



# Office of Temporary and Disability Assistance

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## Administrative Directive Memorandum

### Section 1

<b>Transmittal:</b>	21-ADM-01
<b>To:</b>	Social Services District Commissioners
<b>Issuing Division/Office:</b>	Division of Child Support Services
<b>Date:</b>	February 12, 2021
<b>Subject:</b>	Acknowledging Parentage as the First Step in Providing Child Support Services
<b>Suggested Distribution:</b>	Child Support Coordinators Support Collection Unit Supervisors IV-D Attorneys DSS Attorneys
<b>Contact Person(s):</b>	Eileen Stack, Deputy Commissioner and Director- (518) 474-1078
<b>Attachments:</b>	<a href="#">Attachment 1 - LDSS-5171, Acknowledgment of Parentage</a>

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
20-ADM-01 98 ADM-6 92 INF-8	14-INF-01	18 NYCRR 347.6	FCA §§ 516-a; 581-101, et seq.; PHL § 4135-b		

### Section 2

#### I. Summary

This Administrative Directive Memorandum (ADM) provides social services district (district) child support enforcement units and support collection units (collectively CSEUs) with guidance as to their responsibilities relating to acknowledging parentage, including implementation of the new LDSS-5171, *Acknowledgment of Parentage* form.

#### II. Purpose

The purpose of this ADM is to introduce the new LDSS-5171, *Acknowledgment of Parentage* (Attachment 1) that replaces the LDSS- 4418, *Acknowledgment of Paternity*. It informs districts that effective February 15, 2021, they must begin to use the LDSS-5171 and, further, remove from circulation all prior versions of the LDSS-4418 and recycle or destroy all physical copies. This ADM

also informs districts of the requirement to take specific actions in certain cases to generate newly created petitions reflecting legal requirements under the Child-Parent Security Act of 2020.

### III. Background

The federal and State framework for administratively acknowledging paternity was developed over two decades ago and is rooted in the federal concept of the services provided by the Title IV-D Child Support Program, namely, the establishment of *paternity*, and the establishment, modification, and enforcement of child support orders. Since then, however, the concepts of “family” and “parent” have evolved, as has the statutory authority in New York State regarding who may be a party to a civil marriage. Domestic Relations Law §§ 10-a, 10-b, 13.

Under prior law, only the birth mother and biological father of a child could sign an LDSS-4418, *Acknowledgment of Paternity*, to voluntarily establish the biological father’s legal relationship to the child. To use this administrative process and avoid the need to commence a proceeding in Family Court, however, the birth mother had to be unmarried at the time of the birth.

However, on April 3, 2020, Governor Cuomo signed into law the Child-Parent Security Act (“Act”) which legalized gestational surrogacy and extends to individuals who rely on assisted reproduction (AR) to have children the simple, voluntary mechanism for establishing parental rights. To implement the portion of the Act pertaining to the process of acknowledging parentage, a new document has been created for use in all eligible situations. As amended, Public Health Law § 4135-b provides that this form will be available to acknowledge parentage regardless whether the child is born to unmarried parents or through AR. Further, for children born utilizing AR, the promulgated form may be used whether the children are born to married or unmarried parents.

While there are important changes in who may use the administrative process for acknowledging parentage of a child born in New York and while the form for taking this voluntary step has been modernized to better reflect those who may now use it, much remains unchanged about the process. The LDSS-5171, like the document it is replacing, can be completed at hospitals, birth centers, in local district offices, or privately, but only following the birth of the child. It must still be signed in the presence of two witnesses who are unrelated to the person signing. The statutory requirement for CSEUs to provide both oral and written notice to the birth parent and other parent prior to the signing of the form is unchanged. Likewise, the bases for challenging an executed acknowledgment and the rules pertaining to vacating an Acknowledgment of Parentage, including the special rules for parents who under the age of 18, remain the same.

### IV. Program Implications

Effective February 15, 2021, the Acknowledgment of Paternity (LDSS-4418) is replaced by the new Acknowledgment of Parentage (LDSS-5171). References in prior policy guidance pertaining to the voluntary acknowledgment of paternity are to be interpreted broadly to incorporate acknowledgment of parentage under the Act. CSEU staff must become familiar with the new form generally, including the terminology used and the family constructs for which the form may be used to administratively establish parentage. This will permit CSEU staff to provide prompt and accurate responses to questions from the public, as well as staff in other social services programs. CSEU staff must be familiar with the following terms:

- *Alleged Parent* – an individual who may be the child’s genetic parent but who has not yet been legally declared to be the parent.
- *Assisted Reproduction (AR)* – this term refers to a method of causing pregnancy other than sexual intercourse including, but not limited to, intrauterine or vaginal insemination; donation of gametes (sperm or eggs); donation of embryos; in vitro fertilization and transfer of embryos; and intracytoplasmic sperm injection.
- *Birth Parent* – the parent who gave birth to the child.

