

Education

Child Custody, Education and the Special Needs Child

by Michelle Robins, Esq.

Divorce is a very difficult process that becomes even more difficult when the parties are parents of a special needs child.

Although family law judges prefer parents to amicably resolve their child custody disputes, on many occasions the parties cannot agree and the Judge must issue a child custody order. In some cases a judge will order that one parent alone is best qualified to make all decisions about a child, including decisions about the child's education. In other cases the Judge actually rules on various custody issues. When drafting these custody orders in California courtrooms, Judges try to fashion orders reflecting the best interests of the child or children. To determine these, Judges consider many factors such as the age of the children, the history of each parent's relationship with each child, and, occasionally the preferences of a child.

However, when a custody dispute involves a child with special needs, the Judge considers many additional factors. Given the increase in children diagnosed with autism, attention deficit disorder, and other problems, there is hardly a day that a family law judge across the country is not faced with considering such multiple factors.

One factor Judges often consider when constructing child custody orders for parents with special needs children is the educational needs of the child. To begin, the Judge may consider the issue of where the child will attend school. This is often a point of contention between divorcing parents – especially if one parent lives in the jurisdiction of a school district that provides better special education services than the school district in which the other parent lives. In such cases, the Judge may consider giving custody to the parent who has access to better educational services. This is even more important when the parents do not have the financial resources to provide the special needs child with services that can be provided for free or at nominal cost by the school district.

Another frequently disputed custody issue impacting the education of special needs children is the issue of whether or not to medicate a child. While one parent may bring teachers, physicians and psychiatrists to court to argue why a child needs the medication to function in a classroom, another parent may bring experts to court who contend that behavior modification through therapy is a better option. In such cases, the Judge weighs the evidence presented regarding that specific child and makes a decision. In other words, the results in these cases vary depending on the facts of each case.

Family law judges also evaluate whether one parent seems better qualified to assist the child in his or her educational progress. For instance, a judge may favor one parent over another parent if one has been the parent who primarily worked with the child on completing daily homework assignments. Similarly, a family law judge may favor a parent who was responsible

during the parties' marriage for providing the child with daily physical therapy sessions before the child left for school each day. A Judge may favor these more experienced and involved parents because children with special needs require stability and consistency in their lives and changing the person that is their primary caretaker can have devastating effects on these children.

Alternatively, some judges prefer not to favor one parent over another, and instead, will treat each parent equally if the less involved parent commits to becoming more involved in tending to the child's special needs.

It is not surprising that the responsibility

of deciding the issue of child custody can be overwhelming. Because of the vast number of factors involved when evaluating a custody dispute over a special needs child, Judges often seek expert recommendations to aid their decision-making. A Judge will sometimes order the parents to submit to a custody evaluation conducted by a mental health professional. Although costly, evaluation may be necessary when the issue is custody of a child with special needs – the evaluators often have specific knowledge about the children's medical and educational needs that are critically important to aiding the Court in making a custody ruling.

Parents of special-needs children con-

sidering divorce should make sure they discuss these issues with their family law attorneys who will examine the case and advocate for the best outcomes for both the parent and the children.

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