

THE FAMILY COURT OF THE STATE OF DELAWARE
DELAWARE CHILD SUPPORT FORMULA
EVALUATION AND UPDATE

November 1, 2010

Report of the Judiciary

respectfully submitted

THE HONORABLE CHANDLEE JOHNSON KUHN,
CHIEF JUDGE

SECTION I: BACKGROUND

An Ad Hoc Committee for Child Support Guideline Review (hereinafter referred to as “the Committee”) was convened at the request of Chief Judge Chandlee Johnson Kuhn on October 22, 2009, and charged with reviewing and updating the guidelines in accordance with Federal Regulations at 45 C.F.R. §302.56 and Family Court Civil Procedure Rule 500(b).

Federal Regulations require all States to have guidelines for establishing and modifying child support obligations within the State. The State must review, and if appropriate, revise the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The guidelines must, at a minimum:

1. Take into consideration all earnings and income of the absent parent;
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 a rebuttable presumption for calculating child support obligations in this State. If the Court finds the application of the Formula inequitable 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 C.F.R. §302.56 (g); Dalton v. Clanton, Del. Supr., 559 A.2d 1197 (1989).

The Committee was comprised of representatives of the Family Court, General Assembly, Division of Child Support Enforcement, Department of Justice, Family Law Commission, Family Law Section of the Delaware State Bar Association, and Delaware Volunteer Legal Services. This report is inclusive of revisions made to the Formula in 1990, 1994, 1998, 2002 and 2006 which are still in effect. Pursuant to the 2006 recommendations, the Formula was restated and adopted on August 28, 2008 as Family Court Civil Procedure Rules 500 through 509. Due to the large number of issues regarding medical support, a separate section has been added. This report also includes a complete restatement of Chapter XVII of the Family Court Rules of Civil Procedure also known as the “Delaware Child Support Formula.”

The Committee’s Report dated September 1, 2010 was formally presented at a meeting of the Family Court Judiciary on September 9, 2010 and after discussion was approved in its entirety.

SECTION II: ISSUES CONSIDERED BY THE COMMITTEE

Many issues were considered by the committee including:

- New Federal medical support regulations;
- Shared residency;
- Tutoring expenses;
- Military allowances;
- Stay-at-home parents;
- Tax treatment of disability income and unemployment compensation;

- Medical reimbursement;
- Disability insurance and health insurance purchased by a stepparent;
- Hidden income of the self-employed;
- Allowances and percentages;
- Supplemental Security Income;
- Prisoner Re-entry programs; and
- Minimum orders and minimum income.

The following issues were considered but no proposals were adopted:

- Allocation of tutoring expenses between parents;
- Exclusion of military allowances for food (BAS);
- Standard rule for attribution of income to stay-at-home parents;
- Specialized tax rules for unemployment compensation and disability income; and
- Duplicate costs for children in shared placement and subject to the parenting time credit.

SECTION III: ANALYSIS OF CASE DATA

The sample of 11,673 orders included all child support orders that were generated from the Family Court Automated Management Information System (FAMIS) from 1/1/09 through 8/31/10. The review indicated that 82% of orders issued by Commissioners and 73% of orders issuing from mediation were based on the application of the Formula. When indicated, deviations upward and downward were approximately equally split. Two-thirds of all deviations were by agreement of the parties. Only 7.4% of child support orders resulted from the Court finding that the Formula was rebutted. That number may actually be lower since the designation “other” may include inaccurate designations such as registrations of foreign support orders and other agreements to deviate.

Type of Deviation	Commissioner's Orders	Mediation Consent Orders	Total	% of Deviation
01	10	273	283	10.65
02	4	14	18	.7
03	10	273	283	10.65
04	109	690	799	30
05	852	423	1275	48
Total Deviations	985	1673	2658	100%
No Deviations	4554	4461	9015	77.2
Total Orders	5539	6134	11673	100%

KEY: 01 = Lower amount will meet the needs of the child
 02 = NCP (Non Custodial Parent) 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

The 2006 revisions included a two-year self-executing adjustment of all of the Formula's constant values. Since 1998, the mathematical adjustments to the Delaware Child Support Formula were based upon the report, Measuring Poverty: A New Approach. Commissioned and published by the National Academy of Sciences, the report proposed a new method for measuring poverty in America based upon basic household expenditures rather than the cost of necessary goods. Applying the principles retroactively from 1992 through 2002, the Court created a statistical model which takes into account not only the overall amount of expenditures but the proportion of expenditures to satisfy household needs (shelter and utilities) and personal needs (food and clothing) in single parent households as expressed in the annual Consumer Expenditure Survey compiled by the United States Department of Labor.

As stated, the constants are now automatically adjusted every two years. This adjustment was successfully implemented in 2009 resulting in increases generally reflective of changes in the Consumer Price Index. Nevertheless and consistent with historic trends, household expenditures increased by nearly 11% while personal expenditures grew by only 6%. This imbalance causes the one-child primary allowance to increase disproportionately as compared to the allowances for two or more children. These trends appear likely to continue.

