

APPENDIX IX-A

CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES

(Includes Amendments Through Those Effective September 1, 2009)

1. Philosophy of the Child Support Guidelines - These guidelines were developed to provide the court with economic information to assist in the establishment and modification of fair and adequate child support awards. The premise of these guidelines is that (1) child support is a continuous duty of both parents, (2) children are entitled to share in the current income of both parents, and (3) children should not be the economic victims of divorce or out-of-wedlock birth. The economic data and procedures of these guidelines attempt to simulate the percentage of parental net income that is spent on children in intact families. While it is acknowledged that the expenditures of two-household divorced, separated, or non-formed families are different from intact-family households, it is very important that the children of this State not be forced to live in poverty because of family disruption and that they be afforded the same opportunities available to children in intact families with parents of similar financial means as their own parents.

2. Use of the Child Support Guidelines As a Rebuttable Presumption - In accordance with *Rule 5:6A*, these guidelines must be used as a rebuttable presumption to establish and modify all child support orders. The guidelines must be applied in all actions, contested and uncontested, in which child support is being determined including those involving *pendente lite* (temporary) support, interstate support (Uniform Interstate Family Support Act (UIFSA)), domestic violence, foster care, divorce, non-dissolution, and public assistance (Temporary Assistance to Needy Families or TANF). A *rebuttable presumption* means that an award based on the guidelines is assumed to be the correct amount of child support unless a party proves to the court that circumstances exist that make a guidelines-based award inappropriate in a specific case. The guidelines may be disregarded or a guidelines-based award adjusted if a party shows, and the court finds, that such action is appropriate due to conflict with one of the factors set forth in sections 4, 7, 10, 13, 14, 15 or 20 of Appendix IX-A, or due to the fact that an injustice would result due to the application of the guidelines in a specific case. The determination of whether *good cause* exists to disregard or adjust a guidelines-based award in a particular case shall be decided by the court.

3. Deviating from the Child Support Guidelines - If the court finds that the guidelines are inappropriate in a specific case, it may either disregard the guidelines or adjust the guidelines-based award to accommodate the needs of the children or the parents' circumstances. If the support guidelines are not applied in a specific case or the guidelines-based award is adjusted, the reason for the deviation and the amount of the guidelines-based award (before any adjustment) must be specified in writing on the guidelines worksheet or in the support order. Such findings clarify the basis for the support order if appealed or modified in the future. If the guidelines are found to be inapplicable in a particular case, the court should consider the factors set forth in *N.J.S.A. 2A:34-23* or *N.J.S.A. 9:17-53* when establishing the child support award.

4. The Income Shares Approach to Sharing Child-Rearing Expenses -

New Jersey statutes and case law provide that both parents are responsible for the financial needs of their children. In intact families, the income of both parents is pooled and spent for the benefit of all household members including the children. Each parent's contribution to the combined income of the family represents their relative sharing of household expenses. For example, if the parents have equal incomes, they are assumed to share all expenditures for the family equally (50%). This same income sharing principle is used to determine how the parents will share a child support award. In dissolved or non-formed families, however, the parents share only the expenses *for the child* (i.e., the Appendix IX-F support schedules are based on the marginal or added cost of a child or children to an adult couple). In sole-parenting situations, the custodial parent's share of the child-rearing expenses is assumed to be spent directly on the child through daily living expenses. The non-custodial parent's share of child-rearing costs represents the support order that is paid to the custodial parent for the benefit of the child. In situations involving PAR time (formerly referred to as visitation), both parents make direct expenditures for the child while the child resides in their homes. To accommodate duplicated and shifting expenses associated with a child who shares time with parents who live separately, the Appendix IX-F sole-parenting awards may need to be adjusted to reflect each parent's assumed level of marginal spending on the child.

5. Economic Basis for the Child Support Guidelines -

At the foundation of the child support guidelines are estimates of what parents in intact families spend on their children. Determining the *cost* of raising a child is difficult because most goods and services purchased by families are shared by adults and children. Economists estimate that approximately 65% of household spending is for *pooled* items (e.g., a car, a washing machine, or a box of laundry detergent used in common by all household members). Even for goods that are privately consumed (e.g., clothing, food), expenditure surveys are not detailed enough to link individual household members (adults or children) to a particular expenditure. Together, pooled and privately consumed goods account for about 90% of total household expenditures. Since most expenditures on children cannot be observed directly, economists use an indirect method of determining child-rearing costs known as *marginal-cost estimation*. Marginal-cost estimation attempts to find the added cost of a child to a family by comparing the expenditures of families considered equally well-off economically and have different numbers of children. For example, if two families (one with and one without a child) are equally well-off, the additional expenses of the family with a child are assumed to be the *marginal cost* of the child.

Selecting a Standard of Well-Being - Before estimating the marginal cost of children, a standard of well-being must be defined. Different marginal cost estimation methods use different standards of well-being. Although several standards have been used in the past, no consensus has emerged as to which provides the most credible result. Two of the most widely used marginal-cost estimation methods, *Rothbarth* and *Engel*, employ the standards of well-being described below.

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Engel - The standard of well-being is the proportion of household income spent on food. Thus, if two families spend the same percentage of their income on food, they are considered equally well-off.

Rothbarth - This standard of well-being is based on how parents adjust their spending on adult goods due to the presence of a child. In other words, well-being is measured by comparing excess-income (i.e., after necessary expenditures for the family) available to purchase adult goods such as adult clothing, alcohol, tobacco, and entertainment.

Consumer Expenditure Data - Once an estimation technique is chosen, the household expenditure data to which it is applied must be selected. Typically, economists use data from the Consumer Expenditure Survey (CEX). The CEX is the most detailed source of national data on household expenditures and how they vary by family composition, size, geographic location and socioeconomic characteristics. The CEX collects expenditure information for hundreds of household consumption items including food, housing, clothing, transportation, education, child care, health care, and entertainment. The CEX is a cross-sectional survey designed to represent the civilian, non-institutional population in the United States. Approximately 5,000 families participate in the CEX each quarter. CEX results are published annually, however, the results are generally three years old by the time they are available for public use. The CEX is considered the best *available* source of information for determining the cost of children using marginal-cost estimation techniques.

The Betson Analysis - In September 1990, Dr. David Betson of the University of Notre Dame published child-rearing estimates based on his analysis of pooled CEX data from 1980 through the first quarter of 1987, a variety of estimation techniques, and alternative definitions of the standard of well-being. As did previous studies, Dr. Betson's analysis resulted in a wide range of estimates of expenditures on children. Dr. Betson, like other economists, believes that the true range of marginal expenditures on children lies at some interval between the *Engel* and *Rothbarth* estimates. The *Engel* estimates, which are close to per capita (i.e., equal shares), clearly overstate the marginal cost of children and, thus, represent the upper bound of spending on children. Economists know that the *Engel* estimates are incorrect, but do not have the same information about the *Rothbarth* estimates. Thus, the *Rothbarth* estimates may represent the true level of marginal spending on children or the theoretical lower bound of that spending. Dr. Betson concluded that the *Rothbarth* method produced the best set of estimates on the marginal cost of children because it has the least empirical flaws and those that do exist have a minimal effect on the resulting estimates. The child support schedules in Appendix IX-F of these guidelines are based on Dr. Betson's *Rothbarth* estimates.

