parent’s personal information may also be collected, used and disclosed during this process (for example where an assessment is undertaken of the risk posed by the parent’s participation in the processes under the guidelines).

Notwithstanding the fact that the guidelines will override relevant privacy principles if there is any inconsistency between them, every reasonable effort should be made to

³⁴ the Privacy Act will not apply to some non-govt schools, i.e. those with a turnover less than \$3m

³⁵ See for example section 23 of the Health Records and Information Privacy Act

preserve the privacy rights of students and parents under privacy laws while continuing to ensure the health and safety of staff, students and visitors to schools is not compromised by the risk posed by any student(s) or parents with a history of violent behaviour.

9.12 How may personal or health information obtained, created or used under the guidelines generally be accessed?

Access to any personal information or health information obtained or used under the guidelines will be limited to those who are:

- (a) authorised to access the personal information or health information by the guidelines; or
- (b) are otherwise entitled or permitted to access the information by law.

9.13 What right do staff of education authorities including schools have to access the information?

Only those staff members:

- a) who are required to exercise a function under the guidelines; or
- b) provide support or advice to a person exercising a function under the guidelines; or
- c) are otherwise authorised or permitted to access the personal information or health information by operation of law, such as the school principal or school counsellor in the exercise of his or her duty of care to the student;

shall have access to any personal information or health information obtained while exercising a function under the guidelines.

Any staff member who is given access to such personal information or health information must only use it for legitimate purposes relating to their employment. Any staff member who uses personal information or health information for a purpose unrelated to their employment may be subject to action by their employer to deal with their conduct.

9.14 What right do parents and students have to access the information?

Parents shall have access to all relevant information about their children and students shall have access to all relevant information about themselves unless the guidelines say otherwise³⁶ or the law or the Department of Education and Training's *Privacy Code of Practice* otherwise provides.

Non-government schools need to consult their schools authority for advice on this issue.

³⁶ See for example sections 5.14 and 6.21-6.24

9.15 What right do union representatives have to access the information?

The Department of Premier and Cabinet's Circular C2007.27 Guidelines on Disclosure of Information During Industrial Relations Consultations applies to the Department of Education and Training including its schools and sets out some of the circumstances in which information held by the Department must be provided to employees and union representatives.

The Premier's Guidelines re-state the existing provisions in the *Industrial Relations Act 1996* or the *Occupational Health and Safety Act 2000* which override certain Information Protection Principles and Health Privacy Principles in the context of certain industrial matters.

Government schools should seek advice on the application of this circular from the Industrial Relations Directorate.

Non-government schools need to consult their schools authority for advice on this issue.

9.16 How should information be used and disclosed under the guidelines?

Schools should use their best endeavours to ensure that any personal information or health information used to undertake a written risk assessment and management plan or issue an enrolment direction is relevant, accurate, and complete and not misleading before it is relied upon by the educational authority. Information can only be used or disclosed:

- (a) to exercise a function under the guidelines or undertake any reasonably related course of action; and/or
- (b) for child protection purposes. For example if information provided to a principal led him or her to form the view that a report should be made to the Department of Human Services (Community Services); and/or
- (c) for the purpose of the educational authority obtaining legal advice or representation or for use in legal proceedings; and/or
- (d) where such use and disclosure is necessary for the proper exercise of the complaint handling functions or investigative functions of the educational authority; and/or
- (e) for law enforcement purposes; and/or
- (f) if such use or disclosure is otherwise permitted, necessarily implied or reasonably contemplated under any law; and/or
- (g) if the information is not subject to the guidelines, but is still subject to privacy legislation, and the use or disclosure complies with any relevant exemption in the privacy principles in those acts (which in the case of government schools may include the *Privacy Code of Practice* or a Public Interest Direction).

9.17 How should information be stored?

The written risk assessment and management plan **must** be accessible to staff who need to refer to it to ensure their health and safety. Other written records containing personal or health information should be stored in a secure location.

Information obtained or created under the guidelines will often be of a sensitive nature and is to **be kept separate from a student's usual school records**. It is to be held in a secure location. Copies of documents obtained or created in the exercise of the guidelines may be placed on the student counselling file where the information is relevant to the provision of school counsellor service. In other circumstances a separate file is to be maintained for this information.

9.17.1 How should written records be stored?

Written records containing personal information or health information should be stored in a secure location. A secure location for written information has the following features:

- (a) the information will be protected from dust, water, vermin and if possible fire;
- (b) the information is stored in a lockable filing cabinet, cupboard or similar storage facility. It should be locked when not in use and any keys, combination numbers etc should be retained by a very small number of responsible staff; and
- (c) the room containing the filing cabinet, cupboard or similar storage facility is not generally accessible to students, school staff ³⁷ and visitors to the school such as contractors/community members.

9.17.2 What should happen with electronic records?

Electronic records containing personal information or health information should be stored in a secure location. A secure location for electronic records has the following features:

- a) it is preferable for information not to be stored on a shared drive or directory but instead to be stored on a computer's own drive. A back up copy of the information is to be retained with any relevant written information held about risk to safety posed by the student as a consequence of his or her violent behaviour. The back up should be stored in the same secure manner as written records (see above); and
- b) any information stored on a shared drive is password protected. Information about the password is only available to those who have a legitimate need to access the information (such as a relieving or newly appointed principal or a person involved in reviewing a written risk assessment and management plan).

³⁷ This does not include the written risk assessment and management plan. Relevant staff must have access to this document at all times

9.18 What special arrangements should be in place for health and counselling records in government schools?

It is appropriate and in accordance with community standards that the confidentiality of counselling records is maintained as far as is reasonably possible.

In all but situations involving immediate and serious threat to life or health (or unless a situation arises where the disclosure is required by law such as on occupational health and safety grounds or permitted by the Department of Education and Training's *Privacy Code of Practice*) any counselling records obtained under this process should be retained on the student's counselling file and should only be accessible to the school counsellor and his or her clinical management.

If a government school counsellor is in doubt about what they need to do they should make reference to the Department's *Privacy Code of Practice* and seek advice from their line management. Advice about legal issues is also available for departmental staff from the Department's Legal Services Directorate.

The Department of Education and Training's *Privacy Code of Practice*³⁸ under the *Privacy and Personal Information Protection Act 1998* provides that:

- (a) if another individual is mentioned in a counselling record obtained about the student, the Department including its schools is not required to inform the individual that information is held about them; and
- (b) if that individual becomes aware information is held about them on the counselling record the government school or the Department is not required to amend the counselling record at the request of the individual under the *Privacy and Personal Information Protection Act 1998*.

In relation to the point (b) above it should be noted the same individual may have rights to seek an amendment of the document under the *Freedom of Information Act 1989* or any successor legislation.

9.19 Do the special arrangements for health and counselling records mean that the school counsellor no longer has a duty to provide the principal with information held on those records that is relevant to the assessment or management of risk?

To remove any doubt a school counsellor's duty to provide information to the principal relevant to the assessment and management of risk arising from violent behaviour is **not** affected by the guidelines.

9.20 How long should records be kept?

Unless required to retain the information for a longer period by any act or law or policy of the educational authority, the information provided by agencies about a student must be retained until the student turns 24. Thereafter records held by the Department are dealt with in accordance with its disposal schedules and the *State Records Act 1998*.

³⁸ This only applies to government schools

Non-government schools should refer to relevant advice provided by their school authority.

10. **RESOLVING DISAGREEMENTS BETWEEN SCHOOLS, PARENTS AND STUDENTS**

10.1 What process should be applied to resolve disagreements between parents, students and the Department of Education and Training including its schools?

Requests for a review of a decision to make an enrolment direction must be dealt with in accordance with the procedures set out in Chapter 7 of the guidelines.

Complaints about alleged breaches of privacy are to be dealt with under the Privacy Internal Review policy.

All other complaints are to be dealt with in accordance with the Complaints Handling Guidelines.

Unless exceptional circumstances apply, making a complaint under this policy will not stop any disputed decision being put into effect.

For example if a complaint is made that it is unnecessary to seek information from a particular agency the request for information will be made irrespective of whether or not a complaint has been made provided the requester considers it necessary on occupational health and safety grounds to do so.

This is because a delay in requesting information will generally delay completion of the written risk assessment and management plan. This may impact detrimentally on the student's access to education and must be avoided.

10.2 What process should be applied to resolve disagreements between parents, students and non-government schools and non-government education authorities?

Non-government schools are advised to consult their education authority for direction as to the relevant grievance and appeals polic(ies) to be applied.

11 DEALING WITH DIFFERENCES BETWEEN SCHOOLS, EDUCATIONAL AUTHORITIES AND RELEVANT AGENCIES

11.1 How could concerns arise?

Staff involved in processes under the guidelines (including the staff of all schools and educational authorities) may develop concerns or have disagreements about particular information requests.

11.2 Why is it important to resolve concerns quickly?

Delays in responding to information requests could:

- (a) impede the identification and management of the risk that a student with violent behaviour could pose to the health and safety of themselves, other students and staff at a school; and
- (b) result in a student's application to enrol at a school being delayed or a student's attendance at school being disrupted.

As a consequence early resolution of concerns or disagreements is critical.

11.3 What process should be followed to resolve concerns?

The following process is to be followed when concerns or disagreements between agencies are identified:

1. Attempts must be made to resolve concerns or disagreements between the person who has issued the request and the person who has received it. It is the responsibility of the person who has the concerns or perceives there is a disagreement to approach the person that they dealt with in the other relevant agency and raise the issue.
2. If the issue or concern is not resolved **within 7 working days** then the matter is to be referred to the person nominated in the Memorandum of Understanding that has been entered into between agencies to deal with differences between agencies. If a Memorandum of Understanding has not been entered into then the issue or concern is to be referred to the supervisors of the two agency staff.
3. If the concern or disagreement is not resolved within 14 days then Chief Executive Officer level resolution should be considered. Chief Executive Officers may nominate a senior member of staff to act as their nominee for this purpose.
4. If issues are not resolved within fourteen days the matter can be referred by either Chief Executive Officers (or their nominee) to an independent body or mediator. Costs associated with this referral are to be shared on an equal basis between the agencies. If mediation on a voluntary basis does not lead to resolution there may be an independent arbitration.

12. MEMORANDA OF UNDERSTANDING BETWEEN AGENCIES

12.1 Why should Memoranda of Understanding be entered into?

Relevant agencies are committed to working closely together with parents, students and educational authorities to ensure that schools are safe and students are assisted to achieve their educational potential.

Memoranda of Understanding can be entered into by relevant agencies under section 26C (2) of the *Education Act 1990* to facilitate that purpose.

12.2 What is the purpose of Memoranda of Understanding?

Memoranda of Understanding between agencies are intended to create a clear understanding between agencies about:

- (a) the process to be adopted within each agency for dealing with requests for information made under the guidelines;
- (b) a process for monitoring, evaluating and varying the Memorandum of Understanding; and
- (c) who will deal with concerns or disagreements between relevant agencies, schools and educational authorities about information requests.

12.3 Who can enter into Memoranda of Understanding?

Memoranda of Understanding can be entered into on behalf of a relevant agency by its Chief Executive Officer or his or her nominee.

Relevant agencies can also nominate another organisation to enter a Memorandum of Understanding on their behalf. This representative may be another organisation or agency. For example public health organisations within the meaning of the *Health Services Act 1997* can nominate the Department of Health to enter into a Memorandum of Understanding on their behalf.

The NSW Department of Education and Training will enter into Memoranda of Understanding on behalf of all government schools.

The Association of Independent Schools will enter into Memoranda of Understanding on behalf of independent schools that are members of the Association.

The Catholic Education Commission will enter into Memoranda of Understanding on behalf of Catholic schools that fall within the responsibilities of the Commission.

