



# Creating Parenting Plans for Families with Children with Special Needs

By DR. LYNNE C. HALEM

**R**are indeed is the parent who would disclaim acting in the best interests of his or her children. Can you imagine a parent who does not avow, publicly and privately, that the protection of the children is of paramount importance? Of course not. Even special interest groups, narrowly focused on advocacy for fathers or mothers in the divorcing arena, justify much of their “raison d’être” on their ability to ensure that children are protected from prejudicial laws and prejudiced judges.

Yet despite the unanimity on the need to address the best interests of children, a unanimity enshrined in law and in the avowals of parents, vocalized by their advocates, and proclaimed in judicial rulings, disagreements abound in translating concept into action. To extend this thought a bit further, we certainly can acknowledge that divorcing parents, albeit also parents in intact families, often disagree on what is best for their children. Arguments run the gamut from seemingly mundane disputes over what sport Johnny or Jane should play to the more weighty considerations of where and with whom a child should reside or what kind of medical treatment is warranted.

Think for the moment of how the difficulties of unified decision-making can be exacerbated in divorcing families with one or more children with special needs. These families not only need to reach consensus, but, in the process, need to define how in fact they will provide for their children’s special needs. Incorporated into their parenting plan may be provisions that require particular attention to parental work commitments, to handling day and even nighttime care of children, to the delivery of medical and educational services, to the integration of care with siblings, and on and on—decisions that often require collaboration and cooperation at the very time that the family unit is being disrupted and re-shaped into two separate entities.

This article is intended to address the very *unique* considerations that need to be confronted by divorcing families with children with special needs. Parents with children who have special needs must design *customized parenting plans* that focus not only on known areas of concern but that also strive to anticipate future issues and developments. It is perhaps especially this group of parents who must embrace the objective and the practice of continued collaborative cooperation and decision-making. Difficult as this may sound and difficult as it may be, parents who pledge, in word and in deed, to practice collaborative problem-solving will follow the most direct and effective route to providing for the best interests of their children.

Let’s consider some of the major areas of concern. For the purposes of this article, we will make the assumption that there is only one child in the family with special needs.

## Custodial Determinations

Legal and physical custody (the latter sometimes referred to as “residential custody”) constitutes two aspects of the custodial award.

### *Legal Custody*

In families with a child with special needs, sole or joint legal decision-making is far from a peripheral activity to be interpreted casually by parents. Major decision-making may emerge as the norm, not the exception, in the family’s daily life. Parents may need to agree on:

- What services, if any, should they seek for their child? Does an advocate need to be retained?
- Is private school a consideration to be pursued by the parents outside of the public school system? If so, who pays—the school system or the parents?
- Are there extra costs to be incurred for the child’s special needs? Is one parent liable for payment or are both parents responsible, equally or proportionately?
- Is the child currently eligible for state or federal financial assistance? If the child is not eligible for assistance at this time, will he or she be eligible in the future? Do the parents need to take action to make this happen?
- What kind of medical care, if any, is to be secured? What kind of parental involvement is needed and/or desirable in the selection of care? Is parental involvement warranted or desirable in the treatment process?
- What if the parents disagree? Does the parenting plan include provisions for dispute resolution?

Parents who argue for sole legal custody seek to eliminate the friction and debates involved in joint decision-making. Being in charge, being a sole decision maker, is always, at least in theory, an easier route—no explanations are needed, no evidence needs to be compiled, no debates will ensue. Yet—and the “yet” is of major importance—is it better to assign one parent with sole decision-making authority? The answer may be yes.

In families where one parent does not want or is unable, for any reason, to play an active role in the child’s life, it makes sense that the involved parent should seek sole legal custody. However, what about families where joint decision-making does not come easily, where dissension may play a role in the resolution of problems? Should sole custody be the determination of choice in these families? Here the answer is not as obvious—it is maybe yes or maybe no.

Disagreement, in and of itself, is not necessarily bad. The danger lies, not in having differences of opinion, but, rather, in the route chosen for resolving differences. Particularly in families caring for a special needs child, a sense of urgency may underlie the decision-making process. Parents who elect joint legal custody need to have clearly defined strategies for reaching agreement. Even if

the ultimate decision is made by an expert in the area of disagreement, or if one parent is given the final say after exhausting avenues for reaching a joint decision, joint legal custody may still prove to be the better route for these divorcing parents.

