

## McHENRY COUNTY

# Courts handle parental disputes over schooling

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Disagreements between separated parents on whether their children should be attending school in person or remotely during the COVID-19 pandemic are making their way into McHenry County courtrooms.

“It’s not easy to co-parent, and the coronavirus and this is making it more of a challenge. I can definitely tell you it’s a big stressor for families,” said Elizabeth M. Ellis, a Crystal Lake-based family mediator and lawyer.

For divorced or separated parents who normally share decision-making duties for their children, disputes about what the appropriate behaviors and school options are during the outbreak have sometimes required mediation or a judge’s intervention to resolve, local attorneys said.

John Parisi, a Crystal Lake-based family lawyer and Woodstock School District 200 board member, said he is working on a case involving a child attending school in person while living with one parent in Wisconsin, but the other parent, who lives in Illinois, thinks that is too risky and wants to use a remote learning plan. There has not yet been a decision, he said last week.

“We’re seeing a lot of differences in opinion in how to handle COVID-19 protocols as a whole,” he said. “One parent who is having big parties with family, and one parent who is still on lockdown.”

Local lawyers said they expect judicial rulings to be made on a very case-by-case basis in situations where one parent is challenging another’s child care, health, extracurricular and schooling decisions because of the status of the pandemic.

“It really varies based on the judge’s position and also the likelihood of [COVID-19] exposure,” said Liz Wakeman, a Crystal Lake-based attorney and mediator. “This is a new area of family law being created by the pandemic. It’s changing every day.”

She said she thinks as the pandemic’s caseload grows more or less severe in a particular state or area, it opens the door to family court judgments on education plans or other directions related to the outbreak getting revisited more often than was normal before the virus hit.

“Normally if a court decides something, that’s the decision, it can’t be litigated again. But the reality is that a judge won’t be able to simply say, ‘I have ruled on this once, I’m not going to discuss it again.’ Some might make that decision, but I think most will recognize the changing landscape of the pandemic,” Wakeman said. “I expect most judges will be open to the new facts and the



Photo illustration by Matthew Appgar -mappgar@shawmedia.com

A photo illustration depicting students who impacted by remote and in-person learning changes.

new statistics. But it’s not a certainty that all of them will be.”

The expectation that family courts issue a patchwork of orders, rather than creating a clear pattern of erring on either the side of greater precaution or openness regarding in-person schooling as the pandemic continues, is driven by the fact that separate school districts have varied in their responses to the outbreak, with some systems offering in-person options while others have stuck with fully remote learning, local attorneys said.

“I think that the lack of clear answers and the different decisions communities ... make it really hard for a judge to say one parent is clearly wrong here,” Parisi said. “We really do have to be able to point to something in the [pre-pandemic] judgment saying this is how it’s going to be resolved, or we have to convince the judges that one of the parents is wrong. Getting into these trials, we end up in a position where we’re going to have to bring in medical experts, pediatricians.”

The wide range of the COVID-19 case-loads between communities in the area can also be a factor in conflicting outcomes of mediation and court cases over

parental head-butting because of the virus and the perceived risk it presents in school and other activities.

A parent’s job and its associated risk of exposure to COVID-19 can also be taken into account, local lawyers said. So can whether there are regular contributions to child supervision and caretaking by one parent’s family members who are at high risk of developing severe symptoms of the virus because of their age or a medical condition.

“It depends on the entire family system, including grandparents. It’s going to undermine your case if you are operating contrary to the safety of a child’s caretaker. A lot of the time when we have parents who are working, they are relying on grandparents,” Woodstock-based family lawyer Gunnar Gitlin said.

Less weight would be given to concerns of a parent wanting to keep a child out of remote schooling or other activity to simply limit the chances of viral spread during visits with relatives, he said.

“The Thanksgiving and Christmas grandma and grandpa time are not going to be controlling,” Gitlin said, add-

ing that avoiding conflict over how to act during the pandemic is “easier said than done” for co-parents considering their children’s schooling and extracurricular options.

But resolving parental disputes outside of formal mediation or court processes is possible, said Jennifer Tabor, a licensed clinical social worker and owner of the McHenry-based Tabor Therapy Group.

“I first work to validate the inherent difficulty in making any COVID-19-related decision,” Tabor said in an email. “This is uncharted territory for us all, and many of us have reached a level of [COVID-19]-decision making fatigue.”

The first step, however, is to prioritize the needs of the children, and those can depend on what type of students they are and how effective remote learning has been for an individual, she said.

“For example, tweens and teens developmentally learn more from their peers than their parents. It’s natural,” Tabor said. “When they do not have access to this opportunity, it can impact their social-emotional wellness. And,

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is reflected in increased mental illness amongst this population right now.”

She also encourages parents to explore their own history of anxiety to help make a plan for their children

“based on ‘the evidence’ ” fueling any hesitation surrounding in-person learning, she said.

“Oftentimes, it is the anxiety in one parent that impacts their need to control the other parent; this is a root of much of the conflict seen in divorce and parenting disagreements,” Tabor said.