SEPARATED PARENTS POLICY

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This policy takes into account the following legislation and Derbyshire County Council's requirements for schools:

- Children and Families Act 2014;
- Child Arrangement Order (Sc8 Children Act 1989);
- Human Fertilisation and Embryology Act 2008;
- Private Fostering Arrangements (Children Act 1989, Private Fostering Regulations 2011);
- Special Guardianship Order (Regulations 2005 & 2016);
- DCC Complaints Procedures.

We will also refer to the DfE guidance, September 2018, Understanding and dealing with issues relating to parental responsibility.

1 Introduction and Context

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 children, especially during the initial stages of their separation. This is very often traumatic for any children concerned where personal family problems can have an impact on the child and on the schools the children attend.

This policy summarises the legal framework and recommended guidance in respect of separated parents. 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.

The definition of a parent for school purposes is much wider than for any other situation. The Education Act 1996 defines a parent as:

- *All-natural parents, including those that are not married;*
- *Any person who has parental responsibility but is not a natural parent e.g. a legally appointed guardian or the Local Authority named in a Care Order;*
- *Any person who has care of a child or young person i.e. a person with whom the child resides and who looks after the child irrespective of the relationship*

Who has "Parental Responsibility"? (The Children Act 1989, amended by the Children and Families Act 2014)
Having parental responsibility means assuming all the rights, duties, powers, responsibilities and authority that a parent of a child has by law. Parental responsibility can be removed in some circumstances.

People other than a child's natural parents can acquire parental responsibility through:

- *In the case of step-parents, in agreement with the child's mother (and other parent if that person also has parental responsibility for the child) or as a result of a court order*
- *Being granted a Child Arrangements Order;*
- *Being appointed a Guardian;*
- *Being granted a Residence Order;*
- *Being named in an Emergency Protection Order (although parental responsibility in a such a case is limited to taking reasonable steps to safeguard or promote the child's welfare);*
- *Being granted a care order*
- *Being granted a Special Guardianship Order;*
- *Adopting a child.*
- *A parent by virtue of the human Fertilisation and Embryology Act 2008*

If the parents of a child were not married to each other when the child was born, the mother automatically has parental responsibility; however, the father only has parental responsibility from 1st December 2003 and by jointly registering the birth of the child with the mother. He can, however, subsequently acquire parental responsibility by various legal means**.**

What does having "care" of a child mean?

Having care of a child or young person means that a person who the child lives with and who looks after the child, irrespective of what their relationship is with the child, is considered to be a parent in education law. This could be shown by: Interaction with the school – attending meetings, making phone calls, being on the School's record as being involved (in whatever capacity) etc. Residence with the child where, for all intents and purposes, the person is part of the family, a man or woman married to a parent of a child.

For example:

- Are they listed on school records?
- Does the school have contact details for them?

- Do they meet with teachers/attend parents' evenings?
- Have they been involved with the measures designed to improve attendance?
- Do they contact the school on behalf of the child when s/he is ill?
- Do they live with the child?
- How long has the school known of them being connected with the child?
- Does the adult bring/collect the child to/from school?
- Is the adult married to the parent of the child?

It would not be appropriate to assume that someone having a "casual" relationship with the parent of a child necessarily has 'care of the child' unless we have cause to believe the person has some involvement with the child's life – living with the child could be a determining factor as could the other examples outlined above.

It is therefore those adults who are having significant input to a child's life who can be classified as "parent", having "parental responsibility" or who have "care of a child". And as a school we will use this guideline when separated parents make contact.

Parents as defined above are entitled to share in the decisions that are made about their child and to be treated equally by schools. We aim to collaborate with parents in the best interests and listen to all parties.

All parents can also receive information about the child, even though, for day-to-day purposes, the school's main contact is likely to be a parent with whom the child lives on school days. There may be occasions when this school needs to decline requests for action from one or more parents.

Individuals who have parental responsibility for, or care of, a child have the same rights as biological parents. For example, to:

- receive information – such as pupil reports
- participate in statutory activities – such as voting in elections for parent governors
- be asked to give consent - such as to the child taking part in school trips
- be informed about meetings involving the child - such as a governors' meeting on the child's exclusion

Entitlements also include: -

- Appeal against admission decisions
- Ofsted & school-based questionnaires
- Attend parent meetings/school events
- Have access to school records, receive copies of school reports, newsletters, invitations to school events, school photographs relating to their child and information about school trips.

The Governing Body recognise that while the parents of some pupils may be separated, they are entitled to the above and this entitlement cannot be restricted without a specific court

order. In particular, the school does not have the power to act on the request of one parent to restrict another.

The information provided to the school when the child was enrolled detailing whether parents have parental responsibility for the child will be presumed to be correct unless a court order or original birth certificate proving otherwise is provided to the school.

Similarly, the information provided on the address(es) where the child resides will be presumed to be correct unless a court order proving otherwise is provided to the school.