Development of Child Support Award Schedules - Dr. Betson's analysis provides estimates of parental expenditures on one, two, and three children as a percentage of total household consumption. His *Rothbarth* findings were translated into a child support guidelines format by:

- a. converting spending as a proportion of consumption to a proportion of net income;
- b. updating Dr. Betson's 1990 estimates to September 1994;

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- c. deducting the cost of child care and unreimbursed health care expenses up to \$250 per child per year (these expenses are added to the basic obligation);
- d. extrapolating the estimates to families with four, five, and six children; and
- e. computing marginal proportions between income ranges so that the support schedule could be organized into ten dollars increments.

6. Economic Principles Included in the Child Support Guidelines

- a. There is no absolute cost of raising children. The *cost* of raising children is inferred from the amount that parents' spend on their children. A child's *marginal cost* is the amount of spending above what the parents would spend if they did not have a child.
- b. Larger households have lower per-person costs due to economies of scale and the sharing of household goods (i.e., unit prices decrease as quantities and sharing increase).
- c. Total spending on children increases with family size (i.e., support awards should increase with the number of children in the family).
- d. When total expenditures of the household rise, spending on children increases roughly in the same proportion.
- e. As family income rises, spending on children increases since parents use some of their discretionary income to improve the children's standard of living.
- f. Spending on children as a percentage of *family consumption* is relatively constant through most of the income range.
- g. As income increases, total family consumption spending (e.g., for goods and services) declines as a proportion of net income since income for non-consumption items (e.g., savings, personal insurance, gifts) increases with the level of household income. In low-income families, consumption spending may exceed 100% of net income. In contrast, high-income families may spend only 75% of net income on consumption items.
- h. As household income increases, expenditures on children as a proportion of family income decline although such expenditures remain almost constant as a proportion of family consumption spending. The difference between spending as a proportion of family income and a proportion of consumption is due to the effect of income taxes, savings and charitable contributions. Income dedicated to these items is not available for consumption spending (i.e., on goods and services).
- i. As the number of children rises, the marginal cost of each child does not increase proportionately (i.e., due to economies of scale, the sharing of household goods and the redistribution of adult spending). Expenditures on two children are less than twice as much as spending on one child (i.e., depending on the estimation method, two children cost from 1.40 to 1.73 more than one child). Also, three children cost less than three times as much as one child (the range is about 1.56 to 2.24 more than one child).

7. Assumptions Included in the Child Support Guidelines

- a. *Intact Family Spending Patterns as the Standard for Support Orders* - Support guidelines based on spending patterns of intact families provide an adequate level of support for children. Child-rearing

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expenditures of single parents provide little guidance for setting adequate child support awards since single-parent households generally have less money to spend compared with intact families. The fact that single parents actually do spend less income on children compared with two-parent families does not mean that they should spend less if the other parent has the means to increase total spending on the children through support payments. Also, the level of spending by single parents on their children has no relation to adequacy or the needs of the children but is a function of the total amount of income available to those parents.

- b. *Standard of Living* - Although these support guidelines attempt to approximate the same level of marginal spending on children before divorce or separation, the resulting child support awards do not guarantee that the children's *standard of living* will remain the same if one of those events occurs. Usually, the children's *standard of living* will decline since the child support award (based on marginal spending) is being added to a much smaller level of base household expenditures. Less total money is available in the primary household of the child after divorce or separation since the other parent's income is no longer available. Less money means a decline in household expenditures which results in a lower *standard of living*. Additionally, some economies of scale are lost when one parent leaves the household.
- c. *Marginal-Cost Estimation* - For determining child support obligations, marginal-cost estimation techniques, which provide the additional cost of children based on intact-family spending patterns, are more appropriate than average-cost methods that divide spending between all family members equally (per capita).
- d. *The Rothbarth Marginal Cost Estimator* - The *Rothbarth* marginal cost estimation technique provides the most accurate estimates of parental expenditures on children in intact families. Dr. David Betson's 1990 *Rothbarth* analysis of the 1980-1986 Consumer Expenditure Survey provides the most current and reliable estimates of parental expenditures on children in intact families.
- e. *National versus New Jersey Spending on Children* - Intact-family spending on children as a *proportion* of consumption or income based on national Consumer Expenditure Surveys is consistent with the way in which New Jersey parents spend income on their children. Expenditure patterns derived from the 1980-1986 Consumer Expenditure Surveys have not changed since the data were collected. The specification of child-rearing expenditures as a *proportion* of consumption or income, rather than absolute dollar estimates, avoids the problems associated with the difference in the cost-of living between states.
- f. *NCP/PAR Time* - The awards in the support schedules represent spending on children by intact families. In an intact family, the children reside in one household and no NCP/PAR time is needed. This is similar to child support actions in which one parent has sole physical custody of a child and there is no NCP/PAR time. The

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awards in the Appendix IX-F support schedules represent situations in which the child is with the custodial parent 100% of the time. Although the Appendix IX-F awards are not reduced for NCP/PAR time, they may be adjusted, if these factors are present in a specific case, through worksheet calculations. For further information and assumptions related to NCP/PAR time adjustments and their related assumptions, see paragraphs 13 and 14 respectively.

- g. *Effect of a Child's Age* - Dr. Betson's analysis did not provide estimates on child-rearing expenditures by children's age groups. The Appendix IX-F awards represent the average cost of raising a child from age zero through 17 years (i.e., the total marginal cost averaged more than 18 years). Studies have shown that expenditures are higher than the average for teen-aged children and lower than the average for preteen children.
- h. *Self-Support Reserve* - The self-support reserve is a factor in calculating a child support award only when one or both of the parents have income at or near the poverty level. The self-support reserve is 105% of the U.S. poverty guideline for one person. It attempts to ensure that the obligor has sufficient income to maintain a basic subsistence level and the incentive to work so that child support can be paid. A child support award is adjusted to reflect the self-support reserve only if its payment would reduce the obligor's net income below the reserve *and* the custodial parent's (or the Parent of the Primary Residence's) net income is greater than 105% of the poverty guideline. The latter condition is necessary to ensure that custodial parents can meet their basic needs so that they can care for the children. As of January 23, 2009, the self-support reserve is \$219.00 (this amount is 105% of the poverty guideline for one person).
- i. *Income Tax Withholding* - For wage earners, income tax withholding rates provide an accurate estimate of after-tax income available to pay weekly support obligations. Income tax withholding may differ from end-of-year tax obligations due to the parent's filing status and the number exemptions, deductions and credits reported or claimed by each parent.
- j. *Spending of Child Support Order* - These guidelines assume that the obligee is spending the support award for the benefit of the child or children.
- k. *Sharing of Child-Rearing Expenses* - These guidelines assume that the parents are sharing in the child-rearing expenses in proportion to their relative incomes. To the extent that this is not true (i.e., if one parent is paying *all* costs associated with housing for the child from his or her own income) and can be proven to the court, a guidelines-based support award may require adjustment.

