EMBARK FEDERATION

Love Learning, Love Life.

The shared vision for our trust is to “create schools that ‘stand out’ at the heart of their communities.” Our trust has four core beliefs; Family, Integrity, Teamwork and Success that are integral to everything we do. The purpose is to enable everyone to be able to ‘Love Learning, Love Life.’

Our policies are underpinned by our vision, beliefs and purpose

Separated Parents Policy

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Policy Accountability and Implementation

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- All staff

Policy Classification and Publication

Classification

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2	Embark Safeguarding Lead - HJ	**Minor amends only** **Legal Framework** • Legislation, statutory and non-statutory guidance documents have been updated reflecting the latest versions.
3	Embark Safeguarding Lead - HJ	**Minor amends only** **Legal Framework** • Legislation, statutory and non-statutory guidance documents have been updated reflecting the latest versions.
4	Embark Safeguarding and Personal Development Lead - HJ	**Minor amends only** • Legislation, statutory and non-statutory guidance documents have been updated reflecting the latest versions. • Page 6 - *We expect that parents should liaise and communicate directly* amended to.. *We expect that parents should liaise and communicate directly (unless a court order prevents this)* • Page 8 appendix A – added the following note *NB: Please note that the term 'his' is used in the document extract rather than a gender neutral or gender non-specific language as it is taken from a legal document and so cannot be altered.*

Legal Framework

This policy takes into account the following legislation:

- Pupil/student and Families Act 2014
- Pupil/student Arrangement Order (Sc8 Pupil/student Act 1989)
- Human Fertilisation and Embryology Act 2008
- Private Fostering Arrangements (Pupil/student Act 1989, Private Fostering Regulations 2011)
- Special Guardianship Order (Regulations 2005 & 2016)
- Education Act 1996
- Childrens Act 1989
- Keeping Children Safe in Education (DFE)
- Data Protection Act 2018
- UK General Data Protection Regulation
- Understanding and dealing with issues relating to parental responsibility. (DFE August 2023)

1. Introduction and Context

Research and experience have shown that separated parents can work well together in the best interests of their pupil/student and can together play a role in their pupil/student's education. However, some parents become estranged, and do not work together or in the best interests of their pupil/student, especially during the initial stages of their separation. This is very often traumatic for any pupil/student concerned where personal family problems can have an impact on the pupil/student and on the schools the pupil/student 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 pupil/student or young person i.e., a person with whom the pupil/student resides and who looks after the pupil/student irrespective of the relationship*

Who has "Parental Responsibility"? (The Pupil/student Act 1989, amended by the Pupil/student and Families Act 2014)

Having parental responsibility means assuming all the rights, duties, powers, responsibilities and authority that a parent of a pupil/student has by law. Parental responsibility can be removed in some circumstances.

The government has provided some advice on parental responsibility: https://www.gov.uk/parental-rights-responsibilities

People other than a pupil/student's natural parents can acquire parental responsibility through:

- *In the case of step-parents, in agreement with the pupil/student's mother (and other parent if that person also has parental responsibility for the pupil/student) or as a result of a court order*
- *Being granted a Pupil/Student 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 pupil/student's welfare);*
- *Being granted a care order not sure whether the two highlighted orders should be included as they are only granted to the LA – could say awarded to the Local Authority*
- *Being granted a Special Guardianship Order;*
- *Adopting a pupil/student.*
- *A parent by virtue of the human Fertilisation and Embryology Act 2008*

If the parents of a pupil/student were not married to each other when the pupil/student 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 pupil/student with the mother. He can, however, subsequently acquire parental responsibility by various legal means**.**

What does having "care" of a pupil/student mean?

Having care of a pupil/student or young person means that a person who the pupil/student lives with and who looks after the pupil/student, irrespective of what their relationship is with the pupil/student, 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 pupil/student where, for all intents and purposes, the person is part of the family, a man or woman married to a parent of a pupil/student.

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 pupil/student when s/he is ill?
- Do they live with the pupil/student?
- How long has the school known of them being connected with the pupil/student?
- Does the adult bring/collect the pupil/student to/from school?
- Is the adult married to the parent of the pupil/student?

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

It is therefore those adults who are having significant input to a pupil/student's life who can be classified as "parent", having "parental responsibility" or who have "care of a pupil/student". 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 pupil/student 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 pupil/student, even though, for day-to-day purposes, the school's main contact is likely to be a parent with whom the pupil/student 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 pupil/student 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 pupil/student taking part in school trips
- be informed about meetings involving the pupil/student - such as a governors' meeting on the pupil/student'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 pupil/student 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 pupil/student was enrolled detailing whether parents have parental responsibility for the pupil/student 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 pupil/student 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 pupil/student 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 pupil/student 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 pupil/student, 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 pupil/student or pupil/student 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 pupil/student or pupil/student, or using the school premises for purposes of contact.

