

APPENDIX A

Washington Court of Appeals Opinion

Filed March 10, 2025

Case No. 86502-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of
LARA BROOKE SEEFELDT,

Respondent,

and

ALBERT WHITNEY COBURN,

Appellant.

No. 86502-1-1

DIVISION ONE

UNPUBLISHED OPINION

DÍAZ, J. — Albert Coburn appeals from a March 2024 trial court order holding him in contempt and ordering him to pay his past due, proportional share of education expenses for his child. We affirm.

I. BACKGROUND

Albert Coburn and Lara Seefeldt share a child in common.¹ A 2018 final child support order required each parent to pay a proportional share of the child's educational expenses. The accompanying child support worksheet calculated

¹ Some of the background facts are derived from the first of our two unpublished prior decisions involving the parties. See *In re Marriage of Seefeldt*, No. 84010-0-1 (Wash. Ct. App. Mar. 20, 2023) (unpublished), <https://www.courts.wa.gov/opinions/pdf/840100.pdf>.

Coburn's proportional share of the parties' combined income as 70 percent. And, as the parties agreed, the final parenting plan allocates sole decision-making authority for education to Seefeldt. For disputes over education-related support obligations, the parenting plan provides that any "new medical or educational services" which would require a financial contribution of over \$500 or \$100 per month are "subject to arbitration if the father gives written notice of objection within 1 week of receiving notice."

Seefeldt became dissatisfied with the educational and support services offered in the public school system during the COVID-19 pandemic and, for the 2021-2022 school year, enrolled the child in the Academy for Precision Learning (APL), a private school. Coburn did not object. However, the following year, in a proceeding seeking to modify parenting plan provisions, Coburn made a separate request to arbitrate enrollment at APL for the 5th grade.

In an April 21, 2022 order, the trial court denied Coburn's request to arbitrate. Noting Coburn's failure to object to enrollment at APL for the 4th grade, the trial court concluded that "[c]ontinuing at the same school for the balance of elementary school does not constitute 'new medical or educational services' such that it is subject to arbitration" under the parenting plan. The trial court rejected Coburn's argument that each year's enrollment at APL is a new educational service because the school requires parents to sign a new contract each year and observed that construing new educational services to begin at each level of schooling is in line with the child's "special needs and need for stability and consistency."

Nevertheless, the court determined that Coburn's acquiescence to enrollment in APL for elementary school "should not be considered agreement to her attendance through middle school and high school, even though APL is apparently a K-12 school." The court set forth a specific process for Coburn to object to enrollment at APL, or a different private school, for middle and high school. To that end, the court ordered Seefeldt to provide notice, by April 1, 2023, of her proposal for middle school and to indicate whether she was requesting that Coburn share tuition expenses. If Coburn wished to object, the order required him to "request arbitration of the issue" by May 1, 2023.² The order stated that "[i]f the father fails to invoke arbitration by May 1, 2023, the mother's school proposal (including the sharing of expenses) shall be deemed to be ratified for the period of 6th to 8th grade." The court's order was without prejudice to Coburn's ability to file a motion to modify or adjust child support "as permitted by state law." The court further provided that if Coburn filed such a motion within 10 days, he could request that relief be effective as of the February 2022 date that he filed his petition to modify the parenting plan. Coburn appealed the April 2022 order and this court affirmed.

Just before the April 1, 2023 deadline, Seefeldt notified Coburn that she intended to enroll the child at APL for middle school. Coburn did not file a motion to arbitrate or otherwise request arbitration.

In January 2024, after Coburn failed to pay his share of the tuition that had

² The order likewise sets forth the same process for high school, with specific dates in 2026 for Seefeldt's notice and Coburn's ratification or objection.

accrued for the 2023-2024 school year or sign APL's enrollment contract for the school year, Seefeldt filed a motion for contempt. Seefeldt requested, among other things, an order requiring Coburn to reimburse her for tuition she paid on Coburn's behalf and to pay attorney fees she incurred in bringing the contempt motion. In response, Coburn did not dispute his failure to pay his proportional share of tuition.

