



ERICSA 2014: *TAKING FLIGHT*  
*for Children and Families*



# UIFSA Basics and Beyond



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# Adoption of UIFSA



- ❖ PRWORA mandated that states enact UIFSA
- ❖ The Goal- **One Controlling Order**
  - Multiple states may enforce
  - Only one has the jurisdiction to modify



# Interstate Legislation

- ❖ Uniform Reciprocal Enforcement of Support Act (URESAs)
- ❖ Revised Uniform Reciprocal Enforcement of Support Act (RURESAs)
- ❖ Full Faith and Credit for Child Support Orders Act (FFCCSOA)
- ❖ Uniform Interstate Family Support Act (UIFSA)



# Key Aspects

- ❖ Visitation may not be raised and is not a defense to nonpayment of support
- ❖ UIFSA has enhanced evidence rules
- ❖ Non-paternity is not a defense, if paternity has been established or acknowledged
- ❖ There are one-state and two-state procedures



# Analyzing an Interstate Action

- If there is no order, an order needs to be established.
- If there is only one order, determine whether it needs enforcement or modification.
- If there are multiple orders, determine the controlling order before taking further action



# Determining the Controlling Order

- ❖ One controlling order is the cornerstone of UIFSA and FFCSOA.
- ❖ When multiple valid support orders exist, there are rules for determining which support order governs.
- ❖ States must give full faith and credit to valid child support orders issued by other states



# Determining the Controlling Order

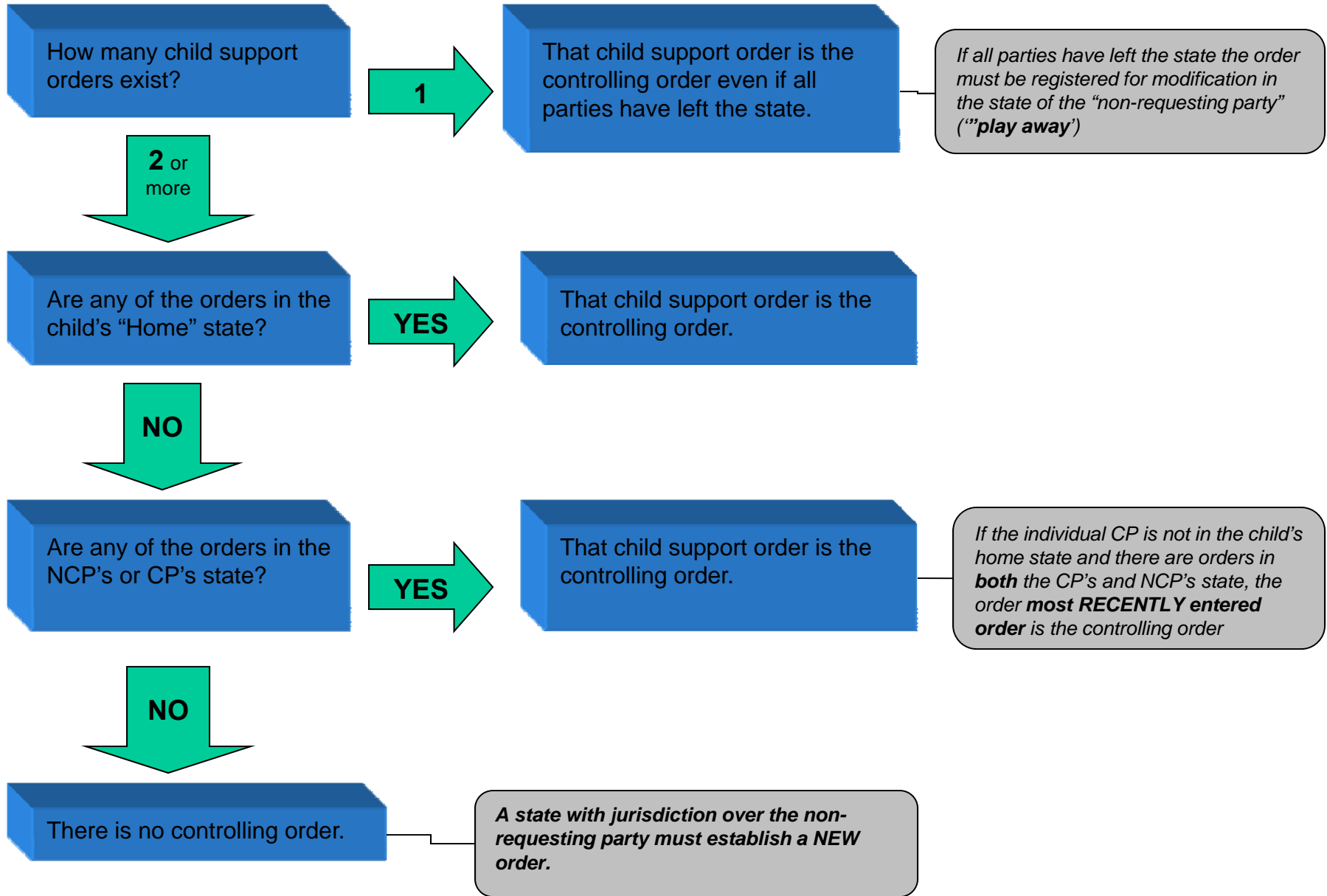
- ❖ UIFSA and FFCCSOA use the same rules
  - No provision in either law invalidates any previously issued **valid support order**
  - A controlling order determination is made only once when multiple orders exist



