

The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses

Carol R. Goforth*

In order to help the University of Arkansas meet the challenges of being the flagship campus of the University of Arkansas system, as we entered the new millennium Chancellor John White helped organize a group of leaders from business, the professions, government, and academia to evaluate the role of this institution and to develop a plan for action. Because the plan was to be implemented in the first decade of the twenty-first century, the committee operated under the name of the "2010 Commission," and its report and recommendations were published in September of 2001.¹ Put simply, the essential finding of the Commission was that Arkansas is unlikely to enjoy economic prosperity unless and until increased emphasis is placed on higher education in the state.² Absent a well-educated work force, the state will simply lack the necessary foundation for economic growth.³ In other words, Arkansas will continue to be ranked at the very lowest levels in the Nation in terms of economic attainment so long as we similarly occupy the bottom rungs of educational attainment.⁴

* Associate Dean for Academic Affairs & Clayton N. Little Professor of Law, University of Arkansas School of Law.

1. 2010 Commission, *Making the Case* (Sept. 2001). I am proud to say that I served on this Commission, and it may therefore be completely unsurprising that I subscribe to the views enunciated in the report and the recommendations of the Commission.

2. *Id.* at i.

3. Prior to the publication of this report, the link between education and economic prosperity had been publicly commented on by others. For example, Georgia Elrod, as Chair of the Arkansas Higher Education Coordinating Board, concluded: "There is such a direct link between the education level of the populace and the financial prosperity of the State that it benefits everybody." Georgia Kimbro Elrod, *Combining Grit and Grace*, ARK. DEMOCRAT-GAZETTE, Mar. 11, 2001, at 6D.

4. One source gives Arkansas a "D" in educational preparation on the basis of the low percentage of students who go directly from high school to college or other educational training. See *Measuring Up 2000: The State-by-State Report Card for Higher Education*, at <http://measuringup2000.highereducation.org/2000/reporhome.htm> (last visited

The link between education and economics is even clearer if you look at the individuals involved rather than at the state as a whole. Commentators readily acknowledge the powerful positive correlation between educational achievements and income levels.⁵ As Congressman Bob Clement reported in 1997, "Few people would refute this causal relationship between higher educational attainment and earning power."⁶ The link is especially clear for those with less than a college-level education: while overall wages have been rising, wage trends for workers who do not have a college degree have actually been declining.⁷

Mar. 25, 2003) [hereinafter *Measuring Up*]. The same source gives the state a "D-" on its ability to realize the economic benefits of education, based on the "very small percentage" of Arkansas residents with a bachelor's degree or higher educational achievement. *Id.*

5. John H. Langbein, *The Twentieth-Century Revolution in Family Wealth Transmission*, 86 MICH. L. REV. 722, 733 (1988). The statistics which this commentator relied upon were derived from 1985 data, which showed that the median annual income of those lacking a high-school diploma was under \$20,000, while the figure for those who had completed four years of college was above \$30,000. The income level for those with more than four years of college was above \$40,000. *Id.* (citing CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 283 (1987) [hereinafter EDUCATION STATISTICS]). Professor Langbein also cites a *Wall Street Journal* article which claimed even greater disparities. *Id.* at 733 n.31 (citing WALL ST. J., Mar. 17, 1988, at 21). The *Wall Street Journal* reported average monthly income for a high school graduate as \$415; for a vocational degree, \$990; for a bachelor's degree, \$1540; for a doctoral degree, \$2747; and for a professional degree, \$3439. *Id.* (citing WALL ST. J., Mar. 17, 1988, at 21).

More recent data is no less impressive. The College Board has published estimates that "college graduates earn on average 81 percent more than those with high school diplomas. Over a lifetime, the gap in earnings potential . . . is more than \$1 million." *College graduation rate below 50 percent*, CNN.com/Education (Aug. 16, 2001), available at <http://fyi.cnn.com/2001/fyi/teachers.ednews/08/15/college.dropout.ap/>.

6. Congressman Bob Clement, *Education: Where the Stakes are as High as Children can Dream*, 17 ST. LOUIS U. PUB. L. REV. 55 (1977). Representative Clement cited the following statistics from a statistical brief prepared by the U.S. Department of Commerce, Economics and Statistics Administration to show the relationship between educational attainment and earning power:

Educational Level Attained	Annual Average Earnings
Professional	\$74,560
Doctorate	\$54,904
Master's	\$40,368
Associate	\$23,398
Some college, no degree	\$19,666
High school graduate	\$18,737
Not a high school graduate	\$12,809

Id. at 59 & n.17.