8. Expenses Included in the Child Support Schedules - The awards in the Appendix IX-F child support schedules represent the average amount that intact families spend on their children (i.e., the marginal amount spent on the children). The Appendix IX-F support awards include the child's share of expenses for housing, food, clothing, transportation, entertainment, unreimbursed health care up to and including \$250 per child per year, and

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miscellaneous items. Specific items included in each category are listed below. *Note: The fact that a family does not incur a specific expense in a consumption category is not a basis for a deviation from the child support guidelines.* The Appendix IX-F awards are based on the percentage of income spent on children by a large number of families in a variety of socioeconomic situations. The use of averages reflects the diversity of spending by parents. To qualify for a deviation based on average costs, a parent must show that the family's marginal spending on children for *all* items related to a consumption category differs from the *average* family (e.g., there are no housing costs).

Housing- Mortgage interest payments or home equity loans, property taxes, insurance, refinancing charges, repairs, maintenance, rent, parking fees, property management or security fees, expenses for vacation homes, lodging while out of town, utilities, fuels, public services, domestic services, lawn care, gardening, pest control, laundry and dry cleaning (non-clothing), moving and storage, repairs on home, furniture, major appliances, purchase or rental of household equipment of tools, postage, laundry or cleaning supplies, cleaning and toilet tissues, household and lawn products, stationary, all indoor and outdoor furniture, floor coverings, all small appliances and housewares (except personal care appliances), all household textiles (e.g., linens, drapes, slipcovers, sewing materials, etc.), and miscellaneous household equipment (e.g., clocks, luggage, light fixtures, computers and software, decorating items, etc.). The net purchase price of a home and mortgage principal payments are considered savings and are *not* included as expenditures in this category.

Food - All food and non-alcoholic beverages purchased for home consumption or purchased away from home (including vending machines, restaurants, tips, school meals and catered affairs). Non-food items (e.g., tissue papers, alcoholic beverages, cigarettes) are not included.

Clothing - All children's clothing, footwear (except special footwear for sports), diapers, repairs or alterations to clothing and footwear, storage, dry cleaning, laundry, watches, and jewelry.

Transportation - All costs involved with owning or leasing an automobile including monthly installments toward principal cost, finance charges (interest), lease payments, gas and motor oil, insurance, maintenance and repairs. Also, included are other costs related to transportation such as public transit, parking fees, license and registration fees, towing, tolls, and automobile service clubs. The net outlay (purchase price minus the trade-in value) for a vehicle purchase is *not* included.

Unreimbursed Health Care Up to and Including \$250 Per Child Per Year - Unreimbursed health-care expenditures (e.g., medical and dental) up to and including \$250 per child per year are included in the schedules. Such expenses are considered ordinary and may include items such as non-prescription drugs, co-payments or health care services, equipment or products. The parent's cost of adding a child to health insurance policy is not included in the schedules.

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Entertainment - Fees, memberships and admissions to sports, recreational, or social events, lessons or instructions, movie rentals, televisions, radios, sound equipment, pets, hobbies, toys, playground equipment, photographic equipment, film processing, video games, and recreational, exercise or sports equipment.

Miscellaneous Items - Personal care products and services (e.g., hair, shaving, cosmetics), books and magazines, education (e.g., tuition, books, supplies), cash contributions, personal insurance, and finance charges (except those for mortgage and vehicle purchases).

9. Expenses That May Be Added to the Basic Child Support Obligation

- Because some child-related expenses represent large or variable expenditures or are not incurred by typical intact families, it is not appropriate to include them in the Appendix IX-F basic child support awards. The items listed below are not included in the Appendix IX-F child support awards. If incurred in a particular case, these expenses should be added to the basic support obligation.

a. *Child-Care Expenses* - The average cost of child care, including day camp in lieu of child care, is *not factored into* in the schedules. The net cost (after tax credits) of work-related child care should be added to the basic obligation if incurred.

b. *Health Insurance for the Child* - The parent's marginal cost of adding a child to a health insurance premium is *not included* in the support schedules and should be added to the basic obligation if incurred.

c. *Predictable and Recurring Unreimbursed Health Care Expenses In Excess of \$250 Per Child Per Year* - Unreimbursed health-care expenses for a child in excess of \$250 per child per year *are not included* in the schedules. Such expenses should be added to the basic obligation *if they are predictable and recurring*. Health-care expenses for a child that exceed \$250 per child per year *that are not predictable and recurring* should be shared by the parents in proportion to their relative incomes as incurred (i.e., the sharing of these expenses should be addressed in the general language of the order or judgment). Health care costs that are not included in the support award should be paid directly to the parent who made or will make the expenditure or directly to the provider of the health care (also, see *N.J.S.A. 2A:34-23b*).

d. *Other Expenses Approved by the Court* - These are *predictable and recurring* expenses for children that may not be incurred by average or intact families such as private elementary or secondary education, special needs of gifted or disabled children, and NCP/PAR time transportation expenses. The addition of these expenses to the basic obligation must be approved by the court. If incurred, special expenses that are *not predictable and recurring* should be shared by the parents in proportion to their relative incomes (i.e., the sharing of these expenses should be addressed in the general language of the order or judgment). Special expenses not included in the award should be paid directly to the parent who made or will make the expenditure or to the provider of the goods or services.

10. Adjustments to the Support Obligation - The factors listed below may require an adjustment to the basic child support obligation.

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- a. *Other Legal Dependents of Either Parent* - These guidelines include a mechanism to apportion a parent's income to all of his or her legal dependents regardless of the timing of their birth or family association (i.e., if a divorced parent remarries and has children, that parent's income should be shared by all children born to that parent). *Legal dependents* include adopted or natural children of either parent who are less than 18 years of age or more than 18 years of age *and* still attending high school or other secondary school. Stepchildren are not considered *legal* dependents unless a court has found that the stepparent has a legal responsibility for the stepchildren. When considering the use of this adjustment, the following principles shall apply:
- (1) this adjustment shall be used only if requested by a serial-family parent and the income, if any, of the *other parent* of the secondary family is provided to the court;
 - (2) if the other parent in the secondary family is voluntarily unemployed or underemployed, the court shall impute income to that person (see paragraph 12) to determine the serial family parent's obligation to the children in the secondary family;
 - (3) this adjustment may be applied to other dependents born before or after the child for whom support is being determined;
 - (4) this adjustment may be requested by either or both parents (custodial and/or non-custodial);
 - (5) the adjustment may be applied when the initial award is entered or during subsequent modifications of the support order.
- b. *Multiple Family Obligations*. In some cases, one individual may be obligated to pay child support to multiple families. When the court adjudicates a case involving an obligor with multiple family obligations, it may be necessary to review all past orders for that individual. If the court has jurisdiction over all matters, it may either average the orders or fashion some other equitable resolution to treat all supported children fairly under the guidelines. If multiple orders reduce the obligor's income to an amount below the self-support reserve, the orders should be adjusted to distribute the obligor's available income equitably among all children while taking into consideration both the obligee's share of the child support obligation and the obligor's self-support reserve. If other jurisdictions' tribunals ordered the obligor to pay child support for a different family, the New Jersey court may consider that fact for the purpose of maintaining the obligor's self-support reserve.
- c. *Government Benefits Paid to or for Children* - In some cases, government benefits may be received by or for a child based on a parent's earnings record, disability, or retirement (e.g., Black Lung, Veterans Disability, Social Security). Such payments are meant to replace the lost earnings of the parent and are paid *in addition* to the worker's or member's benefits (i.e., payments to family members do not reduce the member's benefits). A parent may also receive other non-means-tested government benefits that are meant to reduce the cost of the child such as adoption subsidies (*N.J.A.C.* 10:121-2).

