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## **Custody Restriction Policy**

### **(including decision making for students)**

### **Background**

At Huntingdale Primary School we recognize that students come from a range of family backgrounds and parenting situations. Some students parenting and living situations are bound by court orders, such as stating who the child lives with, listing adults who can collect the child from school or state who is responsible for making decisions in relation to the child's education and welfare.

### **Purpose**

To ensure:

- The safety and welfare of all students.
- Parents understand their responsibilities in relation to court and custody orders.
- Court Orders are followed by families, staff and students at Huntingdale Primary School.
- Huntingdale Primary School is compliant with *Children, Youth and Families Act 2005 (Vic)*, *Family Law Act 1975 (Cth)*, *Family Violence Protection Act 2008 (Vic)* and Department of Education and Training (DET) policies and procedures.

### **Implementation**

- The Principal has the overall responsibility of overseeing the implementation of this policy.
- A record of all court and custody orders will be kept at the School Office.
- Parents, guardians and/or carers are responsible for providing the school with up-to-date information and documentation relating to relevant court orders or informal arrangements that are in place. This includes contacting the school if any changes are made.
- The school can also request copies of relevant court orders or informal arrangements that are in place.
- The Office Manager will keep an updated list of formal and informal custody orders and forward these to staff. Any updates to this list will be communicated to staff as soon as possible.
- The school will follow all directions in the court orders that are on file on school premises at that time.
- If the school is faced with a dispute between persons who are responsible for the custody, collection arrangements or decision making in relation to a child, they will :
  - Avoid becoming involved
  - Avoid attempting to determine the dispute
  - Act neutrally and not adopt sides
  - Act in the best interests of the child of young person involved
  - Act in the best interests of the school community
  - Enlist the assistance of the Victorian Police if a situation arises on school premises that contravenes court orders in place
- The Principal will communicate to parties that schools are not the place to resolve disputes. These disputes should be resolved between the parents/guardians through discussion, attendance at the Family Relationship Centre or at Court.
- The school will only provide information to a court if it is handed a subpoena and will contact DET's Legal Services Unit for support.



## **Responsibilities**

The school recognises the following types of responsibilities:

### 1. Parental responsibility

Parental responsibility is defined as all of the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

Each parent of a child under 18 years of age has parental responsibility for the child unless this responsibility is varied by a relevant Court Order or Parenting Plan.

### 2. Relevant Court Orders

## ***Parenting Orders***

Parenting Orders are Court orders made pursuant to the Family Law Act 1975 (Cth) and may deal with any of the following issues:

- Person with whom the child is to live
- The time a child is to spend with another person
- Communication a child is to have with another person
- The allocation of parental responsibility
- Any aspect of the care, welfare, or development of the child.

In allocating parental responsibility, the Parenting Order may differentiate between “major long term issues” and other issues.

Major long term issues are issues about the care, welfare and development of the child of a long term nature and include the following:

- The child’s education (both current and future)
- The child’s religious and cultural upbringing
- The child’s health
- The child’s name
- Changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with the parent.

Where more than one person is responsible for making decisions about “major long term issues,” it is expected that they will consult with one another, and make a genuine effort to come to a joint decision about the issue.

Where the decision to be made is not a major long term issue, the decision may be made by the person with whom the child or young person is spending time with. This person can make the decision without consulting with any other person who may have parental responsibility for the child.

## ***Family Violence Intervention Orders***

Family violence intervention orders are Court orders made pursuant to the *Family Violence Protection Act 2008 (Vic)*. They protect family members from behaviour committed by other family members. Family violence intervention orders may provide for some or all of the following protections:

- Prohibit family violence
- Exclude a person from a particular residence
- Prohibit a person from approaching, telephoning or contacting another person



- Prohibit a person from being anywhere within a specified distance of where another person lives, works, attends school or child care
- If a child is to be protected by the Order and there is a parenting order in place, it may revive, vary, discharge or suspend the parenting order
- If a child is to be protected by the Order and there is no parenting order in place, it may
  - Make arrangements for a child to live with, spend time with, or communicate with the person the subject of the order; or
  - Prohibit the person the subject of the order from living with, spending time with, or communicating with the child protected by the Order.

### ***Protection Orders***

Protection Orders are Court orders made pursuant to the Children, Youth and Families Act 2005 (Vic). These Orders may grant custody and/or guardianship of a child to a person other than the parent of the child.

When a protection order grants guardianship, it is allocating the right and responsibility for the long term welfare of a child.

When a protection order grants custody, it is allocating the right and responsibility to have the daily care and control of a child; and the right to make decisions regarding the daily care and control of the child.

### **3. Relevant informal arrangements**

#### ***Parenting Plan***

A Parenting Plan is a written agreement that meets all of the following characteristics:

- It is made between the parents of the child
- It is signed by the parents of the child
- It is dated
- It deals with some or all of the following matters:
  - Person with whom the child is to live
  - The time the child is spending with a person
  - The allocation of parental responsibility
  - Any aspect of the care, welfare or development of the child.

A Parenting Plan is binding and can affect the allocation of parental responsibility even though it is not an Order made by a Court.

In addition, a Parenting Plan can be made after a Parenting Order. In such circumstances, the Parenting Plan can vary the Parenting Order made by a Court.

#### ***Informal Carer***

An informal carer is an adult with whom the child is living. The arrangement is informal and is not usually defined by any Court Orders or written agreements.

A carer does not have parental responsibility, guardianship or custody of the child.

It is recommended that informal carers complete an Informal Carer Statutory Declaration form. This is a written statement in which the carer signs and declares that certain information is true and correct. This information should include the following:

- he or she has day to day care of the child;
- the parents are aware and/or consent to the arrangement; and
- explain the reasons for the arrangement.



## Decision Making

In determining who is responsible for making a specific decision in relation to a student, the school will consider who has:

- Parental responsibility
- Whether there is a formal Parenting Order, Family Violence Protection Order or Protection Order in place
- Whether there are any informal arrangements in place such as a Parenting Plan or Carer agreement.

Consider the decision that needs to be made:

- Does it relate to a long term issue about the care, welfare and development of the student? If so, then the following persons can make the decision on behalf of the student:
  - The persons with “parental responsibility” for “major long term issues”
  - The person who has “guardianship” of the child or young person
  - The person who has been given responsibility for this decision pursuant to a Court Order or Parenting Plan.
- Does it relate to other issues about the care, welfare and development of the student? If so, then the following persons can make the decision on behalf of the student:
  - The person with “parental responsibility” who is spending time with the child or young person at the particular time
  - The person who has “custody” of the child or young person
  - The person who is the “carer” of the child or young person.

## Evaluation

This policy will be reviewed as part of the school’s 3 year cycle or as needed to comply with DET policy changes.

## Certification

This policy was endorsed by School Council at the meeting held on 18 August 2015

Signed.....

**Principal**

Signed.....

**School Council President**