



## SEPARATED PARENTS POLICY

### 1. Purpose

The purpose of this policy is to outline the Blue Gum Montessori School (BGMS) response to matters relating to family law issues. This policy relates to other School policies and should be read in conjunction with these, including the Communicating with Separated Parents Policy.

### 2. Scope

This policy is for those employed by BGMS and parents of children at BGMS.

### 3. Policy Statement

Research and experience have shown that separated parents can work well together in the best interests of their children and can together play a role in their children's education. However, some parents become estranged, and do not work together or in the best interests of their child, especially during the initial stages of their separation. This is very often traumatic for any child concerned where personal family problems and separation can have an impact on the child and on the schools they attend.

This policy is an attempt to minimise any impact, clarify to all parties what is expected from separated parents and what can be expected from the school / staff.

Principals, teachers and staff need to have a clear understanding of which persons are entitled to have access to students whilst they are in the care of a school and under what circumstances this right of access may be exercised.

### 4. School Responsibilities

BGMS fully recognises its responsibilities, and it is our sole wish to promote the best interests of the child, working in partnership with all parents.

BGMS respects the rights of both parent to participate in school functions (according to the court order judgement).

BGMS will maintain our open door policy with all parents, and the class teacher and/Principal will be available by appointment to discuss any issues or concerns with regard to separated/divorced estranged parents may have in relation to their child or children at the school.

Parents will be encouraged to resolve any issues around estrangement, contact and access to information without involving BGMS directly.

Issues of estrangement is a civil/private law matter and BGMS cannot be involved in providing mediation, helping an estranged parent to communicate with their child or children, or using the school premises for purposes of contact.

The interests of the child will always be paramount when deciding whether to accommodate a request from an estranged parent. We recognise that a Court Order can restrict a parent in having contact/access to information and we are bound by this. In this situation we will consult with the Local Authority to obtain advice as this may constitute a safeguarding concern.

In any event whereby the parents being estranged is appearing to impact upon the health, wellbeing and safety of a child, the matter will be referred to the Local Authority for advice.

**Please refer to the Communication with Separated Parents Policy which outlines communication channels by the School to the parents/guardians.**

***At all times the school's responsibility is its duty of care to the child and it should always act with that foremost in mind.***

## SEPARATED PARENTS POLICY

### 5. Definitions

- “*Custody*” has the same meaning as a residence order coupled with parental responsibility for the day-to-day care of the child (“Custody” is an old term used by the courts prior to June 1996.)
- “*Guardianship*” has the same meaning as parental responsibility for the long term care of the child. (It is an old term used by courts prior to June 1996.)
- “*Living with*” replaces the concept of residence (formerly custody).
- “*Spending time with*” partially replaces the concept of contact (formerly access).
- “*Have communication with*” partially replaces the concept of contact.
- “*Major long term issues*” are matters upon which parents who have “*shared parental responsibility*” must consult each other. This means issues about the care, welfare and development of the child of a **long term** nature. They are specifically defined as including education, religion, health, the child’s name and changes to the child’s living arrangements that make it significantly more difficult for the child to spend time with the parent.
- “*Parental responsibility*” in relation to a child means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.
- “*Parenting Plan*” is a written agreement, made between the parents of a child, which sets out parenting arrangements. It must be signed and dated by the all parties. A Parenting Plan is **not** legally binding.
- “*Parenting Order*” is an order or set of orders made by the court about parenting arrangements for a child. A Parenting Orders is legally binding.
- “*Parental Responsibility*” is all the duties, powers, responsibilities and authority which parents have in relation to a child.
- “*Shared Parental Responsibility*” can only be created by court order and requires decisions about “*long term issues*” to be made jointly.
- “*Family Violence Order*” means an order (including an interim order) made under a prescribed law of a State or Territory to protect a person from family violence. This can have a similar effect as a Violence Restraining Order.
- “*Interim Order*” is a binding court order that is to remain in force until a final order is made or until a date or time specified within the order.
- “*Location Order*” is an order made by the court requiring a person, the Secretary of a Department or an appropriate authority of a Commonwealth instrumentality to provide the Family Court Registry Manager with information about the child’s location.
- “*Recovery Order*” is an order made by the court requiring the return of a child to the person named in the order. The Police (including Federal authorities) then have power to recover a child from anyone or anywhere, using force if required.

### 6. Legislation

- Family Law Act (Cth) 1975 (applies to parties who are or were married)
- Family Law Reform Act (Cth) 1995
- Family Court Act 1997 (applies to de-facto relationships).

Section 60B of the *Family Law Act* (equivalent in the Family Court Act is Section 66) sets out that the objects of the Act are to ensure that the best interests of the children are met by:

- a. ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
- b. protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and



## SEPARATED PARENTS POLICY

- c. ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
- d. ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

The principles underlying these objects are that (except when it is or would be contrary to a child's best interests, for example where there is a Family Violence Order):

- a. children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- b. children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
- c. parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
- d. parents should agree about the future parenting of their children; and
- e. children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- a. to maintain a connection with that culture; and
- b. to have the support, opportunity and encouragement necessary:
- c. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
- d. to develop a positive appreciation of that culture.

Separation, divorce or re-marriage does not change these duties and responsibilities. The child's best interests are the main concern of the court.

Section 61C of the *Family Law Act* (Section 69 of the Family Court Act) provides that:

*'Each of the parents of a child who is not 18 has parental responsibility for the child.'*

Parental responsibility means all duties, powers, responsibilities and authority which by law parents have in relation to the child.

These responsibilities continue, despite the parents being separated or divorced, unless a court order alters or limits a parent's role in the parenting of the child.