Supplemental Security Income (SSI) and welfare payments received for or on behalf of a child are *not included* in this category since they supplement parental income based on financial need. If non-means tested benefits are paid to or for a dependent child for whom support is being determined, the benefits must be deducted from the basic support obligation (see *Potter v. Potter*, 169 N.J. Super. 140 (App. Div. 1979), *De La Ossa v. De La Ossa*, 291 N.J. Super. 557 (App. Div. 1996), *Pasternak v. Pasternak*, 310 N.J. Super. 483 (Ch. Div. 1997) and *Herd v. Herd*, 307 N.J. Super. 501 (App. Div. 1998)). The deduction is provided because the receipt of such benefits reduces the parents' contributions toward the child's living expenses (i.e., the marginal cost of the child). If the benefits received by the child are greater than the total support obligation (i.e., the amount of the obligation after deducting the benefits is zero), no support award should be ordered while the child is receiving the benefits. The benefits will continue to be paid by the government agency to the custodial parent in lieu of child support. If the total obligation is greater than the benefits received by the child, the non-custodial parent's income share of the residual amount (after deducting the benefits) is the support award to be paid to the custodial parent. Government benefits paid to or for a child that reduce benefits paid to a non-custodial parent (an apportionment) should not be deducted from the basic child support award, but should be used to offset the parent's child support order (i.e., the apportionment represents a payment toward the support order similar to a garnishment). NOTE: There may be circumstances when the CP/PPR is the party who is disabled and the child's share of derivative government benefits such as Social Security Disability greatly reduces child support at a time when the CP/PPR's personal income is also reduced. This creates a situation where the government benefits have the overall affect of being treated as a contribution made entirely by the NCP/PAR which may result in an injustice to the child. Under these circumstances, deviation from the guidelines may be required to prevent a financial hardship in the child's primary household due to the substantial reduction, or possible elimination, of child support caused by the application of the deduction allowed for government benefits against the basic child support amount.

11. Defining Income - These guidelines are based on the combined net income of the parents. Generally, *net income* is gross income minus income taxes, mandatory union dues, mandatory retirement, previously ordered child support orders, and, when appropriate, a theoretical child support obligation for other dependents. See Appendix IX-B for a detailed definition of income and taxes as they relate to the child support guidelines.

12. Imputing Income to Parents. The fairness of a child support award resulting from the application of these guidelines is dependent on the accurate determination of a parent's net income. If the court finds that either parent is, without just cause, voluntarily underemployed or unemployed, it shall impute income to that parent according to the following priorities:

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- a. impute income based on potential employment and earning capacity using the parent's work history, occupational qualifications, educational background, and prevailing job opportunities in the region. The court may impute income based on the parent's former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor (NJDOLE);
- b. if potential earnings cannot be determined, impute income based on the parent's most recent wage or benefit record (a minimum of two calendar quarters) on file with the NJDOLE (note: NJDOLE records include wage and benefit income only and, thus, may differ from the parent's actual income); or
- c. if a NJDOLE wage or benefit record is not available, impute income based on the full-time employment (40 hours) at the New Jersey minimum wage (\$7.15 per hour).

In determining whether income should be imputed to a parent and the amount of such income, the court should consider: (1) what the employment status and earning capacity of that parent would have been if the family had remained intact or would have formed, (2) the reason and intent for the voluntary underemployment or unemployment, (3) the availability of other assets that may be used to pay support, and (4) the ages of any children in the parent's household and child-care alternatives. The determination of imputed income shall not be based on the gender or custodial position of the parent. Income of other household members, current spouses, and children shall not be used to impute income to either parent except when determining the other-dependent credit. When imputing income to a parent who is caring for young children, the parent's income share of child-care costs necessary to allow that person to work outside the home shall be deducted from the imputed income. For further information on imputing income, see *Gertcher v. Gertcher*, 262 *N.J. Super.* 176 (Ch. Div. 1992), *Bencivenga v. Bencivenga*, 254 *N.J. Super.* 328 (App. Div. 1992), *Thomas v. Thomas*, 248 *N.J. Super.* 33 (Ch. Div. 1991), *Arribi v. Arribi*, 186 *N.J. Super.* 116 (Ch. Div. 1982), *Lynn v. Lynn*, 165 *N.J. Super.* 328 (App. Div. 1979), *Mowery v. Mowery*, 38 *N.J. Super.* 92 (App. Div. 1955).

13. Adjustments for PAR Time (formerly Visitation Time)

- a. For the purpose of these guidelines, *visitation* is a level of parental participation in child-rearing that is *less than* the substantial equivalent of two or more overnights with the child each week (approximately 28% of overnights excluding vacations and holidays). *Overnight* means the majority of a 24-hour day (i.e., more than 12 hours). The sharing of parenting responsibilities *above* this time threshold may qualify for a shared-parenting child support award (see paragraph 14). For non-custodial parents (NCP) who participate in child-rearing responsibilities on a regular basis but for less than the substantial equivalent of two or more overnights per week, it is assumed that:

(1) fixed costs (e.g., housing-related expenses) for the child *are not* incurred by the NCP;

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- (2) variable costs (e.g., food, transportation, and some entertainment) for the time spent with the child *are* incurred by the NCP; and
 - (3) variable costs represent 37% of the total child-related expenditures.
- b. *Regular PAR Time* - If a parenting plan that sets forth a PAR Time schedule is filed with the court or a PAR Time schedule is ordered, and/or the non-custodial parent exercises regular PAR Time with the child, the court may reduce an Appendix IX-F sole-parenting support award to accommodate variable expenses (food and transportation) incurred by the non-custodial parent during PAR Time periods. In determining if such an adjustment is appropriate, the court should consider whether the non-custodial parent has incurred variable expenses for the child during PAR Time and if PAR Time has reduced the other parent's variable expenses for the child. If the non-custodial parent exercises PAR Time for more than the substantial equivalent of two or more overnights per week, a shared-parenting award may be appropriate (see paragraph 14).
- (1) The reduction in the award shall not exceed the parent's time share (percentage of overnight time with the child) of the variable costs -- food and transportation -- for the child. For example, if the sole-parenting basic support award is \$100 and the non-custodial parent spends 20% of the time with the child, the maximum PAR Time credit is \$7.40 calculated as: [$\100 (basic award) \times 0.37 (variable costs) \times 0.20 (%time)].
 - (2) Extended PAR Time in excess of five consecutive overnights that represents a single event or intermittent occurrence (e.g., vacation or holiday time) shall not be used to determine the non-custodial parent's annual percentage of overnight time for calculating a regular PAR Time (see paragraph 13(c)) adjustment. Extended PAR Time periods that are part of a regularly scheduled rotation of consecutive weeks between the parents that is set forth in a parenting plan or court order (e.g., a regular schedule that alternates weeks between parents during the year or entire summer) should be included in the calculation of the regular PAR Time adjustment (variable expenses), but shall *not* be included in the determination of qualifying time for a shared-parenting adjustment (fixed expenses) *unless* the parent shows and the court finds that marginal housing-related costs for the child were incurred in the PAR's household for the extended PAR Time period.
 - (3) If the custodial parent's household net income (CP net income from all sources including TANF and the net income of other adults in the household) plus the PAR Time-adjusted child support order is less than two times the poverty guideline for the total number of persons in the household, the adjustment for PAR Time expenses shall not be presumptive, but shall be subject to the discretion of the court.
- c. *Extended PAR Time (Vacation and Holiday Time)*. If a child is in the care of a non-custodial parent for five or more consecutive overnights,

