

Divorcing when Parents have Children with Special Needs **by Mara Berke, J.D., MSW and Carol Hirshfield, PhD**

Divorcing parents who have children with special needs often have many pressing and complex parenting issues to consider that may not be best addressed by the expensive and slow adversarial court system. This article will give the reader a brief overview of the issues that may arise for families with special needs children, and some options that parents of special needs children should strongly consider for divorce.

How do children with “Special needs” get a diagnosis and have decisions made for them?

Parents, teachers or a pediatrician may notice there is something about the child that is different from other children. The first step in this often daunting for parents: do they agree to obtain a diagnosis and/or which professional(s) will perform the assessment? Do they agree that the child needs extra services? Since most professional screenings require both parents to authorize testing, this may be the first obstacle.

Once the parents agree to get a diagnosis, they may need to take their children to see a physician with a specialty, or a developmental pediatrician, a psychologist, neuropsychologist, psychiatrist, or other therapeutic specialists. Parents may be able to get help at their local public school. At the local public school, parents may request assessments to be provided by the school and initiate the Individualized Educational Plan (IEP) or a Section 504 Plan. (See www.disabilityrightsca.org publication, Special Education Rights and Responsibilities (SERR) Manual Revised & Updated September 2011, for more information.)

The parent's emotional response to the new diagnosis may be more difficult in a divorce: each parent will need to address the children's issues and work with the co-parent to take care of the children's needs. In the most challenging situations, sometimes a parent may be in denial and not want to follow the recommended treatment.

Parents will need to attend meetings at school and work towards agreement with the assessments, eligibility, goals, services and school options offered by the school district. Further post-separation complications regarding the school choice may occur if the parents move to different school districts, and they do not agree on the home school.

Parents may feel overwhelmed by managing their children's special needs and the parenting decisions that must be made: will the children need medication or special therapies? Their parenting is even more complicated because of their divorce or separation. Parents also have to navigate sharing time with their children by establishing a custody schedule. What schedule is best given the children's personality and adjustment to transitions, parent's work schedules and wishes? If the children have

in home treatment, how will parents navigate establishing new routines and coordinating the services in place or obtain new services to accommodate their families changing needs?

Options for Divorce: the Choice Matters

Court Process: Litigation

If parents are unable to agree on any of these parenting issues, they need a way to resolve them and have decisions made regarding their children. Some parents who separate or divorce look to the Family Law Court, where the costs and delay in addressing specific potentially time sensitive issues may not serve families with special needs children well. Children who need medical treatment or school placement often cannot wait for the court process.

At the time of the hearing, the Court may make temporary custody orders, appoint a child custody evaluator and set a continued hearing date to enable the child custody evaluator to conduct the evaluation. The evaluation takes a minimum of 3 to 6 months, costs in the range of \$7,500 to \$25,000, and is a thorough assessment of each parent, the children at home and in the office, and speaks to other people in the children's life, such as nannies, therapists or other collaborative witnesses identified by the parties. Ultimately, the evaluator provides a report with recommendations, and the Court after hearing and testimony makes a decision.

Consensual Dispute Resolution Options

Some useful alternative approaches to conflict resolution include mediation, collaborative family law and parenting plan coordination. With these approaches, the professional assisting the family knows them and can spend the time to understand the particular special needs of the children and the nuances of the parenting decisions that need to be made. The trained professional can help the family discuss their concerns and interests and assist in generating options to help them come to a well thought out solution. These options are less costly both emotionally and financially and help to decrease conflict and focus on the children. The parents then have a relationship with the professional that can be ongoing and used if needed. The professional can refer the parents to additional resources, including parent support groups, parenting groups and therapists. Specifically tailored solutions can be reached in a more efficient and timely way. The method to break any deadlock in joint decisions also can be addressed. Specifically defined areas of decisions to one parent can be agreed upon. However, it is important that whatever decision is made it is supported by both parents and not undermined.

- **Mediation** is a process by which parents, together with the assistance of a neutral third person(s), systematically isolate areas of dispute, in order to develop options, consider alternatives and reach a consensual settlement that will

accommodate their mutual needs. (See Folberg & Taylor, Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation (Jossey-Bass Social & Behavioral Science 1984.) The mediator helps parents identify their interests, goals and tries to find common ground to resolve the parenting issues step by step.

- **Collaborative Divorce** is a process for divorcing clients, their attorneys and other professionals involved to work towards reaching a mutually acceptable settlement without going to court and make that pledge in writing. The collaborative team works with the parents on the issues freely and openly as a team, which makes problem solving direct and solution-oriented.
- **Parenting Plan Coordination** (“PPC”) is a voluntary process which combines mediation and arbitration. A mental health or legal professional with mediation training and experience assists the parents by mediating solutions and if they cannot resolve the disputes, then the PPC makes parenting decisions, giving the parents a written decision briefly explaining recommendations and findings.

Conclusion: Families with Children who have special needs have options to address their special challenges

In conclusion, families who have children with special needs and are separating or divorcing have additional challenges to address, some of which have time constraints. Those challenges, such as diagnosis, obtaining the right services or school placement for their children, may require extra expertise and more carefully tailored legal and physical custody plans. Parents with children with special needs would be better served by making the choice of consensual dispute resolution services to assist them in managing their challenges.

Short Biography:

Mara Berke, J.D., M.S.W., is a California family law attorney mediator, collaborative lawyer and parenting plan coordinator in Santa Monica. Ms. Berke has specialized training by the Los Angeles Superior Court, Family Court Services, in child custody mediation and experience with children with developmental disabilities, specifically Autism. Ms. Berke is developing a parent support group for parents of middle and high school students with social differences, which is in the process of becoming funded by the Westside Regional Center.

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