

THE FAMILY COURT OF THE STATE OF DELAWARE
DELAWARE CHILD SUPPORT FORMULA
EVALUATION AND UPDATE

November 4, 2022

REPORT OF THE FAMILY COURT JUDICIARY

THE HONORABLE MICHAEL K. NEWELL,
CHIEF JUDGE

SECTION I: BACKGROUND

An Ad Hoc Committee for Child Support Guideline Review (hereinafter referred to as “the Committee”) was convened at the request of Chief Judge Michael K. Newell on August 31, 2021. The Committee was charged with reviewing and updating the guidelines in accordance with Federal Regulations at 45 C.F.R. § 302.56 and Family Court Civil Procedure Rule 500(b). The ad hoc committee presented its findings and recommendations to the Family Court Judges on October 13, 2022, which were unanimously approved.

Federal Regulations require all States to have guidelines for establishing and modifying child support obligations within the State. The State must review, and if appropriate, revise the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support amounts. The guidelines must, at a minimum:

1. Take into consideration all earnings and income of the absent parent;
2. Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and
3. Provide for the child(ren)’s health care needs through health insurance or other means.

The Delaware Child Support Formula, also known as the Melson Formula (hereinafter referred to as “the Formula”), is a rebuttable presumption for calculating child support obligations in this State. If the Court finds the application of the Formula inequitable it must state on the record the result of a calculation pursuant to the Formula and why the application of the Formula would be unjust or inappropriate. 45 C.F.R. § 302.56(g); *Dalton v. Clanton*, Del. Supr., 559 A.2d 1197 (1989).

The 2022 Review occurred during a period of global economic upheaval caused by the COVID-19 pandemic and aggravated by the Russian invasion of Ukraine. Economic inflation unseen in 40 years, including the doubling of the price of gasoline, has significantly challenged the ability of parents to provide for their children. The unprecedented shutdown of the economy forced millions out of the workforce and re-entry into the job market has presented new opportunities for some parents but new obstacles to others.

Each quadrennial review necessarily involves adjustments to previous revisions to assure intended goals are being met and without unintended consequences. The 2018 Review occurred amidst the implementation of major changes in federal regulations intended to emphasize a parent’s “ability to pay” as a critical element in any child support enforcement proceeding. The most profound revision of 2018 was the elimination of income taxes as a deduction for determining net income available for the support of children. The 2022 Review may be best described as a collection of incremental adjustments focused on equity, the needs of children, and practical issues to facilitate the just determination and enforcement of child support obligations.

The Committee was comprised of representatives of the Family Court, General Assembly, Division of Child Support Services, Department of Justice, Family Law Commission, and the Family Law Section of the Delaware State Bar Association. The members were:

Chief Judge Michael Newell
Senator Kyle Evans Gay
Representative William Bush
Commissioner Andrew Southmayd
Commissioner DeSales Haley
Commissioner Emily Farley
Raetta McCall, Family Law Commission
Constance Dorsney, Esquire, Department of Justice
Theodore Mermigos, Jr., Division of Child Support Services
Achille C. Scache, Esquire, Family Law Section
Sharon Page, Family Court Mediator

The Court acknowledges the assistance of Addie Asay, Esq., Eleanor Torres, Esq., and Jessica Melusky, Esq., for their assistance in the committee and subcommittee meetings and in the drafting of the minutes and the final report.

This report is inclusive of revisions made every four (4) years from 1990 through 2018 which are still in effect. Pursuant to the 2006 recommendations, the Formula was restated and adopted on August 28, 2008, as Family Court Civil Procedure Rules 500 through 509. In 2018, Rule 510 was added.

SECTION II: SUMMARY OF RECOMMENDATIONS

Allowances

The Self-support Allowance will be increased from 110% of the Federal Poverty Limit (FPL) to 120% FPL. The Self-Support Protection percentage from 45% to 50% (and 30% to 35% when a parent supports children in 3 or more households). As a matter of course, increasing the Self Support allowance increases the basis of the Primary Support Allowances. In addition, greater emphasis has been placed in the Primary Support Allowances on the basic amount necessary to support a household with children regardless of the number of children. No changes to the Standard of Living Adjustment percentages were proposed.

	Now	Proposed*	change
Self-Support Allowance	\$1,250	\$1,360	+110
Primary Support Allowances			
per household	240	320	+80
per child	340	360	+20
1 child	580	680	+100
2 children	920	1,040	+120
3 children	1,260	1,400	+140
each additional	340	360	+20
Adjustment for other children	70%	70%	0
Self-Support Protection	45%	50%	+5%
3+ h/h Self-Support Protection	30%	35%	+5%
Minimum Order (% of Primary)	20%	20%	0
Minimum Order, 1 child	\$120	140	+20
Minimum Order, 2+ children	\$180	210	+30

*Based on January 2022 Data.

Annual Exchange of Financial Reports

Delaware law requires parties to ongoing child support orders to exchange financial reports annually. A new rule details the parameters of these exchanges and how to enforce them in Court.

Arrears

Regarding the administration of child support arrears, the report reconfirms \$20 per month as the minimum payment towards arrears and clarifies that it applies to the repayment of genetic test costs. Also, the payment on any arrears-only obligations assigned to the State of Delaware shall be \$20 per month if the individual owes current support or arrears to any private individual. Additionally, when using the formula as a guide in determining an affordable arrears payment to use a 50% primary share instead of attempting to estimate the other party's income.

Cash Medical Support

Each parent's share of medical expenses shall be rounded to a multiple of ten (10). Amounts above 50% shall be round down and amounts below 50% will be rounded

up. This means if the parties' primary shares are above 40% but less 60%, that the cash medical split will be 50/50, and neither parent regardless of income will ever be responsible for more than 90% nor less than 10%. Additionally, the cash medical share owed to a guardian where there is only one surviving parent will be 100%, and the cash medical share for an inmate under a "super-minimum" order will be 50%.

Government Reports Evidencing Income

Government issued reports of actual income reported for individuals shall be presumptively admitted into evidence. Child support hearing notices shall advise of the admissibility of the reports and the Department of Justice (DOJ) will supply individual litigants or their attorneys with copies of such reports upon request prior to trial. If a report is materially contradicted by other credible evidence, the report will be either disregarded or leave will be granted to provide further documentation. Additionally, a completed Financial Disclosure Report with attached documentation may be admitted as a single exhibit subject to challenge.

Health Insurance Premiums

Currently, 50% of health insurance premiums that cover the children of an order are a deduction from income and 50% is an itemized primary expense. This adjusts to 75% deduction and 25% primary if the parent supports other children. Now, no part of the cost will be a deduction from income, but the portion allocated as a primary expense has been increased to 75% (or 50% with other children to support).

High Income Adjustment

Currently, each parent's net available income for the Standard of Living Adjustment (SOLA) is decreased by 20% to the extent parent's net available for SOLA exceeds \$15,000 per month. The discount will be increased from 20% to 30%, and the threshold adjusted from \$15,000 to ten-times (10X) the Self-Support Allowance (which is expected to approach \$1500 in 2023).

Incarcerated Parents

After 180 days of continuous confinement, obligations established after February 1, 2019, are reduced to one-half of a minimum order, currently \$60 for one child and \$90 for two or more. However, persons incarcerated for a crime against the support recipient, or the children of the order cannot benefit from the reduction. At the urging of the Federal Office of Child Support Enforcement (OCSE), that exception has been eliminated.

Minimum Income

Presumptive Minimum Income shall be derived from the most recent edition of Delaware Wage survey published annually by the Delaware DOL Office of Occupational and Labor Management Information (OOLMI). The amount shall be the statewide "Entry" level wage at 150 hours per month rounded to the nearest multiple of ten (10). The new amount will be effective February 1 of each year following the issuance of the most recent report.

Nontaxable Income

While the movement from net income to gross income adopted in 2018 has brought greater efficiency and consistency to the application of the Formula, some categories of nontaxable resources can create a windfall. Accordingly, income and resources utilized to determine support that is not subject to income tax under federal law will be increased by 25% to estimate its equivalent taxable earned income value.

Rebuttal

A new rule requires that all contested orders deviating from the Formula be archived for analysis at the next quadrennial review. It further clarifies, however, that mere rebuttal of the evidentiary presumptions within the Formula constitutes the application of the Formula and not deviation from it.

Retroactivity

Sometimes a petition for new support is resolved with the petitioner declining any prospective cash support or by the petitioner's failure to appear. In the event a similar petition is filed in the future, retroactivity prior to the date of previous dismissal shall be prohibited.

Secondary Income

In 2014, the Court adopted factors to determine whether income from a second job should be included in the support calculation. Now the same factors will be applied to determine whether to include passive income such as interest, dividend, and distributions from trusts. One additional factor was added to consider whether the passive income had been historically saved or reinvested.

Shared Incidental Expenses

The Formula already required parents with shared placement to contribute equally to "shared incidental expenses." The rule now provides greater direction on what constitutes a shared incidental expense with both a qualitative description and a list of expenses presumed to be shared.

Supplemental Security Income (SSI)

Supplemental Security Income (SSI) is a need-based benefit sometimes paid into a household on account of a parent's or a child's disability. Until now, the Formula excluded from income SSI paid to a parent but included SSI disbursed on account of a child of the union. Prospectively, all SSI will be excluded.

SECTION III: ANALYSIS OF CASE DATA

The 2018 Report directed the Family Court to create systems to collect data on deviations from the Formula, default orders, incarcerated parents, low-income adjustments, and the use of imputed income. Prior to the onset of the COVID-19 pandemic, work on this task was underway. However, the pandemic diverted the resources necessary to finish the product. In April of 2021, Family Court’s Automated Case Management Information System (FAMIS) went live with changes to collect the data. The data is collected in the child support order creation process. Due to these delays, the data available for this review only represents 10 months of activity and for a period when hearings and filings have not yet re-achieved historic levels or proportions. The data’s primary utility is to start creating baselines for future comparison and to assess whether the tools are eliciting information that is useful and accurate. Nevertheless, even this limited data was interesting.

Average Monthly Orders

	COMMISSIONER				MEDIATION				Average
	<u>222A (New)</u>		<u>222B (Mod)</u>		<u>344A (New)</u>		<u>344B (Mod)</u>		
	\$	#	\$	#	\$	#	\$	#	
NCC	520	346	563	175	471	136	579	97	529
Kent	388	195	428	95	343	95	316	50	379
Sussex	317	285	434	93	333	123	433	52	351
Statewide	419	826	494	363	389	354	474	199	435

Average order amounts in Kent and Sussex come in at 30% less than New Castle which is consistent with lower average incomes and higher proportions of TANF (Temporary Assistance for Needy Families) and Medicaid cases downstate. Also, not surprisingly, the use of low-income adjustments including the imposition of minimum orders, implication of self-support protection, and use of “super” minimum orders for incarcerated parents occurred more frequently downstate than upstate.

Low Income Adj. (LIA)	<u>New Castle</u>		<u>Kent</u>		<u>Sussex</u>		<u>Statewide</u>	
	#	%	#	%	#	%	#	%
Self-Supp Protection	18	39.1%	44	60.3%	62	67.4%	124	58.8%
Minimum Order	18	39.1%	24	32.9%	22	23.9%	64	30.3%
Incarcerated	10	21.7%	5	6.8%	8	8.7%	23	10.9%
Total	46		73		92		211	
% Statewide	21.8%		34.6%		43.6%		100.0%	
Total Orders	808		462		570		1840	
% LIA	5.7%		15.8%		16.1%		11.5%	

Statewide and in every county, nearly half of new support petitions were resolved with a “medical-only” order with no cash support ordered. This typically occurs where the custodial parent either affirmatively declines cash support or where the custodial parent fails to appear for a

hearing or mediation conference. In cases where the children are receiving Medicaid, both parents are placed under obligations to provide health insurance, if available and affordable through employment even if the custodial parent fails to appear. Data also revealed that in Kent and Sussex, 30% of all mediation orders for current support included an agreement to divide unreimbursed medical expenses equally (50/50) rather than by the income proportions provided in the support calculation. Interestingly, this occurred in only 3.4% of cases in New Castle.

Medical Only Orders (new support petitions only)				50/50 Allocation of Cash Medical at Mediation			
New Castle	975	477	48.9%	New Castle	236	8	3.4%
Kent	582	313	53.8%	Kent	134	39	29.1%
Sussex	860	452	52.6%	Sussex	177	55	31.1%
Statewide	2417	1242	51.4%	Statewide	547	102	18.6%

Users reported imputing income in 33% of prospective support cases statewide. Income is imputed for 3 reasons. First, a parent is employed but there is insufficient documentation to prove the parent’s actual income or assess whether it is commensurate with their training and experience. Second, a parent is employed, and their income is documented, but their compensation is less than their reasonable earning capacity. Finally, income is imputed if a parent is unemployed with no income. Insufficient documentation of actual income was the most common reason at 70.5%.

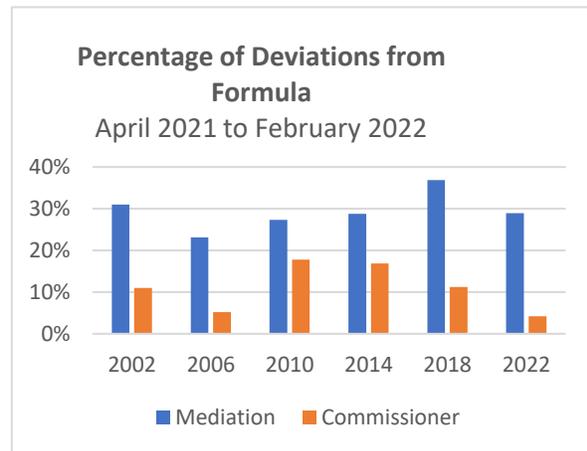
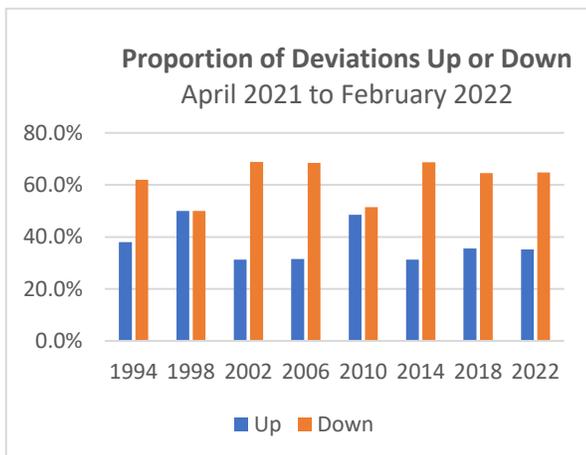
Capturing data correctly and consistently was difficult. Directions to users on how to report this data were ambiguous and subject to personal interpretation. Clarification may lead to more accurate data. For example, how does one classify an unemployed parent who has full documentation of their former income? What if the documentation is a Department of Labor report provided by DCSS? How does one categorize a parent who has documented an adequate part-time income but has been “bumped” up to 35 hours pursuant to Rule 501(c)? The committee has also discussed the number of hours a parent should be expected to work, that is, to identify a child support-specific standard for “full-time.” Perhaps an inquiry into hours per week worked by parents could be part of a re-design of how to best collect income imputation data.

Income Imputation	New Castle		Kent		Sussex		Statewide	
	#	%	#	%	#	%	#	%
Insufficient Documentation	196	65.6%	91	61.1%	196	82.7%	483	70.5%
Unemployed	71	23.7%	29	19.5%	25	10.5%	125	18.2%
Underemployed	32	10.7%	29	19.5%	16	6.8%	77	11.2%
Total	299		149		237		685	
% Statewide	43.6%		21.8%		34.6%		100.0%	
No Imputation	650		325		414		1389	
Total Orders	949		474		651		2074	
Percentage Imputed	31.5%		31.4%		36.4%		33.0%	

Finally, FAMIS collected data on deviations from the formula. Data on deviations has been collected in FAMIS for over 20 years; however, the past format had become less useful. Despite the abbreviated period, reported deviations in 2022 were proportionally consistent with past findings. Historically, on average approximately 30% of obligations out of mediation are deviations from the Formula as opposed to less than 10% of obligations imposed by Commissioners. The data indicates 30-50% of deviations are upward (meaning the resulting order imposes a greater obligation than is calculated under the Delaware Child Support Formula) while 50-70% are downward deviations. For the last 8 years the proportion of deviations has remained steady at 65% upward and 35% downward. There is no analysis of Judges or Commissioners’ decisions where application of the Formula is found to be inequitable after a hearing.

The Judiciary recommends the following:

1. Family Court staff be commended for creating the current data collection system in compliance with the 2018 Report and in the context of very difficult circumstances;
2. Standardized training be created to teach Commissioners, Mediators, and support staff on how to consistently select the intended data options;
3. Imputation of income data be simplified with the following in mind:
 - i. Whether income was imputed is a yes or no question. Either the Court used a parent’s documented income, or an income capacity was imposed.
 - ii. How many hours per week are parents working?
 - iii. To what extent are parents providing documentation?
4. Family Court Judges, Commissioners, Mediators, and attorneys be surveyed to identify areas where they most commonly observe deviation issues.
5. Family Court Judges and Commissioner’s orders that deviate from the Formula be collected and cataloged for analysis at the next quadrennial review.



