

DivorceMapping™

**A Social Science Research Review on
Residential Placement Schedules**

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Executive Summary.¹

1. Designing a residential schedule is one of the key legal tasks facing separating parents. The history of this legal task in the courts creates destructive assumptions in the minds of parents. Treating the time of a child like a commodity that can be divided, counting overnights, and attaching a great many consequences to the outcome of this task distract parents from a focus on the real needs of their children.
2. While playing a role in child adjustment, residential schedules have substantially less effect on child adjustment than do six other factors:
 - a) The level of conflict and the degree of effective communication and cooperation between the parents and other important adults (e.g. stepparents, grandparents, and so on).
 - b) The quality of parenting in each home.
 - c) Mental Health of the parents.
 - d) The socio-educational-economic status of the parties post-divorce at or below the poverty line.
 - e) Support systems of the parents and children.
 - f) The pre-divorce adjustment level of the child.
 - g) The physical placement schedule
3. Having a "default" residential schedule can serve three purposes:
 - a) To provide attorneys and parents with research based information that might assist them in designing a child-focused schedule given the facts of that family situation;
 - b) To provide a starting point from which parents can negotiate;
 - c) And, to provide parents who simply want a "reasonable" child-focused physical placement schedule with more definition and detail than "reasonable visitation at reasonable times with reasonable notice."
4. However, experience has demonstrated that public policy "presumptions" do not take into consideration important case facts and risk factors and do harm to at least some children.
5. Social science research suggests that there are specific factors that are relevant to the design of a child-focused physical placement schedule. Those factors are as follows:
 - (A) The binary family: There are traditions, gender based expectations, and concerns regarding the stress involved for children in "bouncing back and forth" between two homes. This has created the notion that children might do best in "a home base." Social science research does not support this notion, at least in general for most children. The children who are best adjusted on

¹ We shall refer to the schedule ordered by a court defining the times that each child is with each parent as the residential schedule. Many jurisdictions refer to this schedule as physical custody or primary physical custody and visitation. We find referring to residential schedule, or simply the schedule, with each parent simply easier and more explanatory.

average are those who have substantial time with both parents, unless the facts of the case have specific contraindications, such as geographic distance, threats to the safety of the child, substantial differences in the quality of parenting, the presence of high conflict, particularly young children and several other factors.

- (B) Gender matching: While both parents are very important to the overall healthy development of the child, it is particularly important for children to have sufficient/substantial time with the same gender parent, particularly in the 5-12 year old age group.
- (C) Single parenting vs. shared parenting: Frequent regular contact between the child and both parents, with breaks from child care for both parents, leads to better quality relationships in both homes between the parents and the child, higher satisfaction in children, and better outcomes, with some exceptions. In particular, having substantial father involvement appears to predict better outcomes. If parents can work cooperatively with one another on access and flexibility, the range of residential schedules that is likely to work well for the child is broad. Shared parenting schedules do not necessarily have to be equal or near equal to work well for a child. One exception to this general rule is in families with high parental conflict. In those cases, children generally have lower satisfaction rates in shared residential schedules, feel more caught in the middle and demonstrate more adjustment problems than children in primary care residential schedules. Having a primary residence appears to be a protective factor in families with high parental conflict.
- (D) Conflict: there are two types of conflict in post-divorce parent relationships. One is endemic and unlikely to change and is based on personality problems in one or both of the parties, usually including a wide variety of conduct and adjustment problems in the parents. The second is conflict stimulated by the manner in which the marriage broke down, fanned by the difficulties of a separation and divorce, and inherent in the tasks of parenting together from two different residences. Another important factor is that not all conflict is destructive. This second form of parental conflict might or might not be harmful to the children, depending on six factors:
 - 1) The frequency of conflict;
 - 2) The level of emotional hostility and blaming;
 - 3) The content of the conflict;
 - 4) The mode of expression;
 - 5) The use of and types of conflict resolution;
 - 6) The exposure of the child to the conflict.

This second type of conflict tends to lessen over time, is likely to improve with parent education, coparenting counseling, and early frequent parent contact. Efforts to keep separating parents apart, to have them communicate indirectly through attorneys, or to in other ways avoid one another might be helpful particularly in a small minority of cases, that is, those with the first type of conflict described above. However, to do so with the second type of conflict, while perhaps motivated by good intentions, is likely to do more harm than good over time. Research shows that parents who have direct contact with one another at the time of and shortly after the separation are more likely to continue to have communication and cooperation than parents who have little or no direct contact with one another.

In high conflict cases, shared residential schedules put children at risk. If the destructive conflict is unlikely to lessen substantially over time, a schedule that is designed to substantially reduce the exposure of the child to conflict is preferred, including a primary residence with one parent and with a marginal visiting relationship with the other parent.

- (E) Communication and cooperation: No single factor more directly relates to the post-separation child adjustment than the parental relationship. Not only is the negative dimension of parent conflict detrimental, the positive dimension of parent cooperation is critical to child adjustment. The younger the child, the more communication and cooperation is required. The definition of positive co-parenting includes:
- 1) Frequency (at least once per week) and content (child focused) of communication about the children.
 - 2) Decisions are shared; rules, routines, discipline, chores and responsibilities, and expectations are coordinated between households.
 - 3) Disagreements are resolved. Negotiation process is effective.
 - 4) Parents support and respect the other parent's role as a parent.
 - 5) A positive evaluation of the other parent's competency as a parent.
 - 6) There are flexible access arrangements.
 - 7) Transitions are managed smoothly.
- (F) Support systems: the residential schedule should reflect an effort to preserve, or in some cases improve, the support systems available to the children and the parents. Maintaining the child in familiar school and social settings, maintaining important connections to other important adults (e.g. grandparents, neighbors, and coaches), and providing for continuity of care (e.g. both parents relying on the same grandparents for care rather than strangers) are all likely to improve the children's adjustment to the parental separation.
- (G) Quality of parenting: minor differences in the quality of parenting and even substantial differences in parenting style are unlikely to make much difference in the overall adjustment of the child. However, if there are substantial differences in the quality of parenting, the design of the residential schedule should take into consideration the strengths and weaknesses of each of the parents. Children are more likely to do well in school, for example, if the parent who has the child during school days is substantially better at providing for and following through on routines, is more helpful with academics, has higher expectations, and so on. Although there are many attitudes and opinions about what constitutes quality parenting, social science research supports that there are only five basic skill sets that are important. These are, in order of importance:
- 1) Authoritative parenting, including protection and limit setting [juxtaposed with permissive or authoritarian parenting].
 - 2) Nurturance; warmth; pride; and affection.
 - 3) High standards and clear expectations.
 - 4) Intellectual stimulation and exposure to diverse activities, including monitoring those activities.
 - 5) Good instruction, teaching negotiation of control issues in relationships (e.g., effective bargaining), and modeling social maturity.

- (H) Socio-economic status: This is an important factor in one of two ways. The first is whether or not the child is in a family situation at, below or near the poverty line. Children are more likely to do well if above the poverty line. The second is that independent of opportunity and sometimes income, some parents find themselves under constant financial pressures, including the need to move regularly, creating geographic instability. This poses risk to child adjustment. There is no research of which we are aware that suggests that significant differences in the socio-economic status of parents, when both parents are above the poverty live, correlates with child adjustment.
- (I) Father Involvement: It is likely that if there were more research on "mother involvement," we would conclude that this section should be titled "Parent Involvement." However, because mothers are almost always involved, our research has been on how father involvement correlates with child adjustment. Frequent, regular, and substantial contact between children and fathers correlates with high quality parent-child relationships for both parents, better quality of parenting, and with good outcomes on every aspect of child adjustment that has been measured.²
- (J) Mental Health of the Parents: some types of mental health problems in parents correlate with problems in child adjustment. Some of these are very responsive to treatment (e.g. depression) and are therefore of minor importance to the design of a residential schedule. Some, however, are resistant to change, even with treatment (e.g. personality disorders), and should be considered in the design of the residential schedule.
- (K) The Age of the Child: The developmental level and needs of the child affect the types of residential schedules that are most likely to work well. Very young children benefit from frequent contact with both parents, but only under some important conditions. Children from about 3 to 5 years old are only likely to do well in shared residential schedules under certain conditions.³ Children from about 6 to 12 years old are most likely to do well in shared parenting schedules, even when conditions are not ideal. Special trends occur for teens that might be important in designing a child-focused schedule. It is important to understand this factor and for parents to understand that they need to consider changing the residential schedule over time as their children reach different developmental stages.
- (L) Sibling Groups: Keeping siblings together on the same basic schedule provides an important buffer to stress and improves overall child adjustment. This should not preclude each of the parents spending individual time with children, but should encourage the blueprint residential schedule to apply to all of the siblings. Secondly, because children raised in sibling groups tend to do better in general, increasing time of a single child in a sibling group (i.e. step-siblings) might be important in a particular family. Having older siblings appears to assist younger siblings in adjusting to residential schedules that otherwise might be stressful.

² See the Social Science Research Summary on Father Involvement for more detail and cites.

³ See the Social Science Research Summary on Residential Placement Schedules for Young Children for more detail on this controversial group of children and for cites.

- (M) Children's Temperament: This is one of the least understood factors but might be one of the most important. Social science research has identified a number of important temperament issues in children and we know to some extent that the match/mismatch of a child's temperament with the temperament of a parent can affect child adjustment. We are also aware that children have different levels of stress tolerance and resilience and that this should be taken into consideration in designing a residential schedule in a particular case, but we have little scientific information to guide us.
 - (N) Equal parenting schedules: While a hot political, legal and cultural issue, very little research has been done on equal residential schedules, i.e. exactly 50/50. Only one survey study has been done of which we are aware that includes equal. A number of studies have been done comparing "primary" with "shared" residential schedules. The study that addresses "equal" relative to other "shared" residential schedules does not determine actual adjustment outcomes but does demonstrate that children, as young adults, prefer equal residential schedules over others and that those who grew up in equal schedules were most satisfied. That this is just one study, however, leaves many unanswered questions. The sample in this study also raises questions: they are college students, suggesting a good socio-economic-educational family background; given the date of the study, those students who had been in shared and equal residential schedules likely resulted from parental agreement, which might skew the sample in the direction of having parents who communicated and cooperated well; and, "fairness" might have been a factor considered by college age students.
 - (O) Practical Considerations: There are many practical considerations, such as geographic distance between homes, work schedules and other availability issues, childcare resources, and locations of the residences, which might affect the design of the residential schedule. These factors might dictate, for example, that one of the two residences should be emphasized during the school week because of parental availability or proximity to the school.
6. Using these factors, we have proposed default schedules that might be good starting points from which to work in the context of a given family. Both forms of these default schedules are based on assumptions. One is based on an assumption that for practical reasons, because these research factors suggest, or because of the interests of the parents, a primary physical residence is desirable. The second form assumes that conditions are such that a shared residential schedule is desirable.

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Table of Contents

A Social Science Research Review on Residential Placement Schedules	1
Executive Summary	2
A. Introduction	8
B. Organization of this research review	11
C. Relevant facts of the family situation	12
D. Relevant Social Science Research Findings on Placement Schedules	12
1) The binary family	12
2) Gender issues	14
3) Single parenting vs. shared parenting	15
4) Joint physical placement vs. primary physical placement	16
5) Family chaos	17
6) The conflict/cooperation continuum	19
7) The support systems	21
8) Quality of parenting	22
9) Socio-economic status	24
10) Father involvement	24
11) Mental health of parents	25
12) Age of the child	25
13) Sibling groups	28
14) Children’s temperament	29
15) Equal placement	29
E. General Factors to Consider for Arguments in Physical Placement Determinations.	32
F. Summary of Factors and Implications for the Schedule.	34
G. Practical considerations	36
H. Proposed Default Placement Schedules	36
Primary placement schedule	38
Time With Non-Residential Parent	38
Shared placement schedule	39
Schedule	39
I. Conclusions	41

A. Introduction

This review is not nor is it proposed to be a recommendation for or against a residential schedule in a specific case. The facts of each case are unique and a determination on the issues can only be made by the trier of fact. The purpose of this review is to provide attorneys, mediators and their clients with helpful information from social science research that might be relevant to a specific fact situation.