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that parent may request an abatement of the child support order for the extended-PAR Time period. Upon the filing of a motion by the parent seeking the extended-PAR Time abatement, the court shall decide whether the abatement is appropriate, its amount, and how it shall be applied. Alternatively, the amount of an extended-PAR Time abatement may be specified prospectively in an agreement between the parents. The amount of the abatement shall not exceed the variable expenses (food and transportation) incurred for the child during the extended-PAR Time period (i.e., the abatement should not be for the entire award during the vacation period since the custodial parent continues to have fixed and controlled expenses during that time). Variable expenses represent 37% of a basic child support award before any regular-PAR Time adjustments. If child care or other special expenses are included in the order, an abatement for the non-custodial parent's share of those costs that are not incurred during extended-PAR Time shall be given unless such costs are paid in advance or must be paid during the extended PAR Time. Extended vacation or holiday time used to calculate a PAR Time or shared parenting adjustment as permitted in the discretion of the court under paragraph 13(b)(2) or 14(c)(2)(a) does not qualify for the extended-PAR Time abatement under this paragraph.

- d. *Non-Compliance with a Parenting Plan* - If an award is adjusted prospectively for PAR Time and the non-custodial parent, over a reasonable period, does not conform with the PAR Time schedule included in a parenting plan or court order, the custodial parent may file an application with the Family Division requesting that the child support order be adjusted to reflect the level of PAR Time that is being exercised. A simple application for this purpose shall be made available to parents by the Family Division of the Superior Court to ensure that the affected children receive the financial support that is needed. If PAR Time was used to adjust the child support award and the court finds that the non-custodial parent, over a reasonable period, failed to comply with the PAR Time schedule specified in the parenting plan or court order, the child support award shall be recalculated to reflect the actual PAR Time that is being exercised. Alternatively, the court may adjust the award to a zero PAR Time level until the non-custodial parent shows that PAR Time is occurring on a regular basis. Where possible, the court shall hear and decide applications to recalculate child support due to a parent's failure to comply with a PAR Time schedule in a summary manner. The determination of the effective date of any modification shall be consistent with *N.J.S.A. 2A:17-56.23a* unless otherwise ordered by the court. If the court finds that a parent willfully failed to comply with a parenting time provision or entered into such a provision merely to reduce the child support award, it may award counsel fees to a custodial parent in addition to adjusting the amount of child support as provided in this paragraph.

14. Shared-Parenting Arrangements

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- a. *The Support Guidelines and Shared Parenting* - The awards in the Appendix IX-F support schedules represent spending on children by intact families. In an intact family, the children reside in one household with both parents (i.e., there is no shifting of children between households as with non-intact families). Thus, the Appendix IX-F awards are appropriate only if the child resides in the custodial parent's household 100% of the time. In shared-parenting situations, each parent incurs expenses for the child while the child is with that parent. To accommodate shared-parenting situations, each parent's income share of the Appendix IX-F support award may be adjusted based on expenses assumed to be duplicated or shifted and the amount of time spent with the child. Although these guidelines are designed to accommodate shared-parenting arrangements when appropriate, shared-parenting adjustments or awards are not presumptive, but are subject to the discretion of the court in accordance with the factors listed in paragraphs 14(c) and 14(d).
- b. *Parties Defined*. In shared-parenting situations, a parent's designation is related to the time the child spends in that parent's residence. The parents should be referred to as the Parent of Primary Residence (PPR) and the Parent of Alternate Residence (PAR). Either the PPR or the PAR may be the obligor of the support order depending on income and the time spent with the child. The designation of PPR and PAR is not related to the gender of either parent or the legal designation of custodial parent. The PPR and PAR are defined as follows:
- (1) Parent of Primary Residence (PPR) - The parent with whom the child spends most of his or her overnight time. The primary residence is the home where the child resides for more than 50% of the overnights annually. If the time spent with each parent is equal (50% of overnights each), the PPR is the parent with whom the child resides while attending school. *Overnight* means the majority of a 24-hour day (i.e., more than 12 hours).
 - (2) Parent of Alternate Residence (PAR) - This is the parent with whom the child resides when not living in the primary residence.
- c. *Criteria for Determining a Shared-Parenting Award* - The criteria listed below must be met before the shared-parenting worksheet and instructions are used to calculate a shared-parenting award. The existence of these criteria do not make a shared-parenting award presumptive, but permit the calculation of the award so that the court can determine if it is appropriate for a particular family.
- (1) A parenting plan that specifies parenting times and responsibilities must be filed with or ordered by the court.
 - (2) The PAR has or is expected to have the child for the substantial equivalent of two or more overnights per week over a year or more (at least 28% of the time) *and* the PAR can show that *separate living accommodations for the child* are provided during such times (i.e., evidence of separate living accommodations maintained *specifically for the child* during overnight stays).
- (a) At the discretion of the court, the determination of qualifying shared-parenting time may include extended-PAR Time periods of five or more consecutive overnights that are part of a regularly

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scheduled rotation between the parents as set forth in a parenting plan or court order if the PAR shows that marginal housing-related costs were incurred for those periods. Qualifying shared-parenting time shall *not* include extended PAR Time periods of five or more overnights that represent vacations, holidays, or other periodic events (see Extended PAR Time above).

(b) Although a PAR may not be eligible for the shared-parenting adjustment (both fixed and variable expenses) due to limited time with the child, a regular PAR Time credit (variable expenses only) *may be* appropriate (see paragraph 13).

d. **Unless the parties otherwise agree, the final child support order shall not be based on a calculated shared-parenting award if:**

(1) the PPR's weekly household net income (including means-tested income such as TANF and the net income of other adults living in the household) plus the shared-parenting child support award is less than two times the U.S. poverty guideline for the number of persons in the household (PPR household income thresholds are shown in table below); or

(2) in any case, the court finds that the net income of the primary household remaining after the calculation of the shared-parenting award is not sufficient to maintain the household for the child. When evaluating the adequacy of the primary household's total income, the court shall consider the cost of living in the region where the child resides (e.g., the average cost of housing, food, and transportation).

When determining the PPR's household income to evaluate the primary household income threshold, the court may impute income to the PPR in accordance with Appendix IX-A, paragraph 12.

e If a shared-parenting award is inappropriate due to the PPR's limited household income, a sole-custody award shall be calculated.