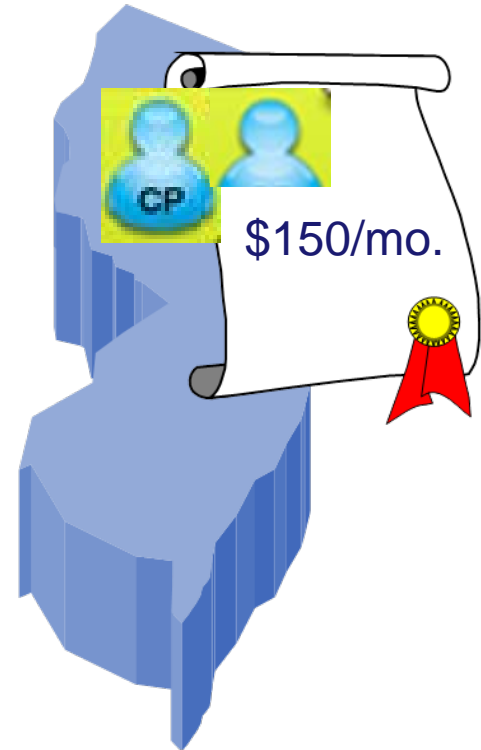
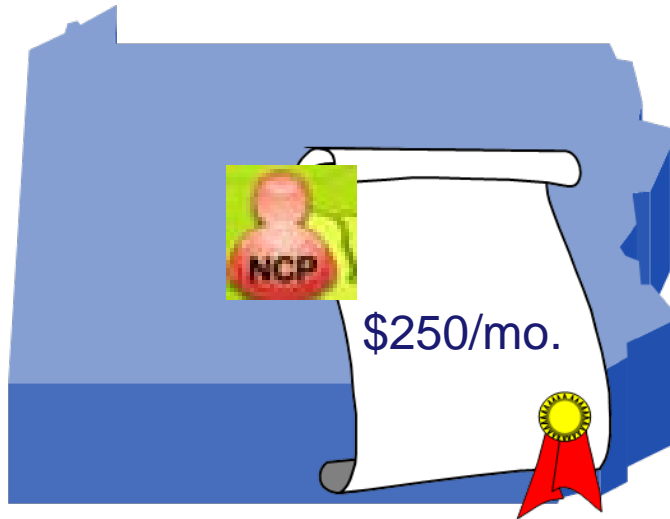
# Determining the Controlling Order

- ❖ For a state to make a controlling order determination, all of these conditions must exist:
  - There must be multiple orders for current support
  - The request must be accompanied by a certified copy of every order in effect
  - The state must have personal jurisdiction over the parties
  
- ❖ Two stages to the determination
  - Preliminary determination
  - Formal determination by a tribunal

