

**TERMINATION OF CHILD SUPPORT:
EMANCIPATION, SHIFTING THE BURDEN OF PROOF AND THE
NON-APPLICABILITY OF N.J.S.A. 2A:17.56-23a**

By Christopher Rade Musulin, Esquire
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Motions to modify child support upon emancipation are routinely filed by family law attorneys. Significant confusion continues to exist with regard to the burden of proof as well as the effective date of any relief.

BURDEN OF PROOF

Various cases state that there is no fixed age upon which emancipation automatically occurs and each case is fact-specific. *E.g.*, Newburgh v. Arrigo, 88 N.J. 529 (1982); Filippone v. Lee, 304 N.J. Super. 301 (App. Div. 1997). N.J.S.A. 9:17B-3, however, provides that a person is “deemed to be an adult” upon reaching the age of eighteen. Accordingly, a moving party establishes a prima facie case of emancipation upon demonstrating that a child has reached the age of eighteen, and the burden of proof then shifts to the responding party to demonstrate a continuing need for financial support. Rescinito v. Panetta, 2009 WL 2525373 at *2 (N.J.Super.A.D. Aug. 20, 2009).

The burden to demonstrate a continuing need for parental financial contribution is satisfied by showing that a child is still in high school, a child is enrolled in college, a health condition prevents a child from being self-sufficient or other similar situations as recognized by case law authority. Upon making such a demonstration, the burden of proof shifts back to the moving party, who at this stage can raise genuine issues of material fact as to the bona fides of the need for parental contribution, necessitating the scheduling of a plenary hearing.

N.J.S.A. 2A:17.56-23a

Due to the fact that the obligation to provide support terminates upon the emancipation of the child, the anti-retroactivity provisions of N.J.S.A. 2A:17.56-23a are not applicable following a judicial determination of emancipation. Mahoney v. Pennell, 285 N.J.Super. 638 (App. Div. 1995). N.J.S.A. 2A:17.56-23a does not bar the retroactive termination of child support back to the date the child was deemed emancipated by the Court. Rescinito v. Panetta, 2009 WL 2525373 at *3 (N.J.Super.A.D. Aug. 20, 2009). Accordingly, during negotiations or judicial dispositions, the correct date for retroactivity is not the date of filing of the motion but, rather, the date of emancipation.

Numerous unpublished opinions of the New Jersey Appellate Division, while not specifically ordering the reimbursement of some or all of child support, college contributions or other forms of support after a determination of emancipation do not prohibit such relief. *E.g.*, Petruzzi v. Petruzzi, 2008 WL 3914874 (N.J. Super. A.D. Aug. 27, 2008). Accordingly, when representing an individual who has paid child support, contributed to college, or provided other maintenance beyond the date of emancipation, an application should be made for reimbursement, which should be granted.