

## Child Support and College: What is the Correct Result?

by

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### I. Introduction

Few areas of matrimonial law vary in application more than the areas concerning the definition of college expenses of a child attending college and the establishment of the appropriate level of child support for that child. On the broadest level, a disparity exists among the states regarding whether a court may even require parents of divorce to contribute to their children's college costs, or to contribute to their children's support after high school. Moreover, even among those states that have determined that a contribution to college costs and child support for the child in college is permissible and appropriate, there still exists a significant divergence in the mechanism for defining what expenses are included in the costs of college and in determining the appropriate level of child support. Furthermore, this disparity exists not just among the various states that allow for college contribution and post-secondary child support, but within each individual state as well. In other words, the lack of uniformity is not only between Illinois's treatment of this issue and New Jersey's treatment of this issue, but also the lack of uniformity that exists between the various courts of Illinois or New Jersey individually.

The purpose of this article is to examine these two interrelated issues—first, defining a college expense, and second, determining child support for the child who is in college. The starting point of this analysis is the assumption that we are dealing with a state that either expressly requires or permits contribution to college expenses, or will at least enforce independent agreements between parties to contribute to their children's college expenses. This article also starts from the premise that the parties at issue have at least some ability to contribute to college, that the parties' expectations and own educational history support the child's college attendance, that the child has demonstrated an ap-

titude for higher education, and that the non-custodial parent maintains a relationship with the child and has had involvement in the school selection process to such a degree that it is a non-issue for the purpose of establishing his or her responsibility to share in the costs. Starting with these assumptions will allow us to focus on the narrow issues of defining college expenses and reallocating child support while the child attends a residential college.

Part II of this article will set forth a statistical overview regarding the various costs of a college education. Part III will survey the nation to determine how states address this issue—not only to provide an illustration of how varied the approaches are, but also to ascertain whether any common themes repeat themselves, whether it is a particular expense that seems to be treated similarly across the nation, or whether there is a common method for reestablishing child support that is used by a majority of the states. Part IV will explore the common approaches employed by the states as established through our survey. Finally, Part V will attempt to establish parameters for avoidance of duplicate expenditures when a supported child is away at college.

## **II. What Students are Spending?: A Statistical Overview**

To best assess the allocation of college expenses and child support for a child in college, it is helpful to first consider some of the statistics regarding the cost of college.

### *A. Tuition, Room and Board*

The national average undergraduate tuition, fees, and room and board rates charged for full-time students in all degree-granting institutions (public and private), as of the 2006-2007 school year, is \$15,483.00 per year,<sup>1</sup> which breaks down as:

Tuition and fees:	\$8,092.00 per year
Dormitory room cost:	\$4,019.00 per year
Board <sup>2</sup> :	\$3,372.00 per year

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<sup>1</sup> National Center for Education Statistics, <http://nces.ed.gov/quicktables/index.asp>, Table 331.

<sup>2</sup> Board is the cost associated with providing the student with a full (seven days/week) meal plan.

The national average total tuition, fees, room and board costs for *public* four-year institutions for the 2006-2007 school year is \$12,797.00 per year; and the national average total tuition, fees, room and board costs for *private* four-year institutions for the 2006-2007 school year is \$28,919.00 per year.<sup>3</sup>

The National Education Association identifies the following additional categories of college-related expenses for prospective students and parents to consider when budgeting for college: meals (in addition to meal plans), books, supplies, computer, printer, clothes, bedding, furniture, entertainment, travel, and phone.<sup>4</sup> An additional “other” category is also identified, which includes, without limitation, laundry, haircuts, athletic gear, medicines, toiletries and batteries.<sup>5</sup>

In October 2008, the Student Monitor, a New Jersey-based research company, conducted a survey of 1,200 full-time four-year undergraduates, representing 100 campuses that varied in enrollment size, administrative control (public/private), and geographic location.<sup>6</sup> The survey reflected the following:

#### B. Four-Year Full-time Profile

The average monthly discretionary spending by the students polled was \$219.00.<sup>7</sup> Undergraduate students, nationwide, use an average \$208.00 per month for discretionary spending.<sup>8</sup> The average annual personal earnings of the students surveyed were \$5,404.00 per year.<sup>9</sup> Of the students surveyed, 64 percent received money from home, which averaged \$365.00 per month.<sup>10</sup> The average family income of the students surveyed was \$97,870.00.<sup>11</sup>

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<sup>3</sup> National Center for Education Statistics, *supra* note 2, Table 331.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Lifestyle and Media: Fall 2008 Findings*, STUDENT MONITOR, Oct. 2008, at 2.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

### C. *Laptops and Cell Phones*

The survey further reflected that 92 percent of the students owned a cell phone, and 80 percent owned a laptop.<sup>12</sup> In fact, laptop ownership among college students has nearly tripled since 2002.<sup>13</sup> With regard to cell phones, the average student cell phone owner spends \$72.00 per month.<sup>14</sup>

### D. *Textbooks*

According to the survey, students are spending an average of \$338.00 per semester on textbooks, which is broken down as \$192.00 on new textbooks, and \$146.00 on used textbooks.<sup>15</sup>

### E. *Monthly Spending*

Students are spending an average of \$37.31 per month on entertainment (movies, concerts, magazines), \$17.14 on school supplies (exclusive of textbooks), \$11.25 on books and magazines, \$12.91 on music (exclusive of concerts), and \$10.46 on video games.<sup>16</sup> The survey indicates that the total mean monthly expenditure for off-campus meals is \$72.11 per month, and eating on-campus is \$59.47 per month.<sup>17</sup> Of the students surveyed, 59 percent had eaten at a fast food restaurant off-campus the prior weekend, 37 percent ate at an on-campus fast-food restaurant the prior weekend, and 34 percent ate at a full-service restaurant the prior weekend.<sup>18</sup>

### F. *Meal Plans*

Nearly six in ten students do not participate in their school's meal plan, including 20 percent of those living on campus.<sup>19</sup> Of those participating in a meal plan, 28 percent participate in a full plan, and 15 percent participate in a partial plan.<sup>20</sup>

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<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 19.

<sup>18</sup> *Id.* at 16.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Id.*

### G. Summary

As these surveys and statistics reflect, the cost of college adds up. The total national average for a public school, inclusive of tuition, fees, and room and board is \$12,805.00, and this is before the inclusion of transportation, cell phone, food outside of the meal plan, dormitory setup costs, and discretionary money.

## III. How Child Support and College Expenses are Being Addressed Throughout the Nation

### A. Introduction

A review of the law throughout the nation on the issues of child support for children in college, and the definition of college expenses, yields a wide array of results. The majority of states contain no provision requiring parents to contribute toward their children's college costs.<sup>21</sup> Moreover, the majority of these states call for a child's emancipation no later than the child's graduation from high school.

Kentucky case law reflects an interesting extension of this principle. First, Kentucky's statute prohibiting college contribution and child support beyond high school, embodied in Kentucky Revised Statutes section 405.020, states:

The father shall be primarily liable for the nurture and education of his children who are under the age of eighteen (18) and for any unmarried child over the age of eighteen (18) when the child is a full-time high school student, but not beyond completion of the school year during which the child reaches the age of nineteen (19) years.<sup>22</sup>

However, the case law of Kentucky takes these prohibitive measures one step further, assuring that the trial courts do not attempt to do through alimony what they cannot do through child support. In *Bailey v. Bailey*,<sup>23</sup> the trial court was called

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<sup>21</sup> Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Montana, Nebraska, Nevada, New Hampshire, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming.

<sup>22</sup> KY. REV. STAT. ANN. § 405.020 (2008).

<sup>23</sup> *Bailey v. Bailey*, 246 S.W.3d 895, 896 (Ky. Ct. App. 2007).

upon to determine the length of the custodial parent's maintenance award. In doing so, the trial court considered the child's future education expenses. Specifically, the court had premised its award of \$2,000.00 per month for twelve years based on the age of the child, so that the custodial parent would be receiving maintenance for four years beyond the child's graduation from high school. The court even conditioned the last four years of maintenance on the child's continued enrollment in college.<sup>24</sup>

In denying the non-custodial parent's motion for reconsideration, the trial court made the following findings of fact:

The future college expenses for the parties' child are not relevant to determining the amount of maintenance. The amount of maintenance was based upon [Geri's] current expenses. . .

After determining the amount of maintenance, the court considered the duration of the maintenance. The May 4, 2006, order provided that, '[Mark] is under no obligation to pay for Jack's (the parties' child) college education after he graduates from high school. To help offset the future burden this will impose on [Geri], [Mark's] maintenance shall be payable to [Geri] for four years beyond the date Jack graduates from high school.' So long as Jack is in college for the additional four years, [Geri] will not be permitted to down-scale her life and will be losing the child support as well.<sup>25</sup>

The Kentucky Court of Appeals reversed, holding that what the court may not do directly, it may not do indirectly, by ordering maintenance aimed to cover support for a child that has reached the age of majority. The court cited to *Atwood v. Atwood*, which held that "since [the non-custodial parent] is under no legal duty to support the children beyond their eighteenth birthdays, future college expenses the children may incur are not relevant in determining the amount of maintenance to which appellant is entitled."<sup>26</sup>

Louisiana is perhaps the state least sympathetic to children when it comes to college education. In *Litel v. Litel*, the court established that (1) a father's duty to provide for the college education of a child of majority age was not a "natural obligation creating a right of action"; (2) a father's moral obligation to provide college education to a child who has reached the age of ma-

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 267, citing *Atwood v. Atwood*, 643 S.W. 2d 263 (Ky. Ct. App. 1982).

majority does not constitute consideration for an allegedly enforceable contract for such obligation; and (3) a wife's acquiescence in a community property settlement and partition was not consideration such that father's agreement to provide for college expenses for children who have reached the age of majority was legally enforceable.<sup>27</sup>

While many states do not authorize a court to award contribution to college, the majority of those states will allow parties to voluntarily contract between themselves to create enforceable obligations to contribute to college expenses.<sup>28</sup> There is an additional difficulty in assessing how other states restructure child support during the period when both parties are concurrently contributing to college expenses for the child. Almost no states that utilize child support guidelines specify within their guidelines what basic child support is intended to cover. Accordingly, this minimizes the value of any information regarding what these respective states consider to be included in college expenses.

Nevertheless, the following is a sample of how various courts from different states are considering college expenses and child support for the college student.

### *Alabama*

In Alabama, Alabama Rules of Judicial Administration, Rule 32(A) (1) (a) provides that "[E]xpenses of college education incurred prior to a child's reaching the age of majority may be a basis for deviating from the guidelines."<sup>29</sup> Courts may require parents to provide post-minority support for the child's college education, which support may include more than the costs of tuition and books, and may include other expenses that the trial court, acting within its discretion, determines to be reasonable and necessary for the child to attend college.<sup>30</sup>

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<sup>27</sup> *Litel v. Litel*, 490 So.2d 741, 743 (La. Ct. App. 1986).

<sup>28</sup> *See generally* *Shopa v. Delaurentis*, No. CN91-6188, 1997 WL 878713 (Del. Fam. Ct. Sept. 16, 1997); *Zolonz v. Zolonz*, 659 So.2d 451 (Fla. Dist. Ct. App. 1995); *Hawkins v. Gilbo*, 663 A.2d 9 (Me. 1995); *Zetterman v. Zetterman*, 512 N.W.2d 622 (Neb. 1994).

<sup>29</sup> *In re* Alabama Rules of Judicial Administration Rule 32(A)(1)(a).

<sup>30</sup> *Bayliss v. Bayliss*, 550 So. 2d 986, 987 (Ala. 1989).

In *Wagner v. Wagner*,<sup>31</sup> the father contended that the trial court erred by including costs for various “living expenses,” including transportation costs and automobile maintenance, in its post-minority educational support award. The father argued that this was error insofar as those expenses are personal or living expenses that should not be included in a post-minority support award. Rejecting this argument, the appellate court held that the allotments for various automobile and personal expenses in the post-minority educational support award—which included \$227.50 per month for automobile insurance, fuel, and maintenance, \$150 per month for food in addition to the meal plan provided by the college, \$60 per month for toiletries, and \$8.75 per month for the student health and recreation center—were reasonably necessary for the parties’ older child to attend Mississippi College.<sup>32</sup>

In *Waddell v. Waddell*,<sup>33</sup> the Alabama Court of Appeals held that that father was required to provide, as part of his post-minority educational support obligation, health insurance coverage for his two sons. The court reasoned that, in some cases, health insurance might be just as necessary as other educational expenses, such as room and board, “to enable children of divorced parents to devote themselves to the pursuit of college educations.”<sup>34</sup>

In *Thompson v. Thompson*, the appellate court reversed the trial court’s order that the non-custodial parent had to contribute toward the children’s college expenses, in addition to room, board, books, and tuition, \$500 per month for “ordinary and necessary living expenses.”<sup>35</sup> Specifically, the court concluded that:

[T]he \$500 per month awarded to each of the daughters was not directly related to the daughters’ college educations, but included a clothing allowance, an entertainment allowance, and other such allowances. Consequently, the trial court erred in ordering the father to pay each of the daughters \$500 per month for their “ordinary and necessary living expenses.”<sup>36</sup>

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<sup>31</sup> *Wagner v. Wagner*, 989 So.2d 572 (Ala. Civ. App. 2008).

