

Use of the Standard for Paternity and Termination of Parental Rights

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The “Standard for Paternity and Termination of Parental Rights” differs from most other child welfare practices standards used by the Department as the majority of information and direction provided is based on legal feedback received by Deputy Attorneys General. This specifically pertains to information regarding who is identified as a father, how to legally establish paternity, and when termination of parental rights is necessary. The direction provided reflects the need to make reasonable efforts towards reunification.

This standard was last updated in 2012. Since its creation, several changes have been implemented in child welfare practice as it relates to paternity established. These include:

- Efforts to legally establish paternity are limited to those cases where reunification is the primary goal.
- The process to share paternity-related documents and information between FACS and the Bureau of Child Support has been streamlined.
- Cases where a child’s mother and father have completed an Acknowledgment of Paternity, however the listed father is not the child’s biological father, now require a termination of parental rights in order for the father to be removed.

Plans are in place for this standard to be reviewed and updated to incorporate these as well as any other necessary changes. Revisions will also incorporate more active rather than passive language.

STANDARD FOR PATERNITY AND TERMINATION OF PARENTAL RIGHTS

PURPOSE

The purpose of this standard is to provide direction and guidance to the Child and Family Services (CFS) programs regarding the establishment of paternity and termination of parental rights of men who may have a legal relationship with a child. CFS standards are intended to achieve statewide consistency in the development and application of CFS core services and will be implemented in the context of all applicable laws, rules, and policies. Standards will also provide a measurement for program accountability.

INTRODUCTION

Establishing paternity for a child can further expand supports available to the child and family, such as the development of a father/child relationship, identification and connection to extended paternal family members, additional placement options and child support regardless of the permanency plan.

In order for a child to achieve permanency through adoption, the parental rights of anyone with possible legal standing must be terminated. Although Idaho courts may not recognize men who do not meet the legal definition of father, it is clearly in a child's best interests that diligent efforts be made to identify any and all men who may be the child's father. The Department will attempt to establish paternity for a child without a legally recognized father and/or for whom paternity is in question, but will only require the termination of parental rights for fathers with legal standing.

STANDARD

The practice standard for Child and Family Services (CFS) is to identify the biological father as well as any father with legal responsibility for a child who is placed in foster care.

Who is a Father?

Idaho law specifies the following men as having legal rights to a child:

- A man listed on the child's birth certificate;
- A man married to the birth mother at the time of conception and/or birth of the child;
- A man who has completed an acknowledgement of paternity for the child;
- A man who has been adjudicated to be the child's biological father and for whom an order exists such as an Order Establishing Paternity, a Child Support Order or a Custody Order; and
- A man listed on the Putative Father Registry in the state of the child's birth.

Identifying Fathers

The social worker should begin the process of identifying a child's biological father and those men who have legal responsibility for the child as soon as a child enters foster care. Identification includes the review of specific documents as well as communication with the child's mother and extended family. Establishment of paternity broadens the circle of support for a child and is part of the concurrent planning process in working toward the permanency goals of reunification, adoption or legal guardianship.

Upon a child's entry into foster care, there are several documents which must be obtained. These documents include information regarding the identity of a child's father:

- Child's birth certificate with the Acknowledgment of Paternity, if available;
- Certificate of Search from the Putative Father Registry in the state of the child's birth (if the state of the child's birth does not have a Putative Father Registry, this information must be documented in the file); and
- Any Paternity, Child Support or Custody Orders relating to the child.

When contacting Child Support Services to request copies of any court orders they have related to the child's paternity, information regarding the status of any current efforts by their program to locate the father and establish paternity should also be requested. Any information CFS has regarding the identity of a possible or confirmed father should also be shared. Child Support Services is obligated to establish paternity for a child through default child support orders if they are unable to locate the individual named as the child's father. In order to avoid situations where the efforts of CFS and Child Support Services are counterproductive to each other, clear communications between both programs is essential. For example, if CFS rules out a potential father and does not share this information with Child Support Services, Child Support Services may establish the individual as having legal rights to the child through a default child support order.

It is possible for different people to be listed on each of these documents as the child's father. It is also possible the man listed on a document may not be the child's biological father. Discussions regarding the identity of the child's father should be held early and as needed throughout the life of the case. There are several opportunities to discuss possible fathers with the mother or other sources. Examples of times to discuss the paternity of a child include:

- At the beginning of the case - a discussion with the child's mother should be held early in a case to identify who is or who might be the father of the child;
- In family group decision making meetings;
- During the development of the genogram and ecomap;
- Preparation for permanency review hearings - a discussion regarding paternity is especially critical in preparing for permanency review hearings if there remains any question regarding the identity of the child's father; and
- Permanency committee meetings - the identity of all possible fathers is pertinent to the decision to pursue termination of parental rights.

