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Record Keeping and Data Protection Policy

Introductory Statement:

This policy was recently formulated by Staff and Board of Management of St. John's N.S. The purpose of this policy is to identify the Records required to be retained by the school and to ensure confidentiality and manageable procedures in relation to access to such records by parents and stakeholders.

Rationale

It is necessary to devise a policy on record keeping at this time

- Teaching is informed by pupil learning needs and the recording of where a pupil is in relation to his/her learning is a cornerstone of good teaching.
- Education Act Section 9(g) provides that parents (or students of 18 years or upwards) are entitled to have access in the prescribed manner to records kept by the school relating to the progress of the student in his/her education
- Attendance at school has a bearing on a pupil's attainment levels
- Education (Welfare) Act, 2000, requires principals
 1. To communicate to a school, to which a student is transferring, any problems relating to school attendance which the pupil concerned had and any other appropriate matters relating to the pupil's educational progress
 2. To keep a record of the pupil's attendance and the reasons for failure to attend
 3. excess of 6 days/or where a pupil is absent in excess of 20 school days in a school year/or To inform the Educational Welfare Officer in writing, where a pupil is suspended for a period in where in the opinion of the principal the student is not attending regularly
- The school's existing procedures need to be clarified to ensure that the school complies with the spirit as well as the letter of the law e.g. accountability and transparency

Relationship to characteristic spirit of the school

- St John's N.S. seeks to enable each child to develop his/her potential in a caring environment where the talents of each child are valued. This work can best be done where there is a high level of openness and co-operation between staff, parents and pupils.

Aims

The school ideally hopes to achieve the following by introducing this policy.

- To record the educational progress that a pupil is making thereby enabling parents and teachers to support the child's learning.
- To report to parents in a meaningful way on the educational progress of their children
- To establish clear, practical procedures that will enable parents/guardians (or past pupils who have reached the age of 18) to access records relating to educational progress.
- To ensure that this access is available within the capacity of the school to administer it.
- To establish a clear understanding, shared by management, staff and parents, as to the type of records that are maintained and how such records should be made available.
- To ensure that the school complies with legislative requirements while awaiting the issue of guidelines as to the 'prescribed manner' referred to in Section 9 (g) of the Education Act
- To ensure that, is so far as possible, the school complies with legislative requirements/principles of good practice while awaiting the issue of guidelines.

Content of Policy

- **Annual Report:** An annual report is sent by post in June of each school year. A copy of the report is sent to both parents in the case of both parents not residing at the same address. (See policy on custody and separation). A copy of the annual report is kept in hard copy form in office filing cabinet.
- **Standardised Tests:** These tests are carried out normally in spring/summer term namely Micra T / Drumcondra spelling in English and Sigma T in Maths. Records of results are initially stored on office computer and are password protected. These results are also tabulated in a class record form (see attached) and given to each class teacher at the beginning of each school year. The results of these tests are stored in a secure place in each classroom. The test booklets are securely stored by the class teacher for one year and are then shredded.
- **Teacher-designed Tests;** As with standardised tests these results are recorded in classroom planner and are stored in a secure place.
- **Screening Tests:** M.I.S.T. is administered in Senior Infants in February. These results are stored in a locked filing cabinet in Learning Support room. N.R.I.T. test is administered in November in 1st and 4th classes. Results are stored in a locked filing cabinet in Learning Support room.
- **Diagnostic Tests:** These tests are carried out periodically by the L.S and resource teachers. Results are stored in each child's class file which is stored in a locked cabinet in L.S. room. Parental consent forms for these tests are also stored securely in the L.S. room