If the parents are unable to agree with one another on decisions regarding their pupil/student'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 pupil/student 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 pupil/student the matter will be referred to the Local Authority for advice, and consideration will be given as to whether to make a referral into pupil/student's services.

Should there be any disagreement between this school and the parent this school may advise the parent to use the school's complaints process. A copy of our complaints process will be found on our school website.

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 pupil/student 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 **Parent Hub**. 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 **2 parent/carer consultation evenings or if your child is on the school's SEND register, you will have 3 SEND evening appointments (one via telephone).** 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 (unless a court order prevents this) 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 pupil/student. 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 pupil/student resides with the expectation that he/she will share the report with the other parent.

If the pupil/student is subject to a joint Pupil/Student Arrangements Order and the school's records formally capture that the pupil/student 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 pupil/student does not reside only if that parent submits a written request.

In the matter of the release of a pupil/student:

We will follow the standard agreed procedure in the release of a pupil/student or pupil/student.

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

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

- The Head Teacher, designated deputy or Designated Safeguarding Lead will contact the parent to whom the pupil/student would normally be released and explain the request.

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

- In the event that the parent to whom the pupil/student 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 pupil/student or pupil/student are collected / released.

- The School cannot prevent the other parent collecting the pupil/student or pupil/student, but we will endeavour to reach an agreement, and this may mean keeping the pupil/student or pupil/student 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 pupil/student or pupil/student 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 pupil/student or pupil/student'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 pupil/student or pupil/student may be supervised by an appropriate member of school staff in a separate room to avoid causing any upset to the pupil/student or pupil/student.

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

4. Support

Some pupils/students' may need additional support in school because of a separation of parents and any possible impact it may have on their health and wellbeing. This may be a temporary, and some pupils/students' may experience initial anxieties. This will be discussed in school and pastoral support, one to one or group work may be beneficial. For some families engaging with early help and an in-school family resource worker may help, and we will try and assist families where possible. We will also refer families to national and local support groups, where they can get independent advice:

National Society for the Prevention of Cruelty to Pupil/student
Gingerbread
Family lives

5. Management of the Policy

The DSL/s will ensure they are familiar with this policy regularly updating all Staff, Governors and Volunteers regarding the legal requirements, and duties.

The Head Teacher will ensure that Separated Parents awareness forms part of Staff Safeguarding Induction and is included in the annual Safeguarding Training for teaching and non-teaching staff.

The Trust will oversee the policy, ensuring its implementation and reviewing its content on an annual basis.

Appendix A
Relevant legislation extracts

NB: Please note that the term 'his' is used in the document extract rather than a gender neutral or gender non-specific language as it is taken from a legal document and so cannot be altered.

Pupil/student Arrangements Orders

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

In private law cases the pupil/student 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 Pupil/student Act 1989, either from the local authority or from a Pupil/student and Family Reporter who is an officer appointed by Cafcass. The report will usually inform the court of the pupil/student's wishes and feelings, but the officer will make a recommendation based on what they think is in the pupil/student's best interests rather than just report on the pupil/student's wishes.

In some circumstances the court may order that the pupil/student is made a party to the proceedings. A Pupil/student's Guardian (who again is an officer of Cafcass) is appointed to represent the pupil/student in the proceedings and the Guardian will appoint a solicitor. If the pupil/student and Guardian do not agree on what recommendations to make to the court and the pupil/student 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 pupil/student 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 pupil/student
2. Any person who has parental responsibility
3. Anyone who holds a residence order in respect of the pupil/student
4. Any party to a marriage or civil partnership where the pupil/student is a pupil/student of the family
5. Anyone with whom the pupil/student 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 pupil/student is in their care; or c) everyone who has parental responsibility for the pupil/student.
Other people can make an application to the court for permission to issue an application for a pupil/student 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 pupil/student; 3. The risk there might be of the proposed application disrupting the pupil/student'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 pupil/student.

The Welfare Checklist – section 1 Pupil/student Act 1989

When a court considers any question relating to the upbringing of a pupil/student under the Pupil/student 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 pupil/student 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 Pupil/student Act 1989 in the proceedings in question.

For all proceedings under the Pupil/student Act 1989 when the court considers a question of the pupil/student's upbringing the pupil/student's welfare is the court's paramount consideration.

Pupil/student Arrangements Orders – section 8 Pupil/student Act 1989

These orders decide who the pupil/student is to live with and/or who the pupil/student will spend time with and can be granted to more than one person whether they live together or not. If a pupil/student arrangements order states that the pupil/student will live with a person, that person will have parental responsibility for that pupil/student until the order ceases. Contact with a pupil/student can either be direct e.g. face 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 pupil/student, other orders will be more open with detailed arrangements to be made between the parties by agreement. Pupil/student 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 Pupil/student Act 1989

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

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

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

Where the pupil/student'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 pupil/student. However, an unmarried father will have parental responsibility for a pupil/student born after 1st December 2003 if he is named on the Register.

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

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

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