Non-government schools that do not belong to the Association of Independent Schools or the Catholic Education Commission can enter into Memoranda of Understanding with agencies on an individual basis provided the agency agrees. Alternatively they may seek to become a party to an existing Memorandum of Understanding.

12.4 Can more than one relevant agency enter into a Memorandum of Understanding?

Yes. A Memorandum of Understanding can be entered into by one agency or a number of relevant agencies and educational authorities.

For example the Association of Independent Schools, the Catholic Education Commission and the Department of Education and Training could enter into a joint Memorandum of Understanding with Police and Emergency Services NSW (NSW Police Force).

12.5 Can existing Memoranda of Understanding be used?

If Memoranda of Understanding already exist between agencies they may be adapted for use under Part 5A of the *Education Act 1990* provided all parties to the existing Memoranda agree.

13. GLOSSARY OF KEY TERMS USED IN THE GUIDELINES

Aboriginal people refers inclusively to all Aboriginal Australians and Torres Strait Islanders.

Accommodations means changes to teaching, learning and assessing that will allow students with additional needs to participate fully in the same learning, working towards the same syllabus outcomes and content as all other students of the same age/stage.

Agency staff means staff of a government agency including a relevant agency within the meaning of Part 5A of the *NSW Education Act 1990*.

All schools means government and non-government schools registered under the *NSW Education Act 1990*.

Another adult or other adult is a reference to the adult who must be involved in enrolment directions process in accordance with section 26I of the *NSW Education Act 1990* when the student's parents are not involved. If the student is over 18 he or she can be that other adult.

Associate when used with respect to the Commonwealth Disability Standards for Education 2005 includes parents, other relatives, carers or other people who are in a business, sporting or recreational relationship with the person concerned.

Carer means a person who has day to day care of the child. A carer may provide the care with or without payment. Carers may be relatives, friends or acquaintances of a parent, a residential care worker, youth worker or Out-of-Home Care authorised carer. To play a role under the guidelines the carer must aged 18 or over.

Chief Executive Officer means the Director-General of a government agency including the Department of Education and Training and the registered proprietor of a non-government schools.

Common law means the law developed over time through decisions made by courts.

Compulsory school age has the same meaning as it has under the *NSW Education Act 1990*.

Consultation with parents and students means providing parents and students with an opportunity to express their views, including providing context to incidents, evaluating information and suggesting additions, deletions or other changes to the risk assessment. It does not mean that parents or students can veto a principal's strategy or enforce any of their own risk management strategies.

Consultation with staff refers to the mandatory involvement of staff in decision making in relation to their occupational health, safety and welfare. It includes:

- providing staff with the opportunity to express their views and to contribute to the resolution of occupational health, safety and welfare issues; and

- ensuring the views of staff are valued and taken into account; and
- sharing relevant information about occupational health and safety; and
- establishing occupational health and safety arrangements including occupational health and safety committees, occupational health and safety representatives or other agreed arrangements.

It includes consultation on consultation arrangements, risk management facilities for welfare, information and training needs and where changes affecting health and safety are proposed.

Decision-maker means any person making a decision under the guidelines.

Delegate means the process by which one person gives another person the right to exercise a function under an Act (or the person to whom the power is given).

Department means the NSW Department of Education and Training.

Director-General means the Director-General of the NSW Department of Education and Training.

Educational authority means the NSW Department of Education and Training and/or a non-government schools authority depending on the context.

Enrolment means both prospective and continuing enrolment.

Enrolment Direction or the enrolment directions process refers to a direction that a student is not to be enrolled at any government school other than a government school of a kind specified in the direction made under section 26H of the *NSW Education Act 1990*.

Final decision-maker means the person who decides whether or not to make an enrolment direction.

Guidelines or the guidelines means the Guidelines Issued under *Part 5A of the NSW Education Act 1990* for the Management of Health and Safety Risks to Schools posed by a Student's Violent Behaviour.

Health information has the same meaning as it does in the *NSW Health Records and Information Privacy Act 2002*.

Health Privacy Principles has the same meaning as it does in the *NSW Health Records and Information Privacy Act 2002*.

Hierarchy of controls means the process for eliminating or controlling risk to an acceptable level.

History of violent behaviour means the behaviour described at chapter 3 of the guidelines includes a very recent incident involving the student.

Home schooling has the same meaning as it does under the *NSW Education Act 1990*.

Inappropriate video, photographs or sound recordings includes videos, photographs or sound recordings taken of students, staff or any person without consent which could reasonably be expected to cause psychological harm to any person if shown to any person (including the person filmed or recorded). It includes videos made using a mobile phone.

Information lawfully obtained includes information obtained in compliance with any law (including the *NSW Occupational Health and Safety Act 2000*), with consent or by other means (including through the Ministerial Council for Education, Early Childhood Development and Youth Affairs Interstate Student Data Transfer Note).

Information protection principles has the same meaning as it does under the *NSW Privacy and Personal Information Protection Act 1998*.

Learning adjustments means measures or actions taken in relation to teaching, learning and assessing that enable a student to access and participate in achieving syllabus outcomes and content that are different from those for the same age/stage group, and that meet the student's personalised learning needs. There is a wide range of adjustments, or 'special provisions' that may be used to enable the participation of students with a disability. These include an augmentative communication system, sign language, Braille, a reader or scribe, access to technology, personal carer support or modifications to equipment, furniture and learning spaces.

Learning environment means the school site as well as any other place where school related activities (such as excursions, school sport events, or artistic performances) are conducted.

Letter issued under NSW *Inclosed Lands Protection Act 1901* means a letter issued by the principal of a school to warn a person about their conduct or to restrict or place conditions upon the entry onto the school site by the person to whom the letter is sent.

Memorandum of Understanding means a memorandum of understanding entered into under section 26C (2) of the *NSW Education Act 1990*.

New school means the school that has been identified as being suitable to manage the risk posed by a student with a violent behaviour.

New South Wales discrimination legislation means the *NSW Anti-Discrimination Act 1977*.

Non-government schools authority has the same meaning as it has under the *NSW Education Act 1990*.

Occupational Health and Safety legislation means the *NSW Occupational Health and Safety Act 2000* and its Regulation.

Orally means by talking.

Other adult – see another adult

Other discrimination legislation includes, where relevant, the Commonwealth *Racial Discrimination Act 1975* and the Commonwealth *Sex Discrimination Act 1984*.

Out-of-home care means the care of a child or young person who is in the parental responsibility of the Minister for Community Services, or a non-related person, residing at a place other than their usual home, as a result of a Children's Court Order that lasts for more than 14 days, or because they are a protected person.

Parent or parents includes a carer, guardian or other person having the custody or care of a child with a history of violent behaviour. This includes relevant caseworkers for children in out-of-home care, the authorised carers of a child and the Director-General of the Department of Human Services (Community Services) (or delegate), where the Minister for Community Services or the Director-General of Human Services (Community Services) has parental responsibility for the child.

Parental responsibility in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

Personal characteristic protected by the *Anti-Discrimination Act 1977* includes but is not restricted to race, sex, disability, homosexuality and transgender or carer's responsibilities.

Personal information has the same meaning as it does under the *NSW Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

Policies and procedures developed and documented by the Department to manage a current risk posed by the violent behaviour means documentation found on the Department's OHS website.

Privacy law or privacy legislation means the Commonwealth *Privacy Act 1988*, the *NSW Privacy and Personal Information Protection Act 1998* and the *NSW Health Records Information Privacy Act 2002*.

Processes under the guidelines includes where relevant the written risk assessment and management plan process, enrolment directions process and the process by which a request for the variation or revocation of an enrolment direction is requested.

Reasonable adjustment means a measure or action taken to assist a student with a disability to participate in education and training on the same basis as other students. The adjustment is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with the disability, the education provider, staff and other students.

Reasonable grounds to suspect that a child is at risk of harm has the same meaning as it has in the *NSW Children and Young Persons (Care and Protection Act) 1998*.

Recent incident involving the violent behaviour of the student means an incident that will generally have occurred in the previous four school weeks.

Registered for home schooling means registration in accordance with the *NSW Education Act 1990*.

Relevant agency has the same meaning as it has under section 26C of the *NSW Education Act 1990*.

Relevant State or Commonwealth privacy laws means the *Commonwealth Privacy Act 1988*, the *NSW Privacy and Personal Information Protection Act 1998* and the *NSW Health Records and Information Privacy Act 2002*.

Reportable conduct has the same meaning as it has in section 25A of the *NSW Ombudsman Act 1974*.

Revoked means an enrolment direction will be withdrawn³⁹.

Risk means a current risk posed by a student with a history of violent behaviour to himself or herself, other students, staff and visitors to a school site.

Risk assessment means the process by which risks are identified and assessed.

Risk management means identifying and implementing strategies designed to eliminate or control identified risk developed as part of the risk assessment.

Safe and disciplined learning environment has the same meaning as it has in the Department of Education and Training's *Privacy Code of Practice*.

School means both government and non-government school unless otherwise indicated

School authority has the same meaning as non-government school authority.

School related activity includes any activity conducted under the auspices of the school including sport, excursions and band camps.

School selected by the parents means the school at which the student is currently enrolled or at which the parents are seeking to enrol the student. It includes a reference to the school at which a student is personally seeking enrolment.

School week means a week during a school term when government schools are open for instruction. Information about school terms in government schools is published on the Department of Education and Training website at <http://www.schools.nsw.edu.au/calendar/>. Information about school terms in non-government schools should be sought from the school proprietor

School year means the four terms that take place each calendar year generally commencing in late January or early February and ceasing each December. Information about school years in government schools is published on the Department of Education and Training website at: <http://www.schools.nsw.edu.au/calendar/>. Information about school years in non-government schools should be sought from the school proprietor

³⁹ See Macquarie Dictionary, Second Revision

Self-harming behaviours includes behaviour that pose a risk to the student themselves and may, depending on the circumstances, also pose a risk to anyone who witnesses the behaviour, attempts to replicate it or is injured during an attempt to deal with the student's attempts to harm himself or herself.

Stalking includes following a person about or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

Standards mean the *Commonwealth Disability Discrimination Standards for Education 2005*.

State Office means the head office of the Department of Education and Training.

Student or students includes a prospective student where appropriate.

Visitors in schools includes volunteers and contractors who may be working on the school site.

Violence, violent behaviour or violent incident means the behaviour described at chapter 3 of the guidelines includes a very recent incident involving the student

Written risk assessment and management plan means the process by which the risk posed by a student's violent behaviour to anyone at a school including the student himself or herself is identified and assessed and strategies developed to eliminate or control that risk in accordance with departmental policies.

Youth Conduct Order scheme has the same meaning as it will have under the NSW *Children (Criminal Proceedings Act) 1987* once amendments to that Act become operative.

SCHEDULE A

1. DEPARTMENT OF HUMAN SERVICES (AGEING, DISABILITY AND HOME CARE)

Behaviour support services are provided by the Department of Human Services (Ageing, Disability and Home Care) with the understanding that the definition of 'challenging behaviour' is behaviour which challenges the support system around an individual. Therefore, working closely with an individual's school is considered to be best practice in relation to the provision of behaviour support to school age children and young people.

In the event that there is not a current working relationship between Education and Department of Human Services (Ageing, Disability and Home Care) and Education considers it necessary to seek additional information on an individual a request for information is to be initiated by Education through the local Regional Office. A referral for service may also need to be made at this point.

Who will provide information within the Department of Human Services (Ageing, Disability and Home Care)?

Information is to be provided to Education by a Behaviour Support Practitioner, Psychologist or Case Worker who is currently providing a service or who has most recently provided a service to the individual. Information is to be provided in a dynamic manner and preferably through consultation rather than the simple provision of document.