After a March 1, 2024 hearing, the trial court found Coburn in contempt for failing to pay his share of education expenses for the 2023-2024 school year.³ The court observed that, despite the clear provisions of the April 2022 order, Coburn failed to file a motion or otherwise seek to arbitrate the issues of middle school enrollment and financial responsibility, although he had filed such a motion in the past and was "more than capable" of invoking arbitration. The court further noted that, while the inability to pay may be a valid defense to contempt, Coburn did not provide evidence, such as a financial declaration, tax documents, pay stubs for a relevant period of time, and/or bank account statements, which would have allowed the court to evaluate his ability to pay. Because Seefeldt had paid Coburn's share of tuition, \$16,848, the court imposed judgment against Coburn for that amount, and authorized the Division of Child Support (DCS) to collect the judgment on Seefeldt's behalf. The trial court also awarded Seefeldt attorney fees of \$4,022.48. The order provided that Coburn could purge the contempt by paying

³ Contrary to Coburn's arguments, the trial court neither found him in contempt for failing to sign the APL enrollment contract nor ordered him to sign that document. And no evidence in the record supports Coburn's claim that APL will not accept payment from him unless he signs an enrollment contract and agrees to a liability waiver. The trial court also did not hold Coburn in contempt for "not filing a motion for arbitration."

the judgment owed and the two remaining tuition payments due for the 2023-2024 school year.

The court noted that, in accordance with the process set forth in the April 2022 order, there would be another opportunity to arbitrate school choice before high school. The court further observed that Coburn's only remaining remedy during middle school would be to file a motion to modify child support, which remained unchanged since entry of the final order in 2018, and could potentially change the parents' proportional shares of tuition going forward. The court stated that prefiling restrictions imposed on Coburn in May 2023 would not preclude such a motion.

Coburn appeals.

II. ANALYSIS

"If a parent fails to comply with a child support order, then a court may hold that parent in contempt." *In re Marriage of Didier*, 134 Wn. App. 490, 500, 140 P.3d 607 (2006). "Whether contempt is warranted in a particular case is a matter within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on appeal." *Moreman v. Butcher*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995) (quoting *In re King*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988)). "An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons." *Moreman*, 126 Wn.2d at 40.

A. Waiver of Arbitration

As he argued before the trial court, Coburn claims he invoked arbitration to

contest his financial responsibility for middle school tuition by promptly sending Seefeldt an e-mail message when he learned of her plan to continue enrollment at APL, stating, "I don't have the money. Can't afford to live." Coburn points out that nothing in the trial court's April 2022 order required a formal motion to arbitrate, and he argues that he reasonably construed the order to require only that he notify Seefeldt by e-mail. Coburn also contends that the parenting plan governs disputes regarding support obligations and requires only "written notice of objection" within one week. We disagree with each contention.

The court's April 2022 order, not the parenting plan, expressly governed this specific dispute about middle school enrollment and financial responsibility. That order set forth the specific deadlines and requirements to resolve any dispute. The order required Coburn to "request arbitration" or "invoke arbitration." Coburn's e-mail message did not mention arbitration, let alone request it or invoke that process. As the court pointed out, Coburn was aware of how to request arbitration, having filed a motion to arbitrate the previous year. And contrary to his position on appeal, Coburn's response to the motion for contempt acknowledged that the April 2022 order governed the process for objection. Coburn explained that he was unable to meet the May 1, 2023 deadline to request arbitration because he was "solely focused" on restoring his visitation at the time.

Substantial evidence supports the trial court's finding that Coburn waived arbitration of middle school enrollment and his obligation to pay his proportional share of tuition.⁴ See *In re Marriage of Rideout*, 150 Wn.2d 337, 351-52, 77 P.3d

⁴ Coburn's claims regarding the efficacy and appropriateness of APL's educational

1174 (2003) (this court reviews contempt findings for substantial evidence).

B. Ability to Pay

Coburn contends the evidence did not support the trial court's finding that he was able, but unwilling, to comply with the child support order and the trial court ignored his inability to pay.

An obligor claiming an inability to comply with an existing support order must specifically provide evidence showing "due diligence in seeking employment, in conserving assets" and otherwise attempting to meet their obligations. RCW 26.18.050(4). And, as the trial court observed, a party may assert a defense to contempt if, through no fault of their own, the party is unable to comply with the court order. *Britannia Holdings Ltd. v. Greer*, 127 Wn. App. 926, 933-934, 113 P.3d 1041 (2005). But, contrary to Coburn's position, it is the party resisting a finding of civil contempt who bears the burden of production and the burden of persuasion regarding any claimed inability to comply with a court order. *Moreman*, 126 Wn.2d at 40. And the evidence that shows inability to comply must be "of a kind the court finds credible." *Id.* at 40-41.

