



BRIEFING PAPER

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Schools: Parental Decision Making and Access to Pupil Records

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This briefing paper provides an overview of the rights of parents to receive information about their child's education, and to participate in decisions about their child's education. It should not be relied upon as legal or professional advice, or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

1. Definition of a 'Parent'

It is important to note that parents may be recognised differently under education law than under family law.

For the purposes of education law, section 576 of the *Education Act 1996* defines a 'parent' as:

- all natural (biological) parents, whether they are married or not;
- any person who, although not a natural parent, has parental responsibility for a child or young person (this could be a step-parent, guardian or other relative);
- any person who, although not a natural parent, has care of a child or young person.

A person has care of a child or young person if they are the person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child.¹

In family law 'parental responsibility' means all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child.² People other than a child's natural parents can acquire parental responsibility, for example through being appointed a guardian or adopting a child. More than one person can hold and exercise parental responsibility for a child.

The Commons Library Briefing Paper [Parental Responsibility](#) (SN02827) provides further information on acquiring parental responsibility.

¹ Department for Education, [Understanding and dealing with issues relating to parental responsibility: Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses](#), January 2016, p.4

² *Children Act 1989*, s3(1)

2. Access to a Child's Educational Information

Education law gives parents the right to information about their child's education. However, these rights differ depending on the type of school the child attends. In some cases a parent may be able to access information about their child's education through a request under the *Data Protection Act 1998*.

2.1 LEA-Maintained Schools

The [Education \(Pupil Information\) \(England\) Regulations 2005 \(SI 2005/1437\)](#) give parents of pupils at Local Education Authority (LEA) maintained schools the right to access their child's educational records and set out when such requests may be refused. Educational records may include information such as the records of the pupil's academic achievements as well as correspondence from teachers, local education authority employees and educational psychologists.

The Information Commissioner's Office (ICO) provides [guidance on accessing pupils' information](#) under the regulations which states:

If your child attends a maintained school, you have a right to access your child's educational record. This covers information that comes from a teacher or other employee of a local authority or school, the pupil or you as a parent, and is processed by or for the school's governing body or teacher, except for information the teacher has solely for their own use. So it will cover information such as the records of the pupil's academic achievements as well as correspondence from teachers, local education authority employees and educational psychologists engaged by the school's governing body. It may also include information from the child and from you, as a parent. Information provided by the parent of another child would not form part of a child's educational record.³

According to [Department for Education \(DfE\) advice](#), parents have a right to access their child's educational record, even if the child does not wish them to access it. This applies until the child reaches the age of 18. The advice provides the following case study to illustrate this point:

For example: a non-resident parent who has limited contact with their children, contacts the school to find out how well they did in their exams. Neither the children nor the resident parent wishes to share that information and informs the school of this. The school refuses to release the information on the basis that the children are sufficiently mature to have control over their personal information. The school has therefore breached education law by failing to provide information to which the non-resident parent is entitled.⁴

However, schools do have the right to refuse a parent's request to access their child's educational record in some circumstances:

There are certain circumstances where the school can withhold an educational record; for example, where the information might cause serious harm to the physical or mental health of the pupil or another individual.

³ Information Commissioner's Office website, [Accessing pupils' information](#) [Accessed 11/07/2016]

⁴ Department for Education, [Understanding and dealing with issues relating to parental responsibility: Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses](#), January 2016, p.8

The request for access would also be denied if it would mean releasing examination marks before they are officially announced.⁵

The school must make a pupil's educational record available for inspection or provide a copy of the record within 15 school days of a parent's written request. The school cannot charge to make the record available for inspection. Any charge for copying the educational record must not exceed the cost of supply.⁶

2.2 Independent Schools (Including Academies and Free Schools)

The *Education (Pupil Information) (England) Regulations 2005* do not apply to non-maintained schools (e.g. academies, free schools and independent schools).

