

## Child Support and College Expenses

Illinois law<sup>1</sup> gives judges the power to allocate college expenses (room board, tuition, and other expenses<sup>2</sup> – even expenses incurred during school breaks<sup>3</sup>) for children whose parents are divorced. Most Judgments and Settlement Agreements speak only vaguely of this requirement as all judges and most parents prefer to take a wait-and-see approach to college expenses. After all, what if the child doesn't turn out to be college material? Other parents go to great lengths to spell out the extent of their respective obligations although this is probably not a sound strategy.<sup>4</sup> Even when a Judgment contains very specific formulas or allocations stating which parent will pay what percentage of the cost of a college education, those plans are always modifiable.<sup>5</sup> This is because payments for college expenses are in the nature of child support, and child support is always modifiable. So, if you signed an agreement to pay a certain amount of your child's college expenses, but now need to renegotiate that agreement, there is always a way to do that. Call our attorneys to learn more.

Parents of children born out of wedlock may also apply with the court for college support from the other parent.<sup>6</sup>

One primary concern of divorcing parents (at the time of the divorce) is that they have a voice in the selection of the school and curriculum for their child. Why, after all, should a divorced parent be forced to pay for an education that he or she could refuse to pay for if still married? Although the law contains no such requirement, a well-crafted agreement can impose an obligation that a consensus be sought between student and both parents before a financial commitment is made.<sup>7</sup>

Unlike child support, the parents' contribution to college expenses is not dictated by a formula or guideline spelled out in the law – it is left to the discretion of the judge.<sup>8</sup> The court must consider many factors – including the income and assets of **both** parents<sup>9</sup> and the financial resources available to the child,<sup>10</sup> as well as the child's academic performance (good grades tend to get more money, poor grades tend to get less)<sup>11</sup> and the standard of living the child would have enjoyed had the parents not divorced.<sup>12</sup> The court may even consider the income of a second spouse and the expenses of a second family<sup>13</sup> as well as the payment or receipt of maintenance (alimony) in making its determination.<sup>14</sup> There is no requirement that judges are restricted to a financial limit equal to the expenses of a state university education. There also is no specific restriction on the type of school that the child may attend. The law covers a "college education or professional or other training,"<sup>15</sup> and that has been held to include trade schools.<sup>16</sup> Some courses of training, however, won't qualify in all circumstances: DeVry Institute of Technology qualified in one case as "an education at the college or university level,"<sup>17</sup> but the "Automotive and Diesel College" did not qualify as part of the "college and professional education expenses of the children."<sup>18</sup> The duration of the education is limited, but only in the most broad sense.<sup>19</sup>

If your child is admitted to an Ivy League university, you won't necessarily have to pay Ivy League prices. Illinois courts tend to prefer State schools over private schools if the programs are similar.<sup>20</sup> Some Judges apply an absolute threshold test: no parent will be expected to pay more than a certain amount minus grants.<sup>21</sup> Courts have also held that a parent need not pay for private school if the child has been accepted at a public school and the financial means are insufficient to reasonably afford the private school.<sup>22</sup> A parent should not be ordered to pay more for college than he or she can afford.<sup>23</sup> For more affluent parents that can afford private schools, however, a college education at a private school may be mandated by the court.<sup>24</sup>

The law does not give kids a free ride. In some cases, be expected to apply for financial aid and take other steps to help keep costs down.<sup>25</sup> Indeed, one court has said "the children themselves have an obligation to lessen their parent's financial burden" by attending less costly state universities.<sup>26</sup> There is no requirement that the child have or maintain a good relationship with either parent.<sup>27</sup> On the other hand, a child's relationship (or lack thereof) with the parents is a factor that courts have considered in some cases.<sup>28</sup>

One problem arises in most college expense cases: the tuition bills come in and must be paid whether the parents agree or not. Illinois' child support laws, however, say that a parent cannot sue for retroactive child support. That means that if one parent pays tuition and fees as they come due, the law may prevent them from being able to recover later a reimbursement from the other parent. The law seems to require parents to go to court and allocate the burden of college educational expenses BEFORE the costs are incurred. This can be a useful defense in some instances. There is, however, another way to present tuition and other payments to the court after-the-fact and still recover a reimbursement – even retroactively.<sup>29</sup> Be sure to talk with a knowledgeable attorney to learn your options.

**Access To Transcripts, Records, And Grade Reports:** Non-custodial parents have a right to grade reports and student records.<sup>30</sup> That's about it, though. The law is very, very stringent in what it offers parents who pay for college expenses. In one case, the father was required to pay 50% of his daughter's college expenses, but was not allowed to know even the name of the college she attended.

**Kids Can Sue For Themselves:** Illinois law permits children to sue their divorced parents for college expenses.<sup>31</sup> The right depends on the court's interpretation of the language of the divorce agreement (assuming there is one). To learn more, contact one of our attorneys.

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This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or [info@illinoisdivorce.com](mailto:info@illinoisdivorce.com).