



## ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

### Do Your Homework – Considerations for Divorced Parents who Disagree on School Choice

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In Massachusetts, shared legal custody is defined as “continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care and emotional, moral and religious development.” Parents with shared legal custody must agree on where their children attend school or otherwise place that decision in the hands of the court.

When possible, parents should work together to agree on what school enrollment is in the best interests of each child, putting the needs and interests of the children above their own. In determining whether a child should attend public or private school, or even which public school the child should attend if the parents live in different towns or different districts within the same town, some things the court will consider include:

**Historical attendance:** Absent extraordinary circumstances, judges will often try to maintain the status quo for children if that is an available option. Where parents previously had their children enrolled in a particular school or school system, the court will recognize the prior decision by the parents that the school was appropriate for the children. There may well be no reason to disrupt what is already working, particularly when a divorce is likely to cause other upheaval to the lives of the children. School may represent the one stable component for children of divorce, such that maintaining school placement solely because it represents consistency for the children is critical.

**Cost:** Even where children attended private school in the past, once parents are divorced and living in separate households, the cost of private school may be a benefit that is no longer affordable. The court will give consideration to the parties’ incomes, assets, and other available resources when determining whether continuation (or new enrollment) in private school is feasible. While the private school may be the highest quality education available, if the family can no longer reasonably afford this option, the court may well order that the children attend public school. Some judges even consider public school to be the default absent express, mutual agreement to continue (or elect) private school enrollment.

**School rating:** There are websites and magazines that rank both public and private school systems within just about every state, including Massachusetts. MCAS scores, graduation rates, college matriculation rates, academic offerings and student/teacher ratios are among the factors that are considered in these ranking systems. While the ranking itself may not be admissible in court, evidence can be presented as to the factors that go into the rankings and why the parent feels those factors make the particular school beneficial for the child.

**Distance from parent homes and available transportation:** In determining which school is in a child's best interests, the court will consider how long a child will need to ride in a car or on a bus to get to / from a particular school. If there is no bus, how will the child get to school? While bus transportation will not be the deciding factor, it is a necessary part of the decision.

**Before and after school care / activities:** Some schools offer before and after school programs right at the school the child attends during the day. Others require that the child be transported to a different location. Some offer no programs at all. If one or both parents need before or after school care in order to work, the availability of such programs can weigh in the court's decision. The same is true as it relates to activities. Some schools offer significant activities, which becomes more important as children get into high school and are building their athletic skills or their resume for college applications. A school that does not offer a child the sport or activity in which they have historically excelled or expressed interest could eliminate that school from consideration.

**Services for special needs:** If a child is on an IEP (individualized education plan) or has a 504 plan (accommodations), or if the town is paying for a child to attend an out-of-district placement to meet some special educational needs, continuation of services (or obtaining services) has to be paramount in determining an appropriate school placement. A parent may wish to move a child to the public school in his/her new town of residence following divorce, but if that town does not have teachers in place who can meet the needs of the child, such a move could be detrimental to the child's progress. Many private schools do not offer any accommodations for special needs at all, making it necessary either to move the child from the private school or not enroll the child to begin with.

**Siblings:** A child's connection to siblings is an important factor. For example, in one public school system in Massachusetts, based on how the grades are broken up, a child two years apart from a sibling would not be in the same school building with that sibling after 3<sup>rd</sup> grade. It may be that ensuring that the siblings – even step-siblings – are able to be in the same school building for some of their years of schooling is important to the emotional well-being of a child.

Each child is different. Each family is different. Each school is different. At the end of the day, the court will look at many factors in an effort to determine what is in the best interests of a child should co-parents be unable to mutually agree on school enrollment. If you are unable to agree with your co-parent about school enrollment, consult with an experienced family law attorney to be sure you are presenting relevant information to the court to facilitate the judge's determination of the best school for your children.