

## What Happens to Learning Disabled Children When Parents Separate?

by Gerald Heinrichs – Merchant Law Regina

Published in the Western Parent March 2000

When parents of young children separate, two legal issues need to be resolved. Firstly, what role will each parent play in the child's life when there are two homes? In most cases, one parent has custody while the other has access or a visitation schedule. In more and more cases though, some form of joint care or decision-making is arranged between the parents.

The second issue is child support. Specifically, the parents must sort out how they will share the cost of raising the child or children. The recent introduction of the Federal Child Support Guidelines has solved much of the debate on that issue. Child maintenance is now linked directly to the income of the noncustodial parent. The more they earn, the more they pay. These same two issues, custody and support, need to be dealt with where the child involved is learning disabled. There are, however, some differences for non-disabled children.

**If parents are fighting over custody of a learning disabled child, the parent who is best able to deliver any special care has a strong claim for custody. Clearly, if one parent was the primary caregiver prior to separation, that parent has a strong claim for custody after separation.**

If a child is learning disabled, there may be extraordinary costs for the child's day to day care. Special schooling or instruction may place an additional financial burden on the custodial parent. In other cases, medication costs can be significant. Tutor fees or regular prescription costs have been considered by the courts. The Child Support Guidelines specify that "extraordinary expenses" related to schooling or health must be divided between parents in proportion to their incomes. Thus, the non-custodial parent must pay for 50 per cent of these expenses if both parents have the same income level. The noncustodial parent would pay more than 50 per cent if his or her income was higher than the other parent's. Moreover, this financial contribution is in addition to any regular monthly child support.

The courts determine custody and access arrangements based upon "condition, means, need, and other circumstances" of the child. If parents are fighting over custody of a learning disabled child, the parent who is best able to deliver any special care has a strong claim for custody. Clearly, if one parent was the primary caregiver prior to separation, that parent has a strong claim for custody after separation.

No two children are alike. Thus, the accommodation for a learning disabled child of separated parents must address the child's special care and financial needs. If the parents cannot sort things out for themselves, the courts must then try and divide up their obligations and rights.