- **Samples of Pupil's Work** Portfolios are kept under the following subject areas English, SPHE, Science, Art. The storage of these portfolios is the responsibility of the classroom teacher.
- **IEPs / IPLPs.** All copies of IEP'S and their draft copies are kept securely in the resource room.
- **Records of attendance / absence:** Roll Books are kept in each classroom and are the responsibility of each teacher. Old roll books are kept securely on the school premises and are not available to the general public. Absence notes are recorded by each individual teacher and kept in yearly planner. These records are passed onto the attendance officer and are stored in the attendance file in the school office.
- **Psychological Assessments;** Reports based on psychological assessments are securely stored by the LS/Resource teacher
- **Referrals for Learning Support/ Visiting Teacher Service/** or other supplementary teaching and communications relating to this e.g. a record of parents' decision not to allow the child to attend at learning support or resource are kept securely in the office filing cabinet.
- **Enrolment Form:** All enrolment forms are stored in the office cabinet and all information therein is kept confidential
- **Code of Behaviour;** Copies of signed Code of Behaviour from child's school diary are collected by class teacher and are stored securely.
- **Record of child's breaches of code of behaviour:** Record of incidents is recorded in special hardback book in office.
- **A record of any serious injuries/accidents:** A yard accident book is stored in the office.
- **Indemnity form for administration of medicine;** These forms are securely kept in the office.

In terms of the above records it is the principal, school teaching staff and secretary who will have access to individual records kept in the school. These individual records are kept until the pupil is 21 and (24 for SEN pupils). A written authorisation from parents will be required to allow access to any other agencies including second level schools. When records are no longer required they will be shredded.

Procedures in relation to accessing of pupil records:

A written request will be required accompanied with identification (e.g. birth cert). Records will be provided within 21 days.

Records held in relation to employees include contracts, references, CVs / job applications. The principal and secretary has access to these. The principal and secretary update and destroy records that are no longer required.

Practical indicators of the success of this policy include

- Systematic compilation of uniform records by staff
- Systematic reporting to parents on educational progress in place
- Parents/pupils can access records without undue disruption of teaching time
- Storage of records is manageable

Roles and Responsibility

- *The principal will notify parents of their entitlements and the procedures they should follow.*
- *The principal and secretary will ensure that files are securely stored when pupils transfer out of the school.*

Implementation Date

These procedures will apply from _____

Review

The operation of the new procedures will be reviewed and, if necessary amended.

Ratification & Communication

The Board of Management officially ratified the Policy on _____

Reference Section

Solas (March 2001)

Schools would be expected to have a policy regarding regular parent /teacher meetings and also regarding the issuing of regular Reports to parents on the progress of their child in her/his education.

The Department of Education & Science is currently in discussions with the Education Partners about the manner of parents' access to records, which will be prescribed. It is expected that parents will have access to any permanent records regarding their child's progress, which are held in the school.

Solas (May/June 2001) Also see *Leadership+ IPPN* (September 2007)

The School's Obligation to Parents

Over the past year we have had an increasing number of queries from schools about their obligations to parents in certain circumstances. We set out here the advice received from legal sources on a number of questions raised. Clearly, there can be nuances in individual situations, which may require a school to seek specific advice in a particular case.

The relevant legal principles applicable when dealing with parents:

The starting point in looking at this area of the law must be the provisions of the Constitution and the provisions of the Guardianship of Infants Act 1964 as amended which reflect the relevant constitutional provisions. The Constitution in Article 41 gives recognition to the family and guarantees to protect the family in its constitution and authority. Case law has established that such constitutional protection extends only to a family based on marriage. Article 42.1 acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social welfare of their children. Article 42.5 however, recognises that in exceptional cases where parents for physical or moral reason fail in their duty towards their children the State shall by appropriate means endeavour to supply the place of the parents but always with due regard for the natural and imprescriptible rights of the child.

The Constitution therefore recognises and protects parental rights but also recognises and protects the rights of the child.

This balance is reflected in the provisions of the Guardianship of Infants Act, 1964 as amended. The Act gives effect to two concepts - that of guardianship and of custody. Where parents are married, both of them are guardians of their children and this position is set out in Section 6 of the 1964 Act as amended, which provides:

- (1) The father and mother of an infant shall be guardians of the child jointly.
- (2) On the death of the father of a child, the mother, if surviving, shall be guardian of the child, either alone or jointly, with any guardian appointed by the father or by the court.
- (3) On the death of the mother of a child the father, if surviving, shall be guardian of the child, either alone or jointly with any guardian appointed by the mother or by the court.
- (4) Where the mother of a child has not married the child's father, she, while living, shall alone be the guardian of the child, unless a guardian has otherwise been appointed in accordance with this Act".

