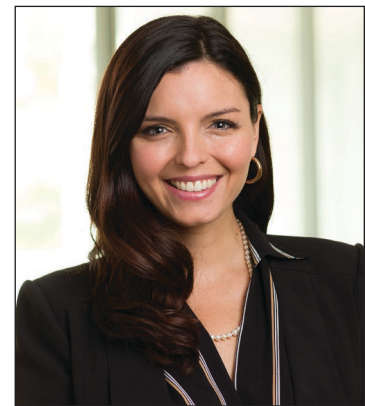

Co-Parenting Facts of Life: Access to Technology as a Decision Affecting Best Interest of Child

by Erika R. Piccirillo, Esq. of Cohn Lifland Pearlman Herrmann & Knopf LLP

New Jersey’s latest Comprehensive Health and Physical Education learning standards, which include Social and Sexual Health Education guidelines, are set to take effect in September 2022. As a result, many parents are taking another look at when and how much they want their children to learn about sex. However, while parents are contemplating what they believe is appropriate for children to learn in schools, they may be overlooking what their children are learning right under their noses on the internet and how could be affecting their mental health. This is particularly true for children of dual households following divorce, who often have access to cell phones or tablets at an impressionable age.



Erika R. Piccirillo, Esq.

In New Jersey, co-parents often share joint legal custody. That is to say, co-parents will share the legal authority and responsibility for making “major” decisions regarding the child’s welfare, while more “minor” day-to-day decisions remain with the parent exercising parenting time. In custody agreements, co-parents often specifically acknowledge and agree that they will confer on all matters relating to the health, welfare, religious training, and education of the child. However, it may be time for co-parents to consider access to technology and the internet as a major decision impacting their child’s social and sexual health education as well as their mental health.

Within the last two decades, access to and engagement with the internet, digital technology, and social media has rapidly increased. Within the last two years, children have had more access to technology and the internet than ever — logging into Google classrooms across the world during the COVID-19 pandemic and connecting with their friends via TikTok, SnapChat, Facebook, and other social media platforms when in-person meetings were not an option.

[Though the internet] has created previously unimaginable opportunities for learning and development and personal exploration and growth... it seems that the very same qualities and characteristics of the Internet that make these positive contributions possible, such as its immediacy, portability, intimacy, unconstrained reach and lack of supervision and regulation of content, has opened children and young people up to a range of serious social, intellectual and mental health risks.

Chris Hollis, Sonia Livingstone, and Edmund Sonuga-Barke. *Editorial: The Role of Digital Technology in Children and Young People's Mental Health — a triple-edged sword?* JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY. 81:8 (2020), pp. 837-841.

And since the New Jersey legislature has declared it is the public policy of the State to assure minor children of frequent and continuing contact with both parents after the parents have separated, it is also increasingly common to find that virtual presence through technology (such as FaceTime, Skype, Google Duo, and the like) is included in parenting time agreements. Parents may agree that their child will have daily or unrestrained telephone or technological access to the parent not exercising parenting time. As a result, co-parents often contemplate and purchase cell phones or tablets for their children at a younger age than they would have if the family had remained intact. However, allowing unrestrained access to technology does not come without risks than can have a major impact on the child's social and mental health.

Specifically, growing up with divorced parents has been identified as a risk factor for problematic internet use. Without parental controls, children can be easily bombarded with the next TikTok challenge, invites to "connect" with strangers, cyber bullying, and peer pressure to send inappropriate photographs. And Rule 34 of the internet is a simple maxim: "If it exists, there is porn of it." Without appropriate parental controls and blockers, a child has all the tools they require to learn about "the birds and the bees" on their own terms — even if only an accident — and to engage in problematic internet use that can impact their mental health. As a result, it may be time for co-parents to specifically enumerate that access to technology and the internet are "major" decisions affecting the health, education, and safety of their child when drafting custody agreements.