An unmarried father may only be added to a child's birth certificate if both he and the child's birth mother sign an Acknowledgement of Paternity confirming he is the father of the child, or through a court order. If the social worker becomes aware a man was placed on the child's birth certificate through an Acknowledgement of Paternity even though he and the birth mother were aware at the time he was not the child's birth father, the Bureau of Vital Statistics and your Prosecuting Attorney must be notified. Falsification of an Acknowledgement of Paternity is a crime.

Establishing Paternity

A child should have a legally recognized father. Legal recognition results in the child's eligibility for services and supports through the father. In situations where there is no legally recognized father, it is in the child's best interest for paternity to be established. Paternity must also be determined in situations where more than one possible father is identified, or if paternity is otherwise in question. For example, if a man has been established as a child's father through a child support order without DNA paternity testing, and another man is identified as the child's possible biological father, DNA paternity testing would need to be completed to confirm the identity of the child's father.

Paternity testing can occur either through direct referral from CFS to a DNA testing laboratory or a referral to Child Support Services. Referral needs to occur as soon as it becomes evident paternity needs to be established. The Locate Unit within the FACS Resource Development Unit can assist in locating a potential father. Child Support Services has 90 days to establish paternity once the potential father has been located, which makes a timely referral critical. If DNA testing occurs through direct CFS referral, it is essential the testing plans and results are shared with Child Support Services. When DNA testing is completed, the CFS social worker is responsible for sharing the test results with the tested individual using the Paternity Denial and Paternity Establishment templates available in the Paternity folder on the Child Welfare SharePoint site under CW Documents.

In a situation where paternity has already been established through Child Support Services via court order and it is determined paternity testing needs to be completed, the CFS social worker is responsible for scheduling DNA testing. Test results are shared with Child Support Services. If DNA testing results confirm the child's biological father to be an individual other than the man already legally established as the child's father through Child Support Services, the social worker will need to make a new referral to establish child support as to the father confirmed to be the biological parent. In order to do so, Child Support Services will need to obtain a new court order.

Paternity testing can also result in situations where the father listed on a child's birth certificate is determined to not be the child's biological father. If the child's permanency plan includes adoption, the father listed on the birth certificate must have his parental rights terminated or he must be removed from the birth certificate. Termination of parental rights may not be an option. The social worker will want to consult with the Deputy Attorney General or Prosecuting Attorney to determine this possibility. The only way for a father to be removed from a child's birth certificate is through a court order. If Child Support Services is working to establish an Order of Paternity or Child Support

through their program, the social worker will need to request language be included in the Order directing the birth certificate be amended. Otherwise, the social worker can work with the Deputy Attorney General or Prosecuting Attorney to obtain the Order necessary to get a corrected birth certificate.

In any case where it becomes evident there is contradictory information regarding a child's paternity between CFS, Child Support Services and/or the Bureau of Vital Statistics, the CFS social worker needs to contact the Department's paternity committee through the FACS Resource Development Unit. The paternity committee includes representatives from Family and Community Services, Child Support Services and the Bureau of Vital Statistics. Its purpose is to help facilitate the correction of any conflicting paternity information between programs.

Case Plans

A case plan is required for each parent. This includes any man with legal standing as the child's father as listed in the section "Who is a Father?" A case plan should also be developed for any man you reasonably believe will meet these criteria once the paternity establishment process has been completed.

Termination of Parental Rights

Prior to proceeding with the adoption of a child, the rights of the child's parents must be terminated by court order and the Department must be named as the legal guardian of the child. Parental rights can be terminated through voluntary relinquishment by the parents or involuntarily through court order. Voluntary termination of parental rights should be pursued prior to involuntary termination proceedings.

An order terminating parental rights is required for the mother as well as all men with legal standing as the child's father as listed in the section "Who is a Father?" In some situations, this may result in multiple orders of termination. For example, if a child's mother was married to a man at the time of the child's birth who is different from the man listed on the child's birth certificate through an acknowledgement of paternity, orders terminating the parental rights of both men would be required.

If DNA testing has determined a man to be the biological father of a child, but his paternity has never been legally established, an Order of Non-Establishment of Paternity must be obtained from the Court prior to proceeding with an adoption. In situations where DNA testing has not determined a biological father and there is no father with legal standing, orders of Termination of Parental Rights or Non-Establishment of Paternity regarding John Doe are not required.

Any action taken not consistent with this standard must be pre-approved by the FACS Division Administrator or designee. The action, rationale and approval must be documented in the file.