### *Physical or Residential Custody*

Physical or residential custody is often the area where the battle lines are drawn and true combat takes place. Here the “hot” classification of custodial preference comes into play. There are, however, a variety of different classifications of physical custody.

1. The most common form of physical custody is primary custody with one parent and scheduled weekday and/or weekend time with the other parent, sometimes referred to as “visitation rights.” The parenting schedule should delineate not only days with each parent, but also pick-up and return times, as well as the division of time during holidays, vacations, and special events. This custodial arrangement may even mirror joint custody in practice, if not in nomenclature.
2. Less common, but becoming increasingly more acceptable and popular, is equal or “joint” custody, with the child moving back and forth on an equal or approximately equal basis between the two parents’ homes. An overly stringent delineation of time can become problematic in structuring joint custody when parents engage in counting minute parcels of time and insisting on a strict adherence to equality. In these families, any change in the schedule requires equal make-up time. Flexibility is frowned upon.  
Remarriage further complicates parenting arrangements, introducing another voice and opinion into the already frayed decision-making ability of the parents. Yet when parents are able to approach joint custody with flexibility and shared goals, children benefit from having two actively involved parents who are working together to balance time and responsibilities for the care of their children.
3. A less common custodial arrangement, particularly in the long term, is often referred to as “birds nesting” or “nesting.” In this custodial plan, the parents move back and forth into the home where the child resides, either on the basis of an equal division of time and mirroring joint physical custody or on the basis of an unequal division, with one parent in essence having primary physical custody.
4. Lastly, there is sole physical custody, in which one parent is designated as the child’s custodian. In these families, the other parent does not engage on a regular and frequent basis with the child as a result of choice or circumstances such as geographical distance or determinations of unfitness.

In families with a child with special needs, the determination of physical custody is often not straightforward. Consider the following questions that may need to be addressed.

- Is the child able, physically and/or emotionally, to move back and forth between two homes on an equal or even unequal basis?
- Does each home require special equipment or special structural adjustments to accommodate the child? How do you ensure safety in both homes? Can the parents afford to equip two homes to meet the needs of the child?
- How is the parenting arrangement structured to include the child's siblings? Does the child with special needs have a different custodial arrangement from his or her siblings?
- Does the child's access to services, including schooling, require a parent or parents to locate in a specific district? Do both parents have to reside in the same district?

It should be obvious that the determination of physical custody is far more complicated for parents who have to consider their child's special needs. Indeed the choice may well be limited by considerations that have little or nothing to do with each parent's willingness to be an active, even equal, custodial parent.

Here in this complex world of choices are additional, not-to-be-overlooked concerns.

- Does one parent have an employment situation that is more flexible or at least more conducive to assuming greater responsibility for the child's daily care or for overseeing the role of outside caretakers?
- Do financial concerns affect the determination of physical custody? For example, is the differential in parental earning power sufficient to justify having one parent stay home or work part time and thereby assume primary responsibility for the child's care? Is this arrangement acceptable to both parents? Is there compensation of any kind to the parent who accepts the greater financial burden of the family's support or to the parent who relinquishes career-building opportunities to remain at home with the child?
- Does the child require care overnight? Do the parents structure a twenty-four-hour caretaking arrangement or pay for private caretakers to assume some of the oversight?

Clearly the determination of physical custody should not be decided by one parent's desire to pay less or the other parent's desire to receive more support. However, it is not possible to separate questions of support or the allocation of assets when considering how to finance a child's special needs or how to compensate for reductions in income resulting from demands for greater custodial oversight. Here the interplay of money and custody take center stage. The careful and deliberate integration of financial requirements and

affordability with the needs of the child and the parents is of paramount importance.

### Parenting Time-Sharing Schedule

Scheduling needs to be specified in all parenting plans for weekday, weekend, holidays, vacations, and special days, with the exception of situations in which sole custody does not include time with the other parent.

Besides the obvious demarcation of which parent the child spends specific weekdays and weekend days and the variations that are part of each parenting plan, parents should be open to creative divisions of time. For example, can a parent transport a child to school or back from school? Is a parent available to participate at bedtime or morning activities even if the parent is not scheduled to be with the child for the day? Will parents divide responsibilities such that one assumes responsibility for doctor appointments and the other for meeting with school personnel? Will the parenting plan provide specific "free" time for a parent undertaking more of the caretaking responsibilities, even building in periodic vacations or "days off"? How will the parents integrate the oversight and needs of siblings to ensure that they do not feel overlooked or overburdened by the care of their sibling with special needs?

