



## Community Services: Education

Argyll House  
Alexandra Parade  
Dunoon PA23 8AJ

To: Heads of all Educational Establishments

Dear Colleague

### **Guidelines on police and legal issues affecting school children and young people**

From time to time, police or legal issues affecting school children and young people arise and heads may feel uncertain as to the most appropriate method of handling the situation. It is, therefore, considered that broad guidelines outlining appropriate procedures in a variety of situations would be welcomed. Of course, it is difficult to cover all eventualities and any head teacher/campus principal or teacher becoming involved in any of the matters covered below, or in similar matters, should not hesitate to seek guidance from Legal Services where a solicitor will always be available to assist. The service is located in Kilmory, Lochgilphead; telephone number 01546 602127.

Reference should also be made in appropriate circumstances to education management circular 3.10 on Pupils' progress records, education management circular 3.23 on Child welfare, safety and protection and education management circular 3.11 on Access to pupil and student records.

Heads must advise the link QIO or appropriate head of service of the circumstances of any incident which results in their seeking guidance from the Council's Legal Services.

#### **1 Police enquiries**

##### **1.1 Identification**

A person appearing in civilian clothes and purporting to be a police officer should be asked to produce his police identification card.

##### **1.2 Court warrants and other court papers**

(a) Wherever possible, police officers endeavour to avoid serving court papers on a child during school hours. However, where such action is unavoidable and police officers call at a school with a warrant or other papers from a court, these

documents should be examined. The terms of any court warrants, orders, etc, must be complied with. In such circumstances, only the head teacher/campus principal or his/her authorised depute should deal with the police.

- (b) The head teacher/campus principal must immediately send a letter to the parent or carer of the child, or children involved detailing what has taken place. This letter can be sent by any means that the head teacher/campus principal considers appropriate, bearing in mind that speed in such cases is of the essence. If such a letter is sent by any other means than through the post then a copy thereof should be sent to the parent or carer by recorded delivery.

### 1.3 Investigation of incidents not connected with school

- (a) In the course of their duties, the police are required to investigate crime, to establish the identity of the person committing the crime, and to obtain witnesses. In normal circumstances, the police interview a child only in the presence of his/her parents or carer and therefore outwith school hours.
- (b) However, there may be special circumstances where, in the interests of justice, it is necessary for the police to interview a child without delay.
- (c) If police arrive at a school to interview child suspects or witnesses, the head teacher/campus principal should ask for an opportunity to try to contact the parent or carer. If the police agree to this, then the head teacher/campus principal should cooperate with the police as to the safe custody of the child or young person concerned until the parent or carer arrives.
- (d) If circumstances are such that it is not possible to contact the parent or carer, or if the police insist that the parent or carer is not present, then the interview of the pupil by the police should take place in the presence of the head teacher/campus principal or such other teacher as may be delegated by him/her. If, in the course of the interview, the police have reasonable grounds for thinking the child or young person being interviewed is the guilty party, the child would be cautioned and charged, and thereafter the police would probably remove the child or young person to the police station. If any child is interviewed by the police in school and without the presence of the parent or carer, the head teacher/campus principal should immediately advise the parent or carer concerned by letter, sent in accordance with the provisions mentioned in 1.2 above. The letter need not give every detail but should narrate all the essential facts.
- (e) In the case of suspected child abuse the role and response of the education department are detailed in education management circular 3.23.
- (f) If in doubt regarding any of the above guidelines do not hesitate to contact the Legal Services Department.

#### 1.4 Investigation of incidents directly connected with schools

- (a) The general principles regarding the taking of statements set out in section 1.3 apply.
- (b) When incidents directly connected with the school are being investigated, it is particularly desirable for the police to interview children and young people in the presence of the parent or carer if any member(s) of the teaching staff may have been directly involved in the incident or as witnesses.

### **2 Parental disputes as to the residence/right to control of children**

- 2.1 Where one parent or carer living in the area of the school enrolls a child at school the head teacher/campus principal is under no obligation to establish whether or not that parent or carer has legal right in respect of residence of the child.
- 2.2 Head teachers/campus principals and their staff will probably become aware of cases where there has been a separation of parents.
- 2.3 In any case where a head teacher/campus principal or teacher has reason to believe that there has been some estrangement between parents and a stranger arrives, purporting to be a parent or carer, demanding to see a child, it should first be ascertained that this person is, in fact, a parent or carer and has parental rights and responsibilities. He/she should be asked to produce some evidence of his/her identity, for example, a driving licence, a credit card or a trade union membership card. If the person is not a natural parent then the production of some evidence of his/her relationship to the child or young person, for example, a court order, should be sought, showing what parental rights and responsibilities he/she has in respect of the child.
- 2.4 If the head teacher/campus principal or teacher is satisfied that the person is, in fact, a parent or carer and has parental rights and responsibilities in relation to a child, the teacher cannot, in law, refuse the parent or carer access to the child, or prevent the parent or carer from removing the child unless the parent or carer is under the influence of drink, drugs or there is some other child protection concern - in which case, if the person persists, the police should be called - or unless there has been produced to the school, previously, a court order preventing this particular parent or carer from access to the child. If such an order is produced at any time to any member of the school staff then in law in any subsequent dealings, all members of staff will be deemed to have knowledge of the existence of the court order. It would therefore be essential for a head teacher/campus principal to advise all members of staff of any relevant situation which exists in the school.