SECTION IV: STATISTICS FOR CHILD SUPPORT FORMULA REVIEW

Consumer Price Index (Philadelphia-Camden-Wilmington, PA-NJ-DE-MD)

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>4-yr change</u>
CPI-U	250.713	255.020	258.042	264.826	286.111	+14.1%
Food	232.912	237.184	245.706	248.973	270.944	+16.3%
Clothing	111.859	105.391	105.363	108.558	109.296	-2.3%
Shelter	321.166	330.549	339.056	341.102	360.615	+12.3%
Utilities	206.576	210.778	205.930	210.104	254.815	+23.4%

Consumer Expenditure Survey (CEX) for single parent households

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022 (est)</u>	<u>4-yr change</u>
Food	6259	6725	6782	7110	7488	+19.6%
Clothing	1901	1978	1838	1961	1998	+5.1%
FC total	8160	8703	8620	9071	9486	+16.2%
Shelter	10167	10544	10675	11216	11917	+17.2%
Utilities	3595	3639	3744	3784	4158	+15.7%
SU total	13762	14183	14419	15000	16075	+16.8%
Total FCSU	21922	22886	23039	24070	25561	+16.6%
Total Expenses	47945	48615	47053	48290	53288	+11.1%

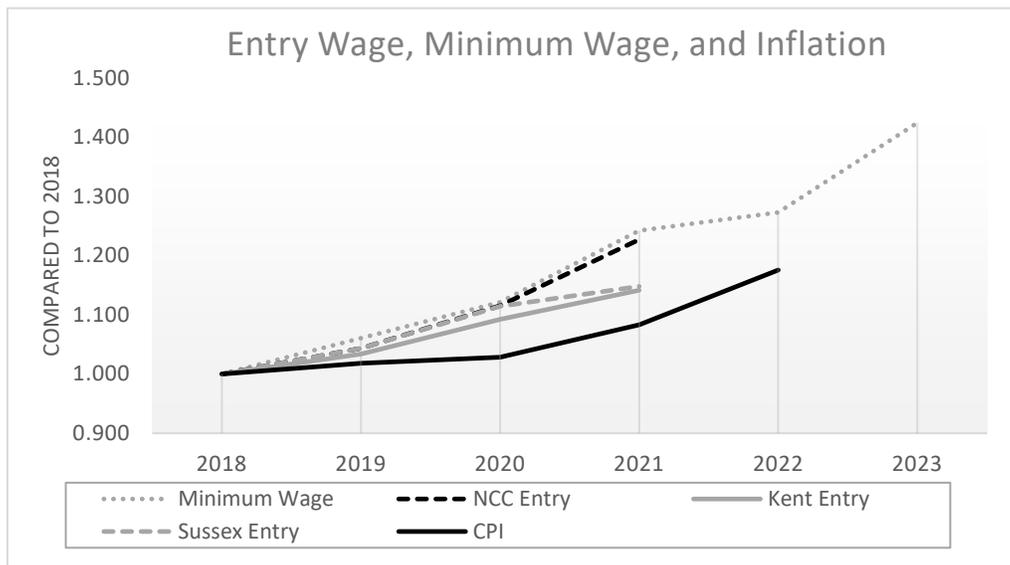
Results are derived from 3-year running averages of annual expenditures measured by the Bureau of Labor statistics (BLS). 2022 data is estimated upon 2021-22 changes to the Consumer Price Index for PA-NJ-DE-MD region for individual expense categories, and overall CPI-U for total expenses.

Surveyed Entry, Median and Experienced Hourly Wages by County

	<u>2018</u>	<u>2109</u>	<u>2020</u>	<u>2021</u>	<u>4-year change</u>
NCC Entry	11.45	11.95	12.77	14.05	22.7%
Kent Entry	10.74	11.1	11.73	12.26	14.2%
Sussex Entry	10.33	10.78	11.51	11.86	14.8%
NCC Median	21.27	21.76	22.76	23.47	10.3%
Kent Median	17.34	17.98	18.63	18.37	5.9%
Sussex Median	15.12	15.59	16.87	17.21	13.8%
NCC Experienced	36.07	36.59	37.79	40.38	11.9%
Kent Experienced	27.17	27.97	29.5	29.85	9.9%
Sussex Experienced	25.11	25.72	27.24	27.41	9.2%

Entry = Average of bottom 30%; Experienced = Average of top 70%.

Data is from the Delaware Office of Occupational and Labor Management Information (OOLMI).



We live in economically tumultuous times. While economic indicators suggested nothing new for 2019, COVID-19 then prompted a purposeful shutdown of the economy for most of 2020 with an inconsistent and clumsy restart into 2021. Hyper-partisanship, massive government spending, labor shortages, sharply increased wages, war in Europe, and recurrent coronavirus mutations was met with levels of inflation in 2021 and 2022 unseen in decades.

To assess the economic impact of these events on Delaware families, the Court examined the Consumer Price Index (CPI) specifically regarding the Philadelphia metropolitan area (including large parts of Delaware, New Jersey, and Maryland), the Consumer Expenditure Survey (CEX) specifically regarding single parent households, and Delaware Wages published annually by Delaware Department of Labor Occupational and Labor Management Information (OOLMI).

CPI indicates that the cost of food has modestly outpaced inflation while the cost of shelter increased at slightly less than inflation. The cost of clothing has remained low, but the cost of utilities soared. The CEX reveals that single parent household expenditures for the core needs of food, clothing, and shelter all increased at greater rates than indicated by the overall cost of those categories under the CPI. Generally, expenditures for food, clothing, shelter, and utilities constitutes approximately one-half of total expenditures for low-income households. Over the last four (4) years, those expenditures in single parent households have increased by 16.6% while spending on the remaining categories increased by only 6.5% suggesting that such households have had to increasingly sacrifice discretionary income to meet basic needs.

Appropriate hourly wages and hours per week parents should reasonably be expected to earn and work especially amidst recent and anticipated increases to Delaware’s minimum wage were intensely debated. The OOLMI data reveals significant disparity of wages between the counties. For example, entry level wages in New Castle County have so far tracked minimum

wage increases while downstate wages have not kept pace. Currently, inflation and minimum wage curves are on parallel trajectories. If that continues, the minimum wage will be successful as a safety net but not as a driver of upward mobility as proponents may have wished. Hopefully, the next four years will bring greater clarity.

SECTION V: RECOMMENDATIONS

A. Self-Support and Primary Support Allowances

As the originator of the self-support allowance, Delaware has always considered the needs of obligated parents and welcomes federal input. This proposal addresses concerns that the needs of children have not been adequately considered amid the continuing federal emphasis on obligated parents who earn less than 200% of the Federal Poverty Guidelines (FPL). An increase to the Self-Support Allowance and re-affirmation of Self-Support Protection sufficiently addresses the basic needs of obligated parents and provides an opportunity to re-assess the adequacy of those elements of the Formula that address the needs of children.

The Court is increasing the Self-Support Allowance from 110% of FPL to 120%. This will assure that most obligated parents with income of less than 200% FPL qualify for the Formula's low-income protocols. This will be modestly offset by an increase to the Self-Support Protection from 45% to 50% (30% to 35% when a parent has children to support in 3 or more households) to better assure that the children's needs are paramount when sufficient income has been attained.

In 1998, the Court first incorporated the findings of the National Institutes of Health (NIH), *Measuring Poverty, A New Approach* (1995) which presented a methodology of standard values for each member of a household subject to an arithmetic power to simulate the economies of scale. These findings play a large part in the study of poverty to this day. The report recommended a power between a range of ".65" to ".75" with the lesser powers representing greater economy and efficiency. While the Court has relied on the NIH report to a greater or lesser degree for the last 24 years, the Court has primarily used the most "efficient" power of ".65" because it was most consistent with the Formula allowances used historically. However, considering the economic upheaval of COVID-19, the war in Ukraine, and the nation's hyper-partisanship, with accompanying inflation and labor uncertainty, basing calculations on the assumption that households operate at optimum efficiency is not realistic.

The U.S. Census Bureau employs a power of ".70" representing a middle-of-the-road economy of scale when using these principles in its Supplemental Poverty Measure. In our context, a power of ".70" would increase our self-support allowances by approximately 10% (for example, increasing a 1-child allowance from 46.5% of self-support to 50.9% of the self-support allowance). A power of ".69" calibrates a 1-child allowance at 50% of self-support and extrapolates to approximately 26.5% for each additional child. The primary support allowances have now been determined using this more moderate approach. No changes to the Standard of Living Adjustment (SOLA) percentages have been proposed.

The Rule determines the primary support allowances by establishing a household component and a per child component. The components are determined by a percentage (25%) of the Self-Support Allowance plus or minus a specific dollar amount. This allows for the smooth growth and transition of the allowance from year to year. It also allows for the creation of a chart showing

what all the allowances will be when the Federal Poverty Guidelines reaches specific levels. This facilitates ease of administration and transparency.

Rule 502(d) Self-support Allowance

The Self Support Allowance shall be ~~40%~~ 120% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted in January of each year.

Rule 503. Primary Support Need.

(b) Primary Support. Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

(1) Primary Allowances. The primary allowances shall be comprised of two components, a per household component and a per child component:

(i) The per household component is 25% of the Self-Support Allowance minus ~~\$72~~ \$25.

(ii) The per child component is 25% of the Self-Support Allowance plus ~~\$24~~ \$20.

(iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).

(iv) To determine the allowance for each household, multiply the number of children by the per child component and then add the per household component to the result. The allowances shall be adjusted in January of each year.

Rule 506. Minimum Orders and Low-Income Adjustments.

(b) *Self-Support Protection*. Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than a designated percentage of net available income as determined under Rule 502(a). The designated percentage shall be ~~45%~~ 50% unless the parent has children to support in three (3) or more households in which case the percentage shall be ~~30%~~ 35%.

chg	Poverty Guideline		Self Support	per h/h	per child	Primary Allowance		Minimum Order	
	from	to				1 child	2 children	1 child	2 children
2022*	13,550	13,640	1360	320	360	680	1040	140	210
0.8%	13,650	13,740	1370	320	360	680	1040	140	210
1.5%	13,750	13,840	1380	320	370	690	1060	140	210
2.3%	13,850	13,940	1390	320	370	690	1060	140	210
3.0%	13,950	14,040	1400	330	370	700	1070	140	210
3.8%	14,050	14,140	1410	330	370	700	1070	140	210
4.5%	14,150	14,240	1420	330	380	710	1090	140	220
5.2%	14,250	14,340	1430	330	380	710	1090	140	220
6.0%	14,350	14,440	1440	340	380	720	1100	140	220
6.7%	14,450	14,540	1450	340	380	720	1100	140	220
7.4%	14,550	14,640	1460	340	390	730	1120	150	220
8.2%	14,650	14,740	1470	340	390	730	1120	150	220
8.9%	14,750	14,840	1480	350	390	740	1130	150	230
9.6%	14,850	14,940	1490	350	390	740	1130	150	230
10.4%	14,950	15,040	1500	350	400	750	1150	150	230
11.1%	15,050	15,140	1510	350	400	750	1150	150	230
11.8%	15,150	15,240	1520	360	400	760	1160	150	230
12.6%	15,250	15,340	1530	360	400	760	1160	150	230
13.3%	15,350	15,440	1540	360	410	770	1180	150	240
14.1%	15,450	15,540	1550	360	410	770	1180	150	240
14.8%	15,550	15,640	1560	370	410	780	1190	160	240
15.5%	15,650	15,740	1570	370	410	780	1190	160	240
16.3%	15,750	15,840	1580	370	420	790	1210	160	240
17.0%	15,850	15,940	1590	370	420	790	1210	160	240
17.7%	15,950	16,040	1600	380	420	800	1220	160	240
18.5%	16,050	16,140	1610	380	420	800	1220	160	240
19.2%	16,150	16,240	1620	380	430	810	1240	160	250
19.9%	16,250	16,340	1630	380	430	810	1240	160	250
20.7%	16,350	16,440	1640	390	430	820	1250	160	250
21.4%	16,450	16,540	1650	390	430	820	1250	160	250

*This represents what the values would have been if these proposals had been in place in February of 2022. The percentages represent the degree of inflation after 2022 that will trigger future increases.

	Now	Proposed*	change
Self-Support Allowance	\$1,250	\$1,360	+110
Primary Support Allowances			
per household	240	320	+80
per child	340	360	+20
1 child	580	680	+100
2 children	920	1,040	+120
3 children	1,260	1,400	+140
each additional	340	360	+20
Adjustment for other children	70%	70%	0
Self-Support Protection	45%	50%	+5%
3+ h/h Self-Support Protection	30%	35%	+5%
Minimum Order (% of Primary)	20%	20%	0
Minimum Order, 1 child	\$120	140	+20
Minimum Order, 2+ children	\$180	210	+30

*Based on January 2022 Data.

B. Annual Exchange of Financial Reports

Section 513(c)(1) of Title 13 of the Delaware Code and Family Court Civil Rule 16(a) requires parents to exchange annually completed financial report forms. The purpose of the exchange is to allow each parent to determine whether to file for modification of the child support obligation. This statutory duty is rarely performed. Part of the reason may be that there have been no procedures governing how the exchange is supposed to occur. Parents may also simply, and mutually, not want to regularly share their private financial information with the other parent. To remedy this omission, a new Civil Rule lays out the process for the annual exchange.

Rule 508. Modification.

(f) Annual Document Exchange. Any party subject to an active current child support obligation may initiate an exchange of child support financial disclosure reports as required by Rule 16(a). Specifically:

1. An exchange is initiated by a party to an ongoing current support obligation sending their own completed financial report along with a blank financial disclosure report form to the other party to complete. The receiving party shall return their completed report with all attachments within 30 days.

2. If the exchange is initiated prior to May 1, tax returns exchanged shall be the most recently filed by the party. After May 1, tax returns exchanged shall be for tax year immediately preceding. If the party has received a tax filing extension, they shall instead submit equivalent financial records such as a draft return with attachments. An exchange may be limited in scope such as the parties' 3 most recent pay stubs incident to a recent change in employment.
3. Attached to each financial disclosure report shall be all documentation otherwise required by Rule 500(c) to be submitted in preparation for a hearing.
3. No party shall initiate an exchange more than once per year or within 6 months after the most recent Court determination of current support (including the dismissal with prejudice of a petition for modification), or in the calendar year in which the last child subject to the order will reach their 17th birthday. A nonparent child support recipient shall only be required to provide information that is directly relevant to the calculation of child support.
4. The Court will assist, upon request, with the exchange if compliance may violate a no-contact order with the other party or any resident in the other party's home, or if a party has been granted confidential address designation pursuant to Rule 90.1(d).
5. An independent Motion to Compel may be filed upon an opposing party's failure to comply with a properly initiated exchange. The motion may be decided on the papers or after a hearing at the discretion of the Court. The motion shall have attached a copy of the moving party's own financial report and proof of actual delivery to and receipt by the noncompliant party.
6. If the Court finds a party has failed to make a good faith effort to comply with this rule or used this rule to harass or abuse the opposing party, the Court may:
 - i. Direct the party to comply with the rule within a time certain or else appear before the Court for contempt;
 - ii. Authorize the compliant party to file a petition for modification not subject to Rule 508(c).
 - iii. Require the noncompliant party to pay court costs and attorney's fees incurred by the compliant party; or
 - iv. Any other relief the Court finds just and appropriate.
7. The Division of Child Support Services and Department of Justice are not required to facilitate the operation of this rule, and the fact of those agencies' involvement shall not constitute a basis to relieve or excuse either party of their obligations under this rule.

C. Arrears Payments

Collection of retroactive support, child support arrears, and genetic testing expenses represents an ongoing source of frustration for litigants as well as the Family Court. In 2018, Family Court Rule of Civil Procedure 509(d) was modified to set the presumptive retroactive support or arrears payment to the greater of \$20 per month or 20% of the current support obligation. The Rule further provides that when current support has terminated, but a past due balance remains, “repayment shall approximate the amount that would have been due had support been ongoing.” In other words, a parent must continue paying towards their past due child support balance in the same periodic amount they had been previously ordered to pay in current support and arrears except all allocated to the remaining balance.

Where a parent has multiple obligations, repayment can be especially difficult and federal regulations control how partial or additional payments must be disbursed by DCSS between multiple obligations. The regulations prioritize current support over arrears, and arrears owed to private individuals over arrears assigned to state entities.

