

Graduation Time - Part 2

In my most recent blog post, I addressed the issues of termination of child support and child custody when either the child turns 18 or graduates from high school. You can read it [here](#). To recap, child support ends at age 18 or graduation from high school, whichever comes later; child custody jurisdiction ends at age 18. However, there are some exceptions.

Relative to child support, the biggest exception is when there is a written agreement to continue some form of support after high school.

It is not uncommon for two divorcing parents to put in the agreement resolving the economic issues in their divorce a formula for addressing their children's college education. This language is enforceable, just like any other contract, and an exception to the statutory language on the end of support.

The other exception is for a child with special needs. While the law assumes that a child becomes an adult at age 18 and can financially support themselves, it is merely a presumption. Obviously, the special needs child cannot financially support themselves at 18.

In these situations, child support continues but the burden is on the parent seeking continuing child support to prove the child needs those continuing payments. In some cases, this is easy to prove but in other cases, there is a hearing to determine if there is an ongoing need.

With custody jurisdiction, the situation is even more complicated. At age 18, child custody jurisdiction simply ends. But what about the child with down syndrome, cerebral palsy, or some other serious disability? The parent or parents with sole or shared legal custody can no longer make decisions for the now-adult child. What happens, or at least what should happen, is that one parent or both parents need to go to Orphan's Court, file a guardianship petition, and have the child declared an incapacitated person. Then one or both parents are appointed the guardian or co-guardians of the adult child's person, estate, or both.

I have worked on a few cases involving adult children with serious challenging diagnoses. In some of these cases, the parents are on the same page, have been appointed co-guardians, and move on just as they had before the child turned 18, even agreeing to continue the previous partial physical custody schedule. I have also been involved in cases where the parents never saw eye-to-eye on any aspect of the child's care, education, or plan for the child's special needs. Unfortunately, those contentious custody cases become contentious guardianship cases after the child turns 18.

The problem is that without an agreement, the Orphan's Court judge has no obligation to appoint co-guardians; if there is an obvious conflict between the parents there can only be one guardian, and the non-guardian parent feels more than left out. What further complicates the situation is the "best interest of the child" standard from custody court does not apply in a guardianship, nor does the concept of partial physical custody. That gives the parent appointed guardian discretion in deciding whether to allow the other parent access to the special needs adult child. Obviously, the guardian is to act in the incapacitated person's best interest but if a doctor, therapist, or caregiver is of the opinion that the now non-guardian parent is a negative influence on the incapacitated adult child, and the guardian agrees with that opinion, there is virtually nothing the non-parent can do to force the issue.

The family law attorneys at Weber Gallagher have experience with complicated child support, child custody, and guardianship issues and would be happy to discuss any of your questions on these issues. Feel free to contact our office at 610.272.5555.