

No Free Ride To A College Education

July 12, 2011 | by Einhorn Barbarito

While it may be a hard pill to swallow for many [divorced](#) or divorcing parents, the court can impose upon them an obligation to pay for college educational costs.

The New Jersey courts have long established that in their capacity as *parens patriae* (literally meaning “parent of the country” originating from English common law referring to the role of the state as guardian of persons under legal disability such as juveniles), they have the authority to impose the obligation to pay for college upon parents. Even if were they an intact family and had discussed college around the kitchen table with their child, they may have advised the child that the family could not afford to fund a college education, leaving the child to his or her own devices.

A child’s rejection of a parent’s attempt to establish a mutually affectionate relationship does not eliminate a parent’s obligation to contribute to the child’s college education. While it is a factor to be considered, it does not relieve the parent of the obligation.

Adding to the frustration of many parents who find themselves court ordered to contribute toward their child’s college education, is that often times the non-custodial parent is left in the dark with respect to the status of the child and left to wonder: Is my child attending school full-time? Is my child receiving passing grades? Am I throwing good money after bad?

In many cases in addition to contributing toward college costs, the [non-custodial parent](#) is obligated to pay child support if the child has been considered still unemancipated because he or she is attending college.

Note, that under New Jersey law, the age of 18 is only prima facie (“at first sight”) proof of emancipation. This presumption is rebutted based on the facts in each case. It has been long

determined by the New Jersey courts that if the child is attending college, emancipation is delayed until he or she graduates so long as that child is pursuing his education on a consistent basis, i.e. attending full-time and attaining passing grades (with the exception of illness or circumstances beyond the child's control).

The court will determine whether or not there should be an obligation to pay based upon a number of factors for example:

- The ability of the parent to pay,
- The aptitude of the child,
- The educational background of the parents,
- The independent resources of the child,

and other reasons.

Where the determination has been made that there is an obligation to contribute toward college pursuant to a Divorce Settlement Agreement or Court it is expected that the child diligently pursue his education. However, the courts will permit short interruptions in college educational process if the circumstances are beyond the child's control, due to illness or some other legitimate circumstances. It is not enough to be enrolled on only a part-time basis while working full-time earning an income or staying home on the couch honing his Xbox skills. The custodial parent has the obligation to keep the other parent advised as to the selection of educational institution as well as the status of the child at that institution.

Recently, an Ocean County New Jersey Superior Court Family Court Judge entered a decision that has become published law in New Jersey that disclosure of information necessary to determine whether a child should remain unemancipated is required by the custodial parent given the non-custodial parent does not have access to this information. The court specifically found that "a parent who is compelled to pay child support or college contribution has a right to ongoing verification of the child's collegiate status. The court faced head-on and rejected the custodial parent's assertion that she could not provide information as to the parties' daughter's college records, i.e. transcripts, grades, enrollment, and credits, because their daughter was protected by FERPA (Family Educational Rights and Privacy

Act) and therefore, can refuse to supply this information. The custodial parent can no longer hide behind their child's privacy right and refuse to provide this information to a non-custodial parent.

While the court recognized the rights of the student child under FERPA which provides the students over 18 has certain privacy rights relative to their educational records, if the parent and child wish to have the non-custodial parent to contribute toward college costs and in cases where there is child support to receive child support, they have an obligation to provide this information. In other words, they cannot assert an entitlement to ongoing mandatory child support and/or college contribution and refuse to provide this information. The custodial parent has a duty to provide this information to the non-custodial parent and he or she is not permitted to "wash [her] hands" of this responsibility. If a child is unemancipated, this means that if the child has not "moved beyond the sphere of influence by his/her parents" (the prevailing definition of emancipation under New Jersey case law), then it is presumed that the custodial parent has control over the child and can compel the child to provide information. This represents a double edge sword whereby the custodial parent cannot claim that the child is unemancipated and at the same time claim that he or she cannot compel the child to provide the information. Accordingly, custodial parents (and the college student) can be compelled to provide grade transcripts, enrollment information, and course credit information in order to reap the benefits of college contributions from his or her parents.

Non-custodial parents and student children be warned: there is no free ride to college education without conditions.

What do you think? Should non-custodial parents be forced to pay for a child's education? Should the child be forced to tell their parents what and how they are doing in school? Let us know below.