



**OWM NEWSLETTER
AUGUST 2017**

**ATTORNEY SPOTLIGHT
MELISSA A. IACOBUCCI**



[Melissa A. Iacobucci, Esq.](#), focuses her practice on matters of family law and litigation. However, she has handled matters relating to personal injury and criminal law in the past. While attending law school, Ms. Iacobucci had the opportunity to work as a Judicial Intern to The Honorable Elizabeth R. Hey, a United States Magistrate Judge for the Eastern District of Pennsylvania, as well as assist the Montgomery County Office

Custody Issues in Family Law - School Choice

As temperatures begin to cool down, custody battles are often heating up for those parents who cannot agree about where to send their children to school in the Fall. Should the child attend private or public school? What if both parents live in good school districts? Southeastern Pennsylvania is very fortunate to have many excellent school districts and private schools, which often rank highly throughout the state and country. However, the availability of so many great schools means courts must make tough decisions when the parties cannot agree to a school for their child. Before deciding to pursue school-choice litigation, parties should understand the applicable law, as well as the strengths and weaknesses of their case.

First, it is important to understand the law which serves as the backdrop for any school-related litigation. Only parents who have legal custody of their children may make education-related decisions. In most cases, both parents share legal custody of their children, and, as such, they must decide together where their child attends school. Sometimes the choice is simple. Pennsylvania law provides that a school-aged child is permitted to attend the public school of the district in which the child resides. Pennsylvania law provides, at 24 Pa. Code Section 11.11(a)(1), that “when parents reside in different school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time.” In other words, the child may attend the school district in which the primary custodial parent resides.

But where should the child go to school when the parents share physical custody? As I tell my clients, Pennsylvania is typically a 50/50 state as it pertains to physical custody. In other words, a child will often spend an equal amount of time with both parents. Contrary to popular belief, there is no

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presumption in favor of the mother as the automatic primary custodian. The courts determine physical custody by evaluating several factors and the overall focus is the best interests of the child. This often means the parents share legal and physical custody. In those instances, Pennsylvania law states “[i]f the parents have joint custody and time is evenly divided, the parents may choose which of the school districts the child will enroll for the school year.”

Custody litigation stems from when parents who share equal physical custody cannot decide on the same school for their child. How do the courts decide? Courts will consider a wide variety of evidence when making this determination, but it is important to keep in mind that all evidence will be considered against the backdrop of the overriding goal of serving the child’s best interest. Furthermore, courts are free to give as much or as little weight to the evidence presented to them as they deem fit. For example, many litigants will introduce rankings of their chosen school to show how it is “better” than the other party’s choice. The other parent may introduce their own rankings which they obtained from a different publication or website. The judge will determine how much weight to attribute to each piece of evidence, as this type of evidence is somewhat subjective and open to interpretation.

Other evidence which may be just as relevant and important include the distance to each school from the parties’ residences, the children’s report cards and progress, whether the child participates in sports and other extracurricular activities, the child’s social life, the school cost, if any, the child’s preference, etc. This list of factors is non-exhaustive, and there may be other relevant information depending on your own unique circumstances...demonstrating why it is so important to consult a lawyer.

Finally, for those parents who have partial physical custody, you also have a say in school choice. Pursuant to 24 Pa. Code Section 11.11(a)(1), a child’s school can be changed through a court order or a custody agreement. As such, a parent with partial physical custody may pursue school choice litigation if the parties cannot reach an agreement on their own.

If you are anticipating school choice being an issue next year, you should contact an attorney, sooner rather than later, to discuss your options. Please call us at (610) 323-2800 or send an email to miacobucci@owmlaw.com to discuss your situation. We would be happy to meet with you in either our Pottstown or Phoenixville office. Also, please watch OWM’s August 2017 Legal Talk program regarding Custody Issues in Family Law - School Choice on our website [here](#).

Upcoming Events

[David A. Megay, Esq.](#), speaking at Chester County Night School Seminars at Owen J. Roberts Middle School, Pottstown, PA on 9/19/17 from 6:30p.m.-8:30 p.m. entitled "Ask the Lawyer: Buying and Selling Real Estate in Pennsylvania," and on 10/24/17 from 6:30 p.m.-8:30 p.m. entitled "Ask the

Lawyer: Starting and Operating Your Own Business" (contact Chester County Night School at 610-692-1964 or online at www.chestercountynightschool.org).

[Kathleen M. Martin, Esq.](#), speaking at Chester County Night School Seminars at Pierce Middle School, West Chester, PA, on 9/26/17 from 7:00 p.m.-8:30 p.m., and at Owen J. Roberts Middle School, Pottstown, PA, on 10/10/17 from 7:00 p.m.-8:30 p.m., entitled "Unique Needs of Aging Adults: An Elder Law Perspective"; and at Pierce Middle School, West Chester, PA, on 10/3/17 from 7:00 p.m.-8:30 p.m., and at Owen J. Roberts Middle School, Pottstown, PA, on 10/24/17 from 7:00 p.m.-8:30 p.m., entitled "Beyond the Simple Will" (contact Chester County Night School at 610-692-1964 or online at www.chestercountynightschool.org).

Watch Legal Talk, brought to you by OWM, on PCTV, Tuesdays at 8:30 on Channel 28, and Thursdays at 9:30 p.m. on Channel 98, or on our website [here](#).

Read Legal Ease every first and third Sunday in the [Pottstown Mercury](#).

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