Coburn failed to satisfy his burden to establish due diligence or inability to comply. In response to the contempt motion, Coburn supplied a spreadsheet, which apparently he created, with entries for "Net Pay" earnings and "Support

services may have been relevant had he arbitrated the issue of middle school enrollment and financial responsibility. But those arguments are not relevant to any issue related to the contempt order before us on appeal. And to the extent that Coburn raises issues about the punitive nature of the contempt sanctions and consideration of lesser sanctions, we decline to consider those arguments raised for the first time in his reply brief. See RAP 10.3(c); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Payments” between January 2021 and December 2022. He also submitted a single pay stub for one two-week period in December 2023. Accordingly, Coburn did not provide sufficient underlying documents that would substantiate his consistent income and his expenses, such as a financial declaration, tax documents, pay stubs, and/or bank statements, and allow the court to evaluate his ability to pay. See KING COUNTY SUPER. CT. LOC. FAM. L. R. (LFLR) 10(b) (documents to be submitted with a financial declaration). And while the trial court expressed some concern about the affordability of the tuition for the parents and frustration with Coburn’s focus on “frivolous arguments” and issues that had been resolved, instead of providing documentation to support a potentially meritorious argument, the court did not abuse its discretion in determining there was no evidentiary basis to conclude that Coburn was unable to comply with the child support order.

C. Unclean Hands

Coburn contends that Seefeldt did not have “clean hands” because, during the “same period” she was seeking to enforce the child support order, Seefeldt was “activity violating” the parenting plan’s visitation provisions.

Coburn did not allege that Seefeldt failed to fulfill her own obligations under the child support order. And, as the trial court noted, any disputes involving visitation were unrelated to the parties’ support obligations and did not provide a legal basis to excuse Coburn’s obligation to pay his share of education expenses. See *McKelvie v. Hackney*, 58 Wn.2d 23, 31, 360 P.2d 746 (1961) (unclean hands equitable doctrine may disqualify an individual from seeking relief if the alleged

inequitable behavior concerns the same matter that is the subject matter of the complaint). The trial court did not abuse its discretion in rejecting Coburn's "unclean hand" defense.

D. Garnishment

Coburn also challenges the contempt order because (1) DCS refused to collect his share of tuition through garnishment, and (2) the contempt order effectively amounts to a ruling that statutory limits on garnishment do not apply.

Coburn's obligation under the child support order was unaffected by whether or not DCS agreed to collect Coburn's share of tuition expenses. And Coburn provides no authority suggesting that DCS was legally required, or authorized, to enforce his tuition obligation when no specific monthly amount was set forth in a child support order. See WAC 388-14A-3302(1),(5) (authorizing DCS to initiate a process, by serving a "notice of support owed" to set a fixed amount of support, which may then be enforced by DCS, but *only* for medical and child care expenses).

It appears that Coburn wants DCS to garnish his wages to collect both his support obligation and his share of tuition so that he may then argue that the total amount exceeds the limitations placed by federal law. See 15 U.S.C. § 1673 (provision of Consumer Credit Protection Act placing limits on wage garnishment). Coburn's argument fails to appreciate that (1) he did not provide evidence establishing that his share of tuition plus his monthly support obligation exceeds 50 percent of his disposable income; (2) any withholding order could not exceed 50 percent of his disposable income under Washington law, see RCW

26.23.060(5)(c) (any income withholding order issued by DCS must include a "statement that the total amount withheld shall not exceed 50 percent of the responsible parent's disposable earnings."); and (3) DCS need not garnish wages and may use other collection tools if wages are insufficient, such as asset seizure, liens, license suspension, contempt and federal income tax offset. See WAC 388-14A-4020 (listing collection tools that DCS may use). And again, Coburn's arguments primarily fail for the simple reason that DCS is not enforcing Coburn's obligation to pay educational expenses, nor is it required to do so.

