



# Decision Making Responsibilities for Students

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## Policy

This policy provides guidance as to who is responsible for decisions about students including for the common decisions that need to be made in relation to their education and welfare.

## Summary

- Each parent of a child under 18 years of age has parental responsibility for a child unless this has been varied by a court order, parenting plan or otherwise as set out in this policy.
- Separated parents with decision making responsibility are expected to consult with one another and make a genuine effort to come to a joint decision about an issue. The law does not require others, such as schools, to ensure that both parents have consulted with each other and come to a joint decision. However, schools are encouraged to have processes in place to seek the views of both separated parents about a major long-term issue – see below for more information about ‘major long-term issues’.
- School staff must try to avoid becoming involved in parent disputes about decision making for students.
- If the student is a mature minor for the purposes of a particular decision, or an adult (18 or above), the student can make their own decision. It is generally assumed that any student who may have become a mature minor is not intending to make their own decision on a particular matter, unless and until they provide information or act in a manner that shows that they are no longer consenting for their parents or carers to make decisions on their behalf or to making joint decisions with their parents or carers – refer to: Mature Minors and Decision Making.

- Principals of Victorian government schools can seek legal advice about a particular court order or family and student circumstances from the department's Legal Division on 03 9637 3146 or email: [legal.services@education.vic.gov.au](mailto:legal.services@education.vic.gov.au)

## Details

Each parent of a child under 18 years of age has parental responsibility for the child, unless that parental responsibility is varied by a court order or parenting plan or otherwise as set out in this policy. In determining who is responsible for making a decision in relation to a student, the principal or relevant staff member must apply the following:

- if the student is an adult or a mature minor for the purpose of a particular decision, the student can make their own decision. If a student is a mature minor, assume the student does not wish to be assessed as a mature minor for a particular decision, if the student has not made evident an intention to make the decision independently of their parent or carer. If a student under the age of 18 years old indicates that they want to make a decision for themselves, the principal should decide whether the student is a mature minor for that decision – refer to: Mature Minors and Decision Making.
- if the student is not an adult or mature minor, consider who has parental responsibility for the child (for example who are the parents listed on the child's birth certificate).
- if the parents are separated, consider:
  - are there any court orders in place that affect decision-making responsibility – for example, parenting order (also known as a Family Law Act order), family violence intervention order or protection order
  - are there any informal arrangements in place that affect decision-making responsibility – for example, parenting plan or informal care arrangements (such as the student living with their grandparent or other non-parent carer, where no court orders are in place for such an arrangement)
  - if the decision is about day-to-day issues affecting the child, in which case a parent or carer who is spending time with the child on a particular day is able to make the decision
  - if the decision is about a major long-term issue affecting the child, in which case schools are encouraged to seek the views of each parent or carer with decision making responsibility for the child. A decision made by only one parent or carer in the absence of a contrary view or communication from the other parent or carer is sufficient, unless otherwise set out in this or other department policy.

Parents and carers are expected to provide schools with up-to-date information and documentation relating to relevant court orders or informal care arrangements. However, schools should request copies from parents or carers of relevant court orders or evidence of informal care arrangements that are in place, if they are aware of them, and make reasonable enquiries with parents and carers about those orders and arrangements from time to time.

In determining who is responsible for making a decision in relation to a student and the information to be provided to the person responsible for making the decision, school staff must also consider the human rights of any relevant parties (for example the student's rights and their parents' or carers' rights) as set out in the Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) and must act compatibly with the Charter. For more information, see Human Rights Charter.

The department's Legal Division can also provide advice for schools to assist them in determining decision making responsibilities if and as needed at [legal.services@education.vic.gov.au](mailto:legal.services@education.vic.gov.au) or 03 9637 3146.

### **Decisions about major long-term issues**

Separated parents with decision-making responsibility are expected to consult with one another and make a genuine effort to come to a joint decision about an issue. The law does not require others, such as schools, to ensure that both parents have consulted with each other and come to a joint decision. However, schools are encouraged to have processes in place to seek the views of both separated parents about a major long-term issue.

The following provides some guidance about the usual classification of common decisions.

#### **Major long-term issues include:**

- enrolment or transfer and choice of school
- year level movement (that is, repeating or skipping a year)
- consents for overseas excursions
- major medical and health decisions
- decision for child to participate in special religious instruction
- chronic non-attendance at school
- the child's name
- a decision about a day-to-day issue that may have a major long-term impact for a particular child.

#### **Day-to-day issues include:**

- non-attendance at school when it is open for instruction on a particular day
- consent to participate in day excursions
- medical and health decisions that are not major.
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### **Disputes between separated parents or carers**

Whenever faced with a dispute between persons who are responsible for making decisions for a child, principals and staff must try to:

- avoid becoming involved
- avoid attempting to determine the dispute
- act neutrally and not adopt sides
- act in the best interests of the child or young person involved
- act in the best interests of the school community.
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School staff should inform parents that schools are not the place to resolve disputes. These disputes should be resolved between the parents and carers through discussion, attendance at the Family Relationship Centre or at court.

### **Other decision-making arrangements**

There are a range of other circumstances in which persons other than a child's parents may make decisions about a student.

