

IF WE SEPARATE, CAN I CHOOSE WHERE THE CHILDREN ATTEND SCHOOL?

In family law there is a presumption that both parents have what is known as 'equal shared parental responsibility' for their children. This means that both parents are required to genuinely consult in relation to big issues relating to the children, including health, education, and religion. For example, it would not normally be appropriate for one parent to have a child undertake a serious medical procedure (except in the case of extreme emergency) without consulting with the other parent.

Sometimes parents will not agree about the school their children will attend. There can be argument as between private and public, Catholic and Anglican, and even at times regular schooling as against home schooling.

An application to the Family Court as to where a child attends school is an application for a Parenting Order. When making a Parenting Order the court must consider as paramount the child's best interests and it is no different when it comes to determining where a child will attend school.

The convenience for the children attending a particular school (that is the distance from each particular home and that school, available transport etc) can be relevant. Also the cost of school, previous agreements as to where the children will be educated, and whether or not a particular school can offer a better education than another (which is often very difficult to prove), are all factors that may lead a Court to make an order favouring one school over another.

So in answer to the question, can a separating party choose which school the children attend?, the answer is that normally it would be for both parents to genuinely consult about their children's education and if they cannot agree then it will be for a Court to make that decision for them.

This article is general information and is not a substitute for legal advice. The information on this website is produced by Ogilvie Jennings Lawyers. It provides general information only on relevant topics of interest in relation to Family Law current at the time it is produced. No reliance should be placed on such general information as contained in this article and legal advice should be sought about the particular circumstances of your particular case.