

February 1, 2019

Child Support Program Manual Transmittal Letter (CSPMTL) No. 142

TO: All Child Support Program Manual Holders

FROM: Michael J. McCreight, Interim Director

SUBJECT: Administrative Review and Adjustment

The rules have been reviewed in accordance with section 106.031 of the Revised Code (ORC), which requires the review of all state agency rules within a five-year period, and to comply with SB 70 of the 132nd General Assembly.

The Office of Child Support (OCS) has **rescinded** the following rules:

Rescinded Rule	Rescinded Rule Title	Prior Effective Date of Rule	Effective Date of Rescission
5101:12-60-05.3	The administrative review This rule describes the responsibilities of the child support enforcement agency (CSEA) when conducting the administrative review. This rule has been rescinded and replaced by a new rule with the same rule number and title because more than fifty percent of this rule has been stricken and a comparable amount of new text has been added. This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, and 3125.03.	11/1/2015	2/11/2019
5101:12-60-05.5	Notice of hearing rights This rule describes the hearing rights of the parties. This rule has been rescinded and replaced by a new rule with the same rule number and title because the rule had to be reformatted due to the removal of a paragraph. This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, and 3125.03.	3/1/2009	2/11/2019

5101:12-60-05.2 **Initiation of temporary adjustment for certain military members.**

- (A) This rule describes the circumstances under which an obligor who is a member of the uniformed services may request an administrative review and temporary adjustment of a child support order when called to active military duty pursuant to section 3119.77 of the Revised Code and how the child support enforcement agency (CSEA) shall proceed.
- (B) The following definitions are applicable to this rule:
- (1) "Active military service" means the performance of active military duty by a member of the uniformed services for a period of more than thirty days.
 - (2) "Uniformed services" means any reserve component of the armed forces of the United States or the Ohio organized militia when engaged in full-time national guard duty for a period of more than thirty days.
- (C) An obligor in the uniformed services who is called to active military duty may request an administrative review of a child support order. The obligor ~~must~~shall complete and submit JFS 01849, "Request for an Administrative Review of the Child Support Order," (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code). The obligor ~~must~~shall indicate on the JFS 01849 that the obligor is a member of the uniformed services called to active military service for a period of more than thirty days and provide with the JFS 01849 any orders or other appropriate documentation specifying the commencement date of the active military service and the monthly monetary compensation for that service.
- (D) The CSEA shall consider the obligor's call to active military service as a change of circumstances substantial enough to require an administrative review of the child support order.
- (E) The obligor may designate another individual to act on behalf of the obligor in the administrative review and adjustment process by providing the CSEA with a military power of attorney executed pursuant to 10 U.S.C. 1044b (11/30/1993). The CSEA shall allow the individual identified in the military power of attorney to act on the obligor's behalf during the administrative review and provide the individual with all required administrative review notices.
- (F) In accordance with section 3119.773 of the Revised Code, when an amount to be paid under a child support order is adjusted as the result of a request made under this rule, the obligor shall provide to the CSEA written notice of the date of termination of active military service. The notice ~~must~~shall be provided no later than the last day of the month in which the service ended. When an obligor who received a temporary

child support order adjustment pursuant to this rule fails to notify the CSEA that the term of active military service ended and the obligee or the CSEA has written documentation that the term of active military service ended, the CSEA shall end the temporary adjustment order and reinstate the prior amount of support as of the first day of the month following the date that the active military service ended.

- (G) In accordance with section 3119.772 of the Revised Code, when a child support order is adjusted based on an administrative review completed pursuant to this rule, the adjustment shall relate back to the date the CSEA sent the notification of administrative review, or the first day of the month in which the active military service begins, whichever occurs later.

- (H) A child support order adjusted under this rule shall:

- (1) Revert to the prior amount of support as of the first day of the month following the date that the obligor's active military service ends; and
- (2) Include a statement that the adjustment will end and the prior amount of support will be reinstated as of the first day of the month following the date that the active military service ends, except as otherwise provided in division (C) of section 3119.771 of the Revised Code.