7. Jared Bernstein & Lawrence Mishel, *The Growth of the Low-Wage Labor Market: Who, What, and Why*, 3 KAN. J.L. & PUB. POL'Y 12 (1994) (citing Frank Lay & Rich-

The very nature of education in this country has changed radically over time. Originally, college education was for the wealthy elite, or the rare “genius” deemed to be peculiarly suited for higher levels of educational training.⁸ Most individuals were trained at home, or in apprenticeships with neighbors.⁹ There were few opportunities for higher education, and most careers did not require that type of training.¹⁰ Today, “[i]t is a truism that a technological age requires a technologically proficient workforce.”¹¹

Unfortunately, at the same time as the importance of education has been increasing, college costs have skyrocketed. The costs of a college education are described as “immense,”¹² and are growing at a rate that easily outpaces inflation.¹³ Although

ard Murnane, *U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations*, 30 J. ECON. LITERATURE 1333 (1992)).

8. For example, what appears to be the earliest reported American case to consider the obligation of a father to pay the expenses of his son's college education is *Middlebury College v. Chandler*, 16 Vt. 683 (1844). In that case, the Vermont Supreme Court concluded that college education was not “a necessary,” given the absence of indications “such as wealth, or station in society, or that he [the son] exhibited peculiar indications of genius or talent, which would suggest the fitness, and expediency of a college education for him, more than for the generality of youth in the community.” *Id.* at 683. Note the suggestions that only persons of considerable wealth or “station in society” might ordinarily aspire to a college education.

9. “This was a low-tech age, and the transmission of skills, like so much else, could still occur within the family.” Langbein, *supra* note 5, at 725.

10. See generally BERNARD BAILY, *EDUCATION IN THE FORMING OF AMERICAN SOCIETY: NEEDS AND OPPORTUNITIES FOR STUDY* (1960). Consider the amount of money spent on education at different points in our Nation's history. In 1840, total education expenditures were estimated at \$9.2 million. Fishlow, *Levels of Nineteenth Century Investment in Education*, 26 J. ECON. HIST. 418, 420 (1966). In 1900, this increased to approximately \$289.6 million (although inflation was relatively low during that time period). *Id.* In 1959, the amount was \$23.9 billion. EDUCATION STATISTICS, *supra* note 5, at 24. In the mid-1980s, the amount was \$282 billion, representing 7% of our domestic gross national product. *Id.* at 4.

11. Langbein, *supra* note 5, at 729.

12. *Id.* at 730.

13. Quite aside from the fact that I can personally attest to this fact after having sent my eldest child off to college at the start of 2003-03, a brief foray into Westlaw provided ample evidence for this assertion. Even limiting my search to a two-month period, there were numerous newspapers and magazine articles devoted to this phenomenon. For representative magazine articles, see *Creeping Ivy, Soaring Tuition*, BUSINESSWEEK, Apr. 8, 2002, at 24; Jonathan R. Laing, *Old College Pry: Tuition Hikes Offset Dips in Gifts and Endowments*, BARRONS, Mar. 4, 2002, at 13; Rachel H. Shea et al., *You're in. Now Pay Up: Special Report; Paying for College*, U.S. NEWS & WORLD REP., Apr. 29, 2002, at 38. For sample newspaper articles, see *College Tuition a Growing Cost; During Past 20 Years, Poorest Families Have Been Hardest Hit by Steady Increase*, S. FLA. SUN-SENTINEL, May

there are a wide variety of financial aid programs designed to help ease the burden, it appears that the only way for many of our Nation's young people to be able to afford college is through the assistance of their parents.¹⁴

Taken as a whole, these facts create a powerful argument in favor of rules which encourage, and potentially require, parents to contribute to the post-secondary education of their children. To make it absolutely clear, my train of logic proceeds like this:

1. Parents have long been required to provide for the reasonable care, nurture and education of their children.¹⁵
2. What constitutes reasonable and necessary education has changed over time.¹⁶
3. In order to earn a reasonable wage today, post-secondary education is increasingly essential for children who can benefit from it.¹⁷
4. Parental support is often necessary in order to make such an education available.¹⁸

2, 2002, at 3A (available via Westlaw at 20 WL 2962395); *Colleges Prepare to Tighten their Belts . . . and Increase Tuition to Compensate*, VIRGINIAN-PILOT & LEDGER STAR, Mar. 12, 2002, at B1 (available via Westlaw at 2002 WL 5489840); *Rising Cost of College Tuition; Only the Richest Keep Pace*, ST. LOUIS PACE DISPATCH, May 2, 2002, at A.1 (available via Westlaw at 2002 WL 2560375). Nor is this "new" news; observers have remarked on the rapidly rising costs of college education for years. See, e.g., Ethan Bronner, *College Tuition Rises 4%, Outpacing Inflation*, N.Y. TIMES, Oct. 8, 1988, at A18; Ben Wildavsky, *Paying for College: Is that the Real Price*, U.S. NEWS & WORLD REP., Sept. 6, 1999, at 64.