Shared-Parenting Primary Household Net Income Thresholds (2.0 x 2009 Poverty Guideline)		
<i>Total Persons in Household</i>	<i>Weekly Net Income</i>	<i>Annual Net Income</i>
2	\$560	\$29,140
3	\$704	\$36,620
4	\$848	\$44,100
5	\$992	\$51,580

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6	\$1,136	\$59,060
7	\$1,280	\$66,540
8	\$1,423	\$74,020

f. *Relative Spending on Children and Shared-Parenting Situations* - For the purpose of the application of these guidelines to shared-parenting situations, there are three broad categories of expenses incurred for children by their parents - fixed, variable and controlled.

Fixed costs are those incurred even when the child is not residing with the parent. Housing-related expenses (e.g., dwelling, utilities, household furnishings and household care items) are considered fixed costs.

Variable costs are incurred only when the child is with the parent (i.e., they follow the child). This category includes transportation and food.

Controlled costs over which the PPR, as the primary caretaker of the child, has direct control. This category includes clothing, personal care, entertainment, and miscellaneous expenses.

The Appendix IX-F support awards (which represent marginal child-rearing costs) are based on expenditures of intact families that reside in one household. In shared-parenting situations both parents incur fixed and variable expenses for the child while the child resides in their individual households (in a PAR Time situation, it is assumed that the non-custodial parent incurs only variable expenses for the child). It is assumed that controlled expenses for the child are incurred only by the PPR since, generally, that parent manages the day-to-day needs of and expenditures for the child. The Appendix IX-F awards may not be appropriate in shared-parenting situations since they assume that the PPR incurs all expenses for the child and that the PAR has no expenses related to the child. To arrive at a fair support award in shared-parenting situations, the Appendix IX-F awards may need to be adjusted to accommodate each parent's time-adjusted fixed and variable expenses for the child. Since it is assumed that only the PPR incurs controlled expenses, the adjustment formula provides that such costs are shared by the parents in proportion to their relative incomes only, not in proportion to time spent with the children (see note on controlled expenses at paragraph I).

g. *Assumptions of the Shared-Parenting Adjustment* - The shared-parenting adjustment assumes that:

- (1) relative spending on children in the three broad consumption categories is as follows: 38% fixed expenses, 37% variable expenses, and 25% controlled expenses;
- (2) the PAR's fixed expenses are equal to: $[2 \times \text{PAR's percentage of overnights} \times \text{PPR's fixed expenses}]$. The PAR's fixed costs are pro-rated based on the time the child spends in the alternate household. For example, if the PAR's spends 30% of overnights with the child, that parent is assumed to incur 60% of the PPR's fixed costs. The PPR's fixed costs remain static (i.e., the full 38% of the basic

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- obligation; they are not reduced for the time the child is not in the household) since that parent must maintain the primary residence for the child at all times. The parents have equal fixed expenses only when time sharing is equal (i.e., fixed expenses are the same when the child spends the same amount of time both households).
- (3) variable costs are incurred only when the child is in the parent's household and, thus, are apportioned based on each parent's percentage of overnights with the child. For example, if the child spends 30% of overnights with the PAR, that parent incurs 30% of the variable expenses for the child and the PPR's variable expenses are reduced by an equal proportion;
 - (4) controlled expenses are incurred by the PPR only and, thus, are apportioned between the parents based on their income shares, not in relation to time spent with the children.
- h. *Calculating the Shared-Parenting Adjustment* - Appendix IX-F sole-parenting awards are adjusted for shared-parenting by calculating the PAR's income share of the total two-household expenses (the basic support obligation plus the PAR's time adjusted-fixed expenses) for the child and then deducting the PAR's time-adjusted fixed and variable expenses for the child. This mechanism adjusts the award to accommodate the PAR's fixed and variable expenses incurred while the child is with that parent and the PPR's reduced variable expenses while the child is not in that parent's household. The PAR's income share of the net supplemental expenses (e.g., child care, court-approved special needs) is added to the PAR's adjusted basic obligation. Detailed instructions and a worksheet for calculating shared-parenting awards are provided in Appendices IX-B and IX-D respectively.
- i. *Note on Controlled Expenses* - In shared-parenting situations, it is assumed that both parents incur fixed and variable costs. The shared-parenting adjustment formula allocates the *total* marginal fixed and variable costs between the parents based on their relative incomes and the time spent with the children. Controlled expenses (e.g., clothing, entertainment, and personal care items) are assumed to be incurred by the PPR only (i.e., the PPR is responsible for the day-to-day needs of the child which includes the purchase of these items). Therefore, controlled expenses are shared in proportion to the parents' incomes only -- such expenses are not time adjusted. Thus, no adjustment is made for direct expenditures made by a PAR for controlled items whether they be duplicated in the PAR's household (e.g., clothing) or made only while the child is present (e.g., entertainment). In some family situations, the PAR may incur expenses for some controlled items either by agreement or on a voluntary basis. The adjustment formula does not accommodate these situations because there is either no empirical data that segregates the expense item into specific percentage of consumption (e.g., entertainment) or the expense item is presumed to be with the autonomy of the PPR (e.g., clothing). Additionally, it is not always clear whether the duplication of these expenses is appropriate or necessary. If a PAR routinely incurs controlled expenses for the child either in addition to or as substitution for a controlled expense item assumed to be unilaterally provided by

the PPR, the PAR may rebut the controlled expense assumption when the award is being determined. If such a rebuttal is made, the court must decide whether the dual expenses are appropriate and necessary and, if so, how each controlled expense category should be treated (i.e., how much of the 25% represents the item in contention and whether it should be treated as a variable or fixed expense).

- j. *Non-Compliance with Parenting Plan* - If an award is adjusted prospectively for shared-parenting time and the PAR, over a reasonable period, does not conform with the shared-parenting schedule included in a parenting plan or court order, the PPR may file an application with the Family Division requesting that the child support order be adjusted to reflect the level of PAR Time that is being exercised. A simple application for this purpose shall be made available to parents by the Family Division of the Superior Court to ensure that the affected children receive the financial support that is needed. If shared-parenting time was used to adjust the child support award and the court finds that the PAR, over a reasonable period, failed to comply with the shared-parenting schedule, the child support award shall be recalculated to reflect the actual PAR Time time that is being exercised. Alternatively, the court may adjust the award to a zero shared-parenting level until the PAR shows that shared-parenting time is actually being exercised. Where possible, the court shall hear and decide applications to recalculate child support due to a parent's failure to comply with a shared-parenting schedule in a summary manner. The determination of the effective date of any modification shall be consistent with *N.J.S.A. 2A:17-56.23a* unless otherwise ordered by the court. If the court finds that a parent willfully failed to comply with a parenting time provision or entered into such a provision merely to reduce the child support award, it may award counsel fees to a PPR in addition to adjusting the amount of support as provided in this paragraph.

15. Split-Parenting Arrangements - Split-parenting situations are those in which there are multiple children of the relationship and each parent has physical custody of at least one child. To determine the net support obligation in split-parenting situations, a separate sole-parenting award must be calculated considering each parent as the non-custodial parent (obligor) for the number of children in the custody of the other parent. Instead of transferring the calculated awards between parents, the two awards are subtracted. The difference of the two awards is the child support order to be paid by the parent with the higher sole-parenting award. If both parents serve as a PPR for at least one child of the relationship and the children share time with the other parent, the court should adjust each parent's award to accommodate shared-parenting costs in accordance with the principles explained in the PAR Time sections of this Appendix before the two awards are subtracted.