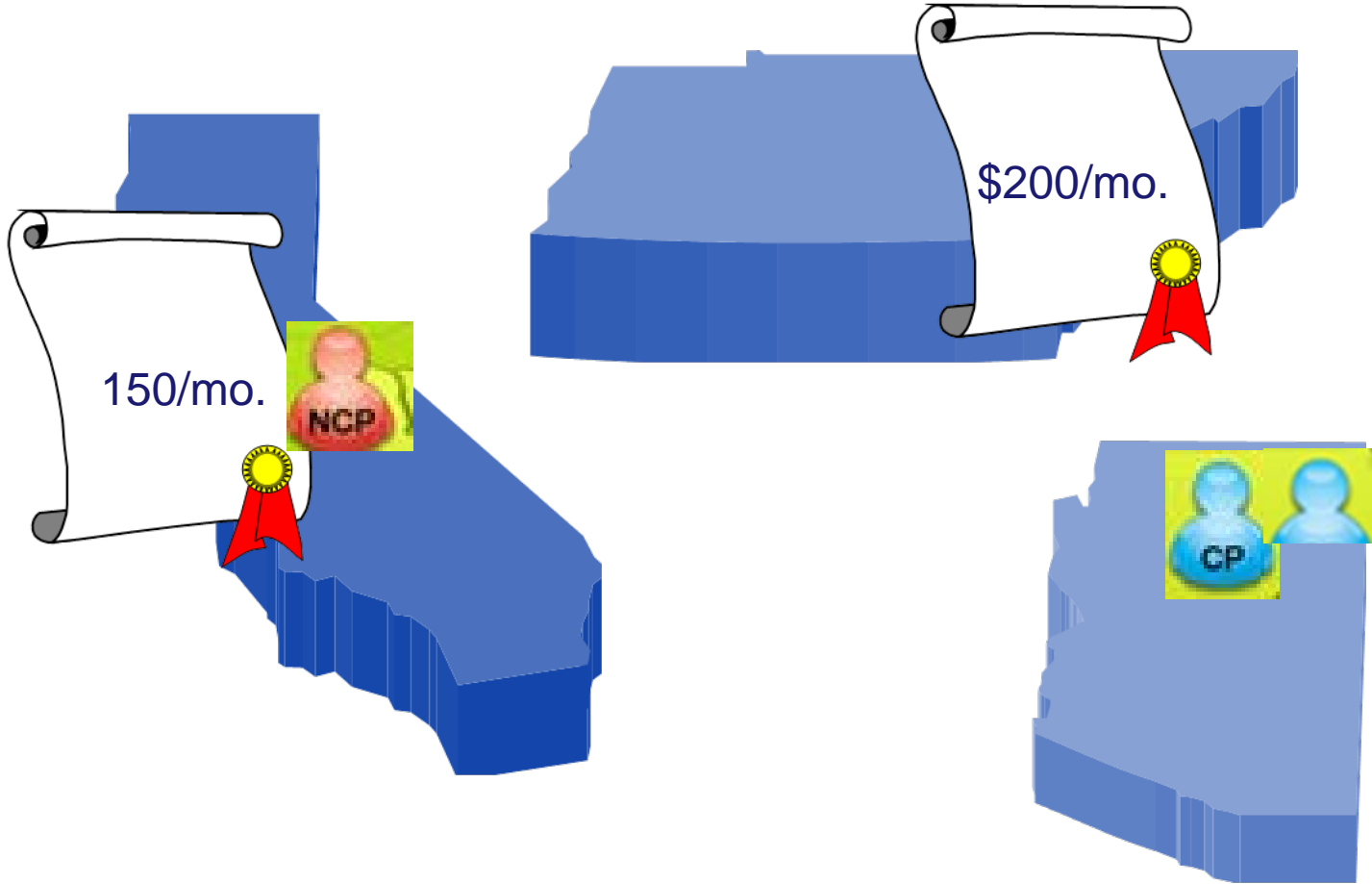




# Case Scenario 1



# Case Scenario 2



# Formal Determination



- ❖ The order must include:
  - The basis on which the determination was made
  - The amount of prospective support
  - The amount of arrears and interest
- ❖ Within 30 days, the requesting party must:
  - File a certified copy of the determination order with each tribunal that had issued an earlier child support

# Formal Determination



- ❖ The controlling order determination cannot be relitigated unless overturned on appeal.
- ❖ Tribunal with jurisdiction to determine the controlling order also reconciles the arrears
  - Required by states that have adopted UIFSA 2001



# Reconciliation of Arrears

- ❖ Consolidates arrears accumulated under multiple orders into a single amount
- ❖ Calculation is based on:
  - Periodic amount of the support order
  - Number of unpaid periods or accruals
  - Payments made on any of the orders



# Reconciliation of Arrears - Formula

- 1) For any period of time when only one order was in effect, the total amount of support due for that period based on that order
- 2) From the amount due, subtract the amount actually paid in that period
- 3) Any period of time when more than one order was in effect, the total amount of support due is based only on the highest order in effect during that period
- 4) The arrears for the different periods are added into a single total less any payments = total due at time of calculation



# Establishment

- ❖ The tribunal that establishes the order applies its laws regarding the support amount and duration of the support obligation. § 303
- ❖ Long-arm jurisdiction cannot be used to modify an order unless the requirements of § 611 or § 615 are met. § 201(b) [01]





# Establishment

- ❖ Long-arm: Legal provision that permits one state to claim personal jurisdiction over someone who lives in another state.
  - Meaningful connection between the person and the state asserting jurisdiction
  - Service of Process Issues



# Jurisdiction

- ❖ The power and authority to hear and determine a support matter, which may include, but is not limited to
  - Establishing paternity
  - Establishing a support order
  - Modifying a support order
  - Enforcing the payment and/or other terms of an existing support obligation



