

FINAL MINUTES  
APPROVED AS WRITTEN SEPTEMBER 9, 2011

Child Support Schedule Workgroup  
Meeting of August 26, 2011  
AOC Office  
SeaTac, WA

Workgroup Members attending: Kevin Callaghan, Chair Pro Tem; Kristopher Amblad, James Cox, Kristie Dimak, Timothy Eastman, Kathy Lynn, Andrew McDirmid, Representative Jim Moeller, the Honorable Edward Pesik, Jr., Kathleen Schmidt and Janet Skreen

DCS Staff: Nancy Koptur, George Smylie, June Johnson

Guests: Mitchell Johns, Shani Bauer, Trudes Tango, Mark Mahnkey, Pat Lessard, Levi Fisher

- I. **Introductions:** Kevin Callaghan announced that he had been appointed Chair Pro Tem while David Stillman was out of town.
- II. **Agenda Reviewed:** It was agreed that the draft agenda would be amended so that the Economic Table would be placed last in order for discussion, with the understanding that any discussion of the Economic Table would probably not happen until the September 9 meeting.
- III. **Review of 8/12/11 Draft Meeting Minutes:** the minutes were approved as amended.
- IV. **Discussion of Issues Identified and Possible Points of Agreement. Residential Schedule Credit:** Andrew McDirmid led the discussion, and Chair Callaghan attempted to identify points of agreement.
  - a. There still appears to be a consensus recommendation for using the Indiana Credit formula for calculating a residential schedule credit, but no consensus on whether there should be a threshold number of overnights.
  - b. There was a suggestion that the Workgroup should recommend that the legislature should direct anyone calculating child support to some sort of online automated system that would do the residential schedule credit calculation because even with the worksheet provided, the Indiana Credit may be too complicated for unrepresented parties to use. However, the Workgroup realized that everything about the WSCSS is complicated, so a complicated formula would not be anything new.
  - c. There was some discussion about the statutory language to be used concerning when the residential schedule credit may not be used because allowing the credit may result in “insufficient funds” in the custodial parent’s household. Chair Callaghan requested that the attorneys on the Workgroup attempt to draft some language on this point (and on the same issue regarding Children From Other Relationships).
  - d. The Workgroup agreed that the residential schedule credit should be available in the administrative forum as well as in superior court.
    - i. In either forum, the credit could be based on a court-ordered parenting plan or residential schedule;

- ii. In the administrative forum, the credit could be based findings of fact based on a written agreement between the parties or sworn testimony of the parties at hearing.
  - iii. The Workgroup agreed that an administrative support establishment notice would not be served with a residential schedule credit, but that it would be up to the parties to deal with any such credit in the administrative hearing.
  - iv. There was discussion about, but no consensus on, dealing with a “true” 50-50 parenting plan in the administrative forum, because DCS defines a noncustodial parent as the parent with whom the child resides less than 50% of the time.
- e. The Workgroup was unable to agree on how to adjust the residential schedule credit.
- i. There was no agreement regarding “noncompliance” with the residential schedule.
  - ii. There was no agreement regarding how long the “noncompliance” with the residential schedule would go before adjustment.
  - iii. There was no agreement whether the credit could be adjusted upward and downward, or only downward.
  - iv. Further, the Workgroup acknowledged that this process seems to require an adjustment or modification of the parenting plan at the same time, and that subject is beyond the scope of this Workgroup.
- f. The Workgroup agreed that the residential schedule credit should be based on the number of overnights.
- g. The Workgroup was unable to reach consensus on whether there should be a threshold before granting a residential schedule credit, and if so, what the threshold should be.
- i. Tim Eastman agreed to prepare an example of the Indiana Credit Table with a zero threshold.
  - ii. The Workgroup agreed that it might be better to delay any discussion of a threshold until there is an actual Economic Table to review.

