WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

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JUL 9 4 33 PM '93

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Department of Health and Human Resources TITLE NUMBER: 78

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code §48A-2-8, 42 U.S.C., 45 C.F.R. §302.56

AMENDMENT TO AN EXISTING RULE: YES X NO ___ Repeal and Replace.

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: Guidelines for Child Support Awards

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: AUGUST 12, 1993 TIME: 9:00-1:00 PM

LOCATION OF PUBLIC HEARING: Conference Room "C" Building 7 Capitol Complex

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:
Child Advocate Office
Bldg. 6, Room 817
Capitol Complex
Charleston, WV 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

680

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Guidelines for Child Support Awards

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency Department of Health and Human Resources

Address Building 3, Capitol Complex Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$	$	$ -0-	$ -0-	$ -0-
Personal Services			-0-	-0-	-0-
Current Expense			-0-	-0-	-0-
Repairs and Alterations			-0-	-0-	-0-
Equipment			-0-	-0-	-0-
Other			-0-	-0-	-0-

2. Explanation of above estimates.

There is no Fiscal Impact on the state for the proposed legislative rule.

3. Objectives of these rules:

To ammend the West Virginia Child Support Guidelines to conform with Senate Bill 358.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. **Economic Impact on State Government.**

NONE

B. **Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.**

Obligor wil continue to pay child support tied to their ability to pay. Children will continue to receive child support with consideration for their needs.

C. **Economic Impact on Citizens/Public at Large.**

SAME AS B

Date 7-9-93

Signature of Agency Head or Authorized Representative

Ruth Ann Panepinto

Ruth Ann Panepinto, Ph.D., Secretary
Department of Health and Human Resources

SUMMARY OF LEGISLATIVE RULE RULE
TITLE 78
PROCEDURAL RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SERIES 16

This Legislative Rule establishes procedural criteria and guidelines to be used to deterine the amount of child support to be awarded in child support establishment and modification cases.

FILED

JUL 9 4 34 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
CHILD ADVOCATE OFFICE
SERIES 16
GUIDELINES FOR CHILD SUPPORT AWARDS

§78-16-1. General.

1.1. Scope. This legislative rule establishes guidelines for child support award amounts so as to ensure uniformity by those persons who make child support recommendations and enter child support orders, to increase predictability for parents, children, and other persons who are directly affected by child support orders, to protect the best interests of the child and maintain the priority of protecting the economic welfare of the child.

1.2. Authority and related code citation. -- W. Va. Code §48A-2-8, 42 U.S.C. §667, 45 C.F.R. §302.56

1.3. Filing date. --

1.4. Effective date. --

1.5. Repeal of former rule. This legislative rule repeals and replaces the following West Virginia Legislative Rule: Department of Health and Human Resources, Series 16, " Guidelines for Child Support Awards," filed April 12, 1988.

§78-16-2. Formula for establishing child support obligations.

2.1. Calculation of gross income. The amount of gross income for a parent includes but is not limited to the following:

2.1.1. Wages, Salary, Commissions, and any other income due or to be due in the future to a parent from his employer or his successor employers.

2.1.1.a. Any payment due or to be due in the future to a parent from a profit-sharing plan, a pension, plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, worker's compensation benefits, state lottery winnings and prizes, and overtime pay.

2.1.1.a.A. Overtime.

2.1.1.a.A.(a) In employment situations where overtime is not normally available, a parent who is offered

overtime employment on an irregular basis shall not be required to accept the offered overtime employment; however, if he/she accepts overtime employment, all income resulting from overtime employment shall be considered on a monthly pro-rated basis in the calculation of the child support obligation.

2.1.1.a.A.(b). A parent who has traditionally accepted overtime employment either on a mandatory recurring overtime basis or an irregular basis shall not voluntarily limit his or her income by refusing to accept overtime employment for the purpose of reducing his or her child support obligation.

2.1.1.a.B. If a court or master determines that a refusal to accept overtime employment results in a self-induced decline in income, the court or master shall attribute the earnings available from overtime work to such parent.

2.1.1.a.C. Such earnings shall be considered on a monthly pro-rated basis in the calculation of child support.

2.1.1.a.C.(a). To determine the monthly pro-rated amount of overtime to be included in the calculation of gross income, take the yearly total of overtime income and divide by twelve (12).

