

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 20: Other Child Support Related Topics</b>	<b>Effective Date: 12/18/13</b>
	<b>Section 3: Post-Secondary Educational Expenses</b>	<b>Version: 1.1 Revision Date: 11/15/13</b>

**BACKGROUND**

Title IV-D law authorizes Title IV-D agencies to establish and enforce orders for “child support”, but the details of what is included in child support is left largely up to each State. Federal Title IV-D law is silent on the issue of orders for post-secondary educational expenses.

Indiana permits courts to order divorced, separated, or never married parents to contribute to the post-secondary educational expenses of their child<sup>1</sup>. Indiana’s statute does not clarify whether post-secondary educational expenses are part of, or separate from, child support. However, Indiana’s Court of Appeals has consistently held in recent years that child support orders and orders for post-secondary educational expenses are “separate and distinct.”<sup>2</sup>

Therefore, it has been concluded that post-secondary educational expense orders are not included in the definition of “child support” for purposes of implementing the Federal Title IV-D Program in Indiana.

**POLICY**

The Title IV-D Program in Indiana does not provide services for post-secondary educational expenses, including the establishment, modification, enforcement, or accounting of orders. Post-secondary educational expenses orders are not “child support” and therefore are not within the scope of Indiana’s Title IV-D program.

**REFERENCES**

- [IC 31-16-6-2](#): Expenses for child's education and health care; Title IV-D fees
- [IC 31-16-6-6](#): Termination of child support; exceptions; petition for educational needs
- [IC 31-16-15-0.5](#): Income withholding orders; stay
- [IC 31-25-3-1](#): Child support bureau; compliance; state central collection unit
- [IC 31-25-4-13.1](#): Agreements with local government officials; contracting; attorney-client relationship; informing applicant; service level stipulation
- [IC 33-32-4-2.5](#): ISETS is the official record of child support payments
- [42 U.S.C. §651](#): Authorization of appropriations
- [Vagenas v Vagenas, 879 N.E.2d 1155 \(Ind.App.2008\)](#)

<sup>1</sup>IC 31-16-6-2(a)(1)

<sup>2</sup> *Vagenas v Vagenas*, 879 N.E.2d 1155 (Ind.App.2008) –Page 5, Lines 4-5

## PROCEDURE

1. Petitions to establish, modify, or enforce orders for post-secondary educational expenses shall not be filed by Title IV-D prosecutors.<sup>3</sup>
2. Title IV-D prosecutors shall not include amounts for post-secondary educational expenses in Income Withholding Orders for child support.<sup>4</sup>
3. Title IV-D participants who seek the services of the Title IV-D prosecutor to establish, modify, or enforce an order for post-secondary educational expenses may be directed to information on other resources; e.g., legal service providers, private counsel, or the [Indiana Judicial Branch Self-Service Legal Center website](#).<sup>5</sup>
4. If the Title IV-D prosecutor is charged with enforcing a child support order which includes an order for post-secondary educational expenses, the prosecutor shall take care to enforce only that part of the order that pertains to the current child support obligation and arrears that have accumulated due to unpaid child support. It is strongly recommended that amounts for educational expenses and any arrears that have accumulated due to unpaid educational expenses be kept separate.
5. The Title IV-D prosecutor may file a petition to modify a child support order for unemancipated children even in cases where an order for post-secondary educational expenses exists. The Title IV-D prosecutor's role should be to facilitate the accurate calculation of the regular child support obligation. The Title IV-D prosecutor shall remain neutral on the issue of post-secondary educational expenses.
6. If the Title IV-D prosecutor is charged with enforcing a child support order which includes an order for post-secondary educational expenses, and the language of the order makes it difficult to keep the two elements of the order separate, the Title IV-D prosecutor may consider filing a petition/motion to modify and/or clarify the order so that the child support obligation and arrears are clearly defined as separate from the post-secondary educational expense order.
7. Only current child support and arrears should be paid through Indiana State Central Collection Unit (INSCCU). Title IV-D prosecutors are strongly encouraged to advise courts that INSCCU is not authorized to receive and process payments for post-

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<sup>3</sup> IC 31-25-4-13.1(b)(1) mandates that the prosecuting attorneys are contracted with CSB to perform the duties prescribed via 42 U.S.C. §651. IC 31-25-3-1 mandates that CSB is to comply with federal regulations. These citations all state that the program is for establishing and obtaining *child support*. Neither Federal nor State code contain a definition of *child support*; however, the Indiana Court of Appeals in *Vagenas v Vagenas*, 879 N.E.2d 1155 (Ind.App.2008) held that, "child support orders and educational support orders are separate and distinct."