<sup>32</sup> *Id.* at 582.

<sup>33</sup> *Waddell v. Waddell*, 904 So.2d 1275 (Ala. Civ. App. 2004).

<sup>34</sup> *Id.* at 1283.

<sup>35</sup> *Thompson v. Thompson*, 689 So.2d 885 (Ala. Civ. App. 1997).

<sup>36</sup> *Id.* at 889.



*Connecticut*

Section 46b-56c of the Connecticut General Statutes Annotated governs “Educational Support Orders.” Subsection (a) defines an educational support order as:

an order entered by a court requiring a parent to provide support for a child or children to attend for up to a total of four full academic years an institution of higher education or a private occupational school for the purpose of attaining a bachelor’s or other undergraduate degree, or other appropriate vocational instruction.<sup>37</sup>

Subsection (a) further provides that an educational support order may be entered with respect to any child who has not attained twenty-three years of age and shall terminate no later than the date upon which the child turns age twenty-three.<sup>38</sup>

Subsection (b) provides that an educational support order may be entered “on motion or petition of a parent,” at the time of the entry of a decree of dissolution, legal separation or annulment, but that, “no such order may be entered thereafter unless the decree explicitly provides that a motion for an educational support order may be filed at a subsequent date.”<sup>39</sup>

Subsection (f) provides that the educational support order may include support for necessary educational expenses, including, “room, board, dues, tuition, fees, registration and application costs.”<sup>40</sup> Such expenses shall not be more than the amount charged by the University of Connecticut for a full-time in-state student at the time the child for whom educational support is being ordered matriculates, except this limit may be exceeded by agreement of the parents. An educational support order may also include the cost of books and medical insurance for such child.

*Florida*

In *Goldman v. Goldman*, the parties were divorced in 1978, and their property settlement agreement provided for the husband/non-custodial parent to (a) pay \$500 per month per child in child support until each child graduated from college; *and* (b) pay all of the fees, books and tuition for the college of the minor

<sup>37</sup> CONN. GEN. STAT. § 46b-56c (2004).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

children.<sup>41</sup> After the parties' elder daughter attained majority, but while she was still attending college, the father ceased making child support payments to the mother and instead made payments directly to and on behalf of his daughter. Eighteen months after the support payments stopped, the mother filed a motion to enforce the agreement, which resulted in a hearing.

Pursuant to the hearing, the trial court found the husband's child support arrears to be \$8,000.00, but afforded the husband the opportunity to submit an affidavit in support of claimed offsets. The husband sought offsets for his payment of the daughter's room and board at college for three semesters, a computer and software he purchased for his daughter, spending money he provided to his daughter, airline tickets he purchased for her, and book expenses he covered for her. Based upon this information, the trial court found the father's expenditures exceeded the \$8,000.00 in child support arrears, and fully offset the arrearage.<sup>42</sup>

The Appellate Court disagreed, at least in part. First, it determined that the parties' agreement required him to pay the book expenses, and these expenditures could not therefore be used to reduce his arrearage.<sup>43</sup> Second, the Court determined that the father's generosity in providing his daughter with spending money, a computer, and air travel constituted gifts and could not qualify as offsets.<sup>44</sup>

Interestingly, however, the Court determined that the father's contribution toward the child's room and board could be used to offset his child support arrearage. Specifically, it opined that the payment of excess educational expenses constitutes a compelling equitable circumstance:

Although [the father] was under no obligation to assume further college-related expenses (beyond tuition and books), the father's payment for room and board for several semesters indicates a substantial compliance with the spirit and intent of the order of support. Had the father not paid the cost of room and board, moreover, the burden would have fallen to the mother.<sup>45</sup>

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<sup>41</sup> *Goldman v. Goldman*, 529 So.2d. 1260, 1261 (Fla. Dist. Ct. App. 1988).

<sup>42</sup> *Id.* at 1261

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

### Hawaii

Hawaii Revised Statute section 577-7(a) provides that parents and guardians shall provide, to the best of their abilities, “for the discipline, support and education of their children.”<sup>46</sup> In addition, Hawaii Revised Statute section 580-47(a) states that, “Provision may be made for the support, maintenance, and education of an adult or minor child.”<sup>47</sup> The protocol established by Hawaii Revised Statute section 580-47(a) for the support, maintenance and education of an adult child is as follows:

In those cases where child support payments are to continue due to the adult child’s pursuance of education, the agency, three months prior to the adult child’s nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child’s nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college, or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years.<sup>48</sup>

When child support continues for an adult child attending college, the child support guidelines continue to apply for determining the level of child support for that child.<sup>49</sup> When the parties are compelled to contribute to college, this contribution can be deemed exceptional circumstances warranting a deviation from the guidelines;<sup>50</sup> however, before any deviation may be considered, the child’s reasonable college-related needs must be determined.<sup>51</sup>

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<sup>46</sup> HAW. REV. STAT. § 577-7(a)(2008).

<sup>47</sup> HAW. REV. STAT. § 580-47(a)(2008).

<sup>48</sup> *Id.*

<sup>49</sup> *Matsunaga v. Matsunaga*, 53 P.3d 296, 303 (Haw. Ct. App. 2002).

<sup>50</sup> However, in *Ching v. Ching*, 751 P.2d 93 (Haw. Ct. App. 1998), the court held that an agreement between the parties that the non-custodial parent would pay the future college expenses of a 5 year old child, in exchange for a downward deviation of his current child support obligation, was not enforceable.

<sup>51</sup> *Id.*

In *Mark v. Mark*, the court held that private education expenses included more than just tuition but also included books and required school fees.<sup>52</sup>

### *Illinois*

Illinois maintains two separate statutes governing child support. The first statute is Illinois Compiled Statutes section 5/505, which governs child support for children who have not yet reached the age of majority (eighteen years of age) or who have not yet graduated from high school.<sup>53</sup> If a child reaches the age of eighteen but has not yet graduated from high school, child support will be extended pursuant to section 5/505 until the child graduates from high school or reaches the age of nineteen, whichever occurs first.<sup>54</sup>

Illinois has a separate statute governing the support and education expense contribution of non-minor children.<sup>55</sup> This statute provides that the court may make provisions for the educational expenses of a child, whether of minority or majority age:

The court may also make provision for the educational expenses of the child or children of the parties, whether of minor or majority age, and an application for educational expenses may be made before or after the child has attained majority, or after the death of either parent. The authority under this Section to make provision for educational expenses extends not only to periods of college education or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 18.<sup>56</sup>

Moreover, the statute defines education expenses as including, but not being limited to, the following:

room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, and living expenses during the school year and periods of recess, which sums may be ordered payable to the child, to either parent, or to the educational institution, directly or through a

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<sup>52</sup> *Mark v. Mark*, 9 Haw. App. 184, 195 (1992).

<sup>53</sup> 750 Ill. COMP. STAT. § 5/505 (a)

<sup>54</sup> *Id.*

<sup>55</sup> 750 ILL. COMP. STAT. § 5/513(a)(2) (2008).

<sup>56</sup> *Id.*

special account or trust created for that purpose, as the court sees fit.<sup>57</sup>

It is important to note that subsection “b” to the statute requires the court, in making its discretionary call, to consider the following four factors: “(1) the financial resources of both parties; (2) the standard of living that the child would have enjoyed had the marriage not been dissolved; (3) the financial resources of the child; and (4) the child’s academic performance.”<sup>58</sup>

While the definition of education embodied in the statute includes specific expenses (including transportation expenses), the court, in assessing the above-referenced factors, need not tailor its award to meet all such expenses.<sup>59</sup> In *In re Marriage of Hillebrand*, the court’s award on behalf of a child of majority age residing at home and attending a local college was substantially below the amount requested. Specifically, the movant sought \$900.00 per month, which was broken down by expense and included components for tuition, books, school supplies, car payment, gasoline, oil, car repairs, car license, clothing, and the child’s share of the shelter expenses.<sup>60</sup> However, the movant was only awarded \$200.00 per month, which specifically only covered tuition, books, miscellaneous school expenses, and maintenance related to education.<sup>61</sup>

Significantly, the court noted that:

While Mary Louise contends the appropriate award should have been \$931 per month, much of that amount as calculated by Mary Louise includes her mortgage payment, homeowner’s insurance, and other costs which she would have to pay whether Teresa lives at home or not. We cannot say that the trial court acted unreasonably in this case.<sup>62</sup>

In one other case indicating the range of expenses associated with attending college, a child’s hourly flight costs required to obtain a bachelor’s degree in airway sciences at a university, but charged in addition to tuition for non-flight courses, were inter-

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<sup>57</sup> *Id.*

<sup>58</sup> 750 ILL. COMP. STAT. § 5/513(b)(2008).

<sup>59</sup> *In re Marriage of Hillebrand*, 258 Ill. 3d 835, 837 (Ill. App. Ct. 1994).

<sup>60</sup> *Id.* at 837.

<sup>61</sup> *Id.* at 840.

<sup>62</sup> *Id.* at 841.

preted as “college expenses” within the meaning of a former husband’s obligations under his marital settlement agreement.<sup>63</sup>

### *Indiana*

In Indiana, child support ends when the child reaches the age of twenty-one, unless there is an order for post-secondary education expenses. In such circumstances, the ordinary child support award ends when the child turns twenty-one, and the non-custodial parent thereafter will pay his or her share of the education expenses.

Indiana’s guidelines provide one of the more bright line delineations of the treatment of college expenses. Specifically, the commentary to Guideline 6 of the Child Support Rules and Guidelines, embodied in the Indiana Rules of Court, in addressing “Extraordinary Educational Expenses,” provides that “[t]he data upon which the Guideline schedules are based include a component for ordinary educational expenses. Any extraordinary educational expenses incurred on behalf of a child shall be considered apart from the total basic child support obligation.”<sup>64</sup>

The commentary further explains that “[e]xtraordinary educational expenses may be for elementary, secondary or post-secondary education, and should be limited to reasonable and necessary expenses for attending private or special schools, institutions of higher learning, and trade, business or technical schools to meet the particular educational needs of the child.”<sup>65</sup>

Subparagraph “b” specifically addresses “Post-Secondary Education” and empowers the court with the authority to award post-secondary education expenses. Whether to award such ex-

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<sup>63</sup> *In re Marriage of Dieter*, 648 N.E.2d 304, 306 (Ill. App. Ct 1995). The agreement for which judicial interpretation was sought defined college expenses as having:

included, but not by way of limitation, tuition, books, supplies, registration and other required fees, board, lodging, sorority or fraternity dues, assessments and charges, and round trip transportation expenses between the college and the home of the child (if the child is in attendance at an out-of-town college), those round trips not to exceed four in any calendar year.

<sup>64</sup> IND.CODE § 31-16-6-2 (2008); *see also* *Marriage of Hensley v. Hensley*, 868 N.E.2d 910, 912 (Ind. App. 2007).

<sup>65</sup> *Id.*

penses, and the amount awarded, remains within the court's discretion; and in exercising its discretion, the court must "consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense."<sup>66</sup>

As to what constitutes an educational expense in Indiana, the comments to the guidelines provide that "[a] determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, supplies, student activity fees and the like. Room and board will also be included when the student resides on campus or otherwise is not with the custodial parent."<sup>67</sup>

Indiana uses a separate, Post-Secondary Education Expenses Worksheet, Appendix A, and mandates that it be utilized in making a fair distribution of said expenses. In addition to lines for tuition, room and board, books and fees, the worksheet contains a line for "other" educational costs; and the commentary provides that the court may wish to consider such items as transportation, car insurance, clothing, entertainment and incidental expenses.