- *Gamete Donor* – an individual who does not intend to be a parent but who produces sperm or eggs (gametes) and provides them to another person, other than the individual’s spouse, for use in assisted reproduction.
- *Gestational Surrogacy* – an arrangement in which the surrogate’s egg is not used and the surrogate has no genetic connection to the child.
- *Intended Parent* – an individual who intends to be legally bound as the parent of a child resulting from AR or pursuant to a surrogacy agreement.
- *Other Parent* – the non-birth parent; may be an alleged parent or an intended parent.
- *Putative Father Registry (PFR)* – the State registry where Acknowledgments of Parentage (and, historically, Acknowledgments of Paternity) are filed, in addition to other documents such as Orders of Filiation and Judgments of Parentage.
- *Surrogate* – an adult individual, not an intended parent, who enters into a surrogacy agreement to bear a child who will be the legal child of the intended parent(s).
- *Surrogacy Agreement* – an agreement between at least one intended parent and a person acting as surrogate intending to result in a live birth where the child will be the legal child of the intended parent(s).

## Who May Sign

The LDSS-5171 may be signed by two people who voluntarily seek to be declared the parents of the child, one of whom must be the birth parent. There are three (3) combinations of individuals who may sign an LDSS-5171:

- An unmarried birth parent and an alleged parent
- An unmarried birth parent and an intended parent
- A married birth parent and an intended parent (married to each other)

The following examples illustrate some of the circumstances in which an LDSS-5171 may be signed.

**Example 1:** Dawn and Lonnie, an unmarried couple, want to start a family despite medical issues barring use of Lonnie’s sperm. They have decided to accept an offer from Lonnie’s cousin for a sperm donation to create an embryo with Dawn’s eggs, and have Dawn carry the child. Upon the birth of their child, Dawn and Lonnie may sign the LDSS-5171 to acknowledge their parentage. (unmarried birth parent / intended parent)

**Example 2:** Grace and Bob are married. Grace was implanted with a donated egg that was fertilized with Bob’s sperm. When their child is born, they may sign the LDSS 5171 to acknowledge parentage if they choose to do so, however their parentage will be established immediately upon the birth based upon the marital presumption. (married birth parent / intended parent)

**Example 3:** Angie and Emma were married in 2017. The couple decided that Angie would be implanted with an embryo from gamete donations (sperm and egg) and she successfully carried their child to term. Their son, Michael, was born on November 28, 2019. Angie and Emma may sign the LDSS-5171 on or after February 15, 2021 to acknowledge their parental rights and duties to Michael if they choose to do so; however, their parentage was established immediately upon the birth based upon the marital presumption. (married birth parent / intended parent)

**Example 4:** Mark and Phil are married. Mark has had hormone treatments to begin his transition to a male, leaving him unable to produce eggs. Before completing the process of transition, Mark and Phil want Mark to give birth to their child. Phil’s sperm will be used with donated eggs to create the embryo. Upon the birth of their child, Mark and Phil may sign an LDSS-5171. (married birth parent / intended parent)

**Example 5:** Gwen and Todd have dated for a few months. Gwen is pregnant and they both know Todd is the father. Gwen and Todd, still unmarried, may sign the LDSS-5171 upon their child's birth. (unmarried birth parent / alleged parent)

### **Situations When the LDSS-5171 May Not Be Signed**

Importantly, under the Act, a surrogate is not permitted to sign the LDSS-5171 under any circumstances. The LDSS-5171 shall not be signed if, at the time of signing, any of the following are true:

- A person other than the parties signing the LDSS-5171 is a presumed parent of the child due to marriage of the birth parent;
- A court has already entered an order or judgment regarding parentage of the child;
- The birth parent previously signed a valid LDSS-4418, LDSS-5171, or an acknowledgment of paternity/parentage from another jurisdiction with another person regarding the child;
- The child has a legally recognized parent under FCA § 581-303 (regarding parentage of a child conceived through AR) other than the parties signing the LDSS-5171;
- A person signing the LDSS-5171 was a donor in an assisted reproduction pursuant to FCA § 581-302; or
- A person signing the LDSS-5171 asserts that they have parental rights under FCA § 581-303 due to an assisted reproduction agreement, but the child was not conceived through AR.

### **Tracking for Federal Reporting Purposes**

To assist in identification of cases establishing the paternity of a child born to an unwed mother for the purposes of the federal Paternity Establishment Percentage (PEP) measure, the LDSS-5171 includes the following PEP assessment questions:

- In the *birth parent* section: Were you married at the time of birth?
- In the *other parent* section: Are you the genetic/biological father of the child?

A “no” response by the birth parent and a “yes” response by the other parent will identify a case eligible for PEP. An LDSS-5171 is valid regardless of the responses to these questions.

### **Children Born Prior to Effective Date of CPSA**

The Act is a remedial statute “to be construed liberally to secure the beneficial interests and purposes thereof for the best interests of the child.” FCA §581-701. As such, whether the birth occurred before, on, or after February 15, 2021, and whether the child was conceived with or without AR, the birth parent and other parent may execute the LDSS-5171 on and after that date. See Example 3, above. There is no requirement in the Act that the child be born or conceived before, on, or after any date in order to utilize the simplified procedure now afforded to additional individuals seeking to legally establish their parental connection to the child.

