

Resolving a family dispute over choice of school

As a parent you will always strive to do what is best for your children, but for separated parents this can sometimes lead to disagreement when what is best in one parent's eyes does not align with the other parent's view.

While education is undoubtedly an important factor for a child's development and welfare, and for their future success and happiness, it can also be the subject of a family dispute if parents disagree over where a child should attend school.

Parents may have had different experiences of education, with each feeling that their schooling worked for them and will be best for their child. Disagreements can arise over nursery, primary, and secondary schooling or whether your children should be home-schooled.

It is always best to try and keep communication with your former partner open and see if an agreement can be reached amicably. If you have tried this but have been unable to reach an agreement, you may be concerned as to who has the final say on schooling matters.

Parental responsibility

The first thing to check is if you both have parental responsibility. Anyone with parental responsibility for a child will have a say on the school their child should attend.

Biological mothers hold parental responsibility as do married fathers or fathers named on their child's birth certificate.

There are other circumstances when you may have parental responsibility, so if you are unsure about this you should seek legal advice. Steps can also be taken to obtain parental responsibility.

Legal options

Our experienced family lawyers will be able to advise you on your options, including alternatives to having to go to court.

Firstly, we can negotiate with your former partner or their legal representative to see if agreement can be reached.

Secondly, mediation is another option to try and reach an amicable resolution. This allows both parents to air their views and feelings on schooling. With the help of an independent mediator, parents can discuss what they both think is best for their children in a calm environment. Sometimes this will lead to a compromise being achieved as both parents may have gained a better understanding of where the other one is coming from.

The final option is to apply to court and let a judge decide what should happen. In most circumstances prior to doing this you will have to have attended a preliminary mediation session. When applying to court you may want to seek one or both of the following types of court order:

- **Specific issue order** - This is when you apply to the court asking a specific question. In this scenario it may be that you will be asking the court to determine which school your children should attend.
- **Prohibited steps order** - This is when you apply to the court asking it to prevent someone with parental responsibility for your child from taking a certain action with your child. In this scenario it may be that you are asking the court to prevent your former partner from moving your child to a new school.

What will the court consider?

As with any dispute to do with children, the court's paramount consideration must be the welfare of the child. The law sets out a list of issues the court must consider. This list is known as the welfare checklist, and it covers a number of aspects, including:

- the age, sex and background of the child;
- their physical, educational and emotional needs;
- how they feel and what they would wish to happen;
- the likely effect on them of a change in circumstances; and
- if they are at risk of suffering harm.

When it comes to a child's schooling it is important to look at if there are any special educational needs and, if so, how these could best be met. A statement of needs may be beneficial or a report from the child's social worker if they have one.

Most children will not have any special educational needs and the question over schooling may be about preference. In that case, the court will look at all the circumstances in the round including the school's facilities, how the child will travel to and from school and depending on the child's age their own wishes and feelings on what school they should attend.

The court will seek a CAFCASS report into the children's wishes and feelings if they are old enough to provide them. A child's view will likely be taken into account provided they have sufficient understanding. Often children will have a view influenced typically on where their close friends are going to school. Their wishes and feelings are only one factor and will not always be in line with what a court decides is best for their welfare.

For further information

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