Effective: 2/11/2019

Five Year Review (FYR) Dates: 10/3/2018 and 02/11/2024

CERTIFIED ELECTRONICALLY

Certification

01/29/2019

Date

Promulgated Under: 119.03

Statutory Authority: 3125.25

Rule Amplifies: 119.03

Prior Effective Dates: 09/01/2005, 03/01/2009, 11/01/2015

OCS has **adopted** the following rules:

Adopted Rule	Adopted Rule Title	Effective Date of Adopted Rule
5101:12-60-05.3	<p>The administrative review</p> <p>This rule describes the responsibilities of the CSEA when conducting the administrative review. The rule replaces rescinded OAC rule 5101:12-60-05.3. Changes from the rescinded rule include:</p> <ul style="list-style-type: none"> • replaced "party" with "parent"; • added language to issue the JFS 00592 and JFS 00593; • changed the review schedule date to 30 days to comply with amended ORC section 3119.60; • added language to paragraphs (E)(1) and (E)(2) to comply with amended section 3121.29 of the Revised Code; and • added language to specify when a parent fails to provide the requested information, the CSEA may seek a court order or make reasonable assumptions to comply with amended ORC section 3119.72. <p>This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, and 3125.03.</p>	2/11/2019
5101:12-60-05.5	<p>Notice of hearing rights</p> <p>This rule describes the hearing rights of the parties. The rule replaces rescinded OAC rule 5101:12-60-05.5. Changes from the rescinded rule include: renumbered paragraphs; amended the introductory paragraph to comply with amended ORC sections 3119.61 and 3119.63; and removed language that is not needed in accordance with ORC section 3121.29.</p> <p>This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, and 3125.03.</p>	2/11/2019

OCS has **amended** the following rules:

Amended Rule	Amended Rule Title	Prior Effective Date of Rule	Effective Date of Amendment
5101:12-60-05.2	Initiation of temporary adjustment for certain military members	11/1/2015	2/11/2019
	<p>This rule describes the process for certain military members called to active duty to request an administrative review. This rule has been amended to replace “must” with “shall.”</p> <p>This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, 3119.77, 3119.771, 3119.772, 3119.773, and 3125.03.</p>		
5101:12-60-05.6	CSEA administrative adjustment hearing process	11/1/2015	2/11/2019
	<p>This rule describes the administrative adjustment hearing process. The rule has been amended to comply with amended ORC sections 3119.61 and 3119.63, which include:</p> <ul style="list-style-type: none"> replaced "regular mail" with "ordinary mail"; revised paragraph (J) to clarify the requirements for the hearing process; added paragraph (K) to describe the reasons for a deviation on the ordered payment on arrears; updated the objection period from 15 to 14 days; and updated the forms effective date language. <p>This rule is authorized by ORC section 3125.25; and amplifies ORC sections 3119.60, 3119.61, 3119.63, and 3125.03.</p>		

INSTRUCTIONS:

When the CSPMTL is published, the CSPM will be updated as follows:

- A rescinded rule will be moved from the CSPM to the OAC Archive section of the eManuals.
- An adopted rule will be inserted
- An amended rule will be inserted and the previous version will be moved to the OAC Archive section of the eManuals.

The rules and forms in the CSPM can be accessed at:

<http://emanuals.jfs.ohio.gov/>

Forms can also be accessed on the ODJFS Forms Central InnerWeb page at:

<http://www.odjfs.state.oh.us/forms/inner.asp>

or on the ODJFS Forms Central Internet page at:

<http://www.odjfs.state.oh.us/forms/inter.asp>

INSTRUCTIONS for CSEA INTERNAL PROCEDURAL HANDBOOK:

Paragraph (I)(1) of OAC rule 5101:12-1-01 states that, whenever a program change requires modification of local procedures, the CSEA is required to revise its internal procedural handbook and submit the revision to OCS within thirty days of the revision. The CSEA should carefully review the amended rules contained in this CSPMTL to determine whether they require the CSEA to update its internal procedural handbook.