Information to be provided includes:

- (a) Any risk assessment and behaviour support strategies developed by the Department of Human Services (Ageing, Disability and Home Care). These documents should be supported by a formulation of the purpose of the behaviour where available.
- (b) An Environmental and Life Style review.
- (c) Other documents that are relevant to the ongoing support of a school placement.

Information that should not be provided includes:

- (a) Medical reports that only contain information about diagnosis and treatment of the student, but which would not affect the management of the student's behaviour by a school.
- (b) Medical information about the student that is unrelated to the student's challenging behaviour.

2. DEPARTMENT OF HUMAN SERVICES (COMMUNITY SERVICES)

Information to be provided includes:

- (a) Any risk assessment and management strategies developed by the Department of Human Services (Community Services) to manage a risk of violence posed by a student to staff or carers who are employed by or whose services have been engaged by:
 - i. the Department of Human Services (Community Services); or
 - ii. another agency or a non-government organisation that is in receipt of government funding and providing services to the student.
- (b) Department of Human Services (Community Services) documentation containing information about:
 - i. incidents of violence directed by the student towards staff of the Department of Human Services (Community Services) where those incidents have been independently verified by the Department of Human Services (Community Services) as having taken place; and
 - ii. a current behaviour management plan developed by the Department of Human Services (Community Services) to manage the risk posed by the student's violent behaviour; and
 - iii. positive practices, supports or interventions that have been developed by the Department of Human Services (Community Services) staff to assist in the management of violent behaviour from the student. (Education would use its best endeavours to develop complementary strategies that support these strategies provided those strategies are suitable for implementation in schools).

Information that need not be provided includes:

- a. A notification of an incident/allegation about the student that has not been independently verified by the Department of Human Services (Community Services).
- b. Information the disclosure of which is prohibited by section 29 (1) of the *Children and Young Persons (Care and Protection) Act 1998* (i.e. the identity of a person who makes a report of risk of harm).

3. DEPARTMENT OF JUSTICE AND ATTORNEY GENERAL (CORRECTIVE SERVICES)

Information to be provided includes:

- (a) An account of the risk of the violence posed by that student to Department of Justice and Attorney General (Corrective Services) staff or another person while in custody.
- (b) Strategies utilised by the Department of Justice and Attorney General (Corrective Services) that have or may assist in the management of the risk of violent behaviour of the student.
- (c) Positive practices, supports or interventions that have been developed to assist in the management of violent behaviour from the student.

4. HEALTH DEPARTMENT (INCLUDING JUSTICE HEALTH AND AREA HEALTH SERVICES)

Information to be provided includes:

- (a) Information of the kind described below that is held by any public health organisation within the meaning of the *Health Services Act 1997* (including Justice Health in relation to an offender who has been detained by the Department of Justice and Attorney General (Corrective Services) or Human Services (Juvenile Justice) and is seeking enrolment in (or is enrolled) in a school).
- (b) Behavioural management strategies developed by Health to deal with a risk of violence posed by the student.
- (c) Behavioural management strategies provided by Health to another agency to enable that agency to deal with a risk of violence posed by the student.
- (d) Documentation containing information about:
 - i. incidents of violence by the student directed against Health staff or any other person to whom Health owes a duty of care that have been verified by Health;
 - ii. positive practices, supports or interventions that have been developed by Health to assist in the management of violent behaviour from the student;
 - iii. strategies that have been attempted to assist in the management of the risk of violent behaviour from the student but have proven unsuccessful, and where available, the reasons why these strategies were unsuccessful; and
 - iv. triggers for violent behaviour by the student and strategies for minimising or eliminating risk and de-escalating incidents.
- (e) Medical and other health-related reports over the past five years that relate to the student's violent behaviour and its management. Reports would only be relevant if they contain information about triggers for the student's behaviour and/or strategies for minimising or eliminating risk or de-escalating incidents.

Information not to be provided includes:

- (a) Medical and other health-related reports that do not centrally relate to the student's violent behaviour and its management.
- (b) Information the disclosure of which is prohibited by section 20G, 20P or 23 of the *Health Administration Act 1982*.

5. DEPARTMENT OF HUMAN SERVICES (JUVENILE JUSTICE)

Information to be provided includes:

- (a) Any written assessment of the risk posed by a student's violent behaviour except where the risk has been assessed as being low;
- (b) Any management strategies developed by Department of Human Services (Juvenile Justice) to deal with the risk of violence posed by the student to any person while they are detained including the student himself or herself; and
- (c) Information about:
 - i. incidents of violence directed against Department of Human Services (Juvenile Justice) staff or any other person by the student while the student is being detained that have been verified by Department of Human Services (Juvenile Justice) and resulted in a reassessment of the risk of violence posed by the student;
 - ii. positive practices, supports or interventions that have been developed by Department of Human Services (Juvenile Justice) staff to assist in the management of the student's violent behaviour; and
 - iii. triggers for violent behaviour by the student and strategies for minimising or eliminating risk and de-escalating behaviour that poses a risk of violence.

Information that need not be provided includes:

- (d) Information incidents that would not lead the Department of Human Services (Juvenile Justice) to develop a risk management plan (or re-evaluate an existing plan) as a consequence of the incident.

6. POLICE AND EMERGENCY SERVICES NSW (NSW POLICE FORCE)

Information to be provided by Police to schools on request about students with a history of violent behaviour includes:

- (a) The name of the student, details of the alleged violent incident in which the student was an alleged offender and progress in the matter (e.g. cautions, conferences or any charges that are being or have been laid, when court appearances are listed, decisions of the courts) where such matters might reasonably impact upon the operation of the school.
- (b) Reports of previous incidents of violent behaviour by the student including use of weapons dealt with by the Police.
- (c) Apprehended personal violence orders made against the student or bail conditions imposed upon him or her for incidents involving violent behaviour.

Information that need not be provided to schools by the Police under this process includes:

- (a) Information about an alleged non-violent offence e.g. drug offences

Information⁴⁰ will not be provided to the parent or student during the risk assessment process where the Police certify that disclosure may:

- (a) Compromise an ongoing investigation or operation, or the ability to obtain a conviction; or
- (b) Pose an unacceptable risk to the safety, welfare or wellbeing of a person as a foreseeable consequence; or
- (c) Reveal confidential police methodologies or practices.

⁴⁰ Consultation will take place with police before this information is used as the basis for an enrolment direction

7. SCHOOLS (GOVERNMENT AND NON-GOVERNMENT)

Information to be provided includes:

- (a) Reports of previous incidents of violent behaviour (including previous serious/high risk threats of violence) by the student, including information from any system for recording bullying by the student that is maintained by the school (such as pastoral care coordinators' reports);
- (b) Risk assessment and risk management plans formulated by the school and/or the educational authority in response to the student's violent behaviour. That is, information about relevant behaviour that contains information about:
 - i. incidents of violence directed by the student against any person on a school site where the school is reasonably satisfied that the incident occurred;
 - ii. information that has been provided to the school by other sources about violent incidents where the school is reasonably satisfied that the incident occurred;
 - iii. information that has been provided to the school by other agencies or entities that relates to the student's violent behaviour, the risk the student poses because of that behaviour and the steps that should be taken to manage that risk;
 - iv. strategies that have been attempted by the school to assist in the management of the risk of violent behaviour posed by the student that have proven unsuccessful together with any information about why the strategies were unsuccessful;
 - v. positive practices, supports or interventions that have been developed to assist in the management of violent behaviour from the student and that the school may be able to support including that developed by any other agency or entity;
 - vi. triggers for violent behaviour by the student and targets for violent behaviour by the student and strategies for minimising or eliminating risk and de-escalating incidents; and.
 - vii. emergency management and response plans, critical/serious incident plans developed by the school for dealing with the student's behaviour.

Information that will not be provided includes:

- Information that is not related to violent behaviour including academic records and discipline records that do not relate to violence (for example a suspension for cheating).

8. THE DEPARTMENT OF EDUCATION AND TRAINING (NSW TAFE COMMISSION)

Information to be provided includes:

- (a) Any risk assessment undertaken, and management strategies developed, by the Department of Education and Training (NSW TAFE Commission) to deal with the risk of violent behaviour posed by the student to staff of the Department of Education and Training (NSW TAFE Commission) or any other person including a contractor or another student.
- (b) Department of Education and Training (NSW TAFE Commission) documentation containing information:
 - i. about incidents of violence directed against staff of the Department of Education and Training (NSW TAFE Commission) or any other person that has been verified by the Department of Education and Training (NSW TAFE Commission) including matters where action has been taken against a student under the student discipline policy. (Where the student is jointly enrolled at a school at the time of the alleged incident information about that incident is to be relayed to the school within 1 school day and accordingly need not be verified by the Department of Education and Training (NSW TAFE Commission) before it is conveyed);
 - ii. about apprehended personal violence orders taken out against a student by Department of Education and Training (NSW TAFE Commission) staff in relation to a “work related” incident;
 - iii. that has been provided by another agency to the Department of Education and Training (NSW TAFE Commission) for the purpose of assessing the risk posed by a student with a history of violent behaviour and developing strategies to manage that risk;
 - iv. about strategies that have been attempted to assist in the management of the risk of violent behaviour from the student but have proven unsuccessful together with information (if available) about why these strategies failed;
 - v. positive practices, supports or interventions that have been developed by Department of Education and Training (NSW TAFE Commission) staff to assist in the management of violent behaviour from the student and that the school may be able to support; and
 - vi. emergency management and response plans, critical/serious incident plans for dealing with the student’s behaviour.

Information that will not be provided includes:

- Information that is not related to violent behaviour including academic records and discipline records that do not relate to violence (for example disciplinary action for cheating).

SCHEDULE B

WHO MAY MAKE A REQUEST FOR INFORMATION UNDER SECTION 26D OF THE EDUCATION ACT AND WHO PROVIDES THAT INFORMATION

1. **Who should make a request for information in a school or education authority**
 - (a) Who may make a request on behalf of the NSW Department of Education and Training and/or government schools?
 - i. School principals or a school staff member authorised by the principal;
 - ii. School counsellors;
 - iii. Where neither the principal nor the school counsellor is responsible for undertaking the written risk assessment and management plan process an information request can be made by another staff member of the Department of Education and Training who is undertaking the written risk assessment and management plan process.⁴¹ Any such staff member must be authorised to make this request by the person who senior in grade to a school principal and must confirm that he or she has been authorised to make this request.
 - (b) Who may make a request on behalf of schools affiliated with the Catholic Education Commission?
 - i. School principals or a staff member authorised by the principal. (For Police only the principal should request the information and provide a copy of the request to the school's approved education authority. Police are to provide the response to the school's approved education authority); and
 - ii. Where neither the principal nor the principal's delegate is responsible for undertaking the written risk assessment and management plan process an information request can be made by another staff member or nominee of the Catholic Education Commission or a Diocesan Education Office who is undertaking the written risk assessment and management plan process. Any such staff member must be authorised to make this request by a person who is senior in grade to a school principal and must confirm in writing that he or she has been authorised by this person to make this request.
 - (c) Who may make a request on behalf of schools affiliated with the Association of Independent Schools system?
 - i. School principals or a staff member authorised by the principal.(note – for Police only where schools are part of a system such as the Seventh Day Adventist schools, the principal should request the information with a copy to their approved education authority. Police are to provide the response to the school's approved education authority); and
 - ii. Where neither the principal nor a principal's delegate is undertaking the written risk assessment and management plan process an information request can be

⁴¹ This should only happen on rare occasions.

made by another staff member of the Association or Independent Schools who is undertaking the written risk assessment and management process.

Any such staff member must be authorised to make this request by a person who is senior in grade to a school principal and must confirm in writing that he or she has been authorised by this person to make this request. The staff member will confirm in writing that he or she has this responsibility when making the request.

(d) What about other schools?

i. The school principal may request information provided the school is registered under the *Education Act 1990*.

