



## DIVORCE, CUSTODY, AND ASD

Divorce is difficult on all families. Parents often struggle with the decision to separate from their spouse, worrying about the consequences divorce may have on the children. For parents of children on the autism spectrum, the decision to separate and eventually divorce from a spouse is especially difficult.

Parents worry about a myriad of things, and there are no clear cut answers to most of the questions you may be contemplating. Nonetheless, the questions and responses below should provide some guidance.

### *How will custody be determined?*

Custody can be agreed upon between the two parents, or parents can go to court to have it decided. Obviously, agreeing to a custody schedule saves money and may result in a better outcome for all parties, especially your children. Many families spend tens of thousands of dollars in custody court – perhaps not the best use of money or time.

Your family situation will help guide what are the best choices for dividing up time with the kids. Your work schedule and the work schedule of your spouse may come into play. Does one parent travel the beginning of every week? Does one parent have to work every other weekend? Is one parent more available to take the children to appointments and therapy?

The primary rule in every jurisdiction is that the best interests of the child is the governing factor in determining custody. Typically, parents try to split time evenly. But this is not always the case. In some jurisdictions, there is still a slight preference in favor of the children spending more time with the mother.

There are different ways time can be divided. Parents can alternate nights, but this may not be ideal for a child on the autism spectrum as it involves many extra transitions. Parents can alternate weeks, but this makes the transition back to the

other parent more difficult at the end of the week. Parents can alternate weekends, with one parent having weekday custody. Parents can set a fixed schedule, such as Dad has the kids every other weekend and on Monday and Tuesday nights. Sometimes, dinners can be inserted instead of overnight custody to ensure that one parent doesn't lose touch with the children when the time between overnight custody is lengthy.

If parents can't agree on a custody schedule, a court or a court appointed master or mediator may make the decision for the parents. Sometimes this individual will act almost on a whim in deciding who gets the children when.

Other times, particularly when one parent is suing for additional custody, the individual will proceed in a very thorough manner. An unbiased party may be called in to evaluate the custody situation. This can be expensive, and usually both parents will be asked to contribute to the cost. This person may ask each parent to complete very lengthy questionnaires about the children, parenting philosophies, how time is spent in each home, religious beliefs, and more. The evaluator will also meet with each parent and, often, with each child. This may be something your child on the autism spectrum is capable of doing, but it may be uncomfortable for him or her. The evaluator may also come to each parent's home when the children are with the parent and observe first-hand the environment in which the child lives. Additionally, the evaluator may require each parent to undergo psychological profiling and assessment. If the parents or the children have received counseling services, the evaluator may ask to have the confidentiality of any counseling sessions waived so that the counselor can share his or her thoughts with the evaluator.

### *Who gets the children on holidays?*

Determining a holiday schedule is part of the custody plan. Thinking ahead and coming to an agreement about holidays is the best course of action. Otherwise, a third party may simply split up time in a way that does not take account your family's situation. For example, if one parent has family living in another state, giving only a few hours on a holiday may preclude that parent from sharing the holidays with extended family. Find a solution that works for both parents whenever possible. Be sure to include any holidays or special times that are important to you. Do you want to alternate who gets the children on spring break? How will other school holidays be split? How will birthdays be divided - both parent

birthdays and children birthdays? Also, usually custody agreements allow parents to take a certain number of days for “vacation.” Figure out how many days are appropriate, how much notice must be given, and any other parameters that make sense for your situation.

*How will my child on the autism spectrum who is so adverse to change adapt? Will the separation from one parent during the other parent’s custody be more than my child can handle?*

This is one of the biggest worries for parents going through separation and divorce. Many children on the spectrum have extreme difficulties with change of routine. Just as you would with any other change, make sure your child is prepared for it and use visuals whenever possible.

Let your child know what the custody schedule is. You may want to post a large calendar at both homes so that the child has a visual reminder of when he or she will be with each parent. Include your child’s regularly scheduled activities on the calendar and let the child know which parent will be taking the child to them. Talk about the schedule ahead of time, so that it doesn’t come as a surprise, and remind your child on the day of a custody switch.

Depending on your child’s age and cognitive level, your child may benefit from counseling to help adjust to the changes that come with separation and divorce. Your child’s school may be able to help with this or you may want to hire a private psychologist or other counselor to help. Counseling may also be available through the mental/behavioral health system.

*Will the other parent follow through on routines, schedules, behavior plans, therapy, etc.?*

There is no guarantee that the other parent will follow through on existing routines or therapies or ones that are begun after the separation. This is often one of the most frustrating things for divorced parents. Trying to establish and maintain a good exchange of information with your former spouse will help ensure continuity for your child. But this is easier said than done; parents often get divorced because they are unable to communicate effectively. Seek out family counseling, or individual therapy if your former spouse is unwilling to join you, to learn how best to work with your ex.

### *How will the divorce affect our ability to pay for the services my child needs?*

It costs money to get a divorce, and the more often you and your former spouse disagree and need to go to court, the more money it costs. This is money that could be going to provide services for your child.

Child support is designed to help make sure that the children have what they need regardless of which parent's house they are at when they need it. If one parent makes more money than the other, then that parent may be required to pay child support to the other parent until the child is 18 years old or finishes high school. In some areas, child support can extend for a longer period of time if the child has a substantial disability; however, this is not the usual situation. (Note, that any support paid for a child over the age of 18 is considered to be the child's asset and can affect the child's ability to receive government benefits, such as Supplemental Security Income, or SSI. To avoid losing eligibility because of support paid for a child over 18, consider setting up a special needs trust for your child and deposit funds previously designated as child support in it.)

Child support is calculated according to a formula set in each state. It takes account each parent's income and may take normal expenditures into account as well. It also considers the amount of time each parent spends with the child, usually looking only at overnight custody time. Parents often think about child support and custody together, but most jurisdictions separate custody and financial decisions so that one does not influence the other.

### *Who makes decisions about our child's medical care, education, and other important issues?*

Decisions about medical care, education, and other life decisions relate to "legal custody." Legal custody is different from "physical custody," which relates to where the child lives and spends time. Courts almost always give parents joint legal custody, meaning that both have the ability to make these decisions. It is very rare for a court to take away a parent's legal custody, but it may be done in cases of neglect, incapacity, or when one parent has been subject to an outside undue influence. The most common examples of when legal custody has been taken away from one parent are substance abuse and mental illness.

If parents disagree on a decision, such as where a child should go to school or the necessity of a medical procedure, they may need to resort to the courts to resolve

it. In extreme situations, a parent can request a temporary injunction preventing the other parent from making a binding decision until a court can more thoroughly examine the issue.

*What happens if one of the parents moves to another school district?*

In general, the child will go to school in the district of the parent who has primary custody. If the parents have equal custody, the parents can decide between the two school districts in which the child resides and include that information in their custody agreement. Some states, including Pennsylvania, allow the parents to specify the district of the parent who does not have primary custody. Note, however, the district in which your child goes to school is not responsible for providing transportation to and from the home of the parent who lives out of district.

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