Allocation of Parental Responsibilities-Decision Making

Q: My child has an IEP and/or 504 plan. How might the new law affect my rights to make decisions for my child in school?

A: One of the biggest changes in the new statute is the construction of Allocation of Parental Responsibilities, which replaces what was formerly known as "custody" and "visitation." Issues related to a child's education fall under the decision-making prong of Allocation of Parental Responsibilities. There is no requirement that each parent must be allocated decision-making responsibility, which means that parents either can share this duty or that one parent can exercise the majority of decision-making. Furthermore, unless the parents agree on who will make the decisions for the child through an agreed parenting plan or allocation judgment, the Court is required to make a determination that will affect the child and many issues related to his or her special needs. Namely, the Court must decide which parent will retain the decision-making authority on several "significant issues" or if both parents will share this obligation. The significant issues include education, extracurricular activities, health care, and religion. If decision-making is shared, then the parents must consult each other and make decisions jointly with respect to these areas.

Pursuant to the statute, decision-making in the area of education explicitly includes choice of school and tutors but also extends beyond these choices, especially when it comes to children with individualized education plans (IEP) or Section 504 plans. In addition, the significant issue of health includes all decisions relating to the medical, dental, and psychological needs of the child and related treatments. The determination of which parent holds this responsibility or whether both parents share this responsibility has large implications and lasting consequences, especially for a family with children with special needs. Thus, a parent negotiating allocation of parental responsibilities should take this decision seriously. Often the best decision will be to share the significant decision-making responsibilities, but other times a parent and his or her attorney should advocate strongly for sole decision-making authority if cooperating closely with the other parent will prove too difficult throughout the often taxing and time-consuming processes of navigating the school system and supports for a child.

As with most other areas in child advocacy, the ultimate consideration for decision-making is the best interest of the child, which the judge determines by the consideration of several factors. These factors include the following: the child's wishes, dependent upon the age and developmental level of the child; the child's adjustment to home, school, and community; the mental and physical health of everyone involved; the ability the parents to cooperate with each other; any prior agreement relating to decision-making; the wishes of each parent; the child's individual needs; the distance between the parents and any transportation and scheduling issues; whether any restriction based on serious endangerment to the child is appropriate; the willingness and ability of each parent to encourage a relationship with the other parent; any threat of physical violence; any abuse in the home; whether either parent is a sex offender; and any other relevant factor.

The final "catchall" factor means that the Court has the discretion to make a decision based upon any other factor not listed explicitly in the statute. This is an important footnote, particularly for special needs divorce, because every case with a child with special needs is idiosyncratic and most cases involve unique problems requiring the consideration of exceptional factors.

Finally, it is important to note that even if a parent is allocated the majority of decision-making authority or the decision-making authority on all significant issues, the other parent still may be allowed access to the child's records. Specifically, a parent will not be denied access to medical, dental, child care, and school records solely because he or she has not been allocated parental responsibility. Nevertheless, a parent who is not allocated any parenting time is *not entitled* access to the child's records unless the Court finds such denial to be against the child's best interests. Additionally, any parent who has been named a respondent in an order of protection is not allowed access to the health care records of any child who is named as a protected person under the order.