

Divorce and a Child with a Developmental Disability

Divorce is a difficult process for anyone, but it can be further complicated when a child (adult or young child) with a developmental disability is involved. As with all divorces, the parties involved typically hire attorneys to represent themselves. Consider hiring an attorney who is familiar with developmental disabilities and the unique needs they bring to a case. Some suggestions are at the bottom of this page.

Child Support

If parents divorce before the child with a disability turns 18 years old, child support can be ordered not only until the child turns 18, but indefinitely if the child has support needs likely to exist into adulthood. Thanks to a 2015 law, ongoing child support can now be ordered when parents divorce after an adult child turns 18, as long as the disability onset during the developmental period and is likely to continue. This is called “Conner’s Law.”

In any case, it is wise to have an updated psychological evaluation ready when going through divorce proceedings. It can be used to demonstrate that a disability is present, approximate age of onset, and show adaptive and functioning needs that necessitate ongoing support needs.

Special Needs Trusts

Child support payments can be made directly into the Special Needs Trust of a person with a disability (including children) in unlimited amounts. Note that a Special Needs Trust is different than a typical trust fund. The amount of money deposited into or maintained in a Special Needs Trust does not affect the public benefits (e.g. Medicaid, Supplemental Security Income, Medicaid Waiver) received by the person with a disability. When the Special Needs Trust is established, you will write a document that dictates who can see the balance of the trust and request funds. We operate a Special Needs Trust at The Arc of Northern Virginia, in partnership with Key Private Bank. You can read more about our Trust, view our Trust documents, and contact us at <http://thearcofnovatrust.org/>.

Special Education Decision Making Authority

If the child with a disability is still school-aged, either parent will be able to sign Individualized Education Plans (IEPs) that include consents to services, placements, and more *without consent from the other parent, regardless of custody and visitation agreements*. This can create a complicated situation where one parent knowingly or unknowingly undermines the rights of another, and services for the child in the process. To avoid this, ensure that the Court order either completely terminates parental rights for one parent (only appropriate if that parent should have absolutely no involvement with the child going forward) or if the Court stipulates who will have “sole educational decision-making authority” in a custody order. The parent without “sole educational decision-making authority” is still able to get information from the school about the child, to participate in IEP meetings, and to be contacted by the school. The only right removed is the right to consent to IEPs and pursue appeals and complaints with the school.

Family Law Attorneys with an Understanding of Disability

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