2. Who in a relevant agency should receive information requests and provide the information?

a) **Department of Human Services (Ageing, Disability and Home Care)** – the Manager Information Referral and Intake in each Department of Human Services (Ageing, Disability and Home Care) Region or a nominee listed in any Memorandum of Understanding.

b) **Department of Human Services (Community Services)** – the Manager Complaints and Information Exchange, Department of Community Services or a nominee listed in any Memorandum of Understanding.

c) **Department of Justice and Attorney General (Corrective Services)** – Executive Director, Offender Services and Programs or a nominee listed in any Memorandum of Understanding.

d) **Department of Health** – Section 248 Area Health Service Contact Points.

e) **Department of Human Services (Juvenile Justice)** – Director, Policy and Government Relations or a nominee listed in any Memorandum of Understanding.

f) **Police and Emergency Services NSW (NSW Police Force)#** – Local Area Command - The request should generally be directed to the Crime Management Unit (CMU) within the LAC. Specifically – the Youth Liaison Officer (for primary school students) or School Liaison Officer (for high school students) or Intelligence Officer. In remote locations any Police Officer available.

g) **Schools – both government and non-government** – school principals.

h) **Department of Education and Training (NSW TAFE Commission)** – the Institute Director in each Institute or nominee listed in any Memorandum of Understanding.

The following special arrangements apply to information provided by the Police and Emergency Services NSW (NSW Police Force):

Government Schools – A copy of any information request made by principals to the Local Area Command should be provided to the Department of Education and Training's Safety and Security Directorate.

Association of Independent Schools - where schools are part of a system such as the Seventh Day Adventist schools, the principal should request the information with a copy to their approved education authority. Police are to provide the response to the approved education authority.

Catholic Education Commission or nominated Diocese Education Office – the principal should request the information with a copy to their approved education authority. Police are to provide the response to the approved education authority.

SCHEDULE C

LETTERS AND FLOWCHARTS⁴²

TEMPLATE LETTER 1 – LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT IN RELATION TO THE NEED TO OBTAIN INFORMATION

I refer to your application to enrol (**INSERT STUDENT'S NAME**) at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**). In that application you disclosed that (**INSERT STUDENT'S NAME**) had a history of violent behaviour.⁴³

The law requires the any current risk that (**INSERT STUDENT'S NAME**) violent behaviour may pose to himself/herself, to other students or to staff at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) be assessed and consideration given to whether those risks can be controlled or eliminated at this school.

I have formed the view that (**INSERT NAME OF AGENCY**) may hold information about (**INSERT STUDENT'S NAME**) that would be relevant to the assessment and management of any risk that (**INSERT STUDENT'S NAME**) poses to this school because of his or her violent behaviour. This view is based upon

INSERT REASONS FOR THAT VIEW.

As a consequence I intend to ask (**INSERT NAME OF AGENCY**) to provide me with the following information if available:

INSERT DETAILS OF INFORMATION SOUGHT⁴⁴

While I am entitled to seek this information under Part 5A of the *Education Act 1990* (see attached extract from the Act) I would prefer to obtain your consent to the information being provided to me. A consent form is attached to this letter for your consideration.

You should be aware that if you do not consent to this information being provided by that agency and I still believe that it is necessary to obtain the information I can request that this information be provided to me without your consent.

If I do not receive a response to this letter by (**INSERT DATE – 5 WORKING DAYS FROM DATE OF LETTER**) I will request the agency to provide the information to me.

Any response that you make to this request will be forwarded to the agency together with my request for information provided I receive it before the information request is sent.

⁴² Consideration must be given to the need to modify any of the template letters to meet the individual needs of the recipient. For example any written or oral information provided to the student must be appropriate for the student's age or development. This includes the need to make adjustments to communication where the student has a disability.

⁴³ If information about the student's history of violent behaviour comes from another source that source should be identified unless inappropriate to do so

⁴⁴ This must be information of a type set out in Schedule A of the guidelines for that agency

TEMPLATE LETTER 1A –CONSENT TO OBTAIN INFORMATION

NAME:

ADDRESS.....

I am the parent/carer of, DOB.../.../... who has received services or support from the following agency or person at in

I am seeking to enrol/have enrolled at school.

I am aware the *Occupational Health and Safety Act 2000* requires the assessment and management of any current risk posed by’s violent behaviour to the health and safety of any person at a school.

I am also aware that **(INSERT NAME OF SCHOOL OR EDUCATIONAL AUTHORITY)** can seek information relevant to the assessment of the risk posed by **(INSERT STUDENT’S NAME)** history of violent behaviour under *Part 5A of the Education Act 1990* and that the school is seeking the following information from your agency:

INSERT INFORMATION TO BE SOUGHT

I give **(INSERT NAME OF AGENCY)** permission to release information of the following kind **(INSERT DETAILS OF INFORMATION TO BE SOUGHT)**⁴⁵ to the **(INSERT NAME OF SCHOOL)**.for the purpose of the assessment and management of any risk posed by to the health and safety of any person at school.

I also consent to **(INSERT NAME OF AGENCY)** being given information about the outcome of any written risk assessment and management plan conducted that uses information given by the agency if **(INSERT NAME OF AGENCY)** requests that information.

Signature:

Name:

Date: /.../....

⁴⁵ For a relevant agency this must be information of the type set out in Schedule A for that agency

TEMPLATE LETTER 2 – COVERING LETTER FROM THE PRINCIPAL TO THE RELEVANT AGENCY REGARDING A REQUEST FOR INFORMATION⁴⁶

The **(INSERT NAME OF SCHOOL OR EDUCATIONAL AUTHORITY)** is requesting information relevant to the assessment and management of health and safety risks posed by **(INSERT STUDENT'S NAME)**'s history of violent behaviour be provided to **(INSERT NAME OF SCHOOL)** by your agency under Part 5A of the *Education Act 1990*.

I am authorised to make this request under Schedule B of the Guidelines Issued under Part 5A of the Education Act 1990 for the Management of Health and Safety Risks Posed to Schools by a Student's Violent Behaviour. These guidelines can be found at **(INSERT WEB ADDRESS)**.

I believe that your agency may hold this information because **(INSERT GROUNDS FOR BELIEVING INFORMATION IS HELD)**.

Part 5A of the *Education Act 1990* authorises your agency to provide this information to **(INSERT NAME OF SCHOOL OR EDUCATIONAL AUTHORITY)** so that it can assess any risk posed by **(INSERT STUDENT'S NAME)** violent behaviour and develop strategies to eliminate or control that risk.

Please provide the requested information which is identified on the attached form to **(INSERT NAME OF REQUESTER AND CONTACT DETAILS)** by **(INSERT DATE)**.

Please note this information will be provided to the parent and student unless the guidelines say otherwise. Sections 5.14 and 5.15 of the guidelines (attached) outline those circumstances.

Advice about any concerns you may have about the disclosure of this information to parents or the student should be indicated when the information is provided.

(INSERT NAME) was requested to consent to this information being provided by your agency. A copy of their response is attached/No response was made to that request prior to this letter being sent.

(INSERT NAME) was also requested to consent to your agency being provided with information about the outcome of any written risk assessment and management plan that is developed using the information your agency has provided upon your request. Consent was not provided/Consent was provided – see attached document.

Please indicate in your response to this request whether or not you want this information provided to your agency.

Thank you for your assistance. If you wish to discuss this matter further please contact **(INSERT NAME OF REQUESTER)** on telephone number **(INSERT TELEPHONE NUMBER)**

⁴⁶ Check Schedule B of the Guidelines to identify who this request should be sent to in a specific agency. The letter should be signed by whoever is making the request.

TEMPLATE LETTER 2A – REQUEST FOR INFORMATION

Letterhead

REQUEST FOR INFORMATION

Students Name:

Sex:

Date of Birth:

Address:

Information Request Details

Information Required:

(INSERT DETAILS OF RELEVANT INFORMATION REQUIRED – IT MUST BE INFORMATION OF THE TYPE SET OUT IN SCHEDULE A OF THE GUIDELINES FOR THAT AGENCY)

How information relates to the management of risks to health and safety at a school:

TEMPLATE LETTER 3 – DECLARATION BY THE OTHER ADULT – NO CONFLICT OF INTEREST/CONFIDENTIALITY

Consideration is currently being given by the Department of Education and Training about how to deal with the risk posed, if any, by **(INSERT STUDENT'S NAME)** to the health and safety of persons at **(INSERT NAME OF SCHOOL SELECTED BY PARENTS)**. This includes consideration of whether or not to make an enrolment direction under section 26H of the *Education Act 1990*.

Such a direction, if issued, would mean that **(INSERT STUDENT'S NAME)** could only enrol in the government school that was identified in the direction and would not be able to identify in any other government school.

As neither of **(INSERT STUDENT'S NAME)** parents are involved in this process you have been asked to provide him/her with support and representation. This means you will be given access to information about the proposed direction, notice of the grounds for issuing the proposed direction and an opportunity to make written and/or oral representations about any direction to the final decision-maker.

To do this you must be at least 18 years old and must not work for the Department of Education and Training (unless you are related to **(INSERT STUDENT'S NAME)**). As it is important to be sure the student gets a "fair go" you must also be sure you will not be placed in a situation of conflict of interest by performing this role.

A conflict of interest would occur if there is a clash between acting in the best interests of **(INSERT STUDENT'S NAME)** and your own private interests. It can be an actual conflict of interest (for example, your own child is seeking enrolment at the school to which **(INSERT STUDENT'S NAME)** may be directed and you know there are limited places available) or other people may think there is one (for example, while you feel you can be fair you have had an argument with the student or his or her parents and it would be reasonable for another person to think that you might not be able to be fair).

If you are satisfied you have no conflict of interest in providing support and representation to **(INSERT STUDENT'S NAME)** please complete the declaration below and return it to the Department of Education and Training. Given the sensitive nature of the information that you may have access to as part of this process you are also being asked to agree to keep that information confidential.

I confirm that I am at least 18 years old and do not work for the Department of Education and Training/while I work for the Department of Education I am related to **(INSERT STUDENT'S NAME)**. I understand that I have been asked to provide support and representation to **(INSERT STUDENT'S NAME)** while consideration is being given as to whether or not to make an enrolment direction under section 26H of the *Education Act 1990*.

I am satisfied there is no conflict between my personal interests and my ability to provide support and representation to and I am willing to perform this role. I declare that no information obtained as a result of my participation in this process will be disclosed or used to any person except for the purpose of making written and/or

oral representations about any enrolment direction to the final decision-maker, for an associated lawful purpose or otherwise as required by law.

Signature
Name
Contact details

TEMPLATE LETTER 4 – LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENTS REGARDING THE COMMENCEMENT OF THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PROCESS – APPLICATIONS TO ENROL

Dear

I refer to your application to enrol (**INSERT STUDENT'S NAME**) at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**).

In that application you disclosed that (**INSERT STUDENT'S NAME**) had a history of violent behaviour.⁴⁷

The law requires an assessment of any risk that (**INSERT STUDENT'S NAME**) violent behaviour may pose to himself or herself, other students or staff at this school. It also requires that consideration is given to how those risks can be eliminated or controlled at this school.

A copy of a draft written risk assessment and management plan prepared by me is attached. I welcome any feedback you may have about the draft plan including any other measures that might allow (**INSERT STUDENT'S NAME**) to enrol at this school by (**INSERT DATE**).

Where the student has a disability the following three paragraphs should be inserted into this letter:

*Please be assured that I am aware the law also requires that any reasonable adjustments that could be made at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) to accommodate (**INSERT STUDENT'S NAME**) are to be considered by me during the written risk assessment and management plan process.*

*A reasonable adjustment is a measure that helps a student with a disability to participate in education on the same basis as other students. An adjustment is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with the disability, the school, staff and other students. The health and safety of students (including **INSERT STUDENT'S NAME**) and staff is one of the interests that must be considered as part of that process.*

The draft written risk assessment and management plan has been completed with this obligation in mind.