Repayment of genetic test costs also causes some frustration with imposition of very modest repayment terms and, sometimes, no payment at all. This permits the genetic test debt to linger for years after it reasonably should have been paid. To resolve these various issues and ensure timely repayment of retroactive support, child support arrears and genetic testing expenses, the rules will be amended as follows:

Rule 509. Retroactive Support

- (d) Retroactive support and arrears should be repaid at a rate equal to 20% of the most recent calculation of current support (but not less than \$20) if:
1. Current support is ongoing;
 2. Current support is not ongoing, but the subject child or children reside in the home of obligated parent; or
 3. Current support is not ongoing, but the retroactive support is owed to the State. However, when imposing a payment term in a case where all arrears have been assigned to the State of Delaware, and the individual has other child support accounts owed to private individuals or other States, then the repayment element of the obligation owed to the State of Delaware should be \$20 per month.
 4. In addition to any other repayment term, genetic test costs should be paid at the rate of \$20 per month.

In all other instances, repayment should approximate the amount that would have been due if current support had been ongoing. If a calculation is performed, it should be based upon the obligated parent’s income alone with a 50% primary share and increased by 20% to simulate an arrears payment. Deviation may occur

by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

D. Cash Medical Support

The Formula directs parents to share unreimbursed medical expenses (Cash Medical Support) by the primary share percentages on Line 9 of the Formula worksheet representing their proportional responsibility for the financial needs of the children. Cash Medical Support is generally reported to be underutilized and underenforced. Parents, typically, handle the sharing of these expenses informally amongst themselves and while many obligated parents readily contribute, some support recipients are forced to either come back to court or just give up because it is not emotionally worth the trouble.

As discussed previously in Case Analysis, many families opted for a 50/50 division of medical expenses in lieu of by income shares. The reasons are uncertain but could include a general affinity for equal division or for the simplicity of round numbers. Additionally, single digit percentage allocation of medical expenses on the custodial parent may diminish the incentive to be efficient in determining treatments and medical providers.

Hopefully, a simplified expression of each parent's share of Cash Medical Support will facilitate greater participation by both parents in Cash Medical Support. Creating ranges, rounding numbers, and setting absolutes (neither greater than 90% nor less than 10%) serve that goal. The rule is being amended to round values that are not already a multiple of 10% towards 50%. In other words, the medical percentages will always be multiples of 10% following the first digit of the higher share. Therefore, 54/46 and 41/59 both become 50/50, 95/5 is 90/10, and 37/63 is 40/60. The automated calculation will display the result.

Rule 507. Medical Support

(b) Cash Medical Support. Every new or modified order for current support entered on or after January 1, 2015, shall impose an obligation of cash medical support on each parent who is a party to the petition.

- (1) Cash medical support shall include all healthcare expenses not reimbursed by insurance, and incurred for the children for whom the order is entered. Such expenses include, but are not limited to, medical, dental, orthodontic, vision, and psychological counseling costs incurred on behalf of each child.
- (2) Each parent's obligation for cash medical support shall be determined by multiplying the amount of unreimbursed healthcare expenses by the parent's primary share percentage as defined in Rule 503(a) but rounded to a multiple of 10% as herein described. As needed, percentages greater than 50% shall round down to the next 10% interval; percentages less than 50%

shall round up. Other than a child with only one known living parent, the percentage shall be neither greater than 90%, nor less than 10%. If the support recipient is a nonparent and the child has only one known living parent, then the cash medical support percentage is 100%. The cash medical support percentage for inmate obligations imposed pursuant to Rule 506(c) shall be 50%.

E. Government Reports Evidencing Income

The Formula uses both parties' gross income to calculate support, but challenges arise when parents do not come prepared with sufficient documentation regarding their earnings. While notices are sent reminding litigants of the types of documentation necessary, parties are frequently unprepared, and the Court is left with inadequate evidence as to their actual earnings. Financial disclosure reports also inform parties of the information they need to provide but are often not completed prior to the hearing and are not supplied to the Court. This makes it difficult for the Court to determine income for purposes of support. The current rules allow for the Court to rely on wage tables compiled annually by the Delaware Department of Labor to impute income in these situations. However, the federal regulations adopted in 2018 emphasize the importance of using actual income information to determine support. Therefore, quarterly wage data compiled by the Department of Labor and the United States Secretary of Health and Human Services will be allowed to be used as presumptive evidence of earnings, when available, in determining support when a litigant appears unprepared.

At the state level, employers are required to report their employees' gross quarterly income to the Delaware Department of Labor to determine unemployment taxes and earnings history for unemployment. The Department of Labor then creates a record of gross wages as supplied by employers. This is referred to as the "DOL report." Under 19 *Del. C.* § 3125(a)(2), that quarterly wage information is required to be reported to the Division of Child Support Services to establish, modify, and enforce child support orders. Each state has similar requirements. Likewise, the disclosure of records from employers nationwide is mandated under the Social Security Act to establish, modify, and enforce child support to improve the effectiveness of the child support program. *See* 42 U.S.C. §§503(h)(1)(A) and 666(c)(1)(C). These reports are referred to as the Income and Quarterly Wage Tables ("INQT"). Income information in the INQT reports is provided to DCSS by the United States Secretary of Health and Human Services. Both the DOL and INQT reports provide actual income information. By expanding the use of these reports, the calculations will be more precise, and therefore fairer, to the litigants before the Court.

Under the new rule, DOL and INQT reports will be presumptively admissible evidence in a hearing without further authentication when notice is provided to the litigant of the potential use of these documents and how they can be obtained. Commissioners may keep the record open for a litigant who has provided documentation that appears to differ from the reports or did not receive

notice, to present additional contrary evidence. Additionally, to ensure confidentiality, all but the last four (4) digits of the litigant's Social Security Number be redacted.

As part of this amendment, the Court also recognizes the need to make the format and substance of the notices clearer by delineating within the notices what parties are expected to bring to Court, as well as the availability of the DOL and INQT reports, how to request them, and the fact they may be used. Rule 16.1(a)(7) is duplicative and has been deleted. Rule 501(m) shall be redesignated as Rule 500(c) and a new subsection inserted as follows:

Rule 500. Delaware Child Support Formula; general principles.

(d) Notice; Admissibility of Reports

- (1) Any notice for mediation or a hearing to be conducted under the Formula shall include, in plain language, an advisory that parties are obligated to bring a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation.
- (2) Any notice for mediation or a hearing under this rule shall also advise the parties that quarterly wage reports provided by their employer(s) to the state and federal Departments of Labor may be presented in any case involving the Division of Child Support Services. The notice must advise the parties that these reports are available to the parties prior to the mediation or hearing upon request to the Delaware Department of Justice, Child Support Unit (DOJ). Contact information for the DOJ must be included in the notice.
- (3) At any mediation or hearing conducted under the Formula, the Court may consider representations of income for each party as reported by employers to the state or federal Departments of Labor. Income reports provided by the state or federal Departments of Labor shall be presumptively admissible evidence without further authentication. If the contents of a report admitted under this rule are materially contradicted by credible documentation of income or testimony during a hearing, or if a party did not receive notice that the income reports could be presented at the hearing, then the Court may in its discretion disregard the report or provide the parties at least ten (10) days to submit further documentation to resolve the discrepancy. All but the last four (4) digits of any Social Security number shall be redacted. Further redaction may occur upon leave of court for good cause shown.
- (4) A fully executed Child Support Disclosure Report with authorized documentation may be admitted into evidence as a single exhibit subject to challenge of its individual components.

F. Health Insurance Premiums

The treatment of health insurance premiums in the Formula has evolved over time. While premiums were once only a deduction from income that modestly affected the obligation (especially when acquired by the custodian), since 2014, health insurance premiums “allocable to the children” have been treated as a primary expense on par with tuition or childcare. The purpose was to recognize the importance of the expense as well as equitably share the ever-rising cost of health insurance for children. In the 2014 revisions, the allocable amount was to be the difference between the cost of “employee only” and “employee and children” and had to be documented. When real-world experience showed few parents adequately documented the difference, the 2018 revisions established a 50% as a primary expense and 50% deduction from income split (75/25 when the parent had other children to support) in order to more fully realize the policy of including health insurance premiums allocable to children as a primary expense.

Child support calculations show that when health insurance is purchased by the obligated parent, this approach shifts a significant but equitable proportion of the expense to the support recipient. When health insurance is purchased by the recipient, however, this treatment fails to shift a corresponding share of the health insurance premium to the obligated parent. This is because deductions from an obligated parent’s income have a greater mathematical impact on the child support amount than similar deductions from the income of a support recipient. Therefore, the degree to which the expense of providing health insurance is shared depends upon which parent incurs the cost.

To address this discrepancy, the proportion allocated as a primary expense has been increased from 50% to 75% (and from 25% to 50%, if other children are supported) and has been eliminated entirely as a deduction from income. By moving consideration to solely within the category of primary needs, the parents’ net financial circumstances are affected in the same amount regardless of which parent pays for the premium except the 25% share attributable to the parent’s own coverage. This is consistent with data from the Bureau of Labor Statistics (BLS) representing that an employee’s share of health insurance for family coverage is typically four (4) times the cost for the employee alone. If the children are not covered, then premiums covering only the parent or other dependents would still be deductions from income. The rule regarding premiums paid by guardians or stepparents would be unchanged.

Rule 502(c) Deductions. -- Allowable deductions include:

- (1) Medical insurance. -- Medical insurance premiums (including COBRA payments) paid by either parent (but not a guardian or stepparent) and regardless of which persons are covered by the policy are deductible ~~except for any portion of a premium found allocable to a child and included~~ unless the policy also covers the children of the union and are includable as an element of primary support pursuant to Rule 503(b)(3).

Rule 503. Primary Support Need

(b) *Primary Support.* Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

(3) Health insurance premiums. A portion of premiums paid by a party for health insurance covering dependent children of the union shall be included as an element of primary support as follows:

(i) That portion shall be ~~one-half (1/2)~~ three-quarters (3/4) of a party's out-of-pocket premium unless the party has other minor children to support as described in Rule 502(e) in which case the proportion will be ~~one-quarter (1/4)~~ one-half (1/2).

(ii) ~~Coverage acquired through a stepparent's employment or by a guardian may be an element primary support but only if the policy does not cover the stepparent's or guardian's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (i) by reference to the parent to whom the stepparent is married. This may include insurance premiums paid by a guardian or through a stepparent. However, no recognition will be given for a premium paid by a guardian or through a stepparent if the policy covers any of the guardian's or stepparent's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (1) by reference to the parent to whom the stepparent is married.~~ The portion allocated to the children by way of a guardian shall be controlled by reference to whether or not the guardian is also guardian to other children of other unions.

G. High Income Adjustment

In 2018, the Court adopted a High-Income Adjustment (HIA) to address the concern the Formula was less useful at high incomes and subject to regular efforts to rebut its presumptive applicability. The intention of the HIA was to reduce the effective Standard of Living Adjustment (SOLA) when net income available for SOLA exceeds \$15,000 per month (gross income of approximately \$200,000 per year) by 20%. However, the coincidental effect of the 2018 transition from net to gross income diluted that adjustment, resulting in the real SOLA being decreased by less than 10% from pre-2018 levels. Accordingly, the marginal HIA has been increased from 20% to 30% and the threshold has been indexed at ten times (10X) the self-support allowance (as opposed to a static \$15,000). These changes will help to realize the original intent of the HIA and allow it to self-adjust going forward. The hope is that the self-adjusted HIA will minimize the number of cases in which parties seek to rebut the presumptive applicability of the Formula and further the goal of the Formula being applicable across socio-economic levels.

Rule 504. Standard of Living Adjustment

- (b) If either or both parents' Net Available Income for the SOLA exceeds \$15,000 ten times (10X) the Self-Support Allowance, then each parent's Net Available Income for SOLA will be reduced by ~~20%~~ 30% of their combined excess.

H. Incarcerated Parents

In 2018, motivated by new federal regulations emphasizing an obligated parent's ability to pay especially in the context of incarceration, the Formula was amended to automatically reduce the obligation of incarcerated parents who had been confined continuously for more than 180 days to one-half of a minimum order, sometimes referred to as a "super-minimum" (currently \$60 per month for one child and \$90 for 2 or more). The 2018 revisions included mandatory exceptions for circumstances where the obligated parent was incarcerated for a crime against the child support recipient or a child of the obligation, or for nonpayment of child support. In those circumstances, the parents' incarceration was not considered evidence of a diminished earning capacity and the pre-incarceration obligation was to remain in place notwithstanding. Following the 2018 revisions, the federal Office of Child Support Enforcement (OCSE) reviewed the quadrennial adjustments made to the Formula to assure compliance with federal law and took the position these exceptions are inconsistent with the relevant federal regulation. Accordingly, the exceptions have been removed from the Formula.

Removing these mandatory exceptions from the Formula does not mean that the Court is unable to consider the circumstances that lead to a parent becoming incarcerated. Any application of the Formula may be rebutted, and a full obligation may be imposed against an incarcerated parent if the support recipient can prove the imposition of the "super-minimum" would, under the particular facts of the case, create an inequitable result. In other words, the Court may consider the status of the support recipient or the child as a victim, but must do so within the totality of the circumstances rather than under a mandatory rule.

Rule 501. Reasonable Earning Capacity

- (k) Incarcerated parents. -- Service of a term of incarceration that exceeds 180 days of continuous confinement may be considered as evidence of a diminished earning capacity unless the individual ~~(1)H~~ has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances, ~~or (2) Is incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.~~

Rule 506. Minimum Orders and Low Income Adjustments

- (c) Automatic Adjustment for Incarceration. --

- (1) After 180 days of continuous incarceration ~~but subject to the exceptions in Rule 501(k)~~, every prospective current support obligation established or modified after January 31, 2019, will automatically decrease to one half of the minimum order amount recited in Rule 506(a) as of the date of the order. This also applies to new support and modification petitions wherein the obligated parent is currently incarcerated and has been continually confined for more than 180 days at the time of the hearing or mediation conference. The presumption of a reduced obligation shall be rebutted if the obligated parent has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.
- (2) A petition may be filed to determine the exact date of adjustment and whether ~~any of the Rule 501(k) exceptions apply~~ the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.
- (3) The obligation will not revert upon release from incarceration, but release shall constitute a substantial change of circumstances for modification pursuant to Rule 508.
- (4) Every written order for new or modified current support shall advise of this potential adjustment.
- (5) Incarcerated parents subject to current child support orders that issued prior to February 1, 2019, or who were subsequently denied relief due to the underlying reasons for their incarceration, may petition for modification under the standards recited in subsection (1). However, if the obligation had already been calculated on the basis of continuous confinement under the prior standard, then relief may only be awarded two and one-half (2½) years after the last determination of current support.
- (6) The Division of Child Support Services (DCSS) may utilize the procedures outlined in Rule 302 to facilitate these adjustments.

I. Presumptive Minimum Income

Minimum Presumptive Income under the Formula is the lowest income that an otherwise able-bodied parent will be imputed if they are not working or there is insufficient information available regarding their earning capacity. Minimum Presumptive Income was based on statutory minimum wage, 40 hours per week (temporarily reduced to 35 hours pending this quadrennial review). Recent aggressive increases to the Delaware minimum wage made it appropriate to review this practice. Minimum wage is currently \$10.50 and will be \$11.75 per hour in 2023, \$13.25 in 2024,

and \$15 in 2025. Increases to hourly wages do not necessarily equate to proportionate increases to average monthly income. Some employers will reduce hours or hire multiple part-time employees rather than full-time employees. The nature of scheduling for low paying jobs can make it difficult to cobble together multiple jobs to equal a 40-hour work week. If employers react to rising wages by cutting hours, individuals subject to Presumptive Minimum Income could face being imputed with higher income than is realistically available to them. On the other hand, these minimum wage increases may indeed result in a proportionate increase in overall income. Fortunately, all should ultimately be revealed in the annual wage surveys published by the Delaware Office of Occupational and Labor Management Information (OOLMI) which will be available for the next quadrennial review.

Many years ago, the Formula defined minimum income as one-half of the statewide median wage (at 40 hours per week) from the most recent OOLMI report. The standard was abandoned when it began outpacing the monthly income of many parents. The OOLMI tables and the related tables at the Bureau of Labor Statistics (BLS) provide other options. For example, OOLMI reports an “entry” level wage (the average of the bottom 30%). The BLS reports wages in the 10th percentile meaning that 9 out of 10 workers earn more and only one out of 10 earn less. Interestingly, entry level at 35 hours per week and 10th percentile at 40 hours per week produce very similar results. Therefore, these lower hourly wage indicators may provide a more sensitive low-income threshold.

Presumptive Minimum Income will be based on the Delaware Statewide “Entry” level wage at 150 hours per month. This will be drawn from the most recent OOLMI report, rounded to the nearest multiple of ten, and adjusted each year. The OOLMI tables come out in May of each year and reflect the wages of the previous year. Therefore, the Minimum Presumptive Income utilized in January of 2023 will approximate the 10th percentile wage as surveyed from 2021, 40 hours per week. The proposal purposely de-emphasizes a set hourly rate in favor of a monthly figure. Nevertheless, the 10th percentile wage from up to two years ago represents a rational floor of what a parent should be able to earn today. If this had been applied to the current year (2022), the presumption would have been \$1820 per month which would be the equivalent of \$10.50 per hour for a 40-hour week or \$12 per hour for a 35-hour week. Midyear 2022 inflation data suggest the presumption may surpass \$1900 per month by 2023.