E. Appellate Attorney Fees

Seefeldt requests fees on appeal under RCW 26.18.160, under which a prevailing party in an action to enforce a child support order is entitled to costs, including reasonable attorney fees, and RCW 7.21.030(3), under which a court has discretion to order a person found in contempt to reimburse for losses and costs incurred in connection with the contempt. Because she is the prevailing party, subject to compliance with RAP 18.1, we award Seefeldt reasonable attorney fees and costs on appeal as required under RCW 26.18.160.

III. CONCLUSION

We affirm.

Díaz, J.

WE CONCUR:

Chung, J.

Hylleberg, J.

APPENDIX B

Washington Supreme Court Order Denying Review

Filed September 3, 2025

Case No. 104125-0

THE SUPREME COURT OF WASHINGTON

In the Matter of the Marriage of)	
)	No. 104125-0
LARA BROOKE SEEFELDT,)	
)	ORDER
Respondent,)	
)	Court of Appeals
and)	No. 86502-1-I
)	
ALBERT WHITNEY COBURN,)	
)	
Petitioner.)	
_____)	

Department I of the Court, composed of Chief Justice Stephens and Justices Johnson, González, Yu, and Whitener, considered at its September 2, 2025, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

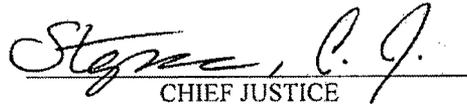
IT IS ORDERED:

That the petition for review is denied. The Clerk’s motion to strike the reply to the answer to the petition for review is granted. The Respondent’s request for attorney fees for filing an answer to the petition for review is granted. The Respondent is awarded reasonable attorney fees and expenses pursuant to RAP 18.1(j). The amount of the attorney fees and expenses will be determined by the Supreme Court Clerk pursuant to RAP 18.1. Pursuant to RAP 18.1(d), the Respondent should file an affidavit with the Clerk of the Washington State Supreme Court.

DATED at Olympia, Washington, this 3rd day of September, 2025.

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ORDER

For the Court


CHIEF JUSTICE

APPENDIX D

U.S. Constitution

Amendment XIV, § 1

(Due Process and Equal Protection Clauses)

APPENDIX D-1

Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E

Individuals with Disabilities Education Act (IDEA)

20 U.S.C. § 1400 et seq.

(Selected Provisions)

APPENDIX E-1

20 U.S.C. § 1400(d)

Purposes

The purposes of this chapter are—

- (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (2) to ensure that the rights of children with disabilities and parents of such children are protected;
- (3) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
- (4) to assess and ensure the effectiveness of efforts to educate children with disabilities.

APPENDIX E-2

20 U.S.C. § 1401(9), (29)

Definitions (Selected Subsections)

(9) Free appropriate public education

The term “free appropriate public education” means special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education; and
- (D) are provided in conformity with an individualized education program.

(29) Special education

The term “special education” means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.

APPENDIX E-3

20 U.S.C. § 1412(a)(1), (a)(10)

State Eligibility (Selected Subsections)

A State is eligible for assistance under this part when it submits a plan that provides assurances to the Secretary that the State has in effect the following policies and procedures:

(a)(1) Free appropriate public education

A free appropriate public education is available to all children with disabilities residing in the State.

(a)(10) Children in private schools

(A) Children enrolled by public agencies

If a child with a disability is placed in or referred to a private school by a public agency as the means of providing FAPE, the program must be provided at no cost to the parents.

(B) Children enrolled by their parents

If parents enroll their child in a private school without the consent or referral of the public agency, a court or hearing officer may require the agency to reimburse the parents if the agency had not made FAPE available to the child in a timely manner.

APPENDIX E-4

20 U.S.C. § 1414(d)

Individualized Education Program (Selected Provisions)

(1) In general

The term “individualized education program” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section.

(2) Contents of IEP

The IEP must include—

- (A) a statement of the child’s present levels of academic achievement and functional performance;
- (B) measurable annual goals;
- (C) a description of how progress toward meeting the goals will be measured;
- (D) the special education and related services to be provided; and
- (E) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class.

APPENDIX E-5

20 U.S.C. § 1415(b), (d), (e), (f)

Procedural Safeguards (Selected Subsections)

(b) Types of procedures

The procedures required by this section shall include—

- (1) an opportunity for parents to examine all records relating to their child;
- (2) procedures to ensure parental participation in meetings;
- (3) prior written notice whenever the agency proposes or refuses to initiate or change identification, evaluation, or placement;
- (4) an opportunity to present complaints; and
- (5) an impartial due process hearing.