However, the [Education \(Independent School Standards\) Regulations 2014](#), which came into force on 5 January 2015, set out certain minimum standards that all independent schools (including academies and free schools) must meet. The standards on information provision require that an annual written report of each registered pupil's progress and attainment in the main subject areas taught is provided to the parents of that registered pupil.⁷

[DfE advice](#) provides the following advice about the information sharing requirements under the regulations:

Under these Regulations, academies must provide an annual written report of each registered pupil's progress and attainment in the main subject areas taught, to the parents of that registered pupil (except that no report need be provided where the parent has agreed otherwise).

In cases where the school does not know the whereabouts of a non-resident parent, it should make the resident parent aware that the other parent is entitled to be involved in their child's education and request that information is passed on.

If the resident parent refuses to share information with the other parent and also refuses to provide contact details so that the school can deal direct with the non-resident parent, the school can do nothing more. It should be noted, however, that the resident parent may be genuinely unaware of the non-resident parent's whereabouts.

If the non-resident parent subsequently contacts the school and requests access to information, the school should provide it to that parent direct, after taking reasonable steps to satisfy itself that the individual is, in fact, the child's parent.⁸

2.3 The Data Protection Act 1998

Pupils attending any type of school have a right of access under the *Data Protection Act 1998* to their own information. This is known as the right of subject access, and it covers all personal data held about the data subject (ie. the information is not limited to the child's educational record). When a child cannot act for themselves, or the child gives permission, parents can make a subject access request (SAR) on their behalf. As a general

⁵ Information Commissioner's Office website, [Accessing pupils' information](#) [Accessed 11/07/2016]

⁶ Information Commissioner's Office website, [Accessing pupils' information](#) [Accessed 11/07/2016]

⁷ [Education \(Independent School Standards\) Regulations 2014](#), Schedule, Part 6(f)

⁸ Department for Education, [Understanding and dealing with issues relating to parental responsibility: Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses](#), January 2016, p.8

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guideline, if the child is aged 12 and over the school is likely to obtain the child's consent before disclosing their personal data to a parent.⁹

The Information Commissioner's Office (ICO) [Subject Access Code of Practice](#) (2014) provides the following guidance on requesting information held about pupils by schools:

Unlike the distinct right of access to the educational record, the right to make a SAR is the pupil's right. Parents are only entitled to access information about their child by making a SAR if the child is unable to act on their own behalf or has given their consent. For guidance about deciding whether a child is able to make their own SAR, see chapter 4. If it is not clear whether a requester has parental responsibility for the child or is acting on their behalf, you should clarify this before responding to the SAR.

In deciding what information to supply in response to a SAR, you need to have regard to the general principles about exemptions from subject access described elsewhere in this code. Examples of information which (depending on the circumstances) it might be appropriate to withhold include:

- information that might cause serious harm to the physical or mental health of the pupil or another individual;
- information that would reveal that the child is at risk of abuse, where disclosure of that information would not be in the child's best interests;
- information contained in adoption and parental order records; and
- certain information given to a court in proceedings concerning the child.¹⁰

The Code of Practice provides guidelines on the factors to take into account when considering whether information should be provided to the child or the parent:

Before responding to a SAR for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that the child can understand their rights, then you should respond to the child rather than the parent. What matters is that the child is able to understand (in broad terms) what it means to make a SAR and how to interpret the information they receive as a result of doing so. When considering borderline cases, you should take into account, among other things:

- where possible, the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;
- any duty of confidence owed to the child or young person;
- any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;
- any detriment to the child or young person if individuals with parental responsibility cannot access this information; and
- any views the child or young person has on whether their parents should have access to information about them.

