

Emancipation of a Child

Podcast # 3 of 9

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Child support usually ends when the child is “emancipated.” Emancipation is presumed to occur at age 18 (the age of maturity in New Jersey), but that presumption is rebuttable and age alone is hardly ever the determining factor.

Whether the child has entered military service, has become employed, marries or is continuing their education are more often the determining factors.

The issue as to a child’s “emancipation” most often arises when the child continues their education beyond high school. In such cases, the family’s lifestyle, the parents’ educational background and the child’s commitment to their education must be considered.

In families with college educated parents who have academically encouraged their child, it is likely that the children of that marriage would not be deemed “emancipated” until they have completed an undergraduate educational program.

On the other hand, in families of parents who have not valued education themselves or whose children who are not academically qualified, emancipation may occur upon the child completing their high school education.

Often times, the issues surrounding the child’s continuation of their education becomes even more complicated when the child interrupts their education or does not complete a four year program within four calendar years. If the child wishes to study abroad, takes an internship or even fails out of a school and then wishes to recommence their education at another school, the reasonableness of the request and the child’s commitment to their education must be analyzed.

As with custody, the Court will always focus upon the best interests of the child unless either the child or the custodial parent of the child is malingering or attempting to inappropriately delay the termination of the child support. The Court will almost always give the child an opportunity to pursue a “reasonable” educational experience which, in this age, frequently involves some form of interruption, delay or extracurricular intervention. Many persons contend that a child should be given five calendar years to complete four years of undergraduate education, but there is no such hard and fast rule. Each case must be analyzed on the basis of its own unique facts.

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It is, however, quite possible that even though the child is not emancipated, there should be a reduction in the amount of child support. For example, if the child is residing away from home and in residence at the college, the primary residential parent's expenses for the child are usually significantly reduced and/or the other parent is paying a portion of the child's room and board by way of her/his contribution to the child's educational expenses (see Section IV following). If so, there will almost always be a substantial reduction in the amount of child support.



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.

Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.