

This factsheet is part of a series from Legal Aid NSW that aims to help answer your questions about COVID-19 and family law.

In times of crisis and hardship, new legal problems can emerge and existing legal problems can become more urgent. During this pandemic, many people are experiencing stress, financial worries, or issues associated with measures designed to slow the spread of the disease, such as the need to stay home. Parents may be worried or confused about what COVID-19 means for them, and how it will affect their children and parenting arrangements.

If I choose to not send my child to school, can I get into trouble?

Under current advice¹, children who attend public schools in NSW are required to return to school, unless they are currently unwell or have a medical certificate for an ongoing condition. Any child who does not attend school and does not have a medical certificate will be marked as absent, and this may result in further investigation.

Some private schools have made different arrangements for their students. You should contact your child's school directly to find out more about their return to school policy.

Family law orders

If you have family law orders in place these orders continue to apply, even during a global pandemic. You might have orders about school pick-ups and school holiday visits that are not easy to follow at the moment. You must apply common sense and take appropriate safety precautions to manage the uncertainty. If your child's school has changed the transport or drop off and pick up arrangements for students and parents, you must follow the school's instructions.

If you break a parenting order, your child's other parent is able to

- Complain to the court about this by filing a contravention application. This is a request that you be punished for disobeying court orders.
- Make an application seeking enforcement or variation of the orders. This is a request to change the orders to fit your new circumstances.

A judge will consider whether each parent has acted reasonably and will take into account the need to ensure a child's safety when deciding these matters. It is preferable that you and your ex-partner try to reach an agreement together about any changes to your orders. If you cannot follow your family law orders and you cannot agree on a compromise with your ex-partner, you should seek urgent legal advice. Legal Aid has a new [COVID-19 mediation service](#) available to quickly help resolve parenting issues caused by the pandemic, and we can also advise you about other options available.

¹ <https://education.nsw.gov.au/covid-19/advice-for-families>

NSW Police

The police will not usually enforce general family law parenting orders. The police can be requested to act by a specific family law order (called a recovery order). The police can also perform welfare checks and take action to protect the personal safety of parents, children and other family members.

My ex-partner says they have COVID concerns and won't share care for our child. What can I do?

Before you think about going to court for a formal order, try to negotiate a parenting arrangement.

Usually, before parents apply to court for a parenting order, they have to attempt mediation as a first step. Many mediation services can run mediations over the telephone, to help parents negotiate a compromise acceptable to each parent, in the best interests of their children.

If you cannot reach an agreement through mediation, you can file an urgent application seeking parenting orders in the Family Law Courts to determine this issue. However, whilst the Courts have started a National COVID-19 list to deal with COVID related matters, there are strict requirements and conditions for a matter to be heard in this list. See <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-list/national-covid-list> for further information.

The court will not make orders that are impractical – you can't force your ex-partner to care for or spend time with a child against that parent's wishes, and you can't ask your ex-partner to meet unreasonable requirements to spend time with a child.

Who can care for my child when they are not at school?

If a child is not at school, parents are required to supervise or arrange for a suitable carer to look after their child. In a shared care arrangement, children, especially those too young to understand and practise social distancing, could potentially carry infections between households. Parents should try to reach an agreement about who will look after a child if they are not available, and what will happen if alternate carers are in a hotspot, or are especially vulnerable to COVID-19.

If you do not have court orders about alternate carers and care arrangements, it is left to parents to make the necessary compromises and sacrifices to ensure that they minimise the risk of infection to all family members and the general public.

How can we build a "meaningful relationship" if a parent or child is in mandatory self-isolation?

It will reassure your child if both parents have privately discussed how they will talk about the COVID-19 crisis and have a joint plan for this situation. Parents could:

- Introduce a regular schedule of telephone and video calls between separated family members, including step-siblings and grandparents

- Help children to write emails
- Help children to send their daily learning activities
- Send photographs of their children's handwritten letters and pictures to isolated family members
- Be creative and work with the interests, age and capacity of their child, as well as the technology available.

How can I get help?

For more information, or to get legal advice about your specific situation, contact LawAccess NSW on 1300 888 529 or [call your local Legal Aid NSW office](#). You can contact the Legal Aid NSW Family Dispute Resolution Service by calling (02) 9219 5118 or (02) 9219 5119.

If you need an interpreter, call the Translating and Interpreting Service on 131 450 and ask for LawAccess NSW. If you find it hard to hear or speak, call the National Relay Service on 133 677 and ask for LawAccess NSW or visit www.relayservice.gov.au.

The Family Relationship Advice Line is a national telephone service that helps families affected by relationship or separation issues. You can call the Family Relationship Advice Line on 1800 050 321.

This factsheet is intended as a general guide to the law. Do not rely on this information as legal advice. We recommend you talk to a lawyer about your situation. This information is correct at the time of writing, however, it may change.