

# ORS 107.108

## Support or maintenance for child attending school

(1) As used in this section:

(a) Child attending school means a child of the parties who:

(A) Is unmarried;

(B) Is 18 years of age or older and under 21 years of age;

(C) Is making satisfactory academic progress as defined by the school that the child attends; and

(D) Has a course load that is no less than one-half of the load that is determined by the school to constitute full-time enrollment.

(b) Regularly scheduled break means:

(A) A summer semester or term;

(B) A period of time not exceeding four months between graduation from or completion of school and the beginning of the next regularly scheduled term, semester or course of study at school;

(C) A period of time between the end and beginning of regularly scheduled consecutive school semesters, terms or courses of study; or

(D) Any other scheduled break between courses of study that is defined by the school as a regularly scheduled break.

(c) School means:

(A) An educational facility such as a high school, community college, four-year college or university;

(B) A course of professional, vocational or technical training, including the Job Corps, designed to fit the child for gainful employment; or

(C) A high school equivalency course, including but not limited to a General Educational Development (GED) program, an educational program for grade 12 or below and home schooling.

(2) A support order entered or modified under this chapter or under ORS chapter 25, 108, 109, 110, 125, 416, 419B or 419C may require either parent, or both of them, to provide for the support or maintenance of a child attending school.

(3) Notwithstanding ORS 416.407 (Parties to support proceedings), a child attending school is a party to any legal proceeding related to the support order. A child attending school may apply for services:

(A) If a support order provides for the support or maintenance of the child attending school; or

(B) In accordance with rules adopted by the Department of Justice;

(b) Request a judicial or administrative modification of the child support amount or may receive notice of and participate in any modification proceeding; and

(c) Agree, in the same manner as an obligee under ORS 25.020 (When support payment to be made to Department of Justice) (12), that payments not made to the Department of Justice should be credited for amounts that would have been paid to the child attending school if the payments had been made to the department.

(4) Regardless of whether the child is a child attending school, an unmarried child who is 18 years of age or older and under 21 years of age:

(a) Is a necessary party to a judicial proceeding under ORS 107.085 (Petition), 107.135 (Vacation or modification of judgment), 107.431 (Modification of portion of judgment regarding parenting time or child support), 108.110 (Petition for support of spouse and children), 109.103 (Proceeding to determine custody or support of child) or 109.165 (Vacation or modification of judgment) in which the child's parents are parties and the court has authority to order or modify support for a child attending school; and

(b) May request notice of any proceeding initiated by the administrator to modify a support order that may affect the child's rights as a child attending school. To receive notice, the child shall provide an address to the administrator, and the administrator shall notify the child of any modification proceeding by first class mail. To be a party to a proceeding, the child must send a written request to the administrator within 30 days after the date of the notice of the proceeding.

(5)

(a) If a support order provides for the support or maintenance of a child attending school and the child qualifies as a child attending school, unless good cause is found for the distribution of the payment to be made in some other manner, support shall be distributed to the child if services are being provided under ORS 25.080 (Entity primarily responsible for support enforcement services) or shall be paid directly to the child if those services are not being provided.

(b) Unless otherwise ordered by the court, administrator or administrative law judge, when there are multiple children for whom support is ordered, the amount distributed or paid directly to a child attending school is a prorated share based on the number of children for whom support is ordered. However, if, due to a parenting time or split custody arrangement, support was not paid to the parent having primary physical custody of the child before the child turned 18 years of age, support may not be distributed or paid directly to the child attending school unless the support order is modified.

(c) The Department of Justice shall adopt rules to define good cause and circumstances under which the administrator or administrative law judge may allocate support by other

than a prorated share and to determine how support is to be allocated in those circumstances.

(6)

(a) For support payments to continue to be distributed or paid directly to the child attending school, the child shall provide to each parent ordered to pay support and, if services are being provided under ORS 25.080 (Entity primarily responsible for support enforcement services), to the department:

(A) Written notice of the child's intent to attend or continue to attend school. The child shall provide the notice before reaching 18 years of age. The notice must include the name of the school and the expected graduation date or date when the child will stop attending classes. If the child changes schools, the child shall provide the information required by this subsection concerning the subsequent school before the expected graduation date or date when the child will stop attending classes at the previous school.

(B) Written consent that:

(i) Is directed to the child's school and is in a form consistent with state and federal requirements that restrict disclosure of student records;

(ii) Gives the school authority to disclose to each parent ordered to pay support the child's enrollment status, whether the child is maintaining satisfactory academic progress, a list of courses in which the child is enrolled and the child's grades; and

(iii) States that the disclosure is for the purpose of permitting each parent to verify the child's compliance with the requirements of this section.

