

THE FAMILY COURT OF THE STATE OF DELAWARE

DELAWARE CHILD SUPPORT FORMULA

EVALUATION AND UPDATE

October 2, 2006

REPORT OF THE FAMILY COURT JUDICIARY

THE HONORABLE CHANDLEE JOHNSON KUHN,  
CHIEF JUDGE

## SECTION I: BACKGROUND

Federal Regulations require that all States have guidelines for establishing and modifying child support obligations within the State. Each State must review, and if appropriate, revise its guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. [45 CFR 302.56; 42 USC § 667.] An Ad Hoc Committee for Child Support Guideline Review was convened at the direction of Chief Judge Chandlee Johnson Kuhn on September 1, 2005, and charged with reviewing and updating the guidelines. The Committee submitted its recommendation to the Family Court judiciary who upon deliberation issued this report.

The guidelines, at a minimum, must:

1. Take into consideration all earnings and income of the non-custodial parent<sup>1</sup>;
2. Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
3. Provide for the child(ren)'s health care needs through health insurance or other means.

The Delaware Child Support Formula, also known as the Melson Formula (hereinafter referred to as the "Formula"), is considered a rebuttable presumption for calculating child support obligations in this State, unless the Court finds its application inequitable in a given case. If the Court deems that the application of the Formula would create an inequity in a given case, it must state on the record the result of a calculation pursuant to the Formula and why the application of the formula would be unjust or inappropriate. 45 CFR §302.56 (g); Dalton v. Clanton, Del. Supr., 559 A.2d 1197 (1989).

The Committee solicited comments from the public, through the Family Law Commission's Public Hearing. The Court and the Committee express their appreciation to the Family Law Commission. Additional public comments, specifically from CLASI and other advocacy organizations, were accepted and reviewed as were comments from Family Court Judges, Commissioners, and Mediators.

The Committee reviewed current economic data, including Measuring Poverty: A New Approach, published by the National Research Council, and Expenditures on Children by Families, 2004, published by the United States Department of Agriculture. Guidelines and proposed guidelines from other states, as well as statistics from the United States Department of Labor, the Delaware Department of Labor Delaware Wages 2004 report, and the 2005 Child Care Market Rate Study, were also reviewed.

This report is inclusive of revisions made to the Formula in 1990, 1994, 1998, and 2002, which are still in effect. The year each revision was effective is noted.

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<sup>1</sup> A "non-custodial parent" is defined as the parent from whom support is being sought.

## SECTION II: DISCUSSION OF PUBLIC COMMENTS

The following concerns arose through public comments:

- The Formula is not conducive to rises in housing, transportation, and other standard of living increases;
- Inequity exists for non-custodial parents that have multiple children in multiple families;
- The Formula relies on surveys of two-parent households which are not representative of a majority of Family Court cases;
- The Formula does not account for previous judgments of child support in consideration of the new order;
- Custodial parents are not required to verify the proper use of funds received from non-custodial parents;
- Social Security benefits are not adequately and uniformly considered; and
- The self-support allowance is inadequate.

In response to some of the concerns above, a two-year indexed adjustment to the mathematical values in the Formula in lieu of the current four year regimen was adopted. A larger adjustment for children of other relationships and a method to prevent the inadvertent invasion of the self-support allowance in multiple household circumstances was adopted. Also adopted was the utilization of single parent household expenditure data instead of the married couple and two-parent two-child household data relied upon previously.

Items that were not addressed include the issue of accounting for the expenditure of support as such is addressed expressly by statute at 13 *Del. C.* §518. The Court re-affirmed the view that recognition of the precise amount of other orders in the support calculation would allow obligors to compel lower obligations to those households they disfavor.

## SECTION III: ANALYSIS OF CASE DATA

The sample of 6,517 orders included all child support orders that were generated from FAMIS from July 1, 2004 through June 30, 2005. The review indicated that 86% of the orders were based on the results of application of the Formula. Deviation from the Formula occurred in only 13% of all sample cases. Deviations upward accounted for 14% and deviations downward accounted for 30%. Agreement of the parties was the most frequent reason for deviation from the Formula accounting for 47%.