2.1.1.b. All non-cash or fringe benefits or reimburseable expenses to the extent that they provide a parent with benefits or property that he or she would otherwise have to provide for himself or herself including but not limited to: business expense accounts, business credit accounts, social or recreational club membership or tangible property such as automobiles, housing, utilities or meals.

2.1.1.c. Any amount of money which is owing to the parent as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or political subdivision of another state, or any other legal entity which is indebted to the parent.

2.1.2. Interest

2.1.3. Dividends

2.1.4. The Portion of sub-chapter S corporation distributions attributable to the parent - Property distributed (including cash) other than dividend distributions reported to the recipient on Form 1099-DIV.

2.1.5. Partnership income/distributions

2.1.6. Excess retained earnings in a closely held corporation.

2.1.6.a. Excess accumulation of prior period earnings retained within the corporation over and above;

2.1.6.a.A. The normal working capital reserve requirements of the subject company;

2.1.6.a.B. Financing requirements for future expansion or diversification plans, and;

2.1.6.a.C. Future capital asset budget requirements.

2.1.7. 401-K pension deductions - Pre-tax contributions withheld or deducted in determining an individual's gross taxable income.

2.1.8. Other pension/savings payments - Keogh, etc. - Other pre-tax and after-tax contributions to pension or savings plans.

2.1.9. Capital gain cash flow from the sale of assets.

2.1.10. Rental income cash flow.

2.1.11. At no time shall the fact that a parent has remarried, or the fact that the spouse of a remarried parent is, or is not, gainfully employed, or that said spouse has income from whatever source, be considered in determining whether or not to increase or decrease child support payments by or to the remarried parent.

2.1.12. All information relating to income shall be presented to the court or master based on monthly amounts.

2.1.12.a. To determine the correct monthly income amount for a parent who is paid wages weekly, multiply the weekly pay by fifty-two (52) and divide by twelve (12).

2.1.12.b. To determine the correct monthly income amount for a parent who is paid on a bi-weekly basis, multiply the amount of bi-weekly pay by twenty-six and divide by twelve (12).

2.1.12.c. To determine the correct monthly income for a parent who is paid on a semi-monthly basis, multiply the amount of semi-monthly pay by twenty-four (24) and divide by twelve (12).

2.1.12.d. When income is paid annually, semi-annually, quarterly or on an irregular basis, it shall be pro-rated by dividing the yearly total by twelve (12) to arrive at a correct monthly amount.

2.1.13. If the court or master deems it appropriate, such information may be presented in such other form as the court or master directs.

2.2. Calculation of net income.

2.2.1. The amount of net income for a parent is computed by subtracting from the gross income of such parent the following:

2.2.1.a. Income tax.

2.2.1.a.A. "Income Tax". Defined.

2.2.1.a.A.(a). The term "income tax" or "income taxes" shall mean personal income tax paid by a parent on his or her taxable income under the laws of the United States, the State of West Virginia, any sister state, any territory, any political subdivision of such governmental bodies, and any other taxing jurisdiction, foreign or domestic.

2.2.1.b. Taxes withheld from income.

2.2.1.b.A. "Taxes withheld from income". Defined.

2.2.1.b.A.(a). The term "taxes withheld from income" shall mean the amount of income tax deducted and withheld by a employer from income of a parent, computed in such a manner as to result, so far as is practicable, in withholding an amount substantially equivalent to the income tax estimated to be due.

2.2.1.b.A.(b). The amount of taxes withheld from income, to be valid as a factor in determining the amount of child support owed by a parent, shall be based upon the maximum number of withholding exemptions allowable under the applicable tax law.

2.2.3. Deductions from income required by law.

2.2.3.a. "Deductions from income required by law". Defined.

2.2.3.a.A. The term "deductions from income required by law" means the amount deducted and withheld by an employer from income of a parent as required by law, including, but not limited to, social security taxes, assessments on wages made under the provisions of any employment security law, and child support payments, if paid, made pursuant to a court order or a written separation agreement incorporated as an order of the court.

2.2.3.a.B. "Deductions from income required by law" shall not include wage attachments and suggestions which are required by law to be deducted and withheld by the employer, but which are for the enforcement of debts which would not otherwise be considered under the provisions of this legislative rule in determining a parent's net income.