Rule 501. Reasonable Earning Capacity

(f) Minimum Income – In any instance not governed by subsection (b) or (c) of this Rule, every parent will be presumed to have a reasonable earning capacity of not less than ~~the greater of the Federal or state statutory minimum wage at 40 hours per week (173.33 hours per month)~~ the “Entry” level wage statewide for all occupations as reported in the most recent edition of “Delaware Wages” published annually by the Delaware Department of Labor Office of Occupational and Labor Management

Information (OOLMI) at 150 hours per month rounded to the nearest multiple of ten (10). This shall be effective February 1 of each year as provided in Rule 500(b).
~~As related to this subsection, when using the State statutory minimum wage, the court will not utilize the statutory training wage or youth wage.~~

J. Nontaxable Income

The 2018 Quadrennial Review profoundly changed the Formula by eliminating the deduction of income taxes in determining net income available for primary support. The Standard of Living Adjustment (SOLA) percentages were reduced by a third and the Self-Support and Primary Support Allowances were modestly adjusted to make the transition as mathematically neutral as possible. In other words, instead of specifically deducting estimated income taxes, the fact of taxation was “baked into” the Formula. This reform greatly simplified the calculation of support eliminating the need for users to identify the proper tax treatment for each type of income. One exception was made for self-employed individuals who could document actual payment of self-employment tax.

However, some persons receive significant nontaxable income does not need to have taxes “baked in” and provides a windfall to the parent receiving the income while cheating the children out of an enhanced standard of living. A case was described of a parent receiving significant Veterans (VA) disability benefits based upon a “100%” disability rating but who was also fully employed. VA benefits are not taxable. In comparison with the pre-2018 Formula, the Court estimates 20% of the nontaxable income is sheltered from child support. On the other hand, the Court is wary of sliding back into the problems the reform was intended to solve.

Workers Compensation is another type of nontaxable income wherein persons injured on-the-job receive two-thirds of their average pay with the missing third intended to represent income taxes that would have normally been paid. Other types of nontaxable income include life insurance proceeds, some S-corporation distributions, military pay allowances, gifts and inheritances, qualified Roth IRA distributions, need-based entitlements, various types of emergency assistance, endowment contract proceeds, some Social Security benefits, restitution, some compensation of clergy, and personal injury awards and settlements. While some of these benefits are temporary and need-based, others constitute real and substantial ongoing resources.

The Court determined that some designated nontaxable income should be augmented in the child support calculation by 25% to simulate a taxable gross amount. This would include periodic payments from a private or public entity intended to replace income due to an injury or disability including public and private, and short-term and long-term disability benefits other than those paid by the Social Security Administration. The 25% supplement would also apply to workers

compensation, personal injury awards and settlements, and military allowances. The rule will not apply to income paid “under-the-table” or self-employment income for which income tax returns are not filed. If the Court finds in those instances that the evidence understates a parent’s true income capacity, then the remedy is to impute an appropriate level of taxable income.

Rule 501. Reasonable Earning Capacity.

(n) Nontaxable Income Adjustment. Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability, personal injury awards or settlements determined by the Court to be income for support purposes, military allowances, or any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law shall be increased by 25% to estimate the taxable earned income equivalent. This shall not apply to payments made by the Social Security Administration.

K. Rebuttal of the Formula

The adoption of the High-Income Adjustment (HIA) has also caused confusion about whether the Formula remains a rebuttable presumption. As stated earlier in this report, the Delaware Supreme Court has endorsed the Formula as a rebuttable presumption for determining a parent’s support obligation unless the facts of the case reveal the result to be inequitable. *Dalton v. Clanton*, 559 A.2d 1197 (Del. 1989). In *Ford v. Ford*, 600 A. 2d 25 (Del. 1991), the Court held that while children are entitled to share in a wealthy parent’s standard of living, the formula should not distribute the parent’s wealth. The Court found that the Formula’s Standard of Living Adjustment (SOLA) was susceptible to manifesting such a distribution. Arguments to rebut the formula are commonplace in high-income cases and the HIA was intended to mitigate that tendency. The HIA reduces SOLA by 30% to the extent either parent’s income exceeds approximately \$200,000 per year. Some have argued that the adoption of HIA abrogated *Ford* by mitigating against a manifest distribution of wealth. This is not true. The objective of every quadrennial review is to make the Formula more comprehensive, but the nature of the Formula as a rebuttable presumption does not change. While the HIA may render a high-income rebuttal less likely, it does not preclude the ability of parties to argue that the SOLA as calculated may go beyond sharing in a wealthy parent’s lifestyle but constitute a distribution of the wealth itself.

What constitutes a rebuttal of the Formula? While *Ford* and *Dalton* deal with rebuttal of the presumptive applicability of the Formula, the Formula itself contains several evidentiary presumptions that are routinely applied by the Court in performing calculations under the Formula (*see, e.g.*, Rule 501(a) (providing for presumption that a parent has achieved their reasonable earning capacity); 501(g) (providing that receipt of unemployment creates presumption of termination without cause); 509(a) (providing for 6 months of presumed retroactivity in initial child support determination)). Application of the evidentiary presumptions within the Formula do not constitute rebuttals of the Formula under *Dalton* or *Ford* and the Court believes that fact should be clear in the Rules.

Given the small number of cases in which the Formula is rebutted, it is important that future quadrennial reviews have the benefit of access to such decisions to inform future modifications to the Formula. In *Ford*, the Delaware Supreme Court held that:

“to the extent that cases are decided that vary from the Melson Formula and are affirmed on appeal or unchallenged, [the Family Court's recorded reasoning] will provide the basis for assuring uniformity to the parties in similar situations.” Thus, the Family Court's discussion of its reasoning will aid future litigants to predict what their obligations will be if the Melson Formula is inapplicable. In this way, the qualities of uniformity and predictability will be preserved, at least to some degree, in cases where the presumption of applicability has been rebutted.

Ford v. Ford, 600 A.2d at 30–31. (internal citations omitted)

To that end, the Family Court will adopt procedures to archive every contested order that deviates from the Formula in whole or in part (but not those that simply apply the evidentiary presumptions within the Formula) for review as part of each subsequent quadrennial review.

Rule 500. Delaware Child Support Formula; general principles.

~~(a) **Rebuttable presumption.** The Delaware Child Support Formula (the “Formula”) shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. The Formula may be rebutted in whole or in part. Every order rebutting the Formula shall state the reason for the deviation. The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.~~

(1) The Delaware Child Support Formula (the "Formula") shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. Every contested order deviating from the Formula shall state the factual findings and reasoning for the deviation.

- (2) Every contested order which rebuts the presumptive applicability of the Formula on grounds the results are not in the best interest of the children or inequitable to the parties shall be archived for analysis at the next quadrennial review and update as provided in subsection (b). Application of the evidentiary presumptions within the Formula (Rules 500-510) constitute the application of the Formula and not a deviation from the Formula.
- (3) The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

L. Retroactivity and a Previous Declination of Current Support

As noted in the section on data collection, 50% of new support petitions are resolved without an award of current support. This occurs because either the named petitioner appears and declines an award of current support, or the named petitioner fails to appear, and the State does not have a financial interest in the support proceeds. In many cases, petitions are later refiled but with the petitioner now wanting to receive current support. Rule 509 presumes six (6) months of retroactivity prior to filing but when current support has been previously declined, some Commissioners have held that the effective date should be limited to the date-of-filing. The arguments for this limitation include that the declination constituted a waiver of retroactive support and the party seeking support has had the option to re-file at any time. Another perspective is that a medical-only order is, in substance, an order for zero (“0”) current support and a later filing for “new” support is, in substance, a modification of current support and retroactive modification is forbidden. Some believe that this approach is overly harsh given the myriad of reasons why support might be declined especially when parents reconcile but then later again separate.

The Court declined to limit retroactivity to date-of-filing under these circumstances. While it would be inequitable to permit retroactivity that pre-dated a previous declination of current support, the consensus was that Rule 509 provided sufficient protection to balance the needs of the children against any inequity to the obligated parent.

Rule 509. Retroactive Support.

- (a) Retroactive support in a new support action shall be presumed at 6 months prior to the date of filing. The burden of proof shall be on the party seeking greater or lesser retroactivity. Retroactivity shall not exceed 24 months prior to date of filing, and shall not predate the resolution of a previous new support action

wherein current support was declined by the same petitioner, or not awarded due to the same petitioner's failure to appear.

M. Secondary Income

While most families' income is in the form of salary and wages received for work, some parents also receive passive income, such as from dividends, interest, and trusts. Sometimes parents use passive income to meaningfully enhance the family's standard of living beyond that which their wages would support. Others live off their earnings and retain and reinvest passive income. In other words, and like income from a second job, parents utilize passive income in different ways.

In the 2014 revisions, the Court adopted factors to analyze whether to include or exclude second job income in calculating child support. Those factors weigh whether the additional income is or should be available to enhance a child's standard of living or is reasonably intended or necessary for some other legitimate purpose. The amended rule delineates when passive income should be included in the calculation and expands the second job analysis to passive income.

Rule 501. Reasonable Earning Capacity.

(1) Secondary Income jobs. – Secondary income includes earned income from second jobs and passive income from interest, dividends, and trusts. Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether secondary income from secondary employment is included in the determination of support is determined on a case-by-case basis and:

- (1) Existing secondary employment income is more likely to be included if it:
 - (i) Was historically earned or received especially when or if the parents resided together and significantly enhanced the family's standard of living;
 - (ii) Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or
 - (iii) Is necessary to meet the minimum needs of the child or children before the court; and
- (2) Existing second employment income is more likely to be excluded if it:

- (i) Merely allows the parent to "make ends meet" especially ~~with~~ regarding ~~to~~ the needs of other dependent children;
- (ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness;
- (iii) Is necessary because the other parent of the child or children before the court is not providing adequate support; ~~or~~
- (iv) Substantially conflicts with the parent's contact with the child or children before the court; or
- (v) Was historically saved or reinvested.

N. Shared Incidental Expenses

In the 2010 Quadrennial Review, the Formula was amended to require parents with children in shared equal placement (164 or more overnights with each parent annually) to share the cost of "shared incidental expenses" based on the reality that the support-paying parent retains a portion of the parents' combined support obligation in their household. Reports arose of parents receiving shared placement and having their support obligations sharply reduced, but then declining to contribute to incidental expenses typically shouldered by a custodial parent and using child support as a basis for that position. It was hoped that the requirement to share such expenses would minimize conflict between parents and emphasize that both parents are obligated to contribute to shared incidental expenses in addition to any child support that may be due under the Formula. The 2010 version of the rule warned that a parent who failed to "adequately" contribute to shared incidental expenses could face sanctions.

In 2014, the rule was clarified that parents were obligated to share incidental expenses "equally" (instead of "adequately"), but declined to specify what qualified as shared incidental expenses in favor of allowing "a body of case law to develop around families' actual experiences before it attempts to further define whether and when an expense is shared, incidental or extraordinary." In the 8 years since the 2014 Quadrennial Review, the case law has not developed, leading to the conclusion that the rule should be amended to further clarify what expenses qualify and to provide a protocol for enforcement of this obligation. The Formula does not equalize the parties' ability to provide shared incidental expenses in all situations; therefore, subparagraph "v." has been included to take into account a parent's ability to pay.

The recommended amendments to Rule 503 include three (3) factors to consider in determining which expenses qualify, a representative list of common expenses, and the requirement that any enforcement petition be plead "with particularity." Additionally, an amendment to Rule 16.1 will refer enforcement petitions to mediation (subject to the domestic violence exception). The particularity and mediation requirement are intended to mirror the process currently used for reimbursement for medical expenses and to facilitate the negotiation and resolution of such petitions and streamline the presentation of evidence to the Court, if necessary.

Rule 503. Primary support need

- (d) Shared equal placement -

- (4) Shared Incidental Expenses. Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to recalculating the support obligation as if the child resided primarily with the other parent.
- a. An expense is considered a “shared incidental expense” based on a totality of the circumstances, including:
 - i. Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);
 - ii. Whether the expense is customarily incurred by similarly situated families;
 - iii. Whether both parents benefit from the expense;
 - iv. The amount of the expense and the frequency with which it is anticipated to be incurred; and
 - v. The parents’ respective abilities to contribute to the expense.
 - b. The following expenses shall be presumptively considered shared incidental expenses: haircuts; school lunches; instrument rentals; school supplies; school project supplies; enrollment/uniform and other mandatory fees (but not equipment) associated with participating in local recreational sports or extracurricular activities; and local field trips not requiring overnight accommodations or air transportation.
 - c. An action to enforce the provisions of this Rule shall be plead with particularity.

Rule 16.1. Mediation.

(a) Support Proceedings -

- (4) Petitions to establish medical arrears or seeking reimbursement of shared incidental expenses, other than in Uniform Interstate Family Support Act cases, shall be scheduled for mediation first in every instance.

O. Supplemental Security Income (SSI) for a Child’s Disability

Social Security Disability Income (SSDI) is awarded to workers who become disabled after having paid Social Security wage taxes beyond a designated threshold. It is an earned entitlement. Benefits are paid based on a worker’s earnings record, but additional benefits are typically paid to the household where the dependent child of a disabled worker resides. By contrast, Supplemental Security Income (SSI) is a lesser, means-tested benefit paid to disabled persons who have not paid

enough in Social Security taxes to be awarded SSDI, and who do not have adequate resources to otherwise support themselves. SSI does not include an additional benefit for dependent children. It is a need-based entitlement. As of 2022, the maximum SSI benefit is \$841 per month while the average disability insurance benefit is \$1,282 per month.

The Court has consistently excluded from income most need-based benefits such as Temporary Assistance for Needy Families (TANF), Supplemental Nutritional Assistance Program (SNAP), and SSI awarded on account of a parent's disability. However, sometimes children receive SSI on account of their own disability. Rule 502(a)(4)(i) includes income attributable to a child's disability "as income to the household into which it is received" (usually the custodian or legal guardian). This practice is inconsistent with the Formula's treatment of other need-based benefits and recommends the rules be amended to exclude SSI for a child's disability from income for child support purposes. The purpose of need-based benefits is to prevent poverty and it is counter-productive to dilute that goal by indirectly sharing the benefit with a third party who may or may not need the assistance.

Rule 502. Net Available Income.

(a) Net Income.

(4) Nontaxable. This includes all other income not subject to income tax income such as:

- (i) Most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation of that parent as set forth in Rule 506 dollar for dollar. ~~Benefits~~ Public need-based benefits, such as Supplemental Security Income (SSI), paid to a child due to the child's own disability are included as income to the household in which it is received. shall not be included as income to either parent.

P. Rejected Ideas

Unrealized Parenting Time – Some attorneys have expressed concerns about obligated parents who receive a parenting time credit for over 80 annual overnights of contact but then fail to subsequently exercise the contact. The Committee considered a proposal that would have allowed for a limited modification -- removing the credit utilizing the original support calculations if filed within 6 to 12 months of the original order. The Committee determined that the failure to exercise the contact contemplated by the original order constitutes a substantial change of circumstances and the availability of a regular modification petition is sufficient.

Back Support Supplement – As a practical matter, there is no technical difference between back support awarded at the commencement of an obligation and arrears that accrue upon subsequent noncompliance with an obligation. These balances can trigger administrative remedies, contempt and, even, incarceration. Some believe it is unfair and unproductive to initiate an obligation under such potentially hostile circumstances. The Committee considered a proposal that would have allowed a new support obligation to be increased by 20% in lieu of an award of the presumptive 6 months of retroactivity. The 20% portion of the order would be nonmodifiable for 2½ years and would not abate until modified beyond 2½ years after the original order. The Committee approved the drafting of the proposal to allow for further consideration.

In a new support proceeding in which a back support obligation may be appropriate, the Court may, in lieu of assessing back support, impose a surcharge equal to up to 20% of the monthly current support obligation. Furthermore:

- (1) The dollar amount of the surcharge shall for the first two and one-half years of the obligation constitute a nonmodifiable element of the current support obligation.
- (2) If the underlying obligation is modified within two and one-half years, the surcharge shall continue as an element of the subsequent order.
- (3) After two and one-half years, the surcharge will not abate but shall merge into the underlying obligation subject to modification pursuant to Rule 508.
- (4) If the support obligation is terminated prior to two and one-half years, the Court will quantify the unpaid surcharge as an arrears balance or as a credit against a reverse obligation.

However, upon consideration of the draft, the Committee decided the proposal was not sufficiently developed to be recommended at this time.