(d) Procedural safeguards notice

Parents shall be given a full explanation of procedural safeguards, including independent educational evaluations, prior written notice, parental consent, and due process hearings.

(e) Mediation

Any State educational agency or local educational agency shall ensure that procedures are established and implemented to allow parties to resolve disputes through mediation.

(f) Impartial due process hearing

Whenever a complaint has been received, the parents or the local educational agency involved in the dispute shall have an opportunity for an impartial due process hearing.

APPENDIX E-6

20 U.S.C. § 1415(i)(2)(C)

Judicial Review (Selected Subsection)

In any action brought under this paragraph, the court—

- (i) shall receive the records of the administrative proceedings;
- (ii) shall hear additional evidence at the request of a party; and
- (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

APPENDIX F

Consumer Credit Protection Act (CCPA)

15 U.S.C. §§ 1671–1677

(Selected Provisions)

APPENDIX F-1

15 U.S.C. § 1671

Congressional Findings and Declaration of Purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services causes undue hardship to wage earners and their families, and is contrary to the public welfare.

(2) The application of garnishment as a creditor's remedy frequently results in loss of employment and the disruption of employment relationships.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws of the United States.

(b) It is the purpose of this subchapter to set uniform national limits on the garnishment of earnings, to protect wage earners from the disruption of employment, and to prevent the imposition of garnishment in amounts that are excessive or oppressive.

APPENDIX F-2

15 U.S.C. § 1672

Definitions

For purposes of this subchapter:

- (a) "Earnings" means 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.
- (b) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction of any amounts required by law to be withheld.
- (c) "Garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.
- (d) "Support" includes any order for the support of any person issued by a court of competent jurisdiction.

APPENDIX F-3

15 U.S.C. § 1673

Restriction on Garnishment

(a) Maximum allowable garnishment

Except as provided in subsection (b), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed:

- (1) 25 percent of disposable earnings for that week, or
- (2) the amount by which disposable earnings for that week exceed thirty times the federal minimum hourly wage,

whichever is less.

(b) Exceptions for support

The restrictions of subsection (a) do not apply in the case of:

- (1) any order for the support of any person, or
- (2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

In the case of an order for the support of any person, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed:

- (A) 50 percent of disposable earnings if the individual is supporting another spouse or dependent child;
- (B) 60 percent of disposable earnings if the individual is not supporting another spouse or dependent child;
- (C) an additional 5 percent may be garnished if the support payments are in arrears for more than 12 weeks.

(c) No court may make, execute, or enforce any order in violation of this section.

APPENDIX F-4

15 U.S.C. § 1674

Restriction on Discharge from Employment

(a) No employer may discharge any employee by reason of the fact that the employee's earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) shall be fined or imprisoned, or both.

APPENDIX F-5

15 U.S.C. § 1675

Priorities

Where the garnishment of earnings is sought for more than one indebtedness, the garnishments shall be satisfied in the order of their service on the employer, unless otherwise provided by State law.

APPENDIX F-6

15 U.S.C. § 1676

Enforcement by the Secretary of Labor

The Secretary of Labor may bring actions to restrain violations of this subchapter and to recover amounts unlawfully garnished.

APPENDIX F-7

15 U.S.C. § 1677

Effect on State Laws

This subchapter does not annul, alter, or affect the laws of any State prohibiting garnishments or providing for more limited garnishments than are allowed under this subchapter.

APPENDIX G

Title IV-D of the Social Security Act

42 U.S.C. § 651 et seq.

(Selected Provisions)

APPENDIX G-1

42 U.S.C. § 651

Purpose

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

APPENDIX G-2

42 U.S.C. § 652(a)(1), (a)(5)

Duties of the Secretary (Selected Subsections)

(a) The Secretary shall establish, within the Department of Health and Human Services, a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent's child is living as the Secretary determines to be necessary to assure that such programs will be effective;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State, and establish procedures to be followed by States for collecting and reporting information required to be provided under this part, and establish uniform definitions (including those necessary to enable the measurement of State compliance with the requirements of this part relating to expedited processes) to be applied in following such procedures.