2.2.4. Deductions from income required by an employer as a condition of employment.

2.2.4.a. "Deductions from income required by an employer as a condition of employment". Defined.

2.2.4.a.A. The term "deductions from income required by an employer as a condition of employment" shall mean nonreimbursable amounts deducted and withheld by an employer from income of a parent as payment for uniforms, tools, equipment and other supplies necessary for the performance of services or labor on behalf of the employer.

2.2.4.a.B. Deductions from income required by an employer as a condition of employment" shall not include deductions for food, clothing, shelter, and other necessities of life unless, and only to the extent, that such necessities are provided for use or consumption by the child(ren) for whom support is being calculated.

2.2.4.b. Deductions from income required by an employer for mandatory pension plans are not to be included in this section but are to be attributed to the party as income to be due in the future.

2.2.5. Deductions from income required by a union as a condition of employment.

2.2.5.a. "Deductions from income required by a union as a condition of employment". Defined.

2.2.5.a.A. The term "deductions from income required by a union as a condition of employment" shall mean the reasonable amount deducted and withheld by an employer from income of a parent as dues, fees or other assessments, for the benefit of a labor union or other employee organization, required to be withheld under the terms of a labor-management agreement.

2.2.6. Legitimate business expenses.

2.2.6.a. Legitimate business expenses for self employed income. Defined.

2.2.6.a.A. Adjustments in calculating gross income shall be made by including non cash deductions claimed as part of the party's total income; non-cash deductions include but are not limited to: depreciation, depletion, amortization, use of personal vehicles, use of home, home utilities, pension and or profit sharing contributions for the parent, Internal Revenue Code Section 79 deductions and deductions for self-employment tax (where self employment tax is deducted from income).

2.2.7. The court or master shall disregard any debt, deduction from income or expense which is incurred with the obvious intent of decreasing child support payments.

2.3. Determination of the standard deduction of a parent.

2.3.1. The court or master shall establish the standard deduction of each parent in accordance with the provisions established by procedural rule.

2.4. Calculation of the net income available for primary child support.

2.4.1. The court or master shall determine for each parent the amount of "net income available for primary child support" by subtracting the standard deduction of the parent from the net income of such parent.

2.5. Calculation of the total primary child support need.

2.5.1. The court or master shall establish the primary support need of each child for whom child support is sought in accordance with the provisions established by procedural rule and then total these amounts.

2.5.1.a. Payments or deductions for the benefit of child(ren).

2.5.1.a.A. The court or master shall add to the primary support needs of all the children in question the cost of extraordinary medical expenses and the cost of child care needed to allow a custodial parent to work.

2.5.1.a.A.(a). Other expenses incurred because of the special needs of a child may be allowed if found by the court or master to be necessary. (See Section 5.1. Payments for the benefit of children).

2.5.1.a.A.(b). The amount resulting from these calculations shall be the "total primary child support need."

2.5.1.b. All payments or deductions for the benefit of children included in the formula in the form of hospital and medical insurance, dental and optical insurance, if paid, shall be subtracted from the primary support need of the child.

2.5.1.b.A. To arrive at the amount to be subtracted from the primary support need of the child, pro rate the total payment or deduction by dividing the total amount of the payment or deduction by the total number of persons eligible for benefits under the provisions of the insurance policy and then multiply the resulting pro-rated portion by the number of children for whom support is being sought.

2.5.2. Provided, that in no event shall the credits given under this subdivision reduce the parent's total monthly child support obligation to an amount less than the minimum monthly support obligation established by procedural rule.

2.5.3. Unearned income to the child.

2.5.3.a. The court or master may not deduct payments made to the child, due to the condition of a parent (i.e. social security, disability, supplemental security income (SSI) or retirement payments), as a part of the Primary Support Calculation.

2.5.3.b. The court or master may deduct distributions made from a trust fund which are applied to and utilized for current expenses for the child, as a part of the Primary Support Calculation.

2.5.3.c. Interest accumulated from a trust established for the benefit of the child from which distributions for current expenses are not made may not be deducted as a part of the Primary Support Calculation.

2.5.3.d. Payments that are made to the child due to a condition of the child (i.e. social security disability payments or supplemental security income (SSI)) shall not be deducted from the Primary Support Obligation or subtracted from the available income from the Standard of Living Adjustment.