Although the law forces upon parents the legal task of deciding on, or litigating, the issue of a residential schedule, research on what actually affects child adjustment suggests that the issue of the residential schedule is minor to largely irrelevant. Law and policy often make the determination of the residential schedule, however, an intense and bitter point of dispute between parents. As most attorneys are aware, the word custody is an old legal term referring to the *possession and control of property*. We do not like to remember that children were considered part of the family property and were *awarded* as such to a spouse after divorce. Historically, this was almost always the father, who could both own property and who also was considered the best parent for raising and preparing the child for adulthood, largely again for economic reasons. It was only towards the latter part of the 19th century that children began to be seen as a unique class of people deserving of legal protections. That and the novel concept proffered by early psychologists that how children turned out depended on how they were treated by their parents and others led to the beginnings of the *Best Interests of the Child* concept in family law. Other economic and social changes also created for the first time in history a division of roles among the middle class in which one party was chiefly responsible for raising children. The one chosen by culture was the mother, again in part for economic reasons (e.g. women could not at the time even own their own salary). There were many other reasons, including that the middle classes aimed at emulating the upper class, in which women were responsible for the organization of the home. This gave rise to the *Tender Years Doctrine* in which motherhood with young children took on not only the unique and special place in our culture, but the exclusion of the father from an equally important role took place. Part of this occurred because also for the first time in history, as a result of the structure of industrialization, for the middle class, the parent(s) worked away from the other family members and the home. Fathers still typically received the custody award of older children, because they were still seen as more capable of preparing the child for the adult world, but mothers began to exclusively receive custody awards of young children. This evolved into the system that was firmly established by the 1950's in which mothers were now responsible for almost all aspects of child rearing at all ages and almost exclusively received custody awards post-divorce, with fathers on the extreme periphery of the child's life, often even in a marriage but certainly following divorce.

Beginning in the late 1960's, a cultural shift occurred, especially for women, but also for men. Priorities shifted to family relationships and away from economic survival. People began to use different yardsticks than role success by which to judge themselves and their spouses. Women began to challenge the commonly held beliefs that they could not succeed and be competent in educational settings and in jobs previously held exclusively by men. Men began to think about a more diverse lifestyle than simply being productive and strategic in an employment system, including playing a larger role in the lives of children. The courts began to reorient towards forms of shared child rearing following divorce, slowly increasing the amount of time fathers typically were awarded and slowly increasing the frequency of joint

custody awards. In 1967, when Mel Roman wrote *The Disposable Parent*, 90% of custody awards were to mothers and 10% were to fathers. In the latter case, the mothers had deserted the family, were in jail or were in mental health institutions. Additionally, two years following a divorce, 50% of fathers were having no contact with their children and many were not paying child support, pushing many single mothers into poverty. Measures of the mental health of both mothers and fathers in those situations found that both were suffering. The social experiment was a failure.

However, the courts still treat custody as a property division issue. Rather than awarding the whole child to one parent, the courts began the tricky process of awarding a portion of the child's time to each parent, no longer dividing the child, but rather dividing the child's time. To use an analogy, rather than giving the car to one party, the court began to give each party the control and use of the car for periods of time on a repeating and regular basis. For ease, in many jurisdictions, the courts began to award these periods of use on the basis of overnights, identifying when in each day a transition of ownership, in a sense, occurred. One sees these assumptions in such terms as "50/50", "60/40" or "my time." Thus, the legal system channeled parents, who previously never considered that they "owned" time with a child, into a way of thinking about parenting that was disruptive. Rather than the children being children, they became children of divorce.

The courts⁴ have further compounded this strange form of family reorganization by not only dividing the time of the child and awarding portions of the child's life to each parent, the courts created, what in business is called, a value-added product. Not only did a parent get the value of time with the child, the court added other values to that time. The most obvious is child support, but there are other values, some subtle and some not, that are attached to which parent has what percentage of the time of the child. Obvious are the other economic benefits (e.g. tax deduction or status) and the power (e.g. a leg up on a relocation issue or the ability to make most of the day to day decisions about the child). There might also be advantages in the property division (e.g. gaining the homestead) or in spousal support (e.g. having less demand to work full time). Subtler are issues such as self-esteem (e.g. choosing a better, and by implication, a worse parent; identifying one parent as more important, i.e. the *primary* parent) and the loss involved in being excluded from major portions of the child's life. Rather than reorganizing the family with parents living in separate households, parents began to battle for parenting time.

Thus, legislatures and the courts have created a false paradigm for the structure of the post-divorce family, a paradigm that has little to do with a child's experience of the post-divorce family and little to do with the interests of the child, but one which can come to completely captivate divorcing spouses, often more because of the value-added issues than the actual time with the child. Once created and imposed on divorcing spouses as a required legal task, our courts have recognized that there is something inherently wrong with this system of assisting the family in making a transition to having separated parents. Rather than address the fundamental problem, however, the courts have tried to fine tune the process, adding mediation, parent education classes, local rules to pressure parties into settlement, and cookie cutter laws, all in hopes of discouraging the inevitable competitive approach parents

⁴ We are well aware that when we use courts, we are referring to a much larger source, including not only the courts, but also legal communities, state legislatures, federal laws, and many other professionals.

will take given the manner in which the courts have set up the *game*.⁵

Nevertheless, in spite of the fact that the residential schedule has little to do with the best interests of the child, even under the best of circumstances, parents would have to come up with some sort of blue-print schedule for who would be in charge on any given day and where the children could be expected to be and sleep. Therefore, having a residential schedule is a necessary task, even if we were able to strip the issue of all of the other value-added factors. However, six other factors have been found to be much more important to the long-term best interests of the child. Those include, in order of importance:

- a) The level of conflict and the degree of effective communication and cooperation between the parents and other important adults (e.g. stepparents, grandparents, and so on).
- b) The quality of parenting in each home.
- c) Mental Health of the parents.
- d) The socio-educational-economic status of the parties post-divorce at or below the poverty line.
- e) Support systems of the parents and children.
- f) The pre-divorce adjustment level of the child.

We do not mean to say that the residential schedule has no effect on the child. A schedule that ignores important child related factors, for example, can do a good deal of harm. Interestingly, it is often because the courts distract the parties from the child's interests with other factors, even good parents assert residential schedule positions that might be harmful to the child. For example, because the courts attach legal power and status, financial consequences, and restrictive views of post-divorce parent involvement, a parent might demand a "primary" residential schedule or "equal" residential placement, independent of whether or not this is in the child's real interests. Although parties oftentimes need assistance in developing a child focused schedule, professionals might keep these other, better, predictors of child adjustment in mind.

What we hope to provide here are some guides in developing a child-focused residential placement schedule. The uses for this are really three:

- a) To provide attorneys and parents with research based information that might assist them in designing a child-focused schedule given the facts of that family situation;
- b) To provide a starting point from which parents can negotiate;
- c) And, to provide parents who simply want a "reasonable" child-focused residential placement schedule with more definition and detail than "reasonable visitation at reasonable times with reasonable notice."

⁵ For more insight into this issue, see the description of Game/Decision Theory Applied to Family Law by Ken Waldron in DivorceMapping™.

B. Organization of this research review

The review is organized in a point-by-point format. The factors that have been found relevant in social science research are listed individually. If a factor is asserted as a risk to children's adjustment, the cooperative strategy is posed as a means of mitigating those risks. It is particularly important to remember in relation to residential schedules that a good decision is one that reflects the values and goals of the parties and that balances the sometimes-contradictory factors. For example, when we decide whether or not to enroll one of our children in an activity, we look at many factors. We examine the child's interest level, our own values and interests, the time demands of the activity, the financial costs, the amount of resources that will be devoted to that activity relative to other family members, practical details such as transportation and parental availability, the relative value of that activity compared to other activities that might be sacrificed, the long-term value or risks of the activity for our child, and so on. We weigh all of these variables and try to balance them all in some sensible manner and make a decision. Deciding on a child-focused residential schedule is much the same process. What we are attempting in this review is to provide research findings on the factors that appear to be important to weigh.

We will be referring to some concepts in this review, which we define below:

Definitions.

1. *Child adjustment* refers to the psychological, emotional and developmental success of the child over time. The specific variables that have been measured in the research related to child adjustment are: symptom checklists filled out by parents; academic achievement; intelligence level; social skills and social competence; sibling relationships; teacher/daycare provider reports and symptom checklists; therapist reports; measures of mood, aggressive behavior, and clinical depression; and measures of the quality of the parent-child relationships.⁶
2. *The schedule* refers to a scientifically founded default physical custody schedule as proposed in this article.
3. *Single parenting* refers to those situations in which the child is raised almost solely by one parent. The other parent might visit regularly (e.g. every other weekend or every other weekend and one day per week) or rarely (e.g. once per year) but plays a peripheral role in the life of the child.
4. *Shared parenting* refers to the family in which both parents play an active and involved role in both the decisions and care of the child, often independent of the residential schedule. Shared parenting does not mean equal custody. To the knowledge of the author, there is only one research effort that has been made comparing equal custody to non-equal custody, which we shall describe in this review. When we use shared parenting, we mean that at least 35% of the time is spent with each parent, so that each parent is actively involved in all aspects of the child's life and is responsible for all types of child time.⁷ 35% is somewhat arbitrary, but has been used in the research to identify the demarcation point

⁶ P. Amato & B. Keith, (1991) *Parental Divorce and the Well-Being of Children: A Meta-analysis*, Psych. Bull, 110: P. 26.

⁷ For a discussion of the concept of child time and parental involvement, see Ricci, I. (1989) *Mediation, joint custody and legal agreements: A time to review, revise and refine*. Family and Conciliation Courts Review, 27: P. 47.

between single parenting and shared parenting. Additionally, when we get to 35%, we usually incorporate all types of child time in both homes, even if that time is not equal.

C. Relevant facts of the family situation

The reader is advised to be cautious when applying the findings listed in the following sections to the specific facts of the family situation. Some findings will not apply to all fact situations. Additionally, some fact situations might be dominated by factors that make the findings in this review irrelevant. For example, many of the benefits children appear to obtain from shared residential schedules might be far outweighed by the risks associated with a high conflict parental relationship. Social science research can tell us what factors to pay attention to, can identify risks and benefits, but cannot be a substitute for critical thinking and judgment applied to the facts of a case.

D. Relevant Social Science Research Findings on Placement Schedules.

- 1) **The Binary Family:** A commonly held belief is that children need a primary and stable *home base*, which usually means on a practical level, a primary attachment to their mother - the *one home model*. This belief assumes that the mother/child attachment is critical and the father/child attachment is peripheral to child adjustment.⁸ Time with fathers, especially overnights, is seen as at the expense of the mother-child relationship or attachment. This stance is commonly held for young children even by mental health professionals, largely based on the unsupported theoretical propositions of Hodges⁹ that became popularized by others.¹⁰ More recently, a great deal of research has supported the importance, in two parent families and post-divorce families, of father involvement.¹¹ These issues have received additional attention in research on

⁸ I. Bretherton and E. Waters (eds.), (1985) *Growing Points of Attachment Theory and Research*, 50 M. of the Society for Research in Child Development, 50: P. 1; D. Capaldi and G. Patterson, 1991) *Relation of Parental Transition to Boys Adjustment Problems: I A Linear Process, II Mothers at Risk for Transitions and Unskilled Parenting*, *Developmental Psychology*, 221: P. 489; M. Greenberg, et al, (eds.), (1990) *Attachment in the Preschool Years*; W. Hodges, (1991) *Interventions for Children of Divorce* (3rd Ed); N. Kalter, (1990) *Growing Up with Divorce*; R. Simons et al, *Stress, Support, and Antisocial Behavior Trait as Determinants of Emotional Well-being and Parenting Practices among Single Mothers*, *J. of Marriage and Family*, 55: P. 385.

⁹ Hodges, *supra* note 8.

¹⁰ M. Baris and C. Garrity, (1992) *Children of Divorce: A Developmental Approach to Residence and Visitation*.

