

How an Education Expert Can Assist with Child Custody Solutions

by Edward F. Dragan

Consider the following hypothetical situations:

- *“My ex-wife wants to move out of the state and I’m concerned about the school my child is to attend. I don’t think it’s as good as the one he’s in now. How do I find out?”*
- *“My child is gifted and my ex-husband wants to send her to a private school. How do I know if that’s the right thing to do?”*
- *“My daughter has Down syndrome and my ex-wife wants to place her in an inclusive education program. How do I find out if that’s going to meet my daughter’s needs?”*

If you represent parents in child custody cases, the child’s education is likely to arise in custody decisions. Issues such as what school a child should attend and the quality of education offered in different school systems can profoundly impact a child’s future and the quality of life for the child and parents.

Education issues in the custody arena arise when the custodial parent seeks to change residence or change the school or program in which a child is enrolled. Because the “where and how” of a child’s education affects the child’s quality of life, it plays a critical role in a child custody “best interests” assessment.

An education expert is an invaluable resource to help parents make education-related decisions at a time when emotions can overtake a parent’s well-intentioned desire to provide a better quality family life. As an education expert, I have made many impartial recommendations concerning educational programs and placements for children. This has helped parents, other caregivers, and the court make informed decisions that benefit the child’s future.

How an Education Expert Can Help

Legal battles often defuse and more easily resolve when a trained education expert offers an objective analysis of the situation. Quicker resolution

benefits the child and the parents.

An education expert is an important resource for a lawyer during the dispute resolution process in custody cases. By accessing professional resources and expertise, the expert can help lawyers narrow the gap between where their clients are and where they want and need to be. Through training and relevant experience these impartial individuals see and understand complex data and understand and evaluate situations that emotionally-involved parents cannot navigate objectively. Impartiality is crucial to a “best interests” analysis.

An education expert is not an advocate for one side or the other. The expert is an active and objective participant who has training and the ability to authoritatively and effectively push forth solutions to complex, emotional, and life-altering issues.

After conducting a complete and careful review of the education issues in the case, the expert writes a detailed report with findings and recommendations and provides testimony to assist the trier of fact.

A Typical Case

Consider a case involving Kathleen, the custodial parent of a seven-year-old second-grader named Lisa. What does Kathleen do when she wishes to move out of state and James, her ex-husband, resists? Case law places the burden on the custodial parent to show

that any move would “significantly improve the quality of life” for the child.¹

Courts throughout the country have not developed a uniform approach to addressing issues involved in relocation requests. Some courts recognize a presumption against removal as a point of departure; others use a presumption in favor of removal; still others presume nothing and rely on a best-interests analysis.²

Some courts incorporate a variation on a best interests analysis and require proof that the child will not suffer from the move.³ The New Jersey Supreme Court holds that the burden is on the custodial parent who seeks to relocate to prove: (1) a good faith motive and (2) that the move will not be inimical to the interests of the child.⁴ The noncustodial parent must show that resistance to the proposed move is based upon a concern for the child and his or her relationship to the child.

In Kathleen and James’s case, the noncustodial parent, James, must look at all relevant issues surrounding a proposed move. This includes his daughter’s education. This becomes the role of the education expert. Looking at and analyzing the overall strengths and weaknesses of school systems and schools can be useful in these cases. However, the education expert with experience reviewing student records, reviewing education programs, and making education placement decisions will conduct an in-depth and careful review of a child’s academic history and potential.

The expert seeks to understand individual children and their needs and desires, how the current school meets those needs and desires, and whether the proposed school is reasonably likely to do the same. This process entails gathering data and background information about the school system and

community and applying that data within an analytical structure that includes a thorough review and analysis of the child's needs and desires.

Identifying the child's educational needs

The education expert's careful review of Lisa's record revealed specific data about her educational needs. The student data and school data was integrated into a "picture" of Lisa, including her educational needs and the school programs and services that currently respond to those needs. That data was confirmed through a telephone interview with her teacher and the school principal. Lisa was receiving all related services outlined in her Individualized Education Program (IEP), such as speech/language therapy, physical therapy, and occupational therapy. A review of her record found she was succeeding in the placement and the school system appropriately implemented the IEP.

An interview with Lisa's teacher revealed Lisa has a well-established circle of friends, both within her special education classroom and within the school. The principal shared that his school has established a very successful "Circle of Friends" program, integrates Lisa in many regular classrooms, and provides afterschool care where a teacher assistant reinforces many of Lisa's academic and social skills.

Evaluating proposed school's ability to meet child's education needs

An interview with the principal at the proposed school was conducted to generate a descriptive picture of Lisa and answer questions about how the school system and the school would meet Lisa's individualized educational needs.