Section 10 provides that every guardian under the Act shall be a guardian of the person and of the estate of the child. The status of guardian carries with it the right to be consulted and to have

input in regard to important decisions which affect the child. The 1964 Act provides mechanism whereby guardians who cannot agree in regard to what should take place in respect of a child can apply to a court for a direction in regard to the matter in dispute. An obvious example of where this procedure comes into play is when parents separate and there is a dispute as to which of them should have custody of the child or children and the court is asked to give a direction in regard to this issue. It is important to bear in mind that if one spouse is given custody of a child this does not deprive the other spouse of their status as a guardian of the child and of the rights which accrue from that status. Therefore if spouses have separated and one of them has obtained an order for custody but both of them remain guardians, then both of them are entitled to be consulted and informed in regard to important decisions which affect the child.

It is almost impossible to set out hard and fast rules as to how a school should respond in particular circumstances. The appropriate reaction must have regard to the particular circumstances of each case and the school authorities must attempt to apply the general principles set out above in a sensible and practical way, having regard to the rights of the various parties while viewing the welfare of the child as the first and paramount consideration.

Query 1: Where parents are separated, is a school obliged to notify parents separately? In many schools, notices to parents are sent borne with the pupils. Is notification by post appropriate for a parent who does not have de facto custody?

Query 2: What type of notices would the school reasonably be expected to send to a parent without custody?

It would be going too far to establish a hard and fast rule that a school is obliged in every case where married parents are separated to send all notices to each parent. However, the school should have regard to the fact that both parents would remain as guardians of their children and therefore it would be prudent to ensure that notice is given to both parents in regard to any important matter that may affect the welfare of the child. An obvious example where notification should take place is if the child is accused of misbehaviour which may cause the school to expel him or her. An example which would possibly fall on the other side of the line and not require notification to both parents would be in regard to a relatively trivial matter such as perhaps that the school will open late on a particular day.

Query 3: Where meetings with the class teacher are required, is the school obliged to arrange separate meetings with each parent (this is often requested)?

If a person who is a guardian of the child requests a separate meeting, it would be appropriate to accede to such a request given that a guardian is entitled to be kept informed of the educational progress of the child. If no such request is made then one would have to consider the matter having regard to the particular facts, for example, the course of dealing with the parents may make it clear that no such separate meetings are required. Both parents may have attended together for such meetings without difficulty notwithstanding their separation.

Query 4: Are schools required to send duplicates of school reports to each parent in separation situations or only to a parent who requests same?

If a request is made then it would be appropriate to comply with the request, and to supply copies of school reports to both guardians. Again, in the absence of a request, a school would have to consider the particular circumstances but, given that it would be likely that there would be relatively little expense and difficulty in arranging for copies of the reports to be sent to both guardians it would seem sensible to have a policy which provides for copies of reports to be sent to each guardian unless it is clear that there is no need in a particular case or that it would be impossible or unduly difficult to do so.

Query 5: Are schools required to get permission for school trips and school activities from both separated parents?

Again it is difficult to set down a hard and fast rule in regard to this query. However, there is no doubt that if the school trip or activity in question requires the child to be taken outside the jurisdiction, then the permission of both parents, if they are guardians, should be obtained. Also it would be sensible to get the consent of both guardians if the trip or activity in question would carry an appreciable degree of risk in regard to the welfare of the child. To take an obvious but perhaps unlikely example, if the school trip involved an inherently risky activity such as perhaps tuition in abseiling techniques then there would be no doubt that the consent of both guardians should be obtained and the exact nature of the activity contemplated should be made clear

Query 6: Are schools required to get the standard indemnity for application of school medicines in emergencies from both separated parents?

Given that the giving of medicines to a child in a circumstance of emergency would in all likelihood be a serious matter involving some risk to the child, it would be appropriate to obtain the consent of both guardians to the giving of medicines in such circumstances.

Query 7: Are schools required to get written confirmation from both separated parents if a child is to be withdrawn from religious education?

The question of religious education is of sufficient importance that both guardians are entitled to be notified and consulted in regard to same. If the guardians cannot agree on a particular course of action then the school should invite them to bring an application pursuant to Section II of the Guardianship of Infants Act 1964 as amended to resolve the dispute.

