CHANGING THE NAME OF STUDENTS IN SCHOOLS AND NSW TAFE

Frequently when a family break up occurs one of the parents will change their surname. When a parent does change their name, it is commonly a wish that any children living with the parent also be known by the new family name. This may be contrary to the wishes of the other parent who may also retain parental responsibility for the child.

Common usage of name
Provided it is not for a fraudulent purpose, a person over the age of 18 can be known by any name they wish and the exclusive use of the new name is all that is required to effect the change. Contrary to popular belief, a deed poll does not of itself change a person’s name – it is merely evidence of the change in the name. A bank account, passport or driver’s licence in the new name serves a similar purpose. The use of a new name can occur despite the person’s birth certificate indicating a different name.

Birth certificate name
Most people will have access to a birth certificate which records the details of their birth as provided to the Registrar of Births, Deaths and Marriages. Usually the information has been provided by one or both parents. Subject to meeting certain requirements imposed by the Registrar, a person over the age of 18 can change the name recorded on the certificate. If an application for a name change is accepted, any extract copy of the birth certificate will be in the new name. Any full certificate issued will include details of the original name and any subsequent changes.

Children and young persons
Children and young people under 18 cannot change their own name either by common usage or by amendment of their birth certificate. Generally both parents need to consent to any proposed change of name. If parents are separated, one parent cannot change a child’s name irrespective of the fact that the child may reside with that parent.

If a parent wishes to change the name of a child, the parent must either obtain the consent of the other parent or obtain a court order unless the other parent is dead. A court will only make such an order if it is satisfied the change is in the best interests of the child.

Enrolment in school and TAFE NSW and requests to effect a change of name
Generally, school and TAFE NSW documents in relation to students under the age of 18 must indicate the birth certificate name of the student. Alternatively, where a birth certificate cannot be provided, records should be in the name indicated in the alternate documentation relied upon to seek enrolment (eg statutory declaration, passport, immigration papers). It is under this name the student is officially enrolled. If however, one of the following conditions apply, principals and institute managers can enrol students under an alternate name or change existing records to indicate the new name:

- a signed consent from both parents indicating approval to use the new name is provided;
- a court order is provided authorising the use of the new name;
- a statutory declaration is provided by the enrolling parent indicating that the child has had no contact with the other parent and his or her whereabouts are unknown.

While there is no specific legal requirement regarding a time period, it is
considered advisable and in keeping with established practice to apply a five year time span for non contact with the other parent;

- a signed consent from one parent and proof that the other parent is deceased. This can take the form of a statutory declaration by the enrolling parent or a death certificate;
- a birth certificate has been issued in the new name;
- proof of adoption is provided;
- the Department of Community Services is responsible for the care of the child and the Department indicates the use of a new name for the child is appropriate, or
- evidence is provided that the parent and/or any child are subject to witness protection or some other similar scheme designed to ensure their safety and the use of a new name for the child is necessary to maintain the safety and well being of the parent and or child.

If a change of name for a student is effected on the basis of one of the above conditions being met and a parent objects to the change, the parent should be advised that any further change will only be made if there is a court order or written agreement of both parents.

Students aged 18 years or more are entitled to be enrolled in whatever name they choose.

**Commonly asked questions**

**Q.** If an application for enrolment has a different name to that on a birth certificate what name should the student be enrolled under?

**A.** If any of the criteria for changing a student’s name are met the name on the application for enrolment document can be used, otherwise the birth certificate name must prevail.

**Q.** If a birth certificate has a different name to that on a passport, what name should the student be enrolled under?

**A.** If any of the criteria for changing the student’s name are met, the passport name can be used otherwise the birth certificate name must prevail.

**Q.** If there is no birth certificate or other document establishing a birth name, what can be accepted by the school or TAFE college to enrol a student under a particular name?

**A.** In the absence of other relevant documents (e.g. bank accounts, passport, Medicare card), a statutory declaration should be obtained from the enrolling parent or student that provides details of why a birth certificate is not available. It should also indicate the name to be used for enrolment purposes is the one that has been used since the student was born.

**Further advice**

The variety and complexity of circumstances surrounding family law issues means that principals and institute managers may encounter situations which are exceptional or otherwise not readily accommodated within these guidelines. If this occurs contact with the Legal Services Unit on 9561 8538 should be made.

Principals and institute managers should also refer to the Department’s *Family Law and the School* document dated July 1997 for guidance on a range of matters involving family law disputes. This is available on the Legal Services Web site, the details of which are provided in the general information below.
AMENDMENTS TO PREVIOUS BULLETINS

Principals and institute managers should note the following amendments to previous bulletins numbers 2a and 10. As a result of the amendments, these earlier bulletins have been withdrawn and replaced as bulletins no. 22 and 23 respectively. Hard copies of the revised bulletins will not be issued. Copies can be found on the Legal Services Unit website.