Child Tax Credits – In response to the pandemic, the Federal and State government have aggressively provided tax credits and assistance to reduce hardship and keep the economy afloat. Other states have identified some of these benefits as elements to be taken into consideration in determining child support. The Committee discussed the issue of child tax credits and elected to stay the course with prior determinations to allow child tax credits to flow into the intended homes of recipients rather than indirectly shared through adjustments to the child support calculation.

W-2 Statements – The Committee examined a weakness in using a W-2 statement to determine income for child support. This weakness is that some items (pension/401k and health insurance), which are deductible for child support purposes, have sometimes already been deducted in the preparation of the W-2. This creates a risk of the items being credited twice in the child support calculation. Some W-2 formats include more complete data revealing the employee’s “true” gross income. For others, the W-2 must be closely compared to detailed periodic pay statements to avoid the problem. While the Committee acknowledged the problem, the solution was determined to be a training issue rather than through an amendment to the Rules.

SECTION VI: CONSOLIDATED UPDATES 1990-2022

A. INCOME AVAILABLE FOR CHILD SUPPORT

1. Income from Second Jobs

(2014) Secondary Income. Sometimes the burden of supporting both oneself and one's children in multiple households is overwhelming. Some parents take second jobs to bridge the gap but are frustrated that the additional income may cause their support obligation to increase (or the support they receive to go down). On the other hand, some parents have always worked multiple jobs irrespective of their support obligation; others cobble together a good living with multiple part-time endeavors. Currently under the Formula such "secondary" income is neither presumptively included nor excluded; instead, it is considered on a case-by-case basis. However, this principle is not detailed in the Rule and the Court and others have grown concerned that some users of the formula treat secondary income as presumptively included.

The Court concludes that a case-by-case consideration about whether to include secondary income in the Formula is still appropriate because the reasons behind and availability of secondary income are too varied for any presumptive treatment. However, the Court also finds the Rule should provide more guidance about the use of income from second jobs and will add a new Rule 501(i) as follows:

- b. Second Jobs. Employment is "secondary" if the parent's primary employment is substantially full time and consistent with the parent's reasonable earning capacity. Whether income from secondary employment is included is determined on a case-by-case basis and:
 - i. Existing secondary employment income is more likely to be included if it:
 - 1. Was historically earned especially when or if the parents resided together and significantly enhanced the family's standard of living;
 - 2. Substantially raises the standard of living of the parent or the parent's household to an extent not shared by the child or children before the court; or
 - 3. Is necessary to meet the minimum needs of the child or children before the court.
 - ii. Existing second employment income is more likely to be excluded if it:
 - 1. Merely allows the parent to "make ends meet" especially with regard to the needs of other dependent children;
 - 2. Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness; or
 - 3. Is necessitated by the nonpayment of adequate child support for the child or children before the court; or
 - 4. Substantially conflicts with the parent's contact with the child or children before the court.

- b. Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.
- c. Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be attributed to a parent as long as that parent's actual income is substantially full-time and consistent with reasonable earning capacity.

(2010) In an effort to foster better preparation for hearings and mediation conferences and mitigate the problem of hidden income, Rule 501 will be amended expanding the minimum documentation required to adequately evidence income and expenses especially from self-employment:

Financial report. (1) Failure to submit a Financial Report Form pursuant to Rule 16(a) with adequate supporting documentation risks dismissal, rescheduling, or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent's most recent tax returns, W-2 Forms, and three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker's Compensation, a recent physician's statement as to any claimed disability, and receipts for childcare payments and private school costs.

(2) Individuals with self-employment income also should include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories, and to the extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder shall also include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

(2022) Second job analysis to be applied to passive income - In the 2014 revisions, the Court adopted factors to analyze whether to include or exclude second job income in calculating child support. Those factors weigh whether the additional income is or should be available to enhance a child's standard of living or is reasonably intended or necessary for some other legitimate purpose. The amended rule expands the second job analysis to passive income and adds that passive income is more likely to be excluded if it was historically saved or reinvested.

2. Attribution of Income

(1990) Imputing income to able but unemployed or underemployed parents - Underlying the Delaware Child Support Formula is the concept that both parents are responsible for the support of their children. An individual cannot, by voluntary unemployment or underemployment, shift the burden of support to the other parent. As to the method of attribution, an individual's "value as a homemaker" has been eliminated as a basis of

attribution. Attribution based on one-half of a spouse or cohabitor's income has also been eliminated; the judiciary felt that this method shifted the burden of support to a non-parent. Attribution will be used only if an individual is able to work and unemployed or working below capacity.

(1994) Judicial notice of wage surveys - For purposes of the attribution of income to self-employed, unemployed, and underemployed persons, and non-appearing or unprepared parties, whose incomes cannot be sufficiently established by evidence presented by the parties, the Court may take judicial notice of wage and earnings surveys distributed by government agencies.

Often, individuals fail to appear in court or appear unprepared, leaving the Court with little to no evidence as to what they earn, are capable of earning, or have earned in the past. This is very frustrating for the trier of fact, as the child support order is based on a calculation of income amounts. This provision will put litigants on notice that, without any better evidence, they may be attributed with the prevailing wage for their current position, or based on their employment history (i.e., carpenter, brick layer, phlebotomist). These wage surveys are available from the Delaware Department of Labor.

(2022) Governmental reports of income - *The Division of Child Support Services and the Department of Justice (DOJ) has access to government reports detailing individual quarterly earned income reported by employers for unemployment compensation and taxation purposes. These reports are known as the DOL (Delaware Department of Labor) and INQT (Income and Quarterly Wage Tables – all States). These reports will be presumptively admissible without authentication. If a party presents credible evidence contradicting a report, they may be given up to ten days to secure additional documentation resolving any discrepancy. Family Court notices will advise that the reports may be presented and provide a DOJ or DCSS telephone number to obtain copies. The rule also provides that a Child Support Disclosure Report with attachments can be admitted as a single exhibit.*

(2014) 50% Primary Share if support recipient is not a parent - When the party petitioning to receive support is not a parent, then the income of the 'other' parent (that is, the parent against whom the petition was not filed) will not be estimated or considered. Instead, the calculation will be completed based upon the available income of the party-parent alone and utilizing a 50% primary share on Line 9 of the calculation worksheet.

(1998) Voluntary unemployment/bona fide efforts to maximize income - A parent who has voluntarily separated from or lost employment due to his/her own fault will be attributed with earnings from that employment and will not be entitled to a reduction in his/her income in the Formula. Any reduction in attributed income will be permitted only after a sufficient period of time has elapsed in which the obligor can demonstrate that he/she has been actively seeking employment commensurate with his/her current skills, education, and training; and in the Court's discretion, other factors surrounding the loss of employment justify such a reduction.

(2006) Termination without cause presumed if parent receives unemployment - There shall be a rebuttable presumption that a parent who receives unemployment compensation has been terminated involuntarily and without cause. Their unemployment compensation shall be included as other taxable income.

(2018) Voluntary loss of employment presumed if unemployment is not received - Non-receipt of unemployment compensation shall be presumptively interpreted that job loss was voluntary or for cause. Where job loss is not voluntary or for cause, a parent's, the unemployed parent's reasonable earning capacity shall be 50% of their prior income, or their unemployment benefits or minimum wage, whichever is greatest. However, unemployment that exceeds 6 months in duration shall be presumed voluntary.

(2022) Exception removed for inmates incarcerated for crimes against the family - *Service of a term of incarceration that exceeds or is anticipated to exceed 180 days may be considered as evidence of a diminished earning capacity unless the individual has independent income, resources, or assets with which to pay an obligation of support consistent with their pre-incarceration circumstances. Upon the request of the federal Office of Child Support Enforcement (OCSE), the Court has eliminated the 2018 exception for parents incarcerated for the nonpayment of child support or for any offense of which his or her dependent child or a child support recipient was a victim.*

(2018) Reasonable earning capacity defined - Reasonable earning capacity of a parent is established with documented earnings at employment commensurate with their training and experience working at least 35 hours per week and with hourly earnings exceeding the entry level wage for their occupation as set forth in the Delaware Wage Survey published annually by the Delaware Department of Labor. A similarly situated parent who works less than 35 hours per week shall be imputed income based on at least 35 hours per week.

(2018) Imputed income analysis - Parents who are voluntarily unemployed or underemployed shall be imputed income based on work history, training and education, and the wage tables promulgated by the Delaware Department of Labor, at 40 hours per week. Any wage table analysis shall begin with the median wage for the applicable occupation.

3. Minimum Attribution of Income

(2022) OOLMI surveyed 'Entry' level wage replaces minimum wage - *When income must be imputed (other than with documented and commensurate income of less than 35 hours per week), all parents will be presumed to have reasonable earning capacity of not less than Presumptive Minimum Income which shall be derived from the most recent edition of Delaware Wage survey published annually by the Delaware DOL Office of Occupational and Labor Management Information (OOLMI). The amount shall be the statewide "Entry" level wage at 150 hours per month rounded to the nearest multiple of ten (10). The new amount will be effective February 1 of each year following the issuance of the most recent report.*

4. Other Income

(1990) Spouse's income cannot be considered - Income of a spouse or person cohabiting with either parent may not be used in the calculation.

(1994) SSDI paid to child for obligor's disability - Social Security Disability Benefits as well as those pension/disability benefits issued by private corporations, paid to a child(ren) on behalf of a disabled parent shall be added to the disabled parent's income for use in this child support calculation. That parent will then receive a dollar-for-dollar credit off the bottom-line support obligation for these payments received by the child(ren). When a child receives these benefits on his/her own behalf the amount would be added to the custodial parent's income.

The judiciary recognizes the prevailing national view, which treats disability payments to a child on behalf of a disabled parent as the payment of child support by that parent.

(2006) SSDI and SSI are evidence of disability - When a person receives Social Security Disability or Supplemental Security Income, this determination shall be substantive evidence of a disability. Whether a person can provide support or earn additional income shall be determined by the totality of the circumstances.

(2010) SSI cannot be used to pay support - A parent who receives Supplemental Security Income (SSI) shall not be attributed income or assessed a child support obligation unless the parent has income or an income capacity independent of their SSI entitlement.

(2022) *Child's SSI is not includable as income - Supplemental Security Income (SSI) is a need-based benefit sometimes paid into a household on account of a parent's or a child's disability. Until now, the Formula excluded from income SSI paid to a parent but included SSI disbursed on account of a child of the union. Prospectively, all SSI will be excluded.*

(2014) Adoption subsidies excluded - Adoption Subsidies are public payments designed to encourage the adoption of disabled children by offsetting the costs associated with bringing the child into the adoptive home. 42 U.S.C. § 673. Including adoption subsidies as income alters the support obligation and mitigates this express public policy. Adoption subsidies should be excluded from income for child support purposes so that the subsidy most benefits the child for which it is intended.

5. Tax Status

(2002) Pretax income deductions are income - All earned income, including pre-tax income deductions (for example, flexible spending plans and health insurance) shall be treated as available income for child support purposes.

(2018) Taxes are no longer deductible - Gross income of the parties shall be utilized in the calculation; deductions for income and social security taxes shall be reflected in a higher self-support allowance and lower percentages for the Standard of Living Adjustment (SOLA) and for Self-Support Protection. There is an exception for self-employed persons who prove they are paying self-employment taxes. Seven percent (7%) of such self-employment income will be deductible to the extent self-employment income and taxable wages do not exceed the Social Security threshold.

(2022) 25% Supplement to nontaxable income - *While the movement from net income to gross income adopted in 2018 has brought greater efficiency and consistency to the application of the Formula, some categories of nontaxable resources can create a windfall. Accordingly, income and resources utilized to determine support that is not subject to income tax under federal law will be increased by 25% to estimate an equivalent taxable earned income value. This does not apply to payments made by the Social Security Administration but does include:*

- *Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability,*
- *Personal injury awards or settlements determined by the Court to be income for support purposes,*
- *Military allowances, or*

- *Any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law.*

6. Allowable Deductions

a. Health Insurance

(1994) Identity of persons covered by health insurance not relevant - All health insurance premiums paid for by either parent, regardless of the persons covered, will be considered in the calculation, unless there has been an affirmative refusal to cover the child(ren) subject to a court Order. It is in no one's best interest to be uninsured; not the child, either parent, or either parent's subsequent children. Any major medical expenditure, due to lack of insurance coverage, by either parent on behalf of that parent, or his/her child(ren) could interfere with the routine payment of child support.

(1998) COBRA counts - Payments for health insurance made under COBRA are includible.

(2022) Premiums covering children not a deduction but are an element of primary support - *Health insurance premiums that do not cover the children of the order are a deduction from income in determining Net Income Available for Primary Support. Health insurance premiums covering the children shall not be a deduction from income but 75% of the premiums shall be a primary expense to be divided between the parties on Line 12. If the parent has other minor children to support, that percentage shall be reduced to 50%. The share of a sole surviving parent shall be 100%, and the share of an inmate with a super-minimum is 50%.*

b. Life Insurance

(1994) Life insurance not deductible unless required by court order - No deduction shall be allowed for the payment of life insurance premiums unless the party is bound by a prior agreement or order of the Court to provide life insurance for the benefit of the child(ren). The cost of term life insurance has a de minimis impact on the support calculation, while the task of separating the premium and investment elements of whole or universal life insurance can be an evidentiary burden.

c. Retirement Plans

(2002) All mandatory and some voluntary retirement contributions are deductible - All mandatory employee paid contributions to retirement plans are allowable deductions even if they exceed 3% of gross income. If an employee makes no mandatory contribution to a retirement plan, a voluntary contribution is an allowable deduction up to 3% of gross income. If the mandatory employee contribution is less than 3% of gross income, a voluntary contribution is allowable, provided the combination of the mandatory and voluntary contribution does not exceed 3% of gross income. Payments to voluntary retirement plans must be to 401(k) or other IRS approved plans.

In 1998, the Court recognized that it was inequitable to recognize mandatory contributions to pension plans to the exclusion of all voluntary contributions (up to 3% of gross income). However, issues arose regarding the interaction of mandatory and voluntary contributions and the 3% limitation. This revision to the Formula clarifies that all mandatory contributions are fully deductible and that where there is a mandatory contribution of less

than 3%, the difference can be made up through voluntary contributions. The 3% limitation is based on the Delaware State Employees' Pension Plan.

(2018) The maximum deduction for pension plan or deferred compensation plan contributions shall be increased from 3% to 5%.

d. High Cost of Living Location

(2002) High cost of living stipends not includible as income - There are times when a parent is relocated by an employer to an area with a high cost of living. Sometimes the employer compensates the employee solely for the higher cost of living. If the reason for the increase is clearly identifiable and the amount documented by the employer as compensation for higher cost of living it may be deducted from child support income.

If a parent has been moved by an employer to a city with a high cost of living, an additional stipend to cover that cost will not be available for any other purpose including child support. Therefore, it would not be equitable to include the increased income in the calculation.

(2014) Transfer to high-cost location may be voluntary - Currently, Rule 502(a)(5) recognizes that sometimes employers compel their employees to relocate to geographic regions with especially high costs of living. The current rule refers to persons "assigned" to such regions; that phrasing can be interpreted to include those who choose to live in a high-cost region as opposed to those who are compelled to relocate as a condition of employment. The Court will change the word "assignment" to "relocation."

(2010) BAH limited to not more than DAFB - The Formula currently exempts from income the cost-of-living stipends paid to offset assignments to high income locations. Military housing allowances (BAH) vary depending upon both rank and location. Includable BAH shall be limited to no more than the entitlement of a servicemember stationed at Dover AFB. The BAH tables ("with dependents") for Dover AFB will need to be readily available to mediators and Commissioners and linked to the on-line calculation. Additionally, military allowances for clothing shall be excluded from income.

e. Disability Insurance

(2010) Disability insurance premiums are deductible - Disability insurance is a common employment benefit and modest deduction from income but is not currently deductible in the Formula. The purpose of this insurance typically is to replace income in the event of serious illness or injury and is beneficial to an employee's dependents. Therefore, disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations) shall be deductible in determining net income available for child support.

7. Parents' Self Support Allowance

(2022) Increase to Self-Support Allowance - Effective not later than February 1, 2023, the Self Support Allowance shall be 120% (previously 110%) of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted not later than February 1 of each year.

(2014) Self-Support Protection - The Court concludes that Self-Support Protection should be extended to all parents (whether or not they have other children) by limiting the final support obligation to 60% of Net Available Income. In combination with lowering the self-support allowance to 100% of the Federal Poverty Level (see above), this change creates a dynamic self-support allowance that permits parents to meet their own basic needs and provides parents the opportunity to advance vocationally, a result that benefits both the parent and the children.

(2022) Increase in SSP percentage - In 2018, the Self-Support Protection percentage was decreased to 45% (30% with children in 3 or more households) to accommodate the change from net to gross income. To balance the increase in the Self-Support allowance from 110% to 120% FPL and effective February 1, 2023, the percentage will be increased from 45% to 50%, and from 30% to 35% if the parent has children in three or more households.

