

Custody 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.



Help for non-English speakers

If you need help to understand the information in this policy, please contact the school office

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 relevant laws and DET policies and procedures.
- The school complies with the Child Safe Standards.
- The school maintains DET's Values of Accountability, Human Rights, Impartiality, Integrity, Leadership, Respect and Responsiveness.

Implementation

- The principal has the overall responsibility of implementing this policy but may delegate certain roles to suitably qualified staff.
- A record of all court and custody orders will be kept at the school office.
- Parents and carers are expected to provide schools with up-to-date information and documentation relating to relevant court orders or informal care arrangements. This includes contacting the school if any changes are made.
- The school should request copies from parents or carers of relevant court orders or evidence of informal care arrangements that are in place, if we are aware of them, and make reasonable enquiries with parents and carers about those orders and arrangements from time to time.
- 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
 - Ensure the Child Safe Standards are being adhered to.



- 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.

Further Information

- Each parent of a child under 18 years of age has parental responsibility for the child, unless that parental responsibility is varied by a court order or parenting plan or otherwise as set out in this policy.
- In determining who is responsible for making a decision in relation to a student, the principal or relevant staff member must apply the following:
 - Consider who has parental responsibility for the child
 - If the parents are separated, consider:
 - are there any court orders in place that affect decision-making responsibility — for example, parenting order (also known as a Family Law Act order), family violence intervention order or protection order.
 - are there any informal arrangements in place that affect decision-making responsibility — for example, parenting plan or informal care arrangements (such as the student living with their grandparent or other non-parent carer, where no court orders are in place for such an arrangement)
 - if the decision is about day-to-day issues affecting the child, in which case a parent or carer who is spending time with the child on a particular day is able to make the decision
 - if the decision is about a major long-term issue affecting the child, in which case schools are encouraged to seek the views of each parent or carer with decision making responsibility for the child. A decision made by only one parent or carer in the absence of a contrary view or communication from the other parent or carer is sufficient, unless otherwise set out in this or other Department policy.

In determining who is responsible for making a decision in relation to a student and the information to be provided to the person responsible for making the decision, school staff must also consider the human rights of any relevant parties (for example the student's rights and their parents' or carers' rights) as set out in the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) and must act compatibly with the Charter.

Decisions about major long-term issues

- Separated parents with decision-making responsibility are expected to consult with one another and make a genuine effort to come to a joint decision about an issue.
- The law does not require the school to ensure that both parents have consulted with each other and come to a joint decision. However, the schools will endeavour to seek the views of both separated parents about a major long-term issue such as:
 - enrolment or transfer and choice of school
 - year level movement (that is, repeating or skipping a year)
 - consents for overseas excursions
 - major medical and health decisions
 - decision for child to participate in special religious instruction
 - chronic non-attendance at school



- the child's name
- a decision about a day-to-day issue that may have a major long-term impact for a particular child

Day-to-day issues include:

- non-attendance at school when it is open for instruction on a particular day
- consent to participate in day excursions
- medical and health decisions that are not major

Disputes between separated parents or carers

- Whenever faced with a dispute between persons who are responsible for making decisions for a child, the school must try to:
 - avoid becoming involved
 - avoid attempting to determine the dispute
 - act neutrally and not adopt sides
 - act in the best interests of the child or young person involved
 - act in the best interests of the school community
 - inform parents that schools are not the place to resolve disputes. These disputes should be resolved between the parents and carers through discussion, attendance at the Family Relationship Centre or at court.

Other decision-making arrangements

There are a range of other circumstances in which persons other than a child's parents may make decisions about a student.

Informal carer arrangements

- When a child's parents are unable or unwilling to care for them, the responsibility often falls on relatives or significant others to take care of the child. Sometimes this care is provided on an informal basis and does not give the carer any legal status over the child or formal recognition as a carer.
- In these circumstances, in order to allow these carers to work with schools that the child is attending or seeking to attend, carers should be asked to complete an Informal Carer Statutory Declaration. This is a written declaration by the carer that sets out the care arrangements for the child
- Generally, an informal carer who has provided the school with a completed Informal Carer Statutory Declaration may make school-based decisions for the child and may access school information ordinarily provided to a parent.
- However, it is important to note that, generally, a decision of a parent with parental responsibility overrides any decision made by an informal carer to the extent of any inconsistency.

Formal carer arrangements

- Where a child is in out-of-home care following an intervention by Department of Health and Human Services (DHHS) Child Protection resulting in a protection order, an 'authorisation' may be issued to the carer in order to enable them to make decisions about the child.
- The types of decisions that a carer is authorised to make for the child are specified in the authorisation and will generally include day-to-day decisions about education and routine medical care.



- Generally, carers are not authorised to make major long-term decisions for a child, unless DHHS Child Protection have issued a specific authorisation allowing the carer to make decisions about issues of a long term nature.
- Carers are responsible for providing principals and staff with a signed instrument of authorisation and for providing up-to-date information relating to any changes in care arrangements. However, the school will ask for a copy of this authorisation whenever they are aware a change has been made.
- In some circumstances, these orders may grant parental responsibility for major long-term issues or day-to-day decisions for a child to someone other than the natural parent(s) of the child, including the child's day-to-day carer, the Secretary of DHHS, a person authorised under an Instrument of Authorisation by the Secretary of DHHS or the child's permanent care parents.
- Where there are protection orders in place, the principal must ensure the school retains a copy of the orders and update the student's records to reflect any impact of these orders on care arrangements or decision-making responsibility for students.

Definitions

Parent

A person that has parental responsibility for a child. This may include a biological parent or another person who has been granted parental responsibility by a court order.

Parental responsibility

All of the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

Parenting orders (also known as Family Law Act orders)

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

Family violence intervention orders

- Court orders made pursuant to the Family Violence Protection Act 2008 (Vic) that prohibit one family member doing specified actions or behaviours towards another family member or multiple family members.
- Family violence intervention orders do not take away or grant parental responsibility but may impact the ability of a parent to care for or have contact with their child.

Protection orders

Court orders made pursuant to the Children, Youth and Families Act 2005 (Vic) upon protective intervention by DHHS Child Protection. There are various types of protection orders including:

- family preservation orders
- family reunification orders
- care by Secretary orders
- long term care orders
- permanent care orders



Parenting plan

A written agreement between parents that meets all of the following characteristics, in that it:

- is made between the parents of the child
- is signed and dated by the parents of the child
- deals with some or all of the following matters:
 - person with whom the child is to live
 - the time the child is to spend with a person
 - the allocation of parental responsibility
 - any aspect of the care, welfare or development of the child

A parenting plan can affect parental responsibility even though it is not an order made by a court. It can be made subsequent to a parenting order and can vary the parenting order made by a court.

Evaluation

This policy will be reviewed as part of a cycle or as needed to comply with DET policy changes.

Document Status

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