In Scotland, the law presumes that a child aged 12 years or more has the capacity to make a SAR. The presumption does not apply in England and Wales or in Northern Ireland, but it does indicate an approach that will be reasonable in many cases. It does not follow that, just because a child has capacity to make a SAR, they also have

⁹ National Association of Head Teachers, [Parental responsibility and entitlement to information](#), 2 November 2012

¹⁰ Information Commissioner's Office, [Subject Access Code of Practice - Dealing with requests from individuals for personal information](#), February 2014, p.52

capacity to consent to sharing their personal data with others – as they may still not fully understand the implications of doing so.¹¹

A SAR must be made in writing. If a SAR is made for information containing, in whole or in part, a pupil's educational record, a response must be provided within 15 school days. The Code of Practice sets out the maximum amount the school may charge. If the SAR does not relate to any information that forms part of the educational record, then a 40-day time limit for responding applies. The maximum fee for dealing with the request is £10.¹²

Information Commissioner's Office helpline

The [ICO helpline](#) can provide advice on requesting information under the *Data Protection Act 1998*: 0303 123 1113 (local rate) or 01625 545 745 (national rate), Monday to Friday, 9am to 5pm.

3. Involvement in Decisions about a Child's Education

The Department for Education (DfE) has issued advice on [Understanding and dealing with issues relating to parental responsibility](#) (January 2016), to help schools understand their obligations and duties in relation to the rights and responsibilities of parents.

The advice states that schools must treat parents (as defined under education law) equally, and all parents have the right to participate in decisions about their child's education:

School and local authority staff must treat all parents equally, unless there is a Court order limiting an individual's exercise of parental responsibility. Everyone who is a parent, as defined under education law (whether they are the resident parent or not, with or without parental responsibility – see, *Defining Who is a Parent*) has a right to participate in decisions about a child's education and receive information about the child (even though, for day-to-day purposes, the school's main contact is likely to be a parent with whom the child lives on school days).

Individuals who have parental responsibility for, or care of, a child have the same rights as natural parents; for example:

- to receive information, e.g. pupil reports;
- to participate in statutory activities; e.g. vote in elections for parent governors;
- to be asked to give consent; e.g. to the child taking part in school trips;
- to be informed about meetings involving the child; e.g. a governors' meeting on the child's exclusion.¹³

It is important to note that in addition to these rights, all parents have legal obligations; for example: to ensure that a child of compulsory school age receives a suitable full-time education.

¹¹ Information Commissioner's Office, [Subject Access Code of Practice - Dealing with requests from individuals for personal information](#), February 2014, p.12

¹² Information Commissioner's Office, [Subject Access Code of Practice - Dealing with requests from individuals for personal information](#), February 2014, pp. 52-53

¹³ Department for Education, [Understanding and dealing with issues relating to parental responsibility Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses](#), January 2016, p.7

4. Disagreements about a Child's Education

If parents cannot agree on decisions about a child's education, they might want to seek independent legal advice about obtaining a Court order setting out exactly what decisions each parent can make in respect of the child.

[DfE advice](#) explains the types of Court order that might be relevant in cases such as these:

Court orders under section 8 of the Children Act 1989 (often called section 8 orders) settle areas of dispute in relation to the exercise of parental responsibility or a child's care or upbringing, and can limit how an individual exercises their parental responsibility.

There are two types of section 8 orders which can be made to address particular issues:

- A **prohibited steps order** imposes a specific restriction on the exercise of responsibility. This means that no step specified by the Court, which a parent could take in meeting his/her parental responsibility, can be taken without the consent of the Court.

***For example:** one parent wants to take the child abroad for an extended period or prevent the child from attending a form of religious worship, against the wishes of the other parent.*

- A **specific issue order** is an order giving directions for the purpose of determining a specific question which has arisen, or may arise, in connection with any aspect of parental responsibility.

***For example:** an order allowing one parent to agree to a pupil changing school against the wishes of the other parent.¹⁴*

The Commons Library Briefing Paper [Legal help: where to go and how to pay](#) (CBP03207) provides information about where to seek legal help and advice.

¹⁴ Department for Education, [Understanding and dealing with issues relating to parental responsibility: Departmental advice for maintained schools, maintained nursery schools, academies, free schools, local authorities and dioceses](#), January 2016, p.6