

Equal Residential Responsibility – Accounting for Children in the Calculations when Order for Equal Residential Responsibility does not Cover all Children (IC-CO-15-01)

Child Support Guidelines, N.D. Admin. Code § 75-02-04.1-08.2

A question has arisen about how to account for the children when calculating support obligations for parents who have a court order to share equal residential responsibility for some, but not all, of their children. This Informational Communication is intended to provide an answer to that question. An example is provided for illustration purposes.

By way of background, when N.D. Admin. Code § 75-02-04.1-08.2 was created effective August 1, 2003, “equal residential responsibility” meant that each parent, by court order, had residential responsibility for their child, or if there were multiple children, all of the children, for an equal amount of time. A support obligation was calculated for each parent and then the obligations were offset by subtracting the lesser from the greater. The parent with the greater obligation paid the difference.

As created, section -08.2 was not intended to be applicable, and offsetting obligations was not authorized, when parents had equal residential responsibility for some, but not all, of their children. This was perceived by some parents, private attorneys, and courts as being a gap in the guidelines.

Effective September 1, 2015, revised guidelines specifically address situations where parents have equal residential responsibility for some, but not all, of their children. First, the definition for “equal residential responsibility” has been expanded:

Equal residential responsibility means each parent has residential responsibility for the child, ~~or if there are multiple children, all of the children,~~ for an equal amount of time as determined by the court.

Second, in the “some but not all” situation, section -08.2 specifies the methodology for accounting for the children when determining the parents’ support obligations:

If equal residential responsibility is not ordered for all the children, a child support obligation must be calculated and specifically ordered for each parent for the children for whom the other parent has primary residential responsibility plus the children for whom the parents have equal residential responsibility.

The following example illustrates how to account for the children in a “some but not all” situation.

Mom and Dad have three children together. They are getting divorced and have agreed that they will share equal residential responsibility for Child A and Child B and that Mom will have primary residential responsibility for Child C. Mom has net income of \$2,400 per month and Dad has net income of \$3,200 per month.

Mom’s child support obligation to Dad will be based on two children and Dad’s obligation to Mom will be based on three children:

	Children in Mom’s Home	Children in Dad’s Home
Equal residential responsibility children	2 (Child A and Child B)	2 (Child A and Child B)
Primary residential responsibility children	1 (Child C)	0
Total	3	2

Mom owes Dad \$676 per month for two children.

Dad owes Mom \$1,075 per month for three children.

For payment purposes only, the obligations may be offset with Dad paying the difference of \$399 per month.

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