8. Adjustment for the Support of Other Dependents

(2006) Adjustment adopted - The Court determined that the Credit for Support of Other Dependent Children should be changed from a credit against the support obligation of the obligor alone to an adjustment to Net Income Available for Support of both parties. This change will eliminate the confusion that has existed since the implementation of the Credit for Support of Other Dependent Children in 1998. The 1998 revisions simplified the way an obligor's duty to support other children impacts the calculation. This was accomplished through a percentage credit against the bottom line rather than an analysis of the other children's actual needs or pre-existing order of support. Unfortunately, some obligors perceive the credit as an allowance and complain that it compares unfavorably to the primary support allowances. Some obligated parents complain that there is no apparent consideration of additional children they may have. This solution negates those misperceptions with minimal impact on the ultimate obligation. It is also more consistent with the underlying assumption that while the burden of new siblings should not fall primarily on pre-existing children, available resources are necessarily diluted.

(2014) Multiplier is 70% regardless of the number of other children supported - The reality of the cost of supporting other children cannot be denied. Nonetheless, the ability to re-litigate support orders for existing children by "voluntarily" bringing new children into the world still causes consternation. In the interest of further simplification, recognition of the genuine needs of "other" children, and reducing litigation, the Court will now utilize a single percentage multiplier of 70% regardless of the number of other children a parent must support.

(2014) Support of infirm adults - The guidelines do not currently recognize that parents of minor children are occasionally legally required to support other dependent family members, including adults who are not able to support themselves. Where a parent is meeting these other legal obligations, recognition of that commitment strengthens the family unit as a whole: after all, these other dependent family members are also relatives of the parent's minor children. Accordingly, the Court adopts a limited, and discretionary, recognition of these other statutory obligations where they undisputedly exist or have been formalized by Court Order.

9. High Income Adjustment

(2022) HIA percentage increased and HIA threshold indexed - In cases where either parents' net income available for the Standard of Living Adjustment (SOLA) exceeds a designated monthly threshold per month, then both parent's net income subject to SOLA shall be reduced

by 30% (previously 20%) of the combined excess. The designated monthly threshold shall be ten times the current Self-Support Allowance. The outgoing threshold is \$15,000 and it is expected the 2023 threshold will be close to that amount also.

B. CHILDREN'S NEEDS

1. Primary Allowances.

(2022) The primary allowances shall be comprised of two components, a per household component and a per child component:

- (i) The per household component is 25% of the Self Support Allowance minus \$25 (previously \$72).*
- (ii) The per child component is 25% of the Self Support Allowance plus \$20 (previously \$24).*
- (iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).*
- (iv) To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted not later than February 1 of each year.*

2. Child Care Costs

(1990) Actual but not hypothetical daycare costs as an element of Primary Support -The judiciary concluded that childcare expense is included in primary support amount based on the cost of actual expense incurred by a working custodial parent. No hypothetical or attributed childcare costs are permitted. Where net income is not derived based on tax returns, the childcare expense shall not be reduced by the allowable childcare credit.

3. Health Insurance Premiums Allocable to Dependent Children and Reasonable Cost

(2010) The Delaware Child Support Formula already addresses requiring a parent to obtain health insurance and the equitable distribution of medical expenses not covered by insurance. While health insurance premiums allocable to children are a deduction from income, such does not equitably share the cost with the other parent. To address equitable distribution of the premium cost, any amount allocable to the children shall be treated as a primary support element in the same manner as daycare is treated.

(2010) The cost of the insurance premium for coverage of both the employee parent and all minor dependents is reasonable when the cost does not exceed 10% of the purchasing parent's gross income and there is sufficient total net income available to cover the primary support allowance, childcare, and the premium allocable to the children. When insurance is not available at the time the order issues, each parent should be directed to obtain it when the total cost for the employee and any minor dependents does not exceed 10% of gross income.

(2010) When a stepparent provides insurance for the parent's child through the stepparent's employment, the cost of that coverage also may be included in the calculation. This approach promotes the goal of insuring children while not imposing parental responsibilities on non-parents. However, the cost to a stepparent of providing coverage will be included in the

calculation only if the stepparent's own children are not included in the coverage, that is, only if the stepparent has additional costs from including a stepchild on an employer-sponsored health plan.

4. Private School Expenses

(2006) Private or parochial school expenses shall only be included in a child support calculation where:

- (a) The parties have adequate financial resources, and
- (b) After consideration of the general equities of the particular case including consideration of whether:
 - (i.) The parents previously agreed to pay for their child(ren)'s attendance in private school; or
 - (ii) The child has special needs that cannot be accommodated in a public-school setting; or
 - (iii) Immediate family history indicates that the child likely would have attended private or parochial school but for the parties' separation.

5. Standard of Living Adjustment (SOLA)

(2018) The Standard of Living Adjustment (SOLA) percentages are adjusted downward to account for the use of parents' gross incomes in the calculation of child support:

1 child	12%
2 children	17%
3 children	21%
Each additional	2%

C. EXTRAORDINARY MEDICAL EXPENSES

(1990) Extraordinary medical expenses are eliminated from the primary support need calculation. Every order will include a general finding that the parties are required to share unreimbursed medical, dental, and psychological counseling expenses.

(2002) Each shared medical expense including individual payments on orthodontic payment plans should be charged against the year in which the payment is actually made, which may not be the same as the year in which the services are provided or in which the contractual obligation with the service provider arises.

(2022) Rounding of Cash Medical percentages - Parents shall share out-of-pocket medical expenses for their children in accordance with their percentage share of Net Income Available for Primary Support on Line 9 of the calculation worksheet but rounded to a multiple of ten (10). As needed, percentages greater than 50% shall round down to the next 10% interval; percentages less than 50% shall round up. Other than a child with only one known living parent, the percentage shall be neither greater than 90%, nor less than 10%. If the support recipient is a nonparent and the child has only one known living parent, then the cash medical

support percentage is 100%. The cash medical support percentage for “super-minimum” inmate obligations shall be 50%.

(1990) Furthermore, the order shall include a requirement to pay expenses directly to the custodial parent or to the provider of services, including IV-D cases, absent any other specific order. The issue of non-payment of a covered expense will properly be addressed pursuant to a Rule to Show Cause petition. This mechanism permits the sharing of unanticipated expenses without violating the Bradley requirement to preclude retroactive modification of child support orders. (See 13 Del. C. § 513(d).)

(2006) For all orders entered after January 1, 2007, all claims for medical support reimbursement shall be filed with the Court no later than December 31 of the year following the expenditure. There shall be a presumption that the claim is waived if it is not brought within 2 years. This language shall be included in all orders establishing or modifying current support.

(2010) Problems have arisen with the Formula’s intention that all claims more than two years old be deemed presumptively waived. However, the Court’s rule is currently inconsistent with the 2006 Report and has been interpreted by some as an unyielding statute of limitations rather than a presumption. Additionally, the current process prevents a parent from seeking any relief until they have actually expended funds, sometimes creating a paradox wherein a child cannot receive treatment until they have money but cannot get the money until they receive treatment. To resolve these issues and improve the process, the Rule will be re-written to clarify that the obligation of reimbursement arises upon receipt of treatment and to expressly state that the two-year period is a presumption that can be rebutted upon good cause shown.

D. EMANCIPATED CHILDREN

(1990) It was concluded that a statutory change was required to permit the Court to order support for adult children, aside from the limited cases wherein an adult child is found to be a poor person under existing law. Nevertheless, the judiciary agreed that the Formula should specify that neither the needs of nor voluntary support paid to or for emancipated children be considered. At minimum, adult children should simply be ignored by the Formula. Thus, the new written procedure shall specify that adult children residing in the household should not be considered regarding expenses incurred for them or contribution made by them to the household.

E. SHARED CUSTODY/PARENTING TIME ADJUSTMENT

(2002) The existing guidelines will now give parents with whom a child resides more than 30% but less than half of annual overnights the opportunity to share in a portion of the combined SOLA.

An adjustment will be triggered by the number of overnights that a child is entitled to spend in the home of a child support obligor pursuant to a court order or written agreement and is intended to be an index of greater interest and superior parenting skills. Modest fluctuations between contact schedules and actual visitation practices will not prompt any adjustment or the rebuttal of the Formula. Thus, an obligor who does not assume the additional financial

responsibilities attendant to substantial additional contact or an obligor who is consistently uncooperative or overly litigious will not be entitled to any credit and may risk rebuttal of the Formula. Substantial discrepancies between schedules and practices should be addressed in visitation (and not support) proceedings.

(2014) Where a court order or written agreement establishes or confirms that a child spends an average of over 79 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of both the primary support allowance and combined Standard of Living Adjustment. Additionally:

- The percentage shall correspond to designated ranges of the number of overnights of visitation as follows:
 - Up to 79 0%
 - 80 – 124 10%
 - 151 – 163 30%
 - 164 or more shared placement
- Where the residential arrangement is complex with children in different ranges, then the percentages shall be the averaged.
- If there is no order or written agreement or prior finding, or a party contends that actual practice substantially differs from the order, agreement or finding, the number of overnights must be established by clear and convincing evidence. The burden of proof lies initially with the party seeking the credit and then with the party seeking to establish an alternative number of overnights.

(2014) In shared custody support cases, each parent under the Delaware Child Support Formula retains a portion of the parents' combined support obligation in their respective households and each parent is expected to share in the children's incidental expenses as they arise. In some cases, one parent may be ordered to make a monthly current support payment to the other parent in addition to sharing incidental expenses. Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to a finding that the support Formula is rebutted and that a current support obligation be imposed against the offending parent as if the child resided primarily with the other parent.

(2022) *Shared Incidental Expense analysis and presumptive list - The Court adopted 5 factors to consider in determining whether an expense is a "shared incidental expense":*

- *Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);*
- *Whether the expense is customarily incurred by similarly situated families;*
- *Whether both parents benefit from the expense;*
- *The amount of the expense and the frequency with which it is anticipated to be incurred;*
and
- *The parents' respective abilities to contribute to the expense.*

The rule also has a list of expenses that should presumptively be shared:

- *Haircuts*
- *School lunches*
- *School supplies*
- *School project supplies*
- *Instrument rentals*
- *Enrollment/uniform and other mandatory fees (but not equipment) associated with participating in local recreational sports or extracurricular activities*
- *Local field trips not requiring overnight accommodations or air transportation*

(2014) In the context of shared placement, a calculation that indicates an obligation of less than \$50 will be considered *de minimis* and neither parent will be required to pay support to the other.

(2014) In the context of shared placement, an obligation can be imposed against either parent regardless of who filed the petition.

F. MINIMUM ORDERS

(2006) No person shall be assessed a support obligation of less than 20% of the primary support allowance for the number of children for who support is sought except:

- a. This limitation shall not apply where children reside in shared (at least 175 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.
- b. A disabled person with actual income of less than the self-support allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash, and other resources available, and the totality of the circumstances.

(2014) The Court has concluded the Formula should be amended back to the 20% standard and to impose a cap on the scheme at two children. In other words, based upon the currently recommended primary allowances, a minimum order for one child would be \$100 per month and for multiple children, \$160 per month. This does not mean that all persons who would have previously qualified for a minimum order will have their obligations reduced to \$100 or \$160. This merely allows the Formula to be calculated below the current minimums based upon the evidence. This is all part of a fundamental shift towards obligations that are realistic and “right-sized” to the individual case.

(2018) Incarcerated Persons. The child support obligation of an incarcerated person for the person’s first 180 days of incarceration shall be determined without regard to their incarcerated status.

(2018) The child support obligation of a parent incarcerated for more than 180 days shall be reduced to one-half of a minimum order unless the parent has the resources to pay support or is incarcerated for an offense in which the child or the support recipient is the victim or is incarcerated due to the nonpayment of child support. This will occur automatically on all orders issued after implementation of this amended rule. The previous obligation will not resurrect upon release from incarceration. For pre-existing obligations, an inmate can file a petition for modification under the new standard as long as the inmate did not already receive a modification under the old standard.

(2022) Incarcerated parent exceptions removed - Effective on all orders that issue after January 31, 2023, the exceptions for incarceration for an offense in which the child or the support recipient was a victim or due to the nonpayment of child support are terminated. However, the exceptions still apply to orders that issued February 1, 2019, through January 31, 2023, until modified upon a substantial change of circumstances or the passage of 2½ years.

G. STANDARDS FOR MODIFICATION

(1994) No petition may be filed within 2½ years of the date of the last order regarding current support absent pleading with particularity a substantial change in circumstances—specifically changes in income brought on by no fault of the petitioner, changes in day care expenses, or changes in other child support obligations of the obligor.

There will be no modification of an existing order if filed within 2½ years of the prior order regarding current support, unless the calculation indicates a change, upward or downward, of 10% or greater.

The passage of 2½ years since the last order regarding current support shall constitute sufficient basis to file a petition for modification of the current support order. These petitions shall result in a modification of the support order based strictly on the calculation amount, with no need for a 10% threshold to be met.

Where a modification petition has been filed and a change in current support is warranted, the obligation amount may be increased or decreased without regard to the specific modification requested. The Formula is presumed correct whether or not the calculated amount results in an increase or decrease in the existing order. A dismissal of an unsuccessful action for an increase merely spurs the other parent’s decrease filing, resulting in re-litigation of the same issue.

(2014) An update or adjustment to the Delaware Child Support Formula pursuant to Rule 500(b) does not constitute a change of circumstances sufficient to modify an existing order for current support even if the amount of current support would change as a result of the update or adjustment.

(2014) Petitions for the modification of orders for the repayment of past due support (also known as ‘arrear-only’ orders) shall be subject to the same standards as current support orders including but not limited to a substantial change of circumstances not caused by the applicant’s voluntary or wrongful conduct if sought within 2½ years of the last determination of current support.

H. RETROACTIVE CHILD SUPPORT

(2018) In new child support actions, there shall be a presumption of six (6) months of retroactive support (from the filing date), subject to the application of factors that may justify lesser or greater back support. The back support payment shall be 20% of current support.

(2022) Repayment of arrears - The report reconfirms \$20 per month as the minimum payment towards arrears. Additionally:

- *Genetic test costs shall be repaid at the rate of 20 per month;*
- *Payment on any arrears-only obligation assigned to the State of Delaware shall be \$20 per month if the individual also owes current support or arrears to any private individual or another State; and*
- *When using the formula as a guide in determining an arrears payment, a parent will be presumed to have the ability to pay 120% of what would have been his or her current support obligation utilizing a 50% primary share.*

(2022) Sometimes a petition for new support is resolved with the petitioner declining prospective cash support or by the petitioner's failing to appear. In the event a subsequent petition for new support involving the same parties, retroactivity prior to the date of previous dismissal shall be prohibited.

I. OVERPAYMENT CREDIT

(2018) In cases where a credit arises in favor of the obligated parent, the credit shall be resolved by either partial or full deferral of current support, except where deferral is not available or is insufficient to reduce the credit. In that circumstance, the credit shall be converted to a past due balance owed to the obligated parent. This shall only take place after all minor children of the union have emancipated or are no longer in the care of the original support recipient.

J. ADMINISTRATIVE PROVISIONS

(1994) All child support obligations shall be rounded to the nearest dollar amount; any figure ending with \$0.01 - \$0.49 shall be rounded down; any figure ending with \$0.50 - \$0.99 shall be rounded up.

(2014) Consent orders and settlements must have calculation attached - Federal law requires the utilization of presumptive guidelines in the determination of child support. Therefore, all consent orders and settlement agreements submitted for endorsement by the Court resolving a determination of current child support shall have attached one or more child support calculations relied upon in the negotiation even if the final result differs there from. This is different from the prior rule which permitted a calculation to be referenced in lieu of being attached.

(2018) Annual update of allowances - The values utilized in the Formula shall be indexed and annually not later than February 1 of each year.

(2022) Approval of Committee report - *The report of the Ad Hoc Committee was submitted to the Family Court judiciary to approve, reject and/or supplement the report's recommendations. The final report of the judiciary includes any necessary amendments to the Family Court Civil Procedure Rules to be submitted for consideration by the Delaware Supreme Court. The goal for implementation is not later than February 1, 2023. The next review committee shall be appointed on or before July 1, 2025.*

(2006) Formula will be incorporated into rules - The instructions to the Delaware Child Support Formula shall be promulgated in a manual format and in plain language to enhance

the accessibility to the Court by all litigants. The Guidelines will be incorporated as a Family Court Rule with annotations which will be drafted and submitted to the Judges of the Family Court for approval.

(2018) Data required to be collected - The Court shall create information systems to collect the number of child support orders entered by default, or where the child support formula has been rebutted, or a minimum order has been entered, or where the case involves incarcerated parents, imputed income, or application of the Self-Support Protection percentage.