In the absence of a court order to the contrary, each parent has equal rights to information, authority and access to their child. This means that both parents may access, and should be provided with, school reports, be involved in parent/teacher interviews, and otherwise take part in school activities. Parents **should not** be excluded from these school activities unless a court order provides otherwise.

If a court order has been issued, it is important that the school has an up to date copy and has **all** of the pages of the order.

Section 70NAC of the *Family Law Act* (Section 205C of the Family Court Act) deals with contraventions of court orders and provides that only parties to the order can actually contravene the order. A person not bound by an order, such as a teacher or principal, can only contravene the order if they have EITHER intentionally prevented compliance with the order by a person bound by the order OR aided or abetted a contravention of the order by a person bound by the order. In order to be liable under this section, actual knowledge of the orders is required.



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## SEPARATED PARENTS POLICY



## SEPARATED PARENTS POLICY

It is important to note that an order for parties to have equal shared parental responsibility for a child or children binds the world at large, that includes schools. The school must ensure that both parents are consulted in relation to the children when there is an order for equal shared parental responsibility.

Further, it is not the role of the school to enforce the terms of a court order. If the school considers that a parent may be in breach of a court order, every effort should be made to verbally persuade them to cease acting in that manner. However, if they continue to act in that manner they should be warned that continuation of the behaviour may be in breach of the court order. In those circumstances, the school should endeavour to contact the other parent immediately. The School may refer the matter to the police.

### 7. Parent Plan

After a separation, parents regularly make formal agreements setting out the arrangements for the care, welfare and development of their child. These arrangements are called Parenting Plans and are different to court orders. Parenting Plans are made by agreement between the parents of the child, must be recorded in writing and signed by both parents.

Parenting Plans usually deal with matters such as:

- with which parent the child will reside;
- what contact the child will have with the other parent;
- who is responsible for the maintenance of the child;
- any other aspects of parental responsibility of the child.

In some instances, Parenting Plans include reference to other persons concerned with the care, welfare and development of a child, such as grandparents, carers or a parent's new partner.

As Parenting Plans are not registered by the Family Court, a school must check to ensure that the document provided to them has been signed by both legal parents and that no orders have been made by the Family Court since the Parenting Plan was signed by the parents.

Parenting Plans are not legally binding.

BGMS requires all separated families without a court order, to have a Parenting Plan signed by both parents.

### 8. Court Orders

In situations where parents cannot agree on the arrangements for the care, welfare and development of a child, the Family Court will issue orders to protect the best interests of the child.

Where differences arise between the parents regarding parenting of a child, for example; regarding the amount of contact a parent will have or where the child will reside, a school should not take sides in the dispute or do anything that could be construed as taking sides or favouring one parent ahead of the other. Those differences should be left to the parents to resolve in conjunction with their professional advisers.

The School should be provided with up to date copies of any court orders relating to the care and parenting of the child and it should not act without first seeing the court orders. However, it is not the school's role to enforce the court orders.

The Family Court has very far reaching powers and can make orders on a wide range of issues, including:

- Parental Contact orders – now known as 'spend time' orders
- Residence orders – now known as 'live with' orders
- Specific issue orders
- Maintenance orders
- Restraining orders – or Family Violence Orders



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## SEPARATED PARENTS POLICY



## SEPARATED PARENTS POLICY

### 9. Responsibilities

#### 9.1. Compliance, Monitoring and Review

#### 9.2. Reporting

#### 9.3. Records Management

Approval and Amendment History	Details	Date
Original Approval Authority and Date	Drafted by Principal	23/6/2016
Amendment Authority and Date	Amendments to Policy	03/02/2017
Review		22/6/2017



## SEPARATED PARENTS POLICY

Following is a brief explanation of the main types of orders a school is likely to encounter.

### **Contact Order – ‘spend time’ order**

A Contact or spend time Order will usually (but not always) stipulate which person is allowed access to a child during school hours and is permitted to collect a child from school. Unless the orders specify that a parent is not to have access to a child at school, then both parents are to have access to the child in question, without restriction from the school.

An Access Order made under earlier legislation has the same effect as a Contact Order.

### **Residence Order – ‘live with’ order**

A Residence or live with Order usually deals with whom a child is to reside. Orders relating to custody or guardianship made under earlier legislation have the same effect as a Residence Order.

### **Specific Issues Orders**

Specific Issues Orders deal with aspects of parental responsibility for a child such as medical, education and religious matters. Under the Specific Issues Orders, a parent's responsibility may be reduced and/or access to information relating to the child's schooling may be limited, including school reports, parent and teacher meeting and school newsletters.

### **Violence Restraining Orders**

Violence Restraining Orders (VRO) may be issued against one of the parents. A VRO restricts access that a parent may have with the other parent and/or children of the relationship. Unlike a breach of other family court orders, it is a criminal offence to breach a VRO. Breaches of a VRO can result in fines of up to \$6000 and/or imprisonment for up to 2 years.

If a parent is subject to a VRO and the school becomes aware that the order is being breached, the principal may contact the police. However, it is not the school's responsibility to enforce a VRO and staff should not place themselves at risk in trying to enforce the terms of a VRO.

*In usual circumstances, when there is a VRO in place, Family Court orders will prevail. IN that case, the orders made by the Family Court will specifically state that the orders are orders to which Section 68Q of the Family Law Act applies (or Section 175 of the Family Court Act) and to the extent that the orders of the Family Court are inconsistent with the Family Violence Orders made in the case (or VRO), then the Family Court orders shall prevail and the VRO or Family Violence Order is invalid to the extent of the inconsistency. This is to allow a party bound by a VRO to, for example, communicate with the protected party in relation to children matters only or to spend time with a child or to drop off or pick up a child from a protected party's residence, school and the like.*