Query 8: Where schools wish to meet with parents relating to a disciplinary problem with a pupil, are schools required to invite both parents to come to the school together?

If the disciplinary problem has the potential for serious implications for the child such as suspension or expulsion then it would be appropriate to inform and consult both guardians. This would not necessarily mean that they would have to come to the school together but rather that both would be informed of the problem and given an opportunity to have input into the disciplinary process.

Query 9: When and in what circumstances is a school entitled to refuse to allow a parent to take a child from the school during the school day?

Query 10: If the school is informed that there is a danger of abduction what precautions, if any, would the school reasonably be expected to take to prevent abduction?

This is an area where hard and fast rules are likely to cause more difficulty than help. However, a school would not be obliged to allow a child to be removed where it had reasonable grounds to believe that the proposed course of action would put the child in danger or at risk. Therefore a school would be entitled in the particular circumstances set out at Query 13 to refuse to release the child to the parent, at least until they have had an opportunity to consult with the other parent so that the rights of one or both parents, as guardians, could also be respected. In a sufficiently serious case, a school would be justified in contacting the Gardaí if this was the only way that the welfare of the child could be protected. In such a case it would probably also be prudent to inform the health board who have statutory responsibility for the protection of the welfare of the child in question.

Query 11: In what circumstance, if any, is a school required to allow a ‘partner’ of a separated parent to participate in discussions regarding a child’s welfare?

Query 12: In what circumstances is a school entitled to allow a partner of a separated parent to collect a child from school? Should a school accept written notes e.g. absences etc. from a partner
There have been circumstances where the separated parent sends a directive to the school that no communication is to be accepted from or sent to the partner

A school is not ‘required’ to allow a partner of a separated parent to participate in discussion regarding the child’s welfare but it may be that the school would, as a matter of discretion, allow a partner to be present when discussions with a parent are taking place. If, following separation, a parent has re-married, the new spouse should be considered to be in a stronger position than simply a partner. If a guardian of the child has indicated that communication should not be accepted from or sent to a partner this would considerably strengthen the case not to accept communications from the partner but ultimately a school might be well advised in such circumstances, if there was a real ongoing dispute, to invite the parents to bring an application seeking a direction in regard to the dispute pursuant to Section II of the 1964 Act as amended.

Query 13: How does a school reach a decision where there is a dispute between the parents as to which surname is to be given to the child? Suppose a birth certificate is not produced by either parent? What happens if a mother says that she has no contact with the father of the child but he turns up at the school, either seeking information or seeking access or seeking to remove his child?

The first approach by the school should be to attempt to ascertain whether both parents are guardians of the child. The question of the name by which the child is to be known is a matter in respect of which both guardians are entitled to have input. A school could not be expected to resolve a dispute between two guardians in regard to what name is to be applied to the child. Rather such a dispute should be referred to a Court for a direction under Section II of the Guardianship of Infants Act 1964 as amended. Pending such an application, a school might be well advised to simply attempt to use the name of the child as per his or her birth certificate. If a parent shows that he is the guardian of the child, then he is entitled to information in regard to the education of the child but this does not mean that he is entitled to exercise access without the consent of the other guardian during the school day or to remove the child from the school without the agreement of the other guardian. Again the guiding principle for the school should be that the welfare of the child is the first and paramount consideration.

Query 14: If a child is living with his grandparents, does the school communicate with them instead of the parents? In these circumstances what happens if a parent objects to communications going to the grandparents, who appear to have de facto custody?

A school in these circumstances is faced with a particularly difficult and awkward situation. The best course of action would be to communicate with both the grandparents and the parents. However, if the guardians, or in the case of a single guardian, that guardian objects to such a course of action then the school is left in the dilemma in that it would obviously not be in the interests of the child that the persons who are actually looking after him or her should be excluded from receiving communications from the school. In such a case the school might be well advised to invite the guardians or guardian to obtain a direction from the court if they wish to prevent the school from communicating with the persons who are actually looking after the child.

Query 15: How should schools deal with circumstances where parents are giving conflicting reports re school (e.g. mother says child loves school, father says he is being bullied?)