(2022) Adjustments to data required to be collected - *Whenever calculating current support owed by or to parents, the Court shall record the actual number of hours each parent is employed per week. Whether income is imputed should be a 'yes' or 'no' question. The extent to which documentation is provided should be specifically measured.*

(2022) Deviations will be Archived/ Evidentiary Rebuttals are not Deviations - *A new rule requires that all contested orders deviating from the Formula to be archived for analysis at the next quadrennial reviews. It further clarifies, however, that mere rebuttals of the evidentiary presumptions within the express terms of the Formula constitute the application of the Formula and not a deviation from it.*

(2022) Annual Exchange of Child Support Reports - *Section 513(c)(1) of Title 13 of the Delaware Code and Family Court Civil Rule 16(a) requires parents to exchange completed financial report forms annually. The purpose of the exchange is to allow each parent to determine whether to file for modification of the child support obligation. This statutory duty is rarely performed. The new rule allows either party to initiate an exchange by sending their own report with documentation to the other party. The other party then has 30 days to do the same. An exchange cannot be initiated more than one time per year, or within 6 months after the most recent determination of current support, or in the calendar year in which the last child of the order turns 17. The initiating party may file a "Motion to Compel" the other party to complete the exchange. Remedies include demanding compliance within a time certain, scheduling a contempt hearing, and authorizing a modification petition wherein the compliant party is not at risk of an adverse result.*

SECTION VII: DELAWARE CHILD SUPPORT RULES – EFFECTIVE FEBRUARY 1, 2023

Rule 500. Delaware child support formula; general principles.

(a) *Rebuttable presumption.*

(1) The Delaware Child Support Formula (the "Formula") shall serve as a rebuttable presumption for the establishment and modification of child support obligations in the State of Delaware. The Formula shall be rebutted upon a preponderance of the evidence that the results are not in the best interest of the child or are inequitable to the parties. Every contested order deviating from the Formula shall state the factual findings and reasoning for the deviation.

(2) Every contested order that rebuts the presumptive applicability of the Formula on grounds the results are not in the best interest of the children or inequitable to the parties shall be archived for analysis at the next quadrennial review and update as provided in subsection (b). Application of the evidentiary presumptions within the Formula (Rules 500-510) constitute the application of the Formula and not a deviation from the Formula.

(3) The Court may decline to adopt any agreement deviating from the Formula that is clearly contrary to the best interest of the child. Any consent order resolving new support or modification of support petitions must have attached a calculation pursuant to the Formula, whether it is one utilized or one from which there is a deviation.

(b) *Review, update, and adjustment.* The Delaware Child Support Formula shall be reviewed and updated no less than every four years with revisions implemented not later than February 1 of the year following each quadrennial review. The numerical values utilized in the Formula will be adjusted not later than February 1 of each year utilizing predetermined objective criteria. The Court will create appropriate forms, tables, and instructions to facilitate consistent and accurate application of the Formula.

(c) The rules in effect at the time of a hearing or mediation apply to all prospective and retroactive determinations of support. However, if a hearing commences prior to an amendment of these rules but is not completed until after the amendment, then the prior rules shall apply up until the effective date of the amendment.

(d) *Notice; Admissibility of Reports*

(1) Any notice for mediation or a hearing to be conducted under the Formula shall include, in plain language, an advisory that parties are obligated to bring a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation.

(2) Any notice for mediation or a hearing under this rule shall also advise the parties that quarterly wage reports provided by their employer(s) to the state and federal Departments of Labor may be presented in any case involving the Division of Child Support Services. The notice must advise the parties that these reports are available to the parties prior to the mediation or hearing upon request to the Delaware Department of Justice, Child Support Unit (DOJ). Contact information for the DOJ must be included in the notice.

(3) At any mediation or hearing conducted under the Formula, the Court may consider representations of income for each party as reported by employers to the state or federal Departments of Labor. Income reports provided by the state or federal Departments of Labor shall be presumptively admissible evidence without further authentication. If the contents of a report admitted under this rule are materially contradicted by credible documentation of income or testimony during a hearing, or if a party did not receive notice that the income reports could be presented at the hearing, then the Court may in its discretion disregard the report or provide the parties at least ten (10) days to submit further documentation to resolve the discrepancy. All but the last four (4) digits of any Social Security number shall be redacted. Further redaction may occur upon leave of court for good cause shown.

(4) A fully executed Child Support Disclosure Report with authorized documentation may be admitted into evidence as a single exhibit subject to challenge of its individual components.

Rule 501. Reasonable earning capacity.

(a) *General.* In determining each parent's ability to pay support the Court considers the health, income and financial circumstances, and reasonable earning capacity of each parent, the manner of living to which the parents had been accustomed as a family unit and the general equities inherent in the situation.

(b) *Actual income.* A parent employed at least 35 hours per week in a manner commensurate with his or her training, education, and experience shall be presumed to have reached his or her reasonable earning capacity.

(c) *Documented part-time employment.* A parent with documented earnings representing an average of fewer than 35 hours per week at employment otherwise commensurate with his or her training and experience shall be imputed the number of hours reasonably available either with parent's current employer or through similar employment but not less than 35 hours per week unless:

- (1) The parent has medical limitations;
- (2) More substantial employment has proven unavailable despite diligent efforts;
- (3) Upon consideration of available hours and rates of pay, available full-time employment would not produce greater total earnings; or
- (4) A child of the union has profound special needs inhibiting the support recipient's ability to maintain employment.

(d) *Imputed income.* Unemployment or underemployment that is either voluntary or due to misconduct, failure to provide sufficient documentation, or failure to appear for a hearing or mediation conference shall cause reasonable earning capacity to be imputed. In determining whether actual employment is commensurate with training and experience and when imputing income, the Court shall consider each parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors. Except as provided in subsection (c) of this Rule, imputed income shall be calculated at not less than 40 hours of wages each week.

(e) *Wage surveys.* The Court may take judicial notice of occupational wage surveys compiled by the United States Bureau of Labor Statistics (BLS) and the Office of Occupational and Labor Market Information (OOLMI) in the Delaware Department of Labor to impute or corroborate reasonable earning capacity.

(1) If a parent's reasonable earning capacity has not previously been established and the actual income expressed as an hourly wage exceeds the survey's "Entry" level wage (average of the lowest 30%) for the parent's occupation, then the rate of pay shall be presumed commensurate with the parent's training and experience.

(2) For imputation purposes, analysis should begin with the median wage for each occupation, but may be adjusted up or down between "Entry" and "Experienced" (average of the highest 70%) based upon the totality of the circumstances.

(f) *Minimum income.* In any instance not governed by subsections (b) or (c) of this Rule, every parent will be presumed to have a reasonable earning capacity of not less than the "Entry" level wage statewide for all occupations as reported in the most recent edition of "Delaware Wages" published annually by the Delaware Department of Labor Office of Occupational and Labor Management Information (OOLMI) at 150 hours per month rounded to the nearest multiple of ten (10). This shall be effective February 1 of each year as provided in Rule 500(b).

(g) *Unemployment.* A person who receives unemployment compensation shall be presumed to have been terminated from employment involuntarily and without cause. Termination without receipt of unemployment compensation shall be presumed voluntary or for cause. Continued unemployment or underemployment in excess of 6 months shall be presumed voluntary.

(h) *Involuntary unemployment.* If a parent's unemployment or underemployment is found by the Court to be involuntary and not for misconduct, then the parent's reasonable earning capacity shall be presumed the greater of:

(1) One-half of the parent's previous reasonable earning capacity;

(2) Any Unemployment Compensation received; or

(3) Minimum Income pursuant to subsection (f) of this Rule.

(i) *Disability.* When a person has been determined to be eligible for Social Security Disability Income (SSDI) or Supplemental Security Income (SSI), this determination shall be substantive evidence of a disability. Whether a person has the ability to provide support or to earn additional income shall be determined upon consideration of the nature and extent of the disability, cash and other resources available and the totality of the circumstances. A parent who receives SSI shall not be imputed income or assessed a child support obligation unless the parent has income or an earning capacity independent of his or her SSI entitlement.

(j) *Earnest re-employment.* Parents who suffer a loss of income either voluntarily or due to their own misconduct may have their support obligation calculated based upon reduced earnings after a reasonable period of time if the parent earnestly seeks to maximize earning capacity.

(k) *Incarcerated parents.* Service of a term of incarceration that exceeds 180 days of continuous confinement may be considered as evidence of a diminished earning capacity unless the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.

(l) *Secondary Income.* Secondary income includes earned income from second jobs and passive income from interest, dividends, and trusts. Employment is “secondary” if the parent’s primary employment is substantially full time and consistent with the parent’s reasonable earning capacity. Whether secondary income is included in the determination of support is determined on a case-by-case basis and:

(1) Existing secondary employment income is more likely to be included if it:

- (i) Was historically earned or received especially when or if the parents resided together and significantly enhanced the family’s standard of living;
- (ii) Substantially raises the standard of living of the parent or the parent’s household to an extent not shared by the child or children before the court; or
- (iii) Is necessary to meet the minimum needs of the child or children before the court; and

(2) Existing second employment income is more likely to be excluded if it:

- (i) Merely allows the parent to “make ends meet” especially regarding the needs of other dependent children;
- (ii) Is used to pay extraordinary medical or educational expenses (including those of an emancipated child) or to service extraordinary indebtedness;
- (iii) Is necessary because the other parent of the child or children before the court is not providing adequate support;
- (iv) Substantially conflicts with the parent’s contact with the child or children before the court; or
- (v) Was historically saved or reinvested.

(3) Fluctuating income and the 40-hour work week. All income from primary employment is included in determining child support. The fact that income may fluctuate or that wage income may exceed 40 hours per week is not a basis for exclusion from income. Where income fluctuates, the Court must determine average monthly income likely to prospectively recur.

(4) Forsaken second jobs and overtime. To leave a second job or to decline prospective overtime without just cause is not a substantial change of circumstance for the purpose of a modification within two and one-half years. However, in the context of a new support petition or a modification beyond two and one-half years, previously earned second job income or overtime will not be imputed to a parent as long as that parent’s actual income is substantially full-time and consistent with reasonable earning capacity.

(m) *Financial report.*

(1) Failure to submit a Child Support Financial Disclosure Report pursuant to Rule 16(a) with adequate supporting documentation risks dismissal or an adverse outcome. Adequate supporting documentation commonly includes but is not limited to each parent’s most recent tax returns, W-2 Forms, three most recent pay stubs, documentation of payments from Social Security, Unemployment Compensation, Worker’s Compensation, a recent physician’s statement as to any claimed disability, and receipts for child-care payments and private school costs.

(2) Individuals with self-employment income shall include all schedules and forms required to be filed with the tax return with corroborating documentation for significant expense categories and, to the

extent that tax returns do not reflect current earnings or income, other reliable documentation of that income (such as recent bank statements).

(3) Individuals receiving income from a business organization in which they are a partner or significant shareholder also shall include the organization's tax return and supporting schedules and forms, and to the extent that tax returns do not reflect the organization's current earnings or income, other reliable documentation of that income (such as recent bank statements).

(n) *Nontaxable Income Adjustment.* Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability, personal injury awards or settlements determined by the Court to be income for support purposes, military allowances, or any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law shall be increased by 25% to estimate the taxable earned income equivalent. This shall not apply to payments made by the Social Security Administration.

Rule 502. Net available income.

(a) *Net income.* Net available income for each parent is determined by subtracting limited deductions and a Self Support Allowance from gross income. The result is discounted further by a designated percentage based upon the number of other children each parent is obligated to support. Obligations are calculated on a monthly basis and all values should be rounded to the nearest whole number. Gross income includes:

(1) *Salary and wages.* This includes salaries, wages, commissions, bonuses, overtime and any other income (other than self-employment income) that is subject to Federal Retirement or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax" or other similar designation.

(2) *Self employment.* This includes all income earned as an independent contractor and subject to federal self-employment tax.

(3) *Unearned.* This includes all other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

(4) *Nontaxable.* This includes all other income not subject to income taxation such as:

(i) Most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation of that parent as set forth in Rule 506 dollar for dollar. Public need-based benefits, such as Supplemental Security Income (SSI), paid to a child due to the child's own disability shall not be included as income to either parent.

(ii) *Military allowances.* Military allowances in addition to pay shall be treated as income. However, military clothing allowances shall be excluded and a servicemember's housing allowance (BAH) shall be limited to the amount that he or she would receive if stationed at Dover Air Force Base.

(5) *Exceptions.*

- (i) Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income only if they are significant and reduce personal living expenses.
- (ii) A cost-of-living stipend given to an employee as compensation due to relocation to a high-cost location will not be included as income as long as it is clearly identified on pay documents.
- (iii) Adoption subsidies disbursed pursuant to 42 U.S.C. § 673 or a subsequent or similar statute shall not be counted as income.

(b) *Taxes.*

- (1) Except as otherwise provided in subsection (2) herein, taxes, either actual or estimated, shall not be deducted in determining available income.
- (2) Self-employed parents who establish with documentation actual payment of self-employment taxes shall have their available income reduced a designated amount. That amount shall be 7% of self-employment income to the extent that the sum of taxable wages and self-employment income does not exceed the Social Security wage base.

(c) *Deductions.* Allowable deductions include:

- (1) *Medical insurance.* Medical insurance premiums (including COBRA payments) paid by either parent (but not guardian or stepparent) and regardless of which persons are covered by the policy are deductible unless the policy also covers the children of the union and are includable as an element of primary support pursuant to Rule 503(b)(3).
- (2) *Pension.* All mandatory retirement contributions are deductible. If that amount is less than 5% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 5% (including mandatory) of gross income also may be deducted.
- (3) *Union dues.* Average monthly amount paid to any labor organization as a condition of employment is deductible.
- (4) *Alimony paid.* Court ordered periodic cash payments for the support of a former spouse shall be deductible from gross income.
- (5) *Disability insurance.* Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to guarantee credit card, mortgage or other third-party obligations) shall be deductible in determining net income available for child support.
- (6) *Other.* Other mandatory unreimbursed business expenses such as supplies required by the employer to be purchased are deductible.

(d) *Self Support Allowance.* The Self Support Allowance shall be 120% of the Federal Poverty Guideline for a one-person household as published in the Federal Register by the United States Department of Health and Human Services rounded to the nearest multiple of ten (\$10). The allowance shall be adjusted in January of each year.

(e) *Adjustment for other dependent.* Each parent's available net income will be diluted in recognition of his or her duty of support to other dependent children, excluding step-children, not of this union either in or

out of the household by multiplying net income after the subtraction of the Self Support Allowance by 70%. Children outside a parent's household should be counted only if there is a court order for current support or proof of a pattern of support. A parent's support of an adult dependent may be similarly recognized, but only if the parent is legally obligated to provide that support as established either by other court order or the agreement of the parties before the Court.

Rule 503. Primary support need.

(a) *Primary share.* Each parent's Net Available income will be expressed as a percentage to be known as the Primary Share of the parents' combined Net Available income. The percentage will be derived on a case-by-case basis by dividing each parent's Net Available income by their combined Net Available income. This is to allow the children's primary support needs to be equitably allocated between the parents and to facilitate the sharing of extraordinary medical expenses. If the person seeking support is not a parent, then the Primary Share for the obligor before the Court is 50%.

(b) *Primary support.* Each parent's Primary Support Obligation is determined by multiplying their Primary Share percentage by the sum of all of the elements of the children's primary support need. The elements of the primary support need are:

(1) *Primary allowances.* The primary allowances shall be comprised of two components, a per household component and a per child component:

(i) The per household component is 25% of the Self Support Allowance minus \$25.

(ii) The per child component is 25% of the Self Support Allowance plus \$20.

(iii) Each component shall be rounded to the nearest multiple of ten (10). Half child allowances may be rounded to a multiple of five (5).

(iv) To determine the allowance for each household, multiply the number of children by the per child component, and then add the per household component to the result. The allowances shall be adjusted in January of each year.

(2) *Child care.* The Formula facilitates the equitable allocation of all expenses incurred for the care and supervision of the children of this union by either parent required for the parent to work. No hypothetical or attributed child-care costs are permitted. Cancelled checks, child-care contracts, receipts, and other instruments created in the usual course of business shall be admissible in addition to the testimony of the parties to prove child-care expenses.

(3) *Health insurance premiums.* A portion of premiums paid by a party for health insurance covering dependent children of the union shall be included as an element of primary support as follows:

(i) That portion shall be three-quarters (3/4) of a party's out-of-pocket premium unless the party has other minor children to support as described in Rule 502(e) in which case the proportion will be one-half (1/2).

(ii) This may include insurance premiums paid by a guardian or through a stepparent. However, no recognition will be given for a premium paid by a guardian or through a stepparent if the policy covers any of the guardian's or stepparent's own children. The portion allocated to the children by way of a stepparent shall be as in subsection (1) by reference to the parent to whom the stepparent

is married. The portion allocated to the children by way of a guardian shall be controlled by reference to whether or not the guardian is also guardian to other children of other unions.

(4) *Other primary expenses.* The special needs of some children require parents to regularly incur other expenses including, as permitted by subsection (c), private school.