#### **Adult students**

A person is considered an adult once they are 18 years of age. An adult student can make all decisions that parents or carers could make. For example, an adult student can:

- sign their own enrolment forms
- consent to a referral to school-based wellbeing supports or Student Support Services
- consent to medical treatment
- consent to participation in an excursion, camp or school approved activity
- consent to other persons (including their treating practitioners, parents or carers) receiving their personal or health information
- enter into an enforceable agreement such as to lease a computer.

After a student turns 18, they may inform the school that they wish to make some or all decisions either jointly with, or independently, of their parents. This wish must be respected by schools.

### **Mature minors**

The law recognises that as children become older and more mature, they are more capable of making their own decisions about a wide range of issues and that they may reach this stage before they are 18 years of age. These children are referred to as 'mature minors'. To determine whether a student is a mature minor for a particular decision, refer to: Mature Minors and Decision-Making.

A child can be considered a mature minor for some decisions, but not for others. Parents or carers continue to have decision making responsibility as set out in this policy, for decisions not made by a mature minor (including those decisions for some matters that are not able to be made by a mature minor). It can be assumed that a parent is making a decision for a mature minor, if the student has not made evident an intention to make the decision independently of their parent or carer.

## **Informal carer arrangements**

When a child's parents are unable or unwilling to care for them, the responsibility often falls on relatives or significant others to take care of the child. Sometimes this care is provided on an informal basis and does not give the carer any legal status over the child or formal recognition as a carer.

In these circumstances, in order to allow these carers to work with schools that the child is attending or seeking to attend, carers should be asked to complete an informal carer statutory declaration. This is a written declaration by the carer that sets out the care arrangements for the child – refer to: Informal carer statutory declaration template (PDF).

Generally, an informal carer who has provided the school with a completed informal carer statutory declaration may make school-based decisions for the child as set out in this policy and may access school information ordinarily provided to a parent.

However, it is important to note that, generally, a decision of a parent with parental responsibility overrides any decision made by an informal carer to the extent of any inconsistency.

## **Formal carer arrangements**

Where a child is in out-of-home care following an intervention by Department of Health and Human Services (DHHS) Child Protection resulting in a protection order, an 'authorisation' may be issued to the carer in order to enable them to make decisions about the child.

The types of decisions that a carer is authorised to make for the child are specified in the authorisation and will generally include day-to-day decisions about education and routine medical care.

Generally, carers are not authorised to make major long-term decisions for a child, unless DHHS Child Protection have issued a specific authorisation allowing the carer to make decisions about issues of a long-term nature.

Carers are responsible for providing principals and staff with a signed instrument of authorisation and for providing up-to-date information relating to any changes in care arrangements. However, principals and staff should ask for a copy of this authorisation whenever they are aware a change has been made.

In some circumstances, these orders may grant parental responsibility for major long-term issues or day-to-day decisions for a child to someone other than the natural parent(s) of the child, including the child's day-to-day carer, the Secretary of DHHS, a person authorised under an Instrument of Authorisation by the Secretary of DHHS or the child's permanent care parents.

Where there are protection orders in place, the principal must ensure the school retains a copy of the orders and update the student's records to reflect any impact of these orders on care arrangements or decision-making responsibility for students.

If a principal or their nominee has any concerns about any aspect of decision-making processes, seek advice from the Legal Division.

## **Definitions**

### **Parent**

A person that has parental responsibility for a child. This may include a biological parent or another person who has been granted parental responsibility by a court order.

### **Parental responsibility**

All of the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

### **Parenting orders (also known as Family Law Act orders)**

Court orders made pursuant to the Family Law Act 1975 (Cth) and may deal with any of the following issues:

- person with whom the child is to live
- the time a child is to spend with another person
- communication a child is to have with another person
- the allocation of parental responsibility
- any aspect of the care, welfare or development of the child

### **Family violence intervention orders**

Court orders made pursuant to the Family Violence Protection Act 2008 (Vic) that prohibit one family member doing specified actions or behaviours towards another family member or multiple family members. Family violence intervention orders do not take away or grant parental responsibility but may impact the ability of a parent to care for or have contact with their child.

### **Protection orders**

Court orders made pursuant to the Children, Youth and Families Act 2005 (Vic) upon protective intervention by DHHS Child Protection. There are various types of protection orders including:

- family preservation orders
- family reunification orders
- care by Secretary orders
- long term care orders
- permanent care orders

### **Parenting plan**

A written agreement between parents that meets all of the following characteristics, in that it:

- is made between the parents of the child
- is signed and dated by the parents of the child
- deals with some or all of the following matters:
  - person with whom the child is to live

- the time the child is to spend with a person
- the allocation of parental responsibility
- any aspect of the care, welfare or development of the child

A parenting plan can affect parental responsibility even though it is not an order made by a court. It can be made subsequent to a parenting order and can vary the parenting order made by a court.

#### Related policies

- Excursions
- Expulsions
- Intervention Orders
- Mature Minors and Decision Making
- Student Support Groups
- Student Support Services
- Suspensions

#### Relevant legislation

- Charter of Human Rights and Responsibilities Act 2006 (Vic)
- Children, Youth and Families Act 2005 (Vic)
- Family Law Act 1975 (Cth)
- Family Violence Protection Act 2008 (Vic)

#### **Evaluation**

This policy will be reviewed in accordance with the school's three-year review cycle.

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Last ratified by School Council in March 2025