SECTION V: GENERAL RECOMMENDATIONS

The Court approved the following changes to the Formula:

- Disability insurance: Disability insurance is a common employment benefit and modest deduction from income but is not currently deductible in the Formula. The purpose of this insurance typically is to replace income in the event of serious illness or injury and is beneficial to an employee's dependents. Therefore, disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations) shall be deductible in determining net income available for child support.
- Military allowances: The Formula currently exempts from income cost of living stipends paid to offset assignments to high income locations. Military Housing Allowances (BAH) vary depending upon both rank and location. BAH shall be limited to no more than the entitlement of a servicemember stationed at Dover Air Force Base. The BAH tables ("with dependents") for Dover AFB will need to be readily available to mediators and Commissioners and linked to the on-line calculation. Additionally, military allowances for clothing shall be excluded from income.
- Minimum orders: The existing minimum order presumption of 20% of each primary allowance is inadequate and shall be increased to 25% to contribute meaningfully to the needs of the child(ren) (rounded to the nearest multiple of \$10). Based on current projections, the minimum order for one child would increase from \$96 to \$130 per month.

- Minimum income attribution: For many years the presumptive minimum income has been \$7.50 per hour. To keep pace with changes in the support allowance, the minimum income attribution shall be adjusted every two years to one-half the statewide median wage which would establish a minimum of \$8.58 per hour or \$1,478 per month for the years 2011 and 2012.
- Supplemental Security Income: A parent who receives SSI shall not be attributed income or assessed a child support obligation unless the parent has income or an income capacity independent of their SSI entitlement.
- Financial obligations of parents in shared custody cases: In shared custody support cases, each parent under the Delaware Child Support Formula retains a portion of the parents' combined support obligation in their respective households, and each parent is expected to share in the child(ren)'s incidental expenses as they arise. In some cases, one parent may be ordered to make a monthly current support payment to the other parent in addition to sharing incidental expenses. Upon a showing that a parent is not adequately contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to a finding that the support formula is rebutted and that a current support obligation be imposed against the offending parent as if the child resided primarily with the other parent.
- Incarcerated parents: Service of a term of incarceration that exceeds or is anticipated to exceed one year may be considered as evidence of a diminished earning capacity unless the individual:
 - Has independent income, resources or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances; or
 - Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.
 - However, incarceration is not a ground for modification of a current support obligation last calculated within the last two and one-half years.
- Hidden income: Family Court Civil Procedure Rule 501 shall be amended to expand the minimum documentation required to adequately evidence income and expenses especially from self-employment:

Financial Report. (1) Failure to submit a Financial Report Form pursuant to Rule 16(a) with adequate supporting documentation risks dismissal, rescheduling, or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, and three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

(2) Individuals with self-employment income also should include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the extent that tax returns

do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder shall also include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

- '4-child' primary and SOLA: Currently, the primary support allowances are placed out to the third and fourth child and then a repeating amount for each additional child. Increases in shelter and utility costs have outpaced food and clothing. This results in a diminishment of the differences between allowances for larger families. Accordingly, it is appropriate to eliminate the "four child" allowance and SOLA percentage. The "each additional" categories are adequate. This also serves to simplify the Formula.
- Adjustment for the support of other children: A common complaint is that some parents continue to have children despite lacking the means to support them while meeting the needs of their existing children. While it is unrealistic and unfair to expect parents with prior obligations to stop having children altogether and the children are not to blame for their parents' shortsightedness, the adjustment should not be limitless. Additionally, the proposed increase to the minimum orders will supersede the adjustments for multiple children in modest income circumstances. Accordingly, the adjustment for support of other children shall not exceed the rate currently applicable to three children.
- Self support allowance protection: Currently, the Formula limits the percentage of net income after self support that a parent can be ordered to pay based upon the number of children to be supported in and out of the obligation before the Court. This is intended to avoid inadvertent depletion of the self support allowance that can result in low income cases where there are multiple orders. Assuming equal incomes and all children in just two households, the current percentages are designed to preserve 100% of the self support allowances. This has resulted in dramatic reductions in obligations with pre-born children sometimes absorbing 100% of the support for subsequently born children. Similar but less extreme results can be obtained by merely multiplying the net available for primary support by the adjustment for the support of other children. Depending on the circumstances this will preserve 80% to 100% of the self support allowance and will simplify the Formula.

SECTION VI: MEDICAL SUPPORT RECOMMENDATIONS

In July of 2008, the Administration for Children and Family of the United States Department of Health and Human Services adopted final regulations for establishing and enforcing medical support obligations in child support cases receiving services under Title IV-D of the Social Security Act. The regulations seek to require one or both parents to obtain health insurance for each child if available through employment at a reasonable cost and accessible to the child. Each state is required to develop objective standards for determining reasonable cost and methods to share the premium cost equitably between the parents. Every child support order

is also required to address “cash medical support.” Cash medical support is both the cost of insurance equitably shared with the other parent and an equitable share of medical expenses not covered by insurance.

