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"Student First" and "SUNY Cap": College Expenses in Divorce

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A four-year college education, including room and board, at a private school currently costs an average of $42,419 per year. A public out-of-state colleg e currently costs an average of $32,762 per year, and a public in-state (SUNY) education currently costs an average of $18,943 per year.[1] Given these extraordinary costs, attorneys have for decades followed the practice of urging clients to negotiate college clauses for high-school-aged children in the stipulations settling divorce actions.

While parents would generally agree to pay for their children's college education, they would opt to cap their respective obligations at the cost of an in-state public college or university, commonly referred to as the "SUNY cap." Absent a specific agreement by parents to cap their financial obligation, Domestic Relations Law § 240(1-b)(c)(7) provides the courts the power to direct parents to contribute to a child's college education based on the "circumstances of the case and the parties, the best interests of the child and the requirements of justice." Case law has held that among the factors courts should consider are the ability of the parties to foot the bill for college, their children's previous academic history, any special needs they have as students and the type of colleges the parents themselves attended.[2]

"Student First" Trumps "SUNY Cap"

Thus, the SUNY cap is not a mandated tenet of matrimonial law. Indeed, to formulate the SUNY cap into a rule of law would, absent agreement or special circumstances, limit the parents' financial obligations for a student's college education, and, therefore, be inconsistent with DRL § 240(1-b)(c)(7).[3]

Further, a SUNY cap rule would be contrary to New York's decidedly "Student First" policy. New York's "Student First" policy requires financially capable parents, in the absence of a contrary agreement by the parents, to contribute to the higher education of children who are qualified students.[4] New York's "Student First" policy has resulted in appellate determinations denying a parent's request to cap parental costs at the SUNY cost because of the child's capabilities, the parental college experience and the parent's ability to finance a private school.[5]

Notably, the court in one case acknowledging (among other things) the "Student First" policy refused to cap a father's contribution at the cost of SUNY Binghamton for his son, who attended Syracuse University. The court reasoned that while "[t]he SUNY system . . . is widely regarded as one of the best large-scale systems of higher education that has ever been created, be it public or private[,] . . . . there is one thing the SUNY system should not be. . . . [T]he SUNY system should not be the assumed destination of the children of divorce."[6]

While there is no case law holding that a court has the authority to override an agreement wherein the parents expressly and clearly provide for a SUNY cap, courts have relied on New York's "Student First" policy to interpret the parents' contract language broadly so as to require parents to bear more of the financial burden of paying for college than may have been intended.[7] It is this "Student First" policy which, when applied by the courts in interpreting parents' agreements employing a

SUNY cap, may render the SUNY cap, if not meticulously drafted, a more arbitrary and capricious standard than parents intended.

For example, unless the parents' agreement unambiguously provides that already-accumulated funds in specifically identified college savings accounts are to be credited against the parental contribution, the parental SUNY-capped contribution is not reduced by these college accounts.[8] Thus, absent specific language sanctioning the use of college savings accounts to reduce parental contributions, a court may rely upon the "Student First" policy to hold that the college savings accounts inure solely to the benefit of the student who may have chosen to attend a more expensive private college, expenses for which will likely exceed the parents' SUNY-capped contribution.

Reducing Parents' Obligations?

Furthermore, student loans taken by the child will not reduce the parents' contributions to the SUNY cap unless the agreement very clearly and specifically so provides. Courts have required parents to pay for student loans incurred by the child under the "Student First" policy.[9]

In Rashidi v Rashidi, the Second Department held that parents were liable to repay any loans incurred by their son, despite the fact that the Judgment of Divorce applied a SUNY cap. Student loans undertaken to attend a private university may equal or exceed the SUNY cap sum. Therefore, parents may ultimately be responsible for the total cost of a private university unless the agreement is carefully drafted so as to include any loan sums as part of the parents' SUNY-capped obligation.

If the language of an agreement does not expressly specify that scholarships, grants, financial aid or other tuition benefits shall reduce the parents' obligations, such awards and benefits will inure to the benefit of the student and will not offset the parents' obligations to finance college expenses up to a SUNY cap.

For example, unless the parents expressly provide that any financial aid awarded is to be subtracted from the parents' SUNY-capped obligation, it is likely that a court will subtract the financial aid award from the total cost of the school the student chose to attend. Oftentimes, a financial aid award is sufficiently large enough that setting it off against the parents' SUNY-capped contribution results in completely negating the parents' tuition obligation while leaving the student, who chose to attend a private school, with a substantial tuition bill. The courts, in accordance with the "Student First" policy, have held that an agreement providing for a SUNY cap, unless unequivocally clear, should not be interpreted to require such a result.[10]

Conclusion

Practitioners seeking to protect their clients from additional and costly financial obligations for college expenses should be attentive to drafting precisely the intentions of the parties when negotiating college clauses. According to case law, when it comes to college costs, courts are leaning in favor of benefitting college-age children of divorce who are not yet emancipated, rather than saving their parents' money.

The ever-evolving case law warns that general language will no longer be effective against limiting financial obligations for college expenses and may end up costing the parties far more than was legitimately intended at the time of settling the divorce action.

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[1] *Trends in Higher Education: Average Published Undergraduate Charges by Sector 2014–15,* www.CollegeBoard.org.

[2] *Reiss v. Reiss*, 56 A.D.3d 1293 (4th Dept. 2008); *Naylor v. Galster*, 48 A.D.3d 951 (3d Dept. 2008); *Rosado v. Hughes*, 23 A.D.3d 318 (1st Dept. 2005).

[3] *Chan v. Chan*, 267 A.D.2d 413 (2d Dept. 1999).

[4] *Poberesky v. Poberesky*, 71 A.D.3d 516 (1st Dept. 2010).

[5] *Tishman v. Bogatin*, 94 A.D.3d 621 (1st Dept. 2012).

[6] *Pamela T. v. Marc B.*, 33 Misc.3d 1001 (Sup. Ct., N.Y. Co. 2011).

[7] *Bungart v. Bungart*, 107 A.D.3d 751 (2d Dept. 2013); *Rashidi v. Rashidi*, 102 A.D.2d 972 (2d Dept. 2013); *Yorke v. Yorke*, 83 A.D.3d 951 (2d Dept. 2011).

[8] *Kurtz v. Johnson*, 54 A.D.3d 904 (2d Dept. 2008).

[9] *Id.*

[10] *Apjohn v. Lubinski*, 114 A.D.3d 1061 (3d Dept. 2014).