**V. Public Comments:** Public comments were made by Mark Mahnkey.

**VI. Break and Distribution of Lunches**

**VII. Children From Other Relationships Subcommittee Report:** Ed Pesik led the discussion.

- a. Chair Callaghan requested that the attorneys on the Workgroup attempt to draft some language on the topic of “insufficient funds” (and on the same issue regarding the Residential Schedule Credit, see above).
- i. As part of the “insufficient funds” discussion, the Workgroup agreed that the statutes referring to using the federal poverty level for a self-support reserve should be revised to refer to “the federal poverty level for a one-person family.”
  - ii. There was some discussion, but no agreement, on whether a larger family size should be used when considering “insufficient funds” when determining whether to use the Whole Family Formula.

- b. The Workgroup agreed to recommend the Subcommittee’s proposed definition for Children From Other Relationships, also known as Children Not Before the Court (CNBC), as set out in the Subcommittee’s August 12 written report.
  - i. It was pointed out by Trudes Tango, legislative staffer, that the language regarding case law on “de facto” parents was not “legislation-ready.”
  - ii. Janet Skreen agreed to work on the language in the definition.
- c. The Workgroup agreed to recommend that the CFOR calculation be a presumptive calculation, which means that the formula would give the transfer payment that results after consideration of the obligor’s CNBC using the Whole Family Formula.
- d. The Workgroup agreed that the statute should also be changed to adopt the Whole Family Formula method whenever a tribunal has to determine a presumptive calculation for CNBC, with the caveat that this agreement is only a consensus if there is a new Economic Table adopted.
- e. The Workgroup agreed to defer discussion of “stacking” limitations or other factors which might reduce the transfer payment.
- f. The Workgroup agreed that they were unable to agree on how and when to apply the Whole Family Formula.

**VIII. Postsecondary Education Support Subcommittee Report:** Tim Eastman led the discussion.

- a. The Workgroup agreed that the child for whom postsecondary education support (PSES) would be paid must be enrolled in an accredited academic or vocational school on a full time basis (as determined by the educational facility).
- b. The Workgroup agreed that PSES should be based on instate tuition at a public school in Washington, regardless of where the child goes.
- c. The Workgroup agreed that, based on individual circumstances at discretion of the court, PSES could be higher for child attending private or out-of-state school.
- d. The Workgroup agreed that the court must consider all financial aid awarded to the child, and subtract that amount from the total cost before determining the parents’ contribution.
- e. The Workgroup agreed “all financial aid awarded to the child” does not include loans which the financial aid award suggests that the child take out.
- f. The Workgroup agreed that if one or both parents saved separately for PSES and used those funds to pay directly to the school or to the child, those amounts should be considered part of the parent’s share of PSES.
- g. The Workgroup agreed that there should be clear rules on suspending and then reinstating PSES, and also for terminating PSES entirely, but the Subcommittee did not have a consensus recommendation on how this would work.
  - i. Kathleen Schmidt pointed out that the current statute is fairly clear on when a parent could suspend payment of PSES without returning to court, but agreed that there needs to be clarification about when PSES would be reinstated.

- ii. The Workgroup agreed that, since the current statute already addresses suspension, there should be no change to the language regarding automatic suspension of PSES.
    - iii. The Workgroup agreed that it makes sense to require a court order to terminate the PSES obligation.
    - iv. Kathleen Schmidt agreed to develop some draft language.
  - h. The Workgroup was unable to agree on whether the current statutory scheme regarding who gets the PSES payments should be revised.
- IX. Planning:** Nancy Koptur advised the Workgroup that it might be necessary to schedule an additional meeting after the last scheduled meeting on September 9.
- a. The Workgroup members almost unanimously requested that there not be another in-person meeting scheduled.
  - b. Several Workgroup members mentioned that they would be unavailable on Friday, September 16<sup>th</sup>.
  - c. Several Workgroup members expressed a preference for a conference call meeting if another meeting is necessary.
- X. Meeting Adjourned at 2:45 pm.**