Finally, the guidelines, through their commentary, recognize the substantial impact of an award of post-secondary education expenses upon the parents, and accordingly mandate a reduction of the basic child support obligation attributable to the child, when the child resides on campus or otherwise is not with the custodial parent. In *Borth v. Borth*, the Indiana Court of Appeals ordered that the cost of a vehicle was properly included in the child's college expenses because the child lived off campus, and it was necessary for her to have a vehicle for school.<sup>68</sup>

The court further noted that:

[I]f the court orders support for a child's educational expenses at an institution of higher learning, the court shall reduce other child support for that child that is duplicated by the educational support order and would otherwise be paid to the custodial parent. Accordingly, the trial court must consider full or partial abatement of a parent's basic child support obligation where the parent is also obligated to pay a

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<sup>66</sup> IND.CODE § 31-16-6-2 (2008), Ind. Child Support Guideline 6, cmt.

<sup>67</sup> *Id.*

<sup>68</sup> *Borth v. Borth*, 806 N.E.2d 866, 871 (Ind. Ct. App. 2004).

350 *Journal of the American Academy of Matrimonial Lawyers*

portion of the child's college expenses in addition to child support. This avoids the duplication of payment for a single expense, resulting in a windfall to the custodial parent. Failing to consider a full or partial abatement constitutes an abuse of discretion."<sup>69</sup>

In *Warner v. Warner*, the trial court held a post-judgment hearing to determine the parties' respective contributions toward the college expenses of the minor child.<sup>70</sup> The court listed the college expenses to be allocated between the parties as "tuition, room, board, and books."<sup>71</sup> The appellate court, in its opinion, noted that the trial court, "excluded from this apportionment between parents and child the costs of transportation, fees and 'expenses,' which [Indiana University] publicly lists, along with tuition, room and board as costs to be expected at college."<sup>72</sup>

Incidentally, the opinion further noted that Indiana University's website projects that transportation, fees, and the undefined category of "expenses" amount to approximately \$2,647 per year.<sup>73</sup> In addition to allocating "tuition, room, board, and books" between the parties, the trial court ordered that the basic support award would cease during the academic year, but that the non-custodial parent was required to pay support during the summer and during school breaks.<sup>74</sup>

The custodial parent appealed, among other issues, the trial court's ruling limiting college expenses to tuition, room, board and books, arguing that the additional costs of transportation, fees and expenses, amounting to approximately \$2,647.00 per year, would fall exclusively on her or the child.<sup>75</sup> However, the appellate court affirmed the trial court's ruling as a discretionary determination.

In *Borth*, the trial court reduced the father's child support obligation from \$100 per week to \$35 per week to reflect the fact that the daughter was away at college and only at the mother's home sixteen weeks each year.<sup>76</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Warner v. Warner*, 725 N.E.2d 975, 977 (Ind. Ct. App. 2000).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*, citing *Indiana University Bloomington Costs*, Feb. 19, 1999, available at <http://www.icpac.indiana.edu/collegeprofiles/151351-costs.html>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 978.

<sup>76</sup> *Borth*, 806 N.E.2d at 871.



*Iowa*

Child support in Iowa covers children between the ages of eighteen and nineteen who are enrolled in high school full-time with the reasonable expectation of completing high school before reaching the age of nineteen.

Iowa Code section 598.1(8) defines “postsecondary education subsidy” as:

an amount which either of the parties may be required to pay under a temporary order or final judgment or decree for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person’s needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.<sup>77</sup>

While Iowa child support laws permit courts to order parties to pay certain post-secondary educational expenses for their children, such an award is discretionary and not mandatory.<sup>78</sup> Moreover, a parent’s contribution is capped at 33.3 percent of the total cost.

In *In re Marriage of Hull*, the custodial parent filed a motion to determine the parties’ obligations toward their son’s college costs. The trial court found the child’s expenses to be “\$159 for tuition, \$34 for books, and \$16 for field trips.”<sup>79</sup> The trial court further found that the child paid \$176 per month for gasoline to commute from home to classes.<sup>80</sup> Accordingly, the trial court ordered the non-custodial parent to pay one-half of these costs, for a total of \$193 per month.<sup>81</sup> The court also found that because the minor child continued to live with the custodial parent, the non-custodial parent should pay \$247 per month for the child’s room and board.<sup>82</sup> The non-custodial parent appealed, and the custodial parent cross-appealed.

<sup>77</sup> IOWA CODE ANN. § 598.1(8) (West 2009).

<sup>78</sup> See *In re Marriage of Misol*, 445 N.W.2d 411, 414 (Iowa Ct. App. 1989); *In re Marriage of Hoak*, 364 N.W.2d 185, 191 (Iowa 1985).

<sup>79</sup> *In re Marriage of Hull*, 491 N.W.2d 177, 178-179 (Iowa Ct. App. 1992).

<sup>80</sup> *Id.* at 179.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

The appellate court, reviewing the case de novo, agreed with the lower court’s allocation of the child’s tuition, books, field trips and gasoline costs and affirmed the lower court’s ruling in this regard.<sup>83</sup>

However, the appellate court did not agree with the lower court’s allocation of the child’s expense for “room and board,” finding that the lower court failed to equally divide this expense, and instead ordered the non-custodial parent to assume 100 percent of this expense. As a result, the appellate court reduced the non-custodial parent’s contribution toward the child’s room and board expense by half, so as to obligate the custodial parent with the other half of this cost.<sup>84</sup>

The court next addressed the custodial parent’s cross appeal of the trial court’s failure to require the non-custodial parent to contribute to the child’s truck payments, truck insurance, or miscellaneous expenses, which totaled \$518.00 per month. It agreed with the trial court’s findings that these expenses “were not necessarily incident to a post-high school education,” and accordingly affirmed the trial court’s denial of the custodial parent’s request.<sup>85</sup>

In *In re Marriage of Vannausdle*, the Supreme Court of Iowa was charged with determining the amount of post-secondary education subsidy that divorced parents should pay to assist their child with the expense of a college education.<sup>86</sup> At the trial on the custodial parent’s petition for college contribution, the custodial parent entered into evidence a chart, prepared by her daughter’s college, Iowa State University, that showed the estimated annual costs of attending the university for the 2001-2002 academic year, as follows:

Full-time tuition and fees	\$3,442.00
<u>Room and board</u>	<u>\$4,666.00</u>
Total Direct Costs:	\$8,108.00
Estimated books:	\$754.00
Estimated Costs for Personal Expenses, Transportation, etc.	<u>\$2,748.00</u>

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *In re Marriage of Vannausdle*, 668 N.W.2d. 885 (Iowa 2003).

Total Personal Expenses	\$3,502.00
Total Estimated	
Cost of Attendance:	\$11,610.00 <sup>87</sup>

The lower court started with the “Total Estimated Cost of Attendance” and deducted from this total cost the financial aid awarded to the child before allocating the remainder between the parents. The non-custodial parent appealed the district court’s approach—specifically, its consideration of the “Total Personal Expenses” as college expenses—and the court of appeals reversed, excluding consideration of the “Estimated Cost for Personal Expenses, Transportation, etc.” as college expenses. The custodial parent appealed to the Iowa Supreme Court.

Iowa’s highest court first noted that Iowa Code section 598.21(5A) (2001) permits a court to order either party to a divorce to subsidize the post-secondary educational expenses of a child if good cause is shown. The Iowa Supreme Court noted that the appellate court had:

applied section 598.21(5A) in a mechanical fashion, and interpreted the concept of “postsecondary education expense” in a strict manner. It limited the expense component to tuition, room and board, books, and supplies, and failed to include any miscellaneous expenses considered by Iowa State University to be common expected expenses for college students. It also applied the statute independent of the mutual desires of the parents to exclude loans.<sup>88</sup>

The Iowa Supreme Court found error in this approach, noting that, “the actual and necessary costs of attending college exceed tuition, books, supplies and a room and board plan.”<sup>89</sup> While the court stopped short of delineating the additional miscellaneous expenses, it expressed its recognition that “a college education includes social, cultural, and educational experiences outside the classroom that impose additional expenses for students. Students also incur normal and reasonable living expenses beyond a standard room and board fee.”<sup>90</sup>

In *In re Marriage of Goodman*, the court further explored the definition of college expenses including whether sorority fees and monthly cash allowances comprised part of college ex-

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<sup>87</sup> *Id.* at 886.

<sup>88</sup> *Id.* at 888-889.

<sup>89</sup> *Id.* at 889.

<sup>90</sup> *Id.*

354 *Journal of the American Academy of Matrimonial Lawyers*

penses.<sup>91</sup> The district court opinion on appeal included sorority charges attributable to room and board but excluded any subsidy for sorority dues or a monthly cash allowance.<sup>92</sup> The Iowa Supreme Court, relying upon its prior decision in *Vannausdle*, held that “[a] cash allowance is necessary for a college student to participate in the social, cultural, and educational experiences outside the classroom.”<sup>93</sup> The court reached the same conclusion concerning sorority dues, by noting that the parties had previously agreed to divide such costs for their older daughter, since her participation in the sorority life was necessary for her college experience.<sup>94</sup>

*Maryland*

In Maryland, child support terminates at the age of eighteen unless the child is enrolled in secondary school, in which case child support will continue to the earlier of the child graduating from secondary school or turning nineteen. In addition, there is no statute or case law holding parents to a duty to provide for the college expenses of their children, absent an agreement.

A court can require a parent to support a healthy child only until the child reaches majority.<sup>95</sup> The parents can, however, contractually obligate themselves to support a child for a longer period, and a court can enforce such an obligation if the parties consent to have the agreement incorporated or merged into the judgment of divorce. Moreover, the Maryland child support guidelines provide that, when assessing whether the guidelines should be applied or deviated from in a particular case, the court may consider the terms of any existing agreement or order affecting the parties, to the extent that the agreement or order includes any provision for the payment of college educational expenses.<sup>96</sup>

*Massachusetts*

In Massachusetts, child support will generally continue until a child reaches the age of eighteen. However, child support may

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<sup>91</sup> *In re Marriage of Goodman*, 690 N.W.2d 279 (Iowa 2004).

<sup>92</sup> *Id.* at 283-284.

<sup>93</sup> *Id.* at 284.

<sup>94</sup> *Id.*

<sup>95</sup> *Quarles v. Quarles*, 489 A.2d 559, 564 (Md. Ct. Spec. App. 1985).

<sup>96</sup> MD.CODE ANN. FAMILY §12-202(a)(2)(iii) (West 2009).

be extended until the child attains the age of twenty-one if the child resides with the parent and is principally dependent upon the parent for maintenance. The court is permitted to make an order of maintenance, support, and education for any child who has not yet attained the age of twenty-three, if the child resides with the parent and is principally dependent upon the parent for maintenance due to enrollment in an education program.<sup>97</sup>

### *Mississippi*

In Mississippi, courts do not have the authority to order parents to pay child support in any form, “whether regular, college expenses, or otherwise, to continue in effect post-majority [which is twenty-one years of age].”<sup>98</sup> However, until a child reaches the age of twenty-one, the Mississippi courts may order parties to provide funds for the college education of a minor.<sup>99</sup>

In *Saliba v. Saliba*, the court refused to establish an absolute definition of college expenses, finding that, “[a]ny recitation that purports to cover all possibilities would more likely than not create more problems than answers.”<sup>100</sup> However, the court did opine on the specific expenses presented as part of the case, finding that out-of-state tuition, car insurance, and fees related to the child’s sorority were properly considered as part of college expenses.

In *Nichols v. Tedder*, the court clarified that “regular child support is but one type of expense which the court may award for the care and maintenance of children.”<sup>101</sup> The court further elaborated that:

Child support refers to the sums of money which the particular parent is ordered to pay for the child’s basic necessary living expenses, namely food, clothing and shelter. Other sums a parent may be ordered to pay for the care and maintenance of the children are the expenses of a college, or other advanced education. Still other items which may properly be awarded pursuant to a valid child care and maintenance order are health related expenses such as reasonable and necessary medical, dental, optical, and psychiatric/psychological expenses. In addition, we have held that it is not error for the trial court

<sup>97</sup> MASS. GEN. LAWS ANN. ch 209C §9 (West 2009).

<sup>98</sup> *Stokes v. Maris*, 596 So.2d 879, 882 (Miss. 1992).

<sup>99</sup> *See Pass v. Pass*, 118 So.2d 769 (Miss. 1960).

<sup>100</sup> *Saliba v. Saliba*, 753 So.2d 1095, 1102 (Miss. 2000).