<sup>4</sup> IC 31-16-15-0.5(a) lays out the amounts to be used for an IWO, and educational support is vacant from this list; therefore, it shall not be included on an IWO.

<sup>5</sup> See footnote 3. Since prosecuting attorneys are contracted to provide the services listed in 42 U.S.C. §651, which includes child support services but omits educational support services, and *Vagenas* clearly upholds a distinction between child support and educational support, prosecuting attorneys shall not petition to establish, modify, nor enforce an order for educational support.

secondary educational expenses.<sup>6</sup> Payments for post-secondary educational expenses shall not be posted in ISETS, or the successor statewide automated enforcement system. Such payments should be posted through the clerk's case management system.

8. Orders for post-secondary educational expenses shall not be entered into ISETS, or the successor statewide automated enforcement system. If a child support order includes an order for post-secondary educational expenses, only the information pertaining to the current child support obligation and arrears should be entered into ISETS, or the successor statewide automated enforcement system. The order for post-secondary educational expenses should be entered into and tracked through the clerk's case management system.<sup>7</sup>

## FORMS AND TOOLS

Title IV-D prosecutors and clerks who wish to remove existing post-secondary educational expense orders from ISETS, or the successor statewide automated enforcement system, may request queries from the ISETS Help Desk to help identify the cases. Please use the [ISETS Help Desk Requests Query - Ad-Hoc Report Request](#), and attach the completed form to an email or fax directed to the ISETS Help Desk. The most common places to find post-secondary educational expenses are CSUP CSUP, CSUP OTHR, and OTHR OTHR.

## FREQUENTLY ASKED QUESTIONS

1. Q: What is the Title IV-D prosecutor's role when a party files a petition to establish or modify a post-secondary educational expense order in a Title IV-D case?

A: It is within the Title IV-D prosecutor's discretion as to whether the State needs to be represented in a hearing for post-secondary educational expenses when there is an ongoing order for child support. The Title IV-D prosecutor's role should be to facilitate the accurate calculation of the regular child support obligation. The Title IV-D prosecutor shall remain neutral on the issue of post-secondary educational expenses.

2. Q: What if there is already a post-secondary educational expenses order in ISETS, or the successor statewide automated enforcement system?

A: It is up to the Title IV-D county prosecutor and clerk to decide whether or not existing orders for post-secondary educational expenses in ISETS, or the successor statewide automated enforcement system, should be removed. Be advised that if the court order specifies that post-secondary educational expenses are to be paid through ISETS or

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<sup>6</sup> IC 31-25-3-1(c) establishes the state central collection unit (INSCCU), which is established to collect child support payments, which, according to *Vagenas*, does not include educational expenses; therefore, the money cannot be sent through INSCCU.

<sup>7</sup> IC 33-32-4-2.5 states that ISETS is the official record of the collection, disbursement and distribution of child support payments. Since *Vagenas* upholds the distinction between child support and educational support, ISETS cannot be used to hold the orders, or track the collection, disbursement, and distribution of educational support.

INSCCU, the Title IV-D prosecutor would first need to seek a modification of the order directing the parent(s) to pay post-secondary educational expenses to the clerk instead. Please refer to procedure number 8.

3. Q: Can a judge order post-secondary education expenses to be withheld from a parent's income?

A: Yes, however, an Income Withholding Order shall not be used for this purpose. The court may issue a garnishment order to the parent's employer for the payment of post-secondary educational expenses.<sup>8</sup> The IV-D prosecutor shall not be involved in this activity.

4. Q: What if the child is age 19, or older, but still in high school?

A: The current child support order for that child shall end per the statute, unless the child is incapacitated. However, if the child support order is for more than one child, and at least one of the children is unemancipated, the child support order remains in effect until further order of the court.

#### **RELATED INFORMATION**

1. Chapter 20, Section 4: Spousal Support Only Cases

#### **REVISION HISTORY**

Version	Date	Description of Revision
Version 1	12/18/13	Final Approved Version
Version 1.1	5/14/19	Moved from stand alone Section to Chapter 20, Section 3

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<sup>8</sup> See footnote 4.