- Health insurance as a primary expense. The Delaware Child Support Formula already addresses requiring a parent to obtain health insurance and the equitable distribution of medical expenses not covered by insurance. While health insurance premiums allocable to children are a deduction from income, such does not equitably share the cost with the other parent. To address equitable distribution of the premium cost, any amount allocable to the children shall be treated as a primary support element in the same manner as daycare is treated.
- Reasonable cost. Currently, “reasonable cost” is handled on a case-by-case basis with no objective standard. The current statutory definition of “reasonable cost” is the somewhat irrational “available through employment” (13 Del. C. §§ 401(b)(11) & 513(a)(4)). That definition was compelled upon the State by earlier federal regulations. Ironically, it contradicts the new mandate that each State determine affordability by an “income-based numeric standard” (45 C.F.R. §303.31(a)(3)). The new regulation suggests, but does not mandate, that the cost of adding a child to an employee-only policy be less than 5% of gross income. The Court rejects this suggestion because it would be difficult to apply outside of court and fails to take into account the amount paid for the parent’s insurance. Therefore, the cost of the insurance premium for coverage of both the employee parent and all minor dependents is reasonable when the cost does not exceed 10% of the purchasing parent’s gross income and there is sufficient total net income available to cover the primary support allowance, child care, and the premium allocable to the children. When insurance is not available at the time the order issues, each parent should be directed to obtain it when the total cost for the employee and any minor dependents does not exceed 10% of gross income.
- Step-parent coverage. When a stepparent provides insurance for the parent’s child through the stepparent’s employment, the cost of that coverage shall be included in the calculation. This approach promotes the goal of insuring children while not imposing parental responsibilities on non-parents. However, the cost to a stepparent of providing coverage will be included in the calculation only if the stepparent’s own children are not included in the coverage, that is, only if the stepparent has additional costs from including a stepchild on an employer-sponsored health plan.
- Two-year presumptive waiver. Problems have also arisen with the Formula’s intention that all claims more than two years old be deemed presumptively waived. However, the Court’s rule is currently inconsistent with the 2006 Report and has been interpreted by some as an unyielding statute of limitations rather than a presumption. Additionally, the current process prevents a parent from seeking any relief until they have actually expended funds, sometimes creating a paradox wherein a child cannot receive treatment until they have money but cannot get the money until they receive treatment. To resolve these issues and improve the process, the Rule will be re-written to clarify that the obligation of reimbursement arises upon receipt of treatment

and to expressly state that the two-year period is a presumption that can be rebutted upon good cause shown.

SECTION VII: CONSOLIDATED UPDATES 1990-2010

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.

(2010) In an effort to foster better preparation for hearings and mediation conferences and mitigate the problem of hidden income, Rule 501 will be amended expanding the minimum documentation required to adequately evidence income and expenses especially from self-employment:

Financial report. (1) Failure to submit a Financial Report Form pursuant to Rule 16(a) with adequate supporting documentation risks dismissal, rescheduling, or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, and three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.

(2) Individuals with self-employment income also should include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories, and to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder shall also include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

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.

(2010) Service of a term of incarceration that exceeds or is anticipated to exceed one year may be considered as evidence of a diminished earning capacity unless the individual:

- *Has independent income, resources or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances; or*
- *Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.*
- *However, incarceration is not a ground for modification of a current support obligation last calculated within the last two and one-half years.*

3. Minimum Attribution of Income

(2006) The attribution figure shall be the greater of \$7.50 per hour (\$1,300 per month), the Delaware State 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.

(2010) To keep pace with changes in the support allowance, the minimum income attribution shall be adjusted every two years to one-half the statewide median wage which would establish a minimum attribution of \$8.58 per hour or \$1,478 per month for the years 2011 and 2012.

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 by the totality of the circumstances.

(2010) A parent who receives Supplemental Security Income (SSI) shall not be attributed income or assessed a child support obligation unless the parent has income or an income capacity independent of their SSI entitlement.

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 of one of the parties the Court will use the Delaware State 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.

(2010) To better distribute the cost of health insurance allocable to a child, such cost shall not be a deduction from income if it is included as an element of primary support pursuant to other rules.

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 minimis 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 that 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 State 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.

(2010) Military Allowances: The Formula currently exempts from income the cost of living stipends paid to offset assignments to high income locations. Military housing allowances (BAH) vary depending upon both rank and location. Includable BAH shall be limited to no more than the entitlement of a servicemember stationed at Dover AFB. The BAH tables ("with dependents") for Dover AFB will need to be readily available to mediators and Commissioners and linked to the on-line calculation. Additionally, military allowances for clothing shall be excluded from income.

e. Disability Insurance

(2010) Disability insurance is a common employment benefit and modest deduction from income but is not currently deductible in the Formula. The purpose of this insurance typically is to replace income in the event of serious illness or injury and is beneficial to an employee's dependents. Therefore, disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations) shall be deductible in determining net income available for child support.

