

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 20: Other Child Support Related Topics	Effective Date: 04/06/2022
	Section 3: Post-Secondary Educational Expenses	Version: 1.2 Revision Date: 04/06/2022

BACKGROUND

Indiana permits courts to order divorced, separated, or never married parents to contribute to the post-secondary educational expenses of their child.¹ 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.”²

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 31-16-15-0.5](#): 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
- [Vagenas v. Vagenas](#), 879 N.E.2d 1155, 1159 (Ind.Ct.App.2008)
- [42 U.S.C. § 651](#): Authorization of appropriations

PROCEDURE

1. Limitations for Title IV-D Prosecutor’s Offices on Post-Secondary Educational Expenses

¹ IC 31-16-6-2(a)(1)

² *Vagenas v Vagenas*, 879 N.E.2d 1155, 1159 (Ind.Ct.App.2008)

Petitions to establish, modify, or enforce orders for post-secondary educational expenses shall not be filed by the Title IV-D Prosecutor's Office.³

The Title IV-D Prosecutor's Office shall not include amounts for post-secondary educational expenses in income withholding orders (IWO) for child support.⁴

Title IV-D participants who seek the services of the Title IV-D Prosecutor's Office 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](#).⁵

If the Title IV-D Prosecutor's Office is charged with enforcing a child support order which includes an order for post-secondary educational expenses, the Title IV-D Prosecutor's Office 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.

The Title IV-D Prosecutor's Office 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 Office role should be to facilitate the accurate calculation of the regular child support obligation. The Title IV-D Prosecutor's Office shall remain neutral on the issue of post-secondary educational expenses.

If the Title IV-D Prosecutor's Office 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's Office 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.

2. Limitations for the Indiana State Central Collection Unit (INSCCU) on Post-Secondary Educational Expenses

³ 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, 1159 (Ind.Ct.App.2008) held that, "child support orders and educational support orders are separate and distinct."

⁴ 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.

⁵ 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.

Only current child support and arrears shall be paid through INSCCU. The Title IV-D Prosecutor's Office is strongly encouraged to advise Courts that INSCCU is not authorized to receive and process payments for post-secondary educational expenses.⁶

3. Limitations for the Statewide Child Support System on Post-Secondary Educational Expenses

Orders for post-secondary educational expenses shall not be entered into the statewide child support 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 statewide child support system. The order for post-secondary educational expenses should be entered into and tracked through the Clerk of Courts case management system.⁷

FORMS AND TOOLS

N/A

FREQUENTLY ASKED QUESTIONS

1. Q. What is the Title IV-D Prosecutor's Office 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 Office 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 Office role should be to facilitate the accurate calculation of the regular child support obligation. The Title IV-D Prosecutor's Office shall remain neutral on the issue of post-secondary educational expenses.
2. Q. Can a Court order post-secondary education expenses to be withheld from a parent's income?
 - A. Yes, however, an IWO 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.⁸ The Title IV-D's Prosecutor's Office shall not be involved in this activity.

RELATED INFORMATION

⁶ 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.

⁷ 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.

⁸ See footnote 4

1. Chapter 10: Child Support Order Establishment, Section 2: Elements of a Child Support Order
2. Chapter 20: Other Child Support Related Topics, Section 4: Spousal Support Only Cases

REVISION HISTORY		
Version	Date	Description of Revision
Version 1	12/18/2013	Final approved version
Version 1.1	05/14/2019	Moved from stand alone Section to Chapter 20, Section 3
Version 1.2	04/06/2022	Updated hyperlinks; Reviewed for accuracy