Where appropriate insert the following:

You are entitled to request the Department to provide an accredited interpreter to assist you in this process. You may also be entitled to the assistance of an advocate. Please advise me as soon as practicable if you believe that an interpreter or an advocate is required. If you wish to be represented by an advocate during this process please notify me of who you propose will play that role.

⁴⁷ If information about the student's violent behaviour comes from another source that should be identified unless inappropriate to do so

Please note that you may have a support person attend any meetings with the school.

I would appreciate your notifying me of whether you will have a support person, and who you propose to have as your support person at the time any meetings are arranged

I anticipate the written risk assessment and management plan will be completed by _/_/_
I will writ to you if this timeline changes.

TEMPLATE LETTER 5 – LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT REGARDING THE COMMENCEMENT OF THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PLAN PROCESS – EXISTING ENROLMENT⁴⁸

Dear

I refer to a recent incident at the school in which **(INSERT STUDENT'S NAME) (INSERT DETAILS OF THE INCIDENT)**.⁴⁹

The law requires an assessment of any risk that **(INSERT STUDENT'S NAME)** violent behaviour may pose to himself or herself, other students or staff at this school. It also requires that consideration is given to how those risks can be eliminated or controlled at this school.

A copy of a draft written risk assessment and management plan prepared by me is attached. I welcome any feedback you may have about the draft plan including any other measures that might allow **(INSERT STUDENT'S NAME)** to continue to attend this school by **(INSERT DATE)**.

Where the student has a disability the following three paragraphs should be inserted into this letter:

*Please be assured that I am aware the law also requires that any reasonable adjustments that could be made at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** to accommodate **(INSERT STUDENT'S NAME)** are to be considered by me during the written risk assessment and management plan process.*

*A reasonable adjustment is a measure that helps a student with a disability to participate in education on the same basis as other students. An adjustment is reasonable if it achieves this purpose while taking into account the student's learning needs and balancing the interests of all parties affected, including those of the student with the disability, the school, staff and other students. The health and safety of students (including **INSERT STUDENT'S NAME**) and staff is one of the interests that must be considered as part of that process.*

The draft written risk assessment and management plan has been completed with this obligation in mind

Where appropriate insert the following:

You are entitled to request the Department to provide an accredited interpreter to assist you in this process. You may also be entitled to the assistance of an advocate. Please advise me as soon as practicable if you believe that an interpreter or an advocate is required. If you wish to be represented by an advocate during this process please notify me of who you propose will play that role.

Please note that you may have a support person attend any meetings with the school.

⁴⁸ A suitably modified version of this letter is to be sent to the student unless the guidelines say otherwise

⁴⁹ The basis for commencing this process should be identified unless inappropriate to do so

I would appreciate your notifying me of whether you will have a support person, and who you propose to have as your support person at the time any meetings are arranged

I anticipate the written risk assessment and management plan will be completed by _/_/_
I will writ to you if this timeline changes.

TEMPLATE LETTER 6 – LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT REGARDING DELAYS IN THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PLAN PROCESS

Dear

As you are aware I am undertaking an assessment of the risk to people at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) posed by the violent behaviour of your son/daughter (**INSERT STUDENT'S NAME**) and attempting to identify strategies to manage that risk at this school.

I note you have been consulted during this process.

It was originally anticipated the written risk assessment and management plan would be completed by .../.../... but due to (**EXPLAIN REASONS FOR DELAY**) it won't be completed by that date.

Insert the following paragraph where the student has not yet been enrolled at the school

*As previously advised your application to enrol (**INSERT STUDENT'S NAME**) at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) cannot be finalised until this process has been completed.*

It is anticipated that the written risk assessment and management plan will be finalised by -/-/. I will write to you again if the completion of this matter is likely to be further delayed.

TEMPLATE LETTER 7 – LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT ABOUT THE OUTCOME OF THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PLAN PROCESS – ENROLMENT PROCEEDS

I refer to my letter of -/-/- in which I provided you with a copy of a draft written risk assessment and management plan dealing with the risk posed by (**INSERT STUDENT'S NAME**) violent behaviour to himself/herself, other students or staff if **he/she** were to enrol at this school.

I invited you in that letter to provide feedback about the draft written risk assessment and management plan I had prepared and to suggest any other measures that might allow **INSERT STUDENT'S NAME** to be enrolled at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**)⁵⁰. I would like to take thank you for your response⁵¹.

I have considered the comments you have made and reviewed the draft written risk assessment and management plan in the light of those comments/As you did not provide comments it has been finalised without the benefit of your input. A copy of the finalised written risk assessment and management plan is attached.

As you can see I have formed the view that (**INSERT STUDENT'S NAME**) can be safely accommodated at this school with the strategies that are set out in the written risk assessment and management plan.

This plan will be reviewed in consultation with you on a regular basis and as circumstances may require.

Please contact me so that arrangements can be made to finalise (**INSERT STUDENT'S NAME**)'s enrolment.

⁵⁰ Delete if student does not have a disability

⁵¹ Delete if no comments provided

TEMPLATE LETTER 8 - LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT ABOUT THE OUTCOME OF THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PLAN PROCESS – DECLINING AN APPLICATION TO ENROL⁵²

Dear

I refer to my letter of -/-/- in which I provided you with a copy of a draft written risk assessment and management plan dealing with the risk posed by (**INSERT STUDENT'S NAME**) violent behaviour to himself/herself, other students or staff if **he/she** were to enrol at this school.

I invited you in that letter to provide feedback about the draft written risk assessment and management plan I had prepared and to suggest any other measures that might allow **INSERT STUDENT'S NAME** to be accommodated at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**)⁵³. I would like to take thank you for your response⁵⁴.

I have considered the comments you have made and reviewed the draft written risk assessment and management plan in the light of those comments/As you did not provide comments it has been finalised without the benefit of your input. A copy of the finalised written risk assessment and management plan is attached.

I have concluded that (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) cannot implement risk management strategies that would eliminate or control (**INSERT STUDENT'S NAME**) violent behaviour because:

INSERT REASONS WHY.

As a consequence I have decided to decline the application to enrol (**INSERT STUDENT'S NAME**) at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**).

I have discussed this matter with my School Education Director (**INSERT NAME AND CONTACT DETAILS**) who concurs with this decision.

The decision to decline the application to enrol at (**INSERT NAME OF SCHOOL**) applies to enrolment at this school only. (**INSERT STUDENT'S NAME**) may be able to enrol at departmental school or facility that is better able to accommodate his/her needs.

Please contact (**INSERT NAME AND CONTACT DETAILS OF SCHOOL EDUCATION DIRECTOR**) to discuss (**INSERT STUDENT'S NAME**)'s educational options or if you disagree with my decision.

⁵² A suitably modified version of this letter is to be sent to the student unless the guidelines say otherwise

⁵³ Delete if the student does not have a disability

⁵⁴ Delete if no comments provided

TEMPLATE LETTER 9 - LETTER FROM THE PRINCIPAL TO THE PARENTS/STUDENT ABOUT THE OUTCOME OF THE WRITTEN RISK ASSESSMENT AND MANAGEMENT PLAN PROCESS – CURRENTLY ENROLLED STUDENT⁵⁵

Dear

I refer to my letter of -/-/- in which I provided you with a copy of a draft written risk assessment and management plan dealing with the risk posed by **(INSERT STUDENT'S NAME)** violent behaviour to himself/herself, other students or staff if **he/she** were to enrol at this school.

I invited you in that letter to provide feedback about the draft written risk assessment and management plan I had prepared and to suggest any other measures that might allow **INSERT STUDENT'S NAME** to be accommodated at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**⁵⁶. I would like to take thank you for your response⁵⁷.

I have considered the comments you have made and reviewed the draft written risk assessment and management plan in the light of those comments/As you did not provide comments it has been finalised without the benefit of your input. A copy of the finalised written risk assessment and management plan is attached.

I have concluded that **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** cannot implement risk management strategies that would eliminate or control **(INSERT STUDENT'S NAME)** violent behaviour because:

INSERT REASONS WHY.

As a consequence I have decided that **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** can no longer safely accommodate **(INSERT NAME AT THIS SCHOOL)**.

I have discussed this matter with my School Education Director **(INSERT NAME AND CONTACT DETAILS)** who concurs with this decision.

The decision about the enrolment of **(INSERT STUDENT'S NAME)** at **(INSERT NAME OF SCHOOL)** applies to enrolment at this school only. **(INSERT STUDENT'S NAME)** may be able to enrol at departmental school or facility that is better able to accommodate his/her needs.

Please contact **(INSERT NAME AND CONTACT DETAILS OF SCHOOL EDUCATION DIRECTOR)** to discuss **(INSERT STUDENT'S NAME)**'s educational options or if you disagree with my decision.

⁵⁵ A suitably modified version of the this letter is to be sent to the student unless the guidelines say otherwise

⁵⁶ Delete if the student does not have a disability

⁵⁷ Delete if no comments provided

TEMPLATE LETTER 10 - LETTER FROM THE SCHOOL EDUCATION DIRECTOR TO THE PARENTS/STUDENT ABOUT THE DIRECTIONS PROCESS⁵⁸

Dear

I refer to a letter sent to you by **(INSERT NAME OF PRINCIPAL)** in relation to your application to enrol/your son/daughter's current enrolment at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**.

As you are aware an assessment of the risk posed by **(INSERT STUDENT'S NAME)**'s violent behaviour to himself/herself, staff and other students at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** has been undertaken by the principal based: on

Insert information that was considered for example application to enrol, previous school records etc

I am advised you were consulted as part of that process.

(INSERT NAME OF PRINCIPAL) has advised me that the written risk assessment and management plan indicates **(INSERT STUDENT'S NAME)** safety, the safety of staff and possibly the safety of other students would be put at risk if he/she were to enrol in **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**, and cannot implement risk management strategies that would eliminate or control these risks.

I have reviewed that material and agree with this decision because:

INSERT REASONS WHY

I would welcome the opportunity to discuss **(INSERT STUDENT'S NAME)** educational opportunities with you.

In fairness you should be aware that if we do not reach agreement about **(INSERT STUDENT'S NAME)** educational options consideration will be given to making an enrolment direction under section 26H of the *Education Act 1990*.

If an enrolment direction is issued it means that **(INSERT STUDENT'S NAME)** can only enrol at that school if he/she is seeking enrolment in the government school system.

Information about the enrolment direction process can be found at **(INSERT WEB ADDRESS)**.

⁵⁸ A suitably modified version is to be sent to the student unless the guidelines say otherwise

TEMPLATE LETTER 11 – FIRST LETTER FROM THE REGIONAL DIRECTOR TO THE PARENTS/STUDENT ABOUT THE DIRECTIONS PROCESS⁵⁹

Dear

I refer to your application to enrol your son/daughter (**INSERT STUDENT'S NAME**) at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**)
OR I refer to your son's/daughter's (**INSERT STUDENT'S NAME**) enrolment at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**).

As you are aware schools are legally obliged to assess any risks posed by a student's enrolment to themselves, other students and staff. Consideration must also be given to what strategies can be implemented to eliminate or control identified risks that may be posed by a student's violent behaviour.