APPENDIX G-3

42 U.S.C. § 654(4), (20), (29)

State Plan Requirements (Selected Subsections)

A State plan for child and spousal support must—

(4) provide that the State will provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to each child for whom services are requested or required;

(20) provide, to the extent required by section 666 of this title, that the State shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and shall implement the procedures which are prescribed in or pursuant to such laws;

(29) provide that the State agency responsible for administering the State plan shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under specified State programs is cooperating in good faith with the State in establishing paternity or establishing, modifying, or enforcing a support order, subject to good cause and other exceptions.

APPENDIX G-4

42 U.S.C. § 666(a)(1), (a)(8), (b)

Required State Laws (Selected Subsections)

(a) In order to satisfy section 654(20)(A), each State must have in effect laws requiring the use of the following procedures to increase the effectiveness of the program administered under this part:

(1) procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan;

(8) procedures under which all child support orders initially issued in the State on or after January 1, 1994, include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur;

(b) The procedures referred to in subsection (a)(1)(A) must provide that, in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State and is being enforced under the State plan, so much of such parent's income must be withheld as is necessary to comply with the order, up to the maximum amount permitted under section 1673(b) of title 15.

APPENDIX G-5

42 U.S.C. § 667

State Guidelines for Support

(a) Each State must establish guidelines for child support award amounts within the State. The guidelines shall be reviewed at least once every 4 years to ensure that their application results in appropriate award amounts.

(b) The guidelines shall be made available to all judges and officials who determine child support awards. There shall be a rebuttable presumption that the amount resulting from application of the guidelines is the correct amount of support.

(c) The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

APPENDIX G-6

42 U.S.C. § 659

Consent to Income Withholding and Garnishment

- (a) Notwithstanding any other provision of law, moneys due from, or payable by, the United States to any individual shall be subject, in like manner and to the same extent as if the United States were a private person, to withholding and other legal process to enforce the legal obligation of the individual to provide child support or alimony.
- (b) Each governmental entity shall be subject to the same requirements as would apply if the entity were a private person, except as otherwise provided in this section.
- (c) The head of each agency shall designate an agent to receive orders and accept service of process in matters relating to child support or alimony.
- (d) If a governmental entity receives notice concerning amounts owed by an individual to more than one person, support collection under section 666(b) must be given priority.
- (e) A governmental entity shall not be required to vary its normal pay cycle to comply with legal process.
- (f) Neither the United States nor any disbursing officer shall be liable with respect to any payment made pursuant to legal process regular on its face.
- (g) Authority to promulgate regulations for implementation of this section shall be vested in the President or designated officials.
- (h) Moneys payable to an individual which are considered to be based upon remuneration for employment include compensation, periodic benefits, workers' compensation, and other specified payments, but do not include reimbursements, certain allowances, or specified veterans' benefits.
- (i) Definitions for "United States," "child support," "alimony," "private person," and "legal process" apply for purposes of this section.

APPENDIX H

45 C.F.R. § 303.100

(Income Withholding Procedures)

This content is from the eCFR and is authoritative but unofficial.

Title 45 – Public Welfare

Subtitle B – Regulations Relating to Public Welfare

Chapter III – Office of Child Support Services, Administration of Families and Services, Department of Health and Human Services

Part 303 – Standards for Program Operations

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k), and 25 U.S.C. 1603(12) and 1621e.

Source: 40 FR 27164, June 26, 1975, unless otherwise noted.

Editorial Note: Nomenclature changes to part 303 appear at 64 FR 6249, Feb. 9, 1999.

§ 303.100 Procedures for income withholding.

(a) *General withholding requirements.*

- (1) The State must ensure that in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her income as defined in sections 466(b)(1) and (8) of the Act must be withheld, in accordance with this section, as is necessary to comply with the order.
- (2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.
- (3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).
- (4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.
- (5) If there is more than one notice for withholding against a single noncustodial parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.
- (6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.
- (7) The State must have procedures for promptly terminating withholding:
 - (i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,
 - (ii) At State option, when the noncustodial parent requests termination and withholding has not been terminated previously and subsequently initiated, and the noncustodial parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

- (8) The State must have procedures for promptly refunding to noncustodial parents amounts which have been improperly withheld.
- (9) Support orders issued or modified in IV-D cases must include a provision requiring the noncustodial parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the noncustodial parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV-D cases.*

- (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such income shall not be subject to withholding under this paragraph in any case where:
 - (i) Either the noncustodial or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or
 - (ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.
- (2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:
 - (i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child; and
 - (ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.
- (3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV-D cases.* In the case of income not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

- (1) The income of the noncustodial parent shall become subject to the withholding on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:
 - (i) The date on which the noncustodial parent requests that withholding begin;
 - (ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or
 - (iii) Such earlier date as State law or procedure may provide.