2.5.4. The amount resulting from these calculations shall be the "total primary child support need".

2.6. Calculation of the primary support obligation of each parent.

2.6.1. The court or master shall divide each parent's net income available for child support by the total net income available for child support from both parents.

2.6.2. The resulting percentage establishes the burden which each parent shall carry with respect to the primary child support needs of the children for whom support is being calculated.

2.6.3. This percentage shall then be multiplied by the total primary child support need in order to arrive at the "primary support obligation of each parent."

2.7. Calculation of the available net income for SOLA support.

2.7.1. SOLA support. Defined.

2.7.1.a. The standard of living adjustment (SOLA) is designed to apportion the discretionary income available to a parent after he or she has met his or her standard deduction and primary support obligation.

2.7.2. Calculate net income available for SOLA support.

2.7.2.a. From each individual's net income available for primary child support, as calculated in accordance with subdivision 2.4, determine the amount of discretionary income available (" net income available for SOLA support") for each parent, if any, by subtracting each parent's portion of the primary support obligation calculated in accordance with subdivision 2.5.

2.8. Calculation of the SOLA support obligations.

2.8.1. An allowance shall be given for the children of the parent's current or previous marriages, who have been adopted by or who have been born to the parent, by counting these children as children who receive a share of the standard of living obligation (SOLA) along with the child(ren) considered in the formula, except for any child for whom a child support payment has been deducted from income pursuant to section 2.2.3.b.

2.8.2. If discretionary income is available, a parent shall be required to pay, as a "SOLA support obligation", amounts calculated as percentages of discretionary income in accordance with the numerical criteria established by procedural rule.

2.8.3. The total amount required to be paid by a parent as SOLA support shall not exceed fifty percent of the parent's discretionary income unless the court sets forth, in writing, findings of specific need.

2.9. Calculation of the per-child share of SOLA support.

2.9.1. Upon determining the total amount required to be paid by a parent as SOLA support, the court or master shall calculate the "per-child share of such SOLA support" by dividing each parent's SOLA support amount by the number of children included in the calculation of that parent's SOLA support.

2.9.2. Once each child's share of the SOLA has been determined, the court or master shall subtract the shares allowed for the children not included in this formula from the parent's individual SOLA support obligation to determine the amount of the parent's individual SOLA support obligation for the children for whom support is being determined in this formula.

2.10. Calculation of the total monthly child support obligation.

2.10.1. The court or master shall determine the "total monthly child support obligation" of each parent by adding together the parent's primary support obligation and SOLA support obligation for the children considered in the formula.

2.10.2. In the usual case involving a noncustodial parent and a custodial parent, the custodial parent shall retain his or her child support obligation and the non-custodial parent shall pay his or her total monthly child support obligation as directed by the court or master.

2.10.3. Split Custody.

2.10.3.a. In cases of split custody, where each parent has custody of one or more of children of the marriage living in his/her household, each parent shall retain that age based share of the support obligation allotted to the child or children in his or her custody .

2.10.3.b. After such retention, if one parent's obligation is greater than that owed by the other, the difference between the amounts owed by the parents shall be paid by the custodial parent owing the greater amount as directed by the court or master.

2.10.3.c. The use of the split custody formula is limited to those cases where a split custody agreement has been incorporated into an order of the court and where the time periods of physical custody of the child are clearly provided for therein.

2.10.4. Joint custody.

2.10.4.a. Joint custody. Defined.

2.10.4.a.A. Where parties share equal physical joint custody on a 50/50 basis, each will be considered to have the child(ren) for six (6) months during the course of year.

2.10.4.a.A.(a). To avoid unnecessary transfers of funds, in cases where parents share equal joint custody, the "pay out" of each parent for the year should be determined by multiplying the monthly support obligation times six months.

2.10.4.a.A.(b). If one parent's yearly obligation is greater than that owed by the other, the excess amount shall be divided by twelve (12) and paid monthly over the course of the year, unless the parties agree otherwise.

2.10.4.b. In cases where parties do not share equal joint custody on a 50/50 basis, the regular formula calculation shall be used and the support obligation of each parent shall be based upon the actual number of months that either parent has actual physical custody of the child or children.

