



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 BGMS policies and should be read in conjunction with these, including the Code of Conduct and student safety related policies, and 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 an important 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 school they attend.

This policy aims to minimise any negative impact of parental separation, clarify to all parties what is expected from separated parents, and outline what can be expected from the School.

Principals, teachers and staff need to have a clear understanding of which people 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 promotes the best interests of the child, working in partnership with all parents.

BGMS respects the rights of parents to participate in school functions and events; whilst ensuring any law or court order judgement is upheld.

BGMS will maintain an open-door policy with all parents, and for matters relating to a child enrolled at BGMS, the class teacher, Deputy Principal, Principal and Business Manager will be available by appointment to discuss any issues or concerns with separated/divorced or estranged parents.

BGMS will encourage parents to resolve any family issues outside of the School environment; including estrangement, child access arrangements and personal issues arising from separation.

Issues of estrangement are civil/private law matters and BGMS cannot provide mediation, help an estranged parent to communicate with their child or children, or provide 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.



Parents will be encouraged to enable the School environment to be a safe place for children that concentrates on School activities.

BGMS recognises that a Court Order can restrict a parent in having contact/access to information and the School is bound by this, and any relevant law.

In any situation, where there is uncertainty, particularly for the safety of a child, BGMS will consult with the relevant Authority to obtain advice.

In any event whereby a parent being estranged appears to impact upon the health, wellbeing and safety of a child, the matter will be referred to the relevant Authority for advice.

The Communication with Separated Parents Policy outlines communication guidelines for separated parents/guardians.

At all times the school's responsibility is its duty of care to the child, and it will always act based on this priority.

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 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 Order 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 to 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
- 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 do 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, 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 will 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 and complete copy (all 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 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.

To be liable under this section, actual knowledge of the orders is required.

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, including schools. The school must ensure that both parents are consulted in relation to the child when there is an order for equal shared parental responsibility.

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 about to breach a court order, every effort should be made to verbally persuade the parent to cease acting in a manner that may constitute a breach of a court order.

In those circumstances where the School believes a court order has been breached or is about to be breached, the School will contact the relevant authority and the other parent/guardian as soon as possible.

The School may refer any matter to the police at any time, particularly if child safety or the safety of staff or community members are a concern.

7. Parent Plan

After 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, and 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 for the child.

In some instances, Parenting Plans include reference to other people 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, BGMS 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 that contradict the Parenting Plan signed by the parents.

Parenting Plans are not legally binding.

Parents are required to supply any updates of a Court Order to BGMS – this responsibility safeguards against any administrative error of the Court and enables BGMS to check updates with the Court.

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 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, BGMS will not take sides in the dispute or do anything that could be construed as taking sides or favouring one parent ahead of the other.

The School should be provided with up-to-date copies of any Court Order relating to the care and parenting of the child and BGMS will not act without first seeing the Court Order. However, as previously stated, it is not the School's role to enforce the Court Order.

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

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 meetings, school newsletters and school communications.

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 BGMS becomes aware that the order is being breached, the Principal will 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's 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.

9. Responsibilities

9.1 Compliance, Monitoring and Review: Principal or delegate.

9.2 Reporting: Principal or delegate.

9.3 Records Management: Principal or delegate.

Approval and Amendment History	Details	Date
Original Approval Authority and Date	Drafted by Principal	23/06/2016
Amendment Authority and Date	Amendments to Policy	03/02/2017
Review		22/06/2017
Review and Reformat		18/02/2025
Review and Update	Principal: Wording and layout adjustments.	30/09/2025