Type of Deviation	Commissioner's Orders	Mediation Consent Orders	Total of Row	% of Deviation
01	20	230	250	27%
02	3	23	26	3%
03	3	124	127	13%
04	90	350	440	47%
05	47	51	98	10%
Total Deviations	163	778	941	
No Deviations	2988	2588	5576	
Total Orders	3151	3366	6517	

KEY: 01 = Lower amount will meet the needs of the child  
02 = NCP purchases items or pays other expenses resulting in lower order  
03 = NCP agrees to higher amount to maintain standard  
04 = Parties reached an alternative agreement  
05 = Other

#### SECTION IV: ANALYSIS OF ECONOMIC DATA

In the early 1990's the National Academy of Sciences (NAS) commissioned a panel of eminent economists to improve the way poverty is defined and measured in America. The panel's conclusions appeared in Measuring Poverty: A New Approach (1995). Among the primary findings was a mathematical formula to compare the needs of families of different sizes and the appropriate statistical basis upon which to apply the formula. This mirrored the analysis required to create the self-support allowance and the primary support allowances for the Delaware Child Support Formula (Melson Formula). Application of the NAS methodology caused the 1998 quadrennial review committee to conclude that our child support formula at that time overstated the needs of children in comparison to adults and overstated the ability of families to economize as members were added.<sup>2</sup> Since these two errors pushed the values in opposing directions, the impact on the child support formula was subtle but both validated the Formula historically and appeared to provide a reliable way to derive updates at future reviews.

The NAS study recommended use of the annual Consumer Expenditure Survey (CEX) published each November by the Bureau of Labor Statistics. Specifically, it recommended using the annual expenditures for food, clothing, shelter and utilities at the 30 to 35<sup>th</sup> percentile of two-

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<sup>2</sup> The NAS measure recommended assigning a value of "1.0" for each adult and ".7" for each child and applying the sum for each household composition to a power of between ".65" and ".75" to simulate the economies of scale. To date, the Formula had manifested assigning a value of 1.0 for every family member to a power of ".5" (which is the equivalent of the square root). In 1998, the Court adopted ".65" as the most efficient representation of an obligee's duty to mitigate damages.

parent two-child households plus 15 to 25% for other expenditures. Unfortunately in 2002, the Ad Hoc Formula Committee found that the recommended components of the CEX were not among the available standard tables. The information had to be extrapolated and estimated from other sources. While the resulting update was accomplished satisfactorily, the prospect for this method in future reviews was in doubt.

In 2006, after a decade of study, consensus developed within the poverty research community that the needs of single parent households were not adequately addressed by the NAS approach. It was felt that the needs of the first child in a single parent household should receive greater weight than subsequent children, especially if the cost of shelter and utilities outpaced food and clothing.<sup>3</sup> Additionally, critics of the Formula complained that the Formula was based upon estimations of the needs of two-parent households rather than those of single parents and did not satisfactorily reflect current economic conditions. To satisfy both the unavailability of the recommended data and the Formula's critics, the Committee looked at the average expenditures of single parent households which can be found in the standard CEX tables published each year. Those tables revealed that from 1992 (the year of the data in the NAS report) until 2004, expenditures on shelter and utilities (SU) did indeed grow disproportionately in comparison with food and clothing (FC). The Court also noticed that the ratio of SU and FC expenses over the period closely tracked the ratio of primary support allowances for one versus two child households adopted into the Formula over the same period.

These aforementioned observations permitted the creation of a continuum where the respective weighting of the needs of a single parent or person, a first child, and subsequent children could be derived from the proportions of household-type (SU) and individual-type (FC) expenses.<sup>4</sup> The Court tested this theory historically and it successfully replicated the self and primary support allowances for 1994, 1998, and 2002, as well as revealed rational intermediate adjustments that could have easily been made. Therefore, it showed that the Melson Formula could be updated on a more frequent basis using data more recent and more relevant than ever before.

With regard to the Standard of Living Adjustment (SOLA), the findings of the Department of Agriculture confirm that while spending on children increases overall as income increases, the proportion of income spent on children decreases. The interaction of primary support allowance and the SOLA percentages embody this principle. Prior to 1994, the Melson Formula actually produced the opposite result. Since then, however, the percentages have been

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<sup>3</sup> For single parent households, assigning a value of “.8” for the first child and “.5” for each additional child has become popular. John Iceland, Experimental Poverty Measures: Summary of a Workshop 13 (The National Academies Press 2005). In the view of the Court, utilization of these values manifested too substantial a change to impose at one time especially while the concept is still being debated. Instead, the Court chose “.75” and “.6” representing one-half of the change from the original NAS measure.

<sup>4</sup> The Court reviewed FCSU data from 1992 to 2004 utilizing 3-year averages as recommended in the NAS report. The 1992-94 results reflected that SU expenses made up 54% of the total. The 2002-04 results indicated 59%. The continuum was derived by assuming the appropriateness of the “.7” value for all children at the 54% proportion and the “.75/.6” scheme at the 59% proportion. In other words, the assigned value for the first child was increased by “.01” and subsequent children decreased by “.02” for each percentile increase in the proportion of household (SU) over total basic expenses (FCSU). This quantified the premise that the changes in the costs of shelter and utilities had the greatest impact on the ability to establish a household regardless of size while food and clothing tends to multiply with the addition of new members.

engineered to produce at least a bare regression. Currently, the SOLA percentages allocate a proportion of available income to children of approximately 95% of that allocated by the primary support allowance. The Department of Agriculture findings, however, suggest a more substantial tilt. To this end, the Court has indexed the allocation at 90%.

