

## Custody and Financial Aid Considerations for College-Age Children

**DIVORCED, SEPARATED, OR UNMARRIED PARENTS** face specific challenges in obtaining financial aid to afford college costs. Lawyers may be unaware of the daunting details that parents and their prospective college student must address. There are so many tasks to perform and decisions to be made. Which test to take: Scholastic Aptitude Test or American College Test? What should be safety, target, and reach schools? What decision plan: early decision one, early decision two, early action, and/or regular decision? What kind of personal statement writing style best markets the student's individuality? Then, there is the Common Application that most colleges accept and the University of California's separate, proprietary application.

These decisions become further complicated if parents are separated, divorced, or unmarried and need help financing college costs. Although college policies require both parents to contribute, this may not be the reality for some families. One parent may refuse to pay for college. A student may have little or no relationship with one of the parents. What can parents do if they find themselves in these circumstances? Start early. Make a plan. Be strategic.

Choices parents make as to their "separation" or "divorce" may impact financial aid and how to strategically complete the financial aid forms. Most colleges require two forms: the Free Application for Federal Student Aid (FAFSA) from the government and the College Scholarship Service profile (CSS) from the College Board. The FAFSA—required by all colleges when financial aid is sought—is based upon the prior year's federal tax return. The CSS is required by many colleges, but mostly by private colleges rather than public universities. It is based on federal tax returns and additional information. The key issue for this population of parents is deciding who is the custodial parent and whose financial information will be the basis for the financial aid award.

The FAFSA form is available for filing after October 1 each year and is completed when the student is a senior in high school (and every year thereafter when applying for aid though deadlines vary by college). Applicants are encouraged to apply early to have the best chance of obtaining aid. Ideally, the parent with the least income would complete the FAFSA to increase the student's chances of receiving aid. However, determining which parent that is depends on certain requirements that parents can anticipate and plan around, or at least try to do so in a high-conflict custody situation. A parent's marital status is considered as of the date the parent completes the FAFSA.<sup>1</sup>

### Custodial Parent: FAFSA

Determining which parent completes the FAFSA largely depends on who is considered the custodial parent or the parent with whom the student lived most of the time during the 12 months preceding the date that the parent completes the FAFSA. If the

student lived the same amount of time with each divorced or separated parent, the financial questions are about the parent who provided more financial support during the 12 months preceding the date the FAFSA is filed. However, if the parents still live together, whether divorced or separated, the financial questions pertain to both parents. Married parents are separated if they are considered legally separated by a state, or if they are legally married but have chosen to live separate lives, including living in separate households, as though they were not married.

### Noncustodial Parent: CSS

The CSS, which is also available to complete on October 1, defines the custodial parent the same way the FAFSA does. However, unlike the FAFSA, when parents live apart, many CSS colleges require the noncustodial parent's information. This requirement adds complications for parents who are high-conflict or uncooperative with meeting deadlines or providing confidential financial information.

A custodial parent with an uncooperative noncustodial parent (NCP) who spends little or no time with a student eyeing a college that requires NCP information should consider a Non-Custodial Parent Waiver Request<sup>2</sup> to exempt the NCP's financial information from the financial aid process.

The NCP waiver generally applies in cases of abuse and to court orders limiting contact with the NCP. It also applies to students who have limited or no contact with the NCP or did not receive child support from the NCP. The waiver is supported by the student's statement and corroborating statements from neutral persons with first-hand knowledge of the student's circumstances, i.e., a high school counselor, friend, teacher, therapist, lawyer, coach, or religious leader. Once the waiver is granted, colleges will likely honor it until graduation so that the NCP's financial information will never be considered.

Lawyers representing clients with soon-to-be college students can benefit from awareness of the potential impact of a marital dissolution and definition of "separation" in the context of financial aid, the financial disparity between parents, and custody schedules preceding the completion of the FAFSA and CSS forms. The goal is to lessen parental conflict for the family by finding creative solutions to challenges that arise during the financial aid process. ■

<sup>1</sup> A midyear divorce or separation may impact the income calculation. One should consult the specific instructions on how to complete the financial aid forms in this circumstance.

<sup>2</sup> Form and requirements available at <https://cssprofile.collegeboard.org/pdf/css-profile-waiver-request-non-custodial-parent.pdf>. Some colleges have their own NCP waiver form.