

Homeschooling and Custody

By Linda J. Conrad Jansen, Esq.

The following note was written in response to a question from a parent in another state who had recently lost custody of her child because she intended to homeschool. She asked what homeschoolers could do to so others would not lose custody they way she did. The following answer applies equally to Californians.

The biggest problem with the issue of custody battles involving homeschooling is that both parents have to agree to the educational choice, or the judge is most likely to order a public school. This is true whether the alternative is private school or homeschooling. In my experience, in those cases where the child has been a long-time homeschooler or private school student and both parents agreed, the court will allow the homeschooling or private school to continue. However, I have also seen situations where the court has ordered that the child return to public school.

When you put the decision regarding custody and schooling in the hands of a mediator or a judge, neither one of you is going to like the result. My advise is to do whatever you can to try to maintain a cordial or friendly relationship with the other parent of your children so that your children can have as normal and healthy a relationship as possible and so that you can make decisions together about their schooling. When children are made the center of the battle it does not matter where they go to school. They will lose.

I am an advocate of homeschooling. However, the reason we homeschool is so that we can do the best we possibly can for our children. One of the best things we can do for our children is show them how, even after splitting up with their other parent, you can have a relationship with him/her. That relationship usually means that sometimes you will have to compromise.

Talk to the other parent. Find out what their objection is. Maybe it is something simple like they are afraid they will lose their own relationship with the child or they want some verification that the child is learning and has friends and will not lose college opportunities. Perhaps it is more complicated. Whatever the reason, just talking about it may help you understand each other and help you reach a resolution. Provide the other parent with as much information about homeschooling as you possibly can. Perhaps they will agree to go to a homeschooling conference with you. Make sure that the conference truly reflects your philosophy of homeschooling.

When you do have to get an attorney, call and interview several. Ask them what their experience is with homeschoolers and if they support that choice, or if they are willing to read materials that you provide them about homeschooling. Then you will need to go to the bookstore and get them some books on homeschooling. There are several good books out there, including David Guterson's Family Matters, Why Homeschooling Makes Sense, and John Taylor Gatto's book Dumbing Us Down.

Once you get to the mediators, you need to do the same thing. They will not have time to read entire books, but you may find articles about homeschooling written by respected educators and names that will make them think more deeply about the homeschooling choice.

If you do end up having to go to court, and the mediators are against your choice, you will need to hire an expert to testify on your behalf. Again, you will need to contact several experts and ask them about their experience, opinions and positions regarding homeschooling. Ask them if they are willing to educate themselves, and provide them with material to do so.

When you go to court, you need to make it clear that your interest in homeschooling is because it is in the best interest of the child. Emphasize the educational advantages, the social advantages, and the advantages to the other parent. Show the court how willing you are to share custody and involve the other parent in the child's education. Emphasize how much more flexible time the other parent can spend with your child if you homeschool.

Be aware that one of the arguments against homeschooling is that you may require more support in order to stay home and educate your child. Although you may not like this argument, parents are equally responsible for the financial needs of their child. If a parent makes a life choice to not earn money up to their fullest capacity, then that will be held against them when the court makes decisions regarding child and spousal support. I have seen in the case of fathers choosing to change their careers or quitting in order to get out of child support payments, the courts have ordered support at the level of their earning capacity.

As you can see from this email, there are many factors that go in to the decision of the court in determining the custody of the child. These factors include primarily what the judge thinks is in the best interest of the child, and the judge may consider many factors including access to the other parent, financial ability to support the child, status quo, which parent appears most reasonable, etc.

Judges do make mistakes. They can only make a decision based on the information they have. You cannot expect them to support homeschooling when they do not understand it or know anything about it. It is your job to educate them about homeschooling.

Judges, lawyers and experts usually have compulsory continuing education. It may be worthwhile for homeschool advocates to offer educational courses for professionals about homeschooling. I would suggest contacting state bar associations, judicial associations and expert associations. See what needs to be done to set up educational programs, and if you can line up experts to speak who will be accepted at the educational programs. Find experts to write articles about homeschooling for professional magazines. Brainstorm among your statewide homeschooling group and donate your time and energy to get this work done.

Good luck.