The following paragraph is to be inserted where a student has a disability:

*The school is also legally obliged, while assessing the risk that (**INSERT STUDENT'S NAME**)'s enrolment may pose to persons at (**INSERT NAME OF SCHOOL SELECTED BY THE PARENTS**) and considering strategies to eliminate or control those risks, to have regard to whether there are any reasonable adjustments that could be made at the school to accommodate (**INSERT STUDENT'S NAME**)'s enrolment there.*

I have been advised by (**INSERT DETAILS OF SCHOOL EDUCATION DIRECTOR**) that (**INSERT DETAILS OF PRINCIPAL**) has decided, based on a written risk assessment and management plan, that the risk posed by (**INSERT STUDENT'S NAME**) at (**INSERT SCHOOL SELECTED BY THE PARENTS**) cannot be controlled or eliminated.

I agree with that decision because:

INSERT REASONS WHY

I have considered the range of schools which would be able to provide (**INSERT STUDENT'S NAME**) with the support and access to curriculum that he/she needs and have identified (**INSERT NAME OF NEW SCHOOL**).

A draft written risk assessment and management plan dealing with (**INSERT STUDENT'S NAME**) proposed enrolment at (**INSERT NAME OF NEW SCHOOL**) is attached.

I welcome any feedback you may have about the draft plan including any other measures that might allow (**INSERT STUDENT'S NAME**) to be accommodated in the school by (**INSERT DATE**).

⁵⁹ A suitably modified version of this letter is to be sent to the student unless the guidelines say otherwise

TEMPLATE LETTER 12 – LETTER FROM THE REGIONAL DIRECTOR - RECOMMENDATION ABOUT THE NEW SCHOOL

I refer to my letter of **(INSERT DATE)** in which I provided you with a copy of a draft written risk assessment and management plan dealing with the risk posed at **(INSERT NAME OF NEW SCHOOL)** by **(INSERT STUDENT'S NAME)**'s violent behaviour.

You will recall in this letter that I invited you to provide feedback on the draft written risk assessment and management plan and to suggest any other measures that might allow **(INSERT STUDENT'S NAME)** to enrol at that school. I would like to thank you for your participation in this process⁶⁰.

I have considered the comments you have made and reviewed the draft written risk assessment and management plan in the light of those comments/As you did not provide comments it has been finalised without the benefit of your input. A copy of the finalised written risk assessment and management plan is attached.

I have concluded **(INSERT NAME OF NEW SCHOOL)** is the most suitable learning environment to manage the risks identified in the written risk assessment and management plan posed by **(INSERT STUDENT'S NAME)** behaviour and provide him/her with access to the curriculum.

Information about the programs available at the school, including what distinguishes it from **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** and a copy of its welfare and discipline policies are attached and an application to enrol at this school are attached.

I strongly recommend that you apply to enrol **(INSERT STUDENT'S NAME)** at **(INSERT NAME OF NEW SCHOOL)**. This recommendation will be considered to have been rejected by you in the absence of a response from you within seven days of the date of this letter.

Should you fail to accept this recommendation I am able to request that **(INSERT STUDENT'S NAME)** be directed to enrol, under section 26H of the *Education Act 1990*, at **(INSERT NAME OF NEW SCHOOL)**. If an enrolment direction is issued it will mean that **(INSERT STUDENT'S NAME)** can only enrol in **(INSERT NAME OF THE NEW SCHOOL)** if he or she is seeking enrolment in the government school system.

⁶⁰ Delete if no feedback provided

TEMPLATE LETTER 13 - LETTER TO FROM THE REGIONAL DIRECTOR TO THE PARENTS/STUDENT ADVISING THAT THE FINAL DECISION-MAKER HAS BEEN REQUESTED TO MAKE AN ENROLMENT DIRECTION

I refer to my letters of **(INSERT DATE OF LETTERS RELATING TO DRAFT RISK ASSESSMENT AND RECOMMENDATION)**.

I note that you have declined to accept my recommendation to enrol **(INSERT STUDENT'S NAME)** at the **(INSERT NAME OF THE NEW SCHOOL)**.

I have accordingly requested **(INSERT NAME and POSITION)** to consider making a direction to enrol **(INSERT STUDENT'S NAME)** at that school in accordance with section 26H of the *Education Act 1990*.

(INSERT NAME AND POSITION OF FINAL DECISION-MAKER) will write to you shortly in relation to what happens next.

TEMPLATE LETTER 14 - LETTER FROM THE REGIONAL DIRECTOR TO THE FINAL DECISION-MAKER REQUESTING THAT AN ENROLMENT DIRECTION BE MADE

REQUEST FOR DIRECTION ON ENROLMENT – (INSERT STUDENT’S NAME)

(INSERT STUDENT’S NAME) has sought enrolment in **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**

OR

(INSERT STUDENT’S NAME) is currently enrolled at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**.

An assessment of the risk posed by **(INSERT STUDENT’S NAME)** at **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** was undertaken by the principal of that school which concluded that the risk posed by **(INSERT STUDENT’S NAME)** violent behaviour could not be safely managed at that school.

The School Education Director and I both agree with this written risk assessment and management plan.

Another school has been identified that can safely manage the risk posed by the student’s violent behaviour – **(INSERT NAME OF NEW SCHOOL)**. A written risk assessment and management plan dealing with the risk of violent behaviour posed by **(INSERT STUDENT’S NAME)** enrolment at **(INSERT NAME OF NEW SCHOOL)** has also been undertaken.

I have recommended to **(INSERT STUDENT’S NAME)**’s parents that he/she enrol at this school but this recommendation has not been accepted.

I request that you direct that **(INSERT STUDENT’S NAME)** be directed to enrol at **(INSERT NAME OF NEW SCHOOL)** for **(INSERT RECOMMENDED PERIOD FOR DIRECTION)** because:

(INSERT GROUNDS AND REASONS FOR MAKING THIS REQUEST)

I further recommend that the enrolment direction, if made, be reviewed **(INSERT TIME PERIOD)**.

I enclose in support of this request:

1. A copy of the written risk assessment and management plan undertaken in relation to **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)**.
2. A copy of the written risk assessment and management plan undertaken in relation to **(INSERT NAME OF NEW SCHOOL)**.
3. A copy of letters sent to the parents and **(INSERT STUDENT’S NAME)** if they have been involved in the process) any responses made including notes of any

meetings and the letter in which I advised them I was requesting you to make an enrolment direction.

4. Copies of any records of incidents of violent behaviour by (**INSERT STUDENT'S NAME**)
5. Information about (INSERT NAME OF NEW SCHOOL) including any special programs that it offers and the school's welfare and discipline policies should also be provided to the final decision-maker;
6. provide any other documentation that the regional director considers relevant to the issue of an enrolment direction.

TEMPLATE LETTER 15 - LETTER FROM THE FINAL DECISION-MAKER TO THE PARENTS/STUDENT INVITING SUBMISSIONS ABOUT THE ENROLMENT DIRECTION⁶¹

Section 26H of the *Education Act 1990* gives the Director-General the authority to direct that a student is not to be enrolled at any government school other than a school of the kind specified in the direction.

I have been delegated by the Director-General of the Department of Education and Training to decide whether **(INSERT STUDENT'S NAME)** should be directed to enrol in a specified government school under section 26H of the *Education Act 1990*.

A direction may only be given where I believe on reasonable grounds that **(INSERT STUDENT'S NAME)** enrolment at any other school would constitute a risk because of his/her violent behaviour to the health or safety of any person (including **INSERT STUDENT'S NAME**).

I am considering directing **(INSERT STUDENT'S NAME)** to enrol at **(INSERT NAME OF NEW SCHOOL)** for the following reasons.

(INSERT REASONS)

If this direction is issued **(INSERT STUDENT'S NAME)** will **not** be able to enrol in any other government school than at **(INSERT NAME OF NEW SCHOOL)**.

Please find attached details of **(INSERT NAME OF NEW SCHOOL)** including information about the school itself, special programs that it offers, what distinguishes it from **(INSERT NAME OF SCHOOL SELECTED BY THE PARENTS)** and the school's student welfare and discipline policies.

It is proposed that the direction is to be in place for **(INSERT PERIOD)** and that the need for the direction will be reviewed **(INSERT PROPOSED REVIEW PERIODS)**.

A copy of the documents I am considering as part of this process is attached.

INSERT LIST OF DOCUMENTS

You have until **(INSERT DATE)**⁶² to write to me about whether or not **(INSERT STUDENT'S NAME)** should be given this direction. Any written material you wish to provide me should be addressed to me and sent to **(INSERT ADDRESS)**.

You may also speak to me in person about the proposed direction. If you would like to do this please contact **(INSERT CONTACT DETAILS)** within seven days of the date of this letter so that arrangements can be made. Please note that you may have a support person attend any meetings with the school. Please also note that he or she will be present at the meeting as a witness or adviser and not as an advocate

⁶¹ A suitably modified version of this letter should be provided to the student unless the guidelines say otherwise

⁶² This must be at least 14 days

I would appreciate your notifying me of whether you will have a support person, and who you propose to have as your support person at the time any meetings are arranged.

Where appropriate insert the following

*You are entitled to request the Department to provide an interpreter to assist you in this process. Please advise **(INSERT CONTACT DETAILS)** as soon as practicable if this assistance is required.*

You may also be entitled to the assistance of an advocate. Please advise me as soon as practicable if you believe that an interpreter or an advocate is required. If you wish to be represented by an advocate please notify me of who you propose will play this role.

TEMPLATE LETTER 16 – NOTICE OF AN ENROLMENT DIRECTION FROM THE FINAL DECISION-MAKER⁶³ TO THE PARENTS/STUDENT/OTHER ADULT

Dear

As you were advised on -/-/:-

- I have been delegated by the Director-General of the Department of Education and Training on -/-/:- to decide whether or not to issue your son/daughter a direction to enrol in a specified government school;
- under section 26H of the *Education Act 1990* I have the authority to direct that **(INSERT STUDENT’S NAME)** is not to be enrolled at any government school other than a school of the kind specified in the direction.
- I may only issue this direction if I believe on reasonable grounds’s enrolment at any other school would constitute a risk (because of the behaviour of the student) to the health or safety of any person (including **INSERT STUDENT’S NAME**).

I have decided, under section 26H of the *Education Act 1990* , to direct that if you seek to enrol in a government school he/she may only enrol at **(INSERT NAME OF NEW SCHOOL)**. In practical terms this means that any application by you to enrol **(INSERT STUDENT’S NAME)** in another government school will be declined while the direction remains in force.

Information about that school including the programs that it offers and the school’s welfare and discipline policy are attached for your information.

This direction will be in place for **(INSERT PERIOD)** and will be reviewed **(INSERT REVIEW PERIOD if applicable)**.

I have reached this decision because

(INSERT GROUNDS FOR DECISION).

In reaching this decision I have considered: **(INSERT DETAILS OF WHAT CONSIDERED** – e.g. parents written submissions and interview).

You are entitled to ask the Director-General of the Department of Education and Training to consider whether or not the direction should be revoked or varied. If you would like to do this you should write to **(INSERT NAME, CONTACT DETAILS)** by **(INSERT DATE)**.

A sample application for revocation or variation of an enrolment direction is attached.

⁶³ A suitably modified version of this letter is to be sent to the student unless the guidelines say otherwise

TEMPLATE LETTER 17 - REQUEST FOR A REVIEW OF AN ENROLMENT DIRECTION FROM A PARENT/OTHER ADULT

I, **(INSERT NAME)** am the parent of/was appointed as the other adult representing **(INSERT STUDENT'S NAME)** who was directed to enrol at **(INSERT NAME OF NEW SCHOOL)** by **(INSERT NAME OF FINAL DECISION-MAKER)** on --/--/--.

I want to have this direction varied/I want to have this direction revoked (delete whichever does not apply) because:

A. The process set out in the guidelines was not followed (Yes/No)

B. No direction should have been issued at all because

.....
.....
.....

C. The school to which my son/daughter has been directed is unsuitable/My son/daughter should have been directed to a different school because (please identify that school if known)

.....
.....