5101:12-60-05.3 **The administrative review.**

(A) A child support enforcement agency (CSEA) shall evaluate a case when it is determined that an administrative review may be required or a JFS 01849, "Request for an Administrative Review of the Child Support Order" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), is received. When the CSEA is required to conduct an administrative review, the CSEA shall initiate action to adjust the child support order in accordance with the guidelines.

(B) The CSEA is required to conduct an administrative review when:

- (1) An administrative review is required pursuant to paragraph (A) or (B) of rule 5101:12-60-05.1 of the Administrative Code;
- (2) Any party to the child support order requests an administrative review pursuant to paragraph (D) of rule 5101:12-60-05.1 of the Administrative Code;
- (3) Any party requests an administrative review pursuant to paragraph (E) of rule 5101:12-60-05.1 of the Administrative Code and the requesting party submits sufficient evidence or information to support such a request; or
- (4) The obligor requests an administrative review pursuant to rule 5101:12-60-05.2 of the Administrative Code and the obligor submits sufficient evidence or information to support such a request.

(C) The CSEA is not required to conduct an administrative review when:

- (1) No party resides in Ohio, unless the request is made in accordance with rule 5101:12-60-05.2 of the Administrative Code or the parties have consented in a record or open court that the tribunal in Ohio, may continue to exercise jurisdiction to modify its order. When the CSEA denies such a request for an administrative review, the CSEA shall notify the requesting party to contact the IV-D agency in the requesting party's state of residence.
- (2) It has been less than thirty-six months from the date of the most recent child support order and the CSEA determines that the request for the administrative review is a frequent request and there is no evidence to support the request. "Frequent request" is defined as more than one request for an administrative review per party in a three-month period. When the CSEA denies such a request for an administrative review, the CSEA shall notify the requesting party of the denial and the reason for the denial.
- (3) It has been less than thirty-six months from the date of the most recent child support order and the CSEA determines that the requesting party has

failed to provide evidence or information, in accordance with paragraph (E) of rule 5101:12-60-05.1 or paragraph (C) of rule 5101:12-60-05.2 of the Administrative Code, necessary to support the administrative review request. When the CSEA denies such a request for an administrative review, the CSEA shall notify the requesting party or the person appointed by the obligor as having military power of attorney of the denial and the reason for the denial.

(D) The CSEA shall complete the evaluation and make a determination of whether an administrative review is required to be conducted within the following time frames:

(1) No later than fifteen days after the following:

(a) The thirty-six month anniversary of the date of the most recent child support order when the CSEA is required to complete an administrative review pursuant to paragraph (A) of rule 5101:12-60-05.1 of the Administrative Code;

(b) The date the CSEA identifies that an administrative review is required pursuant to paragraph (B) of rule 5101:12-60-05.1 of the Administrative Code; or

(c) The date the CSEA receives a JFS 01849 from any party requesting an administrative review pursuant to paragraph (D) or (E) of rule 5101:12-60-05.1 of the Administrative Code.

(2) No later than three business days after receipt of a JFS 01849 from an obligor requesting an administrative review pursuant to rule 5101:12-60-05.2 of the Administrative Code.

(E) The CSEA shall conduct the administrative review within one hundred eighty days of:

(1) Receiving a JFS 01849 or locating the non-requesting party, when the most recent child support order was issued on or before February 10, 2019 (indicating that the order does not contain notice to the parties pursuant to section 3121.29 of the Revised Code), whichever occurs later; or

(2) Receiving a JFS 01849, when the most recent child support order was issued on or after February 11, 2019 (indicating that the order does contain notice to the parties pursuant to section 3121.29 of the Revised Code).