This is another circumstance where there is no satisfactory hard and fast answer. The school is obliged to listen to both guardians and to have regard to what they say. The school must then make its own judgement having regard to what is being said by all parties including the child. A school would be well advised in such a case to keep notes of what they are being told by each parent.

Query 16: What evidence of legal custody should a school seek e.g. extract from separation agreement, solicitor's letter, copy court order.

The school would be justified in seeking an extract from a separation agreement, if such exists. In regard to a court order there is a difficulty in that family law cases are heard in camera. However, in practice if both parties are agreeable that an extract from the order should be made available to the school, this should be satisfactory. If there is no agreement that the school can be given the order or an extract from the order, then the school should request the parties or one or other of them to seek a direction from the court that a copy of the order or of the relevant part of the order, should be made available to the school

Education Act, 1998

9. A recognised school shall provide education to students which is appropriate to their abilities and needs and, without prejudice to the generality of the foregoing, it shall use its available resources to—

(g) ensure that parents of a student, or in the case of a student who has reached the age of 18 years, the student, have access in the prescribed manner to records kept by that school relating to the progress of that student in his or her education.

Education (Welfare) Act, 2000

Section 20

- (1) The principal of a recognised school shall, as soon as may be after the commencement of this section, cause to be established and maintained a register of all students attending that school.
- (2) The principal of a recognised school shall, on the day on which the child first attends that school, enter the child's name, the date of his or her first so attending and such other particulars as may be prescribed by the Minister, in the register maintained under this section in respect of that school, and the child concerned shall, for the purposes of this Act, be deemed, as on and from that date, to be registered in that school.
- (3) The principal of a recognised school shall, as soon as may be after entering in the register maintained under this section in respect of that school the name of a child who is registered in another recognised school, so inform by notification in writing the principal of the second-mentioned school.
- (4) The principal of the second-mentioned school referred to in subsection (3) shall, on receipt of a notification under that subsection, remove the name of the child concerned from the register maintained under this section in respect of the said second-mentioned school except where the child continues to receive part of his or her education at that school.

- (5) The principal of a recognised school shall, on receiving a notification under subsection (3) in relation to a child, notify the principal of the school first-mentioned in that subsection of—
 - (a) any problems relating to school attendance that the child concerned had while attending the second-mentioned school referred to therein, and
 - (b) such other matters relating to the child's educational progress as he or she considers appropriate.
- (6) The principal of a recognised school shall not remove a child's name from the register other than—
 - (a) in accordance with subsection (4), or
 - (b) where he or she has received a notification in writing from the Board that the child concerned is registered in the register maintained under section 14.

Section 21

- (7) The principal of a recognised school shall cause to be maintained in respect of each school year a record of the attendance or non-attendance on each school day of each student registered at that school.
- (8) A record maintained under subsection (1) shall specify the following, that is to say:
 - (a) where a student attends at the school concerned on a school day, the fact of his or her attendance, or
 - (b) where a student fails to so attend, the fact of his or her failure and the reasons for such failure.
- (9) A record to which this section applies shall be maintained at the recognised school concerned and shall be in such form as may be specified by the Board.
- (10) Where—
 - (a) a student is suspended from a recognised school for a period of not less than 6 days,
 - (b) the aggregate number of school days on which a student is absent from a recognised school during a school year is not less than 20,
 - (c) a student's name is, for whatever reason, removed from the register referred to in section 20 by the principal of the school concerned, or
 - (d) a student is, in the opinion of the principal of the recognised school at which he or she is registered, not attending school regularly,the principal of the school concerned shall forthwith so inform, by notice in writing, an educational welfare officer.
- (11) On receiving a notice under subsection (4), an educational welfare officer shall—
 - (a) consult with the student concerned, his or her parents, the principal and such other persons as he or she considers appropriate, and
 - (b) make all reasonable efforts to ensure that provision is made for the continued education of the child and his or her full participation in school.