### Schedule Adjustments

Not to be forgotten are mechanisms built into the parenting plan for changing parenting schedules over time. Discussions before each school semester and the summer allow for collaborative approaches to adjusting parenting time and parenting responsibilities in keeping with schedule adjustments occurring over the academic year and the summer. Then, too, we cannot forget the need to adapt schedules and parental commitments as children get older. Younger children benefit from frequent contact with parents, even for short periods of time. But older children often prefer less frequent transitions and can handle longer periods of time with each parent.

Depending on the child's special needs, each parent's physical ability to care for the child on a daily basis may be tested. Lifting a three-year-old is certainly not the same as a lifting a fifteen-year-old. The demands on each parent may not be related to the parent's willingness to provide care, but, rather, to one's physical and even mental ability to do so. Here parents need to be realistic in determining how each parent can and, in fact cannot, meet the best needs of their child with special needs. Once again the interplay of finances and custody may require a modification in custody and/or support or the employment of outside assistance.



## Access to Information

All parents should have access to information about their children. Yet in families with a child with special needs, there may be more information to process and a quicker response time required. Parents should be aware of:

- their child's academic activities and schedules, homework and projects, interactions with teachers and classmates, and after- or before-school activities;
- evaluations of the child, whether undertaken by classroom teachers or specialized school personnel, and whether the child is receiving academic assistance from private tutors or in extracurricular classes;
- the timing and results of more comprehensive undertakings such as creation of individualized evaluation plans (IEPs), and be part of the decision about whether both parents should be present at the evaluation meeting;
- the child's interactions with peers and with siblings;
- the opportunities for programs and child coverage over school vacations;
- finances that are needed in the present and predicted for the future;
- the reports and recommendations of healthcare providers. Knowledge of the decisions to be made on medications or procedures to be undertaken or special services to be assigned are of key importance, whether or not both parents participate in the decision-making process itself.

In summary, parents who share information on a regular, planned basis are best able to meet the needs of their child. Parents need to schedule weekly meetings and/or telephone calls to review time-sharing schedules, discuss the child's then-current needs, inform each other in advance of meetings where parents are invited to attend, and transmit, by electronic means or in person, evaluative reports about the child.

## Provisions for the "Emancipated" Child

For a child with special needs who is not expected to be able to support him- or herself upon termination of education, parents should include in their divorce agreement terms for the child's guardianship post attainment of age eighteen. While this subject is beyond the scope of this article, parents dedicated to the creation of a specialized parenting plan should seek the advice of a special needs attorney for assistance in structuring provisions for the care of their "emancipated" child. Not unpredictably, parents frequently disagree on the approach to be taken and their role in the care of their adult child. Help in reaching such decisions is of paramount importance.

## Summary

All children are special and all families should parent in the best interests of their children. Parenting, however, is never easy; each child poses different challenges, and children are

## Death of a Parent

Not to be forgotten is the question of who will care for the child in the event of the death of either parent. If the physical custodian should predecease the child's emancipation, is the other parent willing and/or able to assume residential care of the child? If both parents should predecease the child's emancipation, who will be nominated as the child's guardian? Would a sibling be the logical guardian? Is the sibling willing and able to assume such responsibility? Is this a burden too great to impose? Here, too, legal involvement and guidance in structuring wills and perhaps trust provisions are a needed and important step for all parents, including those who are divorcing.

not born with a set of easy-to-follow instructions. Yet in divorcing families where children have special physical and/or intellectual needs, the challenges are multiplied, and they may multiply further as new obstacles surface and tensions mount. Parenting questions become far more complex. Where there were two parents living under the same roof, now there is a separation—a divide that may interfere with the assumption of basic parenting roles and responsibilities.

A specialized parenting plan must be crafted. Parents need to consider and reconsider their child's very special needs; they need to put aside their personal differences and collaborate in designing a custodial plan that protects their child's well-being and capitalizes on each parent's ability to contribute, be it financially, physically, or emotionally. The integration of time and money is of paramount importance, as is the need to build in provisions for ongoing reflection and change over time. Parenting is not a static process and, as such, the court-submitted version of any parenting plan should not be viewed as the final draft. **FA**



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