## SECTION V: 2006 SUMMARY

The following are the 2006 modifications to the Delaware Child Support Formula:

- The Guidelines will be incorporated as a Family Court Rule with annotations which will be drafted and submitted to the judges of the Family Court for approval.
- Most values utilized in the Formula shall be indexed and adjusted biannually on the first of January of every odd-numbered year to coincide with the new tax withholding tables. The Court resolved to select self support and primary support allowances that would reflect the most recent economic information available and to objectively adjust the values every two years based upon a predetermined formula. The statistical basis for the adjustment will be the average annual expenditures of single parent households for food, clothing, shelter and utilities plus 20% for other expenses as reported by the United States Department of Labor Bureau of Labor Statistics in its Consumer Expenditure Survey averaged over a three year period ending 12 months prior to the adjustment. The first adjustment will occur in January of 2007 and will be repeated every two years thereafter. The following table will be utilized to effectuate the adjustments. All final values will be rounded to the nearest multiple of ten (10).

<b>Equivalence Scales</b> <sup>5</sup> (sum of values are adjusted to a power of .65 representing economies of scale)															
Housing %	50%	51%	52%	53%	54%	55%	56%	57%	58%	59%	60%	61%	62%	63%	64%
Adult	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
1st Child	0.66	0.67	0.68	0.69	0.70	0.71	0.72	0.73	0.74	0.75	0.76	0.77	0.78	0.79	0.80
Each Add'l	0.78	0.76	0.74	0.72	0.70	0.68	0.66	0.64	0.62	0.60	0.58	0.56	0.54	0.52	0.50
<b>Self Support &amp; Primary Support</b> (% of 120% 3-year average single parent h/h for food, clothing, shelter and utilities)															
Self	56.00	56.15	56.30	56.45	56.61	56.76	56.91	57.07	57.23	57.39	57.55	57.71	57.87	58.03	58.19
One	22.00	22.36	22.72	23.08	23.43	23.78	24.13	24.47	24.81	25.14	25.47	25.80	26.12	26.44	26.76
Two	44.00	43.85	43.70	43.55	43.39	43.24	43.09	42.93	42.77	42.61	42.45	42.29	42.13	41.97	41.81
Three	63.76	63.20	62.64	62.07	61.49	60.91	60.33	59.74	59.14	58.54	57.94	57.32	56.70	56.08	55.45
Four	81.89	80.98	80.07	79.14	78.20	77.26	76.30	75.33	74.36	73.37	72.37	71.36	70.33	69.30	68.25
EA	16.04	15.76	15.47	15.17	14.88	14.57	14.27	13.95	13.64	13.32	12.99	12.66	12.32	11.97	11.62
<b>Standard of Living Adjustment</b> (90% of primary divided by the sum of 2X self support and primary)															
One	15%	15%	15%	15%	15%	15%	15%	16%	16%	16%	16%	16%	17%	17%	17%
Two	25	25	25	25	25	25	25	25	24	24	24	24	24	24	24
Three	33	32	32	32	32	31	31	31	31	30	30	30	30	29	29
Four	38	38	37	37	37	36	36	36	35	35	35	34	34	34	33
EA	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3	+3
<b>Adjustment for the Support of Other Children</b> (2X self support divided by the sum of 2X self support and primary)															
One	84%	83%	83%	83%	83%	83%	83%	82%	82%	82%	82%	82%	82%	81%	81%
Two	72	72	72	72	72	72	73	73	73	73	73	73	73	73	74
Three	64	64	64	65	65	65	65	66	66	66	67	67	67	67	68
Four	58	58	58	59	59	60	60	60	61	61	61	62	62	63	63
EA	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4	-3	-3	-3	-3

<sup>5</sup> An equivalence scale is a mathematic equation used to estimate the relative needs of households of different sizes. The Court's equivalence scale is calibrated upon findings of the National Academy of Sciences (NAS) as published in Measuring Poverty: A New Approach (1995) and adjusts automatically based upon the proportion of expenses for food and clothing in contrast to shelter and utilities. The costs of shelter and utilities are believed to more greatly affect the costs of establishing a household (self support and one child allowances) while food and clothing are more closely associated with individual needs (second and subsequent child allowances). This differentiation is based upon a consensus that has developed in the economic research community that the needs of one-child single parent households had been undervalued by the NAS model which had assigned equal weight to the needs of first and subsequent children.