D. The enrolment direction should not be in force for the period of time it is (please specify how long it should be in place)

.....
.....
.....

E. Other:

.....
.....
.....
.....

Please attach additional pages if there is not enough space to say everything you want to say

NAME OF PARENT/ OTHER ADULT

Address for correspondence
Telephone number

Date .../.../.....

TEMPLATE LETTER 18 - REQUEST FOR A REVIEW OF AN ENROLMENT DIRECTION FROM A STUDENT

I,**INSERT STUDENT'S NAME** was directed to enrol at(**INSERT NAME OF NEW SCHOOL**) by..... (**INSERT NAME OF FINAL DECISION-MAKER**) on --/--/--.

A. The process set out in the guidelines was not followed (Yes/No)

B. No direction should have been issued at all because

.....
.....
.....

C. The school to which my son/daughter has been directed is unsuitable/My son/daughter should have been directed to a different school because (please identify that school if known)

.....
.....

D The enrolment direction should not be in force for the period of time it is (please specify how long it should be in place)

.....
.....
.....

E. Other:

.....
.....
.....
.....

Please attach additional pages if there is not enough space to say everything you want to say

NAME OF STUDENT

Address for correspondence

Telephone number

Date .../.../.....

TEMPLATE LETTER 19 – LETTER FROM THE DIRECTOR-GENERAL (OR DELEGATE) TO THE PARENTS/STUDENT ABOUT A REQUEST FOR A REVIEW OF DIRECTION

I refer to your request, dated (**INSERT DATE**) for the revocation/variation of the direction on enrolment issued to (**INSERT STUDENT'S NAME**) by (**INSERT NAME OF FINAL DECISION-MAKER**) on (**INSERT DATE**).

I have authority under section 26K of the *Education Act 1990* to vary or revoke a direction on enrolment.

I am currently considering your request, and as part of that process, have asked (**INSERT NAME OF FINAL DECISION-MAKER**) to provide me with:

- the documentation that he/she considered when deciding whether or not to issue the enrolment direction;
- a copy of the letter, and any other material provided to you when you were notified of the enrolment direction;
- his/her response to the request that you have made for the variation/revocation of the direction.

A copy of that material is attached⁶⁴.

You have until (**INSERT DATE**) to provide me with any written reasons and documentation you feel supports your request for a variation/revocation of the enrolment direction. These reasons should be addressed to me and sent to (**INSERT CONTACT ADDRESS**).

You may also speak to me in person about your request for a variation or revocation of the direction. If you would like to do this please contact (**INSERT CONTACT DETAILS**) within seven days of the date of this letter so that arrangements can be made. Please note that you may have a support person with you at any meetings that are held with me

I would appreciate your notifying me of whether you will have a support person, and who you propose to have as your support person at the time any meetings are arranged

Where appropriate insert the following:

*You are entitled to request the Department to provide an accredited interpreter to assist you in this process. Please advise (**CONTACT DETAILS**) as soon as practicable if this assistance is required.*

You may also be entitled to the assistance of an advocate. Please advise me as soon as practicable if you believe that an interpreter or an advocate is required. If you wish to be represented by an advocate during this process please notify me of who you propose will play that role.

⁶⁴ Reference should be made to chapters 4.8, 4.9, 4.12 and 4.13 (which set out the circumstances in which parents/student s are not involved in the process) prior to providing this material

TEMPLATE LETTER 20 – LETTER FROM THE DIRECTOR-GENERAL - DECISION ABOUT REVIEW OF AN ENROLMENT DIRECTION

I refer to your request for a review of an enrolment direction.

I have considered the following matters as part of this process

INSERT DETAILS

I have decided

INSERT DECISION

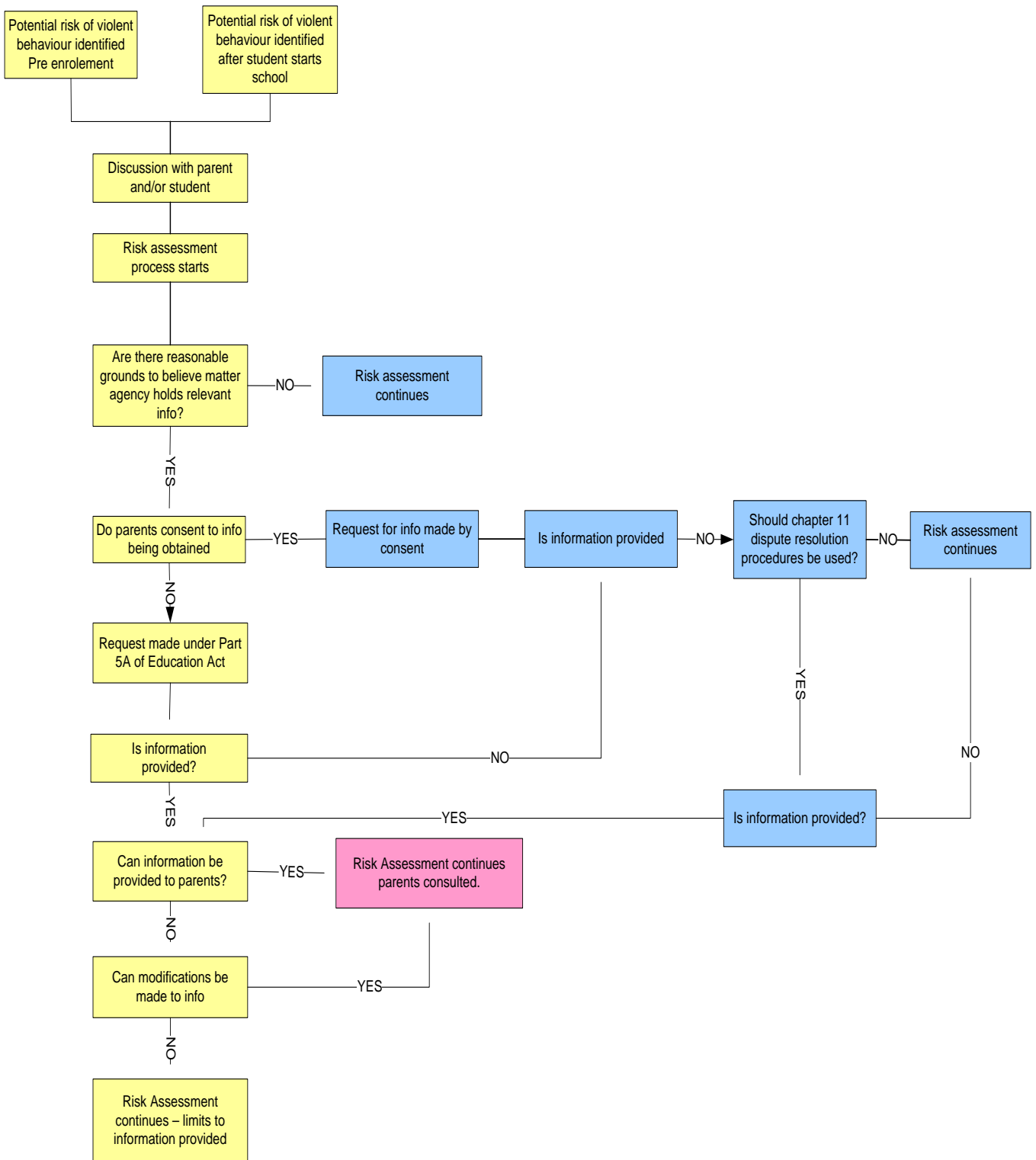
I made this decision because

INSERT REASONS WHY

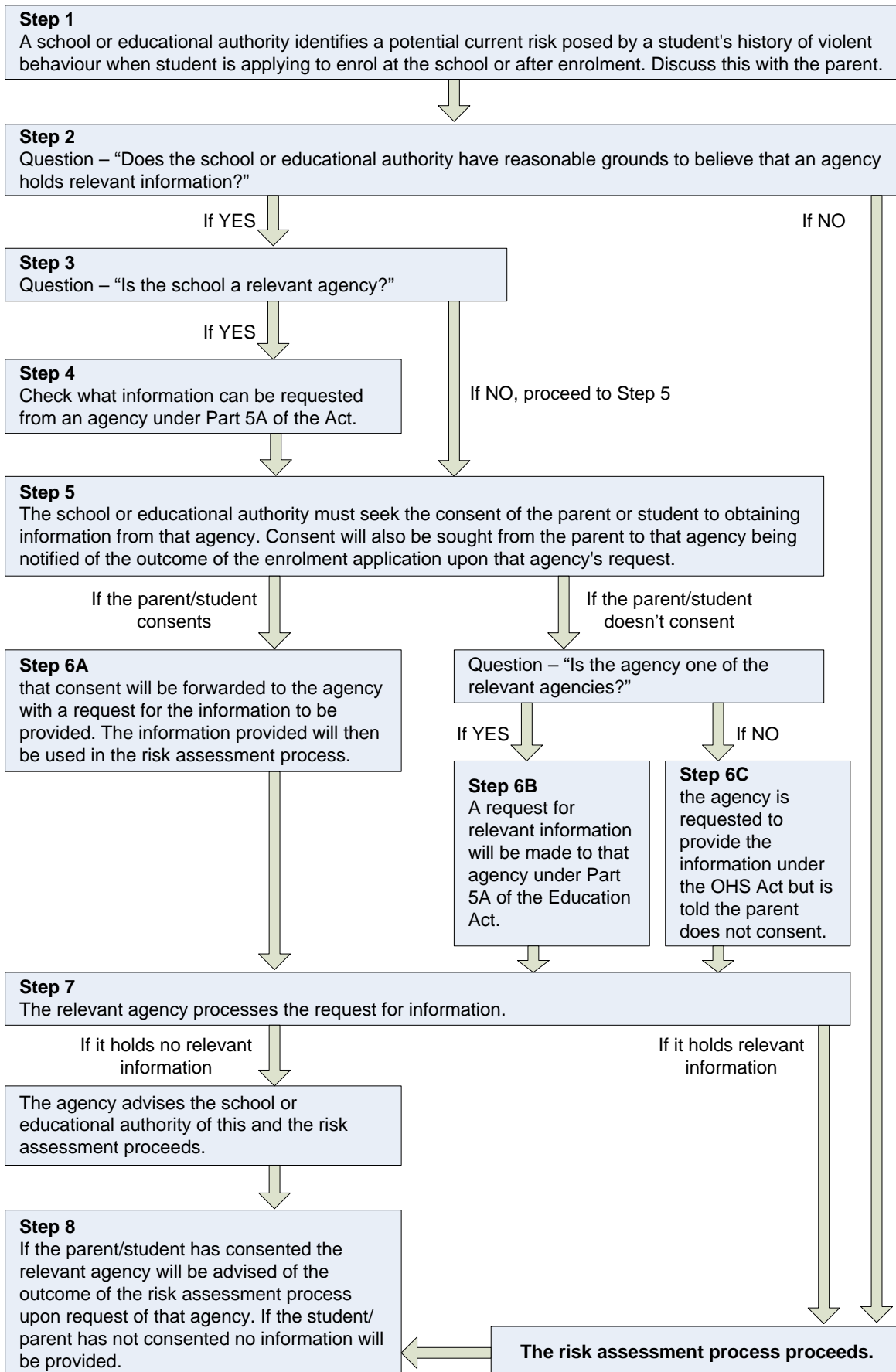
Please note that you may have a right to seek a review of the enrolment direction by the Administrative Decisions Tribunal.

Details of this review can be found in Chapter 8 of the Guidelines which have been previously provided to you. If you no longer have that document an additional copy can be found at www.....