16. Child in the Custody of a Third Party - If the child is in the custody of a third party (e.g., an aunt, uncle, grandparent, foster parent), the court shall order both parents to pay their income shares of the sole-parenting award to the third party for the benefit of the child.

17. Adjustments for the Age of the Children - The child support schedules are based on child-rearing expenditures averaged across the entire age range of zero through 17 years (total expenditures divided by 18 years). This *averaging*

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means that awards for younger children are slightly overstated due to the higher level of expenditures for older children. If an award is entered while the child is very young and continues through age 18, the net effect is negligible. However, initial awards for children in their teens are underestimated by the *averaging* and should be adjusted upward to compensate for this effect. Due to limitations of the CEX and the *Rothbarth* estimator, a separate marginal cost for teen-aged children could not be estimated. Based on Dr. Thomas Espenshades's 1980 CEX study, the cost of children aged 12 through 17 was 14.6% above the average expenditures. Therefore, if the initial child support order is entered when a child is 12 years of age or older, that order and all subsequent orders shall be adjusted upward by 14.6%. Whenever the 14.6% adjustment is made, it should be noted in the guidelines worksheet or in the support order. This will clarify the basis of the order for future modifications or appeals.

18. College or Other Post-Secondary Education Expenses - These child support guidelines are intended to apply to children who are less than 18 years of age or more than 18 years of age but still attending high school or a similar secondary educational institution. For the reasons set forth below, the Appendix IX-F support schedules shall not be used to determine parental contributions for college or other post-secondary education (hereafter college) expenses nor the amount of support for a child attending college. The child support guidelines may be applied in the court's discretion to support for students over 18 years of age who commute to college.

Duplicate Expenditures - Many costs associated with college attendance (e.g., room, board, transportation) are included in the Appendix IX-F child support guidelines awards. Thus, a parent who is ordered to pay a guidelines-based child support award and part of the child's college expenses is forced to make duplicate expenditures for the child (i.e., the PAR would be paying a share of the cost of food for the child to the primary household as well as a share of the cost of a meal plan or food allowance while the child is attending college). As a result, the level of total spending on the child would exceed that of intact families in a similar economic situation and the PAR's share of the total spending on the child would increase beyond his or her income share. Requiring duplicate expenditures for a child is inconsistent with spending patterns of intact families and the economic theory of the child support guidelines.

Appendix IX-F Awards Represent Intact-Family Spending on Children up to Age 18 - The proposed Appendix IX-F support awards are based on the marginal cost of children who are less than 18 years of age and living in intact-family situations. The children on whom the support guidelines (average marginal expenditures) are based were minors who had not progressed beyond the high school level. Thus, the Appendix IX-F awards do not include any expenditures related to college attendance.

Guidelines Awards Are Based on Average Costs - The proposed Appendix IX-F child support schedules represent total average spending on children (birth through age 18) who are living in an intact-family residence. Since the cost of college attendance is a large, variable expenditure, it is inappropriate to incorporate such an expense in the total average marginal costs of children. Including college costs in the Appendix IX-F support schedules would increase the recommended

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support awards for all family situations regardless of whether a family has a child who is actually attending college.

Guidelines Awards Represent Basic Needs - The Appendix IX-F support schedules represent average marginal expenditures on children for food, housing, transportation, clothing, and miscellaneous items - basic items needed by every child and provided by their parents. Since college education is a discretionary expense, it is inappropriate to commingle such costs with basic needs of children.

When determining whether continued financial support for children attending college and/or parental contributions to college education are appropriate, the court shall consider relevant case law and statutes. In all cases, primary consideration shall be given to the continued support of minor children remaining in the primary residence by reapplying the child support guidelines for those children before determining parental obligations for the cost of post-secondary education and/or continued support for a child attending college.

19. Determining Child Support and Alimony or Spousal Support Simultaneously - If child support and alimony, maintenance, or spousal support are being determined simultaneously (for the same family), the court shall determine the amount of alimony, maintenance, or spousal support before applying the child support guidelines, except when the court establishes *pendente lite* support. When applying the guidelines, the amount of alimony, maintenance or spousal support shall be deducted from the paying parent's income (after adjusting for tax benefits, if known) and added to the recipient's income to determine each parent's gross income. This transfer method reflects the availability of income to each parent for the purpose of paying child support.

20. Extreme Parental Income Situations - Although these guidelines apply to all actions to establish and modify child support awards, extremely low or high parental income situations make the Appendix IX-F awards inappropriate due to the limitations of the economic data. The guidelines listed below apply to extreme parental income situations.

- a. *Obligor's Net Income Less Than the U.S. Poverty Guideline.* If an obligor's net income, after deducting that person's share of the total support award, is less than 105% of the U.S. poverty guideline for one person (net income of \$219 per week as of January 23, 2009 or as published annually in the Federal Register), the court shall carefully review the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means of self-support at a minimum subsistence level. If an obligee's income is less than 105% of the poverty guideline, no self-support reserve adjustment shall be made regardless of the obligor's income. When assessing whether an obligee has sufficient net income to permit the application of the self-support reserve for an obligor, the court shall consider the effect of the obligee's share of the child support obligation (note that this amount is not calculated on either worksheet). The obligor's self-support reserve shall not be applied if obligee's net income minus the obligee's child support obligation is less than 105% of the poverty guideline for one person. In all cases, a fixed dollar amount shall be ordered to establish the principle of the parent's support obligation and to provide a basis for an upward modification should the obligor's income

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increase in the future. In these circumstances, the support award should be between \$5.00 per week and the support amount at \$170 combined net weekly income for the appropriate number of children.

- b. *Parents with a Combined Net Annual Income In Excess of \$187,200.* If the combined net income of the parents is more than \$187,200 per year, the court shall apply the guidelines up to \$187,200 and supplement the guidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of \$187,200) and the factors specified in *N.J.S.A. 2A:34-23*. Thus, the maximum guidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than \$187,200 per year. An award for a family with net income in excess of \$187,200 per year shall not be less than the amount for a family with a net income of \$187,200 per year. Because estimates on the marginal cost of children in intact families with net incomes of more than \$187,200 per year are either unreliable or unavailable, the court shall not extrapolate the Appendix IX-F schedules (statistically or by adding amounts from different income ranges) beyond that dollar limit.

21. Other Factors that May Require an Adjustment to a Guidelines-Based Award - At the court's discretion, the following factors may require an adjustment to a guidelines-based child support award:

- a. equitable distribution of property;
- b. income taxes;
- c. fixed direct payments (e.g., mortgage payments);
- d. unreimbursed medical/dental expenses for either parent;
- e. educational expenses for children (i.e., for private, parochial, or trade schools, or other secondary schools, or post-secondary education);
- f. educational expenses for either parent to improve earning capacity;
- g. single family units (i.e., one household) having more than six children;
- h. cases involving the voluntary placement of children in foster care;
- i. special needs of gifted or disabled children;
- j. ages of the children;
- k. hidden costs of caring for children such as reduced income, decreased career opportunities, loss of time to shop economically, or loss of savings;
- l. extraordinarily high income of a child (e.g., actors, trusts);
- m. substantiated financial obligations for elder care that existed before the filing of the support action;
- n. the tax advantages of paying for a child's health insurance; and
- o. one obligor owing support to more than one family (e.g., multiple prior support orders).