<sup>101</sup> *Nichols v. Tedder*, 547 So.2d 766, 768 (Miss. 1989).

356 *Journal of the American Academy of Matrimonial Lawyers*

to require a parent to furnish an automobile and make mortgage payments as part of an award for the care and maintenance of children.<sup>102</sup>

Accordingly, it would appear that in Mississippi, automobile expenses are considered neither a part of regular child support, nor a component of college expenses, but rather an additional part of an award for the maintenance of children that would be allocated above and beyond the basic child support amount.

In *Meek v. Warren*, the court was called upon to once again interpret the definition of college expenses, as set forth in the parties' agreement.<sup>103</sup> The provision in question required the non-custodial parent to pay "all educational expenses of the minor child including the expenses incurred by the minor child in obtaining such appropriate college and professional degrees as the child may choose, even after the child shall reach the age of majority."<sup>104</sup>

Initially, the appellate court noted that it did not find, "the words selected by these parties to be particularly enlightening," and that the phrasing employed "begs the question—exactly what is encompassed within educational expenses."<sup>105</sup> The appellate court further acknowledged that "institutional charges are often overshadowed by other, related costs such as those associated with maintaining a separate residence at school," and that "the strictest interpretation of college education necessities may work to destroy the original provision's effectiveness."<sup>106</sup>

Nevertheless, without any precedent within the state "with any appreciable degree of specificity," the court felt compelled to look to other jurisdictions for guidance. In doing so, it found the "general rule among the few states that have considered the question to be that 'only tuition, room and board, and fees should be included.'"<sup>107</sup> Adopting this general rule, the Court stated:

We are persuaded by the underlying rationale in these opinions, that a direct educational link should serve to cut-off the parental obligation short of wholesale post-majority support. Especially since this is some-

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<sup>102</sup> *Id.* at 769.

<sup>103</sup> *Meek v. Warren*, 726 So.2d. 1292 (Miss. Ct. App. 1982).

<sup>104</sup> *Id.* at 1293.

<sup>105</sup> *Id.* at 1294.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

thing which Warren opted not to bind himself to, we follow this approach in the case sub judice. This leads us to give the chancellor's order our qualified endorsement, noting only that we view the term "lab fees" to include all those additional, miscellaneous fees and supplies required for Jennifer's successful completion of her studies. In this day and age one would encounter great difficulties in completing post-graduate course work without, for example, the benefit of a personal computer.<sup>108</sup>

Accordingly, the interpretation of the trial court was affirmed, and the non-custodial parent was only required to pay for tuition, room, board and fees, and was not required to contribute anything toward transportation or clothing.<sup>109</sup>

### *Missouri*

In Missouri, child support will generally terminate when a child reaches the age of eighteen, subject to certain exceptions. One exception exists in the case of a child who, at the time that he or she turns eighteen, is enrolled in college or in an institute of vocational or higher education by October 1 of the year following graduation from high school:

If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-one, whichever first occurs.<sup>110</sup>

Under this scenario, direct payments to the child are possible.

In determining the appropriate level of child support in Missouri, the trial court employs a two-step process: (1) the court determines the presumptively correct child support using its "Form 14"; and (2) the trial court then considers all relevant factors to determine whether the presumptive amount is "unjust or inappropriate."<sup>111</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See MO. REV. STAT. § 452.340 (2008).

<sup>111</sup> Smith v. White, 114 S.W.3d 407, 413-14 (Mo. Ct. App. 2003).

358 *Journal of the American Academy of Matrimonial Lawyers*

In *Smith v. White*, the court explained the interrelation between the establishment of child support and the identification and allocation of college expenses:

Within this framework, the trial court may address college expenses in step one or step two. It may address these expenses in step one by including them in the Form 14 calculation. Or it may address them in step two by using them to rebut the Form 14 amount as unjust or inappropriate under the circumstances and then adding an appropriate amount for college expenses. *Id.* The current version of Form 14 also recognizes a third possibility: entering ‘a separate order of support for post-secondary educational expenses in lieu of including them in the trial court’s Form 14 calculation or rebutting the Form 14 [amount as unjust or inappropriate].’<sup>112</sup>

In *Smith*, the trial court opted for step one, including the college expenses in the primary child support calculation, and the non-custodial parent argued that the trial court should have found the resulting child support figure to be inappropriate because it resulted in duplicate expenses, and therefore did not accurately reflect the actual needs of the minor child.<sup>113</sup> Specifically, the non-custodial parent had argued that the room and board represented a duplicate expense, because the basic child support component of the award contemplated the child’s housing expense (i.e., the custodial parent’s residence), and the college “room and board” component likewise included a housing expense (i.e., the dormitory).<sup>114</sup>

While the court agreed with the non-custodial parent that including college expenses in the basic child support calculation may have resulted in duplicate expenditures, the court also found that the non-custodial parent failed to establish that the resulting child support figure was unjust or inappropriate. Of particular significance to the court was the fact that “[a]lthough [the child’s] monthly college expenses include room and board when he lives at school, those expenses do not reflect the costs incurred when he lives with his father during the summer, over school breaks, and on occasional weekends. Nor do they include other miscellaneous expenses.”<sup>115</sup>

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<sup>112</sup> *Id.* (citations omitted).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 414.



In referring to “other miscellaneous expense,” the court was citing to *Seltzer v. Seltzer*, in which the court acknowledged that while a “custodial mother’s need for child support would decrease to the extent that college would furnish meals for child while he lived at school . . . that Mother must still provide a home for [the child] on weekends and his needs for clothing, school supplies, recreation, car insurance and maintenance and similar expenses will be undiminished and, perhaps increased.”<sup>116</sup>

In addition, the *Smith* court noted that while some expenses undoubtedly vary depending upon the child’s residence, other expenses remain the same regardless of where he lives. Even the custodial parent had conceded that expenses for items such as clothing, car insurance, car maintenance, health insurance, and housing remain the same whether the child lives with his father or at school.<sup>117</sup>

In *Shands v. Shands*, the parties’ separation agreement had provided for the non-custodial parent’s child support obligation to continue at its full rate, and for the child’s vehicle expense and car insurance to be considered an additional form of child support, to be paid by the non-custodial parent until the child graduated.<sup>118</sup> In addition, the parties equally shared the child’s tuition and fees.

In *Appling v. Appling*, the court indicated that the payment of the reasonable expenses of a child for whom an obligation of support is owed for attending such an institution has been found to be a form of child support, but held that such expenses are not included in the calculation of the basic child support obligations.<sup>119</sup> The court had cited to the child support guideline worksheets of the state, and the directions and comments for use in completion of the Form 14, Line 6e, which is titled, “Other extraordinary child-rearing costs.” The comment to which the court cited provides: “Post-secondary educational expenses . . . are not included in the schedule of basic child support obligations. These expenses may be included in Form No. 14 as an ‘other extraordinary child-rearing cost’ if the parents agree or the

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<sup>116</sup> *Seltzer v. Seltzer*, 982 S.W.2d 764, 766 (Mo. Ct. App. 1998).

<sup>117</sup> *Smith*, 114 S.W.3d at 415.

<sup>118</sup> *Shands v. Shands*, 237 S.W.3d 597, 601 (Mo. Ct. App. 2007).

<sup>119</sup> *Appling v. Appling*, 156 S.W.3d 454, 460 (Mo. Ct. App. 2005).

360 *Journal of the American Academy of Matrimonial Lawyers*

court orders that the parents contribute to payment of these expenses.”<sup>120</sup>

Accordingly, while college-related expenses are considered child support, they are not included in the base support, but are added to the base support as “extraordinary expenses” to the extent that they are agreed upon or ordered by the court. The expenses do not become an issue until the child is preparing to attend college; at that time, the parties may advance arguments as to why the expenses should or should not be added to the base support obligation. It is at this point that arguments in support and in opposition to duplicate expenditures would be made.

In Missouri, the actual automobile expenses and insurance premiums incurred by a driving-age child may be considered with the needs of a child in determining child support.<sup>121</sup> However, these expenses may not be considered until the child actually reaches driving age. Rather, child support may be revisited, and increased, upon the showing of the appropriate proofs regarding such expenses, when the conditional event occurs.<sup>122</sup>

### *Montana*

In Montana, “[a] divorced parent has no greater obligation to his children than a non-divorced parent.”<sup>123</sup> Moreover, a parent’s legal obligation to support his children ends with their emancipation—in Montana, at eighteen years of age.<sup>124</sup>

However, parties may agree to an obligation to support their children beyond the age of majority.<sup>125</sup> Moreover, an agreement to contribute to a child’s support beyond the age of majority need not be in writing, and may be elicited through testimony. In *In Re Marriage of Roulier*, the court ordered the non-custodial father to be responsible for the costs of books, room, board, tuition, and fees for his child.<sup>126</sup> The court’s order was based upon the following testimony of the non-custodial father at trial:

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<sup>120</sup> *Id.*

<sup>121</sup> *In re Marriage of Cohen*, 884 S.W.2d 35, 40 (Mo. Ct. App. 1994).

<sup>122</sup> *Id.*

<sup>123</sup> *Herrig v. Herrig*, 648 P.2d 758, 762 (Mont. 1982).

<sup>124</sup> *Chrestenson v. Chrestenson*, 589 P.2d 148 (Mont. 1979).

<sup>125</sup> *Herrig*, 648 P.2d at 765.

<sup>126</sup> *In re Marriage of Roulier*, 746 P.2d 1081, 1087 (Mont. 1987).

Q. Do you have any commitment that you're willing to make with regard to college education for your child?

A. Well, I have maybe strange and different ideas on college education. I feel like I put myself through school. I feel like I really accomplished something. I didn't get any help at all. I would like to help my children. I don't want to see them get a full ride and be able to goof off during the summer and really not get any kind of a self satisfaction of having completed school.

Q. Do you have a commitment that you're willing to make in terms of defining what you are willing to do with regard to college education?

A. I'm going to help my children through school.

Q. Is there any agreement that you're willing to reach with regard to your minimum requirements?

A. Well, I hate to place a minimum requirement on me from the standpoint that I don't even know what my financial capabilities are going to be, but if I'm in a position where I can pay for basically all the books, tuition and the kids end up having to, depending on where they're living, if they're living out of town or whatever if they're going to come up with their own spending monies and stuff like that, that's the kind of arrangement that I would like to see; but I'm hesitant to say, fine, go ahead and sign on the dotted line where I'm going to provide that they're going to go to school. What would happen if I said that and I had no input, for example, on where Rikki went to school and all of a sudden she's going to school in Italy and it's costing me \$2,000 a month and I can't afford it. Believe me, I want to take care of my children.<sup>127</sup>

Based upon this exchange, the trial court determined that the husband agreed to contribute to his child's college expenses, and obligated him to do so. This determination was affirmed on appeal.

### *New Jersey*

The public policy of New Jersey regarding education affords courts substantial discretion in determining whether, and to what extent, to require a non-custodial parent to pay for a child's college education expenses. New Jersey Statutes section 2A:34-23 authorizes the courts to "make such order as to the alimony or maintenance of the parties, and also as to the care, custody, education and maintenance of the children."<sup>128</sup>

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<sup>127</sup> *Id.* at 1086-87.

<sup>128</sup> N.J. STAT. ANN. § 2A:34-23 (2007).

In New Jersey, child support and contribution to college expenses are two distinct yet related obligations imposed on parents.<sup>129</sup> Child support in New Jersey is ordinarily governed by guidelines,<sup>130</sup> however, while courts may apply these guidelines to children who commute to college, the guidelines may not be applied to children over eighteen years of age who reside on campus. As a result, such circumstances are considered on a case-by-case basis, including the definition of college expenses, as well as the recalculation of child support.

In *Guglielmo v. Guglielmo*, the Appellate Division reversed the trial court's determination that the non-custodial parent was only responsible for the repayment of the child's school loans to the extent that they covered tuition and books, and not to the extent that they covered any other expenses normally associated with college.<sup>131</sup>

In the unreported decision of *Sailon v. Sailon*, the parties' property settlement agreement called for the non-custodial parent to pay full child support during the weeks that the child resided at home, and 60 percent of his child support obligation during the weeks that the child was residing on campus. In addition, the parties shared in the child's college tuition, after the exhaustion of custodial funds, with the custodial parent being responsible for the first \$10,000.00 in tuition cost after that exhaustion, and the non-custodial parent being responsible for the remainder of the tuition, plus fees, book, tuition, spending money, transportation and automobile expenses.<sup>132</sup>

Accordingly, the agreement fashioned by the parties in *Sailon* included fees, books, spending money, transportation and automobile expenses as college expenses, toward which the parties would contribute above and beyond child support. The parties agreed to this designation of college expenses, notwithstanding the fact that the child support guidelines include automobile expenses, and possibly certain items that would have been covered by "spending money," as consumption catego-

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<sup>129</sup> *Blum v. Adler*, 652 A.2d 176, 177 (N.J. Super. Ct. App. Div. 1994).