(F) In accordance with paragraph (E)(1) or (E)(2) of this rule, the CSEA shall:

(1) Determine that the request for the administrative review does not meet the administrative review criteria and issue a JFS 07613, "Administrative

Adjustment Review Denial Notice" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to the requesting party that includes the reason for the denial, or

(2) Determine that the request for the administrative review does meet the administrative review criteria, then schedule the administrative review in accordance with paragraph (G)(1)(a) of this rule, and:

(a) Conduct the review to determine whether or not the child support order should be adjusted, or

(b) Issue a JFS 01868, "Dismissal of Administrative Review Request" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to dismiss the scheduled review:

(i) In accordance with paragraph (G)(2)(b) of this rule, or

(ii) At the request of the requesting party before the date certain.

(G) When an administrative review is to be conducted:

(1) The CSEA shall:

(a) Schedule the review for a date that is at least thirty days in the future;

(b) Issue to the last known address of the parents, at least thirty days before the date certain:

(i) A JFS 07606, "Administrative Adjustment Review Notification" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), and

(ii) A JFS 00593, "Child Support Financial Affidavit" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code);

(c) Issue a JFS 00592, "Caretaker Notification of Administrative Adjustment Review" (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to the last known address of the caretaker, if a caretaker exists.

- (2) The JFS 07606 notifies each parent to provide the CSEA with the information and documents listed on the JFS 00593 no later than the date of the scheduled review, pursuant to section 3119.60 of the Revised Code.
- (a) Should either parent fail to submit the required information, the CSEA may do either of the following:
- (i) Request the court of appropriate jurisdiction of the county in which the agency is located to issue an order requiring the parent to provide the information as requested; or
- (ii) Make any reasonable assumptions necessary with respect to the information the parent did not provide to ensure a fair and equitable review of the child support order or establishment of an administrative order under section 3111.81 of the Revised Code.
- (b) When a requesting parent fails to submit the information in accordance with paragraph (G)(2) of this rule, the CSEA may issue a JFS 01868 to the parties indicating that the administrative review has been abandoned by the requesting party. Any party has the right to submit a new JFS 01849.
- (c) A caretaker is not required to submit any information to the CSEA for the administrative review.
- (3) When the parents wish to conduct the administrative review sooner than the required thirty day time period and the CSEA has sufficient information to proceed with an administrative review, both parents must complete a waiver and submit the waiver to the CSEA. Upon receipt of the completed waivers, the CSEA shall conduct the administrative review on a date specified and agreed upon by both parents and the CSEA. When the parents and CSEA fail to agree upon a date, the administrative review shall occur on the date certain.
- (4) It is not necessary for any party to be present at the administrative review.

Replaces: 5101:12-60-05.3

Effective: 2/11/2019

Five Year Review (FYR) Dates: 02/11/2024

CERTIFIED ELECTRONICALLY

Certification

01/29/2019

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Promulgated Under: 119.03

Statutory Authority: 3125.25

Rule Amplifies: 3119.60, 3125.03, 3119.63, 3119.61

Prior Effective Dates: 01/01/1987 (Emer.), 03/20/1987, 12/01/1987,
12/31/1990 (Emer.), 02/21/1991, 03/18/1991,
07/15/1992, 09/01/1993, 12/31/1993, 01/01/1995,
06/21/1996, 07/22/1996, 01/01/1998, 12/01/2001,
09/01/2005, 03/01/2009, 11/01/2015

5101:12-60-05.5 **Notice of hearing rights.**

The JFS 07724, "Administrative Adjustment Recommendation" (effective or revised effective date as identified in rule 5101:12-45-99 of the Administrative Code), notifies the parties to the child support order of their right to request an administrative adjustment hearing and the procedures and time deadlines for requesting the administrative adjustment hearing.

(A) When the order is a court support order, the child support enforcement agency (CSEA) shall submit the JFS 07724 to the court for inclusion in a revised court support order unless any party requests an administrative adjustment hearing no later than fourteen days after the JFS 07724 is issued.

(1) When the existing court support order contains a deviation granted under section 3119.23 or 3119.24 of the Revised Code or when any party intends to request a deviation, any party has a right to file for a court hearing on the revised amount of a support obligation without first requesting an administrative adjustment hearing.