The equation below is the Court's equivalence scale as it applies to a one parent two child household from which all allowances are extrapolated. If applied to the data available in 1994, 1998 and 2002, the results closely approximate the values chosen by the Court in those years. Therefore, this method should also create fair and equitable values into the future.

a = parent or guardian (always equal to "1")  
s = proportion of basic expenditures attributable to shelter and utilities  
f = proportion of basic expenditures attributable to food and clothing  
<sup>.65</sup> = economies of scale (sharing resources, buying in bulk, hand-me-downs etc.)  

$$\left( (a + (s + .16) + 2*(f - .11)) \right)^{.65}$$

↑     ↑                     ↑     ↑  
adult | first child | add'l child | economies of scale

- Income Attribution: The attribution figure shall be the greater of \$7.50 per hour (\$1,300 per month), the Delaware minimum wage, or the Federal minimum wage.
- Unemployment Income: There shall be a rebuttable presumption that a parent who receives unemployment compensation has been terminated involuntarily and without cause. Their unemployment compensation shall be included as other taxable income.
- Social Security: When a person has been determined to be eligible for Social Security Disability or Supplemental Security Income, this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances.
- Minimum orders: No person shall be assessed a support obligation of less than 20% of the primary support allowance for the number of children for whom support is sought except:
  - a. This limitation shall not apply where children reside in shared (at least 175 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.
  - b. A disabled person with actual income of less than the self-support allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.
- Parenting Time Adjustment: Where a Court Order or written agreement establishes or confirms that a child spends an average of over 109 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of the primary support allowance and combined Standard of Living Adjustment. Additionally:
  - The percentage shall correspond to designated ranges of the number of overnights of visitation as follows:
 

▪ Up to 109	no change
▪ 110 – 132	10%
▪ 133 – 150	20%
▪ 151 – 164	30%
▪ 165 – 174	40%
▪ 175 +	50%.
  - If the percentage is less than 50%, the amount retained shall not exceed the SOLA obligation of the obligated parent.
  - Where the residential arrangement is complex with children in different ranges, then the percentages shall be averaged.
  - If there is no order or written agreement, a 50/50 shared placement agreement (more than 175 annual overnights in each household) may be established by other evidence.

The Parenting Time Adjustment is now going to be included on the worksheet. In the past, the worksheet did not contain this information.

- Deadline for filing of unpaid medical and dental reimbursements: A claim for medical reimbursement shall be presumptively waived if no action for reimbursement is timely filed. A petition for reimbursement should be filed no later than December 31 in the second year after the expenditure. For example, 2007 expenses must be pursued by the end of 2009. The Court’s standardized order forms shall be modified to contain language to this effect.
- Private School: Private or parochial school expenses shall only be included in a child support calculation where:
  - a. The parties have adequate financial resources, and
  - b. After consideration of the general equities of the particular case but especially where:
    - i. The parents previously agreed to pay for their child(ren)’s attendance in private school; or
    - ii. The child has special needs that cannot be accommodated in a public school setting; or
    - iii. Immediate family history indicates that the child would likely have attended private or parochial school.
- Tax Deductions: Regardless of the state of residence, the Court will use the Delaware Income tax tables in the Formula. Local wage or income taxes will remain specific to the city of residence or employment.
- Self-Support Allowance Protection: Except incident to the assessment of Minimum Orders, no person should be required to substantially invade their primary support allowance to satisfy a current support obligation. When a parent supports children in multiple households, that parent’s obligation shall not exceed an equitable proportion of the parent’s net income after deduction of the self-support allowance. The equitable proportion shall be based upon the number of children in the household for whom support is sought compared to the total number of children the obligor does in fact support. That proportion shall be integrated into the automated child support calculation derived as follows and reflected in the table below:

Any other children	Children for Whom Support is sought			
	1	2	3	4+
0	100	100	100	100
1	50	60	70	75
2	40	50	60	65
3	30	40	50	55
4+	25	35	45	50

## SECTION VI: CONSOLIDATED UPDATES 1990-2006

### A. INCOME AVAILABLE FOR CHILD SUPPORT

#### 1. Income from Second Jobs

(1998) In certain circumstances, it may be appropriate to exclude income from a second job. In considering the exclusion of such income, the following factors may be considered:

- a. Second Income History – The Court has been more likely to exclude second job income if it was not earned during the time the parties were together. Second job income earned when the parties were together should generally be included, since it established a standard of living for the children that relies on the inclusion of the income.
- b. Purpose of Second Income – Income from a second job obtained to assist in supporting minor dependents currently living with the obligor is more likely to be excluded than second income used simply to increase the payor’s standard of living. The consideration put forth by the Court in Duck v. Duck, Del. Fam., File No. CN90-8784, James, J. (July 31, 1992) in which the obligor was making a “good faith effort to comply with his duty to support... as well as continue to provide a suitable standard of living for his other dependents.” Similar reasoning was used in Hamilton v. Morning, Del. Fam., File No. CK88-3102, Nicholas, J. (April 4, 1997), in which the Court refused to exclude the obligor’s second income because, inter alia, he did not use the second income “to help provide for a second family, but to provide for himself.” Other purposes that may make exclusion of second income appropriate are payment of extraordinary medical expenses or putting another child through college.
- c. Amount of Second Income – Second job income that is comparable to the primary job income is less likely to be excludable. The underlying issue is the purpose of the second job income. Is it really just helping to make ends meet or to pay a legitimate extraordinary expense, or to substantially raise the standard of living of the obligor, and perhaps the obligor’s new family, while the children who are the subject of the order remain at a much lower standard of living?
- d. Effect on Amount of Visitation – The Court should consider whether working the second job decreases the amount of visitation the payor is able to have with the child, thereby potentially increasing the payee’s expenses. Exclusion of second income may be less likely in such a case because of the financial impact the second income has on the payee.