**Bulletin 2a – Possession of Knives and Power of Search Update**

The Summary Offences Amendment (Public Safety) Act 2002 has now amended the Summary Offences Act 1988 by introducing new penalties relating to the possession of knives in a public place or school. The new penalties are as follows –

- For a first offence, the maximum penalty remains at $550;
- In the case of a person who has been dealt with by the court for one previous knife related offence, the maximum penalty is $1,100 or 12 months imprisonment or both;
- In the case of a person who has been dealt with by the court for two or more previous knife related offences, the maximum penalty is $2,200 or 2 years imprisonment or both.

The amendment act also provides police officers with new powers to give 'move on' directions to groups of people in public places.

**Bulletin 10 – Protected Confidences in Relation to School and TAFE Counsellor files concerning victims of sexual assault**

The Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002 has amended the Criminal Procedure Act 1986 in relation to the meaning of protected confidence. The previous legislation defined protected confidence as meaning a counselling communication made by, to or about a victim or alleged victim of a sexual assault offence.

Counselling communication was further defined as being a communication made in confidence by a counselled person to a counsellor in the course of a relationship in which the counsellor is counselling, giving therapy to or treating the counselled person for any emotional or psychological condition. A counselling communication also included a communication made in confidence to or about the counselled person by the counsellor in the course of that relationship.

The amending legislation has introduced the following changes effective from 22 July 2002 –

- A counselling communication is now defined as being a communication made in confidence by a person to a counsellor who is counselling the person in relation to any harm the person may have suffered.
- In relation to communications made in confidence to or about the counselled person by the counsellor, the requirement for a relationship to exist has been removed. The protection will now apply if the communication occurred during the course of any counselling.
- In relation to communications between a counsellor and another counsellor, the need for any current or previous counselling to be for any emotional or psychological condition of the person has been removed.
- A counselling communication is a protected confidence even if it was made before the sexual assault was alleged to have occurred or was not made in connection with an alleged sexual assault offence or any condition arising from an alleged sexual assault offence.
- A definition of counselling is introduced. A person counsels another person if the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm, and the person listens to and gives verbal or other support or encouragement to the...
other person or advises, gives therapy to or treats the other person.

The new definition of counselling means that it is possible that communications between victims of sexual assault and school and TAFE personnel other than specialist counsellors may be subject to the protected confidence provisions.

PUBLIC LIABILITY INSURANCE REQUIREMENTS FOR INCORPORATED ASSOCIATIONS

The law relating to the public liability insurance requirements for associations incorporated under the Associations Incorporation Act 1984 has recently been changed. The great majority of incorporated New South Wales non-profit community groups are incorporated under this legislation. As a result of the changes, incorporated associations no longer need to hold public liability insurance in order to become, or continue to be, incorporated. Public liability insurance is now discretionary rather than mandatory. The changes allow incorporated associations to make their own determinations regarding potential liability and the need to obtain appropriate insurance cover.

Departmental staff who are required to draft, negotiate, approve or enter into any agreements between the Department and incorporated associations or represent the Department on the boards or committees of these associations need to be mindful of this change. It is no longer prudent to assume that an association automatically has public liability insurance as a result of it being incorporated. If it is considered necessary for the purposes of any agreement that the contracting party hold public liability insurance, it will be necessary to specify that relevant insurance cover is required.

IMPORTANT NOTICE

Legal Services Directorate has a web-site on the Department's intranet. The web-site contains:

- All past legal issues bulletins in both web-page and pdf format
- Questions that the Legal Services Directorate most frequently encounters
- Information about Freedom of Information and Privacy
- Links to other related legal web-sites
- Other information for use to schools and TAFE colleges

It is hoped that the most commonly asked legal questions can be answered from this source which is located at http://detwww.det.nsw.edu.au/directorates/leglserv/

Of course, the Legal Services Directorate continues to offer its phone advice service. We have a duty officer system. Just phone 9561 8538 to make contact with the legal officer on duty. Our fax number is 9561 8543.

Or you may wish to contact us via email on legal@det.nsw.edu.au

About Legal Services…..

Legal Services provides legal support and advice to schools, colleges, regions and institutes in addition to senior officers, state office directorates and specialist boards and authorities. It arranges for the department to be represented before a range of courts and tribunals and assists with the preparation of legal documents. It is also available to provide legal advice in respect of any Departmental policies or procedures that may have a legal complexion.

The Legal Services Directorate can provide legal advice to Departmental staff only. Parents, students or other community members should not be referred to the Legal Services Directorate for legal or other advice.