- (2) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
- (d) **Notice to the noncustodial parent in cases of initiated withholding.** The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:
 - (1) That the withholding has commenced;
 - (2) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;
 - (3) That the provision for withholding applies to any current or subsequent employer or period of employment;
 - (4) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;
 - (5) Of the information provided to the employer, pursuant to paragraph (e) of this section.
- (e) **Notice to the employer for immediate and initiated withholding.**
 - (1) To initiate withholding, the State must send the noncustodial parent's employer a notice using the required OMB-approved *Income Withholding for Support* form that includes the following:
 - (i) The amount to be withheld from the noncustodial parent's income, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (e)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));
 - (ii) That the employer must send the amount to the SDU within 7 business days of the date the noncustodial parent is paid, and must report to the SDU the date on which the amount was withheld from the noncustodial parent's income;
 - (iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;
 - (iv) That the withholding is binding upon the employer until further notice by the State;
 - (v) That the employer is subject to a fine to be determined under State law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding;
 - (vi) That, if the employer fails to withhold income in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income;
 - (vii) That the withholding under this section shall have priority over any other legal process under State law against the same income;
 - (viii) That the employer may combine withheld amounts from noncustodial parents' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual noncustodial parent;

- (ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the income would have been paid to the noncustodial parent.
 - (x) That the employer must notify the State promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.
- (2) In the case of an immediate withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date the support order is received if the employer's address is known on that date, or, if the address is unknown on that date, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.
- (3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.
- (4) If the noncustodial parent changes employment within the State when a withholding is in effect, the State must notify the noncustodial parent's new employer, in accordance with the requirements of paragraph (e)(1) of this section, that the withholding is binding on the new employer.

(f) *Interstate withholding.*

- (1) The State law must require employers to comply with a withholding notice issued by any State.
- (2) When an out-of-State IV-D agency requests direct withholding, the employer must be required to withhold funds as directed in the notice but to apply the income withholding laws of the noncustodial parent's principal place of employment to determine:
 - (i) The employer's fee for processing the withholding notice;

- (ii) The maximum amount that may be withheld from the noncustodial parent's income;
 - (iii) The time periods to implement the withholding notice and to remit the withheld income;
 - (iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and
 - (v) Any withholding term or conditions not specified in the withholding order.
- (3) In other than direct withholding actions:
- (i) A State may require registration for orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does not delay implementation of withholding beyond the timeframes established in paragraphs (e)(2) and (e)(3) of this section.
 - (ii) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV-D agency of the State in which the noncustodial parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.
 - (iii) The State in which the noncustodial parent is employed must implement withholding in accordance with this section upon receipt of the notice from the initiating State required in paragraph (f)(3)(ii) of this section.
 - (iv) The State in which the noncustodial parent is employed must notify the State in which the custodial parent is receiving services when the noncustodial parent is no longer employed in the State and provide the name and address of the noncustodial parent and new employer, if known.
- (4) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the noncustodial parent is employed.
- (5) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the noncustodial parent is employed shall apply.
- (g) **Provision for withholding in all child support orders.** Child support orders issued or modified in the State whether or not being enforced under the State IV-D plan must have a provision for withholding of income. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that enforcement under the State plan must proceed without the need for a withholding provision in the order.
- (h) **Notice to employer in all child support orders.** The notice to employers in all child support orders must be on an OMB-approved *Income Withholding for Support* form.

- (i) *Payments sent to the SDU in child support order not enforced under the State IV-D plan.* Income withholding payments made under child support orders initially issued in the State on or after January 1, 1994 that are not being enforced under the State IV-D plan must be sent to the State Disbursement Unit for disbursement to the family in accordance with sections 454B and 466(a)(8) and (b)(5) of the Act and § 302.32(a) of this chapter.

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