14. As Professor John Langbein has noted, "There is no mystery about who has been paying the bill for this vast expansion of education. Even allowing for some scholarships, loans, and student labor, the main burden falls upon the parents." Langbein, *supra* note 5, at 732.

15. Perhaps this statement will simply be accepted as true. For those who are doubtful, consider this powerful excerpt from a 1953 opinion by the Appellate Division of the New Jersey Superior Court:

Basically it is indubitable that a common school education has for centuries been regarded as a necessary to which a child is entitled at the expense of the parent. Indeed it is a parental obligation which Blackstone characterized as one of supreme importance to the family life and to society in general. Solon excused the children of Athens from supporting their parents if the latter had neglected to give them early training. We now have our compulsory education laws.

Jonitz v. Jonitz, 96 A.2d 782, 787 (N.J. Super. Ct. App. Div. 1953).

16. See *supra* notes 8-11 and accompanying text.

17. See *supra* notes 8-11 and accompanying text.

18. See *supra* notes 12-14 and accompanying text.

5. There are strong societal benefits from rules which encourage this as the usual course of business.¹⁹

Given what seems to me to be essentially inescapable logic, as currently interpreted by the courts of this state, section 9-14-237 of the Arkansas Code sends exactly the wrong message at the wrong time.

The Arkansas statutes dealing with child support obligations provide that the duty to pay child support “shall automatically terminate by operation of law when the child reaches eighteen (18) years of age or should have graduated from high school, whichever is later . . . unless the court order for child support specifically extends child support after such circumstances.”²⁰ Regrettably, the Arkansas courts have very narrowly construed what constitutes sufficiently special circumstances to justify the continued award of support after the age of eighteen or high school graduation.

For example, in *Riegler v. Riegler*,²¹ the Arkansas Supreme Court considered the propriety of a chancery court order which provided for continued child support during college. The Chancellor had found that the daughter was neither mentally nor physically handicapped or otherwise abnormal, and that the father had entered into no contractual obligation requiring him to pay for her college education.²² Nonetheless, reasoning that a college education or degree had become “much more important over time,” and that a child “can hardly get started or even apply for a job without some college education,” the Chancellor concluded that the father had “the legal duty to give the child those advantages which are reasonable contributions.”²³ The father appealed.

As framed by the Arkansas Supreme Court, “[t]he question . . . is not whether appellant is morally obligated to assist [his daughter] financially while attending college, but the question is whether he is legally obligated to do so under the evidence in this case.”²⁴ The court apparently had no trouble an-

19. See *supra* notes 1-4 and accompanying text.

20. ARK. CODE ANN. § 9-14-237(a)(1) (Repl. 2002).

21. 259 Ark. 203, 532 S.W.2d 734 (1976).

22. *Id.* at 210-11, 532 S.W.2d at 738.

23. *Id.* at 210-11, 532 S.W.2d at 739.

24. *Id.* at 210, 532 S.W.2d at 738.

swering this question in the negative,²⁵ refusing even to address the Chancellor's contention that a college education was increasingly necessary in the modern world.

The Arkansas courts continue to follow this pronouncement. In 1981, in *Mitchell v. Mitchell*,²⁶ the Arkansas Court of Appeals confirmed the general rule that, absent "special or unusual circumstance," there is no duty for a divorced parent to contribute to the education of an adult child.²⁷ The court recognized earlier Arkansas cases that had imposed a duty to pay for educational expenses of adult children, but concluded that "in every case so holding there has been a circumstance of special need."²⁸

So what facts are sufficient to constitute "special circumstances" in this state? While many cases recite the "special circumstances" exception to the doctrine that exonerates a parent from any obligation to pay for educational expenses of his or her offspring once they reach the age of majority, there are actually relatively few cases in this state where a court has found that the facts justify an award of support past the age of eighteen or the date of high school graduation, whichever is later. One case that did find sufficient "special circumstances" was *Petty v. Petty*.²⁹ In that case, while the daughter in question suffered from grand mal epilepsy which essentially rendered her unable to earn a livelihood, the court found that her need for "a specialized education" was so acute that the state had agreed to pay for tuition.³⁰ This condition therefore justified a continuing support obligation on the father.³¹

25. *Id.* at 213, 532 S.W.2d at 740; *accord* *Hogue v. Hogue*, 262 Ark. 767, 561 S.W.2d 299 (1978).