(2) In order to exercise this right, any party must file the request for a court hearing with the court no later than fourteen days after the JFS 07724 is issued.

(B) When the order is an administrative child support order, the CSEA shall include the recommendation in an amended administrative child support order using the JFS 07719, "Administrative Order for Child Support and Medical Support" (effective or revised effective date as identified in rule 5101:12-45-99 of the Administrative Code), unless any party requests an administrative adjustment hearing no later than fourteen days after the JFS 07724 is issued.

Replaces: 5101:12-60-05.5

Effective: 2/11/2019

Five Year Review (FYR) Dates: 02/11/2024

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Promulgated Under: 119.03

Statutory Authority: 3125.25

Rule Amplifies: 3119.60, 3119.61, 3119.63, 3125.03

Prior Effective Dates: 01/01/1987 (Emer.), 03/20/1987, 12/01/1987,
12/31/1990 (Emer.), 02/21/1991, 03/18/1991,
07/15/1992, 09/01/1993, 12/31/1993, 01/01/1995,
06/21/1996, 07/22/1996, 01/01/1998, 12/01/2001,
09/01/2005, 03/01/2009

5101:12-60-05.6 **CSEA administrative adjustment hearing process.**

- (A) The child support enforcement agency (CSEA) shall schedule and conduct an administrative adjustment hearing in accordance with this rule when the CSEA determines that ~~either any~~ party to the child support order has submitted a timely request for an administrative adjustment hearing.
- (B) ~~Either~~ Any party may submit to the CSEA a written request for an administrative adjustment hearing to object to the recommendations contained in the JFS 07724, "Administrative Adjustment Recommendation" ~~(rev. 8/2008)~~ (effective or revised effective date as identified in rule 5101:12-45-99 of the Administrative Code).
- (1) In accordance with division (B) of section 3119.63 of the Revised Code, when the order is a court support order, the request must be received by the CSEA within fourteen days ~~of the date the parties received~~ after the JFS 07724 is issued.
- (2) In accordance with division (A) of section 3119.61 of the Revised Code, when the order is an administrative child support order, the request must be received by the CSEA ~~within thirty~~ no later than fourteen days ~~of the date the parties received~~ after the JFS 07724 is issued.
- (C) The CSEA shall schedule the administrative adjustment hearing for a date no later than fifteen days after the date that the CSEA receives the request. No later than ten days before the hearing is conducted, the CSEA shall issue the JFS 07602, "Administrative Adjustment Hearing Notice" ~~(4/1996)~~ (effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to each party's last known address by ~~regular~~ ordinary mail.
- (D) The CSEA may grant a request from ~~either any~~ party to participate in the hearing via telephone in appropriate circumstances as determined by the CSEA.
- (E) The administrative adjustment hearing shall be conducted by a licensed attorney or other qualified person designated by the CSEA director with significant training or experience in conducting hearings that are subject to court review (hereafter both are referred to as "designee"). The designee shall not have been involved in the administrative adjustment recommendations being appealed. The designee shall not have contact with ~~either party~~ the parties about the case outside the hearing process.
- (F) The CSEA representative who was involved in the administrative adjustment recommendation being appealed or other person designated by the CSEA who is familiar with the recommendation shall be available for the administrative adjustment hearing to explain the administrative adjustment recommendation, answer relevant questions, and provide appropriate documentation to support the administrative adjustment recommendation.

