

Policy: Custody/ Separation

Rationale

The separation of parents 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 have a policy to follow. We aim to handle these matters with sensitivity, compassion and understanding, and ultimately, our primary concern is for the well-being and overall development of the child.

Aims

The aims of this policy are

- To highlight current legal situation.
- To set out for teachers and parents the procedures to follow when separation occurs.
- To assist teachers to respond professionally, appropriately and within the law.
- To advise teachers when they should consult the principal and/or Board of Management for further guidance.

Legal Facts

In a marital relationship both parents are joint guardians. A guardian is the person who has legal rights to make decisions regarding the upbringing and welfare of the child as well as having a duty to ensure the child is properly cared for. One of these rights is custody. Custody is the right to day-to-day physical care and control of the child. In a non-marital relationship the mother is automatically the guardian of the children. In a non-marital relationship the natural father has no automatic custody or guardianship rights, even though his name may be on the birth certificate, unless a court or the natural mother grants those rights to him. 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 the 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 groups.

Permanency of Guardianship

Irrespective of the issue of custody in marriage breakdown, parents remain as joint guardians of their children and the legal obligation and rights as guardians remain unaltered. 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 issue of custody and access may 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 St Michael's N.S.

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.

Because of the guardianship relationship and the way it gives both parents in matters affecting the welfare of the children, both parents unless precluded by Court order (note , a solicitor's letter is not a court order) continue to have the right to

- Consult with class teachers
- Attend Parent/ Teacher meetings
- Have access to the normal end of year school reports
- Be notified of meetings of parents, etc.

Parent/ Teacher Meetings

It is school policy in St Michael's to facilitate the option of separate parent/teacher meetings, if so requested. The school invites parents to parent-teacher meetings by sending letter home with 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

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. Special requests for separate communication can be accommodated;

- 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.
- It can be arranged that both parents are included on the school textparent service, if requested.
- When a child spends time in two homes, it is requested that the school be provided with both sets of emergency/contact numbers.

The Staff of St. Michael's 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.

Custody, Access and Collection of Children

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

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. The natural mother only, has automatic right to guardianship. The school recognises that new partners have no statutory rights in relation to the child but may have a role with regard to collection from school etc. However, the school does require a letter from the natural mother highlighting consent for a new partner to collect child from school.

- In the case of married parents, the school cannot be asked to withhold a child from either parent in the absence of a custody arrangement. In the case of unmarried parents, the natural father has no custody or guardianship rights unless a court 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.

- If there is a serious concern about a parent abducting or leaving the country with a child, the parent/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 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.

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

- Seek direction from the Board of Management on how to handle the situation
- Endeavour to comply with the request of the parent who has to all intents ‘.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.
- The school/teacher cannot be asked to withhold a child/ children from either parent in the absence of a Court Order.
- 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.

During school hours, children are under the care 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.

Reporting

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.

Increasingly teachers are requested by a range of professional (social workers, psychologists) 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. The report should be similar in content to the normal end of year school report.

Role of teachers

- as previously outlined in this policy
- to act in a fair and open manner in respect of both parents.
- To treat all information supplied in a sensitive, confidential and professional manner
- To pass all relevant information concerning a child/children from one teacher to another in the school, on ‘ a need to know’ basis , to enable the school to cater for the well-being and development of the child in the most effective manner possible
- To facilitate a request to meet a parent to discuss any issues concerning child
- To comply with the parent who has ‘de facto’ day to day control (i.e. custody) in the event of a dispute
- If in any doubt to seek advice/guidance from Principal and Board of Management.

The staff of St. Michael’s endeavour at all times to deal sensitively and caringly with children experiencing separation.

Implementation:

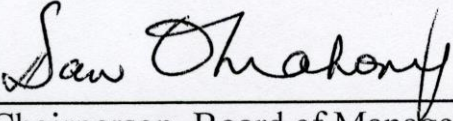
This policy was implemented from 1st December 2010.

The policy was reviewed during Term 1 2019 and will be available to all parents on school website.

Next review date: 2022

Ratification and Communication:

The initial policy was ratified at B.O.M. meeting in April 2010.

Signed 

Chairperson, Board of Management
Fr Dan O'Mahoney