#### 2. Attribution of Income

(1990) Underlying the Delaware Child Support Formula is the concept that both parents are responsible for the support of their children. An individual cannot, by voluntary unemployment or underemployment, shift the burden of support to the other parent. As to the method of attribution, an individual’s “value as a homemaker” has been eliminated as a basis of attribution. Attribution based on one-half of a spouse or cohabitor’s income has also been eliminated; the judiciary felt that this method shifted the burden of support

to a non-parent. Attribution will be used only if an individual is able to work and unemployed or working below capacity.

(1994) For purposes of the attribution of income to self-employed, unemployed, and underemployed persons, and non-appearing or unprepared parties, whose incomes cannot be sufficiently established by evidence presented by the parties, the Court may take judicial notice of wage and earnings surveys distributed by government agencies.

Often, individuals fail to appear in Court or appear unprepared, leaving the Court with little to no evidence as to what they earn, are capable of earning, or have earned in the past. This is very frustrating for the trier of fact, as the child support order is based on a calculation of income amounts. This provision will put litigants on notice that, without any better evidence, they may be attributed with the prevailing wage for their current position, or based on their employment history (i.e., carpenter, brick layer, phlebotomist). These wage surveys are available from the Delaware Department of Labor.

(1994) The Court frequently has the benefit of statistical wage information for non-appearing parties; but where no better information exists, the non-appearing party will be assessed with at least the same amount of income as the appearing party.

(1998) A parent who has voluntarily separated from or lost employment due to his/her own fault will be attributed with earnings from that employment and will not be entitled to a reduction in his/her income in the Formula. Any reduction in attributed income will be permitted only after a sufficient period of time has elapsed in which the obligor can demonstrate that he/she has been actively seeking employment commensurate with his/her current skills, education, and training; and in the Court's discretion, other factors surrounding the loss of employment justify such a reduction.

(2006) There shall be a rebuttable presumption that a parent who receives unemployment compensation has been terminated involuntarily and without cause. Their unemployment compensation shall be included as other taxable income.

### 3. Minimum Attribution of Income

(2006) The attribution figure shall be the greater of \$7.50 per hour (\$1,300 per month), the Delaware minimum wage or the Federal minimum wage. Parents have a duty to aspire to greater than minimum earnings to support their children. This presumption may be rebutted where a person is employed on a full-time basis at a position commensurate with his/her skills, education and training.

### 4. Other Income

(1990) Income of a spouse or person cohabiting with either parent may not be used in the calculation.

(1994) Social Security Disability Benefits as well as those pension/disability benefits issued by private corporations, paid to a child(ren) on behalf of a disabled parent shall be added to the disabled parent's income for use in this child support calculation. That parent will then receive a dollar-for-dollar credit off of the bottom line support obligation for these payments received by the child(ren). When a child receives these benefits on his/her own behalf the amount would be added to the custodial parent's income.

The judiciary recognizes the prevailing national view, which treats disability payments to a child on behalf of a disabled parent as the payment of child support by that parent.

(2006) When a person receives Social Security Disability or Supplemental Security Income, this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances.

## 5. Tax Status

(1994) All persons for whom taxable income is determined shall be assessed a tax status of single with one exemption (S-1). In keeping with this philosophy of simplification, the Earned Income Tax Credit and the Dependent Care Tax Credit shall not be considered for purposes of calculating child support. These credits are given to individuals based on needs intended to be addressed by the relevant federal and state revenue statutes. The Court ought not to mitigate the effect of these statutes by local Court rules of evidence and procedure.

(2002) All earned income, including pre-tax income deductions (for example, flexible spending plans and health insurance) shall be treated as available income for child support purposes. For the sake of simplicity and consistency and to further avoid entangling tax and child support policy, all such income should also be treated as taxable.

(2006) Regardless of the state of residence, the Court will use the Delaware Income tax tables in the Formula. Local wage or income taxes will remain specific to the city of residence or employment.