- (G) The designee shall permit one request per party for postponement of the originally scheduled administrative adjustment hearing date. The request must be based on a valid reason, as determined by the CSEA, and received by the CSEA no later than seven days before the scheduled date.
- (1) When the CSEA approves the request, the CSEA shall reschedule the administrative adjustment hearing within fifteen days of the original hearing date and issue the JFS 07633, "Rescheduling Administrative Adjustment Hearing Notice" (~~rev. 4/1996~~)(effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to each party, notifying the parties of the rescheduled date, time, and location of the administrative adjustment hearing.
 - (2) When the CSEA determines that no valid reason to postpone the administrative adjustment hearing has been presented by ~~either~~the party, the CSEA shall issue the JFS 01856, "Denial of Request to Reschedule Administrative Review and Adjustment Hearing" (~~rev. 7/2005~~)(effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to the requesting party.
- (H) The CSEA may deny the request for an administrative adjustment hearing when:
- (1) The request for an administrative adjustment hearing is not made by one of the parties or ~~one of~~ a party's authorized representative;
 - (2) The stated reason for requesting the hearing is unrelated to the administrative adjustment recommendation; or
 - (3) The request is untimely.
- (I) When an administrative adjustment hearing request is denied, the CSEA shall issue a JFS 07728, "Denial of Request for an Administrative Adjustment Hearing Request Denial Notice" (~~rev. 11/2001~~)(effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code), to each party by ~~regular~~ordinary mail. The JFS 07728 shall indicate the reason(s) for the denial.
- (J) At the administrative adjustment hearing, each party shall be given the opportunity to present evidence and testimony to support whether the party's contention that the CSEA did not correctly evaluate~~evaluated the party's income information relevant to the review; when such income information had been provided, or did not make reasonable assumptions with respect to the income of any person who failed to provide income information. Either~~Any party may bring a representative to the hearing. The designee may exclude any individual who does not have a valid interest

in the proceedings as determined by the designee. The CSEA shall maintain a copy of all exhibits provided by the parties at the administrative adjustment hearing.

(K) In accordance with section 3123.21 of the Revised Code, an administrative hearing officer may consider evidence of household expenditures, income variables, extraordinary health care issues, and other reasons for a deviation from the twenty per cent presumption on the ordered payment on arrears.

~~(K)~~(L) Within ten days of the administrative adjustment hearing, the CSEA shall issue the JFS 07770, "Administrative Adjustment Hearing Decision" ~~(rev. 11/2001)~~ effective or revised effective date as identified in rule 5101:12-60-99 of the Administrative Code, to the last known address of ~~both parties~~ each party by ~~regular~~ ordinary mail. The designee shall attach to the JFS 07770 findings of fact based upon the evidence presented at the hearing, relevant citations to the guidelines and other applicable law, a conclusion regarding the correctness of the administrative adjustment review recommendation under appeal, and a recommendation regarding the support obligations and medical support provisions.

~~(L)~~(M) The JFS 07770 contains the following notices of ~~each party's right~~ the parties' rights to file for a court hearing to object to the administrative adjustment hearing decision:

(1) When the order is a court support order, the parties may file for a court hearing within ~~fifteen~~ fourteen days of the issuance date of the JFS 07770.

(2) When the order is an administrative child support order, the parties may, within ~~fifteen~~ fourteen days of issuance date of the JFS 07770, initiate an action under section 2151.231 of the Revised Code in the juvenile court or other court with jurisdiction under sections 2101.022 and 2301.03 of the Revised Code of the county in which the mother, father, child, guardian, or custodian of the child resides.

~~(M)~~(N) Within fifteen days of receiving a request for or being notified of a court hearing, the CSEA shall submit the request, when applicable, the JFS 07724, the JFS 07770, and any attachments to the court. The CSEA's only requirement is to submit the documents to the court. The CSEA does not prepare the motion or represent ~~either party~~ any party at the hearing.

~~(N)~~(O) The CSEA's legal representative shall primarily serve an administrative function rather than that of a legal advocate. When a legal challenge occurs at the court level and the CSEA is requested to appear, the CSEA shall present to the court the facts from the administrative adjustment review and hearing to assure that the guidelines were correctly applied and to explain the JFS 07724.

Effective: 2/11/2019

Five Year Review (FYR) Dates: 10/3/2018 and 02/11/2024

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12/01/2001, 09/01/2005, 03/01/2009, 11/01/2015