

STANDARD: DETERMINING PATERNITY, NOTICE OF TERMINATION AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS

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

Before a child can be adopted, the parental rights of anyone with possible legal standing must be terminated. In recent years, changes have been made to the Idaho adoption statute, Section 16-1501, Idaho Code, that remove the requirement to provide notice of termination and adoption proceedings to unmarried fathers unless they satisfy several requirements, including filing a paternity action and registering with Vital Statistics. Although courts may no longer recognize men who do not meet the legal definition of father, it is clearly in the best interests of children that diligent efforts be made to identify all men who may be a child's father. The Department will attempt to establish paternity for a child without a legal father 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 Children and Family Services is to identify all possible legal fathers of a child who is placed in foster care.

Identifying Possible Legal Fathers

The social worker should begin the process of determining paternity as soon as a child enters foster care. 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. Idaho law identifies the following men as a child's legal father:

- A man listed on the child's birth certificate
- A man listed in the Putative Father Registry
- A man who has completed an acknowledgement of paternity for the child (a document signed by the man and the child's mother which results in the listing of an unmarried father on the child's birth certificate)

- A man who has been adjudicated to be the child's biological father
- A man living with the birth mother who holds himself out to be the father of the child
- A man married to the birth mother at the time of conception and/or birth of the child
- A man subject to a Child Support Order relating to the child

Discussions regarding the identity of family members, including the child's father, should be held early and as needed throughout the life of the case. There are several points during the life of the case where there is specific opportunity 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
- Regional permanency committee meeting - the identity of all possible fathers is pertinent to the decision to pursue termination of parental rights.

Child Support Services should also be contacted regarding paternity records for the child. In situations where a father has not been identified, the Putative Father Registry in the state of the child's birth also needs to be checked. An Idaho Certificate of Search, or equivalent document from the state of the child's birth, detailing the outcome of the search of the Putative Father Registry needs to be obtained for the file. If the state of the child's birth does not have a Putative Father Registry, this information must be documented in the child's file.

Establishing Paternity

If no man is identified as a child's legal father, it is in the child's best interest for paternity to be established. Attempts should be made to establish paternity through resources such as the Locate Unit, DNA paternity testing and Child Support Services. Establishing paternity for the 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.

If more than one possible legal father is identified, or if paternity is otherwise in question, paternity must be determined as conclusively as possible. 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 to a DNA testing laboratory or a referral to Child Support Services (CSS). Referral needs to occur as soon as it becomes evident paternity needs to be established. CSS has 90 days from a "good locate" to establish paternity, which makes a timely referral critical. A "good locate" occurs when the identified man has been found. CSS has 90 days from that point to establish paternity.

In a situation where paternity has already been established through CSS via court order and it is determined paternity testing needs to be completed, the CFS social worker is responsible for scheduling DNA testing without CSS involvement.

Publication of Notice to Terminate Parental Rights

After a petition to terminate parental rights has been filed with the court, notice shall be provided to the parents of the child and others, which may include the guardian of the child, any person standing in loco parentis to the child, the Guardian Ad Litem of any party, or the nearest blood relative of the parent or guardian, if the parent or guardian cannot be located. (Section 16-1513, Idaho Code) If notice cannot be personally served, notice must be made by registered or certified mail to the last known address of the person and by publication once a week for three successive weeks in a newspaper or newspapers most likely to give notice to the person being served. (Section 16-2007, Idaho Code)

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 "Identifying Possible Legal Fathers". In some situations, this may result in multiple orders of termination. For example, if a child's mother was married to a man different from the child's biological father at the time of the child's birth, orders terminating the parental rights of both men would be required.

If the social worker is unsuccessful in establishing the paternity of a man who was identified as a possible father of a child, an Order of Non-Establishment of Paternity must be obtained from the Court prior to proceeding with an adoption. In situations where no legal father or possible father has been identified or established, orders of Termination of Parental Rights or Non-Establishment of Paternity regarding John Doe fathers are not required.

Any variance to these standards will be documented and approved by Division Administration, unless otherwise noted.

Paternity and TPR: 10-1-09