¹¹ F. Furstenberg, (1988) *Childcare after Divorce and Remarriage*. In *Impact of Divorce, Single Parenting, and Step-parenting on Children*, (E. Heatherington & J. Arasteh (eds.); A. Elster & M. Lamb, 1982) *Adolescent Fathers: A Group Potentially at Risk for Parenting Failure*. *Infant Mental Health J.*, 3: P. 148; A. Hawkins and D. Eggebeen, (1991) *Are Fathers Fungible? Patterns of Co-resident Adult Men in Maritally Disrupted Families and Young Children's Well-being*, *J. of Marriage and the*

never married parents.¹² The role of fathers in paternity cases is receiving some important attention.¹³

The research shows that the mother/child attachment is indeed important, if the attachment is a positive one, but that the father/child attachment is also important to child adjustment. The sum of the research shows that children benefit from multiple caregiver patterns¹⁴ and in fact in many cultures this is desirable and successful. These studies demonstrate that toddlers and infants can form multiple relationships and benefit from a care-giving system that includes a number of care-givers, including both parents. There is no research that supports a pre-supposition that the maternal-child attachment is exclusive and that other attachments dilute or reduce the quality of that attachment. This leads to the following conclusions:

- a) There is no scientific foundation for an assumption that a child needs a primary care-giver/parent or a primary home. Research in fact supports the

Family, 51: P. 958; J. Herzog, (1980) *Sleeping Disturbance and Father Hunger in 18 to 28 Month Old Boys: The Erlkonig Syndrome*, *Psychoanalytic Study of the Child*, 35: P. 219; F. Furstenberg et al, (1987) *Paternal Participation and Children's Well-being after Marital Dissolution*, *Amer. Sociological Review*, 52: P. 695; K. Hannan and T. Luster, (1991) *Influence of Parent, Child, and Contextual Factors on the Quality of the Home Environment*, *Infant Mental Health J.*, 12: P. 17; J. Peterson and N. Zill, (1986) *Marital Disruption, Parent-child Relationships, and Behavior Problems in Children*, *J. of Marriage and the Family*, 48: P. 295; J. Seltzer, (1991) *Relationships Between Fathers and Children Who Live Apart: The Father's Role After Separation*, *J. of Marriage and the Family*, 51: P. 79; P. Allison and F. Furstenberg, (1989) *How Marital Dissolution Affects Children: Variations by Age and Sex*, *Developmental Psychology*, 25: P. 540; Amato, P. & Keith, B. (1991) *Parental divorce and the well-being of children: a meta-analysis*, *Psych. Bull.* 110: P. 26.

¹² L. Bumpas et al, (1991) *The Impact of Family Background and Early Marital Factors on Marital Disruption*, *J. of Family Issues*, 12: P. 22; D. Hernandez, (1988) *Demographic Trends and the Living Arrangements of Children*, In Heatherington, E.M. & Arasteh, J. *Impact of Divorce, Single Parenting and Stepparenting on Children*; A. Norton and J. Moorman, (1987) *Current Trends in Marriage and Divorce Among American Women*, *J. of Marriage and the Family*, 49: P. 3.

¹³ S. Danziger and N. Radin, (1990) *Absent Does Not Equal Uninvolved: Predictors of Fathering in Teen Mother Families*, *J. of Marriage and the Family*, 52: P. 636; D. Eggebeen et al, (1990) *Patterns of Adult Male Co-residence Among Children of Adolescent Mothers*, *Family Planning Perspectives*, 22: P. 219; J. Hardy, et al, (1989) *Fathers of Children Born to Young Urban Mothers*, *Family Planning Perspectives*, 21: P. 159; F. Mott, (1990) *When is a Father Really Gone? Paternal-Child Contact in Father-absent Homes*. *Demography*, 21: P. 499.

¹⁴ S. Harkness, (1992) *Cross-Cultural Research on Child Development: A Sample of the State of the Art*, *Developmental Psychology*, 28: P. 622; H. McGurk et al, (1993) *Controversy, Theory, and Social Context in Contemporary Day Care Research*, *J. of Child Psychology and Psychiatry*, 34: P. 3; J. Jackson, (1993) *Multiple Care-giving Among African Americans and Infant Attachment: The Need for an Approach*, *Human Development*, 3: P. 87; C. Coll, (1990) *Developmental Outcome of Minority Infants: A Process-oriented Look into our Beginnings*, *Child Development*, 61: P. 270; A. Harrison et al, (1990) *Family Ecologies of Ethnic Minority Children*, *Child Development*, 31: P. 347. For a thorough discussion of this issue, see M. Whiteside, (1996) *An Integrative Review of the Literature Relevant to Custody for Children Five Years of Age and Younger*, (Ad. Offices of the Court, State of Calif.).

multiple caregiver approach as supporting the adjustment of the child and that the maternal/child and the paternal/child attachments are both important.

- b) There have been five studies that look specifically at schedules for infants, toddlers and preschool age children. Those studies clearly identify children in that age group as at risk, but the schedule itself does not appear to be the risk factor. The risk factors involve the quality of parenting in the two homes, the willingness and ability of the parents to coordinate their homes and parenting so that the parents approach key developmental tasks similarly or the same, smooth transitions from parent to parent and the mental health of the parents. In other words, young children are particularly vulnerable and require a good deal of effort by the parents to protect the child from risks.
- c) Mainstream United States culture at this point in history includes strong beliefs about the exclusivity of mother-child bonding and about an assumed lack of competence of fathers in child rearing.¹⁵ Science does not support either of these beliefs. Rather, science suggests that children do best with multiple caregivers, including fathers, and that fathers are as capable of parenting as are mothers.
- d) Fathers in intact marriages often display different but equally important styles in parenting than mothers¹⁶ and typically spend less time with children than mothers. Both mothers and fathers spend more time with young children than with older children. Fathers after divorce adapt to new role demands well and perform the functions of parenting as well as mothers, whether in shared custody or as primary custody parents.¹⁷
- e) In a particular family, pre-separation gender linked expectations and roles can lead to expectations on the part of one or both parents that the post-separation roles will remain the same. Pre-separation differences in parental levels of involvement and commitment to childcare tend to remain stable over time. Unless encouraged and supported to continue/increase involvement early in the separation, fathers are likely to become increasingly peripheral in decision-making, time and involvement, and commitment. Since father involvement correlates with child adjustment, the schedule should encourage and support early and continuing father involvement with the child.

Conclusion: A residential schedule should include substantial time with both parents, unless there are important factors contraindicating this (e.g. high conflict; a parent with substantially poor parenting skills; a parent with conduct disturbances such as violence or substance abuse; and so on).

¹⁵ G. Russell, (1986) *Primary Caretaking and Role Sharing Fathers*, in Lamb, M. (Ed.) *The Father's Role: Applied Perspectives*.

¹⁶ M. Lamb, (1986) *The Changing Roles of Fathers*, In Lamb, supra note 13; V. Phares, (1993) *Father Absence, Mother Love, and Other Family Issues that Need to be Questioned: Comments on Silverstein*, *J. of Family Psychology*, 7: P. 293.

¹⁷ C. Richards & I. Goldenberg, (1986) *Fathers with Joint Physical Custody of Young Children: A Preliminary Look*, *Amer. J. of Family Therapy*, 14: P. 154; S. Hanson, (1985) *Fatherhood*, *Amer. Behavioral Scientist*, 29: P. 55; N. Radin, (1986) *Primary Caregiving and Rolesharing Fathers*, In M. Lamb, supra note 13; G. Russell, supra note 13; G. Russell & M. Radojevic, (1992) *The Changing Role of Fathers? Current Understandings and Future Directions for Research and Practice*, *Infant Mental Health J.* 3: P. 296; Truax and Carkuff, (1991) in Hodges, supra note 8.

There are exceptions to this rule. Research has found that there are risk groups in which shared residential schedules might do more harm than good to the adjustment of children. For example, whereas the satisfaction rates of children in low conflict/high cooperation families is higher for children in shared than in primary arrangements, the satisfaction rates of children in high conflict/low cooperation families is lower for children in shared schedules when compared to primary schedules.¹⁸ Additionally, the level of conflict predicts more adjustment problems in high conflict cases with shared schedules than in primary schedules.¹⁹ There are also special considerations with infants and toddlers in deciding on a schedule, in some instances making primary schedules superior to shared schedules.²⁰

2) Another **gender issue** that is both sometimes overlooked and overused is the gender of the parent match with the gender of the child. There is reasonably good research on this issue, suggesting that children (in the 5 to 12 year old age range) generally do better in a residential schedule (when primary custody is the issue) with the same sexed parent.²¹ There is supporting evidence in the research on loss of parents through death, that is, that children will generally do better if the loss is of the opposite sexed parent.²² The implications of this are obvious, but a number of researchers have cautioned us to not over-interpret these results and develop social policy of placing children with the same-sexed parent. Although the use of this data might be somewhat controversial, there is little controversy about the conclusion that children will do best if they have *an adequate amount of involvement with the same sexed parent*, though this does not necessarily mean a primary residence with that parent. There other factors that may counter-balance this factor, also, such as the relative quality of parenting of the two parents and the sibling group. Another important finding is that adolescent boys are less likely to be delinquent, less prone to antisocial behavior and depression, and less likely to drop out of school if placed with

¹⁸ McIntosh, Smyth and Kelaher, (2010) *Parenting Arrangements Post-Separation: Patterns and Developmental Outcomes*. Report to the Australian Government.

¹⁹ *Ibid*.

²⁰ McIntosh, Smyth and Kelaher, (2010) *Relationships between Overnight Care Patterns and Psycho-Emotional Development in Infants and Young Children*. Report to the Australian Government. Solomon, J. *Parenting Schedules for the very young child: Summary of a longitudinal study on the development of attachment in separated and divorced families*, unpublished research. Solomon, J. & George, C. (1999) *The development of attachment in separated and divorced families: Effects of overnight visitation, parent and couple variables*. Attachment and Human Development, 1: P. 2. Herzog, J. (1980) *Sleep Disturbance and Father Hunger in 18-28 month boys - The Erlkonig Syndrome*. Tornello, et al (2013).

²¹ J. Santrock & R. Warshak, (1979) *Father Custody and Social Development in Boys and Girls*, J. of Social Issues, 35: P. 112; Camara, K. and Resnick, G. (1989) *Styles of conflict resolution and cooperation between divorced parents: Effects on child behavior and adjustment*, Am. J. of Orthopsychiatry, 59: P. 560; J. Peterson and N. Zill, (1986) *Marital disruption, parent-child relationships, and behavior problems in children*, J. of marriage and the Family, 48: P. 295; R. Warshak, (1986) *Father Custody and Child Development: A Review and Analysis of Psychological Research*, Behavioral Sciences and the Law, 8: P. 2.

²² Hodges, *supra* note 8.

fathers.²³ Care should be taken to not over-interpret these findings, because in many mother custody homes with boys, the father has abandoned the family and socio-economic factors might also come into play. What is relevant here is that the role of fathers appears to be of particular significance to the development of boys. Although perhaps less significant to girls, father involvement does in fact predict important parts of the girls long-term adjustment. The quality of the father-daughter relationship, for example, is the primary predictor of later marital success of the daughter.

Conclusion: While both parents are very important to the overall healthy development of the child, it is particularly important for children to have sufficient/substantial time with the same gender parent.

- 3) **Single parenting vs. shared parenting.** There is sound research that describes the pervasive and negative effects of single parenting on fathers²⁴ and mothers.²⁵ Frequency of contact with the non-custodial parent may not be as important as the quality of the father-child relationship.²⁶ There is a high correlation, however, between frequency and quality.²⁷ In other words, fathers who have a high quality relationship do not have to have frequent contact to accomplish this, but as a group, they tend to. This should not surprise us. High quality father-child relationships are highly likely to have fathers who are

²³ Gregory, I. (1965) *Anterospective date following childhood loss of a parent*, Arch. Gen. Psychiatry, 13: P. 99; Peterson, J. & Zill, N. *supra* note 16; Zimiles, H. & Lee, V. (1991) *Adolescent family structure and educational progress*, Developmental Psychology, 27: P. 314.

²⁴ J. R. Dudley, (1991) Increasing our understanding of divorced fathers who have infrequent contact with their children, *Family Relations*, 40: P. 279; J. R. Dudley, (1991) Exploring a way to get divorced fathers to comply willingly with child support agreements, *J. of Divorce and Remarriage*, 16: P. 121; E. M. Heatherington and K. A. Camara, (1984) Families in transition: The processes of dissolution and reconstitution, *Review of Child Development Research*, 7: P. 398; E. Kruk, (1992) Psychological and structural factors contributing to the disengagement of noncustodial pre- and post-divorce father-child relationships: New evidence regarding paternal disengagement, *J. of Divorce and Remarriage*, 16: P. 195.

²⁵ Hodges, *supra* note 8; J. Pearson, (1985) *Report on visitation, child adjustment and child support*, Office of Child Support Enforcement, Denver CO; J. Pearson and N. Thoennes, (1990) *Custody after divorce: Demographic and attitudinal patterns*, Am. J. of Orthopsychiatry, 6: P. 233.

²⁶ E. E. Maccoby et al, (1993) *Postdivorce roles of mothers and fathers in the lives of their children*, J. of Family Psychology, 7: P. 24; W. F. Hodges et al, (1991) *Infant and toddlers and post divorce parental access: An initial exploration*, J. of Divorce and Remarriage, 17: P. 239; M. B. Isaacs, (1988) *The visitation schedule and child adjustment: A three year study*, Family Process, 27: P. 251; M. Kline et al, (1989) *Children's adjustment in joint and sole physical custody families*, Developmental Psychology, 25: P. 430; N. Zill, et al, (1993) *Long-term effects of parental divorce on parent-child relationships, adjustment, and achievement in young adulthood*, J. of Family Psychology, 2: P. 91.