26. 2 Ark. App. 75, 616 S.W.2d 753 (1981).

27. *Id.* at 79, 616 S.W.2d at 755.

28. *Id.* at 78, 616 S.W.2d at 754. The same result was reached in 1992 in *Elkins v. James*, 40 Ark. App. 44, 51, 842 S.W.2d 58, 62 (1992) ("[A]bsent special circumstances which are not present here, there is no legal obligation on the part of a parent to contribute to the maintenance and support of his or her children after they reach the age of eighteen."). *Accord* *Aikens v. Lee*, 53 Ark. App. 1, 3, 918 S.W.2d 204, 205 (1996) ("[A] parent may not be ordered to support a child who has reached majority absent special circumstances.").

29. 252 Ark. 1032, 482 S.W.2d 119 (1972).

30. *Id.* at 1036, 482 S.W.2d at 121.

31. *Id.*

Similarly, in *Elkins v. Elkins*,³² a majority of the Arkansas Supreme Court concluded that dyslexia accompanied by “slow speech, poor performance on visual-motor coordination, poor sequential memory, and mild motor clumsiness,” as well as short attention span, was a sufficient handicap where the evidence showed that the son would “need psychiatric care and prescription medicine for his lifetime,” and that “[w]ithout a college education it will be very difficult for him to earn sufficient sums for his support and medical bills.”³³

On the other hand, the Arkansas Court of Appeals has held that allergies and the concomitant need for allergy medication is not a sufficient justification for continuing support after graduation from high school.³⁴ Similarly, in a recent opinion not designated for publication, the Arkansas Court of Appeals found that diabetes did not amount to such a disability or handicap that the daughter could not hold a job, and therefore did not amount to a special circumstance sufficient to justify the award of support past the age of majority.³⁵

Taken as a whole, these cases make it appear that only a child who is so physically or mentally handicapped that he or she is essentially unable to make a minimum living for him- or herself will be awarded post-secondary educational support in this state under current standards. The prevailing attitude appears to be encapsulated in the dissent to *Elkins*, where Justice Byrd objected to an award of continued support because the son was not physically “disabled,” and had admitted he could do hard or light physical labor.³⁶

32. 262 Ark. 63, 553 S.W.2d 34 (1977).

33. *Id.* at 65-66, 553 S.W.2d at 35-36.

34. *Aikens*, 53 Ark. App. at 2-4, 918 S.W.2d at 204-05. The fact that the child was in the school band and that this precluded part-time employment was recited, but not given any weight by the court. *Id.* at 2, 918 S.W.2d at 204. The court also ignored evidence of the child's academic successes as being irrelevant to the question of whether the father should have been ordered to contribute to his son's education. *Id.*

35. *Brazille v. Brazille*, No. E-93-1690-2, 1998 WL 262668 (Ark. App. 1998).

36. *Elkins*, 262 Ark. at 69, 553 S.W.2d at 37 (Byrd, J., dissenting). The majority in *Elkins* found that the brain impairment suffered by the young man, coupled with his ongoing need for psychiatric care and prescription medication, meant that his special needs for additional education justified an award of continued support. *Id.* at 65-66, 553 S.W.2d at 35.

The resistance to continued education for offspring who have reached the age of majority is perhaps most clearly expressed in the following passage from the dissent in *Elkins*:

Consequently, the son is now an adult for all purposes except for the attitude of this Court that everybody ought to have a college education. I do not agree with that philosophy. While, I agree that college is good for some people, between an adult son and a father, the issue of whether a son goes to college should be left to the father and son without any interference from the courts. One of the old adages of the hills where I grew up was the saying that "there's no fool like an educated fool."³⁷

Following this reasoning, the Arkansas courts continue to be extremely reluctant to award support for college expenses.

It is probably worth mentioning that this result is not really compelled by the language of the Arkansas statute. As currently written, the Arkansas statute provides that child support terminates at the later of a child's eighteenth birthday or the date the child should graduate from high school, "unless the court order for child support specifically extends child support after such circumstances."³⁸ Nothing in this language explicitly restricts the discretion of the Arkansas courts.