## 6. Allowable Deductions

### a. Health Insurance

(1994) All health insurance premiums paid for by either parent, regardless of the persons covered, will be deducted from gross income, unless there has been an affirmative refusal to cover the child(ren) subject to a Court order. It is in no one's best interest to be uninsured; not the child, either parent, or either parent's subsequent children. Any major medical expenditure, due to lack of insurance coverage, by either parent on behalf of that parent or his/her child(ren), could interfere with the routine payment of child support.

(1998) Payments for health insurance made under COBRA are deductible.

### b. Life Insurance

(1994) No deduction shall be allowed for the payment of life insurance premiums, unless the party is bound by a prior agreement or order of the Court to provide life insurance for the benefit of the child(ren). The cost of term life insurance has a de minimus impact on the support calculation, while the task of separating the premium and investment elements of whole or universal life insurance can be an evidentiary burden.

c. Retirement Plans

(2002) All mandatory employee paid contributions to retirement plans are allowable deductions even if they exceed 3% of gross income. If an employee makes no mandatory contribution to a retirement plan, a voluntary contribution is an allowable deduction up to 3% of gross income. If the mandatory employee contribution is less than 3% of gross income, a voluntary contribution is allowable, provided the combination of the mandatory and voluntary contribution does not exceed 3% of gross income. Payments to voluntary retirement plans must be to 401(k) or other IRS approved plans.

In 1998, the Court recognized that it was inequitable to recognize mandatory contributions to pension plans to the exclusion of all voluntary contributions (up to 3% of gross income). However, issues arose regarding the interaction of mandatory and voluntary contributions and the 3% limitation. This revision to the Formula clarifies that all mandatory contributions are fully deductible and where there is a mandatory contribution of less than 3%, the difference can be made up through voluntary contributions. The 3% limitation is based on the Delaware Employees Pension Plan.

d. High Cost of Living Location

(2002) There are times when a parent is relocated by an employer to an area with a high cost of living. Sometimes the employer compensates the employee solely for the higher cost of living. If the reason for the increase is clearly identifiable and the amount documented by the employer as compensation for higher cost of living, it may be deducted from child support income.

If a parent has been moved by an employer to a city with a high cost of living, an additional stipend to cover that cost will not be available for any other purpose including child support. Therefore, it would not be equitable to include the increased income in the calculation.

7. Parents' Self-Support Allowance

(2006) The self-support allowance is \$970 per month for all obligations calculated January 1, 2007 through December 31, 2008. The allowance is based upon actual single parent household expenditures as reported in the Department of Labor Bureau of Labor Statistics Consumer Expenditure Survey for the years 2003 through 2005. The allowance will be recalculated every two years.

(2006) Except incident to the assessment of Minimum Orders, no person should be required to substantially invade their primary support allowance to satisfy a current support obligation. When a parent supports children in multiple households, that parent's obligation shall not exceed an equitable proportion of the parent's net income after deduction of the self-support allowance. The equitable proportion shall be based upon the number of children in the household for whom support is sought compared to the total number of children the obligor does in fact support. That proportion shall be integrated into the automated child support calculation derived as follows and reflected in the table below:

Any other children	Children for Whom Support is sought			
	1	2	3	4+
0	100	100	100	100
1	50	60	70	75
2	40	50	60	65
3	30	40	50	55
4+	25	35	45	50

#### 8. Adjustment for the Support of Other Children

(2002) The Court determined that the Credit for Support of Other Dependent Children should be changed from a credit against the support obligation of the obligor alone to an adjustment to Net Income Available for Support of both parties. This change will eliminate the confusion that has existed since the implementation of the Credit for Support of Other Dependent Children in 1998. The 1998 revisions simplified the manner in which an obligor's duty to support other children impacts the calculation. This was accomplished through a percentage credit against the bottom line rather than an analysis of the other children's actual needs or pre-existing order of support. Unfortunately, some obligors perceive the credit as an allowance and complain that it compares unfavorably to the primary support allowances. Some obligees complain that there is no apparent consideration of additional children they may have. This solution negates those misperceptions with minimal impact on the ultimate obligation. It is also more consistent with the underlying assumption that while the burden of new siblings should not fall primarily on pre-existing children, available resources are necessarily diluted.

(2006) Each parent's net income after deducting the Self-Support Allowance will be multiplied by the applicable percentage shown on the table below (but not less than 50%). The percentages are derived by dividing two times the self support allowance by the sum of two times the self support allowance and the primary support allowance applicable to the number of other dependent minor children in the obligor's home and outside the obligor's home for whom there is a Court Order for support or proof of a pattern of support.