7. Parents' Self Support Allowance

(2006) The estimated self support allowance is \$960 per month for all obligations calculated January 1, 2007 through December 31, 2008. The final amount will be 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. Data for the year 2005 will not be available until November of 2006 and has been projected for this estimate utilizing the Consumer Price Index. The actual allowance will be confirmed upon release of the 2005 data and recalculated every two years thereafter.

(2010) Currently, the Formula limits the percentage of net income after self support that a parent can be ordered to pay based upon the number of children to be supported in and out of the obligation before the Court. This is intended to avoid inadvertent depletion of the self support allowance that can result in low income cases with multiple orders. Assuming equal incomes, the current percentages are designed to preserve 100% of the self support allowances. This has resulted in dramatic reductions in obligations with pre-born children sometimes absorbing 100% of the support for subsequently born children. Meaningful but less extreme results can be obtained by merely multiplying the net available for primary support by the adjustment for the support of other children. Depending on the circumstances this will preserve 80% to 100% of the self support allowance and will simplify the Formula.

8. Adjustment for the Support of Other Children

(2006) 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.

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.

(2010) A common complaint is that some parents continue to have children despite lacking the means to support them. While it is unrealistic to expect that parents with prior obligations will stop having children altogether, tolerance should not be limitless. Additionally, orders utilizing the higher percentages would frequently be superseded by the newly increased minimum orders. Accordingly the adjustment for support of other children shall not exceed the rate currently applicable to three children.

Number of Children	Percentage
0	100%
1	81%
2	73%
3	67%

B. CHILDREN'S NEEDS

1. (2010) The following are the estimated monthly primary support allowances and SOLA percentages for January 1, 2011 through December 31, 2012:

Number of Children	Primary Support Allowance	SOLA %
1	\$530	17%
2	710	24
3	970	29
Each Additional	220	+ 4

The final allowances and percentages will be based upon actual single parent household expenditures as reported in the Department of Labor Bureau of Labor Statistics Consumer Expenditure Survey for the years 2007 through 2009. Data for the year 2009 will not be available until November of 2010. 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 actual allowances and percentages will be confirmed upon release of the 2009 data and recalculated every two years thereafter.

(2010) Prior to 2010 the primary support allowances have been placed out to the third and fourth child and then a repeating amount for each additional child. Increases in shelter and utility costs have outpaced food and clothing. This results in a diminishment of the differences between allowances for larger families. Accordingly, it is appropriate to eliminate the "four child" allowance and SOLA percentage. The "each additional" categories are adequate. This also serves to simplify the Formula.

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. Health Insurance Premiums Allocable to Dependent Children and Reasonable Cost

(2010) The Delaware Child Support Formula already addresses requiring a parent to obtain health insurance and the equitable distribution of medical expenses not covered by insurance. While health insurance premiums allocable to children are a deduction from income, such does not equitably share the cost with the other parent. To address equitable distribution of the premium cost, any amount allocable to the children shall be treated as a primary support element in the same manner as daycare is treated.

(2010) The cost of the insurance premium for coverage of both the employee parent and all minor dependents is reasonable when the cost does not exceed 10% of the purchasing parent's gross income and there is sufficient total net income available to cover the primary support allowance, child care, and the premium allocable to the children. When insurance is not available at the time the order issues, each parent should be directed to obtain it when

the total cost for the employee and any minor dependents does not exceed 10% of gross income.

(2010) When a stepparent provides insurance for the parent's child through the stepparent's employment, the cost of that coverage also may be included in the calculation. This approach promotes the goal of insuring children while not imposing parental responsibilities on non-parents. However, the cost to a stepparent of providing coverage will be included in the calculation only if the stepparent's own children are not included in the coverage, that is, only if the stepparent has additional costs from including a stepchild on an employer-sponsored health plan.

4. 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 including consideration of whether:
 - (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 likely would have attended private or parochial school but for the parties' separation.

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.

(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.

(1990) 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).)

(2006) For all orders entered after January 1, 2007, all claims for medical support reimbursement shall be filed with the Court no later than December 31 of the year following the expenditure. There shall be a presumption that the claim is waived if it is not brought within 2 years. This language shall be included in all orders establishing or modifying current support.

(2010) Problems have arisen with the Formula's intention that all claims more than two years old be deemed presumptively waived. However, the Court's rule is currently inconsistent with the 2006 Report and has been interpreted by some as an unyielding statute of limitations rather than a presumption. Additionally, the current process prevents a parent from seeking any relief until they have actually expended funds, sometimes creating a paradox wherein a child cannot receive treatment until they have money but cannot get the money until they receive treatment. To resolve these issues and improve the process, the Rule will be re-written to clarify that the obligation of reimbursement arises upon receipt of treatment and to expressly state that the two-year period is a presumption that can be rebutted upon good cause shown.