The interview process revealed that Lisa would be placed in the school's special education classroom with students who were similar to those in her current placement. Asked

Assessing Gifts and Talents

A school-age student may have special gifts and talents that must be addressed during the evaluation process. Questions an expert will explore are:

- Does a school system or school offer specialized programs and services and are they easily obtained?
- Does the school offer a "pull-out" enrichment program?
- Are enrichment programs infused into the regular classroom?
- Will the proposed new school offer a similar program and what are the resources to provide such programs?

about the level of services available in the school for Lisa, the principal said the school, by law, would have to provide the services as outlined in the IEP.

Further probing revealed the school did not currently employ a speech/language therapist. According to the principal, the students in the special education class were all verbal and did not need such services.

Additional interviewing revealed that this was the only special education class in the school system and all the other students with disabilities attend either private or other state schools for the handicapped. The school does not employ an occupational therapist or physical therapist. Further, the school does not integrate any of the students from the special education class into the regular school program except for lunch and some assemblies.

Analyzing school data and background information

In addition to data gleaned from interviews, the education expert thoroughly reviewed both school systems' statistics. This included data pertaining to student enrollment; teacher-student ratio; standardized test scores; numbers of students graduating; the amount of money spent on each student and other factors relating to education quality.

Information about schools is readily available from state, county, and local education authorities and several services collect data for comparison. While this standardized infor-

mation is useful, when the custody case involves a highly individualized program or placement, each child and each individual school should be separately reviewed and analyzed.

Making an assessment and recommendation

When educational opportunities at a proposed school are not comparable to those a child currently receives, the educational component of the best interests test may fail and it may not be in the child's best interest to move. However, the analysis should not end there. The critical question then becomes what path to take that will not harm the child?

Important factors to consider are the quality and opportunities that different school systems and individual schools within those systems offer.

- Will Lisa, who has a disability, have the same opportunities to benefit from her education in the school system where her mother is proposing to live as she has in the district where she currently lives?
- Will the move and transfer to a new school system significantly improve Lisa's quality of life?
- Does the proposed new school system offer more opportunities for Lisa to benefit from her education?
- Is it likely that she will suffer educationally if she is moved from the current school system?

After analyzing Lisa's records and interviewing her current teachers and the principal at the proposed school placement, the expert determined that a transfer would leave her without speech and language services she needs and give her fewer appropriate special education program choices. The proposed district had only one special education class and all the other students had to get these services outside of the district. Therefore, the expert determined the proposed move would not significantly improve Lisa's quality of life and would very likely detract from it.

Tips for Working with Education Experts

In child custody matters it is critical that lawyers recognize early on the value of the consultant-expert. Early engagement helps the expert undertake a comprehensive and detailed review and develop the requisite contacts and relationships that are critical to the overall conclusion and recommendation. An education expert can have the greatest impact when the issues are new before emotions run too high, significant time has passed, or large sums of money are spent.

In many cases, the expert's effectiveness will determine the outcome of the dispute. A lawyer should look for an education expert with a broad background that includes teaching, supervision, management, curriculum development, and program monitoring. An expert with a majority of career activities in one or two areas may not be as credible as one with a broader background.

Conclusion

An education expert is vital in child custody cases in which one parent wants to change the child's residence, school or educational program, and especially if the child may be moved to another state. The expert's specialized training and objectivity help the trier of fact decide more quickly whether such a move is in the child's best interests, defusing what might otherwise be a

protracted emotional struggle between the parents over this key "quality of life" issue.

By looking at statistics on each school's educational quality, the resources available to the child in each program—particularly if the child has special needs—reviewing the child's academic performance and potential, and interviewing school staff, the expert makes an informed and credible recommendation about whether the new educational program will be better or worse for the child.

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from The College of New Jersey, and a masters degree in education law from Franklin Pierce Law Center. Dr. Dragan provides consultation to attorneys who are working on all issues of child law. He can be contacted at 609/397-8989 or by visiting the firm's web site at www.edmgt.com.

Endnotes

¹ See *Gruber v. Gruber*, 583 A.2d 434 (Pa. Super. Ct. 1990); *Lozinak v. Lozinak*, 569 A.2d 353 (Pa. Super. Ct. 1990).

² See, Driscoll, Ann M. "In Search of a Standard: Resolving the Relocation Problem in New York," *Hofstra Law Review* 26, 1997, 175, 176.

³ See, *Holder v. Polanski*, 544, A.2d 852 (N.J. 1980); *Cooper v. Cooper*, 99 N.J. 42, 491 A.2d 606 (N.J. 1984).

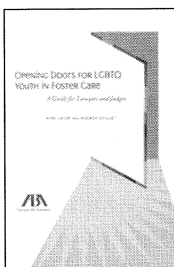
⁴ See, *Baures v. Baures*, 770 A.2d 214 (N.J. 2001).

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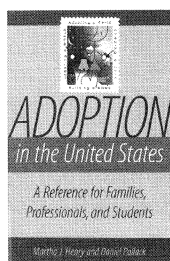
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