In fact, in other jurisdictions, a growing number of courts have found that changing times have in fact created sufficient justification for the award of continued support.³⁹ This is not the place or the time for a comprehensive listing or analysis of the

37. *Id.* at 70, 553 S.W.2d at 37 (Byrd, J., dissenting).

38. ARK. CODE ANN. § 9-14-237(a)(1).

39. Professors Elrod, Spector, and Atkinson reported in 1999 that Alabama, the District of Columbia, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Oregon, South Carolina, Tennessee, and Washington all recognized the propriety of imposing post-majority support obligations to help pay college expenses. Linda D. Elrod et al., *A Review of the Year in Family Law: Children's Issues Dominate*, 32 FAM. L.Q. 661, 714 chart 3 (1999). Their 2000 listing added Alaska. Linda D. Elrod & Robert G. Spector, *A Review of the Year in Family Law: Century Ends with Unresolved Issues*, 33 FAM. L.Q. 865, 910 chart 3 (2000). Although these listings purport to be comprehensive, they are missing some states that allow such awards. For example, Colorado and North Dakota are on neither list, although both states allow such awards. See COLO. REV. STAT. § 14-10-115(1.5)(b) (Supp. 2002); *Donarski v. Donarski*, 581 N.W.2d 130, 134-36 (N.D. 1998).

decisions from other jurisdictions on this issue.⁴⁰ However, it certainly seems appropriate to provide a brief discussion of what some other jurisdictions, not necessarily those generally regarded as the most progressive or unusually pro-education, have been doing with regard to the question of when a parent should be liable for post-majority educational support.

Consider North Dakota, generally regarded as a relatively poor state and not one that is widely regarded as having invested disproportionately in post-secondary education.⁴¹ In 1998, the North Dakota Supreme Court held in *Donarski v. Donarski*,⁴² that a divorce court could impose an award of post-minority support, including college expenses, under appropriate circumstances.⁴³ While ability to pay was the most important factor, the court also listed the following factors to be considered:

1. Whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education;⁴⁴
2. the effect of the background, values, and goals of the parent on the reasonableness of the expectation of the child for higher education;⁴⁵
3. the amount of the contribution sought by the child for the cost of higher education;⁴⁶
4. the ability of the parent to pay that cost;⁴⁷

40. For those hoping to find a comprehensive research guide on this issue, I would suggest starting with Annotation, *Responsibility of Noncustodial Divorced Parent to Pay for, or Contribute to, Costs of Child's College Education*, 99 A.L.R.3d 322 (1980).

41. One on-line source provides a side-by-side comparison of the various states. You can choose the criteria in which you are interested, and then compare the states that you select. In a comparison of Arkansas and North Dakota, in terms of how well high school students were prepared for college, Arkansas earned a "D" and North Dakota a "B." In terms of the percentage of adults who had sought or were seeking a college education, Arkansas earned a "D-," and North Dakota again earned a "B." In terms of affordability of a college education, Arkansas earned a "C+," while North Dakota earned a "C." In terms of benefits realized from post-secondary education, Arkansas scored a "D-," and North Dakota earned a "B." See generally *Measuring Up*, *supra* note 4.

42. 581 N.W.2d 130.

43. *Id.* at 136-37.

44. *Id.* at 136.

45. *Id.*

46. *Id.*

47. *Donarski*, 581 N.W.2d at 136.

5. the relationship of the requested contribution to the kind of school or course of study sought by the child;⁴⁸
6. the financial resources of both parents;⁴⁹
7. the commitment to and aptitude of the child for the requested education;⁵⁰
8. the financial resources of the child, including assets owned individually or held in custodianship or trust;⁵¹
9. the ability of the child to earn income during the school year or on vacation;⁵²
10. the availability of financial aid in the form of college grants and loans;⁵³
11. the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance;⁵⁴ and
12. the relationship of the education requested to any prior training and to the overall long-range goals of the child.⁵⁵

Many of these factors relate to the amount of any support obligation, rather than the question of whether continued support would be appropriate. None of them suggests that support should be conditioned on some type of physical or mental handicap. As is the case in Arkansas, the only relevant North Dakota statute is ambiguous, saying nothing about support for college expenses. In fact, the only statutory language in North Dakota authorizes the court to provide for "child support which continues after the child reaches age eighteen, if the parties agree, or if the court determines the support to be appropriate."⁵⁶ This is quite similar to the language used in Arkansas, although

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Donarski*, 581 N.W.2d at 136.

53. *Id.*

54. *Id.*

55. *Id.*

56. N.D. CENT. CODE § 14-09-08.2(6) (Supp. 2001).

the judicial interpretation of the two statutes is radically different.