²⁷ Clarke-Stewart, K. A. & Hayward, C. (1996) *Advantages of father custody and contact for the psychological well-being of school-age children*, J. Applied Developmental Psychology, 17: P. 239.

very interested in their children and their children's activities, come to school events, go to extracurricular events, perhaps even coach teams, make a point of seeing the child when possible and so on. Thus, although frequency is not a prerequisite to a high quality relationship, frequency tends to reflect the high interest level and strong bonding that a high quality relationship probably also reflects. Supporting this interpretation is a study that found that the pre-divorce quality of father—child relationships predict the post-divorce quality.²⁸ It should be noted that across at least 21 studies, fathers report more frequent contact than do mothers. Fathers might overestimate their involvement and mothers might underestimate that involvement.

Duration and regularity of contact appears more directly related to child adjustment than total amount of time. Fathers' post-separation relationship with the child appears to depend on several factors, including: age of the child at the time of the separation; level of pre-separation involvement; the father's post-separation adjustment; and the level of parental cooperation versus conflict. Mothers' confidence in the father's parenting abilities may also affect the level of father involvement. However, the low level of confidence is more related to parental conflict which may be the causative factor. One study, interestingly, found that child adjustment related to the confidence that father's had in mothers but not in the confidence that mothers had in fathers.²⁹

Even when child adjustment is reasonably good in the absence of father involvement, these children tend to report feelings of abandonment, longing, and emotional pain. Existing research supports that in cases of low to moderate parental conflict and where the relationship between the child and the father is reasonably good, more father involvement contributes substantially to child adjustment, and to the emotional experience of the child, supports fulfilling other parental financial responsibilities, and has a positive impact on the post-separation adjustment of both parents. The mother-child relationship appears to be better if the father is actively involved.

There has been controversy about the importance of frequency of contact to the quality of the father-child relationship. Some research has not found a consistent relationship between the frequency of contact and the quality of the relationship. However, the bulk of the research and, in particular, the research with good methodology, has found a direct correlation between frequency and the quality of the relationship. These are correlation findings, which raises an interesting question: are fathers who take an active interest in their children to begin with more likely to see them frequently? In other words, perhaps it is not the frequent contact that is predictive; perhaps it is the kind of father who pushes for or is gladly given frequent contact is also the kind of father who is likely to have a good relationship with the child.

Conclusion: Frequent regular contact between the child and both parents, with breaks from child care for both parents, leads to better quality relationships in both homes between the parents and the child, higher satisfaction in children, and better outcomes.

²⁸ Poortman, A. (2018) Post-Divorce Parent-Child Contact and Child Well-Being: the Importance of Pre-Divorce Parental Involvement. *J. of Marriage and the Family*, 80, P. 671-693.

²⁹ McIntosh, J.E. & Chisholm, R. (2008). Cautionary notes on the shared care of children in conflicted parental separations. *Journal of Family Studies*. 14(1), 37-52.

4) **Joint Residential Schedules vs. Primary Residential Schedules.**

In a review of 21 studies, Benjamin and Irving concluded that so compelling are the findings that joint custody and shared residences “should be a legal presumption.”³⁰ Others seem to have arrived at the same conclusion.³¹ Perhaps they are correct. Substantial residential time with both parents increases the chances that both parents will be involved in all aspects of the child’s life. However, this can also be accomplished through a variety of residential schedules if attention is paid to establishing a cooperative relationship between parents. For example, flexibility in the schedule, that is, parents willing to trade times, start and stop times earlier or later depending on circumstances, allow additional access times with the child and so on, is a key factor in determining outcomes for children. Parents with rigid inflexible schedules, implying a poor working relationship, have children who are less satisfied and likely to have more problems than parents with flexible schedules, regardless of whether it is a shared parenting schedule or a primary parenting schedule.³²

We have studied family situations in which divorces have occurred but in which the children do very well. One of the keynote characteristics of these *successful* parents is that they are flexible, not only with the schedule itself, but in providing regular access to the child for the parents, to the parents for the child, and to the child’s activities outside of the home. In a highly flexible family system like this, the residential schedule is unlikely to be an important factor in the adjustment of the child.

A series of studies were highlighted in the October Family Court Review in 2017. Those studies included an incidence study of primary vs. shared physical placement, highlighting Wisconsin as having the highest rate of shared physical custody in the United States.³³ Other studies looked at shared physical placement schedules in Norway, Belgium, Australia, Canada, the United Kingdom and the Netherlands. The findings of those studies might or might not be applicable to the United States. Belgium and the Netherlands, for example, have very high divorce rates and a culture of amicable post-divorce relationships. Research, such as that of William F. Hodges in Boulder Colorado found that if divorce and post-divorce amicable parent relationships are the norm, children demonstrate no negative post-divorce reactions. The culture in Australia continues to emphasize mothers as caregivers to children and fathers much less so.

Many of the studies looking at father involvement, particularly frequency of involvement, find significant, but small effects. However, when those studies look specifically at fathers who are actively involved in various aspects of the child’s life, those effects are large. For example, in one study, looking at father

³⁰ Benjamin, m. & Iurving, H. (1989) *Shared parenting: A critical review of the research literature*. Family and Conciliation Courts Review, 27: P. 127.

³¹ Amato, P. R. & Gilbreth, J.G. (1999) *Non-resident fathers and children’s well-being: A meta-analysis*, J. of Marriage and the Family, 61: P. 557.

³² E.g. see McIntosh *et al*, *supra* note 18 and 27.

³³ Meyer, D. (2017) October Family Court Review.

involvement with school, children who had father involvement were significantly more likely to do well academically, behaviorally and socially.³⁴

Conclusion: If parents can work cooperatively with one another on access and flexibility, oftentimes meaning that specific procedures be devised for going off schedule, for changing the schedule, for jointly attending activities, and for keeping extended family available to the child across homes, the range of residential schedules that is likely to work well for the child is broad.

- 5) **Family Chaos.** There is often a fear on the part of the court to award any form of shared-care schedule in families marred by high levels of parental conflict. This fear has been supported by some research that has found that in some high conflict families, the pattern of conflict not only continues past divorce but will often spiral downwards into increasingly dysfunctional family life.³⁵ Some researchers have also found that in these downward spiraling high conflict families, children were likely to do better in sole residential schedules than in any form of shared schedule.³⁶

There are two basic forms of parental conflict following a divorce. In the first, parental conflict is only one of many symptoms of problems exhibited by one or both parents. These families have been called "chaotic" or "anti-social."³⁷ These families comprise about 5-10% of all divorcing parents. In addition to the conflict with each other, the functioning of one or both parents usually includes: substance abuse; domestic violence; low income and unstable job patterns; high use of punitive parenting practices; low parenting skills; and lives characterized by many disruptions in stable functioning. Exposure of children to the chronically and oftentimes violent conflict in these families through frequent parent-child contact with both parents has clearly been demonstrated to be harmful to children and children are likely to be better in single parent arrangements.³⁸ It is in these families that we see with some frequency such extreme forms of parental conflict as parental alienation syndrome and brainwashing.³⁹

³⁴ Nord, *et al*, (1997) *Father's involvement in their children's schools*, U.S. Department of Education.

³⁵ M. Isaacs *et al*, (1986) *The Difficult Divorce*; J. Johnston and L. Campbell, (1988) *Impasses of Divorce*.

³⁶ Tschann *et al*, (1990) *Conflict, loss, change and parent-child relationships: predicting children's adjustment after divorce*. *J. Divorce*, 13: P. 1.

³⁷ Hawkins & Eggebeen, *supra* note 11; G. Patterson and D. Capaldi, (1991) *Antisocial Parents: Unskilled and Vulnerable, in Family Transitions* (P. Cowan and E. Heatherington, eds.); Simons *et al*, *supra* note 8.

³⁸ C. Buchanan *et al*, (1991) *Caught Between Parents: Adolescents' Experience in Divorced Homes*, *Child Development*, 62: P. 1008; Camara and Resnick, *supra* note 18; E. Heatherington, (1989) *Coping with Family Transitions: Winners, Losers, and Survivors*. *Child Development*, 60: P. 1; Johnston and Campbell, *supra* note 26; S. Steinman *et al*, (1985) *A Study of Parents who Sought Joint Custody Following Divorce: Who Reaches Agreement and Sustains Joint Custody and Who Returns to Court*, *J. of the Amer. Academy of Child Psychiatry*, 24: P. 554.

³⁹ Clawar and Rivlin, (1989) *Children Held Hostage*; American Bar Association.

The second form of parental conflict might best be described as conflict related to the separation itself, including unresolved marital problems, compounded by disputes related to the divorce, including both financial disputes and disputes as to the custody of the children.⁴⁰ This form of parental conflict is responsive (i.e. tends to improve) to parent education and specialized forms of counseling and tends to diminish over time, though more slowly, even without intervention. One of the interesting findings in a major Australian study was that while levels of conflict were reported to decrease by parents in shared residential schedules, the children reported no decrease in the conflict over 4 years and no decrease in the degree to which they, the children, felt "caught in the middle" of that conflict.⁴¹

In this latter form of conflict, research has also found different dimensions of parental conflict. These will be described in more detail in a later paragraph. Relevant here, not all conflict is harmful to children. The severity, frequency, and manner in which the child is exposed correlate to child adjustment.⁴² Many parents are able to separate their marital feelings from parenting responsibilities and protect their children from exposure to harmful conflict.⁴³ Even parents who expose their children to damaging conflict shortly after the separation tend to improve over time.

The court will at times attempt to reduce conflict by restraining or restricting contact and/or the need for contact between parents. However, more frequent contact between parents (of the separation type of conflict) has been found to correlate with better parental cooperation, better parenting practices, and better child adjustment over time.⁴⁴ Given that patterns established at the time of the

⁴⁰ C. Depner et al, (1992) *Interparental Conflict and Child Adjustment: A Decade Review and Meta-analysis*. *Family and Conciliation Courts Review*, 30: P. 323; Coysh et al, (1989) *Parental Post-divorce Adjustment in Joint and Sole Physical Custody Families*. *J. Family Issues*, 10: P. 52; Maccoby and Mnookin, (1992) *Dividing the Child: Dilemmas of Custody*; Emery, R.A. (1996) *Renegotiating Family Relations*.

⁴¹ McIntosh et al, *supra* note 18.

⁴² C. Ahrons, (1980) *Joint Custody Arrangements in the Post-Divorce Family*. *J. of Divorce*, 30: P. 189; M. Bowman & C. Ahrons, (1985) *Impact of Legal Custody Status on Father's Parenting Post-Divorce*, *J. of Marriage and the Family*, 47: P. 481; A. Fishel, (1987) *Children's Adjustment in Divorced Families*, *Youth and Society*, 19: P. 173; J. Goldsmith, (1980) *Relationships Between Former Spouses: Descriptive Findings*, *J. of Divorce*, 4: P. 1; J. Kelly & L. Gigy, (1989) *Divorce Mediation: Characteristics of Clients and Outcomes*, *In Mediation Research: The Process and Effectiveness of Third Party Intervention*; Maccoby and Mnookin, *supra* note 31; S. Machida and S. Holloway, (1991) *The Relationship Between Divorced Mothers' Perceived Control Over Child Rearing and Children's Post-Divorce Development*, *Family Relations*, 4: P. 272; C. Masheter, (1991) *Post-Divorce Relationships Between Ex-spouses: The Roles of Attachment and Interpersonal Conflict*, *J. of Marriage and the Family*, 53: P. 103; Pearson and Thoennes, *supra* note 20.

⁴³ Buchanan et al, *supra* note 29; E. Heatherington, (1991) *The Role of Individual Differences and Family Relationships in Children's Coping with Divorce and Remarriage*, *In Families in Transition* (Cowans and Heatherington, eds.); Tschann et al, *supra* note 27; Kline et al, *supra* note 23.

⁴⁴ Johnston et al, (1989) *Ongoing Post-Divorce Conflict: Effects on Children of Joint Custody and Frequent Access*, *Amer. J. of Orthopsychiatry*, 59: P. 576; Kalter, *supra* note 6; Maccoby and Mnookin, *supra* note 31; R. McKinnon and J. Wallerstein, (1986) *Joint Custody and the Preschool Child*, *Family and Conciliation Courts Review*,

separation tend to persist over time, the wisdom of applying enforced restrictions on parent contact and communication, as a blanket strategy is questionable. In game theory, restricted communication between parties tends to move the most stable point of interacting between two parties into increasing conflict. Yet frequent contact between parents in the minority of cases when the conflict is the chaotic/antisocial type is likely to be very damaging and even dangerous.

