

Child Custody: When Do Children Get to Decide?

Child Custody: When Do Children Get to Decide? Does my child get to decide to live with me or my ex-spouse? The complicated answers to that question are somewhere in the middle between yes and no.

When is the answer yes? The child's wishes are influential when all involved significant adults in the child's life are in agreement about the child's future living arrangements and that agreement meshes with the child's own wishes.



Mutual agreement is the most common way for resolving a child's custody. This is probably the most frequent outcome because a child may clearly be bonded more to one person or place versus another. Even very young children unable to verbalize a preference for their primary living arrangements often exhibit, through their conduct, a greater attraction to one or the other caretaker and/or to one or another living situation. The ability of most parents to recognize and solve by mutual agreement their child's basic needs is the easiest and least expensive route.

When does a child not decide? The child should not decide where he or she lives if either you or your spouse disagree strongly enough with your child's wishes. In this case using

mediation and arbitration as means of resolving custodial disputes is a solution. A mediator or arbitrator will attempt to build a common, harmonious meeting ground between you and your spouse as it applies to your child's wishes.

If you and your spouse can not agree about the child custody and you have to go to court to litigate, in North Carolina the law tells the judge that he or she does not have to interview the child, nor pay much, if any attention to the child's exhibited preferences. Therefore, unlike you and your spouse in mediation, a judge is free to give the child's wishes, if known to the judge, as much or as little consideration as he deems appropriate.

The difference between a court's resolution and a mediator's resolution is that the mediator's job is to attempt to create harmonious agreement between the parents. A judge's decision about the child's best interests can be shockingly different from the child's own view of those best interests, much less the parents' views.

Judges consider a host of factors in custody cases, including parental affection, steadiness, your physical and mental health, your sensitivity to your child's needs and ability to act on those needs, and the quality of your relationship your child's other parent. After considering these factors the judge's decision may have no predictable relationship with the child's expressed preferences.

The child's preference may carry greater weight if the child appears to the judge to be mature enough to understand his situation, but many child psychologists as well as judges state that children should not be asked to choose between parents. The judge's potential disregard for a child's wishes is all the more likely if a judge suspects that a child's preference is being articulated by direct pressure from one parent. In such cases of suspected parental coaxing, the judge may request additional psychological review of the child in an attempt to ascertain if the child's genuine wishes are being manipulated.

In North Carolina the judge has complete discretion to overrule a child's preferences and this can have startling results. For example, from the standpoint of his authority under the law, a judge in North Carolina can enter an order directing a child to reside exclusively with his mother even though the child has adamantly insisted for years that he or she wants to live only with the father and the child, in addition to that insists in fighting physically and verbally over the issue with the mother. Unlike some other states, the law in North Carolina permits the judge to totally override a teenager's firmly expressed preferences until the child ceases to become a minor at age 18 or otherwise. For this reason, you and your spouse solving child custody by mutual satisfactory agreement and avoiding litigation can be the most desirable action.

A separation agreement will very likely lead the way to a simple no contest divorce or uncontested divorce.

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