If parental responsibility, addresses and contacts are unclear, then we will make reasonable enquiries to ascertain the information.

If a child or young person and is under 16 and is living with someone other than a close family relative e.g.- grandparent then this may be a private fostering arrangement and the local authority will need to be notified. We will notify the local authority if this is found to be the case and we have a separate policy on private fostering which we will also refer to in this situation.

In any event and if at any time it appears that there is not anyone with parental responsibility who is caring for a child or if it is unclear, and we have taken reasonable steps to find out, we will involve the Local Authority to help clarify and resolve.

2 Our responsibilities

We fully recognise our responsibilities, and it is our sole wish is to promote the best interests of the child, working in partnership with all parents. Schools do not have the power to act on the request of one parent to restrict the other parent's involvement. Schools can only do so if there is a specific legal basis such as a court order, which is very rare.

We will maintain our open door policy with all parents, and the class teacher and/or Head Teacher will be available by appointment to discuss any issues or concerns with regard to separated/divorce 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 our School directly.

Issues of estrangement are a civil/private law matter and our School 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.

If the parents are unable to agree with one another on decisions regarding their child's educational programme, including but not limited to placement, participation in extracurricular activities, and consent to evaluation and services this school will not arbitrate and will ask parents to resolve the issues between themselves and to revert to the school with the solution.

In cases where there is continued conflict and this cannot be resolved, we will advise the aggrieved parent to pursue the matter through the Family Court.

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 may be 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.

Should there be any disagreement between this school and the parent this school may advice the parent to use the school's complaints process.

3 Our Policy

It is the responsibility of the parents to inform the school when there is a change in family circumstances. Our School needs to be kept up to date with contact details, arrangements for collecting children and emergencies.

We encourage parents to tell us at an early stage if there is a change in family circumstances. Whenever possible, staff will be informed of such changes so that suitable support can be offered. We will, however, recognise the sensitivity of some situations and maintain the level of confidentiality requested by parents as far as possible

Newsletters & general school updates can be sent to all parents via email. These updates will contain all the main events within school, including; productions, sports days, parent's evenings, class trips, etc. Occasionally letters are sent to individual classes. We would expect parents to communicate these messages to each other as and when appropriate.

We will hold *regular parent consultation meetings*. We would expect parents to communicate with each other regarding these arrangements.

The school will consider separate appointments but by prior agreements only or when a court order is in place restricting contacts with both parents.

We expect that parents should liaise and communicate directly with each other in matters such as the ordering of school photographs; tickets for performances and other instances.

A parent as defined in Education law has the right to receive progress reports and review pupil records of their children. If the parents are separated or divorced, progress reports will be sent to the parent at the address in the school's records specifying where the child resides with the expectation that he/she will share the report with the other parent.

If the child is subject to a joint Child Arrangements Order and the school's records formally capture that the child resides at two addresses, then progress reports will be sent to both addresses.

The school will send copies of the progress reports to a parent with whom the child does not reside only if that parent submits a written request.

<u>In the matter of the release of a child or children:</u>

We will follow the standard agreed procedure in the release of a child or children.

In the case of separated parents our School will release a child or children to a parent in accordance with any specific arrangements or a Court Order notified to the school.

If one parent seeks to remove the child from school in contravention of the notified arrangements, and the parent to whom the child would normally be released has not consented the following steps will be followed: -

- The Head Teacher, Deputy or Designated Safeguarding Lead will contact the parent to whom the child would normally be released and explain the request.

- If the parent to whom the child would normally be released agrees, the child may be released, and the records will reflect that the permission was granted verbally.

- In the event that the parent to whom the child would normally be released to cannot be reached, the Head Teacher or staff member dealing with the issue may make a decision based upon all relevant information available to him/her.

- The Head Teacher or staff member may have to refuse permission if agreement/consent cannot be obtained and may need to take advice before a child or children are collected / released.

- The School cannot **prevent** the other parent collecting the child or children, but we will endeavour to reach an agreement, and this may mean keeping the child or children safe whilst we try and reach such an agreement.

- If there is a Court Order restricting contact or it is in contravention of any access agreement, the child or children will not be released into their care and the other parent advised to take the necessary action which does not involve the school. If it is deemed necessary by the school to protect the child or children's health and welfare, the school shall immediately contact the police and the Local Authority where relevant.

- During any discussion or communication with parents, the child or children may be supervised by an appropriate member of school staff in a separate room to avoid causing any upset to the child or children.

- In circumstances if there is a belief that a possible abduction of the child may occur or if the parent is disruptive, the police should be notified immediately, and the Local Authority notified.

4 Support

We will try and assist parents where possible with offering national and local support groups, and where they can get independent advice:

National Society for the Prevention of Cruelty to Children

Gingerbread

Family lives

5 Management of the Policy

The Head Teacher/Safeguarding Designated Lead(s) will familiarise themselves with this policy and ensure all Staff, Governors and Volunteers are aware of the procedures to follow should the need occur.