(c) *Private school.* Private or parochial school expenses shall be included as a primary expense only where:

- (1) The parties have adequate financial resources, and
- (2) After consideration of the general equities of the particular case including consideration of whether:
 - (i) The parents previously agreed to pay for their child(ren)'s attendance in private school; or
 - (ii) The child has special needs that cannot be accommodated in a public school setting; or
 - (iii) Immediate family history indicates that the child likely would have attended private or parochial school but for the parties' separation.

(d) *Shared equal placement.* Shared Equal placement (at least 164 overnights annually in each household) is established by order of the court, by written agreement, or in the absence of any order or written agreement by other evidence. Additionally,

- (1) Each child is counted as one half in each household;
- (2) The Court shall establish additional primary support allowances to accommodate any such partial allocation of placement;
- (3) Any modification of an order based upon a change between primary and shared equal placement must be proven by court order or written agreement or, in the absence thereof, by clear and convincing evidence.

(4) *Shared Incidental Expenses.* Upon a showing that a parent is not equally contributing to shared incidental expenses, the Court may impose any appropriate sanction, including but not limited to recalculating the support obligation as if the child resided primarily with the other parent.

d. An expense is considered a "shared incidental expense" based on a totality of the circumstances, including:

- i. Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);
- ii. Whether the expense is customarily incurred by similarly situated families;
- iii. Whether both parents benefit from the expense;
- iv. The amount of the expense and the frequency with which it is anticipated to be incurred; and
- v. The parents' respective abilities to contribute to the expense.

e. The following expenses shall be presumptively considered shared incidental expenses: haircuts; school lunches; instrument rentals; school supplies; school project supplies; enrollment/uniform and other mandatory fees (but not

equipment) associated with participating in local recreational sports or extracurricular activities; and local field trips not requiring overnight accommodations or air transportation.

f. An action to enforce the provisions of this Rule shall be plead with particularity.

(5) If all the minor children before the Court reside in shared placement, and the calculation indicates a net order of less than \$50 per month, no affirmative payment of current support shall be ordered.

(6) Either parent may be assessed an affirmative obligation without regard to which parent filed the petition.

Rule 504. Standard of Living Adjustment (SOLA).

(a) After satisfying the parents' own and the children's primary needs, the Standard of Living Adjustment (SOLA) allows each child to share in each parent's economic well-being to simulate what the child would have enjoyed if the parents lived as a single family unit. SOLA is determined by subtracting each parent's Primary Support Obligation from his or her respective Net Available Income and multiplying the result by a designated percentage based upon the number of children of the union:

1 child	12%
2 children	17%
3 children	21%
Each additional child	2%

(b) If either or both parents' Net Available Income for the SOLA exceeds ten times (10X) the Self-Support Allowance, then each parent's Net Available Income for the SOLA will be reduced by 30% of their combined excess.

Rule 505. Credits and the net monthly obligation.

(a) *Gross obligation.* Each parent's Gross Obligation is the sum of the individual's Primary Support Obligation (Rule 503(b)) and Standard of Living Adjustment (Rule 504).

(b) *Credits.* Each parent shall retain from their Gross Obligation:

- (1) Primary Support Allowance for the children of this union in their primary or shared placement; and
- (2) Child care, private school, or other primary expenses claimed by the parent as allowed by Rule 503(b) or (c); and
- (3) Per capita share of the parents' combined SOLA obligation for the children of this union in each parent's primary or shared placement; and
- (4) Parenting Time Adjustment as set forth in Rule 505(c), if applicable.

(c) *Parenting time adjustment.* When a child spends an average of more than 79 but less than 164 annual overnights in the household of the parent from whom support is sought, that parent shall be entitled to retain a percentage of the primary support allowance allocable to that child and combined SOLA and shall be

known as the Parenting Time Adjustment. The percentage is 10% for 80 to 124 overnights, and 30% for 125 to 163 overnights. Additionally:

- (1) The number of overnights must be proven by court order, written agreement, previous finding, or other clear and convincing evidence. The party asserting a number of overnights other than as indicated in the order, agreement, or previous finding carries the burden of proof.
- (2) Modest or temporary departures from the established contact schedule will not prompt any adjustments or rebuttal of the Formula.
- (3) Where the residential arrangement is complex with children in different ranges, then the percentages should be averaged.

Rule 506. Minimum orders and low-income adjustments.

(a) *Minimum orders.* Except as otherwise provided in this Rule, a support obligation for one child shall not be less than 20% of the Primary Allowance for one child; and for 2 or more children, 20% of the Primary Allowance for two children. Minimum orders shall be rounded to the nearest multiple of ten (10).

- (1) This limitation shall not apply where children reside in shared (at least 164 overnights in each household) or split (at least one child of the union with primary residence in each household) placement.
- (2) A disabled person with actual income of less than the Self Support Allowance may be assessed a lesser obligation upon consideration of the nature and extent of the disability, cash and other resources available, and the totality of the circumstances.

(b) *Self-Support Protection.* Except incident to subsection (a) of this Rule, no parent shall be placed under an obligation to pay more than a designated percentage of net available income as determined under Rule 502(a). The designated percentage shall be 50% unless the parent has children to support in three (3) or more households in which case the percentage shall be 35%.

(c) *Automatic adjustment for incarceration.*

- (1) After 180 days of continuous incarceration, every prospective current support obligation established or modified after January 31, 2019, will automatically decrease to one half of the minimum order amount recited in Rule 506(a) as of the date of the order. This also applies to new support and modification petitions wherein the obligated parent is currently incarcerated and has been continually confined for more than 180 days at the time of the hearing or mediation conference. The presumption of a reduced obligation shall be rebutted if the obligated parent has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.
- (2) A petition may be filed to determine the exact date of adjustment and whether the individual has independent income, resources, or assets with which to pay an obligation of support consistent with his or her pre-incarceration circumstances.
- (3) The obligation will not revert upon release from incarceration, but release shall constitute a substantial change of circumstances for modification pursuant to Rule 508.
- (4) Every written order for new or modified current support shall advise of this potential adjustment.

(5) Incarcerated parents subject to current child support orders that issued prior to February 1, 2019, or who were subsequently denied relief due to the underlying reasons for their incarceration, may petition for modification under the standards recited in subsection (1). However, if the obligation had already been calculated on the basis of continuous confinement under the prior standard, then relief may only be awarded two and one-half (2^{1/2}) years after the last determination of current support.

(6) The Division of Child Support Services (DCSS) may utilize the procedures outlined in Rule 302 to facilitate these adjustments.

Rule 507. Medical support.

(a) *Available, affordable, and accessible health insurance.* One or both parents shall be ordered to acquire private health insurance when it is available through employment, reasonable in cost, and accessible to the child. Whether health insurance available to a parent other than through employment is reasonable in cost and should be acquired or maintained will be determined on a case-by-case basis.

(1) *Reasonable cost.* In the context of establishing or modifying a child support obligation health insurance is reasonable in cost if:

(i) The premium to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income; and

(ii) After inclusion of the insurance premium in the Formula, the parents' combined net income pursuant to Rule 502 is sufficient to provide all primary expenses exclusive of private school tuition.

(2) *Continuing duty to acquire insurance.* If affordable coverage is not available at the time of the order or whenever coverage lapses, each parent shall be ordered to acquire coverage that becomes available if the cost to cover both the parent and the parent's dependent children does not exceed ten percent (10%) of the parent's gross income.

(3) *Accessibility.* Health insurance is accessible to a child if it covers medical services within a reasonable distance from the child's primary residence.

(4) *Termination.* Once a parent has been ordered to acquire or maintain a specific policy of insurance, the parent shall continue the coverage despite changes in cost or accessibility until further order of the Court or written consent of the opposing party, or the State of Delaware if the child is a Medicaid recipient.

(5) *Specialized coverage.* Whether either parent is required to acquire or maintain dental, vision, or other specialized coverage shall be determined on a case-by-case basis. A National Medical Support Notice or medical support attachment shall not include specialized coverage unless expressly ordered.

(b) *Cash medical support.* Every new or modified order for current support entered on or after January 1, 2015, shall impose an obligation of cash medical support on each parent who is a party to the petition.

(1) Cash medical support shall include all healthcare expenses not reimbursed by insurance, and incurred for the children for whom the order is entered. Such expenses include, but are not limited to, medical, dental, orthodontic, vision, and psychological counseling costs incurred on behalf of each child.

(2) Each parent’s obligation for cash medical support shall be determined by multiplying the amount of unreimbursed healthcare expenses by the parent’s primary share percentage as defined in Rule 503(a) but rounded to a multiple of 10% as herein described. As needed, percentages greater than 50% shall round down to the next 10% interval; percentages less than 50% shall round up. Other than a child with only one known living parent, the percentage shall be neither greater than 90%, nor less than 10%. If the support recipient is a nonparent and the child has only one known living parent, then the cash medical support percentage is 100%. The cash medical support percentage for inmate obligations imposed pursuant to Rule 506(c) shall be 50%.

(3) An action for contribution to or reimbursement for a medical expense for a child may be brought at any time after the medical expense is incurred. However, any right of reimbursement will be presumed to have been waived unless a petition for reimbursement is filed with the Court by December 31 of the second year following the date the expense was incurred. This presumption may be rebutted for good cause shown.

(4) *Incurred.* For purposes of this rule (including orders entered before 2015 that assigned the first \$350 of healthcare expenses to the child support recipient), “incurred” shall be the date the medical healthcare service was provided, except that in the event a parent contracts to pay orthodontic or other long-term treatment services over a period of time the date each periodic payment is due under the contract shall be deemed to be the date the expense was “incurred.”

Rule 508. Modification.

Any petition for child support modification filed within two and one-half years of the last determination of current support must allege with particularity a substantial change of circumstances not caused by the petitioner’s voluntary or wrongful conduct except as described in Rule 501(j) and 506(c). Furthermore:

- (a) No modification will be ordered unless the new calculation produces a change of more than 10%.
- (b) Beyond two and one-half years, neither the “particularity” nor the “10%” requirement applies.
- (c) An obligation may be adjusted upwards or downwards, and the payor and payee may be reversed, regardless of who filed the petition.
- (d) An update or adjustment to the Delaware Child Support Formula pursuant to Rule 500(b) does not constitute a change of circumstances sufficient to modify an existing order for current support even if the amount of current support would change as a result of the update or adjustment.
- (e) Any petition for modification of an arrears only order filed within two and one-half years of the last establishment by the Court of an arrears only payment after either a hearing on the merits or stipulation of the parties must allege with particularity a substantial change of circumstances not caused by the Petitioner’s voluntary or wrongful conduct except as described in Rule 501(j).
- (f) *Annual Document Exchange.* Any party subject to an active current child support obligation may initiate an exchange of child support financial disclosure reports as required by Rule 16(a). Specifically:

- 4. An exchange is initiated by a party to an ongoing current support obligation sending their own completed financial report along with a blank financial

disclosure report form to the other party to complete. The receiving party shall return their completed report with all attachments within 30 days.

5. If the exchange is initiated prior to May 1, tax returns exchanged shall be the most recently filed by the party. After May 1, tax returns exchanged shall be for tax year immediately preceding. If the party has received a tax filing extension, they shall instead submit equivalent financial records such as a draft return with attachments. An exchange may be limited in scope such as the parties' 3 most recent pay stubs incident to a recent change in employment.
6. Attached to each financial disclosure report shall be all documentation otherwise required by Rule 500(c) to be submitted in preparation for a hearing.
7. No party shall initiate an exchange more than once per year or within 6 months after the most recent Court determination of current support (including the dismissal with prejudice of a petition for modification), or in the calendar year in which the last child subject to the order will reach their 17th birthday. A nonparent child support recipient shall only be required to provide information that is directly relevant to the calculation of child support.
8. The Court will assist, upon request, with the exchange if compliance may violate a no-contact order with the other party or any resident in the other party's home, or if a party has been granted confidential address designation pursuant to Rule 90.1(d).
9. An independent Motion to Compel may be filed upon an opposing party's failure to comply with a properly initiated exchange. The motion may be decided on the papers or after a hearing at the discretion of the Court. The motion shall have attached a copy of the moving party's own financial report and proof of actual delivery to and receipt by the noncompliant party.
10. If the Court finds a party has failed to make a good faith effort to comply with this rule or used this rule to harass or abuse the opposing party, the Court may:
 - v. Direct the party to comply with the rule within a time certain or else appear before the Court for contempt;
 - vi. Authorize the compliant party to file a petition for modification not subject to Rule 508(c).
 - vii. Require the noncompliant party to pay court costs and attorney's fees incurred by the compliant party; or
 - viii. Any other relief the Court finds just and appropriate.
11. The Division of Child Support Services and Department of Justice are not required to facilitate the operation of this rule, and the fact of those agencies' involvement shall not constitute a basis to relieve or excuse either party of their obligations under this rule.

Rule 509. Retroactive support.

(a) Retroactive support in a new support action shall be presumed at 6 months prior to the date of filing. The burden of proof shall be on the party seeking greater or lesser retroactivity. Retroactivity shall not exceed 24 months prior to the date of filing and shall not predate the resolution of a previous new support action wherein current support was declined by the same petitioner, or not awarded due to the same petitioner's failure to appear.

(b) Retroactive support is determined by the totality of the circumstances. Whether or not the value of direct, in-kind, or other support provided is comparable to the amount indicated by the Formula is not conclusive of whether retroactive support should be awarded. Factors to be considered include but are not limited to whether:

(1) The parent has:

(i) The ability to pay;

(ii) Been aware of the possible parentage;

(iii) Other children to support;

(iv) Avoided service of process;

(v) Meaningfully contributed financially or in-kind to the care of the child and whether those contributions were realized within the child's primary residence;

(vi) Been incarcerated, institutionalized, hospitalized, or otherwise involuntarily absent from the workforce.

(2) The party seeking support has:

(i) Exercised due diligence in pursuing legal remedies;

(ii) Made requests for assistance that have gone unheeded;

(iii) Incurred debt to compensate for the lack of support from the other parent.

(3) The child or children have special financial needs;

(4) The parents' finances have been intermingled including if the child has resided in a home to which the parent has provided material support; and

(5) The parties have or had a formal or informal support agreement and whether the agreement was honored.

(c) Retroactivity prior to the filing date shall not be awarded for any period of incarceration subject to the exceptions contained in Rule 501(k), or incident to foster care placement.

(d) Retroactive support should be repaid at a rate equal to 20% of the most recent calculation of current support (but not less than \$20) if:

(1) Current support is ongoing;

(2) Current support is not ongoing, but the subject child or children reside in the home of obligated parent; or

(3) Current support is not ongoing, but the retroactive support is owed to the State. However, when imposing a payment term in a case where all arrears have been assigned to the State of Delaware, and the individual has other child support accounts owed to private individuals or other States, then the repayment element of the obligation owed to the State of Delaware should be \$20 per month.

(4) In addition to any other repayment term, genetic test costs should be paid at the rate of \$20 per month.

In all other instances repayment shall approximate the amount that would have been due if current support had been ongoing. If a calculation is performed, it should be based upon the obligated parent's income alone with a 50% primary share and increased by 20% to simulate an arrears payment. Deviation may occur by agreement, upon subsequent or repeated contempt for non-payment, or for good cause shown.

Rule 510. Overpayments.

(a) *Credit in the context of an ongoing support obligation.* Whenever a net account credit arises in favor of the obligated parent, the arrears balance should be set at zero and:

(1) Current support shall be deferred for the period of time necessary to exhaust the credit based upon the current support obligation appropriate under these Rules. This may be subsequently modified if circumstances warrant a modification of the underlying current support obligation.

(2) If deferral of current support would be a hardship upon the household of the support recipient and sufficient time remains on the obligation, the Court may instead partially defer the obligation by 20% to 50% until the credit is exhausted.

(3) If there is not sufficient time remaining on the obligation to exhaust the credit, the Court shall defer the obligation as in subsection (a) of this Rule, and estimate the likely termination date of the obligation and the credit balance likely to remain at termination. In estimating the termination date, the Court may presume that a child emancipates for child support purposes on June 1 following the child's 18th birthday. However, if a child was born in June, July or August, the presumed date is the child's 18th birthday. This should be adjusted in accordance with the child's actual circumstances.

(b) *Change of placement.*

(1) If the credit arises in the context of a change of placement to the obligated parent, then the credit shall be converted into a past due support balance in favor of that parent and enforceable as such.

(2) If the credit arises in the context of a change of placement to a third party, then the credit shall be converted to a past due balance in favor of the obligated parent. However, the credit may be reduced to the extent the support recipient remitted the support proceeds to the new custodian or guardian, or expended the proceeds to the benefit of the child or children.

(c) *Termination.* If the credit arises in the context of the emancipation or death of the final child of the order, then the credit shall be established as a past due support obligation in favor of the obligated parent and enforceable as such. This includes when the credit had been previously estimated as in subsection (a)(3) of this Rule. The actual amount of the credit may vary depending upon the circumstances.