<sup>130</sup> See New Jersey Rules of Court 5:6A, Appendix IX.

<sup>131</sup> *Guglielmo v. Guglielmo*, 602 A.2d 741, 750 (N.J. Super. Ct. App. Div. 1992).

<sup>132</sup> *Sailon v. Sailon*, No. A-6052—02T2, 2004 WL 1229634 (N.J. Super. Ct. App. Div. Apr. 5, 2004).

ries.<sup>133</sup> It is significant to note, however, that by way of a final amendment, the parties agreed to equally share in the cost of the child's automobile insurance.<sup>134</sup>

In *Avery v. Avery*, the parties' property settlement agreement provided that the parties were to contribute to college to the extent of their financial ability, and that the non-custodial parent's continuing child support payments would be a factor to consider in determining the amount to be contributed by him toward the college expenses. The parties' agreement did not define college expenses.<sup>135</sup>

In *Hudson v. Hudson*, the trial court, in addressing the issue of child support and allocation of college contribution for the parties' child in college, ordered the parties to equally share the college expenses of the child.<sup>136</sup> Additionally, the trial court terminated the non-custodial parent's child support obligation "based upon the fact that [he] is contributing towards [the child's] tuition, room, and board for approximately nine months of the year and that [the child] will be attending college."<sup>137</sup> This ruling had the effect of including the non-custodial parent's child support obligation in his college contribution, which meant that the non-custodial parent's total obligation toward his child was limited to his 50 percent share of the tuition, room and board.<sup>138</sup>

The Appellate Division found error in this approach. Specifically, the Appellate Division opined that "[c]hild support and contribution to college expenses are two discrete yet related obligations imposed on parents. The relationship between the two is not fixed but depends on the facts of each case."<sup>139</sup>

The Appellate Division had specific concerns regarding the facts before it and noted that:

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<sup>133</sup> *Id.* at 1.

<sup>134</sup> *Id.* at 1 n.1.

<sup>135</sup> *Avery v. Avery*, 507 A.2d 242, 243-44 (N.J. Super. Ct. App. Div. 1986).

<sup>136</sup> *Hudson v. Hudson*, 719 A.2d 211, 213-14 (N.J. Super. Ct. App. Div. 1998). The matter was reversed, in part, based upon the trial court's methodology in adding the income of the custodial parent's new spouse to the income of the custodial parent for the purpose of determining the parties' proportionate share of the expenses.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 215.

<sup>139</sup> *Id.* (citations omitted).

364 *Journal of the American Academy of Matrimonial Lawyers*

Here, no consideration was given to Jeremy's expenses which remain plaintiff's obligation such as fixed shelter costs and food when Jeremy is home. Jeremy attends school nine months per year imposing an obligation on [the custodial parent] to support him for the additional three months. In addition, Jeremy indicated that he would be home on numerous weekends during the school year. Moreover, while the judge observed that Jeremy is capable of earning income, we do not deem that to be a substitute for defendant's obligation to contribute to Jeremy's support. In sum, the interrelationship between the college contribution and child support must be reconsidered by the judge on remand.<sup>140</sup>

In *Jones v Jones*, an unreported Appellate Division decision, the parties' property settlement provision provided for the non-custodial parent's child support obligation to be reviewed upon the youngest child's entry into college (the older child was already in college at the time of the entry of the agreement), with the understanding that if the parties' respective incomes remained the same and the child resided away at school, child support would be reduced.<sup>141</sup>

Regarding the allocation of college educational expenses, the agreement acknowledged the custodial parent's payment of the older child's tuition, room, board and books, for the second semester of the 2003/2004 academic year, and memorialized the non-custodial parent's obligation to pay the same expenses for the first semester for the 2004/2005 academic year.

The agreement further called for the parties to share the 2004/2005 laptop expenses, and for the parties to share "all reasonable and necessary undergraduate college education expenses" incurred on behalf of the minor children "[e]ffective [upon commencement of the older child's] second semester of the 2004/2005 academic year and thereafter."<sup>142</sup> The agreement defined reasonable college educational expenses as: "college search fees, including the cost of reasonable visits (excluding air fare) to view college campuses, college application fees, SAT and achievement preparatory courses, test fees, tuition, room and

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<sup>140</sup> *Id.*

<sup>141</sup> *Jones v. Jones*, No. FM-14-1164-03, 2007 WL 506048 (N.J. Super. Ct. App. Div. Feb. 20, 2007).

<sup>142</sup> *Id.* at 2.

board, books, fees, lap top computer costs, and reasonable transportation expenses.”<sup>143</sup>

In the unpublished Appellate Division decision *Schultze v. Schultze*, the parties’ property settlement agreement provided for a 50 percent reduction in child support for a child who lived away from home while attending college and for the parties to share the cost of college in proportion to their respective incomes.<sup>144</sup>

In the unpublished Appellate Division decision *Magurne v. Magurne*, the parties had one child residing at home and one child in college. The trial court, in the context of a post-judgment plenary hearing, ordered an allocation of college expenses between the parties, and defined college expenses as, “tuition, room, board and fees, but not transportation.”<sup>145</sup> However the written order recited that “each child’s meal plan remains the sole responsibility of [the custodial parent],” which the trial court subsequently explained was because, “food was included in the guideline calculation.”<sup>146</sup> In addition, the court calculated support based upon the guidelines, although the court did not enhance the guideline award, even though the parties’ incomes were above the guidelines, on the basis that the non-custodial parent was paying 85 percent of the college costs.<sup>147</sup>

The Appellate Division found error in the trial court’s application of the child support guidelines, and applicable case law, for fixing support for the parties’ child attending college and for the parties’ minor child. Specifically, the Appellate Division took issue with the trial court’s reliance upon the child support guidelines, in lieu of application of the statutory child support factors, for the purpose of fixing support for the parties’ child in college.<sup>148</sup> The court ordered, on remand, that the trial court calculate child support for the child at home before considering support for the child in college.<sup>149</sup>

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<sup>143</sup> *Id.* at 2.

<sup>144</sup> *Shultze v. Shultze*, No. FM-30-1760-95A, 2008 WL 2744053 (N.J. Super. Ct. App. Div. July 16, 2008).

<sup>145</sup> *Magurne v. Magurne*, No. FM-02-2565-99, 2007 WL 470634 (N.J. Super. Ct. App. Div. Feb. 15, 2007).

<sup>146</sup> *Id.* at 3.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 4.

<sup>149</sup> *Id.*

366 *Journal of the American Academy of Matrimonial Lawyers*

Regarding the determination of support for the child in college, the Appellate Division's instructions to the trial court on remand were that:

The trial court must also calculate the amount of child support necessary for the unemancipated college student, after consideration of the child's annual needs, which comprise items in addition to 'room, board, tuition and fees'. These costs, which are presumably paid by plaintiff, include, but are not limited to, fixed shelter costs, clothing, bedding, toiletries, medications, medical treatment, books, supplies, transportation, entertainment, and food for break periods, weekends home and summer months. The child's needs are but one factor set forth in the statute which must be examined.<sup>150</sup>

In *Herridge v. Herridge*, an unpublished opinion, the parties had three children. The parties' property settlement provided for the non-custodial parent to pay child support in the amount of \$4,800.00 per month until the earlier of either the youngest child graduated from college, or four years after the youngest child graduated from high school. The agreement also called for the non-custodial parent to be responsible for the car payments of one of the parties' sons separate and apart from the child support obligation.<sup>151</sup> Regarding college, the parties' agreement provided that:

The parties acknowledge that the children should have the opportunity of post high school education if they so choose, including undergraduate college, vocational school and job training school. The [custodial parent] shall pay 100% for that education, including funds for application expenses, review courses, tests, transcripts, room, board, tuition, living expenses, transportation, computer, and other miscellaneous fees and reasonable other expenses, subject to any scholarships, loans, assets held in the child's name or other assistance the child is able to obtain.<sup>152</sup>

In another unpublished opinion, *Horne v. Horne*, the parties' agreement called for the non-custodial parent to pay child support above the guidelines until emancipation, and further called for the parties to share in the cost of college expenses in accordance with their respective incomes, with college expenses

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<sup>150</sup> *Id.*

<sup>151</sup> *Herridge v. Herridge*, No. FM-14-044-04, 2007 WL 3376182 (N.J. Super. Ct. App. Div. Nov. 15, 2007).

<sup>152</sup> *Id.* at 1.



being defined as “tuition, room and board, books, and reasonable costs of transportation (4 round trips per year).”<sup>153</sup>

*New York*

Unless parents expressly agree otherwise, a court may not compel parents to contribute to the support or college education of a child whose age exceeds twenty-one years.<sup>154</sup>

New York Domestic Relations Law section 240 (2) defines child support as “a sum to be paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any unemancipated child under the age of twenty-one years.”<sup>155</sup>

New York Domestic Relations Law section 240 (1-b) (c) (7) provides that:

Where the court determines, having regard for the circumstances of the case and of the respective parties and in the best interests of the child, and as justice requires, that the present or future provision of post-secondary, private, special, or enriched education for the child is appropriate, the court may award educational expenses. The non-custodial parent shall pay educational expenses, as awarded, in a manner determined by the court, including direct payment to the educational provider.<sup>156</sup>

In *Healey v. Healey*, the custodial parent appealed the determination of a hearing examiner that the non-custodial parent would be responsible for his older child’s college expenses but would not be responsible for any additional child support on behalf of the older child. The Appellate Division affirmed, finding that since the non-custodial parent was ordered to pay for the older child’s tuition, room, board, books, and some transportation expenses, and was also providing the child with some clothing and spending money, no additional child support was warranted.<sup>157</sup>

College expenses in New York are defined by case law. In *Ann Marie T. v. John T.*, the court defined college expenses as “tuition, room, board, books, and incidental fees and expenses

<sup>153</sup> *Horne v. Horne*, No. FM-10-387-04, 2008 WL 4876006 (N.J. Super. Ct. App. Div. Nov. 13, 2008).

<sup>154</sup> *Maroney v. Maroney*, 570 N.Y.S. 2d 339, 340 (N.Y. App. Div. 1991).

<sup>155</sup> N.Y. DOM. REL. LAW § 240 (1-b) (b-2).

<sup>156</sup> N.Y. DOM. REL. LAW § 240 (1-b)(c)(7).

<sup>157</sup> *Healey v. Healey*, 190 A.D.2d 965, 967 (N.Y. App. Div. 1993).

charged by the college.”<sup>158</sup> There were two children in this matter, one child was in college, and it was anticipated that the other child would commence college shortly. The court also refused to provide an abatement against ongoing child support because the child attending college resided at home while doing so. However, the court did opine that in the event that either child did reside away at school, “two thirds of that child’s share of child support . . . would then be subtracted from and credited to college expenses.”<sup>159</sup>

In *Houk v. Houk*, the court ordered the non-custodial parent to pay 75 percent of the child’s college expenses, defined as “tuition, room and board, necessary college fees and required books.”<sup>160</sup> In addition, the non-custodial parent was ordered to pay child support of \$245.99 per week for the weeks that the child was home from school, and \$167.00 per week for the weeks that the child was at school.<sup>161</sup> The court held that it was “entitled, depending on the particular facts and circumstances of a case, to make an adjustment in child support where the noncustodial parent contributes to college expenses and said expenses include room and board.”<sup>162</sup>

#### *North Dakota*

In *Sullivan v. Quist*, the parties’ agreement regarding college expenses provided for them to share, in proportion to their respective incomes, “any and all expenses incurred in educating any of their children beyond the secondary level.”<sup>163</sup> At the parties’ request, the court interpreted “any and all expenses” to include, “[t]uition, books, fees, and the average cost of room and board, all predicated on costs of attending a college in North Dakota or a comparably priced institution located out of state.”<sup>164</sup>

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<sup>158</sup> *Ann Marie T. v. John T.*, 820 N.Y.S. 2d 841 (N.Y. Sup. Ct. 2006).

