

Impact of Divorce Agreements on Special Education Decision-Making

Children with special needs further complicate child custody and care issues during and after a divorce. Family law practitioners need to be aware of what parents rights are under the Individuals with Disabilities Act (IDEA) and with the Section 504 (504) in the Americans With Disabilities Act when advising their clients and when crafting custody agreements. Below are some of the highlighted issues and concerns a practitioner needs to know if their client's children are suspected of having or are diagnosed with a learning or emotional disability.

Similar to divorce law, Maryland has its own laws to implement IDEA. This article will also address Maryland distinctions.

Parents Rights In Special Education

The divorce decree and custody agreement determine the parent's rights in making special education decisions. Parents, under the IDEA, have the legal right to make decisions for their children's special education unless that right is specifically revoked by a court order. Such a court order revoking another parent's right must be made specific to special education involvement, in addition to revoking other rights, as most Maryland school district policies enforce the right of both parents to attend and offer input in meetings involving their child's special education program unless a court order specifically states a parent cannot be involved.

Under typical joint legal custody, and even if one parent has sole physical custody, both parents have the right to attend Individualized Education Plan (IEP) and 504 meetings. Both parents may receive the same progress reports, have the same procedural rights to request due process hearings, and disagree/agree with placements for special education.

More specifically, both parents have the right to bring whomever they wish to the meeting as well. School districts do not have the authority to prevent any parent from bringing whomever the parent chooses. Anticipate an angry call someday from your client because of the possibility that the one parent will bring someone to the IEP meeting that the other parent does not approve of, such as a new boy/girlfriend, new spouse or a controversial educational advocate. Should your client have a peace order against the other parent's guest at the IEP meeting, the school is permitted to physically exclude that other parent's guest based upon the peace order.

Protective and Peace Orders

If your client has a protective order against the other parent however, the protective order will not be enforced insofar as the other parent's participation in the IEP meeting and involvement in the child's special education. It is possible to have the school prevent the other parent from physically attending the IEP, but still have the other parent participate by speakerphone. It is unclear whether a protective order with the

express condition of no involvement in an IEP meeting can be enforced, but in general, only a court order or legal instrument can permit a school to exclude one parent under the IDEA.

If your client has sole legal custody, federally under the IDEA, your client has the right to make the final education determination, and only one parent's signature is needed to permit or reject special education placements. However, in Maryland county school districts, the school districts do permit the other parent to attend and participate in IEP meetings and permit the other parent to bring along someone to the IEP meeting for support.

Unless Otherwise Ordered, Schools Involve Both Parents

Be certain to anticipate any problems if your client with sole legal custody finds the other parent insisting on attending and participating in a child's special education planning. Your client will need to provide the school with the custody agreements for the child's file so that the school can be put on alert for any potential problems that can arise with another parent. While the client with the sole legal custody has the legal procedural rights involving their child's special education, Maryland schools must respect the rights of the other parent to be involved in the special education process, including filing for due process or signing off agreement to an IEP.

Unless the custody decree states specifically that the other parent has given up her or his right to make decisions involving the child's special education. Maryland schools may attempt to informally resolve any conflict between the parents, but if that does not happen, even the non-legal custodial parent may enforce all their rights to participate in their child's special education under the IDEA.

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