

School's out: resolving disputes about where your child will attend school

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Worthwhile read for: parents

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Disputes about which school your child will attend can represent one of the trickier aspects of navigating the post-separation parenting landscape. This alert discusses the factors that the Court takes into account when determining these disputes, and provide some practical advice for parents who will have to deal with this issue in the coming years.

First and foremost, it is important to recognise that a child's education is considered a '*major long-term issue*' and any decisions regarding a child's schooling should be made jointly by both parents, unless there are Court Orders in place which specify otherwise. In an intact relationship this can be a difficult discussion which can create serious conflict, let alone in a separated family. People have different ideas about the individual needs of their children and which school will best meet those needs in relation to, for example, religious denomination, location or the cost of various educational options.

Where parents can't ultimately agree on which school a child should attend, the Court will make a determination based on the school that best promotes the interests of the particular child. Importantly, the Court won't 'compare' different schools, particularly when young children are involved (although a clear exception exists in the case of children with special needs).

The following factors (amongst others) will be taken into consideration when determining which school will best meet the needs of a particular child:

- Any views or wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court thinks are relevant;
- The nature of the relationship of the child with each of the child's parents;
- The maturity, sex, lifestyle and background (including culture and traditions) of the child and of the child's parents;
- The likely effect of any changes in the child's circumstances, including the likely effect of the child of any separation from either of the parents or any other person;
- The attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
- If the child is currently enrolled in a school, how the child is progressing at the current school;
- Prior agreements in relation to schooling and other parenting matters;
- The location of each school and the location of each parent's residence;
- Any cultural or religious reasons for a child attending, or not attending, a particular school; and
- The fees payable for each school and the ability of each parent to contribute to those fees.

Further, although there is no legal presumption in favour of a parent who has the primary care of the child, it will also be a factor the Court will take into consideration.

In our recent experience, judges take a very practical approach to determining these disputes and will be guided largely by issues such as which parent undertakes more of the travel to and from school and how long the children will spend in a car each day on each parent's proposal. It is fair to say that geographical issues realistically play a major role in the decision making process. If there is a change in school proposed, the Court will consider how unsettling this will be for the child and make an assessment as to whether the potential advantages of the proposed change are outweighed by potential disadvantages.

Parents need to keep in mind the significant delays (of up to two to three years) in seeking a Court decision with respect to schooling. In the recent case of *Dautry & Webley*^[1], which ran for three years through trial and appeal proceedings, the Court of Appeal held that the trial judge had erred in making final orders about a child's schooling where final orders in relation to parental responsibility and the residence arrangements for the child were yet to be made. From a practical perspective this means that parents are unable to achieve absolute certainty in relation to the issue of schooling until final orders are made.

What does this mean for you if you have a child starting school (or secondary school) soon and you are unable to reach agreement with your former partner about which school they will attend? In the event that you are unable to resolve the dispute via non Court means, you need to obtain advice about your options. This will enable you to start the conversation about the issue sooner rather than later, and will ensure that you have plenty of time to make an application to the Court.

The HopgoodGanim Family Law team regularly assists parents to resolve disputes about the school(s) their children will attend. We offer support and commercial advice to parents at each stage of the process including participation in family dispute resolution, private mediation and negotiation through lawyers or litigation.

For more information or discussion, please contact HopgoodGanim Lawyers' [Family Law](#) team.

[\[1\]](#) (No. 2) [2015] FamCAFC 248

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