Conclusion: The fear of imposing schedules with frequent contact between parents is well founded in a small minority of cases. They are, however, unfounded and perhaps even harmful in the majority of cases. Determining whether a high conflict case is the chaotic/antisocial type or a separation conflict type is critical, therefore, in the application of restrictions on parent contact, on parent-child contact, and to the use of default schedules.

- 6) **The conflict/cooperation continuum.** In this last section, the issue of conflict was described from one vantage point. The parental relationship, however, appears to be a primary determinant of child adjustment and as such, should be included as a major factor. Science has demonstrated that certain types of parental conflict are harmful to child adjustment.⁴⁵ Others have clearly demonstrated that the ideal is not just the absence of conflict. The positive characteristics of communication, cooperation, and conflict resolution have a direct impact on child adjustment.⁴⁶ For example, frequent and intense conflict between parents does not appear harmful if: the content of the conflict are legitimate disputes on parenting issues; the level of conflict does not include personal attacking and blaming; and the parents are able to resolve the dispute. Steinman et al (1985), for example, found that successfully cooperating parents did not report fewer disputes or even lower levels of disagreement than unsuccessful parents did, they simply reported lower levels of emotional hostility toward the other parent. It is reassuring that parents do not need to be more agreeable to be successful; they simply need to contain the disagreement and learn to resolve disputes.

The factors related to conflict that are relevant to our purposes here are the following:

2: P. 169; B. Bloom and K. Kindle, (1985) *Demographic Factors in the Continuing Relationship Between Former Spouses*, Family Relations, P. 375.

⁴⁵ Buchanan et al, *supra* note 29; Camara and Resnick, *supra* note 18; Heatherington, *supra* note 27; Johnston and Campbell, *supra* note 26; Steinman et al, *supra* note 27; E. Cummings & P. Davies, (1994) *Children and Marital Conflict*. For a good summary of the effects of parental conflict, see Amato and Keith, *supra* note 3.

⁴⁶ C. Ahrons and R. Rogers, (1987) *Divorced Families*; Braver et al, (1991) *Frequency of visitation by divorced fathers: differences in reports by fathers and mothers*. Amer. J. of Orthopsychiatry, 61: P. 448; Camara and Resnick, *supra* note 18; Maccoby and Mnookin, *supra* note 31; M. Whiteside, (1998) *The Parental Alliance Following a Divorce: An Overview*, J. of Marital and Family Therapy, 24: P. 3.

- a) Frequency of conflict. Overall, the frequency of conflict does not appear to affect child adjustment. Gottman⁴⁷ found this true in married couples also, that is that the frequency of marital disagreement did not predict marital dysfunction. The frequency is less an issue than the remaining factors, except that in negative conflict, the more frequent, the more damaging.
- b) Level of emotional hostility and blaming. About 80% of divorcing parents report mild to moderate levels of emotional hostility. The remaining 20% (13-28% depending on the research) present the hostile blaming problems we associate with high conflict cases. These types of parent relationships are also characterized by low levels of trust in the capacity of the other parent to parent well and in fact both parents are likely to display poor parenting practices.
- c) Content. In both low and high conflict families, the content tends to focus not only on parenting issues but also on almost all other issues. The primary differences between the two groups are: when parents are able to cooperate on parenting issues *independent of other conflicts*, they are much more likely to have warm and communicative relationships with their children and better adjusted children and when parents are able to stick to the issue of disagreement (e.g. which rated movies the child can watch) they are more likely to resolve the dispute than when they resort to personal attacks and blaming.
- d) Mode of expression. Verbal attacks and physical aggression are most likely to produce poor parenting relationships and poor child adjustment.
- e) Conflict Resolution. The ability of parents to resolve their disputes successfully appears to be a critical factor in ameliorating all other effects of parental conflict on child adjustment.
- f) Exposure of the child to the conflict. It appears that children can witness parental disagreement if the mode of expression is good, the level of emotional hostility is low and the conflict is resolved. It is when the child is exposed to high levels of emotional hostility, to attacking and blaming expressions, and to unresolved conflict that the child ends up "caught in the middle." It is this form of exposure that is harmful.

The effect of negative conflict (the negative factors above) has been well documented and too extensive to present briefly here. In brief, every aspect of child adjustment is adversely affected, as is the quality of the parent/child attachments with both parents. It has also been found that the parents who engage in these types of relationships tend to have substantially poorer parenting practices and model poor social skills.

The converse appears true of parents who demonstrate positive conflict management. These parents show good parenting practices, warm harmonious parent/child relationships, promote good social skills, have much better adjusted children and are more likely to be supportive of the relationship between the child and the other parent.⁴⁸

⁴⁷ Gottman, J. (1993) *The roles of conflict, engagement, escalation, and avoidance in marital interaction: a longitudinal view of five types of couples*. J. of Consulting and Clinical Psych., 61: P. 6.

⁴⁸ J. Belsky, (1990) Parental and NonParental Child Care and Children's Socioeconomic Development: Children of the National Survey of Youth, J. of Marriage and the Family, 52: P. 885; P. Cowan & C. Cowan, (1988) Changes in Marriage during the Transition to Parenthood: Must We Blame the Baby? In *The Transition to Parenthood: Current Theory and Research* (G. Michaels & W. Goldberg, eds.); S. Gable et al, (1992) Marriage, Parenting, and Child Development: Progress and Prospects, J. of Family Psychology, 5: P. 276; P. Howes and H. Markman, (1989)

Conclusion: No single factor more directly relates to the post-separation child adjustment than the parental relationship. Not only is the negative dimension of parent conflict detrimental, the positive dimension of parent cooperation is critical to child adjustment. The younger the child, the more communication and cooperation is required. The definition of positive coparenting includes:

- 1) Frequency (at least once per week) and content (child focused) of communication about the children.**
- 2) Decisions are shared; rules, routines, chores and responsibilities, discipline, and expectations are coordinated between households.**
- 3) Disagreements are resolved. Negotiation process is effective.**
- 4) Parents support and respect the other parent's role as parent.**
- 5) A positive evaluation of the other parent's competency as a parent.**
- 6) Flexible access arrangements.**
- 7) Transitions are managed smoothly.**

7. The support systems. Extended family, school, preschool, neighbors, day care providers, friends, coaches and others all make up the support systems for both the child and the parents. The quality of this support network has been shown to predict post-separation adjustment of the parents.⁴⁹ The quality of the attachments of parents to extended family, however, can be positive or negative and as such can predict parental adjustment to divorce.⁵⁰ Overly involved grandparents, for example, can increase stress for the parent, increase conflict between parents, and expose the child to a broader type of conflict. However, in general, the greater in breadth and higher in quality the support systems, the better the likelihood that the child will do well in the long run. Professionals often underestimate the importance of this factor, especially in older children. We often look at a child who is doing well in one setting (e.g. a small town, a school, a circle of friends), for example, and see the child as well-adjusted, likely able to do well in a different setting. What we forget is how vulnerable children are, even in their teens, to a change in the context that supports their doing well.

Marital Quality and Child Functioning: A Longitudinal Investigation, Child Development, 60: P. 1044; Ahrons and Rogers, *supra* note 34. Steinman *supra* note 27; Camara and Resnick, *supra* note 18; J. Kelly, (1988) *Long Term Adjustment of Children of Divorce: Converging Findings and Implications*, J. of Family Psychology, 2: P. 119; Maccoby and Mnookin, *supra* note 31.

⁴⁹ R. Del Carmen and G.N. Virgo, (1993) *Marital disruption and nonresidential parenting: A multicultural perspective*. In *Nonresidential Parenting: New Vistas in Family Living* (C.E. Depner and J.H. Bray, eds.); M. B. Isaacs and G. H. Leon, (1988) *Race, marital dissolution and visitation: An examination of adaptive family strategies*. J. of Divorce, 11: P. 17; K. D. Gray, (1992) *Fathers' participation in child custody arrangements among Hispanic, Non-Hispanic White and intermarried families*, J. of Comparative Family Studies, 23: P. 55; W. L. Parish et al, (1991) *Family support networks, welfare, and work among young mothers*, J. of Marriage and the Family, 53: P. 203; M. Whiteside, *supra* note 14.

⁵⁰ J. Johnston and L. E. G. Campbell, (1986) *Tribal Warfare: the involvement of extended kin and significant others in custody and access disputes*, Conciliation and Family Courts Review, 2: P. 1.

The issue of non-parental daycare is one of controversy, especially when the other parent is available to care for the child. Since divorce often leads to increased non-parental childcare⁵¹ and since the availability of one parent during custody time with the other parent often becomes a source of conflict, this issue is important. Scientific research has produced divergent findings. At one end, the amount of daycare versus parent-care can affect the attachment and adjustment of the child. At the other, researchers have documented improved child adjustment and improved parent-child relationships with increased childcare, especially when related to maternal employment. Daycare itself does not seem to be the determinant factor. The factors that appear determinative are the relative quality of the care provided by the mother, the father and the daycare, and the effect of maternal employment on socio-economic status.⁵²

Conclusion: The degree to which the schedule preserves the positive support systems for the child and the parents, the interests of the child are served. There is no inherent advantage of parent care over childcare. The quality of care is more important. However, if the quality of care by parents is good, the importance of the parent-child attachment to the long-term adjustment of the child should be considered superior. If the quality of care of a parent is equal to or superior to that of a daycare, time with the parent should have priority. The exception is preschool age children (3-5 years old). Regular attendance of preschool has been shown to correlate with better academic and social adjustment in the elementary school grades. The other exception is that when maternal employment improves the socio-economic status of the family, childcare may be preferable to parent care.

- 8. Quality of parenting.** High quality parenting includes providing warmth,⁵³ structure and guidance, high standards, and support,⁵⁴ and good instruction and negotiation of control issues.⁵⁵ Poor quality parenting includes coercive rigid authority, permissive and neglectful styles, and cool and rejecting styles.⁵⁶ Additionally, good parenting practices include cognitive stimulation with

⁵¹ G. J. Duncan and S. D. Hoffman, (1985) *Economic consequences of marital instability*. In *Horizontal Equity, Uncertainty, and Well-Being* (M. David and T. Smeeding, eds.).

⁵² H. McGurk *et al*, (1993) *Controversy, theory and social context in contemporary day care research*, *J. of Child Psychology and Psychiatry*, 34: P. 3; K. A. Clarke-Stewart, (1989) *Infant day care: Maligned or malignant?* *American Psychologist*, 44: P. 266; J. Belsky and D. Eggebeen, (1991) *Early and extensive maternal employment and young children's socioemotional development: Children of the national longitudinal survey of youth*, *J. of Marriage and the Family*, 51: P. 1083.

⁵³ W. F. Hodges *et al*, (1983) *Parent-child relationships and adjustment in preschool children in divorced and intact families*, *J. of Divorce*, 2: P. 43.

⁵⁴ D. Baumrind, (1967) *Childcare practices anteceding three patterns of preschool behavior*, *Genetic Psychology Monographs*, 75: P. 43.

⁵⁵ M. D. S. Ainsworth, (1988) *Patterns of infant-mother attachment as related to maternal care: Their early history and their contribution to continuity*. In D. Magnusson and U. L. Allen (Eds.) *Human Development: An Interactional Perspective*.

⁵⁶ Baumrind, *supra* note 42; E. M. Heatherington, (1989) *Coping with family transitions: Winners, losers, and survivors*, *Child Development*, 60: P. 1; J. Guidubaldi, *et al*, (1986) *The role of selected family environment factors in children's post-divorce adjustment*, *Family Relations*, 35: P. 141; I. Bretherton and E. Waters

toys, books, reading, language stimulation, modeling social maturity, stimulation of academic behavior, exhibiting pride, affection and warmth, and exposure both within the home and out of the home to a variety of stimulation and activities.⁵⁷ These parenting practices and positive parent-child attachment correlate highly with child adjustment, both in an intact family and with separated parents.

The quality of parenting has been associated with socio-economic status, educational level of parents, support systems, and cooperation between parents both in marital and divorce families. Divorce threatens socio-economic status, splitting of support systems, and parental cooperation. The schedule should re-institute these factors to the degree possible. Other divorce law and policy should support retaining as high a level of socio-economic status as possible and should promote education, particularly as it applies to parenting practices.

Conclusion: High quality parenting correlates with good child adjustment. Although there are many books and opinions regarding what constitutes high quality parenting, including opinions heavily influenced by current cultural myths and popular culture, research based measures of quality parenting suggest only five basic skill areas.