<b>Number of Children</b>	<b>Percentage</b>
0	100%
1	82%
2	73%
3	66%
4	61%
Each Add'l	minus 4%

**B. CHILDREN'S NEEDS**

1. Primary Support Allowance and Standard of Living Adjustment (SOLA)

(2006) The following are the monthly primary support allowances and SOLA percentages for January 1, 2007 through December 31, 2008:

<b>Number of Children</b>	<b>Primary Support Allowance</b>	<b>SOLA %</b>
1	\$430	16%
2	\$720	24%
3	\$990	30%
4	\$1,240	35%
Each Additional	\$230	+3%

The allowances and percentages are based upon actual single parent household expenditures as reported in the Department of Labor Bureau of Labor Statistics Consumer Expenditure Survey for the years 2003 through 2005. SOLA is determined by dividing 90% of the corresponding primary support allowance by the sum of two times the self support allowance and 100% of the corresponding primary support allowance. The maximum SOLA percentage is 50%. The allowances and percentages will be recalculated every two years.

2. Child Care Costs

(1990) The judiciary concluded that childcare expense is included in primary support amount based on the cost of actual expense incurred by a working custodial parent. No hypothetical or attributed childcare costs are permitted. Where net income is not derived based on tax returns, the childcare expense shall not be reduced by the allowable childcare credit.

### 3. Private School Expenses

(2006) Private or parochial school expenses shall only be included in a child support calculation where:

- a. The parties have adequate financial resources, and
- b. After consideration of the general equities of the particular case but especially where:
  - i. The parents previously agreed to pay for their child(ren)'s attendance in private school; or
  - ii. The child has special needs that cannot be accommodated in a public school setting; or
  - iii. Immediate family history indicates that the child would likely have attended private or parochial school.

### **C. EXTRAORDINARY MEDICAL EXPENSES**

(1990) Extraordinary medical expenses are eliminated from the primary support need calculation. Every order will include a general finding that the parties are required to share unreimbursed medical, dental and psychological counseling expenses in excess of \$350 (per child or per family) expended within each calendar year.

Furthermore, the order shall include a requirement to pay expenses directly to the custodial parent or to the provider of services, including IV-D cases, absent any other specific order. The issue of non-payment of a covered expense will properly be addressed pursuant to a Rule to Show Cause petition. This mechanism permits the sharing of unanticipated expenses without violating the Bradley requirement to preclude retroactive modification of child support orders. (See 13 Del.C. § 513(d).)

(2002) Each parent's share of medical expenses in excess of \$350 annually shall be in accordance with the Share of Total Net Available Income on the Delaware Child Support Calculation Worksheet. This includes orthodontic payment plans payable over a period of more than one year. Each medical expense, including individual payments on orthodontic payment plans, should be charged against the year in which the payment is actually made, which may not be the same as the year in which the services are provided or in which the contractual obligation with the service provider arises.

(2006) A claim for medical reimbursement shall be presumptively waived if no action for reimbursement is timely filed. A petition for reimbursement should be filed no later than December 31 in the second year after the expenditure. For example, 2007 expenses must be pursued by the end of 2009. The Court's standardized order forms shall be modified to contain language to this effect.

### **D. EMANCIPATED CHILDREN**

(1990) It was concluded that a statutory change was required to permit the Court to order support for adult children, aside from the limited cases wherein an adult child is found to be a poor person under existing law. Nevertheless, the judiciary agreed that the Formula should specify that neither the needs of nor voluntary support paid to or for

emancipated children be considered. At a minimum, adult children should simply be ignored in the Formula. Thus, the new written procedure shall specify that adult children residing in the household not be considered regarding expense incurred for them or contribution made by them to the household.

**E. SHARED CUSTODY/PARENTING TIME ADJUSTMENT**

(2006) In 2002, the guidelines were amended to give parents with whom a child resides more than 30% but less than half of annual overnights the opportunity to share in a portion of the combined SOLA. Omitting Primary Support from consideration manifested a precipitous difference between the 40% and 50% categories and left parents of modest means without a meaningful remedy. While Primary Support will now be incorporated into the adjustment, the maximum adjustment for less than 50% placement will be limited to no more than the obligated parent's SOLA obligation, thus assuring that each child's primary needs can still be met in the primary placement household. The thresholds for shared 50/50 placement have also been modestly broadened and the other categories adjusted accordingly.

An adjustment will be triggered by the number of overnights that a child is entitled to spend in the home of a child support obligor pursuant to a Court Order or written agreement and is intended to be an index of greater interest and superior parenting skills. Modest fluctuations between contact schedules and actual visitation practices will not prompt any adjustment or the rebuttal of the Formula. Thus, an obligor who does not assume the additional financial responsibilities attendant to substantial additional contact or an obligor who is consistently uncooperative or overly litigious will not be entitled to any credit and may risk rebuttal of the Formula. Substantial discrepancies between schedules and practices should be addressed in visitation (and not support) proceedings.

