

137-055-3500

Joinder of a New Party to a Child Support Proceeding

(1) In any proceeding under ORS 416.400 to 416.470 to establish or modify a child support obligation, any party may join any other person who has physical custody of a child in the proceeding.

(2) Before a person may be joined as a party, the administrator will determine who has physical custody of the child. The determination of who has physical custody of a child is not affected by who may have legal custody of the child. A person has physical custody when that person is responsible for the care, control and supervision of the child. The administrator will make this determination upon reliable objective information including one or more of, but not limited to, the following:

(a) Written agreement of all parties to the proceeding and of the person having physical custody of the child;

(b) Current school or day care records of the child, indicating the child's name, address and primary caretaker;

(c) Notarized statements by persons who are knowledgeable about the child's primary place of residence and primary physical custodian;

(d) Letters of guardianship or other court records;

(e) Current state or federal agency records.

(3) The administrator will send written notification of the determination of physical custody and joinder to all parties and the person proposed to be joined as a party. The notice will inform the parties and the person proposed to be joined that:

(a) A determination of physical custody will result in joining the person with physical custody as a party to the action;

(b) A person who is joined as a party has the rights of a party, including the right to receive current child support;

(c) An objection to the determination of who has physical custody must be made to the administrator in writing within 30 days of the date that the determination was mailed.

(4) The notice described in section (3) may be served on the parties, which may include a child who qualifies as a child attending school under OAR 137-055-5110, and the person proposed to be a party as part of an action to modify or establish a support order in the same manner that service is required for that action in ORS 416.400 to 416.470. If an action to establish or modify has already been served, the notice of determination of physical custody and joinder will be sent to the parties and the person proposed to be

a party by regular mail at the last known address. If no objection is received within the time allotted in section (3) the person determined to have physical custody of the child, will be joined as a party to the action.

(5) If a written objection is filed pursuant to section (3) of this rule, the matter will proceed as follows:

(a) The administrator will attempt to resolve the dispute with the persons involved and, if the dispute is resolved, issue an order reflecting how the matter is resolved;

(b) If the dispute cannot be resolved, the written objection will be considered a request for a hearing and the issues of physical custody and joinder will then be heard and determined by a administrative law judge, pursuant to procedures established under ORS 416.400 to ORS 416.470. The issues of physical custody and joinder may be determined at the hearing to establish or modify a support obligation. The administrative law judge's determination of physical custody and joinder will be included in the order to modify or establish support and may be appealed pursuant to ORS 416.427;

(c) If the issues of physical custody and joinder are raised for the first time during a hearing to modify or establish support, the administrative law judge has authority to postpone the hearing and to order the administrator to serve a person alleged or claiming to have physical custody of the child. After service is accomplished, the administrative law judge may proceed with the hearing and has authority to make a determination of physical custody in accordance with section (2) of this rule. The administrative law judge's determination of physical custody and joinder will be included in the order to modify or establish support and may be appealed pursuant to ORS 416.427.

(6) Any person who has been previously joined as a party, pursuant to this rule, will be removed as a party after the administrator has determined that the child is no longer in the custody of that person. In making this determination, the administrator may use the criteria specified in subsections (2)(a) through (2)(e) of this rule.

Stat. Auth.: ORS 180.345; 416.455

Stats. Implemented: ORS 416.407

Effective Date: September 1, 2005