

# Enrolled Senate Bill 1050

Sponsored by COMMITTEE ON RULES

CHAPTER .....

AN ACT

Relating to child support for child attending school; creating new provisions; amending ORS 107.108; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 107.108 is amended to read:

107.108. (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.**

*[(1)]* (2) *[In addition to any other authority of the court, the court may enter an order against]* **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[:].**

*[(a) After the commencement of a suit for annulment or dissolution of a marriage or for separation from bed and board and before the judgment therein;]*

*[(b) In a judgment of annulment or dissolution of a marriage or of separation from bed and board; and]*

*[(c) During the pendency of an appeal taken from all or part of a judgment rendered in pursuance of ORS 107.005 to 107.086, 107.093 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540, 107.610 or this section.]*

*[(2) An order providing for temporary support under subsection (1)(c) of this section may be modified at any time by the court making the judgment appealed from, shall provide that the support money be paid in monthly installments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.]*

*[(3) If the court provides for the support and maintenance of a child attending school under this section, the child is a party for purposes of matters related to that provision.]*

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

**(a) Apply for services under ORS 25.080:**

**(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 (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, 107.135, 107.431, 108.110, 109.103 or 109.165 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.**

*[(4)] (5)(a) [When the court orders support under this section or the administrator or an administrative law judge orders support for a child attending school under ORS 416.400 to 416.470, the court, administrator or administrative law judge shall order that the support be distributed to the child] **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 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 [under this subsection] is a prorated share based on the number of children for whom support is ordered [unless otherwise ordered by the court, administrator or administrative law judge]. 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.

*[(5) A child for whom support has been ordered under this section:]*

*[(a) Must maintain the equivalent of a C average or better.]*

*[(b) Shall notify a parent paying support when the child ceases to be a child attending school.]*

*[(c) Shall submit to the department and the parent paying support, on a form developed by the department, all information necessary to establish eligibility to receive support under this section, including grades earned and the courses in which the child is enrolled. The child shall submit the information required by this paragraph within the first month of each term or semester.]*

*[(6) If the child fails to comply with any of the requirements imposed on the child by this section and upon written notice from the obligor, the distribution of the support directly to the child ceases and may not be reinstated unless the parent paying support elects to continue to pay the support, in spite of the child's failure to comply with the requirements of this section, and notifies the department of the election in writing. If the underlying support order is for the support of more than one child, the parent shall pay the amount previously paid directly to the child to the recipient of the rest of the support until such time as the support order is modified. A child's failure to comply with the requirements imposed by this section is a substantial change of circumstances for purposes of modification of a support order.]*

*[(7) Orders entered into prior to October 4, 1997, may be modified to include the provisions of subsections (4) to (6) of this section. However, the fact that an order entered, or agreement entered into, prior to October 4, 1997, does not contain any of the provisions of subsections (4) to (6) of this section does not constitute a substantial change of circumstances for purposes of modifying a child support order.]*

*[(8) As used in this section, "child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school, community college, college or university, or regularly attending a course of professional or technical training designed to fit the child for gainful employment. A child enrolled in an educational course load of less than one-half that determined by the educational facility to constitute "full-time" enrollment is not a "child attending school."]*

**(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, 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, 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;

(B) The parent has provided the child with a written notice of the parent's 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;

(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 parent's 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, 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, 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 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 department's decision on review under ORS 183.484.

(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 child's 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.

**SECTION 2.** (1) The amendments to ORS 107.108 by section 1 of this 2005 Act become operative on September 1, 2005.

(2) The Department of Justice may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by the amendments to ORS 107.108 by section 1 of this 2005 Act.

**SECTION 3.** This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

**Passed by Senate June 15, 2005**

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Secretary of Senate

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President of Senate

**Passed by House July 11, 2005**

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Speaker of House

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State