### **3 Reports of children and young people**

- 3.1 Teachers are expected and encouraged to give regular written reports to parents or carers of the conduct and progress of children and young people. Details of the

procedures to be followed with respect to access to children and young peoples' records are contained in education management circular 3.11.

- 3.2 Apart from the routine reports, and requests to see children's records from parents or carers mentioned in 3.1, teachers are from time to time asked for a written report on a child or young person. Such reports may be required due to a court action and can result in a citation to attend a court as a witness in a case such as divorce or contested right to decide as to the child's residence. In general, reports should only deal with matters within the knowledge of the author, and teachers should resist being drawn into speculative areas.
- 3.3 Requests for written reports other than the above normal school reports can be of two types. Firstly, the request can come from a solicitor acting for one or other of the child's parents. In these cases the solicitor should be provided with a copy of the last regular report which was issued to the parents together with an update thereof in the same terms as the original report. If the solicitor follows this up by requesting additional information head teachers/campus principals are advised to be extremely careful regarding giving any such additional information. If the information is given, any opinions contained therein should be confined to educational matters. If a teacher is in doubt whether to supply any additional information, the safest course of action is to supply no more than the updated report outlined above.

The other set of circumstances whereby reports could be requested is when solicitors acting for some third party other than the parents or carers are seeking information, probably with a view to subsequent court action. In these cases no information whatsoever should be given to the solicitor without first contacting the Legal Services Department.

- 3.4 It is appreciated that requests from solicitors for statements may cause concern to head teachers/campus principals and teaching staff because usually they are not familiar with the law, and, in particular court procedure. It is emphasised that they should not hesitate to contact Legal Services at any time where a solicitor will endeavour to assist them.

#### **4 Citations to attend court**

- 4.1 A teacher may receive a citation to attend court as a witness in a criminal case, a civil case or a case initiated by the reporter to the children's panel.
- 4.2 If a teacher is cited to attend as a prosecution witness in a criminal case, the citation will usually be in the name of a procurator fiscal and served on the teacher by a police officer. In these cases no minimum period of notice is required and indeed sometimes only very short notice will be given. If the teacher is required as a defence witness in a criminal case, intimation will probably be sent to the teacher by

a solicitor for the defence and the teacher should be aware of the case and the evidence he or she is required to give.

- 4.3 In civil cases, whether in the Court of Session or the Sheriff Court the citation will be served personally by a sheriff officer, a messenger at arms or by post or “served personally by an Officer of the Court or by post”.
- 4.4 Where the citations are made by a sheriff officer or messenger at arms they can be asked the name and address of the solicitor who instructed them to serve the citation. Where the citation is by post the solicitor's name and address should appear on the backing of the citation. In some cases the solicitor's name given will be that of an individual and not of a firm of solicitors which may make it difficult for the teacher to contact the solicitor. In these cases, Legal Services, if contacted, will try to trace the solicitor.
- 4.5 The teacher concerned may either contact the solicitor directly to find out what is required of him/her and thereafter consult the Legal Services Department or contact the Legal Services Department before taking any further action.
- 4.6 It may also be possible that, if a teacher has been cited as a witness, they may be asked by the other party's solicitor to give a precognition. This is a formal statement of the teacher's evidence. There is no legal requirement to give a precognition although in the normal course this would be given and it is possible that if one is not given the solicitor may apply for a warrant to cite for a precognition before a sheriff. If a teacher has any concern regarding a request for a precognition, they should contact Legal Services for advice.
- 4.7 In civil cases very short notice, on occasions only 48 hours, may be given to a witness. Attendance at the court specified and at the time specified is mandatory and can only be avoided on medical grounds supported by a medical certificate or in other very exceptional circumstances.
- 4.8 It is possible that a teacher will receive a citation to attend as a witness in civil cases without having had some earlier communication with the solicitor concerned but it is unlikely because the solicitor would not know what the teacher is likely to say in evidence.

4.9 Where a citation for a civil case is received, with or without prior communication with the solicitor, the Legal Services Department, if requested, may be able to contact the solicitor concerned with a view to reducing to a minimum the time the teacher has to spend at court.

Yours sincerely

Executive Director of Community Services

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