



## How to Handle Child Support When Custody Changes

The question of who is taking primary care of the child (also referred to as custody) is fundamental to every child support order. We know it can change with time. But what should parents do when a change in custody means a child support order also needs to change?

The answer is especially important when the child goes from living with the person named as the custodial parent on the child support order to the person named as the noncustodial parent.

### The Critical First Step: Filing with the Court

The first and most important step: the person now taking primary care of the child should *immediately* file two petitions with the Family Court.

The **first** petition is to suspend or terminate the child support order.

The **second** petition, called an order to show cause, could suspend the ongoing child support order obligation and stop the order from charging while they wait for the hearing to suspend or terminate the order.

Importantly, even if the order is successfully suspended or terminated, any debt on the case would still have to be paid.

Parents who also want to formally change their custody order need to file a **third** petition just for that. The hearing for this will be separate from the ones for child support.

All of this should happen as soon as the parent can prove the child now lives with them.

### Why Start with Court? While File Quickly?

Parents should start the process by filing with the Family Court because the Office of Child Support Services (OCSS) cannot do anything without a court order. Only the court has power to suspend or terminate an order.

We at OCSS are not automatically alerted to changes in custody, only to changes to child support orders. Filing a petition to suspend or terminate a child support order does not change the child support account in the child support system until a court order is issued.

Another reason to go directly to the Family Court is that child support orders are usually only modified back to the date the petition is filed, not the date the child's new living arrangements started. In almost all cases neither OCSS nor the Family Court

can do anything about the period between when the child's living arrangements changed and the petition was filed.

Child support payments that have already been distributed to the person named as the custodial parent cannot be refunded by OCSS.

### A Recent Case

Last year a father who had been his child's noncustodial parent paid over \$10,000 in child support while his child was living with him because he didn't realize he should file for custody and a change in child support at the same time.

His custody filing came soon after the child's living arrangements changed, but that petition took a year to make its way through the court. Meanwhile, his child support order remained unchanged. Only two months after the court granted him custody did he file for a change to his child support.

This led him to pay a full year's worth of child support that could have been avoided if the child support petition was filed immediately after the children started living with him. Because the money was already distributed to the custodial parent, OCSS was unable to recover and return the \$10,000 he had paid during that time.

### Questions? Want Help Filing a Petition?

If you have questions about changes to custody like this, email OCSS at [dcse.cseweb@dfa.state.ny.us](mailto:dcse.cseweb@dfa.state.ny.us) or visit [nyc.gov/hra/ocss](http://nyc.gov/hra/ocss). To file a petition with the New York City Family Court, visit [nycourts.gov/COURTS/nyc/family](http://nycourts.gov/COURTS/nyc/family) or go to your local Family Court.

The Office of Child Support Services can also assist parents with filing a petition.



## In the Know

### Remember: Special Training Institute Event on February 14 and Online Information Packet

As we mentioned last month, we recently posted a [comprehensive information packet](#) that organizations can use to find up-to-date information on our program that can be easily shared with the people you work with.

And don't forget to join a special OCSS Training Institute event on Tuesday, February 14, when OCSS's Executive Deputy Commissioner and Deputy Commissioner will be available to answer questions about the program. Email us at [dcse.cseweb@dfa.state.ny.us](mailto:dcse.cseweb@dfa.state.ny.us) to register.

### Contact OCSS

Email us at [dcse.cseweb@dfa.state.ny.us](mailto:dcse.cseweb@dfa.state.ny.us)