The policy will be made available to parents and published on our school website.

Signed by: **Signed by:**

Head Teacher **Chair of Governors**
Date: **Date:**

Appendix A

Child Arrangements Orders

Applications for child arrangements orders are usually between private individuals, under s8 Children Act 1989. Where someone seeks an order in respect of a child who is in the care of the local authority it will be considered a public law matter.

In private law cases the child is not a party to the proceedings unless there are particular circumstances that make the case complex. The court can request a welfare report under s7 Children Act 1989, either from the local authority or from a Children and Family Reporter who is an officer appointed by Cafcass. The report will usually inform the court of the child's wishes and feelings, but the officer will make a recommendation based on what they think is in the child's best interests rather than just report on the child's wishes.

In some circumstances the court may order that the child is made a party to the proceedings. A Children's Guardian (who again is an officer of Cafcass) is appointed to represent the child in the proceedings and the Guardian will appoint a solicitor. If the child and Guardian do not agree on what recommendations to make to the court and the child is of sufficient age and understanding, they will be able to instruct a solicitor directly to represent their views and the Guardian will present their own views to the court.

Certain categories of people are entitled to make an application for a child arrangement order under s8 without having to seek permission from the court first, and they are:

1. The parent, guardian or special guardian of a child;

2. Any person who has parental responsibility;

3. Anyone who holds a residence order in respect of the child;

4. Any party to a marriage or civil partnership where the child is a child of the family;

5. Anyone with whom the child has lived for at least three years;

6. Anyone who has obtained the consent of:

a) a residence order;
b) the local authority if the child is in their care; or
c) everyone who has parental responsibility for the child.

Other people can make an application to the court for permission to issue an application for a child arrangements order. In deciding whether to give permission the court will take into account, amongst other things:

1. The nature of the application;
2. The applicant's connection with the child;
3. The risk there might be of the proposed application disrupting the child's life to such an extent that they should be harmed by it.

It is via this route that wider family members such as grandparents are able to apply for orders in respect of their grandchildren.

The Welfare Checklist - section 1 Children Act 1989

When a court considers any question relating to the upbringing of a child under the Children Act 1989 it must have regard to the welfare checklist set out in s1 of that Act. Among the things the court must consider are:

a) The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding);
b) His physical, emotional and/or educational needs;
c) The likely effect on him of any change in his circumstances;
d) His age, sex, background and any characteristics of his, which the court considers relevant;
e) Any harm which he has suffered or is at risk of suffering;
f) How capable each of his parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
g) The range of powers available to the court under the Children Act 1989 in the proceedings in question.

For all proceedings under the Children Act 1989 when the court considers a question of the child's upbringing the child's welfare is the court's paramount consideration.

Child Arrangements Orders - section 8 Children Act 1989

These orders decide who the child is to live with and/or who the child will spend time with and can be granted to more than one person whether they live together or not. If a child arrangements order states that the child will live with a person, that person will have parental responsibility for that child until the order ceases. Contact with a child can either be direct e.g. fact to face meetings, or indirect e.g. by letter or exchange of cards or virtual via zoom, Teams, WhatsApp etc.

Some orders will make very specific arrangements for the child, other orders will be more open with detailed arrangements to be made between the parties by agreement. Child arrangements orders are not only made in respect of parents; there can also be orders for arrangements between siblings, and wider family members. Sometimes the order will give directions that contact is to be supervised by a third person, or that contact is to take place in a specific location.

Failure to comply with an order may result in the court making further orders specifying activities for a party to undertake or the court making other enforcement orders which can include an order for unpaid work.

Parental Responsibility - sections 3 and 4 Children Act 1989

Parental responsibility means all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his property.

The birth mother of a child will always have parental responsibility unless it is extinguished by the making of an adoption order to another person.

Where the child's father and mother are married to each other at the time of the birth, they both have parental responsibility for the child.

Where the child's mother and father are not married to each other at the time of the birth the general rule is that the mother has sole parental responsibility for the child. However, an unmarried father will have parental responsibility for a child born after 1st December 2003 if he is named on the Register.

Other ways in which a father can obtain parental responsibility are by:

a) drawing up an agreement with the mother (a parental responsibility agreement), which is a specific form that has to be signed by both parents;
b) marrying the mother;
c) the court making a child arrangements order for parental responsibility if the parents cannot agree on the father having parental responsibility.

d) the court making a parental responsibility order

Other people may acquire parental responsibility by entering into an agreement if they are the husband or civil partner of the mother, or if they obtain a child arrangements order live with order or the court makes a parental responsibility order.

More than one person can have parental responsibility for the same child at the same time. Parental responsibility is shared between everyone, but where more than one person has parental responsibility for a child each of them may act alone in meeting that responsibility except in circumstances where the consent of everyone with parental responsibility is required.