- (12) The Board of Management of a recognised school shall, not later than 6 weeks after the end of each school year, submit a report to—
 - (a) the educational welfare officer who has been assigned functions under this Act in relation to that school, and
 - (b) the parents' association of the recognised school concerned established under section 26 of the Act of 1998 (where so established), on the levels of attendance at that school during the immediately preceding school year.
- (13) A report under subsection (6) shall be in such form and comply with such requirements as may be determined by the Board.
- (14) An educational welfare officer may during any school day enter a recognised school and inspect the register maintained at that school under section 20 or a record to which this section applies, and take copies of extracts from such register or record.
- (15) For the purposes of this section a student shall be deemed not to be absent from school where any period of absence is authorised by the principal and relates to activities organised by the school or in which the school is involved.

Section 28

- (1) The data controller of a prescribed body may supply personal data kept by him or her, or information extracted from such data, to the data controller of another prescribed body if he or she is satisfied that it will be used for a relevant purpose only.
- (2) The data controller of a prescribed body may, for a relevant purpose only, keep and use personal data supplied to him or her under this section.
- (3) In this section... "relevant purpose" means the purpose of—
 - (a) recording a person's educational or training history or monitoring his or her educational or training progress in order to ascertain how best he or she may be assisted in availing of educational or training opportunities or in developing his or her full educational potential

The Freedom of Information Act

Primary schools are not yet subject to the Freedom of Information Act but can expect to be included in a future expansion of those areas of the public service that come under the scope of the Freedom of Information legislation. Some agencies with whom a school may interact in relation to pupils (e.g. Health Boards, DES) are subject to the act.

The Data Protection Act 1988 and the Data Protection (Amendment) Act 2003

The Data Protection Act 1988 was introduced in response to privacy issues raised by the maintenance of data on computers and to specify the responsibilities of those who keep personal data on computer (data controllers). The Act relates to data held on computers in a format in which it can be processed automatically. "Personal Data" in this context means "*data relating to a living individual who can be identified either from the data or from the data in conjunction with other information in the possession of the data controller.*"

Unlike the Freedom of Information Act, the Data Protection Act applies to all organisations. Schools that retain data on staff or students on computer are subject to its provisions.

The Data Protection Act specifies certain key responsibilities that data controllers must exercise:

- Fair obtaining and processing of data - the identity of the person collecting the data, the use to which it will be put and to whom it will be released should be set out for the person providing the information, or should outline any secondary or future uses to which the data might be put.
- Data may only be held on computer about people if it is held for a specific, lawful and clearly stated purpose.
- The data must be accurate and kept up to date.
- The data must be used only in ways that are consistent with the purpose/purposes for which it is kept.
- Security measures must be put in place to prevent unauthorised access, alteration, disclosure or destruction of the data and against accidental loss or destruction.
- The data held must be adequate, relevant and not excessive in relation to the purpose/purposes for which it is held.
- The data must not be kept longer than is necessary. Data controllers should be clear on how long data is to be kept and why it is being retained. Unless the school has a system for managing electronic records, the ever-increasing number of electronic records should be dealt with in the same way as paper records, i.e. using the same retention and disposal periods, etc. It is advisable to print off copies of important e-mail correspondence or documents for the file.
- Right of Access - an individual about whom data is held and who applies in writing specifying the information requested is entitled to a copy of the data held about him or her. Along with the right of access to personal data, the Data Protection Act also gives employees the right to ascertain the existence of personal data and the right to rectify or erase data.

The Data Protection (Amendment) Act 2003

The Data Protection (Amendment) Act, enacted in July 2003, amends the Data Protection Act, 1988 in a number of significant ways:

- it extends data protection rules to include certain manual data (paper-based filing systems) relating to living individuals, which is recorded as part of a filing system;
- it sets out conditions for processing personal data, including more stringent controls in relation to sensitive personal data, e.g. religious beliefs, racial or ethnic origin, etc.;
- it strengthens individuals' rights, in particular the right to be informed about the processing of data relating to them;
- it gives the new powers to the Data Protection Commissioner to carry out investigations in order to ensure that data protection rules are being complied with.
- it includes a re-statement of basic data protection principles, with additional safeguards in relation to direct marketing (using data collected for a particular legitimate purpose to contact individuals to sell products or services);
- it specifies additional conditions relating to the processing of personal data, e.g. a new category of sensitive personal data is to be created which will benefit from stronger protection;
- it introduces a right for individuals to object to automated decision-making (decision-making which is processed by electronic means without human input).