<sup>159</sup> *Id.*

<sup>160</sup> *Houk v. Houk*, 246 A.D.2d 905, 906 (N.Y. App. Div. 1998).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Sullivan v. Quist*, 506 N.W.2d 394, 397 (N.D. 1993).

<sup>164</sup> *Id.*

*Oregon*

In Oregon, a court may order a non-custodial parent to contribute to college expenses on behalf of the minor child pursuant to Oregon Revised Statute section 107.108, entitled “Support or maintenance for child attending school.”<sup>165</sup> Pursuant to the statute, the court is authorized to order a non-custodial parent to provide support for an unmarried child between the ages of eighteen and twenty-one. In addition, the child must be making satisfactory academic progress (as defined by the school).<sup>166</sup> A child who attends school on a part-time basis is not entitled to parental support. Pursuant to Oregon Revised Statute section 107.108, a child who has a course load that is less than half of that which constitutes full-time enrollment, is not considered a “child attending school.”

It is important to note that:

A support order that provides for the support or maintenance of a child attending school is intended to recognize the importance of continuing education for a child over 18 years of age who does not benefit from an intact family or who has been removed from the household. While support may serve to supplement the resources available to the child attending school, it is not intended to replace other resources or meet all of the financial needs of a child attending school.<sup>167</sup>

Therefore, a non-custodial parent may be obligated to pay for college expenses for a “child attending school” within the meaning of the statute and may also be obligated to pay child support during that time to meet the child’s additional financial needs. Such a child support obligation will be based on the calendar year rather than the school year.<sup>168</sup>

The statute reflects Oregon’s commitment to making higher education as available as possible to its citizens. The state’s tradition dates back to 1941, when the court in *Jackman v. Short* held that a trial court could compel a non-custodial father to contribute to the cost of his daughter’s education.<sup>169</sup>

While litigants have challenged the constitutionality of the Oregon statute by arguing that it violates the Equal Protection

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<sup>165</sup> OR. REV. STAT. § 107.108 (2).

<sup>166</sup> *Id.* at 1(a)(C).

<sup>167</sup> OR. REV. STAT. § 107.108(14).

<sup>168</sup> Matter of Marriage of Eusterman, 598 P.2d 1274 (Or. Ct. App. 1979).

<sup>169</sup> Jackman v. Short, 109 P.2d 860, 865-66 (Or. 1941).

370 *Journal of the American Academy of Matrimonial Lawyers*

Clause of the United States Constitution or Oregon's Equal Privileges and Immunities clause, courts have upheld the statute's constitutionality. Specifically, the court in *Marriage of Crocker* held that "the legislature rationally could believe that households in which parents do not live together might need judicial assistance in making educational decisions."<sup>170</sup>

*Pennsylvania*

In *Townsend v. Townsend*, the parties' property settlement agreement contained the following child support/college contribution provisions: (a) paragraph 3 obligated the husband/non-custodial parent to pay child support in the amount of \$325.00 per month, per child until each child graduated from college; (b) paragraph 6 required the husband/non-custodial parent to pay all college tuition, fees and book expenses for the children; and (c) paragraph 6 provided that the wife/custodial parent was required to pay the room, board and living expenses of each child up to \$1,000.00 per year, with the husband/non-custodial parent responsible for any reasonable living expense beyond that figure.<sup>171</sup>

The issue, as framed by the court, was:

Inssofar as \$1,000 is not sufficient to cover [the child's] 'room, board and living expenses' at [college](as those terms are used in paragraph 6), may Father get credit for all or any part of his 'support' payment under paragraph 3 for the excess 'living expense' which he is obliged to pay under paragraph 6?<sup>172</sup>

The court, in its adjudication of this issue, declared:

[W]e note at the outset that if we give Father credit for the \$325 per month he has been paying under paragraph 3, we have effectively denied any content or meaning to the stricture concerning excess living expenses in paragraph 6. We think the better interpretation is to recognize that Mother's expenses for her daughter continue even though she is away at college, so that the \$325 payable under paragraph 3 was not meant to be used to defray "living expenses" under paragraph 6. The latter seems to us to be intended to refer to room, board, toiletries, and the like, incurred wholly as the result of being at college.<sup>173</sup>

The court further noted that while it had no information as to what living expenses might cost beyond the room and board,

<sup>170</sup> *Marriage of Crocker*, 971 P.2d. 469 (Or. Ct. App. 1998).

<sup>171</sup> *Townsend v. Townsend*, 446 A.2d 630, 631 (Pa. Super. Ct. 1982).

<sup>172</sup> *Id.* at 632.

<sup>173</sup> *Id.*

the room and board alone was \$2,270.00 the prior year, and was expected to be \$2,700.00 for the following year. Accordingly, the court found that: “We think that Daughter could use her \$325 per month toward personal toiletries and the like, and so we will direct that Father’s ‘living expense’ obligation include only the ‘excess room and board costs.’”<sup>174</sup>

In *Wiegand v. Wiegand*, the father had agreed to pay the sum of \$125.00 per month for the support of each of his children during minority and, in addition to that monthly payment, to pay for school tuition and expenses for a four-year college for each child. The father sought to reduce the monthly payments for support and maintenance from \$125.00 per month to \$62.50 per month while his daughter was away at college.<sup>175</sup>

The court directed the father to provide for payment to the mother of the full amount for maintenance and support of the child while away at college. The court concluded that the father had intended that there would be a family home for the benefit of the children and that such a home could not be dismantled in part or diminished in size while a particular child was away at school.

#### *South Carolina*

In *McDuffie v. McDuffie*, the court applied the plain-meaning rule to the language of the parties’ divorce decree that required the non-custodial parent “to pay all expenses associated with [the children’s] college education[s].”<sup>176</sup> It held the language to mean that Mr. McDuffie was responsible for “room, board, books, tuition, fees, transportation, clothing, allowances, insurance, incidentals, etc. [sic].”<sup>177</sup>

The appellate court reversed, noting that the trial court should have looked to the intentions of the parties. In this regard, the appellate court noted that during the trial, the custodial parent herself defined college expenses as room, board, tuition and books, and she testified that this was all she was looking for by way of contribution.<sup>178</sup>

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<sup>174</sup> *Id.*

<sup>175</sup> *Wiegand v. Wiegand*, 37 A.2d 492 (Pa. 1944).

<sup>176</sup> *McDuffie v. McDuffie*, 418 S.E.2d 331, 332 (S.C. Ct. App. 1992).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 334.

372 *Journal of the American Academy of Matrimonial Lawyers*

*South Dakota*

In *Kier v. Kier*, the parties' agreement provided for the non-custodial parent to pay "all of the regular costs in [the child's] obtaining a college education to the level of an undergraduate degree."<sup>179</sup> The non-custodial parent had paid the child's expenses for room, board, tuition and books, but he paid no additional costs in connection with the child obtaining her education.<sup>180</sup> The custodial parent appealed the trial court's denial of her request for the court to interpret the parties' agreement to include clothing expenses, costs of travel, and other employment opportunity expenses of the child. The appellate division affirmed.

*Washington*

In Washington, the court has broad discretion in allocating college expenses. Washington's child support schedule sets forth standards for an award of postsecondary support. The statute provides that "[t]he child support schedule shall be advisory and not mandatory for postsecondary educational support."<sup>181</sup>

In considering whether to award postsecondary educational support, the court must determine "whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life."<sup>182</sup> If so, the court may award support based on consideration of a number of nonexclusive factors such as the:

age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, current and future resources; and the amount and type of support that the child would have been afforded if the parents had stayed together.<sup>183</sup>

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<sup>179</sup> *Kier v. Kier*, 454 N.W.2d 544 (S.D. 1990).

<sup>180</sup> *Id.* at 545.

<sup>181</sup> WASH. REV. CODE § 26.19.090(1) (2009).

<sup>182</sup> WASH. REV. CODE § 26.19.090(2) (2009).

<sup>183</sup> *Id.*

## **IV. Making Sense of the Chaos: Finding Common Ground in Constructing College Costs**

### *A. Introduction*

While the foregoing section illustrates just how differently the concept of “college costs” can be perceived depending upon the state or particular court, and while the section equally illustrates just how seemingly random a child support determination can be for a child in college, certain recurring principles can serve as the foundation for constructing a uniform approach to these two intertwined issues. In the next section, we will explore some of those principles as they apply to recalculating child support for the child in college. However, in this section, we will first explore some of the common principles found in our nationwide survey as they pertain to defining college expenses.

As a word of caution, while the purpose of this section and the next section is to identify standards that may be extrapolated from the nationwide survey in the previous section, we know that nothing in this area is truly uniform. Rather, the tenets set forth below more accurately reflect principles that are adopted by the majority of the states opining on the issue, or at least by enough states to contribute to a recurring theme.

### *B. College Costs: A Working Definition*

The most clearly delineated college expenses—those expenses that are universally accepted as college expenses, at least among the states that permit or mandate college contribution—are as follows:

- Tuition and fees;
- Room (i.e., dormitory costs, on-campus housing, or costs associated with living in a fraternity or sorority house);
- Board (i.e., food for the child on campus, usually in the form of a meal plan);
- Books and supplies.

Of course, this list is not exhaustive, but rather represents the basic expenses which most states include within the definition of college costs. The more difficult question is whether there are any additional common threads among the various courts on the treatment of additional expenses as college costs.

374 *Journal of the American Academy of Matrimonial Lawyers*

To arrive at a list of the specific expenses that would be included in the phrase “college costs,” we must first start with a definition of college costs—a definition that is based not on the identification or enumeration of specific expenses, but rather on the general characteristics of those expenses that seem to be the most recurring among the states.

So how do we define college costs? Based on the survey of case law set forth in the preceding section, college costs can be defined as: *Costs related to, reasonable and necessary for a child’s attendance at college.*

This proposed definition, while relatively simple, contains three elements: (1) the costs must be related to attendance at college, (2) the costs must be reasonable, and (3) the cost must be necessary for attendance at college. These three elements appear over and over in the cases and statutes surveyed in the prior section.<sup>184</sup>

The significance of determining whether an expense, otherwise determined to be reasonable and necessary for college, is related to the attendance at college, serves the purpose of assuring that duplicate expenses are avoided. An obligation to contribute to college expenses is often coupled with an ongoing child support obligation, and there may be expenses that are reasonable and necessary for the child’s attendance at college, but which are simply not related to college, and therefore otherwise covered by the child support. Clothing is such an example. Clothing is an expense that is certainly reasonable. Likewise, it is logical that a child would need clothes to attend college. However, courts may consider clothing unrelated to college, and a child’s clothing costs are routinely considered a basic component of child support.

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<sup>184</sup> See CONN. GEN. STAT. ANN. § 46b-56c(f) (educational support orders provide for support for necessary expenses, including room, board, dues, tuition, fees, registration and application costs); *Bayliss v. Bayliss*, 550 So.2d 986, 987 (Ala. 1989) (college expenses may include those expenses that the trial court deems reasonable and necessary for the child to attend college); *Matsunaga v. Matsunaga*, 53 P.3d 296, 303 (Hawaii Ct. App. 2002) (the court must consider the child’s reasonable college-related needs); *In re Marriage of Van-nausdle*, 668 N.W.2d. 885 (Iowa 2003) (the court should consider the actual and necessary costs of college).



Consider laptop computers. In *Nichols v. Tedder*,<sup>185</sup> the court determined that the child in college would benefit from a “personal computer.” This was in 1989. Today, the personal computer has been replaced by the laptop computer.

Laptop computers are not listed in the category of universal college expenses only because the survey of case law has expanded back to a time before laptops were so prevalent. The day of the computer laboratory is disappearing. Recently, an increasing number of courts are considering a laptop for the child to be a college expense. Some courts consider laptops to be a “supply” component of the “books and supplies” category, or it may serve as a replacement for the laboratory fee component of tuition and fees. In any event, it is safe to say that as the costs of laptop computers become more reasonable, and they become more necessary for college and related to college, the growing trend will be toward including a laptop as a universal college expense.

Based upon our working definition of college expenses, and based upon the survey of case law in the previous section, the following additional costs should be considered for their relation to college, reasonableness, and necessity.

### C. Automobile / Transportation Expenses

Several courts have considered automobile and/or transportation expenses to be a college cost.<sup>186</sup> However, automobile and/or vehicle expenses have not been universally accepted as a college expense.<sup>187</sup> The initial difficulty in assessing the reasona-

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<sup>185</sup> *Nichols v. Tedder*, 547 So.2d at 768.