(b) The child shall provide the written consent form described in paragraph (a)(B) of this subsection within 30 days after the beginning of the first term or semester after the child reaches 18 years of age, at the beginning of each academic year thereafter and as otherwise required by the school to disclose the information under this section.

(c) If an order of nondisclosure of information has been entered concerning the child under ORS 25.020 (When support payment to be made to Department of Justice), the child may provide the information described in paragraph (a)(B) of this subsection in the manner established by the department by rule.

(7) Each parent ordered to pay support shall continue to make support payments, to be distributed or paid directly, to the child during regularly scheduled breaks as long as the child intends to continue attending school the next scheduled term or semester.

(8) A parent's obligation to pay support to a child attending school is suspended when:

(a) The child has reached 18 years of age and has not provided written notice of the child's intent to attend or continue to attend school, or the child has graduated or reached the date to stop attending classes, as provided under subsection (6)(a)(A) of this section;

(b)

(A) Services are not being provided under ORS 25.080 (Entity primarily responsible for support enforcement services);

(B) The parent has provided the child with a written notice of the parents intent to stop paying support directly to the child because the child is no longer a child attending school or the child has not provided the written consent required by subsection (6)(a)(B) of this section; and

(C) Thirty days have passed since the parent provided the notice to the child and the parent has not received:

(i) Written confirmation from the school that the child is enrolled in the school and is a child attending school; or

(ii) The written consent from the child as required by subsection (6)(a)(B) of this section;

(c)

(A) Services are being provided under ORS 25.080 (Entity primarily responsible for support enforcement services);

(B) A parent ordered to pay support has provided the department with written notice that the child is no longer a child attending school or that the child has not provided the written consent required by subsection (6)(a)(B) of this section;

(C) The department has provided written notice to the child requiring:

(i) Written confirmation, on a form developed by the department, from the school that the child is enrolled in the school and is a child attending school; and

(ii) Proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support; and

(D) Thirty days have passed since the department provided the notice to the child and the department has not received:

(i) Written confirmation from the school that the child is enrolled in the school and is a child attending school; or

(ii) Proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support.

(9) When a parents support obligation has been suspended under subsection (8) of this section, the obligation is reinstated:

(a) If services are not being provided under ORS 25.080 (Entity primarily responsible for support enforcement services), effective on the date the parent receives written confirmation from the school that the child is enrolled in the school and is a child

attending school and receives the written consent from the child as required by subsection (6)(a)(B) of this section; or

(b) If services are being provided under ORS 25.080 (Entity primarily responsible for support enforcement services), effective on the date the department receives written confirmation from the school that the child is enrolled in the school and is a child attending school and receives proof that the written consent required by subsection (6)(a)(B) of this section has been provided to the parent ordered to pay support.

(10) If a parent ordered to pay support is paying a prorated share under subsection (5) of this section and that obligation is suspended under subsection (8) of this section, the parent shall pay to the obligee the amount previously paid to the child attending school until such time as the support order is modified. The suspension of a parent's obligation to pay support to a child attending school is a substantial change of circumstances for purposes of modifying a support order. In a proceeding to modify a support order, the court, administrator or administrative law judge may order a modified amount of support and may order an amount of support to be paid in the event that a support obligation is reinstated under subsection (9) of this section.

(11)

(a) If services are being provided under ORS 25.080 (Entity primarily responsible for support enforcement services) and the department has suspended a support obligation under subsection (8) of this section or reinstated a support obligation under subsection (9) of this section, a party may request administrative review of the action within 30 days after the date of the notice that the department has suspended or reinstated the support obligation.

(b) The department may adopt rules specifying the issues that may be considered on review.

(c) A party may appeal the departments decision on review under ORS 183.484 (Jurisdiction for review of orders other than contested cases).

(12)

(a) Notwithstanding any other provision of this section, if a parent who is required to provide for the support or maintenance of a child attending school has established a higher education savings plan for the childs continued education, the court may order payment in accordance with the plan instead of ordering support that would otherwise be distributed or paid directly to the child under this section.

(b) If the court orders payment in accordance with the plan, the court may not order compliance with or payment of that provision of the order through the department.

(c) As used in this subsection, higher education savings plan means a tax-advantaged account established by a parent on behalf of a child for the purpose of paying qualified higher education expenses of the child at eligible educational institutions.

(13) A support order that provides for the support or maintenance of a child attending school is subject to this section regardless of when the support order was entered.

(14) A support order that provides for the support or maintenance of a child attending school is intended to recognize the importance of continuing education for a child over 18 years of age who does not benefit from an intact family or who has been removed from the household. While support may serve to supplement the resources available to the child attending school, it is not intended to replace other resources or meet all of the financial needs of a child attending school.