- 1) Authoritative parenting, including protection and limit setting.**
- 2) Nurturance; warmth; pride; and affection.**
- 3) High standards and clear expectations.**
- 4) Intellectual stimulation and exposure to diverse activities, including monitoring those activities.**
- 5) Good instruction, teaching negotiation of control issues in relationships, and modeling social maturity.**

9. Socio-economic status (SES). SES has repeatedly been found to correlate both with parent adjustment and child adjustment. Divorce has been shown to lower the SES of single mothers especially if the spouses are young, often dropping the primary residence into the poverty level.

Through tougher legislation and enforcement of child support, this situation has improved, but the method that is most likely to improve the situation over time is to promote father involvement with the child. Many studies have clearly demonstrated that fathers, who are more involved with the children, by having an increased amount of residential time, are more likely to develop positive attachments to their children, remain involved over time, and pay child support.

(Eds), (1985) Growing Points of Attachment Theory and Research, Monographs of the Society for Research in Child Development, Vol. 50, Nos. 1-2, Serial No. 209.

⁵⁷ N. D. Colletta, (1979) The impact of divorce: Father absence or poverty? J. of Divorce, 3: P. 27; N. Colletta, (1983) Stressful lives: The situation of divorced mothers and their children, J. of Divorce, 6: P. 19; C. E. MacKinnon et al, (1982) The effects of divorce and maternal employment on the home environments of preschool children, Child Development, 51: P. 1392; C. E. MacKinnon et al, (1984) The impact of maternal employment and family form on children's sex-role stereotypes and mother's traditional attitudes, J. of Divorce, 8: P. 51; C. E. MacKinnon et al, (1986) The longitudinal effects of divorce and maternal employment on the home environments of preschool children, J. of Divorce, 9: P. 65; S. K. Karr and B. Easley, (1986) Exploration of effects of divorce on the preschool home inventory, Psychological Reports, 59: P. 659.

Conclusion: Divorce threatens the Socio-economic status of children. Keeping children and their parent(s) above poverty line assists in child adjustment. If the family is below poverty live, some divorce agreements can assist the family in rising above poverty. Aside from this issue of poverty, the relative economic differences between divorced spouses have not been shown to affect child adjustment.

10. Father involvement. The bulk of the research on father involvement is by its very nature socially and politically biased. Father involvement has largely been studied because it is typically the father who, through choice or a variety of socio-political-economic pressures, is typically less involved after separation.⁵⁸ The best way to read the research on this factor is to see the comparisons as between children who are raised with the active involvement of two parents versus children who are raised primarily or entirely by one parent. What little research that exists on mother involvement⁵⁹ as the non-custodial parent suggests similar findings for more or less mother involvement.

Conclusion: We have provided more extensive information about the value of post-divorce father involvement with children in a separate review.⁶⁰ In brief, frequent, regular, and substantial contact between children and fathers correlates with high quality parent-child relationships for both parents, better quality of parenting, and with good outcomes on every aspect of child adjustment that has been measured. Although we do not have much research on which to rely, it is reasonable to extrapolate from these findings and conclude that post-divorce mother involvement with children is also critical to adjustment and development.

11. Mental Health of Parents. A number of mental health issues may be relevant to the development of the schedule. Some conduct disorders, for example (e.g. intermittent explosive disorder), or alcohol and drug issues have been found to affect the quality of the parent-child relationship and child adjustment.⁶¹ Factors in mothers may be complicated since some symptoms of emotional problems may be more due to the oppressive tasks of single parenting and the lowered SES resulting from divorce.⁶² Maternal depression and anxiety have been found related to child adjustment. Depressed mothers are more likely to perceive children as negative and are less likely to be involved with their children and to provide their children with stimulating environments.⁶³ Single

⁵⁸ G. Goodman et al, (1998) Developmental psychology and the law: Divorce, child maltreatment, foster care, and adoption, *Handbook of Clinical Psychology*, 775.

⁵⁹ E.g. N. Zill, (1988) *Behavior, achievement, and health problems among children in stepfamilies: Findings of a national survey of child health*. In E. M. Heatherington & J. D. Arasteh (Eds.) *Impact of Divorce, Single Parenting and Stepparenting on Children*.

⁶⁰ See Social Science Research Review on *Father Involvement*.

⁶¹ J. R. Johnston and L. E. G. Campbell, *supra* note 26; J. R. Johnston and L. E. G. Campbell, (1993) *Parent-child relationships in domestic violence families disputing custody*, *Family and Conciliation Courts Review*, 2: P. 282.

⁶² See e.g. S. McLanahan and K. Booth, (1989) *Mother-only families: Problems, prospects, and politics*, *J. of Marriage and the Family*, 51: P. 557.

⁶³ S. L. Braver, et al, *supra* note 36; S. L. Olsen et al, (1994) Socioenvironmental and individual correlates of psychological adjustment in the context of poverty and

mothers are much more likely to experience depression, anxiety and social isolation than shared parenting situations and demonstrate poorer parenting practices. Single mothers are also less likely to provide cognitive stimulation to their child than intact two-parent households but this has not been measured in shared parenting situations with separated parents. In brief, divorced mothers who have physical custody of their children post-divorce have less adequate parenting skills and are much more likely to demonstrate mental health difficulties than their married counterparts. Although less studied, results for single fathers with primary care of the children are similar. Shared residential schedules appear to ameliorate these effects to some extent, but again these correlations are so complicated that it is impossible to draw a cause and effect relationship. Shared schedules, for example, also seem to better support the SES of both parents and this might have more to do with emotional functioning than the schedule itself.

Interestingly, fathers who are more involved with their children tend to demonstrate fewer problems with depression and anxiety than do fathers who play a more marginal parenting role.

Conclusion: Depression, anxiety, and some other mental health disorders that include conduct problems (e.g. violent behavior, neglect or abuse of the children, alcohol or drug use, substantial problems in recognizing and responding to children's needs) have been demonstrated to correlate negatively with child adjustment. Many mental health disorders can be successfully treated so treatment should always be considered when designing a schedule.

12. Age of the child. The age of the child has received perhaps the most attention in the literature, yet perhaps the least in terms of research. Many schedule templates have been based on suggestions emanating primarily from the theoretical orientation of William F. Hodges.⁶⁴ With some age groups, Hodges supports his conclusions with research, but with others he does not. Most controversial has been the recommended patterns for children under five years old, a group which has received the least amount of attention in the research (probably because of the ease of conducting research on elementary school age children). Some age related assertions have not been supported in the research. With young children in particular, theory has presumed a socio-political bias that the mother-child attachment is critical and superior to the father-child attachment, that mothering skill levels are superior to fathering skill levels, and that children need one home. The one-home conclusion appears vaguely supported by object constancy theory, but there is no specific research support for this. Perhaps most remarkably, much of the controversy falls to overnights away from mothers, a factor for which there is little research support. Several authors caution mental health professionals to not assert professional opinions that are little more than iterations of "folklore" and cultural gender biases.⁶⁵

single parenthood, *Amer. J. of Orthopsychiatry*, 64: P. 317; D. Spiker et al, (1992) Reliability and validity of behavior problem checklists as measures of stable traits in low birth weight, premature preschoolers, *Child Development*, 61: P. 1481; M. S. Barratt et al, (1991) Single mothers and their infants: Factors associated with optimal parenting, *Family Relations*, 40: P. 448; W. F. Hodges, et al, *supra* note 21.

⁶⁴ Hodges, *supra* note 8.

⁶⁵ See Social Science Research Review on *Placement of Young Children*.

What we do know about young children is that they are more at risk than older children and more affected by the other factors than older children. For example, one task of separated parents is to coordinate their parenting in order to have both homes fairly similar and for both parents to support the authority (e.g., rules, routines, expectations and discipline) of the other parent. Older children can tolerate some differences without long-term damage to their adjustment. Young children cannot.

In general, the age of the child has been found to be a relevant factor, not in terms of residential schedules *per se*, but because some family situations are more supportive of developmental accomplishments than others. First, children at different ages have different levels of vulnerability to risk factors associated with a divorce. The younger the child, for example, the more vulnerable the child is to negative parental conflict.⁶⁶ How well the child does on important developmental tasks at different ages may also be suggestive of facilitating schedules. For example, gender identity is important between 6 and 12 years old, as are other identity tasks (e.g. moral development is largely accomplished through the modeling of both parents), which might explain why children in shared schedules during these years are likely to do better in their adjustment than children in single parent households, especially boys with mothers. For young children, attaching to two parents is important and this is most likely to occur constructively if there is frequent contact with both parents, but at later ages, the child's capacity to maintain attachment over time is much improved and frequency of contact becomes less important than duration and quality.

These developmental issues are covered extensively elsewhere⁶⁷ as are the developmental needs of children.⁶⁸ The type of schedule that is most likely to work well for each age group is one that supports the principle developmental tasks for that age. The exception might be schedules for teenagers. Trends in the physical placement of teenagers suggests that teens like to spend more time in one home rather than going back and forth, they often request a change of placement, especially if they have spent too little time with a non-custodial father, and they seem to do better with a great deal of flexibility in the schedule.

Suggesting a simple chart for each of the ages is really too simplistic, but we shall try to identify some basic age related factors below:

- a) Ages 0 – 3 years old: children in this age are developing their primary attachments, or once developed, maintaining these fragile foundations for

⁶⁶ J. Solomon, (1998) Parenting schedules for the very young child: Summary of a longitudinal study on the development of attachment in separated and divorced families. Unpublished research; J. M. Tschann et al, (1990) Conflict, loss, change, and parent-child relationships: Predicting children's adjustment during divorce, *J. of Divorce*, 13: P. 1; C. E. MacKinnen, (1989) An observational investigation of sibling interactions in married and divorced families, *Developmental Psychology*, 25: P. 36; C. E. MacKinnen, (1991) Sibling interactions in married and divorced families: Influence of ordinal position, socioeconomic status, and play context, *J. of Divorce*, 12: P. 221; J. S. Wallerstein and J. B. Kelly, *post note 55*; J. R. Johnston and L. E. G. Campbell, *supra note 26*; J. R. Johnston and L. E. G. Campbell, *supra note 51*.

⁶⁷ K. H. Waldron, (1996) *Developmental needs of children of divorce*, In 1996 Wiley Journal of Family Law.

⁶⁸ E.g. S. Greenspan and N. Greenspan, (1985) *First Feelings*; S. Greenspan, (1993) *Playground Politics*; S. Greenspan, (1992) *Infancy and Early Childhood*.

personality development. Frequent contact with both parents is the key. Children this age tolerate transitions well, if conducted well by the parents (e.g. without conflict), and a variety of placement schedules if the care in both homes is good and the care patterns are similar. Establishing a consistent predictable routine appears to be important. Alternating day schedules could work well or having part of each day spent with each parent. Both parents should have regular bed times with the child to establish familiarity in both homes. Both parents should be involved in all forms of care (except possibly feeding if the child is breast-fed). Because of the substantial developmental issues at this age, the parental relationship must be moderate to low conflict, with good flexibility, high quality parenting, smooth transitions and an effort made by the parents to follow very similar routines in both homes. High conflict parental relationships are a particular threat to many aspects of early childhood development, even neurological and physical health.

- b) Ages 3-5 years old: this is a high-risk age group for shared residential schedules. In some research, only about a third of the children in this age group fare well in shared residential schedules. The reasons are many, chiefly reflecting the importance of the developmental tasks faced by children in this age group. The children who do well have high quality parenting in both homes, have parents who actively communicate and cooperate with one another, parents who establish very similar rules, expectations, routines, discipline, and approaches to developmental steps. Shared residential schedules should not likely be initiated for a child in this age group unless the parenting relationship is quite good and the quality of parenting is good. Having an older sibling (or more) is likely to alleviate many of the stress points in going back and forth. If a child was in a shared residential schedule before this age, continuing with a shared schedule might be worth a try, but parents should make a concerted effort to coordinate their parenting with one another closely. If one home is to be chosen, it should be the home with the highest quality parenting, especially the parent who is most likely to be authoritative, structured, and consistent.
- c) Ages 5-12 years old: children in this age group are in the midst of tremendous transition. They transition in many important developmental stages, including intellectually. They transition from small protected social arenas into school, extracurricular activities, and the beginnings of friendships. It is also time to transition to a shared residential schedule, if the child has not been in one yet. Children from about 5 or 6 years old to about 12 or 13 years old have consistently been shown to do best in some form of shared residential schedule, even when the parenting relationship is less than perfect. Because of their increased developmental abilities, they can tolerate longer periods of time away from a parent without damage to the attachment and do better with fewer transitions. Longer periods of contact are better, in general, than frequent transitions. The schedule should emphasize one of the homes if that parent is available after school. The parents must actively support and be involved in the child's life outside of the home. Time with a parent away from the child's social and educational activities probably does more harm than good. In other words, it seems less important to spend time with the parent than to have that parent actively involved in the child's life. If time with the parent ends up competing with the child's life outside of the homes, the life outside of the homes is likely more important.

