

CHILD SUPPORT

Private Schooling Can Depend on Income

By K. Dean Kantaras

LITIGATION OVER CHILD SUPPORT issues never seems to end. How is the child support amount determined? What standard of living factors, if any, are to be considered? What if the paying parent's income far exceeds the highest amount calculated in the child support guidelines? When does the requirement to pay child support end? What, if anything, is the effect of the majority time sharing parent's remarriage?

All of these questions are important and require attention! The courts and the legislature try to address such questions; but as much as the law provides answers to questions, other questions always arise.

Private school for children is not usually an issue, as most parents don't send their children to private schools. However, such questions might involve a discussion between the parents as to the virtues of the public school system versus private. Family finances will obviously play a major part in a choice between public and private education.

This issue generally is raised when one of the parents, usually the paying parent, takes the position that private school is not economically feasible, nor necessary. This argument is often made even though the children have historically attended private schools.

As a general rule, a party may be ordered to pay for a private school education for the children if the paying parent has the financial ability to pay for it, the expense is part of the standard of living established by the family, and a private school education is in the best interests of the child.

The standard of living established by the parties plays an important role in determining many issues in divorce (and sometimes, paternity), cases. There is at least one case where the appellate court



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has said that standard of living is not a "super factor that trumps all others", but the courts continue to rely on the lifestyle that was established and enjoyed by the parties and the children previously.

In a recent case, the appellate court reversed the trial court because the trial judge did not require the father to pay the cost of private school for his two children, despite the fact that the children had been attending the same private school for about five years, and the father could easily afford the tuition expense. Under the circumstances that the finances were available, the children's previous lifestyle included private school and the children were generally doing well, the appellate court ruled that the children should be sent to private school.

Since child support is usually calculated based on a statutory grid, taking into

consideration the gross monthly incomes of the parents and the number of children, we will not discuss the other factors that can influence this.

However, you should know that the cost of private school doesn't factor into that grid schedule. The costs of private school, assuming the paying parent has the ability to pay, are considered over and above the monthly child support as calculated using the grid (Child Support Guidelines), as those support payments are for the usual monthly expenses of the child.

There can be other potential additional expenses that may be added to monthly child support. Expenses such as religious education and summer camp are typically in addition to regular monthly child support.

Usually, a careful analysis must be made of the available money, as it is not uncommon for a family that could afford private school prior to the divorce to not be able to do so once the family is divided into two households. In those cases, private schooling may be eliminated. ■

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