Divorce and the Special Needs Child

BY DAVID BULITT

When parents divorce, care for their child is always a top concern—with some divorce proceedings resulting in custody battles aimed at determining what is best for the child.

Custody cases can be extremely difficult matters to litigate, particularly when the children involved experience mental health issues, learning disabilities or behavioral difficulties. The symptomology often cannot easily be seen, explained or understood.

With more than 30 years of law experience, I come to these cases with not only my experience as a an attorney, but also as a parent of a child with lifetime mental health issues. Like a cardiologist who has experienced a heart ailment or an oncologist who has had cancer, my own personal experience has helped me to understand the needs of these children, the nuances of what works and what doesn't when it comes to time-sharing arrangements, as well as the myriad of issues that special needs children are faced with when shuttling between two homes.

Here are some key considerations for parents of children with intellectual and developmental disabilities who are going through a divorce.

Divorcing parents of special needs children must come together on matters related to their child's education plan.
Parents ensure consistency and progress by putting the child's education requirements first in any negotiations. Collaboration also promotes stability for the child during the divorce and emotional security in an uncertain time.

A child who is eligible for special education services under the federal Individuals with Disabilities Education Act (IDEA) will have an Individualized Education Program, or IEP, created for him or her.

The IEP sets forth the needed information about the child in all areas that are educationally relevant—from academics to functional skills, social skills, behavior and emotional health. It is developed with input from both school personnel and the family and is based on the child's present levels of performance.

Similarly, some children have what are called 504 Plans, which are developed to ensure that a child who has a disability identified under the law and who attends an elementary or secondary educational institution receives accommodations that will ensure their academic success and access to the learning environment.

Special needs children often have health plans that should remain consistent despite changes in the family.
Parents should agree on medical treatments, medication and therapy schedules, among other critical health questions. Failure to address these issues upfront can result in a setback or worse for the child.

When interviewing family lawyers, a divorcing parent should ask about the attorney's experience in working with families that have special needs children.

A parent should inquire about the lawyer's understanding of the nuances that might be necessary in negotiating parenting plans and agreements that will serve as a basis for co-parenting their child.

It's important to remember that in most cases, regardless of the custody agreement or court decision, both parents will likely always be a critical part of their child's growth and development.
Even in the most hotly contested custody matters, parents should be counseled and made to understand that the other parent will continue to have a place in the child's life long after the lawyer has moved on to another case. This is particularly true for parents of special needs children, who face very unique and "special" problems and complications of their own. ∎

DAVID BULITT

David Bulitt has more than 30 years of experience helping families navigate the legal process of divorce, including parents of children with special needs and their custody cases. Bulitt is a Rockville-based shareholder in the suburban Maryland law firm of Joseph, Greenwald & Laake, PA and has served as JGL's assistant managing director for almost 20 years. He and his wife, Julie, also offer family and couples therapy and have authored two books on marriage and relationships. dbulitt@jgllaw.com