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New York Divorce and Family Law Blog

Divorce and the Costs of College: Applying a SUNY Cap

By Daniel Clement on November 02, 2011

The college application process can be an extremely stressful experience in a young person's life; adding to the child's stress about deciding where to apply and which school to attend is the child's awareness that his or her choice of a college will provide yet another opportunity for parental conflict over who is going to pay for college. In New York, divorced parents oft seek to apply the "SUNY cap."

The SUNY cap is one of the devises employed by New York divorce attorneys to address the issue how to pay for children's college education.

It is common in New York for divorcing parents to agree in their settlement agreements how college expenses will be paid. Sometimes the parties agree to split the actual costs of pursuing a higher education; other times one parent solely agrees to bear the burden. More often, the parties agree to limit their obligation to pay for their children's college education to a percentage of the cost of a State University of New York (SUNY) school. This limitation is referred to as a "SUNY Cap."

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An agreement to apply the SUNY cap and to limit a parent's contribution to a child's college education will be enforced regardless of whether the child attends a public or private educational institution.

In the absence of an agreement, the Domestic Relations Law empowers a court to order a parent to pay for college. Among the factors that Courts consider in determining whether to award college expenses are the educational background of the parents, their financial ability to provide the necessary funds, the child's academic ability and endeavors, and the type of college that would be most suitable for the child.

More problematic is when, in the absence of an agreement, college expenses will be paid. In the recent case, Pamela T. v Marc B., the parties did not have an agreement as to how they would pay for the children's college education, the court refused to apply a SUNY cap.

In Pamela T. v. Marc B., the Court announced that:

There is no basis to impose the SUNY cap, to the extent that it should be imposed at all, where the party seeking to invoke the cap has the financial ability to contribute towards the actual amount of his or her child's college expenses.

The Court noted that even if a SUNY were to be imposed, it would not be determinative as to what school the child would attend. As the Court noted:

Contrary to what proponents of a wide and liberal application of the SUNY cap might urge, the SUNY system should not be the assumed destination of the children of divorce.

In selecting the college, a litany of factors should be considered, including the educational curriculum, the make-up of the student body, and active alumni networks. "Other considerations might include such things as the size of the school, the type of campus, the architectural distinction of the buildings, the nature of its athletic programs, the services provided to students with either physical or learning disabilities, and the type of city or town in which the school is located. "

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In short, the failure to address the how the costs of college will be handled in a settlement agreement only leaves the door open to litigation when the children are college bound.

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