Where a Court Order or written agreement establishes or confirms that a child spends an average of over 109 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of the primary support allowance and combined Standard of Living Adjustment. Additionally:

- The percentage shall correspond to designated ranges of the number of overnights of visitation as follows:
  - Up to 109           no change
  - 110 – 132         10%
  - 133 – 150         20%
  - 151 – 164         30%
  - 165 – 174         40%
  - 175 +             50%
- If the percentage is less than 50%, the amount retained shall not exceed the SOLA obligation of the obligated parent.
- Where the residential arrangement is complex with children in different ranges, then the percentages shall be averaged.

- If there is no order or written agreement, a 50/50 shared placement agreement (more than 174 annual overnights in each household) may be established by other evidence.

The Parenting Time Adjustment shall be included on the worksheet. In the past, the worksheet did not contain this information.

**F. MINIMUM ORDERS**

(2006) No person shall be assessed a support obligation of less than 20% of the primary support allowance for the number of children for whom support is sought except:

- a. This limitation shall not apply where children reside in shared (at least 175 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.
- b. A disabled person with actual income of less than the self-support allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

**G. STANDARDS FOR MODIFICATION**

(1994) No petition may be filed within 2 ½ years of the date of the last order regarding current support absent pleading with particularity a substantial change in circumstances—specifically, changes in income brought on by no fault of the petitioner, changes in day care expenses, or changes in other child support obligations of the obligor.

There will be no modification of an existing order if filed within 2 ½ years of the prior order regarding current support, unless the calculation indicates a change, upward or downward, of 10% or greater.

The passage of 2 ½ years since the last order regarding current support shall constitute a sufficient basis to file a petition for modification of the current support order. These petitions shall result in a modification of the support order based strictly on the calculation amount, with no need for a 10% threshold to be met.

Where a modification petition has been filed and a change in current support is warranted, the obligation amount may be increased or decreased without regard to the specific modification requested. The Formula is presumed correct whether or not the calculated amount results in an increase or decrease in the existing order. A dismissal of an unsuccessful action for an increase merely spurs the other parent's decrease filing, resulting in re-litigation of the same issue.

**H. ROUNDING OBLIGATIONS TO NEAREST DOLLAR**

(1994) All child support obligations shall be rounded to the nearest dollar amount; any figure ending with \$0.01 - \$0.49 shall be rounded down; any figure ending with \$0.50 - \$0.99 shall be rounded up.

**I. IMPLEMENTATION**

(2006) All child support orders calculated from January 2, 2007, prospectively shall utilize the 2006 revisions to the Delaware Child Support Formula. If back support is calculated, it shall be done applying the 2006 revisions to the Formula.

(2006) Most values utilized in the Formula shall be indexed and adjusted biannually on the first of January of every odd-numbered year to coincide with the new tax withholding tables. The Court resolved to select self support and primary support allowances that would reflect the most recent economic information available and to objectively adjust the values every two years based upon a predetermined formula.

The statistical basis for the adjustment will be the average annual expenditures of single parent households for food, clothing, shelter and utilities, plus 20% for other expenses as reported by the United States Department of Labor Bureau of Labor Statistics Consumer Expenditure Survey averaged over a three year period ending 12 months prior to the adjustment. The first adjustment will occur in January of 2007 and will be repeated every two years thereafter utilizing the Equivalence Scales and explanation in “Section V” of this report. All final values will be rounded to the nearest multiple of ten (10).

**J. FORMAT OF THE FINAL DOCUMENT**

(1994) The instructions to the Delaware Child Support Formula shall be promulgated in a manual format and in plain language to enhance the accessibility to the Court by all litigants.

(2006) The Guidelines will be incorporated as a Family Court Rule with annotations which will be drafted and submitted to the judges of the Family Court for approval.

**SECTION VII: SUMMARY**

The Delaware Child Support Formula remains a fair and equitable approach to determining child support obligations. It comports with federal law as well as Delaware statutory and case law. These revisions focus on the best interest of children through the standardization of Court policies and simplification of procedures. The adjustments reflect current economic data relevant to the cost of raising children.

On behalf of the Judges and Commissioners of the Family Court, I wish to express our appreciation to the Delaware Child Support Formula Ad Hoc Committee, The Honorable Michael Newell, The Honorable Andrew Southmayd, The Honorable John Carrow, The Honorable Lester Blades, The Honorable Patricia Blevins, The Honorable Robert Marshall, The Honorable Robert Valihura, Jr., The Honorable William Oberle, Janine Howard O’Rangers, Esquire, Ellen Meyer, Esquire, Peter Feliceangeli, Esquire, Lisa DiBuo, Alisa Mawson, Lynn Kokjohn, Norman E. Levine, Esquire, Andrew Haman, Guy Perrotti, Alfred Lindh, Esquire, and Islanda Finamore, Esquire.

A Formula Review Committee shall be appointed on or before September 1, 2009. Any changes to the Formula shall be adopted on or before October 1, 2010 with implementation to be effective January 1, 2011.