Consider also the case of Alabama, which, like Arkansas, is a southern state with problems in its educational system.⁵⁷ It has allowed for post-majority support orders much longer than has been the case in North Dakota. More than a decade ago, in *Ex Parte Bayliss*,⁵⁸ the Alabama Supreme Court found that Alabama courts were within their equitable powers to extend parental support obligations to cover college expenses.⁵⁹ The court held that trial courts must consider "all relevant factors that shall appear reasonable and necessary, including *primarily* the financial resources of the parents and the child and the child's commitment to, and aptitude for, the requested education."⁶⁰ Other factors were suggested, but not listed as being required. Subsequent Alabama decisions make it appear that these standards are liberally applied in favor of a child who is suggesting the need for educational support.⁶¹

Finally, consider the case of Missouri, our neighbor to the North.⁶² Missouri has taken a somewhat different route to the same place that a growing number of states are arriving at in terms of requiring parents to shoulder a reasonable portion of

57. Alabama scored an "F" in preparation, a "C+" in participation, a "D" in affordability, a "B-" in completion, and a "C" in terms of benefits from providing post-secondary education. *Measuring Up*, *supra* note 4. For a comparison with Arkansas, and a more detailed explanation of what each of these categories means, see *supra* note 41.

58. 550 So. 2d 986 (Ala. 1989).

59. *Id.* at 987.

60. *Id.*

61. For example, it has been held to be an abuse of discretion to deny an award of post-secondary educational expenses prior to a point in time close to the child's graduation from college. *Fountain v. Fountain*, No. DR-00-1982, 2002 WL 399216 (Ala. Civ. App. 2002). In *Spencer v. Spencer*, 812 So. 2d 1284 (Ala. Civ. App. 2001), it was held that "undue hardship," as a limitation on a parent's obligation to contribute towards post-secondary expenses, did not mean the same as "without personal sacrifice," because such sacrifice was usual. *Id.* at 1286. Parental disagreement over choice of college has been found to be irrelevant. *Wallace v. Condo*, 656 So. 2d 833, 834-35 (Ala. Civ. App. 1994). Similarly, in *Kent v. Kent*, 587 So. 2d 409 (Ala. App. 1991), the court upheld a post-majority support order despite the fact that the father was not wealthy, had no real relationship with the son, and the son had only a "C" average in his first quarter at college. *Id.* at 411-13.

62. Again, for comparison purposes, consider how Missouri rates in terms of its educational system. Missouri scored a "C+" in preparation, a "C-" in participation, a "D+" in affordability, a "B-" in completion, and a "C" in terms of benefits from providing post-secondary education. *Measuring Up*, *supra* note 4. For a comparison with Arkansas, and a more detailed explanation of what each of these categories means, see *supra* note 41.

their children's college expenses. Missouri law on this point originated with a very detailed statute which provides as follows:

If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs. If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-two, whichever first occurs. To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course. If the circumstances of the child manifestly dictate, the court may waive the October first deadline for enrollment required by this subsection. If the child is enrolled in such an institution, the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child. As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly. "Higher education" means any junior college, community college, college, or university at which the child attends classes regularly. A child who has been diagnosed with a learning disability, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of

credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection. A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.⁶³

There have been a number of decisions pursuant to this statute. Most notably, in 1999, the statute was upheld against a challenge that it violated the constitutional right of equal protection, since married parents were not required to contribute to the college education of their offspring.⁶⁴ In this case, the Missouri Supreme Court upheld the statute, finding that it rationally advances legitimate state interests by requiring financially capable parents to lend support to their children wishing to pursue higher education, and touches only upon economic interests.⁶⁵

Generally speaking, in interpreting the statute's requirements, the Missouri courts have held that so long as a child is enrolled in and attending an institution of higher education after graduating from high school, a parent's support obligation continues until that child reaches the age of twenty-two or completes her education, whichever comes first.⁶⁶ Courts have determined that the obligation should not be terminated as a result of temporary inability to attend classes because of illness or disability, so long as there is evidence that the interruption is indeed temporary.⁶⁷ It has also been found that the statute does not require "full-time" attendance at the college beyond the twelve-credit hour requirement.⁶⁸ However, it has been held that a trial court cannot award child support for college tuition absent findings that the child had enrolled in an appropriate institution before October first following graduation from high school, that the child continued to be enrolled for twelve hours

63. MO. REV. STAT. § 452.340.5 (Supp. 2003).

64. *In re Marriage of Kohring*, 999 S.W.2d 228 (Mo. 1999).