As with most major parenting decisions, there is no universal approach to determining what is appropriate or in a child's best interests in tackling access to technology and the internet. Instead, parents should consider multiple variables, which may include:

- **The Age and Maturity of the Child.** Age does not always equate to maturity. A nine-year-old could have the same maturity and understanding of responsibilities as the neighbor's twelve-year-old. Has the child already proven that they can be responsible to abide by the boundaries set for them or have they already shown a penchant for breaking rules? Even if one parent thinks that the child is responsible, children make mistakes. Mistakes made online or in a public forum can have greater ramifications. It is important for co-parents to make sure that their child understands what is and is not appropriate conduct on the internet or even messaging with friends.

- **The Education of the Child.** Consider whether the child has already taken a sex education course. If so, what did they learn? If not, have the co-parents had a discussion with their child about sex? If co-parents are considering giving their child unfettered access to technology, it might be time to have "the talk" and a discussion about what is real and what isn't real on the internet.

• **What Device is Appropriate.** Caregivers should research what type of phone is appropriate. Gone are the days where the “house” phone rang on the kitchen wall and Susie’s first crush had to announce themselves to her parents before they could speak to her. For some, it may be appropriate for the child to have an old iPhone that’s been sitting in the corner collecting dust. For others, it may be appropriate for the child to have a Pinwheel phone, which only allows “Safelist” calls and texts (i.e., every contact on the child’s phone must be approved by the caregiver) and includes an App Store that is only available to the child’s caregiver. There is a wide range of devices available, and co-parents should research what device is necessary for purposes of virtual parenting time, while protecting the child.

• **Parental Controls.** Parents have the ability to block websites, filter content, manage screen time, and get alerts for non-compliance. For example, parents might choose to use “Bark” to monitor text messages, YouTube, e-mails, and social networks, which will send a parent notification if there is a potential cause for concern. There are also parental controls available on iPhones through Apple. Co-parents should also consider who is going to receive these alerts and/or monitor their child’s internet usage.

• **Co-Parenting Relationship.** Co-parenting is difficult and the introduction of technology to the child may increase tensions. Even in single households, one parent may be seen as the disciplinarian while the other parent is the “fun” parent. While the limitations in dual households do not have to be identical, it is important to consider each co-parent’s expressed concerns. For example, if SnapChat is off limits in one home because of its inherent risks, it is important that the other co-parent has been consulted to see if they will agree to do the same.

• **Parental Designations.** In New Jersey, the parent with whom the child spends the majority of the time is designated as the Parent of Primary Residence (“PPR”), while the other parent is designated as the Parent of Alternate Residence (“PAR”). While parents may agree that they will have equal input on major decisions, Courts have broad discretion to give more deference to the PPR’s decision-making authority. If the parents disagree with respect to a child’s enrollment in sex education and access to technology such that Court intervention becomes necessary, their parental designations may be considered by the Court.

• **Prior History of Domestic Violence.** If there has been a prior history of domestic violence, this should be taken into consideration. Sharing login credentials for a single account that would allow both parents to receive alerts may not be appropriate. One parent might also not feel comfortable with the other being able to access their child’s location at all times, because it might mean that their former spouse can also check on the other parent’s location.

• **“House Rules” and Discipline.** Co-parents may also want to consider what “house rules,” if any, will apply across their dual households. If a co-parent receives notice that the child is accessing pornography or is otherwise engaged in risky online behavior, how will these situations be handled? While “minor” day-to-day disciplinary decisions are usually left to the parent exercising parenting time, a combination of minor infractions can lead to major ramifications in the long run when technology is involved. In fact, courts outside of New Jersey have restricted access to technology by implementing their own “house rules” when a child refuses to comply with parenting time.

The reality is that co-parenting and joint legal custody decisions are complicated. Access to technology and the internet make it even more complex to navigate. Educational and health decisions have long been considered “major” decisions impacting the welfare of the child in custody agreements. However, increasing access to technology and the internet also increase the risk that a child may “self-educate” on topics like sex or may engage in other problematic internet use, which can have an impact on their mental health. As a result, it may be the time for divorcing parents to consider a child’s access to technology and the internet as a “major” decision when drafting joint legal custody provisions.