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 by 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

(2002) The existing guidelines will now 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.

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.

(2006) The Judiciary approved some modifications to the existing guidelines. 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 both 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 the 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 shall be included on the worksheet. In the past, the worksheet did not contain this information.

(2010) In shared custody support cases, each parent under the Delaware Child Support Formula retains a portion of the parents' combined support obligation in their respective households and each parent is expected to share in the children's incidental expenses as they arise. In some cases one parent may be ordered to make a monthly current support payment to the other parent in addition to sharing incidental expenses. Upon a showing that a parent is not adequately contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to a finding that the support Formula is rebutted and that a current support obligation be imposed against the offending parent as if the child resided primarily with the other parent.

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 who 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.

(2010) The existing minimum order presumption of 20% of each primary allowance is inadequate and shall be increased to 25% to contribute meaningfully to the needs of the child(ren) (rounded to the nearest multiple of \$10).

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 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 relitigation 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

(2010) All child support orders calculated from January 2, 2011, prospectively shall utilize the 2010 revisions to the Delaware Child Support Formula. If back support is calculated it shall be done applying the 2010 revisions to the Formula.

(2006) Most values utilized in the Formula shall be indexed and adjusted biannually 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 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).

(2010) The report of the Ad Hoc Committee was submitted to the Family Court judiciary to approve, reject and/or supplement the report's recommendations. The final report of the judiciary includes any necessary amendments to the Family Court Civil Procedure Rules to be submitted for consideration by the Delaware Supreme Court. The goal for implementation is January 1, 2011. The next review committee shall be appointed on or

before July 1, 2013. Any changes to the Formula shall be implemented on or before January 1, 2015.

J. FORMAT OF THE FINAL DOCUMENT

(2006) 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. 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 VIII: DELAWARE CHILD SUPPORT FORMULA

(with amendments)

RULE 500. DELAWARE CHILD SUPPORT FORMULA; GENERAL PRINCIPLES

(a) *Rebuttable Presumption.* The Delaware Child Support Formula (the “Formula”) shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. The Formula may be rebutted in whole or in part. Every order rebutting the Formula shall state the reason for the deviation. The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must reference or have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

(b) *Review, update and adjustment.* The Delaware Child Support Formula shall be reviewed and updated no less than every four years. The numerical values utilized in the formula will be adjusted every two years utilizing predetermined objective criteria as set forth in Rule 509. The Court will create appropriate forms, tables and instructions to facilitate consistent and accurate application of the Formula.

RULE 501. INCOME ATTRIBUTION

(a) *General.* In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and earning capacity of each parent, the manner of living to which the parents had been accustomed as a family unit and the general equities inherent in the situation.

(b) *Actual income.* A parent employed full-time in a manner commensurate with his or her training, education and experience shall be presumed to have reached their reasonable earning capacity.

(c) *Attribution.* Unemployment or underemployment either voluntary or due to misconduct or failure to provide sufficient evidence or failure to appear for a hearing or mediation conference may cause income to be attributed. The Court may examine earnings history, employment qualifications and the current job market. The Court may take judicial notice of

Department of Labor wage surveys for individual occupations to estimate or corroborate earning capacity. Where no better information exists, a parent may be attributed at least as much income as the other party.

(d) Every parent is presumed to have a minimum earning capacity of the greater of one-half of the statewide median wage for a 40-hour week as reported by the State Department of Labor, or the Federal or State minimum wage, whichever is greatest as determined biannually pursuant to Rule 509.

(e) *Unemployment.* A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause.

(f) *Disability.* When a person has been determined to be eligible for Social Security Disability or Supplemental Security Income (SSI), 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. A parent who receives SSI shall not be attributed income or assessed a child support obligation unless the parent has income or an earning capacity independent of their SSI entitlement.

(g) *Earnest re-employment.* Parents who suffer a loss of income either voluntarily or due to their own misconduct may have their support obligation calculated based upon reduced earnings after a reasonable period of time if the parent earnestly seeks to achieve maximum income capacity.

(h) *Incarcerated parents:* Service of a term of incarceration that exceeds or is anticipated to exceed one year may be considered as evidence of a diminished earning capacity unless the individual:

- (1) Has independent income, resources or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances; or
- (2) Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.

