

Oh, Dear, College Is Here!

And How Can I Get My Ex to Help Cover These Expenses?

By MELISSA R. GILLIS, Esq.

If you divorced your ex-spouse when your kids were young, it is possible that you did not consider the funding of your children's college education in your support order. Now that they are on the brink of college, you may be looking ahead to that considerable financial hurdle and wondering how you will be able to pay for it, and how to ask your ex-spouse to contribute their fair share. You may also be wondering how college will affect existing child-support payments.

Separation agreements and divorce judgments often don't make a specific provision for how children's college education will be funded, what percentage of the total cost each parent will pay, and what happens to weekly child-support payments as a result, which is entirely distinguishable from college contributions.

Instead, what is most commonly seen is 'blanket language.' That's the language in an agreement or order that says child support is to be paid until a child is deemed emancipated, and once each child reaches the age of college, both parents will attempt to discuss with each other how college will be paid. They also agree to discuss which college each child will attend, given their aptitudes and desires. Parents also have an understanding that they must exchange financial information and cooperate with their child's financial-aid office. Unfortunately, such blanket language often leaves parents confused as to what the nexus should be between their weekly child-support order and each parent's college-contribution percentage.

Reaching that perfect balance between a weekly support order and college contribution can be tricky at best. Most parents paying weekly child-support orders pursuant to the child-support guidelines can't pay both and don't feel that they should have to. If there have been some college funds or accounts set aside to assist paying parents, an agreement or order should dictate whether those accounts are to be utilized prior to either parent contributing out of pocket, or whether the funds within the accounts are actually a part of the contribution that a parent will be required to make.

In the case where there is no fund set aside, and a parent is now being asked to pay both

a weekly support amount and contribute to college, the typical paying parent begins to feel as though their weekly support is more like alimony. They fear that they are being set up for exactly that: a request for alimony once child support is over, creating a never-ending stream of payments to a spouse they haven't been married to for years.

The best time to discuss how to pay for college and how this affects a weekly support



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order is certainly not when the first tuition payment is due, but the September of that child's senior year of high school. By then, you probably know whether your child is going to apply to a community college, a state university, Harvard (or its cost equivalent), or something in between. This gives you a feeling for what the tuition will be, whether financial aid is necessary, and how much input each parent will or wants to have in the college-selection process.

If there is a required mediation clause in the parties' agreement or judgment, then arguably you and your ex-spouse can wait until your child's actual acceptance is received from the institution. But be careful not to set your child's expectations too high if you know there is simply no way to afford a \$40,000-per-year tuition bill even with loans. Being practical, reasonable, and knowledgeable of the law is the key to successful negotiations in this regard.

If you and your ex-spouse can't work out how much each should contribute, what should happen to weekly child-support payments, whether to use any college savings or investment accounts first or last, and whether to require your child to apply for student

loans, scholarships, and grants without court intervention, a modification action should be filed about eight to 10 months prior to the child's entrance to college to allow adequate time for financial discovery. During this period, you and your ex-spouse may reach resolution, but in the event that you cannot, there is enough time to have a trial on the merits and receive the judge's decision.

The statute governing periodic payments of child support from one parent to another provides that, between the ages of 18 and 21, a court can award child support if a child principally resides with the custodial parent and is principally dependent upon them for support, without any requirement that a child be attending college. Between the ages of 21 and 23, a court can still award child support if a child continues to principally reside and be dependent upon the custodial parent, but they must be

pursuing further education, not to exceed a bachelors' degree.

Because there is no 'bright-line' rule for how judges must treat weekly support orders if a parent is also ordered to contribute to college, this opens up myriad possibilities and differing judicial decisions. It should also be noted that the actual child-support guidelines are merely discretionary and arguably do not apply after a child reaches the age of 18.

Often, practitioners will run the guidelines for children over the age of 18 anyway to give the judge a suggestion of what could be and to perform an analysis of what some combination of weekly support payments and direct college contribution would look like, in an attempt to figure out how much extra the paying parent should be asked to contribute.

That said, the resulting possibilities are endless. Some judges use the '1/3, 1/3, 1/3' approach, making the parents and the child each responsible for contributing one-third of the total, whether by loans or cash equivalent. Other possibilities include:

- A straight contribution to college, only if the child will spend approximately equal time living with each parent when home from school, with termination of the weekly sup-

port order;

- An order of straight continued weekly child support to the custodial parent if the other parent doesn't have much contact with the child;

- A combination of reduced weekly support and a percentage of college funding, depending on whether the child will live at home and the ability of a parent to pay; or even

- Both continued weekly payments plus a substantial college contribution.

The above options will all be dependent upon additional factors, including whether there are remaining non-college-age children still in the home, the non-custodial parent's ability to pay, and the custodial parent's inability to contribute.

Any way it's looked at, the message is clear. Absent an agreement, and given the amount of judicial discretion present, it is imperative that a parent facing this battle have a skilled lawyer in their corner who can advocate all the intricacies in order to best suit the needs

of the child without breaking the bank of one or both parents or causing an undue burden on one parent because the other refuses to provide an adequate financial contribution to their child's higher education. ■

Melissa R. Gillis, Esq. is an attorney with Bacon Wilson, P.C. in the domestic, special education, and real estate departments; (413) 781-0560; baconwilson.com/attorneys/gillis