<sup>186</sup> 750 ILL. COMP. STAT. § 5/513(a)(2) (Illinois statute includes “transportation” in definition of education expenses); *Wagner v. Wagner*, 989 So.2d 572, 582 (Ala. Civ. App. 2008) (college expenses included transportation cost and automobile maintenance); *Borth v. Borth*, 806 N.E.2d 866, 871 (Ind. Ct. App. 2004) (the cost of a vehicle was properly included in the child’s college expenses because the child lived off campus, and it was necessary for her to have a vehicle for school); *Saliba v. Saliba*, 753 So.2d 1095, 1102 (Miss. 2000) (car insurance was considered a part of the college costs); *Shands v. Shands*, 237 S.W.3d 597, 601 (Mo. Ct. App. 2007) (child’s vehicle expense and car insurance to be considered part of college expenses).

<sup>187</sup> *Goldman v. Goldman*, 529 So.2d 1260, 1261 (Fla. Dist. Ct. App. 1988) (father’s contribution toward daughter’s air travel was gratuitous and could not be considered an offset against his obligation to contribute to college costs); *Warner v. Warner*, 725 N.E.2d 975, 977 (Ind. Ct. App. 2000) (trial court’s exclu-

376 *Journal of the American Academy of Matrimonial Lawyers*

bleness and necessity of transportation and/or automobile expenses is that it is a very broad category of expenses, which can cover a wide array of costs from the cost of an automobile and car insurance, to payments for gasoline and oil changes, to contribution toward plane tickets. Accordingly, the reasonableness and necessity must be assessed within the context of the individual case. Some schools do not permit students to have cars on campus, and the campus is small enough that all classes are within walking distance from the dormitories. Some schools maintain separate campuses, where classes are spaced out, and therefore require students to have cars, or at least the means of travelling between the various campuses. Some students will require automobiles to travel to work study programs, internships, and field trips.

In circumstances where the child is attending college across the country, or even overseas, it may not be reasonable for the child to have his own car on campus, so far away from home. In such circumstances, the cost of airfare for the child to travel to and from school may be the real transportation cost at issue. On the other hand, where the child continues to reside at home and commutes to a local college on a daily basis, securing a separate automobile for the child may be considered a reasonable necessity.

Even where it is determined that an automobile may be a reasonable expense, and an expense that is necessary for college, there still remains the issue of whether an automobile is related to college. However, this inquiry may very well merely be one of semantics rather than substance. For example, in *Nichols v. Tedder*, the court clarified that automobile expenses are considered neither a part of regular child support, nor a component of college expenses, but rather an additional part of an award for the maintenance of children that would be allocated beyond the basic child support amount.<sup>188</sup> The issue in that case was not

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sion of automobile expenses from college costs was not an abuse of discretion); *In re Marriage of Hull*, 491 N.W.2d 177 (Iowa Ct. App. 1992) (while cost of gasoline to commute to college was considered a college expense, the truck payments and insurance were not necessarily incident to a post-high school education); *Kier v. Kier*, 454 N.W.2d 544 (S.D. 1990) (the cost of travel was not a regular cost of obtaining a college education).

<sup>188</sup> *Nichols*, 547 So.2d at 768.

whether automobile expenses were reasonable or even necessary for college, but rather whether they were related to college. However, since there was a mechanism (automobile expenses could be added to child support as an extraordinary expense) for securing contribution to these reasonable and necessary costs from the parents independent of the college analysis, the actual designation of automobile expenses as college or not college became a secondary issue.

This analysis is not uncommon. Many states' guidelines provide for not only a basic child support amount, but also a mechanism for determining additional support to cover any type of extraordinary expense, which typically include expenses that are large, variable, and not incurred by the average family. Where such a mechanism exists, there is an avenue for parents to seek contribution toward the cost of a car for the child independent of the child support assessment.

#### D. *Dormitory Setup Costs*

An additional expense for consideration as part of the definition of college costs is dormitory setup costs. Such costs do not reflect ongoing or recurring expenses, but rather one-time expenses to help the student get situated and function in his or her dorm room. Such expenses may include a mini refrigerator, a hotpot, linens, etc. Attached to this article is a compendium of checklists issued by various sources regarding all of the possible expenses that a student is advised to consider when moving into a dorm room, and is therefore a list that the parents of the child are likewise advised to consider when framing or defending applications for college expense contribution.

In considering dormitory setup costs, it is important to keep in mind the three components that have made up our definition of college. Is the individual item related to college? Is it reasonable? Is it necessary to a college education? There is certainly room for creative argument when addressing dormitory setup costs.

#### E. *Living Expenses*

There is no set definition of living expenses, although the term is used frequently in courts throughout the nation to cover a broad array of expenses such as toiletries, food in addition to the

meal plan, the cost of the school's recreation center, clothing, fraternity and sorority costs, entertainment costs, and other similar expenses.

Since living expenses cover such a wide variety of expenses, the designation of such expenses, perhaps more than any other category of expenses, receives a wide variety of treatment. Some courts will not allow for such living expenses, especially where such expenses are covered by the basic child support obligation.<sup>189</sup> Other courts have determined that such living expenses are reasonable and necessary college expenses.<sup>190</sup>

The key to assessing the expenses that fall within the broad "living expense" category is to remain true to the three elements of a college expense, and determine whether the expenses are reasonable, necessary, and related to college. There is plenty of room for creative argument on these issues. For example, while clothing in general is not related to college, fraternity or sorority jerseys may be considered "related to college." A gym membership or tickets to a sporting event may not relate to college, but a membership to the on-campus gym, and tickets to a college sporting event may be related to college.

Often, the basic child support award continues, in whole or in part, while a child attends college. This leads to objections that it is duplicative to include living expenses in the calculation of college expenses, which, at least to some degree, will often continue while the child is in school. This leads to our next section, in which we consider general themes arising from the case

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<sup>189</sup> *In re Marriage of Hull*, 491 N.W.2d 177, 178-179 (Iowa App. 1992) (holding that miscellaneous expenses were not necessarily incident to a post-high school education); *Townsend v. Townsend*, 446 A.2d 630, 632 (Pa. Super. Ct. 1982); *Kier v. Kier*, 454 N.W.2d 544 (S.D. 1990) (holding that college expenses did not include such living expenses as clothing).

<sup>190</sup> 750 ILL. COMP. STAT. § 5/513(a)(2) (interpreting the Illinois statute which defines education expenses to include living expenses during the school year and periods of recess); *Wagner v. Wagner*, 989 So.2d 572, 582 (Ala. Civ. App. 2008) (finding that food in addition to the meal plan, a stipend for toiletries, and contribution toward the school's recreation center were reasonable and necessary living expenses associated with college); *In re Marriage of Vanausdle*, 668 N.W.2d 885 (Iowa 2003) (reasoning that a college education includes social, cultural, and educational experiences which will include normal and reasonable living expenses).

law survey concerning the treatment of child support while the child is in college.

## **V. Parameters for Avoiding Duplicate Expenses while Recalculating Child Support in the Absence of Guidelines**

### *A. Introduction*

When the child of a separated, divorced, or unformed family makes the transition from high school to college, the definition and allocation of the child's college expenses is only half of the support equation for that child. The other half of the equation is the determination of what adjustments, if any, should be made to the basic child support award that was in place before the child ventured off to college.

Child support in almost all of the states is governed by guidelines. However, courts vary as to whether or not the guidelines are applicable for determining the child support for a child in college. New Jersey permits the court to apply the guidelines for a college student who commutes to school, but not for a child who resides on campus.<sup>191</sup> Indiana has its own college expense guidelines which incorporate the basic guideline-based child support award and reduces same in proportion to the amount of time the child is at home, versus the amount of time the child is on campus.<sup>192</sup> Some states, such as Alabama and Hawaii, provide that guideline support is to continue while the child attends college, but that contribution toward college expenses may serve as a basis to deviate from the guidelines.<sup>193</sup>

The primary reason that strict guideline application for determining the child support is frowned upon is that an assumption exists that strict guideline application, where the parties are already contributing to the child's college expenses, will inevitably result in duplicate expenses. Appendix IX-A, ¶ 18 of New Jersey's child support guidelines specifically prohibit application of the guidelines for children residing on campus for this very

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<sup>191</sup> See New Jersey Rules of Court 5:6A, Appendix IX.

<sup>192</sup> Indiana Child Support Rules 1-3.

<sup>193</sup> AJRA Rule 32 (A)(1)(a) and *Matsunaga v. Matsunaga*, 99 Hawaii 157, 164 (Hawaii App. 2002).

380 *Journal of the American Academy of Matrimonial Lawyers*

reason.<sup>194</sup> However, in *Smith v. White*, while the court acknowledged the movant's argument that the room and board expenses college expenses were a duplicate of the child's housing expense component of the basic child support award, the court denied the movant's petition to reduce child support because the movant failed to demonstrate that basic child support figure was unjust or inappropriate.<sup>195</sup>

With this in mind, the following protocol, which takes into account the case law survey on child support for college students, is recommended for reassessing child support:

1. Start with the guideline award.
2. Adjust the guideline award to avoid duplicate expenses.
3. Adjust the guideline award to contemplate the time the child will be home.

*B. Starting With the Guideline Award*

While the potential for duplicate expenses may preclude strict guideline application for child support determinations in college cases, the guideline award is still the appropriate starting point for determining such support. This is true for two important reasons. First, as a practical matter, it is simply easier to start with something and make the appropriate reductions to account for duplicate expenses than it is to reconstruct a new figure from start.

The second reason why it is beneficial to start with the basic child support award is that when we start with the basic child support award, we know what that figure represents: it represents the amount of child support that would be appropriate for a child given the income levels of that child's parents (and other easily identifiable criteria that goes into determining the basic child support award). One of the benefits of the child support guidelines in general is that similarly situated children are treated similarly; so we know when the guidelines produce a figure, it is the same figure that will apply for all children with the same circumstances as the subject child. Accordingly, when we start with the guideline figure, it is easier to identify what are and are not the

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<sup>194</sup> See also *Borth v. Borth*, 806 N.E.2d 866 (Ind. Ct. App. 2004) (stating that a full or partial abatement of child support is required to avoid a duplication of expenses).

<sup>195</sup> *Smith v. White*, 114 S.W.3d 407, 414-15 (Mo. Ct. App. 2003).

appropriate reductions based upon the existence or absence of potential duplicate expenses.

One significant caveat must be mentioned when starting with the guideline award and then adjusting for duplicate expenses. To proceed in this fashion, it is important to identify exactly what expenses are intended to be covered by the basic child support award. In New Jersey, Appendix IX-A, ¶8 specifically and exhaustively defines what expenses are covered by a basic child support award.<sup>196</sup> Without knowing what expenses are intended to be covered by basic child support, it is impossible to know what expenses are duplicated in the form of college expenses.

Surprisingly, New Jersey's child support scheme is unique in this regard. Very few other states' guidelines provide the costs that are intended to be covered by a child support award; and no other state is as detailed as New Jersey, which breaks the expenses covered by child support down into seven general categories—housing, food, clothing, transportation, unreimbursed medical expenses, entertainment, and miscellaneous items—and then further breaks each individual category down in excruciating detail.

In states where guidelines are not as specific regarding what expenses the guidelines are intended to cover, it would be advisable to seek out this information through any available means. Where the guidelines provide little guidance on the issue of what is covered by child support, the basis for their state's respective guidelines must be analyzed. All guidelines are based upon some underlying economic study—this is how the correlation between income and support is derived. Within these underlying economic studies, there is most likely reference to the actual expenses in play. In addition, the case law of the particular state should be informative as to the specific expenses covered by child support.

### C. *Adjusting for Duplicate Expenses*

Section IV of this article addressed living expenses, specifically, whether such expenses are related to college and should be treated as college expenses, or whether these expenses are cov-

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<sup>196</sup> New Jersey Schedule of Child Support Awards, Appendix IX-F (2009).

ered by child support, and therefore should not be treated as college expenses, so as to avoid the duplication of an individual expense.

The two expenses that are most often cited as representing duplicate expenses, however, are the child's "housing" expense and the child's "food" expense. These are a common child support designation, and the college component counterparts of food and housing are "room" and "board."

The following is intended to address these two areas. In addition to looking at the arguments for and against duplication, it is important to again consider the statistics pertaining to these specific expenses to fully understand the financial impact on the supporting parents.

#### *D. Housing/ Dormitory Room Costs*

One of the more difficult expenses to designate is the child's living expense when he or she is residing on campus during the school year. The difficulty in this designation arises from the fact that two expenses are implicated; (1) the room component of the child's college room and board costs essentially provide the child with a dorm room; and (2) the shelter component of child support.