(i) *Financial report.*

- (1) Failure to submit a Financial Report Form pursuant to Rule 16(a) with adequate supporting documentation risks dismissal or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for child care payments and private school costs.
- (2) Individuals with self-employment income shall include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).
- (3) Individuals receiving income from a business organization in which they are a partner or significant shareholder also shall include the organization's tax return and

supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

RULE 502. NET AVAILABLE INCOME

(a) *Net income.* Net available income for each parent is determined by subtracting taxes, limited deductions and a self support allowance from gross income. The result is discounted further by a designated percentage based upon the number of other children each parent is obligated to support. Obligations are calculated on a monthly basis and all values should be rounded to the nearest whole number. Gross income is organized by its taxable status and may include:

- (1) Salary and wages. This includes salaries, wages, commissions, bonuses, overtime and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax" or other similar designation.
- (2) Self employment. This includes all income earned as an independent contractor and subject to federal self-employment tax.
- (3) Unearned. This includes all other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.
- (4) Nontaxable. This includes all other income not subject to income taxation such as:
 - (i) Most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation of that parent as set forth in Rule 506 dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received.
 - (ii) Military Allowances. Military allowances in addition to pay shall be treated as nontaxable income. However, military clothing allowances shall be excluded and a servicemember's housing allowance (BAH) shall be limited to the amount which he or she would receive if stationed at Dover Air Force Base.
- (5) Exceptions. Second job income may be disregarded upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income only if they are significant and reduce personal living expenses. However, a cost of living stipend given to an employee as compensation due to assignment to a high cost location will not be included as income as long as it is clearly identified on pay documents.

(b) *Taxes.* Tax liability for child support purposes shall be derived by the income tax withholding tables and other publications distributed by the Internal Revenue Service and

Delaware Department of Revenue based upon a single tax status with one (1) exemption regardless of State of residence. The Court may create specialized tax tables to facilitate the calculation of estimated tax liability for child support purposes.

(c) *Deductions.* Allowable Deductions include:

- (1) Medical insurance. Medical insurance premiums (including COBRA payments) paid by either parent and regardless of which persons are covered by the policy are deductible except for any portion of a premium found allocable to a child and included as an element of primary support pursuant to Rule 503(b)(3).
- (2) Pension. All mandatory retirement contributions are deductible. If that amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income also may be deducted.
- (3) Union dues. Average monthly amount paid to any labor organization as a condition of employment is deductible.
- (4) Alimony paid. Alimony required to be paid is an allowable deduction but unless designated otherwise in the award document also must be subtracted from taxable income when calculating Federal and State income tax liability (but not retirement and Medicare taxes).
- (5) Disability insurance. Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to guarantee credit card, mortgage or other third party obligations) shall be deductible in determining net income available for child support.
- (6) Other. Other mandatory unreimbursed business expenses such as supplies required by the employer to be purchased are deductible.

(d) *Self support allowance.* The Self Support Allowance is the minimum amount of net income necessary for a parent to remain productive in a workplace as set forth in Rule 509.

(e) *Other children.* Each parent's available net income will be diluted in recognition of their duty of support to Other Children, excluding step-children, not of this union either in or out of the household by applying a designated percentage against net income after the subtraction of the self support allowance. Children outside a parent's household should be counted only if there is a court order for support or proof of a pattern of support. The percentage shall be determined as set forth in Rule 509.

RULE 503. PRIMARY SUPPORT NEED

(a) *Primary share.* Each parent's Net Available income will be expressed as a percentage to be known as the Primary Share of the parents' combined Net Available income. The percentage will be derived on case by case basis by dividing each parent's Net Available income by their combined Net Available income. This is to allow the children's primary support needs to be equitably allocated between the parents and to facilitate the sharing of extraordinary medical expenses.

(b) *Primary support.* Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by sum of all of the elements of the children's primary support need. The elements of the primary support need are:

- (1) Primary support allowance. As set forth in Rule 509, the Formula includes uniform allowances representing the minimum amount necessary to meet the basic needs of one, two, three and four children households (plus an amount for each additional child of the union), and for households where one or more children reside in shared equal placement.
- (2) Child care. The Formula facilitates the equitable allocation of all expenses incurred for the care and supervision of the children of this union by either parent required for the parent to work. No hypothetical or attributed child care costs are permitted. Cancelled checks, childcare contracts, receipts and other instruments created in the usual course of business shall be admissible in addition to the testimony of the parties to prove childcare expenses.
- (3) Health insurance premiums. Health insurance premiums allocable to dependent children of the union may be included as an element of primary support as follows:
 - (i) The amount of a premium allocable to dependent children shall be the difference between the premium for the parent alone and for the parent and his or her children. If the difference cannot be determined by the evidence given, the entire amount shall remain a deduction from income.
 - (ii) Coverage acquired through a stepparent's employment may be considered but only to the extent the increased premium provides coverage for the parties' dependent children and not the stepparent's own children. If the difference cannot be determined by the evidence given, no consideration will be given to the expense.
 - (iii) The proportion allocable to the children of a particular union shall be the number of children of the union divided by the parent's total number of dependent children.
- (4) Other primary expenses. The special needs of some children require parents to regularly incur other expenses including, as permitted by subsection (c), private school.