2.10.4.b.A. To avoid unnecessary transfers of funds in cases where parents do not share equal joint custody, the "payout" of each parent for the year should be determined by nultiplying the monthly support obligation times the number of months the parent has actual physical custody of the child(ren).

2.10.4.b.B. In cases where parents do not share equal joint custody, if one parent's yearly obligation is greater than that owed by the other, the excess amount shall be divided by twelve (12) and paid monthly over the course of the year, unless the parties agree otherwise.

2.10.4.c. The use of the joint custody formula is limited to those cases where a joint custody agreement and a parenting agreement have been incorporated into an order of the court and where the time periods of actual physical custody of the child(ren) are clearly provided for therein.

2.10.5. Payments to third parties.

2.10.5.a. Payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes or other expenses or charges reasonably necessary for maintenance of a residence for the parent's children, to the extent that such payments have been specifically denominated as child support by a court order or a valid separation agreement and are specifically denominated as a sum certain, shall, if actually paid, be credited against the parent's total monthly child support obligation;

2.10.5.b. Provided, That in no event shall the credits given under this subdivision reduce the parent's total monthly child support obligation to an amount less than such parent's primary support obligation.

§78-16-3. "Attributed income".

3.1. Attributed income. Defined.

3.1.1. The term "attributed income" shall mean income not actually earned by a parent, but which shall be attributed to such parent because he or she is unemployed, is not working full time, or is working below full earning capacity.

3.1.1.a. Income shall be attributed to a parent who is unemployed, underemployed or is otherwise working below full earning capacity unless one or more of the following conditions exist:

3.1.1.a.A. Such custodial parent is providing care for the children of the marriage to whom the parties owe a joint legal responsibility for support, and such children are of preschool age or are handicapped or otherwise in a situation requiring particular care by the custodial parent;

3.1.1.a.B. Such parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education;

3.1.1.a.C. Such parent is, for valid medical reasons, earning an income in an amount less than that previously earned;

3.1.1.a.D. Such parent has demonstrated to the court that diligent efforts have been made to find and accept available suitable work or to return to customary self-employment, to no avail; or

3.1.1.a.E. The court or master makes a written finding that other circumstances exist which would make the attribution of income inequitable:

3.1.1.a.E.(a). Provided, that in such case, the court or master may decrease the amount of attributed income to the extent required to remove such inequity; or

3.1.2. If a court or master determines that a limitation on income is not justified in that it is a result of a self-induced decline in income, a refusal to occupy time profitably, or an unwillingness to accept employment and earn an adequate sum, the court or master shall consider evidence establishing the parent's earning capacity in the local job market, and shall attribute income to such parent.

3.1.3. If a court or master determines that there is insufficient evidence establishing the parent's earning capacity in the local job market based upon prior employment history, the court or master shall attribute income to such parent in accordance with the amount to be attributed as minimum wage full time employment established by procedural rule.

3.1.4. In any case attributed income shall be the greater of the calculations made in 3.1.2. or 3.1.3.

§78-16-4. "Earnings".

4.1. Earnings. Defined.

4.1.1. The term "earnings" shall mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

4.1.2. Earnings shall be considered a part of the gross to net income calculations established in this rule.

78-16-5. "Payments for the benefit of children".

5.1. Payments for the benefit of children. Defined.

5.1.1. The term "payments for the benefit of children" shall mean an amount or amounts paid by a parent to third parties on a regular, recurring basis for the benefit of the children for whom support is being calculated, including, but not limited to, tuition, health care expenses, hospital insurance, and medical, dental or optical insurance.

5.1.2. Payments for the benefit of children, if paid, which are, in fact, extraordinary medical expenses, costs of child care needed to allow a custodial parent to work or other expenses incurred because of the special needs of a child, may, in the discretion of the court or master, be treated as payments for the benefits of children.

5.2. Under no circumstances shall any payment, expense or deduction for the benefit of children be deducted from the income.

5.3. The court or master shall disregard any debt, deduction or payment which is incurred with the obvious intent of decreasing child support payments.

§78-16-6. "Standard deduction".

6.1. "Standard deduction". Defined.

6.1.1. The term "standard deduction" shall mean the amount of income that a parent must retain to function at maximum productivity.

