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Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators VANORDEN, Wintrow and,
Representatives VANDER WOUDE, Erickson, Rubel

FROM: Kyle Slominski - Legislative Drafter

DATE: September 09, 2024

SUBJECT: Temporary Rule

IDAPA 16.06.01 - Child and Family Services - Temporary Rule - Docket No. 16-0601-2404

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Kyle Slominski at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

16.06.01 – CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-2404

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 6, 2024.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 56-202, Idaho Code, as well as Sections 16-1629, 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209, 39-1210, 39-1211, 39-5603, 39-7501, 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rule adds protections for children visiting their biological parents who have been substantiated for crimes including sexual and physical abuse. These added protections put the best interest of the child first and foremost.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The health and safety of the children of the State of Idaho is central to the mission of the Department of Health and Welfare. This temporary rule is necessary to establish safeguards and restrictions around the interaction of children and their parents who have been substantiated for sexual and physical actions.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Fees will not be increased as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Jared Larsen at 208-334-5500.

DATED this 6th day of August, 2024.

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 16-0601-2404
(Only Those Sections With Amendments Are Shown.)**

16.06.01 – CHILD AND FAMILY SERVICES

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws that are the basis for these rules include a number of mandatory protections and safeguards intended to ensure timely permanency for children and to protect the rights of children, their families, and their tribes. (3-15-22)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with their family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (3-15-22)

- a. Efforts to prevent or eliminate the need for a child to be removed from their home; (3-15-22)
- b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (3-15-22)
- c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (3-15-22)

02. Active Efforts. The efforts required under ICWA to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family, or to reunify an Indian family. Active efforts must include contacts and work with an Indian child's tribe. (3-15-22)

03. ICWA Placement Preferences. (3-15-22)

- a. When the Indian child's permanency goal is reunification, the preferences are described in Section 402 of these rules. (3-15-22)
- b. When the Indian child's permanency goal is adoption or guardianship, the preferences are described in Subsection 800.01 of these rules. (3-15-22)
- c. When the placement preferences are not followed, the court must determine that good cause exists for not following the preferences. (3-15-22)

04. Least Restrictive Setting. Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. (3-15-22)

05. Legal Requirements for Indian Children. When there is reason to believe that a child is an Indian child, notice of the pending proceeding must be sent according to the notice provisions specified in Section 051 of these rules. Notice must also include notice of the tribe's right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; and the right to examine all documents filed with the court upon which placement may be based. (3-15-22)

06. Visitation for Child's Parent(s) or Legal Guardian(s). ~~Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. The Department should determine the scope, duration, and manner of visitation that best promotes the best interest of the child and ensures that visitation does not impair the physical or mental health of a child. In-person visitation arrangements between a child and a parent who has been substantiated at a Level One or Two by the Department for one (1) of the following: sexual abuse, sexual exploitation, or physical abuse will not be granted unless it is in the best interest of the child and the child's physical and/or mental health will not be impaired. If in-person visitation is granted, it will only occur under the following conditions:~~ (3-15-22)(8-6-24)T

a. Approved by a program manager, after consultation with the child's guardian ad litem, where applicable, who concludes that in-person visitation is in the best interest of the child and that the child's physical and/or mental health will not be impaired; (8-6-24)T

b. Under conditions set forth by the program manager. Conditions of supervised visitation will include the following: (8-6-24)T

i. The parent will not be left alone with the child for any reason, including restroom breaks; (8-6-24)T

ii. For sexual abuse and exploitation cases, the parent will not allow the child to sit on his or her lap; (8-6-24)T

iii. The parent will not be allowed to engage in secret conversations or other communication that cannot be monitored in real time; (8-6-24)T

c. The best interest decision and visit conditions are documented and explained in writing. (8-6-24)T

07. Notification of Change in Placement. Written notification must be made within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting. Notification must be sent to the child's parent(s) or legal guardian(s). When the child is an Indian child, written notification must also be sent to the child's Indian custodian(s), if applicable, and to the child's tribe. (3-15-22)

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (3-15-22)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-15-22)

10. Qualified Expert Witness--ICWA. The testimony of an expert witness is required at the hearing in which a child is placed in state custody, typically the adjudicatory, and at the hearing for termination of parental rights. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-15-22)

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-15-22)

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or (3-15-22)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. (3-15-22)

11. Compliance with Requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. (3-15-22)

a. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. (3-15-22)

b. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; (3-15-22)

c. To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; (3-15-22)

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; (3-15-22)

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and (3-15-22)

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. (3-15-22)

12. Family Decision-Making and Plan Development. (3-15-22)

a. A family plan will be completed within thirty (30) days of the date the case was opened. (3-15-22)

b. Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-15-22)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-15-22)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. (3-15-22)

a. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. (3-15-22)

b. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. (3-15-22)

c. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (3-15-22)

14. ASFA Placement Preferences. The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (3-15-22)

a. Return home if safe to do so; (3-15-22)

b. Adoption or legal guardianship by a relative or kin; (3-15-22)

c. Adoption or legal guardianship by non-relative; (3-15-22)

d. Another planned permanent living arrangement such as long-term foster care. (3-15-22)