65. *Id.* at 231-33.

66. *Halupa v. Halupa*, 980 S.W.2d 325, 329 (Mo. Ct. App. 1998).

67. *Braun v. Lied*, 851 S.W.2d 93, 95 (Mo. Ct. App. 1993).

68. *Harris v. Rattini*, 855 S.W.2d 410, 411 (Mo. Ct. App. 1993).

of credit per semester, and was advancing satisfactorily as contemplated by the statute.⁶⁹

Each of these jurisdictions have taken affirmative steps, whether by judicial interpretation or legislative intervention, to insure that the children of divorce are as well-prepared for the future as they reasonably can be. I believe that it is time for Arkansas to step up to the plate and do the same.

Consider the lesson from New Jersey, a state I called home for a brief five-year period before returning here, to my roots.⁷⁰ One of the New Jersey cases dealing with this issue is *Weitzman v. Weitzman*.⁷¹ It is not the facts of this case that make it important or instructive, but the explanation of the history of the issue employed by the court. After reciting the principle that parents are "equally charged with their [children's] care, nurture, education and welfare,"⁷² the court concluded, based on older New Jersey cases, that "in appropriate circumstances, the privilege of parenthood carries with it the duty to assure a necessary education for [the] children."⁷³ (This is, of course, a principle that has been recognized even in Arkansas, albeit in very limited circumstances.⁷⁴) The New Jersey court then made the very argument that I would make here: "The concept of what constitutes a 'necessary education' has changed considerably in recent years."⁷⁵ Citing cases from the 1970s and 1980s, the New Jersey court observed:

69. *Rivers v. Rivers*, 21 S.W.3d 117, 125 (Mo. Ct. App. 2000).

70. I did not include New Jersey in the preceding list of states used for purposes of comparison because I suspect that most readers would be inclined to simply write-off New Jersey as not exemplifying the ideals more appropriate to a state like Arkansas. To some extent this is true. Although it has its problems, New Jersey has for a long time emphasized education, and it reaps the benefits from this investment. On the ratings scale which I cite throughout this article, New Jersey earned an "A" in preparation, a "B+" in participation, a "B" in affordability, a "B-" in completion, and an "A" in terms of benefits. For a comparison with Arkansas's scores, and a more detailed explanation of these categories, see *supra* note 41.

71. 549 A.2d 888 (N.J. Super. Ct. App. Div. 1988).

72. *Id.* at 892 (citing N.J. STAT. ANN. § 9:2-4 (2002)).

73. *Id.* (quoting *Newburgh v. Arrigo*, 443 A.2d 1031 (N.J. Super. Ct. App. Div. 1982)).

74. See *supra* notes 30-33 and accompanying text.

75. *Weitzman*, 549 A.2d at 892 (citing *Khalaf v. Khalaf*, 275 A.2d 132, 137 (N.J. Super. Ct. App. Div. 1971)) ("While a 'common public school and high school education' may have been sufficient in an earlier time, the trend has been toward greater education." (internal citations omitted)); see also *Ziesel v. Ziesel*, 115 A. 435 (N.J. 1921); *Limpert v.*

In the past, a college education was reserved for the elite, but the vital impulse of egalitarianism has inspired the creation of a wide variety of educational institutions that provide post-secondary education for practically everyone.” While the cost of a college education has vastly increased over the years, “[s]tate, county and community colleges, as well as some private colleges and vocational schools provide educational opportunities at reasonable costs.” . . . “In general, financially capable parents should contribute to the higher education of children who are qualified students.”⁷⁶

Based on this analysis, the New Jersey courts apply “all relevant” factors to determine whether post-majority support should be awarded, including all of the following:

1. whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education;
2. the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education;
3. the amount of the contribution sought by the child for the cost of higher education;
4. the ability of the parent to pay that cost;
5. the relationship of the requested contribution to the kind of school or course of study sought by the child;
6. the financial resources of both parents;
7. the commitment to and aptitude of the child for the requested education;
8. the financial resources of the child, including assets owned individually or held in custodianship or trust;
9. the ability of the child to earn income during the school year or on vacation;
10. the availability of financial aid in the form of college grants and loans;

Limpert, 292 A.2d 38 (N.J. Sup. Ct. App. Div. 1972); Sakovits v. Sakovits, 429 A.2d 1091 (N.J. Sup. Ct. Ch. Div. 1981).

76. *Weitzman*, 549 A.2d at 893 (internal citations omitted).