6.1.2. The standard deduction assigned each parent shall be in keeping with the amounts set by the amounts to be used in the guidelines for child support awards procedural rule.

78-16-7. "Primary child support need". Defined.

7.1. The term "primary child support need" shall mean the presumptive amount of money that a child requires based upon his or her age, for the necessities of life including but not limited to: food, clothing, shelter and medical care, tuition, school related expenses, and extra curricular activities.

7.2. The primary support need assigned to a child for whom support is being calculated, shall be in accordance with the numerical criteria established by procedural rule, unless the court or master determines in writing that a deviation from the presumptive need is supported by clear and convincing evidence.

§78-16-8. Effect of separation agreements.

8.1. "Separation agreement". Defined.

8.1.1. For purposes of this legislative rule, the term "separation agreement" shall have the meaning ascribed to it in subsection (h), section one, article two, chapter forty-eight of the code of West Virginia.

8.2. On and after the effective date of this legislative rule, where the parents execute a separation agreement which provides for the custody and support of the child or children of the parties, the court shall order the payment of child support in accordance with the terms of the agreement, unless the court finds:

8.2.1. That the agreement was obtained by fraud, duress, or other unconscionable conduct by one of the parties, or by a mistake of law on the part of one or both of the parties; or

8.2.2. That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

8.2.3. That the agreement, viewed in the context of the children having a right to share in their natural parents' level of living, and considering the best interests of the children, is so inequitable as to defeat the purposes and principles of section eight, article two, chapter forty-eight-a of the code of West

Virginia, and such agreement was inequitable at the time the same was ratified and approved by a court or master; or

8.3. If a separation agreement provides for amounts of child support which would not fall within the guidelines for child support awards promulgated by this legislative rule, and such amounts have been determined as a part of a broader agreement establishing the rights of the parties in such matters as disposition of their separate property or the distribution of marital property, the reason or reasons for such variance should be set forth in the agreement or made a matter of court record, in order that they may be considered in future proceedings involving child support obligations.

§78-16-9. Disregard of formula.

9.1. If, after computing the amount of a child support award in accordance with the provisions of this legislative rule, the court or master determines that the figure resulting from the application of the support guidelines is less than the minimum child support award amount as established by procedural rule, the court or master shall disregard the formula and assign the minimum child support amount to the child(ren) due support in the support action.

9.2. If, after computing the amount of a child support award in accordance with the provisions of this legislative rule, the court or master determines that the figure resulting from the application of the support guidelines is inappropriate as being contrary to the best interests of the children and the parties, and as outlined in §48A-2-8, and does not meet the priority of protecting the economic welfare of the children within the custodial home, the court or master may disregard the formula and not follow the guidelines.

9.1.1. However, in such instance, the court or master shall set forth, in writing, in the order, the reasons for not following the guidelines in the particular case involved.

§78-16-10. In every case, a copy of the calculation of the child support guidelines including gross to net income calculations shall be provided to the parties and attached to the order.

§78-16-11. Effect of promulgation of rule on existing support orders.

11.1. The fact that the revision and promulgation of this legislative rule establishes guidelines for child support awards shall not, in and of itself, constitute a change of circumstances upon which an existing support order may be revised or altered.

11.2. A party seeking a modification of a child support order must show that the welfare of the child or children requires modification and that a substantial change in circumstances that was uncontemplated by either of the parties at the time the order was entered has occurred since the entry of the existing order that was not adequately dealt with in that order.

11.3. Upon the motion of either party and after a showing that a modification would be in the best interests of the child, an order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent (85%) or more than one hundred fifteen percent (115%) of the amount that would be required to be paid under the revised child support guidelines promulgated pursuant to the provisions of this legislative rule.

§78-16-12. Guidelines for standard deduction, presumptive need, standard of living adjustment (SOLA) percentages, attribution of minimum wage amount and minimum child support award amount.

12.1. The director of the child advocate office shall, by procedural rule as outlined in WVC §29A-3-1 et seq, establish the amounts to be used for standard deductions, primary or presumptive need for child(ren), standard of living (SOLA) percentages, attribution of minimum wage amount and minimum child support order amount as outlined in this rule.

12.2. These amounts shall be reviewed and if necessary modified every three years with the first rule taking effect on July 1, 1994.