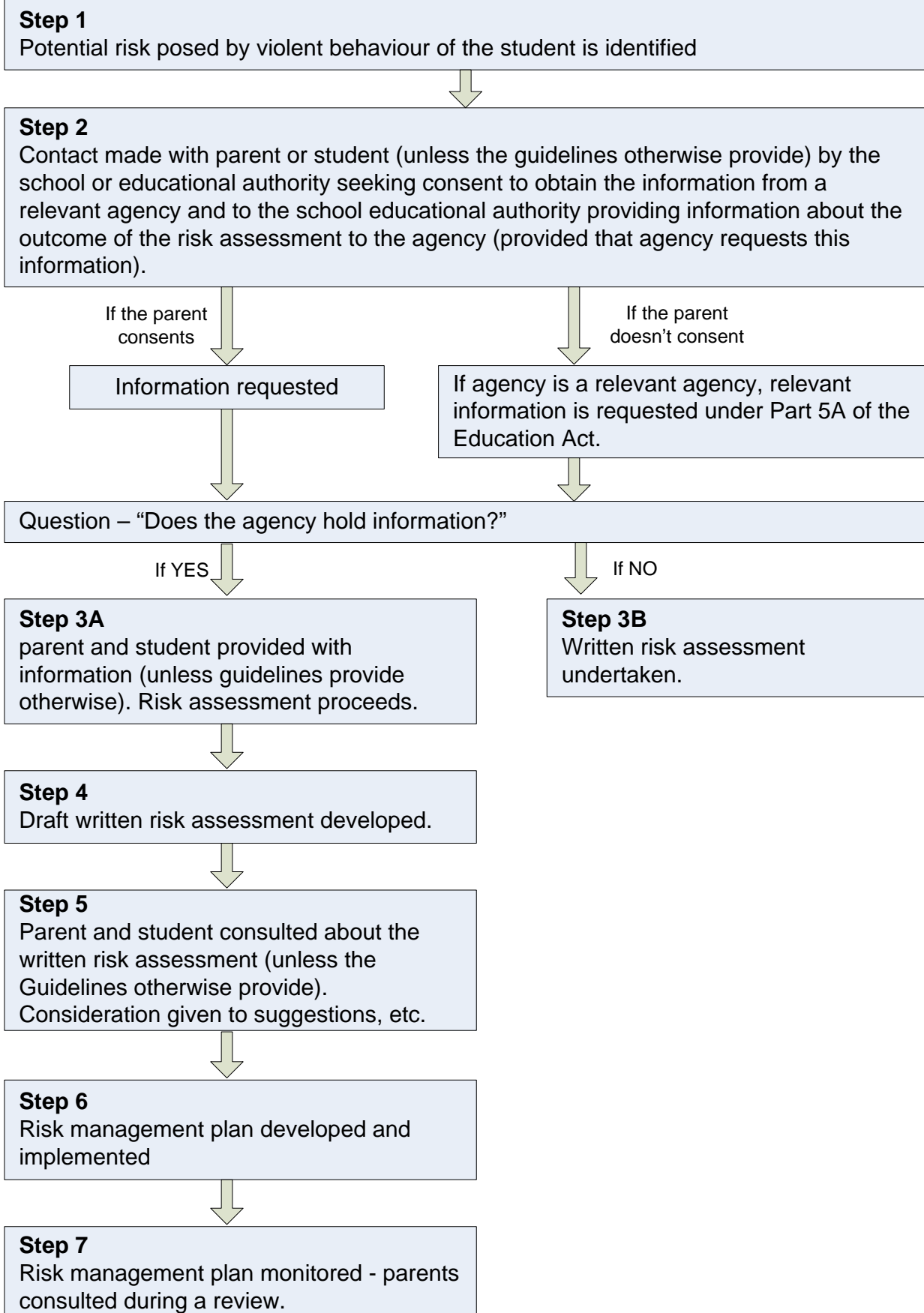
Seeking Information Relevant to Risk



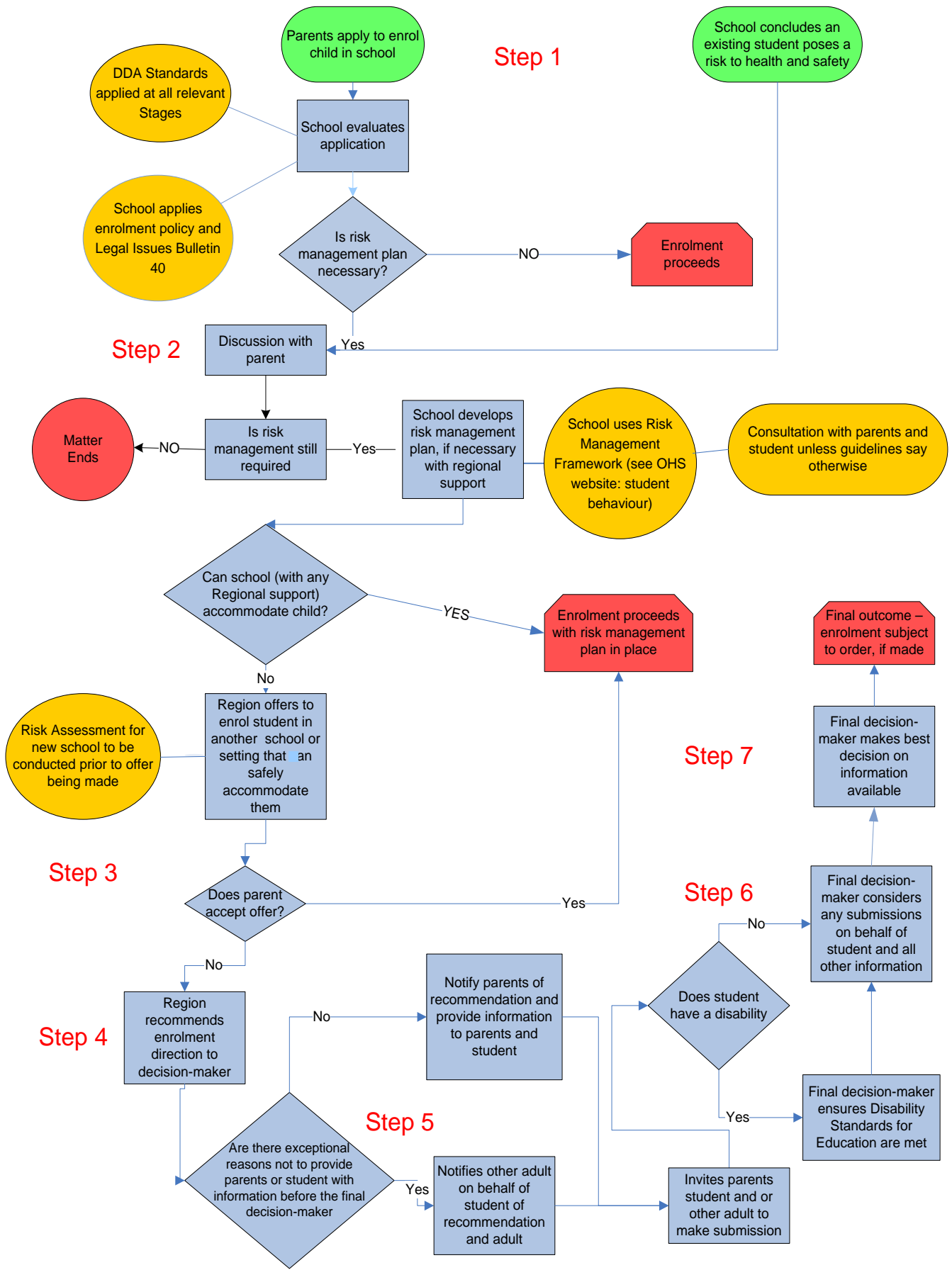
PROCESS FOR OBTAINING INFORMATION FROM AN AGENCY



ROLE OF PARENT/STUDENT IN THE RISK ASSESSMENT PROCESS

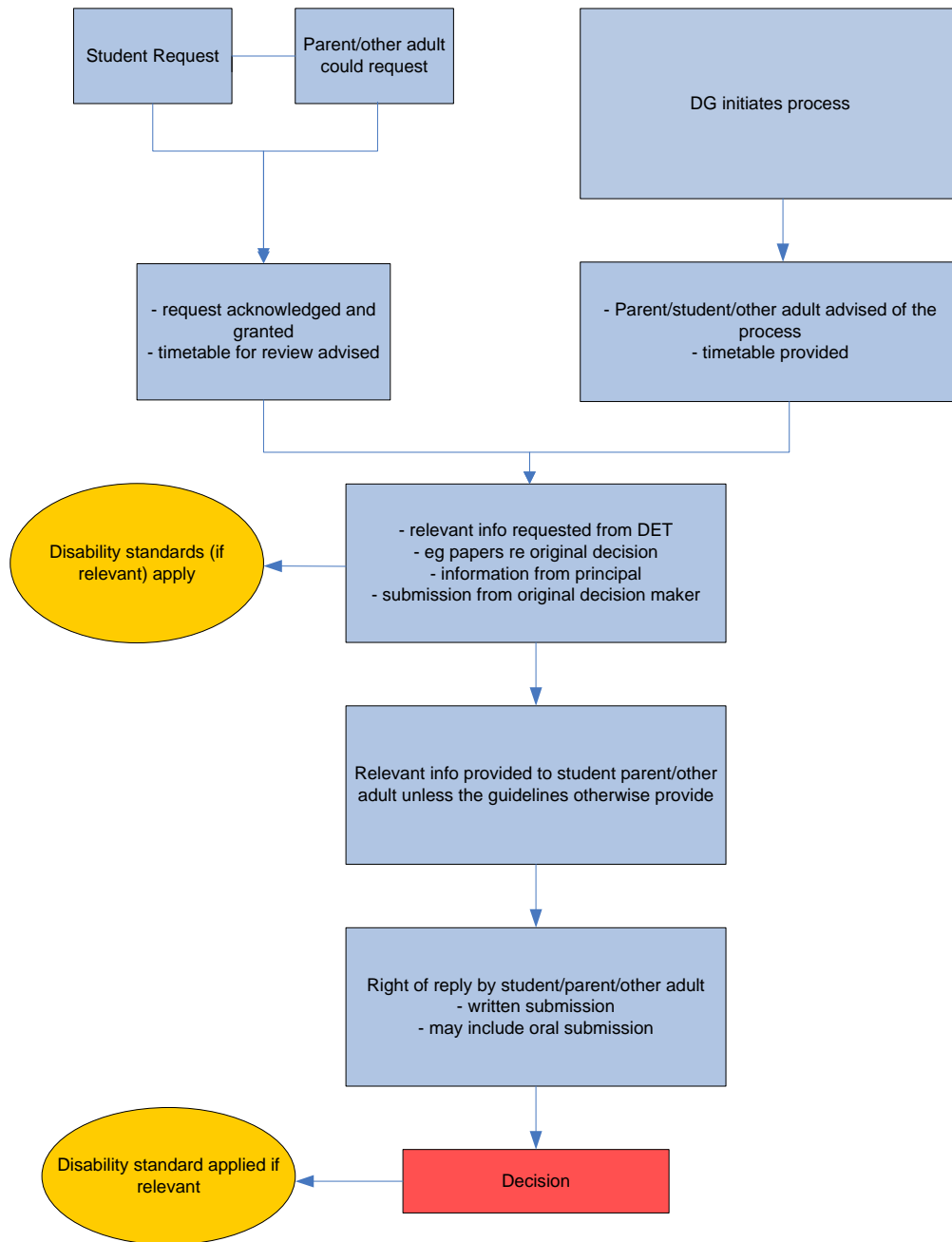


Process for making an enrolment direction under Part 5A of the Education Act



THIS APPLIES TO GOVERNMENT SCHOOLS ONLY

VARIATION OR REVOCATION OF AN ENROLMENT DIRECTION



THIS APPLIES TO GOVERNMENT SCHOOLS ONLY

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