## **V. Required Action**

The CSEU must ensure that by the close of the last business day prior to February 15, 2021 all paper and electronic versions of the LDSS-4418 have been removed from circulation within the district, and all paper copies destroyed.

In cases requiring establishment of parentage under Social Services Law § 111-k to take the next appropriate step in a child support case, the CSEU must provide to a birth parent and other parent seeking to voluntarily establish parentage of a child the oral and written notice required pursuant to

PHL § 4135-b (1)(f) of their rights and the consequences of signing the LDSS-5171. This would include notice of the time frame for filing a petition to vacate the LDSS-5171, which is dependent upon the parent's age at the time of signing. FCA § 516-a(b).

The CSEU must assist the parents in completing the LDSS-5171, ensuring it is fully completed and without obvious errors (e.g. parent's date of birth later than the child's date of birth) or cross-outs/corrections to the child's name. Since a document submitted with a cross-out/correction of the child's name or other error will be rejected at the PFR, it is critical for CSEUs to identify errors or omissions and address them with the parents. In particular, the CSEU must confirm that both PEP assessment questions, one (1) posed to each signatory, have been completed. Within five (5) business days of receiving a properly completed, original LDSS-5171, the CSEU must file the acknowledgment with the registrar where the birth certificate has been filed.

It is possible that on and after February 15, 2021, the CSEU will receive submissions of the LDSS-4418, *Acknowledgment of Paternity*, some of which were fully executed and witnessed prior to the effective date of the Act. For these submissions, the CSEU must review the document for obvious errors, and if none, file the original acknowledgment within five (5) business days of receipt with the registrar where the birth certificate has been filed. If the document contains obvious errors, the CSEU must work with the parents to correct the errors to the LDSS-4418, if possible, or work with them to complete an LDSS-5171. LDSS-4418, *Acknowledgment of Paternity* forms will be accepted at the PFR until December 31, 2021; after that date only the LDSS-5171 will be accepted. In no instance, however, shall the CSEU accept either an LDSS-4418 or an LDSS-5171 containing a cross-out/correction to the child's name.

For any case in which parentage is established for a child born through AR, CSEUs are to enter a Wedlock Indicator of "1". This includes parentage rights supported by a surrogacy agreement, a Judgment of Parentage entered pertaining to a child born through AR including but not limited to use of a surrogate, or an LDSS-5171, *Acknowledgment of Parentage* executed for a child born through AR.

Where parentage is required for children born through AR, and an LDSS-5171 has not been executed, CSEUs must use new parentage establishment petitions available in the *Local Correspondence* folder on ASSETS to establish parentage via a court proceeding. These petitions require CSEU staff to manually enter necessary information into the document fields, save the document to the ASSETS *Document Log*, and manually set a paternity status (P-group status code) indicating that a petition has been filed. CSEUs must also note actions taken in the remarks section of the case record. In addition, until notified otherwise, CSEUs must maintain a log of all cases involving creation of a petition seeking establishment of parentage for children born through AR and provide this log of case numbers and party names to the Division of Child Support Services upon request.

## VI. System Implications

As described above, new petitions developed to establish parentage for children born through AR are now available in the *Local Correspondence* folder on ASSETS.

Wedlock Indicator descriptions have been revised to change references from "paternity" to "parentage" and reflect other terminology used in the LDSS-5171.

## VII. Additional Information

CSEUs were previously provided instructions via Dear Colleague letter dated January 20, 2021 on the pre-order process for obtaining an initial supply of the English and Spanish versions of the LDSS-5171 prior to February 15, 2021. The LDSS-5171 will also be available to CSEUs on ERS under *Forms, Parentage/Paternity Establishment, Affidavit of Parentage (LDSS-5171)*. The general

public may obtain the LDSS-5171 on the New York State child support website at [childsupport.ny.gov](http://childsupport.ny.gov) under the Resources/Publications & Forms or by emailing [otda.sm.dcse.parentage@otda.ny.gov](mailto:otda.sm.dcse.parentage@otda.ny.gov). Note that the version available on the child support website is a fillable PDF, but an original signature (i.e., not electronic) is still required.

Translated reference-only versions of the LDSS-5171 will be placed on ERS and on the New York State child support website once they are available. After February 15, 2021, districts can place additional orders for the English or Spanish version of the LDSS-5171 by submitting a completed OTDA-876 form, available at [http://otda.state.ny.net/ldss\\_eforms/](http://otda.state.ny.net/ldss_eforms/), via e-mail to [forms.orders@otda.ny.gov](mailto:forms.orders@otda.ny.gov) or by using the Electronic Forms and Publications Online System at <http://ldformorders.otda.state.ny.net/forms.aspx>.

### VIII. Effective Date

This ADM is effective upon release.

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#### Issued By:

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