



DISABILITY KNOWLEDGE SERIES: Family Law

Divorce with Children Who Have a Disability

Zach and Erika were divorced in 2005, and they thought they would never have to go back to court or bother with the legal process again. Since the dissolution of their marriage, they have not always agreed, but they have managed to co-parent fairly well. They have a son named Timmy who is about to turn 18, however, and Timmy has Autism. Zach wants to apply for social security and Medical Assistance for Jack when he turns 18. Unfortunately, Timmy's child support payments - which continue until he turns 21 or graduates from high school - will make him ineligible for social security and Medical Assistance. This means that he won't qualify for supported employment or for the residential supports and services that he needs. Erika disagrees with Zach - she thinks that Timmy should stay in high school until he turns 21, continue living with her, and not apply for social security or Medical Assistance until he turns 21. Looks like Zach and Erika need to hire attorneys again!

An attorney who understands disability-related issues in the context of a marriage dissolution can help avoid future problems. When parents have a child with Autism or any type of disability, there are specific issues that should be addressed in the Decree of Dissolution. While these issues can vary depending on the family and the individual child, they typically include:

- Guardianship at age 18;
- a Supplemental Needs Trust for life insurance proceeds;
- a Special Needs Trust for receipt of child support payments after the age of 18;
- whether to require private insurance coverage (and how doing it incorrectly can cost thousands of dollars);
- treatment decisions (including experimental treatment);
- special education decisions;
- payment for special diets and supplements;
- Medical Assistance;
- Parental Fees under TEFRA;
- Social Security; and;
- tax dependency exemption.

The Autism Advocacy & Law Center can help. We understand these issues and can work with other attorneys or on our own to help your family address all the important issues NOW (or later).

Why do these issues matter? Failing to address them properly can cause problems down the road. At the Autism Advocacy & Law Center, we often assist divorced parents who disagree over treatment decisions, special education decisions, or whether or not a child should be enrolled in Medical Assistance, for example. This fact sheet can't address all the issues in depth, but here are a few examples:

Guardianship. If parents decide NOW who will be the guardian for their child when he or she turns 18, then they won't need to fight in court over this decision later. The guardian is responsible for making all important decisions for the adult child - such as decisions about where the adult child will live, what medical treatment she will receive, and whether or not the child will stay in school until age 21. **These decisions in turn can affect spousal maintenance and child support obligations.** The guardian is also responsible for applying for social security and Medical Assistance for the adult child. Parents can choose to be co-guardians if they get along reasonably well, but they will then have to agree on all of these decisions.

Supplemental and Special Needs Trusts. When a child has a disability, it is crucial to protect the eligibility of that child for Social Security and Medical Assistance benefits. If life insurance proceeds are meant for the children, then the Decree should specify that the proceeds for the child who has a disability will go directly into a Supplemental Needs Trust. This will ensure that the child will have economic resources available to meet his or her needs while maintaining eligibility for benefits. Likewise, child support payments after age 18 should be made directly into a Special Needs Trust. The Autism Advocacy & Law Center has special expertise drafting these types of trusts.

Please contact Jason Schellack at the Autism Advocacy & Law Center, LLC for more information and a free initial consultation. The Autism Advocacy & Law Center, LLC serves all individuals who have a disability, their families, and the organizations that serve them.