(c) *Private school.* Private or parochial school expenses shall only be included as a primary expense where:

- (1) The parties have adequate financial resources, and
- (2) After consideration of the general equities of the particular case including consideration of whether:
 - (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 likely would have attended private or parochial school but for the parties' separation.
- (d) *Shared equal placement.* Shared Equal placement (at least 175 overnights annually in each household) is established by order of the court, by written agreement, or in the absence of any order or written agreement by other evidence. Additionally,
- (1) Each child is counted as one half in each household;
 - (2) The Court shall establish additional primary support allowances to accommodate any such partial allocation of placement;
 - (3) Any modification of an order based upon a change between primary and shared equal placement must be proven by court order or written agreement or, in the absence thereof, by clear and convincing evidence.
 - (4) Upon a showing that a parent is not adequately contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to finding that the support formula is rebutted or imposing a current support obligation against the offending parent as if the child resided primarily with the other parent.

RULE 504. STANDARD OF LIVING ADJUSTMENT (SOLA)

After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic well being to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from their respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union as set forth in Rule 509.

RULE 505. CREDITS AND THE NET MONTHLY OBLIGATION

- (a) *Gross obligation.* Each parent's Gross Obligation is the sum of the individual's Primary Support Obligation (Rule 503(b)) and Standard of Living Adjustment (Rule 504).
- (b) *Credits.* Each parent shall retain from their Gross Obligation:
- (1) Primary Support Allowance for the children of this union in their primary or shared placement; and
 - (2) Child care, private school or other primary expenses claimed by the parent as allowed by Rule 503(b) or (c); and
 - (3) Per capita share of the parents' combined SOLA obligation for the children of this union in each parent's primary or shared placement; and
 - (4) Parenting Time Adjustment as set forth in Rule 505(c), if applicable.
- (c) *Parenting time adjustment.* When a Court Order or written agreement establishes or confirms that a child spends an average of more than 109 but less than 175 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 allocable to that child and combined

SOLA and shall be known as the Parenting Time Adjustment. The percentage is 10% for 110 to 132 overnights, 20% for 133 to 150, 30% for 151 to 164, and 40% for 165 to 174. Additionally:

- (1) If the actual practice of the parties deviates from the written schedule, the appropriate remedy is to first apply for a modification of the contact schedule. However, modest fluctuations between contact schedule and actual visitation practices will not prompt any adjustments or rebuttal of the Formula.
- (2) No parent may claim a Parenting Time Adjustment in excess of his or her individual SOLA obligation.
- (3) Where the residential arrangement is complex with children in different ranges, then the percentages should be averaged.

RULE 506. MINIMUM ORDERS AND SELF-SUPPORT ALLOWANCE PROTECTION

(a) *Minimum orders.* No person shall be assessed a support obligation of less than 25% of the primary support allowance (rounded to the nearest multiple of ten and adjusted biannually pursuant to Rule 509) for the number of children for whom support is sought except:

- (1) 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.
- (2) 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.

(b) Except incident to subsection (a) of this rule, no person should be required to substantially invade his or her primary support allowance to satisfy a current support obligation. When a parent supports children in multiple households, that parent's obligation shall not exceed the parent's net available income multiplied by the percentage utilized in the applicable Adjustment for the Support of Other Children as determined by Rule 509(d).

RULE 507. MEDICAL SUPPORT

(a) *Available, affordable and accessible health insurance.* One or both parents shall be ordered to acquire private health insurance when it is available through employment, reasonable in cost and accessible to the child. Whether health insurance available to a parent other than through employment is reasonable in cost and should be acquired or maintained will be determined on a case by case basis.

- (1) Reasonable cost. In the context of establishing or modifying a child support obligation health insurance is reasonable in cost if:
 - (i) The premium to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income; and
 - (ii) After inclusion of the insurance premium in the child support formula, the parents' combined net income pursuant to Rule 502 is sufficient to provide all primary expenses exclusive of private school tuition.

- (2) Continuing duty to acquire insurance. If affordable coverage is not available at the time of the order or whenever coverage lapses, each parent shall be ordered to acquire coverage that becomes available if the cost to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income.
- (3) Accessibility. Health insurance is accessible to a child if it covers medical services within a reasonable distance from the child's primary residence.
- (4) Termination. Once a parent has been ordered to acquire or maintain a specific policy of insurance, the parent shall continue the coverage despite changes in cost or accessibility until further order of the Court or written consent of the opposing party, or the State of Delaware if the child is a Medicaid recipient.
- (5) Specialized coverage. Whether either parent is required to acquire or maintain dental, vision or other specialized coverage shall be determined on a case-by-case basis. A National Medical Support Notice or medical support attachment shall not include specialized coverage unless expressly ordered.

(b) *Cash medical support.* Except as provided herein, every order for current support shall be presumed to include annual cash medical support of \$350. Accordingly, the support recipient is responsible for the first \$350 of healthcare expenses for the children under the order not reimbursed by insurance, including but not limited to medical, dental, orthodontic, vision, and psychological counseling costs incurred by either parent each calendar year.