# Types of Jurisdiction

- ❖ Subject-matter jurisdiction
- ❖ Personal jurisdiction
- ❖ Long-arm jurisdiction (extended personal jurisdiction)
- ❖ In rem jurisdiction



# Long-Arm Provisions

- ❖ Personal service of NCP within the state
- ❖ Submission to jurisdiction by consent of NCP
  - By entering a general appearance
  - By filing a responsive document having the effect of waiving any contest to personal jurisdiction
- ❖ NCP lived with the child in the state
- ❖ NCP lived in the state and provided prenatal expenses or support for the child



# Long-Arm Provisions

- ❖ Child is living in the state due to directives or acts of NCP
- ❖ NCP had sexual intercourse in the state, possibly resulting in conception of the child
- ❖ NCP acknowledged or claimed paternity in the state
- ❖ Other basis consistent with state and U.S. Constitutions



# Two-State Establishment

## ❖ Initiating Process includes:

- Completing all UIFSA required paperwork
- Forwarding the documents to the Central Registry of the responding state
- Following up on the case
- Applying the laws of the tribunal that establishes the order to the support amount and duration of the support obligation



# Two-State Establishment

- ❖ Responding process includes:
  - Acknowledging the request
  - Establishing paternity and support, if requested
  - Providing details to the initiating state
  - Enforcing the support order



# Direct Income Withholding

- ❖ Multiple states may enforce a support order.
  - The jurisdiction is based on personal jurisdiction over the obligor or *in rem* jurisdiction over an asset.
- ❖ Direct Income Withholding
  - Communicate with other States
  - Use on any valid support order to any state
  - Keep issuing state informed of any payments





# Registration

- ❖ Process in which a support order issued by one tribunal is filed in another tribunal
- ❖ Types
  - Enforcement-only
  - Modification-only
  - Enforcement and modification
- ❖ Allows the state in which the order is registered to take action



# Registration – Enforcement Only

- ❖ Confirmation is of validity of the order and the amount of the arrears alleged
- ❖ No objection can be made to the substantive provisions of the order in the registering state
- ❖ Laws of the registering state apply for enforcement only
- ❖ 20 day contest period available for the non-registering party



# Valid Defenses to Registration

- 1) The issuing tribunal lacked personal jurisdiction over the contesting party
- 2) The order was obtained by fraud
- 3) The order has been vacated, suspended, or modified by a later order
- 4) The issuing tribunal has stayed the order pending appeal
- 5) There is a defense under the law of this State to the remedy sought



# Valid Defenses to Registration

- 6) Full or partial payment has been made
- 7) The statute of limitation under § 604 (Choice of Law) precludes enforcement of some or all of the alleged arrearage
- 8) The alleged controlling order is not the controlling order

*Note: Nonparentage is not a defense*



# Continuing Exclusive Jurisdiction (CEJ)

- ❖ Pertains specifically to modification
- ❖ CEJ maintained by issuing state as long as one of the parties in the support case resides in that state
- ❖ Petitioning party must file for modification in the state with CEJ
  - If the issuing state loses CEJ, modification must be filed in the state of the party that is not asking for the modification (Play Away)

# CEJ – Important Points



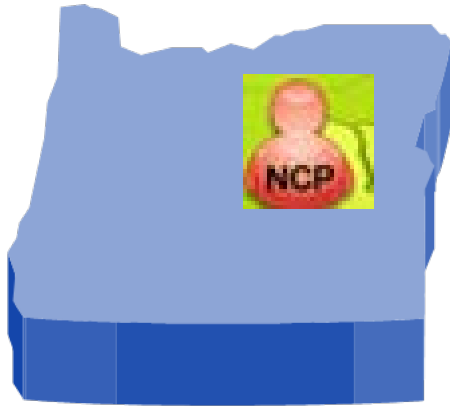
- ❖ CEJ is only relevant when one of the parties wants to modify the controlling order
- ❖ Under UIFSA, only the state with CEJ has the right to modify an existing support order
  - When CEJ is lost, the issuing state loses the ability to modify the child support order.

# CEJ – Important Points



- ❖ Only the terms that are modifiable in the controlling order state can be modified
- ❖ If another state gains CEJ, it cannot modify terms of the original controlling order that are non-modifiable
  - duration of the obligation
  - age of emancipation

# Case Scenario 3





# Resources



❖ UIFSA found at [www.uniformlaws.org](http://www.uniformlaws.org)

❖ OSCE website:

<http://www.acf.hhs.gov/programs/css>

- Browse Resources found on right hand side of the OCSE home page
- Review the IRG for state specific details
  - <https://extranet.acf.hhs.gov/auth/login>