

2011 Child Support Workgroup
Post Secondary Educational Support Subcommittee
Telephone Meeting May 4, 2011 Notes

Present: Chair Tim Eastman, Note taker Kathleen E. Schmidt and James Cox. George Smylie (DSHS/DCS support staff) No members of the public were on the line for the call.

The telephone conference commenced at 4:15 p.m. on May 4, 2011. Chair Tim Eastman had provided an agenda for the meeting via email to the members sent May 2, 2011.

RCW 26.19.090 sets forth the provisions relating to post secondary educational support.

(1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW [26.09.225](#).

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

The State of Washington has provided by statute for the payment of post-secondary support for children per RCW 26.19.090 for about 20 years. The opinion was expressed by a member of the subcommittee that parents who have remained married to each do not have to pay for a child's college education unless they decide they want to contribute and it did not seem fair to impose on unmarried partners or divorced parents an obligation to pay for

college. As an alternative it was suggested by a member of the subcommittee that to be consistent that the Legislature should consider imposing an obligation on married parents to pay college support by court order just as unmarried and divorced parents can be ordered to pay.

The State of Washington has long recognized a public policy in favor of providing for post secondary support for children of divorced parents and prior to the adoption of RCW 26.19.090 case law had established an obligation to assist children with college support. A divorced parent may have a duty of support for a child attending post-secondary education if it works no significant hardship on the parent and if the child shows aptitude. *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978)

A discussion ensued of the language of RCW 26.19.090(3) and whether or not the statute as drafted provides a clear statement to the parents, child and the courts as to what is expected. The statute does not use the term “full time” student but it is generally understood that “pursuing a course of study commensurate with the child’s vocational goals” requires the child to be attending school full time. The statute does not use “full time” so it does not define “full time” student status. Colleges and universities may have conflicting policies about the number of credits a student must be enrolled in per quarter or semester in order to be considered a full time student. James commented that he had done some review of the policies of colleges and universities on the issue of full time student status as well as good academic standing. It appeared to him that 12 credits per quarter was considered full time and that “good academic standing” was defined as 2.00 GPA. The Court order can set the number of credits for full time status per the current statute.

Exactly how the obligation for support is “suspended” if the child does not meet the conditions of the statute seemed to be problematic to a member who had some personal experience with post-secondary support cases. How many times can a child stop and start college before the obligation to help should terminate? There is nothing in the statute that specifically addresses this issue but the Court order could and should be clear on how a suspended obligation is handled.

A more general discussion occurred about a child who may not have planned for college while attending high school and the possible unfair burden that might fall on the economically advantaged parent when post secondary support is considered and determined. While some members felt that a child would value their education more if they had to pay for it themselves, others had a different point of view.

Kathleen commented from an anecdotal point of view in her practice that Court’s look quite carefully at the criteria set forth in RCW 26.19.090 (2) and that a trial judge would look critically at a child who did not do well in high school and did not have a plan for college as part of the statutory scheme to look at the child’s “prospects, desires, aptitudes, abilities and disabilities.” The court has broad discretion to consider the parent’s level of education, their

standard of living and the parents' current and future resources. Not all parents are able to assist their children with college support and not all children are going to qualify for an order that requires both parents to help with the cost of the child's college education.

Another concern expressed by a committee member related to the issue of whether college support should be paid 12 months per year or just for the months that the child is actually in college. A discussion ensued about whether a child is "dependent" on their parents during the summer months while they may not be enrolled but intending to return to school or if support should be paid to the child who is living with the other parent who may not be contributing by an actual payment to the child during the months the child lives at home. The statute allows the Court sufficient discretion to address this issue but it was noted that it remains a concern.

Another concern expressed was the means by which each parent's contribution is determined and if college support might end up being paid to the former obligee which did not seem right. RCW 26.19.090(6) does allow the Court the discretion to decide who gets the payments. A common outcome is for both parents to pay the child who then uses the money to pay for a combination of expenses on a monthly basis. With the college expecting to be paid in advance for tuition, books, room & board it is not feasible in many cases to have either parent pay their obligation directly to the college.

The subcommittee will meet again and discuss the issues further before reporting to the Child Support Workgroup. Meeting ended at 5:15 p.m.