- d) Ages 13-18 years old: we mentioned some trends for teenagers above. The desires of the child come more into play. Location of the homes could become critical to the child because of proximity to the child's activities and friends. Children might show a gender preference, with young girls preferring mothers and young boys preferring fathers. The schedule can be adjusted to reflect these preferences, but children continue to require the active involvement of both parents during their teen years. Access and flexibility become the operating principles. Care must be taken to continue to communicate and cooperate between parents to prevent premature rushing through developmental steps (e.g. providing consistent limitations on the child's activities).

Conclusion: Young children need frequent access to both parents. This supports the development of multiple attachments, but requires parents to coordinate household rules, routines, expectations, styles of discipline, and management of the child's separation experiences.⁶⁹ As children get older, they require less frequent contact, benefit from fewer transitions, and the locus of their lives moves out of the home to school, friends, and extracurricular activities. The schedule needs to maintain the involvement of both parents while supporting the development of the child's life outside the homes.⁷⁰ As the child moves into the teen years, the child needs less contact with parents and more flexibility and negotiating of schedules, but still needs the active support, guidance, and limit setting of two parents. The schedule must at least fit, or not obstruct, the developmental level of the child, supporting the successful accomplishment of developmental tasks.

13. Sibling Groups. Keeping sibling groups together appears to be helpful to child adjustment post-divorce.⁷¹ Additionally, older siblings appear to provide a buffer for younger siblings, making for more resilience and tolerance.⁷² Although not thoroughly researched, it would appear that younger siblings will do best if kept in the sibling group, even if the schedule is built more around the older children. In other words, a young child as an only child perhaps should be on one schedule, but if there are older siblings might do best on the schedule of the older children. Keeping sibling groups together on placement schedules is generally a good rule, although having individual children visit separate from siblings at times is not likely to be harmful.

Conclusion: Keep siblings together on the same schedule, although individual visits are unlikely to be harmful. If a younger sibling is with an older sibling, the younger sibling is more likely to do better on a stressful

⁶⁹ E.g. Solomon, *supra* note 57.

⁷⁰ A special problem arises in weighing time with a parent against the involvement of the child in activities outside of the home. In general, time with a parent is less directly associated with good child adjustment than is the case when the parent is actively involved in the child's activities outside of the home. For more discussion on this issue, see the Social Science Research Review on *Father Involvement*.

⁷¹ T. Kempton *et al*, (1991) *Presence of a sibling as a potential buffer following parent divorce: An examination of young adolescents*, *J. of Clinical Child Psychology*, 20: P. 434; Wallerstein, J.S., & Kelly, J.B. (1980). *Surviving the Breakup: How Children and Parents Cope with Divorce*.

⁷² Wallerstein & Kelly, *supra* note 61.

placement schedule. Try the younger sibling on a schedule designed for the older sibling and see if it works. Modify the schedule if it does not work.

14) Children's Temperament. Although not well studied, a child's temperament (or even special needs) could be a factor in developing a residential schedule. Most children, for example, can learn to cope with the pressures of a shared schedule. Some children, however, might have so much difficulty that other key developmental tasks are compromised. Another possibly important temperament issue might be the match between the child's temperament and the parents' temperaments.⁷³ With a very energetic, perhaps even attention disordered, child, one parent might do well and the other might do poorly. Although these issues are important to consider, they are so under-researched that we cannot offer overall guidelines.

15) Equal Residential Schedules. Only one study as looked specifically at equal placement schedules.⁷⁴ The findings are fascinating. The subjects were college students, which limits generalizing to young adults from perhaps less favorable socio-educational-economical backgrounds. In this rather large study (817 college students), they asked college students to describe:

- (a) What kind of schedule they had;
- (b) What kind of schedule their mother's wanted;
- (c) What kind of schedule their father's wanted;
- (d) What they wanted;
- (e) What they thought mothers in general thought was good for children;
- (f) What they thought fathers in general thought was good for children;
- (g) What they thought was good for children.

The findings were remarkable. Most of the children had schedules that came close to what their mothers wanted, i.e. most of the time with mothers. Most of the children in retrospect wanted schedules closer to what their fathers wanted (mostly shared). This was slightly truer for boys than girls. The students' perceptions were that mothers thought that more time with mothers was best for children, although interestingly not as much time as their perceptions of what their own mothers wanted. The students thought that most fathers thought that shared schedules were best for children. What was remarkable was that when asked question (g), 71% of the students thought that **equal** schedules were the best for children. The researchers were surprised by the finding and thought that perhaps children longed for more time with their father and so thought equal schedules were best, so the pulled out the data from the young men and women WHO ACTUALLY HAD equal schedules. The students who had equal schedules were even more strongly opinionated that equal schedules were best. 93% of them answered question (g) that way. In this study, young adult children who were looking back were mostly with their mothers, as their mothers wished, but wished they could have spent more time with their father, what their fathers

⁷³ Emery has done some work on this and calls this "childing" in contrast to "parenting."

⁷⁴ Fabricius, W.V. & Hall, J.A. (2000) *young adults' perspectives on divorce: Living arrangements*. Family and Conciliation Courts Review, 38: P. 446.

wished, and in remarkably high percentages thought that equal schedules were superior. The young adults who had equal schedules were the biggest fans. This suggests that most young adults wish they had more time with their fathers and believe that equal schedules are best.

Caution should be exercised in drawing a conclusion that equal schedules are in fact the best for children from this study. First, the study was done on young adults, so when their schedules were devised was some years back and the parents who either agreed to or were awarded equal schedules might be a select group. For example, research has found different results for equal schedules depending on how the schedule was arrived at (e.g., mediation, court order, even different types of mediation). The sample was college students which might also suggest on average medium to high socio-economic-educational level, which might have been more influence on the results than the actual schedule. However, this study should not be ignored either. It strongly suggests that children, when they reach adulthood and look back on their lives, in general wish they had or were glad that they had spent substantial time with both parents.

Conclusion: We have little scientific research on equal placement schedules. In one study, satisfaction rates were highest for children who have equal placement and most children wanted more placement time with their fathers than they had. We must be very cautious in our interpretation of these findings. It is one study and there are other possible factors at play. For example, young idealistic college students might be thinking in terms of fairness rather than real emotional satisfaction. Or, the kinds of fathers who had equal were different than the kinds of fathers who do not. Nevertheless, it does raise the question that if some form of shared placement does appear appropriate, why not equal?

E. General Factors to Consider for Arguments in Residential Schedule Determinations.

We recognize that an attorney might have a client whose interests might conflict with the interests of the child. We are providing here some specific issues to consider in those cases. A scientifically based default schedule can only be asserted to be most likely to serve the interests of a general population of children. Such a schedule cannot be asserted to meet the best interests standard in every case. The proposed schedule is likely to work for most children with separated parents, but might not be the ideal in a minority of cases and might even be harmful in a few. Perhaps the most profound example of this is with parents where domestic violence has been an issue. Domestic abuse is an area of scientific study, and personal suffering, which cannot be covered here.⁷⁵ The schedules proposed here would be inappropriate for most of these circumstances.

The schedule must be based on a desired outcome, or as is the case here, on two desired outcomes. The primary outcome is the positive long-term adjustment and development of the children to whom the model is applied. A secondary desired outcome is to reduce the risk of harm to the adjustment and development of those

⁷⁵ See Social Science Research Review on *Domestic Violence and Divorce*.

children who do not easily fit the norm. To balance these two desired outcomes, the schedule proposed here has been conservatively modified in some ways to be less ideal for the majority of the children in order to reduce risks to the minority of the children to whom the schedule might be applied.

These desired outcomes fit the current political and cultural ideals of what is considered a positive outcome for the child. In past times, the preparation of a child to make a living was considered the ideal and since fathers could own property and were considered more able to make a living, custody awards were almost always made to fathers. In post-Freudian times, the maternally nurtured child was seen as most likely to be well adjusted when an adult and the tender year's doctrine dominated. Industrialization led to another political and cultural set of values for children and more recent cultural and economic trends have again altered our vision of the well-adjusted child. Now we consider a child well adjusted if he or she is well behaved, smarter, performing well in school, better socialized and socially capable, more independent and confident, has fewer mental health problems, and is "happy." These are culturally and politically defined outcomes. The proposed schedule attempts to reach these outcomes without making a judgment on these goals.

The court does not have the luxury of this purist approach to child adjustment. The court must balance the needs and rights of the state and general population with social policy, the rights of parents, special interest groups, and the needs and rights of the children in a political and cultural atmosphere. A pragmatic and obvious example of this potential conflict in paradigms is that custody schedules have financial implications regarding child support issues. Another subtler but equally dangerous problem is that in the context of the legal divorce, what might be scientifically supportable as good for children might be indirectly harmful. In Washington State, legislation was enacted to produce scientifically based post-separation templates for physical custody. These were well-devised schedules based on family history and emanated directly from good research on children. The as yet unpublished results of this effort after two years are that while the schedules may be good ones, the unintended effect was a near doubling of litigation.⁷⁶ Litigation has been found in the research to sometimes have a detrimental effect on the parenting relationship, a factor that negatively affects child adjustment, on the father-child relationship, and at times directly on the child. Thus, a scientific model when applied in the legal arena might do more harm than good if it leads to unnecessary litigation. This is not to say all litigation is bad. Scientific principles, for example, might support that, in spite of some detriment, especially if parents can protect the children from the litigation process, an issue SHOULD be litigated. A good example is in a proposed relocation case in which the weight of the scientific evidence supports one of the positions.

Another clash between the legal paradigm and the scientific one is that of what is being accomplished. A consistent source of frustration and dissatisfaction not only for parents but for professionals in the court system is that the legal question of child custody is based on assumptions that a child is property to be held by one or both of the parties in some combination. This is often reduced to counting overnights (or even more oddly, to percentages of time) that the child spends in each home, a factor that has never been found in any research to be relevant to child adjustment. In other words, the most relevant legal question, "Who gets the child, when?" is being asked in an arena where the statutory mandate is to do what is best for the

⁷⁶ John Dunne, personal communication. Other jurisdictions (e.g. Utah) have applied models less sophisticated, but with better results.

child. Yet, in scientific circles, there is no answer to that question that has been demonstrated to be relevant to real child outcomes. Compounding the situation, whether or not the question is relevant to child outcomes, it must be answered, since the child in fact does have to be somewhere every night. Even more frustrating, the very fact that the question is asked, especially in an arena in which the interests of the parties are assumed to be at odds, promotes competition and increases conflict between parents, a fact that has consistently been found to inversely correlate with child adjustment.

In game theory (an area of mathematics which studies the behavior of individuals with competing interests), by instituting the legal question of physical custody, with assumptions that the interests of the parents are opposed to one another, the legal system itself sets up a situation in which the Nash equilibrium (a game theory solution concept) predicts that parents will compete. This is sad, though many parents are able to ignore these pressures and resolve their custody issues without dispute. In a recent mediation case of the author, for example, a last ditch effort was being made by the attorneys to save this poor set of parents from the costs of studies and litigation. The father wanted "50/50" custody of the infant while the mother wanted "primary" custody. In the discussion of the reality of their day-to-day lives, they were ignoring the real problems they faced. The father, who had moved out, was living in one room, and couldn't afford more (one of the reasons he wanted "50/50" was to reduce child support so that he could afford more). The baby was nursing. The mother had no objection to the father being very involved; she just wanted the baby overnight, partly to nurse and partly for other reasons. Instead of competing, they needed to collaborate and plan, both money and child care. Once they began planning, the solutions became obvious, with shared custody during the days (alternating care to fit work schedules and save on daycare) and nights with mother. This also required a willingness to plan financially and they were sent to a financial planner specializing in working with poor families. As a friend of the author once put it, "Don't win; solve the problem." The clash of paradigms comes when an attorney faces the dilemma of a client whose position does not solve the problem or worse yet, when the solutions to the problem put that client at a legal disadvantage.

Summary. In brief, the scientifically founded proposed schedule in this review is made in a legal arena that must also consider other factors. The schedule proposed is most likely to be best for most children but cannot be asserted to be best for all children. Finally, the schedule is not asserted to be best because it has been scientifically demonstrated to be the best, but rather, because it best accommodates the factors that have been found to predict child adjustment.