The court may consider other factors that could, in a particular case, cause the child support guidelines to be inapplicable or require an adjustment to the child support award. In all cases, the decision to deviate from the guidelines shall be based on the best interests of the child. All deviations from the guidelines-based award and the amount of the guidelines-based award must be stated in writing in the support order or on the guidelines worksheet.

22. Stipulated Agreements. In accordance with *Rule 5:6A*, if a child support amount in a stipulated or consent agreement differs from an award calculated using the support guidelines, the parties or their representatives shall state on a child support guidelines worksheet: (a) the amount of support that

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would have been awarded if calculated using the guidelines and (b) the reason that the stipulated amount differs from the guidelines-based award.

23. Modification of Support Awards. Before using these guidelines to modify a child support award, the court must find that the circumstances of the parties have changed since the date that the order was entered (see *Lepis v. Lepis*, 83 N.J. 139 (1980)). In applying the guidelines in modification actions, the court shall consider the interrelationship of alimony or other financial factors that may have influenced the original child support amount as well as the principles set forth in existing case law. The adoption of revised child support guidelines is not an automatic basis for the modification of a child support order. To qualify for a modification, a party must file a motion with the court and show a change in circumstances, other than the adoption of revised guidelines, as specified in *Lepis v. Lepis* and other relevant case law.

24. Effect of Emancipation of a Child - If the guidelines were used to calculate a child support award for two or more children, the emancipation of a child shall not result in a proportionate reduction of the support order (i.e., based on the economic evidence, it is not appropriate to reduce an order for two children by half if one child becomes emancipated). Instead, child support award should be recalculated based upon the current income of the parents and the number of unemancipated children.

25. Support for a Child Who has Reached Majority - These schedules are based on economic estimates of average intact-family expenditures on children from ages zero through 17. These guidelines shall not be used to determine a support obligation for a child who has reached majority (18 years of age) and who is no longer enrolled in high school or other secondary education. After a child reaches majority and completes secondary education, a support obligation, if found by the court to be appropriate, shall be determined in accordance with *N.J.S.A. 2A:34-23* and existing case law.

26. Health Insurance for Children. Unless the parents agree to an alternative health care arrangement, all child support orders shall provide for the coverage of the child's health care needs (i.e., medical and dental) and health insurance (when such insurance is available to either parent at a reasonable cost). The parent's marginal cost of adding a child to a health insurance policy shall be added to the basic child support award and deducted from the paying parent's income share of the total child support award (see Appendix IX-B). The following standards shall apply when determining if a health insurance provision is appropriate and which parent should provide health insurance for the child.

- a. The cost of health insurance is considered *reasonable* if it is employment-related or available through a group plan, regardless of the service delivery mechanism, and does not reduce the net income of the obligor below 105% of the poverty guideline for one person (after paying the child support award) or the custodial parent's net household income below 200% of the poverty guideline for the number of persons in the primary household. If sufficient income is not available to pay child support and a health insurance premium without eroding these income reserves, priority shall be given to child support.
- b. Health insurance includes fees for service, health maintenance organizations (HMO), preferred provider organizations (PPO) and

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other types of coverage under which medical services could be provided to the dependent child.

- c. When reasonably priced health insurance is available to only one parent, that parent shall be ordered to provide coverage for the child.
- d. If health insurance is available to both parents, the parent who can obtain the most comprehensive coverage at the least cost shall be ordered to provide health insurance for the child. Alternatively, both parents may be ordered to provide health insurance if it is available to them at a reasonable cost and the combination of plans provides the most comprehensive coverage.
- e. When neither parent has access to health insurance, the parents shall be ordered to share in health expenses in accordance with their relative incomes (see paragraph 9 for the treatment of predictable and recurring unreimbursed health care expenses in excess of \$250 per child per year).
- f. If the custodial parent and the child receive Medicaid, the non-custodial parent shall be ordered to enroll the child in a health insurance plan if it is available at a reasonable cost.
- g. If health care insurance is not available to either parent at the time the support order is established, the court shall require that health insurance coverage be obtained for the child if it becomes available to either parent in the future. The Probation Division shall monitor the availability of health insurance for the child.

27. Unpredictable, Non-Recurring Unreimbursed Health-Care In Excess of \$250 Per Child Per Year - As stated in paragraph 9, predictable and recurring unreimbursed health care expenses in excess of \$250 per child per year should be added to the basic support obligation. However, because the unreimbursed cost, duration, or incidence of some illnesses or health conditions are highly variable or unexpected, it may not be appropriate or practical to add them to the basic support obligation when the support award is being established. To acknowledge the possibility of unpredictable or non-recurring unreimbursed health-care expenditures, the court should order that such expenses, if incurred, be shared in proportion to each parent's relative income (income shares). Such payments should be made directly to the parent who made or will make the health care expenditure or directly to the health care provider (i.e., not through Probation).

28. Distribution of Worksheets and Financial Affidavits - Immediately following the establishment or modification of a child support award, each party shall be provided with a copy of the support order and, if requested, a copy of the child support guidelines worksheet and any financial affidavits used to determine the obligation. The original order, guidelines worksheet, and all financial affidavits shall be maintained in the Family Division case file.

29. Background Reports and Publications - The reports listed below were either used during the development of the New Jersey child support guidelines or document the Supreme Court Family Practice Committee's findings and recommendations regarding the guidelines. Judiciary reports are available at the New Jersey State library and select city, county, and county courthouse libraries. Reports prepared for the U.S. Department of Health and Human Services are available from the U.S. Office of Child Support Enforcement Reference Center.

APPENDIX IX-A

- a. New Jersey Administrative Office of the Courts, *Supplemental Report of the Supreme Court Family Division Practice Committee on Proposed Amendments to Appendix IX (Child Support Guidelines) of the New Jersey Court Rules*, Report to the Supreme Court, October 1996.
- b. New Jersey Administrative Office of the Courts, *Final Report of the Supreme Court Family Division Practice Committee on Proposed Revisions to the New Jersey Child Support Guidelines, Rule 5:6A and Appendix IX of the New Jersey Court Rules*, Report to the Supreme Court, March 1996.
- c. Policy Studies, Inc., *Economic Basis for Updated Child Support Schedules, State of New Jersey*, Report prepared for the New Jersey Administrative Office of the Courts, April 1995.
- d. Mark Lino, *Expenditures on Children by Families, 1994 Annual Report*, U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, Miscellaneous Publication 1528, April 1995.
- e. David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Report to the U.S. Department of Health and Human Services (Office of Assistant Secretary for Planning and Evaluation), University of Wisconsin Institute for Research on Poverty, September 1990.
- f. Lewin/ICF, *Estimates of Expenditures on Children and Child Support Guidelines*, Report to the U.S. Department of Health and Human Services (Office of Assistant Secretary for Planning and Evaluation), Lewin/ICF, October 1990.
- g. Robert G. Williams, *Development of Guidelines for Child Support Orders, Final Report*, Report to the U.S. Office of Child Support Enforcement, Policy Studies Inc., September 1987.