

Custody, Access & Separation Policy

The staff of Monaghan Model School encourage parents experiencing separation to come and speak confidentially to the teachers and/or principal. It is our aim to handle such matters with sensitivity and compassion, and ultimately, our primary concern is for the well being of the child/children.

The staff will endeavour at all times to deal sensitively and caringly with children experiencing separation. This is in keeping with Our Vision Statement.

Rationale

The separation of parents following marital or non -marital difficulties is extremely traumatic for all parties involved and this is particularly true where children are involved. In order for us to respond professionally and appropriately when separation of parents occurs, we need to give teachers clear guidelines to follow.

Aims

The aims of this policy are:

- to explain the legal situation to members of staff
- to set out for teachers and parents the procedures we follow when separation occurs
- to assist teachers to respond professionally, appropriately and within the law
- to advise teachers when they should consult principal and Board of Management for guidance

Legal Facts

In a marital relationship both parents are joint guardians. In a non-marital relationship the mother is automatically the guardian of any children. It is open to the natural father to be appointed a guardian through the courts.

Parental Separation

Parental separation can occur in a number of ways, for example:

‘de facto’ separation: no formal/legal arrangements in place for custody/access to children;

custody and access of children set out in a mediation agreement (no formal legal standing);

Separation Agreement/Deed of Separation (negotiated between both parties’ solicitors);

District Court Orders for Custody and Access;

Decree of Judicial Separation (Circuit and High Court) may deal with custody/access;

Foreign Divorce/Decree;

Irish Decree of divorce.

It is important to note that the issue of schooling may not be explicitly dealt with in every case whether in the Separation Agreement or in the Court Order. In many cases the issue of custody is agreed between the parties without the necessity for court orders and expert reports.

Permanency of Guardianship

Irrespective of the issue of custody in marriage breakdown, parents remain as joint guardians of their children and their legal obligations and rights as guardians remain unaltered.

Guardianship gives both parents a say in all matters affecting the welfare of their child/children whether physical, religious, moral, social, educational - irrespective of the issue of custody. As guardians, parents continue to have rights in relation to the

upbringing of their child. Essentially the issue of guardianship supersedes that of custody.

Custody and Access

Custody may be defined as the daily care and control of the child. The right of custody is only one of the rights that arise from the guardianship relationship between parent and child. In cases of marital breakdown the issues of custody and access arise. This may be resolved with both parents sharing joint custody, or with one parent having or being awarded custody and the other parent having access.

Implications for Monaghan Model School

- 1 In cases of separation, Separation Agreements and Court Orders, details relating to the custody of children, access, etc. are generally considered private to the parties involved and are not copied to school authorities. The guardianship relationship remains unaltered.
- 2 Because of the guardianship relationship and the way it gives both parents in matters affecting the welfare of their children, both parents, unless precluded by Court order, (note, a solicitor's letter is not a court order) continue to have a right to:
 - consult with class teachers;
 - attend parent teacher meeting;
 - have access to the normal end of year school reports;
 - be notified of meetings of parents, etc.

Parent/teacher Meetings

- 3 It is school policy in Monaghan Model School to facilitate the option of separate parent/teacher meetings, if so requested.
- 4 The school invites parents to a parent- teacher meeting by sending a note home via the child. When requested, the school will send two such notes, one to each parent via the child or by post to the second parent to an address provided, if requested.

Communication

5 Generally it is assumed that when we wish to communicate with parents regarding their child, the parent who is contacted (i.e. the parent with whom the child principally resides) will inform the other parent of meetings, arrangements etc.

6 Regarding notes, school communication via schoolbags, school reports etc, it is assumed that the parent with whom the child principally resides will keep the other parent informed.

Special requests for separate communication can be accommodated when specifically requested.

- If there is a serious concern about a parent abducting or leaving the country with the child, the parents/guardian should request their solicitor to seek a court order instructing the school and any other carers regarding rights of access
- In the case where the estranged parent/guardian is not known to the class teacher, as may be the case in larger schools, the concerned parent/guardian should provide a family photograph enabling the class teacher to identify the person in question
- In the case where a court order is in place, a copy of this order must be furnished to the school
- The parent/guardian of each child has full responsibility for informing the school in writing of any change in circumstances at home e.g. separation, divorce, custody arrangements.

Custody, Access and Collection of Children

7 In the absence of a custody arrangement, both parents will be treated as equal partners in terms of parenting rights and responsibilities.

8 In the case of unmarried parents, the natural father has no custody or guardianship rights unless a court or the natural mother grants those rights to him. The onus is on the father to produce evidence of a court order in the case of a dispute regarding the collection of a child during or after school

9 Where custody and/or the collection/delivery of children to/from school are in dispute and brought to their attention, teachers should:

- seek direction from the Board of Management on how to handle this situation;
- endeavour to comply with the request of the parent who has to all intents and purposes 'de facto' control of the children
- refrain from giving guarantees to either parent regarding handing over of children at the end of the school day etc.
- avoid becoming embroiled in the marital dispute and place the onus on the custodial parent to collect the children at the end of the school day.

10 During school hours, children are under the control of the principal and teachers who are in 'loco parentis'. Where a parent seeks to use the school as a venue for informal access to his/her children, the principal and teacher should decline the occurrence of this. If in doubt advice should be sought from the Board of Management.

Report

- 11 Appropriate information, relevant to the child, regarding family structure etc., may be passed on from teacher to teacher within the school as part of normal professional communications.
- 12 Increasingly teachers are requested by a range of professionals (social workers, psychologists, probation officers etc.) to provide written reports on pupils. Likewise, in custody/access cases solicitors acting for one parent may seek a written report from a teacher. Note: **(Teachers are under no legal obligation to provide any such reports)**

Accordingly, the Board of Management advises that:

- any reports provided should relate to the type of information a teacher is professionally capable of giving and be within the teacher's area of expertise.
- The report should be similar in content to the normal end of year school report and supported by verifiable data (attendance, test results etc.) where required.
- The terms of the report should be discussed with other colleagues who have a responsibility for the child (learning support teacher etc.) and with the principal teacher.

1 Generally, the prior written consent of parents should be sought where outside agencies are seeking a report on a child. There may be circumstances where it may not be appropriate to obtain the prior written consent of the parents (e.g.) cases involving alleged child abuse.

In such cases the terms of "Children First" will be followed.

- 12 Teachers are not obliged to attend court unless under subpoena or summons

Compiled by principal, staff & Board of Management: December 2014

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