F. Summary of Factors and Implications for the Schedule. In general, the findings of the research and goals of the schedule should be:

- a) Preserve strong parent-child attachments with both parents.
- b) Encourage and support the involvement and commitment of a parent who has been less involved.
- c) The sooner the more peripheral parent gets involved post-separation, the more likely that parent will become committed and stay involved, including financial involvement in the form of reliable payment of child support.

- d) Since there is little support for an assumption of primary caregiver and since multiple care-giving models appear more successful, and since fathers can parent as well as mothers, the schedule should show no gender bias and should encourage a multiple care-giving system.
- e) If there is high conflict, the court should determine if it is a case of chaotic/antisocial conflict before imposing a schedule and should not impose shared custody if it is.
- f) If the conflict is chaotic/antisocial, the schedule should be one in which the children are in the sole custody and sole residential schedule. Visitation with the other parent should be determined by a study of other factors.
- g) If the family is low conflict/high cooperation, or is a high conflict of the separation type, a schedule which requires frequent parental contact is probably not harmful and might even encourage less conflict and a more cooperative effort by the parents.
- h) Not all conflict is harmful to children. The mode of expression, content, resolution, and manner of exposure of the child are determinative. Frequency of conflict is only an issue in negative conflict. In negative conflict, less frequent is more helpful to children.
- i) Reducing negative conflict is important, but increasing parental cooperation is equally important. This factor should be weighed as the most predictive of child adjustment.
- j) The schedule should encourage the maintenance of existing support systems.
- k) The schedule should favor parent care over childcare when the quality of parent care is equal to or superior to the quality of childcare.
- l) The quality of parenting practices is central to child adjustment. The schedule should favor high quality parenting. The court should promote improvements in the overall quality of care.
- m) More father involvement correlates with better adjustment in mothers, better adjustment in fathers, more regular payment of child support, and better adjustment and satisfaction in children. Frequent involvement with children, including everyday routines in childcare and overnights, even with young children, promotes positive father-child attachment and continuing father involvement.⁷⁷
- n) Mary Whiteside⁷⁸ and Robert Emery⁷⁹ have both remarked that the evidence is so strong that father involvement is so important to long-term child adjustment, that the courts should take proactive action to encourage and assure opportunity. Mary Whiteside points out that the main problem is obstruction by mothers. In a grab for a personal sense of meaning, mothers in general tend to hurt their children with possessory and controlling attitudes.
- o) Since the most likely reasons for low father involvement is parental conflict and/or obstruction by mothers, and bias in the courts, the court should structurally support father involvement through court ordered schedules and provide services (e.g. education and counseling) to reduce conflict and obstructionism. A word of caution however is warranted. Research on young children in shared residential schedules and on children in daycare settings

⁷⁷ M. E. Lamb, (1986) *The changing roles of fathers*, In M. E. Lamb (Ed.) *The Father's Role: Applied Perspectives*; G. Russell, (1986) *Primary caretaking and role sharing by fathers*, In M. E. Lamb (Ed.) *The Father's Role: Applied Perspectives*; E. E. Maccoby and R. H. Mnookin, *supra* note 31.

⁷⁸ Whiteside, *supra* note 14.

⁷⁹ Emery, *supra* note 29.

suggests that mothers who are concerned about the potential negative effects of residential time with fathers and in day cares and take precautions to ameliorate the effects are most likely to have secure mother-child attachments. This implies that a cautious protective mother is probably good for the child, as long as it leads to precautions, not obstruction.

G. Practical considerations

Although not really psychological in nature, there are other important considerations in designing a child focused residential schedule. The geographic distance between residences, for example, can be an enormous limiting factor. Shared residential schedules, for example, are unlikely to work well with distances as short as 30-40 minutes. At that distance, time with a parent competes too heavily with the child's other activities and social ties. Parental availability is also important. Shared schedules, when one parent travels every week for work or works evenings, doesn't make much sense. The financial and geographic stability of the parents is also a factor. I won't go into great lengths here, but children who move frequently and/or who live in an unstable home situation (e.g. financial instability not for lack of money, but for lack of money management skills; frequent changes of parental romantic relationships; etc.) are likely to have serious adjustment problems.

H. Proposed Default Placement Schedules

There are numerous variables affecting child outcomes, all of which cannot be adequately taken into consideration in a default schedule. Therefore, the schedules proposed rely on several assumptions:

1. It is assumed that the parents live within 30-40 minutes of one another. In all forms of shared custody, the closer the distance, the better (at least under 30 minutes), especially for school age children, because the child has just one life, which must be maintained from both residences. For primary custody situations, the distance may be longer, but realistically not so long that the child's life outside the homes cannot be adequately maintained.
2. That both parents are able to operate in at least the adequate range of parenting practices.
3. That neither parent demonstrates substantial mental health and/or conduct problems; that there is no substantial risk to the safety and welfare of the child.

Two basic schedules are being suggested. One schedule presumes that there is a primary residence and that the residential schedule is for the purposes of designating non-residential parent contact with the child. Within this framework, two sub-schedules are described, based on the level of conflict/cooperation between the parents. This choice may be because the parents are electing to have a primary residential parent or because there is high negative conflict between the parents.

Since a primary residence will almost always be the better choice in chaotic/antisocial type of parent conflict families, this is not a variable in the second schedule. The second schedule assumes that the parents are electing to, or are being ordered by the court to share the custody of the child. Within this framework, two sub-schedules are described, based on the existing attachment of the child to both

parents. This type of schedule is more difficult to manage well, and thus there are additional assumptions being made that are required for this schedule to be wise. It is assumed for shared custody schedules that:

1. The parents are willing to communicate and cooperate on issues of parenting;
2. Both parents demonstrate an at least adequate level of parenting practices *or are willing to participate in parenting classes that raise the level of parenting to at least an adequate level;*
3. The child has an adequate (not necessarily equal) level of secure attachment to both parents;
4. The parents are able to contain emotional hostility and to engage in constructive conflict management, *or are willing to attend classes or counseling that teach positive conflict management skills;*
5. The parents will cooperatively manage the child's reactions to the residential schedule (e.g. manage the transition periods cooperatively).

These assumptions should be viewed by the parents, and the court, as *required conditions* for shared residential schedules. While the rights of parents and gender equity issues have created pressures for equal residential schedules and while this may satisfy the wish of the court to be *fair* to the parties, the long-term interests of children are paramount. The research on shared residential schedules has been on situations in which the child spends at least thirty-five percent of the time with both parents. This allows both parents to actively participate in all types of child time and activities. Science also clearly indicates that children in shared custody in high negative conflict parent situations are much more likely to have adjustment problems than if placed in a primary residence. To place a child in an equal residential schedule if there is likely to be high negative conflict may satisfy the wishes of at least some of the adults, but is very risky for children.

Primary placement schedule

For parents electing to have a primary residence and for high negative conflict parent relationships.

Time with Non-Residential Parent		
Age of the Child	Low-moderate conflict Moderate-high cooperation	Moderate-high conflict Low-moderate cooperation
Birth – 6 months:	3-4 visits per week. Duration can vary from 1 to 3 hours, depending on feeding and sleeping schedules. Some task time should be included (e.g. bathing or feeding the child).	One day per week up to 3 hours.
6 months – 18 months:	Depending on if breast feeding and schedule, expand 1 or 2 periods per week to 6 hours or an overnight if feeding schedule allows (e.g. expectorated milk or bottles).	One day per week expanded to 6 hours if schedule allows.
18 months – 3 years:	Alternate weekends; Saturday to Sunday PM. 2 additional access times each week of 1 – 3 hours.	Alternate weekends, Saturday AM to Sunday PM
3 years – 5 years:	Alternate weekends, Friday PM to Sunday PM. Two additional nights every two weeks.	Alternate weekends Friday PM to Sunday PM. One additional time every week from after school to one hour before bedtime.
Samples: 1) Alternate weekends, Monday after school to Wednesday AM. An additional access time or two. 2) Every Thursday overnight; plus alternate weekends		
5 years – 12 years: (Beginning Kindergarten)	Alternate weekends, Friday PM to Monday am; continue with two overnights every two weeks.	Alternate weekends, Friday PM to Monday AM. Continue with one access time every week.
13 years – 18 years:	Same schedule if possible; more input from child; more flexibility. May drop non-residential over- nights, but only if other access time is arranged.	Same schedule

Shared residential schedule

For parents electing to have a shared residential schedule and court imposed shared residential schedule.

(A) Conditions:

1. Low to moderate conflict only of the separation type. If moderate negative conflict, participation in co-parenting class is recommended. If high conflict of the separation type, participation in co-parenting class or co-parenting counseling is required.
2. If either or both parents express doubts about his or her own or the other parent's parenting practices, both attend parenting class together.
3. Geographic distance between homes is limited: less than 30 minutes for school age child; 45 minutes for pre-school age child.
4. Parents must submit a co-parenting plan.
5. A determination is made as to whether the child is a *sensitive child*. The determination must be based on reactions of the child to the shared residential schedule, unless there is other substantial data to suggest that the child is insecure. In other words, the shared residential schedule for the secure child should be tried. If the child has strong persisting negative adjustment reactions to the shared residential schedule move to a primary residential schedule until the child is older.

(B) Schedule. Note: if mother is breast-feeding, she should be the designated primary residential parent (PR) for the first year and the father the non-primary residential parent (NR).

Schedule		
Age of the Child	Secure Child	Insecure Child
Birth – 6 months:	2 – 3 midweek visits with NR from 1-3 hours. One day every weekend AM to PM. Feeding on long day is by bottle or returned to PR at feeding times.	Same.
	Sample: Tuesday and Thursday, 5:30-7:30pm; Saturday, 9:00am to 5:00pm.	
6 months – 12 months:	3 overnights per week. Feeding is by bottle or returned to mother schedule at feeding time.	Stay with same schedule to 12 months
	Samples: (a) Alternating days or alternating 2 days.	

	(b) (b) Monday, Thursday, Sunday.	
12 months – 2 years:		Stay with same schedule
(Note: frequency of previously NR parent contact is still important. Limit to 3 days away from Either parent).		
Samples: (a) Every Monday and Tuesday; Every other Friday – Saturday or Sunday. (b) (b) Monday – Wednesday AM with PR or NR; Wednesday – Friday AM with opposite alternate weekends. Alternate weeks; other parent sees child 2-3 times per week		
2 years – 5 years (Frequency diminishing in importance; managing transitions is key)	Days and overnights between 5 and 9 for each parent in every two-week period.	Keep transitions to a minimum. Stay with a pattern of living mostly in one home with frequent access to other parent. Increase number of overnights (e.g. 2-4 each two week period).
	Samples: (a) Alternate weeks, Monday and Tuesday with NR; alternate 3 or 4-day weekends. Alternate weeks, 2 access times per week for other parent.	Samples: (a) Every Monday and Wednesday, 2-4 hours; Alternate 2 day weekends. Every Monday overnight to Tuesday before bedtime; alternate Fridays, 2-4 hours; alternate 2-day weekends.
5 years – 12 years:	e. If one home favors school days (e.g. location; after school available parent; better parenting practices) place mostly with one parent.	Gradually increase to shared placement schedule in e. Favoring one home is likely to reduce stress reactions of child.
Samples: (a) Alternate 4-day weekends with NR; every other week, one day overnight. E.g. Every other Thursday to following Monday AM; ever other Thursday to following Friday AM (b) 10 – 18 schedule. Child with PR Monday for 18 consecutive days to Friday; with NR from Friday for 10 consecutive days to Monday; one overnight access time every week with other parent.		
f. If there is no reason to favor one home during school week, use one of samples under e. or use equal placement.		
Samples of equal placement: (a) Alternate weeks; one access time each week for other parent (e.g. dinner every Wednesday with other parent). Avoid overnight access unless more practical. Every Monday and Tuesday with one parent; ever Wednesday and Thursday with other parent; alternate weekends.		
12 years – 18 years:	g. Continue with same	Same schedule

	schedule but allow for more input from child and flexibility. If reason to favor one home (e.g. closer to activities) adjust to schedule that does this. If there is a good deal of distance between homes, teens will gravitate to one primary residence. Allow, but assure 2 access times each week and keep alternate weekends.	
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I. Conclusions

We have tried in this lengthy Social Science Research Review to accomplish two major goals: first, to summarize important research on residential schedules and the factors that should be considered in developing a schedule in an individual family; and second, to suggest default schedules that might have several uses. They might be adopted by parents want to have a schedule that is child focused, or might be used as starting points in negotiating a schedule. Our hope, however, is that this will simply be used to help attorneys and parents make educated decisions when they reorganize their post-divorce family structure. We once again caution that the residential schedule is less important to outcomes for children than the co-parenting relationship, the quality of parenting in each home, and several other determinative factors identified early in this review.