This is not an insignificant issue, since the costs associated with room and board are substantial. As of the 2006/2007 school year, dormitory room costs average \$4,011.11 per year.<sup>197</sup>

The issue that mandates discussion is whether, and to what extent, any costs associated with securing a child a room on campus represent the same costs associated with the child's housing costs with the custodial parent.

To the extent that a child's housing costs are considered a component of child support, consideration must be given to whether this cost is merely a duplicate of the room component of the "room and board" college tuition expense.

It is helpful to briefly summarize the opposing positions as they relate to the consideration of duplicate expenses:

(1) From the non-custodial parent's perspective, if he or she is paying full child support, and his or her contribution to the child's "housing" costs are covered by the same, the custodial

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<sup>197</sup> National Center for Education Statistics, Table 331.



parent is receiving a windfall if the non-custodial parent is simultaneously compelled to pay for the child's room and board costs associated with college because the non-custodial parent is paying the same expenses twice.

(2) From the custodial parent's perspective, the housing expenses that are covered by child support are expenses that the custodial parent will continue to incur on behalf of the child even while the child is attending college and residing on campus.

Courts have generally reconciled these divergent positions by reaching a middle ground: a non-custodial parent contributing to college expenses must continue to pay child support (giving merit to the custodial parent's perspective), but at a reduced rate (giving merit to the non-custodial parent's perspective).

Is a "middle ground" resolution correct? The authors of this article suggest that custodial parents incur both or other housing costs at college as well as housing costs at home. The difference between "housing" or "shelter" expenses and "dormitory" expenses is the difference between ordinary expenses and extraordinary expenses. The child's shelter expense costs are ordinary expenses, covered by basic child support. It is an expense that is incurred by most intact families—a very important guideline consideration.

In contrast, extraordinary expenses are usually not covered by the basic child support award. In New Jersey, Appendix IX-A, ¶ 9 to the guidelines, which is devoted to "Expenses That May Be Added to the Basic Child Support Obligation," includes within this category "other expenses approved by the court":

These are *predictable and recurring* expenses for children that may not be incurred by average or intact families such as private elementary or secondary education, special needs of gifted or disabled children, and visitation transportation expenses. The addition of these expenses to the basic obligation must be approved by the court.<sup>198</sup>

Many states' guidelines distinguish between ordinary expenses covered by child support and extraordinary expenses which not every family incurs, and are therefore not considered part of the basic child support award. Such extraordinary expenses, if incurred, may be added to the basic child support award, if the court deems them to be appropriate.

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<sup>198</sup> See New Jersey Rules of Court 5:6A, Appendix IX.

Accordingly, the room component of “room and board” expenses possesses none of the qualities that other ordinary expenses have, and all of the qualities that extraordinary expenses have: they are large expenditures, they are variable expenditures, and they are expenses incurred by the typical intact family. This serves to clearly distinguish these expenses from the ordinary housing costs covered by a basic child support award.

Many courts that do find that college room expenses are a duplication of the custodial parent’s shelter expenses prorate the child support, so that the custodial parent receives at least some component to cover the period of time during which the child is home from school. Indiana is one such state that uses a separate worksheet for college expenses, which restructures child support by determining how many weeks per year the child will be home, converting this number into a percentage of time, and multiplying this percentage of time by the basic child support figure to arrive at the new child support award. (See Appendix A).

In short, the custodial parent has a strong argument that there is no duplication of expenses, and that the two expenses are distinct, separate expenses, and, because of this, the non-custodial parent’s child support obligation should not be reduced. At the very least, however, the custodial parent has an argument that there should not be a complete reduction in child support for the shelter component in child support because he or she still needs to maintain a bedroom for the child’s occasional return to the custodial parent’s home.

#### *E. Food / Board (Meal Plan) Expense*

Food is universally covered by basic child support across the nation. While not all states specify what its guidelines are intended to cover, there is not a single case to be found suggesting that food is not covered by basic child support. At the same time, food is also the “board” component of a room and board college cost, usually identified by a meal plan that grants the student access to the school cafeteria.

The national average cost for a full meal plan (seven days worth of meals), is \$3,368.00 per year.<sup>199</sup> Approximately 57 percent of students do not participate in their school’s meal plan,

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<sup>199</sup> National Center for Education Statistics, Table 331

including nearly 20 percent of those living on campus.<sup>200</sup> Of those participating in meal plans, 28 percent participated in a full meal plan, with 15 percent participating in a partial meal plan.<sup>201</sup> The average full meal plan for the 2006/2007 school year cost \$3,368.00.<sup>202</sup>

The Student Monitor's survey indicates that the total mean monthly expenditure on eating off campus is \$72.11 per month, and eating on campus is \$59.47 per month.<sup>203</sup> Of the students surveyed, 59 percent had eaten at a fast food restaurant off campus the prior weekend, 37 percent ate at an on campus fast food restaurant the prior weekend, and 34 percent ate at a full service restaurant the prior weekend.<sup>204</sup>

When discussing food as a college expense, we are primarily discussing the "board" component of "room and board." The most basic food component of a child's college expense is the meal plan. Meal plans are generally designed to provide the child residing on campus with access to the school cafeteria for breakfast, lunch and dinner. Meal plans can vary substantially among schools, and individual schools in fact offer multiple different meal plans. Full plans often cover three meals per day, seven days per week. Partial plans often cover three meals per day during the week, but do not provide for meals on the weekends. Some partial plans do not provide for three meals per day, but rather two meals per day, omitting breakfast from the plan.

The existence of the college full meal plan justifies, in part, deduction of the food component of a basic child support award, as both are tailored to the same cost: providing the student with a means of breakfast, lunch, and dinner seven days per week. Any variation on the meal plan selected, however, will result in a deviation from this offset: if the student has less than a full meal plan, but the offset against the food component of the basic child support award contemplates a full meal plan, all of the child's food needs are not being met. For these reasons, any decision for a child to accept less than a full meal plan should be discussed in

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<sup>200</sup> *Lifestyle and Media: Fall 2008 Findings*, STUDENT MONITOR, Oct. 2008, at 20.

<sup>201</sup> *Id.*

<sup>202</sup> National Center for Education Statistics, Table 331.

<sup>203</sup> *Id.* at 19.

<sup>204</sup> *Id.* at 16.

386 *Journal of the American Academy of Matrimonial Lawyers*

advance by the parties, as should any consequent adjustment to the basic child support.

A total offset against the food component of child support, based upon the allocation of the “board” component of the “room and board” child expense, however, would only work if a student’s food-related needs were limited to the three meals per day covered by the food plan. However, this is not an accurate reflection of a child’s food-related needs.

The important point to take from this section is that adjustments for duplicate expenses should not be assumed. There are arguments to be made both in support of and in opposition to a duplicate expense adjustment for both housing costs and for food costs. The facts of the given case should determine if, and to what extent, such a deduction is appropriate.

*F. Adjustment for Time at Home*

Another common theme found in the case law addressing child support for the child in college is that there may be a correlation between the amount of the reduction and the amount of time that the child will be at home. It should be contemplated that the child will be home for some period of time during the summer, on breaks from school, on holidays, and for the occasional weekend. During this period while the child is residing with the custodial parent, the custodial parent will be incurring the food-related expenses of the minor child, and should accordingly receive support to cover that period of time. To compensate for this, it is proposed that at the outset, when the parties are determining their respective share of college contribution, they estimate the amount of time that the child will spend at home, and adjust the variable component of child support accordingly.

This approach of reducing basic child support in proportion to the time spent by the child at home is occasionally relied upon in New Jersey.<sup>205</sup> There is further precedent for this approach. Appendix A, the Indiana “Post-Secondary Education Worksheet, is divided into two sections. The first section is devoted to (a) an

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<sup>205</sup> See *Sailon v. Sailon*, No. A-6052—02T2, 2004 WL 1229634 (N.J. Super. Ct. App. Div. Apr. 5, 2004)

(holding that the non-custodial parent was to pay full child support during the weeks that the child resided at home and 60 percent the full child support during the weeks that the child was residing on campus).

assessment of the college expenses, (b) an assessment of the various sources of payment toward these expenses (i.e., scholarships, grants, student loans, child's cash share), and (c) an allocation between the parties of the difference, based upon their income.

The second section, entitled "Determination of Support While Student at Home," is devoted to a restructuring of the basic child support for the period of time that the child is not on campus, but is residing with the custodial parent. This section requires a determination of the amount of weeks that the child will be residing at home, which is converted into a percentage of time; that percentage is then applied against the basic child support award to determine the reduced amount of the basic child support award.

In *Smith v. Smith*, the court denied the movant's request for a downward adjustment of basic child support that was premised upon the existence of duplicate expenses. In denying the request, the court focused on the fact that: "Although [the child's] monthly college expenses include room and board when he lives at school, those expenses do not reflect the costs incurred when he lives with his father during the summer, over school breaks, and on occasional weekends. Nor do they include other miscellaneous expenses."<sup>206</sup>

From a practical standpoint, an upward adjustment of basic child support for the time that the child is at home serves as the counter to the adjustment for duplicate expenses. Whatever duplicate expenses are created as a result of the child's attendance at college, they do not exist when the child is at home.

## VI. Conclusion

No set formula exists to determine what constitutes a college expense and how child support should be adjusted for the child in college. Even the formulaic approach used by Indiana through its Post-Secondary Education Worksheet is subject to discretion in what specific "other" expenses should be included.

While there may be no formula into which to plug numbers, there are many principles regarding both college expenses and

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<sup>206</sup> *Smith v. Smith*, 114 S.W.3d 407, 414-15 (Mo. Ct. App. 2003).

388 *Journal of the American Academy of Matrimonial Lawyers*

child support that repeat themselves in case law throughout the nation with great enough frequency to make them reliable standards.

# Appendix A

## Worksheet – Child Support Obligation

Each party shall complete that portion of the worksheet that applies to him or her, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

**IN RE:** \_\_\_\_\_ **CASE NO:** \_\_\_\_\_  
**FATHER:** \_\_\_\_\_  
**MOTHER:** \_\_\_\_\_

<b>CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)</b>			
Children	DOB	Children	DOB
<b>1. WEEKLY GROSS INCOME</b> Subsequent Children Multipliers (Circle .935 .903 .878 .863 .854)		<b>FATHER</b>	<b>MOTHER</b>
A. Child Support (Court Order for Prior Born Child(ren))			
B. Child Support (Legal Duty for Prior Born Child(ren))			
C. Maintenance Paid			
D. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, and 1C			
<b>2. PERCENTAGE SHARE OF TOTAL WAI</b>		%	%
<b>3. COMBINED WEEKLY ADJUSTED INCOME</b> (Line 1D)			
<b>4. BASIC CHILD SUPPORT OBLIGATION</b> Apply CWAI to Guideline Schedules			
A. Weekly Work-Related Child Care Expense of each parent			
B. Weekly Premium – Children’s Portion of Health Insurance Only			
<b>5. TOTAL CHILD SUPPORT OBLIGATION</b> (Line 4 plus 4A and 4B)			
<b>6. PARENT’S CHILD SUPPORT OBLIGATION</b> (Line 2 times Line 5)			
<b>7. ADJUSTMENTS</b>			
( ) Obligation from Post-Secondary Education Worksheet Line J.	+ _____	+ _____	
( ) Payment of work-related child care by each parent. (Same amount as Line 4A )	- _____	- _____	
( ) Child(ren)’s Portion of Weekly Health Insurance Premium \$ _____. (This will be a credit to the payor)	- _____	- _____	
( ) Parenting Time Credit \$ _____.	- _____	- _____	
<b>8. RECOMMENDED CHILD SUPPORT OBLIGATION</b>			
<b>EXPLAIN ANY DEVIATION FROM GUIDELINE SCHEDULES IN ORDER/DECREE.</b>			
<b>I affirm under penalties for perjury that the foregoing representations are true.</b>			
Dated: _____		Father: _____	
Dated: _____		Mother: _____	
<b>UNINSURED HEALTH CARE EXPENSE CALCULATION</b>			
A. Custodial Parent Annual Obligation: (CSOW Line 4) \$ _____ + (PSEW § Two, Line I) \$ _____ = \$ _____ x 52 weeks x .06 = \$ _____.			
B. Balance of Annual Expenses to be Paid: (Line 2) _____ % by Father; _____ % by Mother.			