11. the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and
12. the relationship of the education requested to any prior training and to the overall long-range goals of the child.⁷⁷

The very nature of these factors emphasizes the fact that support in a reasonable amount is presumed to be a parental obligation, and the New Jersey opinions on this issue generally confirm this observation.⁷⁸

I might criticize the inclusion or wording of some of these factors, but the general approach seems sound. The Arkansas Child Support Statute should presume that support obligations continue so long as a child is pursuing an education that he or she will benefit from, whether that is in high school or college.⁷⁹ One could easily place an upper limit of four or five years on the college support obligation, to insure that it does not continue indefinitely. Once the presumption arises, the parent wishing to contest the continued support obligation could use any relevant factor to show that support should not be awarded, or should be awarded in a limited amount. For example, if it can be shown that the child cannot benefit from the education, or if the parent absolutely cannot afford to support the endeavor, the support ordered should reflect those considerations.⁸⁰

Unfortunately, at the present time, it is not merely that the Arkansas courts presume that child support will not include any financial assistance for college or post-secondary education after the child reaches the age of eighteen. Rather, under current rules, a court in Arkansas does not have the equitable discretion to order continued support absent agreement to the contrary,⁸¹ no matter how necessary for a reasonable standard of living,

77. These factors are taken verbatim from *id.*

78. See generally *supra* note 75.

79. On this point, the language of the Missouri statute seems *apropos*: "'Higher education' means any junior college, community college, college, or university at which the child attends classes regularly." MO. REV. STAT. § 452.340.5.

80. As a drafting suggestion, I include as an Appendix to this article suggested language which might be relied upon in amending the Arkansas Child Support Statute.

81. Arkansas courts will enforce a voluntary agreement to provide for college expenses. See *Hutto v. Burnett*, No. 93-6154, 1998 WL 778901 (Ark. App. 1998).

unless the child is handicapped or disabled. To move into the economy of the twenty-first century, we need for this to change.

**APPENDIX A—SAMPLE LANGUAGE FOR A REVISED
ARK. CODE § 9-14-237(A)(1).**

§ 9-14-237. Expiration of child support obligation.

(a)(1) An obligor's duty to pay child support for a child shall automatically terminate by operation of law when the child reaches eighteen (18) years of age or should have graduated from high school, whichever is later, or when the child is emancipated by a court of competent jurisdiction, marries, or dies, unless the court order for child support specifically extends child support after such circumstances. It shall be presumed that an award for support should continue as to any child who plans to and does regularly attend classes at any legitimate institution of post-secondary education, including technical or vocational institutes, junior college, community college, college, or university, although the court may consider any relevant factors in deciding upon the appropriate amount and conditions of such support. The presumption in favor of such educational support shall last for no more than four years,⁸² and shall exist only so

82. A case can be made that this should be five or even six years, as most contemporary studies indicate that fewer and fewer college students graduate in four years. The Arkansas Department of Higher Education maintains records and statistics that show the following graduation rates at four, five, and six years for all public colleges in this state.

The following chart includes these statistics for the four largest in-state Arkansas colleges: Arkansas State University at Jonesboro ("ASUJ"); University of Arkansas ("UAF"); University of Arkansas at Little Rock ("UALR"); and University of Central Arkansas ("UCA"), as well as the total graduation rates for all public "four-year" institutions in this state. These statistics are further broken down by the years in which the freshman class would have started their college education.

Institution	Year	% graduated at 4 years	% graduated at 5 years	% graduated at 6 years
ASUJ	1995	15.3	34.5	43.1
	1996	13.3	33.4	n/a
	1997	17.0	n/a	n/a
UAF	1995	18.5	39.9	49.0
	1996	19.0	39.9	n/a
	1997	20.2	n/a	n/a
UALR	1995	7.1	19.9	25.1
	1996	5.9	16.9	n/a
	1997	8.0	n/a	n/a

long as the child is continuously enrolled in an institution of learning, and is satisfactorily progressing towards a degree. The court may order the award of such support to be paid directly to the institution, to the child, or elsewhere as the court deems appropriate.

UCA	1995	14.4	35.3	45.8
	1996	14.9	40.0	n/a
	1997	16.1	n/a	n/a
Total Public	1995	14.3	32.3	40.6
	1996	14.9	33.3	n/a
	1997	16.1	n/a	n/a

Statistics available from the Research and Planning Office of the Arkansas Department of Higher Education, *available at* <http://www.arkansashighered.com/research.html>. The six-year standard is gaining wider acceptance, and is used, for example by *U.S. News & World Report* in its annual ranking of U.S. colleges, *available at* <http://www.usnews.com/>.

