

DIVORCE AND PRIVATE SCHOOL TUITION

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THE AMOUNT OF CHILD SUPPORT awarded in any case is governed by Florida Statute §61.30, based upon both parties' incomes and the number of overnights each parent has with the child, among other things. Often included in the child support guidelines are expenses for child care and the child's out-of-pocket medical expenses. The Court may also include private school tuition as an expense in the child support guidelines. "[S]ection 61.30(11)(a)(11) provides that the court can also make "[a]ny other adjustment that is needed to achieve an equitable result which may include, but not be limited to a reasonable and necessary existing expense or debt." Courts have long held that private school tuition may be awarded as part of child support if private schooling is part of the family's customary standard of living. *Gilroy v. Gilroy*, -- So.3d -- (Fla. 2nd DCA April 29, 2015.)

However, a parent cannot be required to contribute to a child's private schooling expenses unless the trial court finds: "(1) the parties have the ability to pay such expenses, (2) the expenses are in accordance with the customary standard of living of the parties, and (3) attendance at private school is in the child's best interest." *Bell v. Bell*, 811 So. 2d 833, 834 (Fla. 2nd DCA 2002); citing *Musser v. Watkins*, 752 So.2d 141, 142 (Fla. 2nd DCA 2000).

Therefore, if the child had never attended private school during the marriage, but a parent wants the child to attend private school after a divorce, it is unlikely that a Court will order the cost of private school to be included in the child support guidelines, since the expense was not in accordance with the customary standard of living during the marriage. Furthermore, if public school provides the appropriate programs and curriculum for the child, private school expenses may not be included in child support. "Where it cannot be shown that



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private schooling is in accordance with the family's customary standard of living, or that the child has some special need which cannot be adequately fulfilled by the public schools, payment of private school expenses should not be ordered." *Wilson v. Wilson*, 559 So.2d 698 (Fla. 1st DCA 1990).

Additionally, although a child may have attended private school during the marriage, the expense may be unsustainable post-divorce. In most cases, two households must now be maintained instead of one, requiring paychecks to stretch farther than before. This often times results in the inability to afford private schooling. However, "A court may order a noncustodial parent to pay for private educational expenses if it finds that the parent has the ability to pay for private school and the expenses are in accordance with the family's customary standard of living and are in the child's best interest." *Gelman v. Gelman*, 24 So.3d 1281 (Fla. 4th

DCA 2010). See also *Wilson v. Wilson*, 559 So.2d 698 (Fla. 1st DCA 1990).

Furthermore, when parties agree that one parent will pay for the child's private school education, the Court may consider payment of this expense as a child support obligation which is enforceable by contempt of Court if the paying parent discontinues paying the expense. See *Fox v. Haislett*, 388 So.2d 1261, 1264-65 (Fla. 2nd DCA 1980). Ultimately, the primary consideration of the Court is what is in the child's best interest. If private school education is in the child's best interest, the Court will consider all of the evidence before it to enter a child support obligation to meet the child's needs. For more information, contact K. Dean Kantaras, P.A.



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