- (1) Incurred. For purposes of this rule, "incurred" shall be the date the medical service was provided, except that in the event a parent contracts to pay orthodontic or other long-term treatment services over a period of time the date each periodic payment is due under the contract shall be deemed to be the date the expense was actually "incurred."
- (2) Additional cash medical support. Any additional healthcare expenses over \$350 each calendar year shall be divided by the parents according to their respective Primary Shares as established pursuant to Rule 503(a). The \$350 threshold is not applicable to shared or split placement circumstances.

(c) *Contribution and reimbursement.* An action for contribution to or reimbursement for a medical expense for a child may be brought at any time after the medical expense is actually incurred. However, any right of reimbursement will be presumed to have been waived unless a petition for reimbursement is filed with the Court by December 31 of the second year following the date the expense was incurred. This presumption may be rebutted for good cause shown.

RULE 508. MODIFICATION

Any petition for child support modification filed within two and one-half years of the last determination of current support must allege with particularity a substantial change of circumstances not caused by the petitioner's voluntary or wrongful conduct except as described in Rule 501(g). Furthermore:

- (a) Incarceration is not a ground for modification of a current support obligation last calculated within the last two and one-half years.
- (b) No modification will be ordered unless the new calculation produces a change of more than 10%.
- (c) Beyond two and one-half years, neither the “particularity” nor the “10%” requirement applies.
- (d) An obligation may be adjusted upwards or downwards without regard to who filed the petition.

RULE 509. NUMERICAL VALUES

(a) *Basis and adjustment.* The numerical values utilized in the Delaware Child Support Formula shall be derived from the Consumer Expenditure Survey (CEX) as published annually by the United States Department of Labor. The values shall be adjusted automatically in January of every odd numbered year. Specifically, 120% of the three-year average annual expenditures for food (F), clothing (C), shelter (S) and utilities (U) of all surveyed single parent households (“FCSU”) shall constitute the minimum basic need for a one parent two-child household from which the Formula's allowances and percentages will be extrapolated. The applicable CEX surveys shall be the three most recent surveys available immediately preceding the adjustment. The Court may adopt mechanisms to simplify and expedite the biannual adjustment.

(b) (1) Variables. The following variables are applicable to the equations utilized in subsections (b)(2) through (b)(6):

a = number of adults in the household (for child support purposes, this is always “1”)

c = the number of children in the household minus “1”.

s = proportion of basic expenditures attributable to shelter and utilities (shelter and utilities divided by food, clothing, shelter and utilities)

f = proportion of basic expenditures attributable to food and clothing (food and clothing divided by food, clothing, shelter and utilities)

.65 = economies of scale (sharing resources, buying in bulk, hand-me-downs etc.)

(2) Self support. The self-support allowance is determined by dividing the FCSU by the following equation:

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

(3) One child primary. The primary support allowance for one child is determined multiplying the self-support allowance by the following:

$$((a + (s + .16))^{.65} - 1)$$

(4) Two child primary. The primary support allowance for two children is determined by subtracting the self-support allowance from the FCSU.

(5) Three child primary. The primary support allowance for three children is determined by multiplying the self-support allowance by the following:

$$((a + (s + .16) + c*(2*(f - .11))))^{.65} - 1$$

(6) Each additional child. The primary support allowance for each additional child is determined by calculating the primary support allowance for six children as in subsection (4), subtracting the result by the primary allowance for three children, and then dividing by 3.

(7) All allowances shall be rounded to the nearest multiple of ten.

(c) *SOLA*. The percentages to be utilized in calculating the Standard of Living Adjustment (SOLA) shall be determined by taking ninety percent (90%) of the applicable Primary Support Allowance and dividing it by the sum of the whole Primary Support Allowance and two times the Self Support Allowance. The result shall be rounded to the nearest 2-digit percentage. The percentages applicable to households of more than three children shall be expressed in the manner described in subsection (b)(6).

(d) *Adjustment for the support of other children*. The percentages to be utilized in the adjustment for the support of other dependent children shall be two times the self support allowance divided by the sum of two times the self support allowance and the primary support allowance applicable to the number of children who qualify for the credit. The result shall be rounded to the nearest 2-digit percentage. However the credit shall never exceed the percentage applicable to three other children.

SECTION IV: 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. The Judges of the Family Court extend thanks to the members of the Delaware Child Support Formula Ad Hoc Committee for their efforts:

Judge Michael Newell, chair
Senator Brian Bushweller
Commissioner John Carrow
Janine Howard O'Rangers, Esq.
Jennifer Mensinger, Esq.
Theodore Mermigos

Dr. M. Diana Metzger
Representative Melanie George
Brenda Sammons, Esq.
Commissioner Andrew Southmayd
Commissioner Louann Vari
Heather Whisman