



National Institute for Permanent
Family Connectedness

Defining Due Diligence: Identifying Relatives for Foster Youth

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The Foster Connections Act of 2008 (FCA) has established the legal requirements of identifying and notifying relatives for children and youth who are entering or in danger of entering the foster care system. This brief highlights strategies to comply with those legal mandates, and explores the overall meaning and intent of due diligence to identify relatives for youth who are in care or at risk of entry.

The Notice to Relatives provision within the FCA¹ states:

“...within 30 days after the removal of a child from the custody of the parent or parents of the child, the State **shall exercise due diligence to identify and provide notice** to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence...”

At first glance, this provision appears straight forward and simple. However, upon further scrutiny of the language and guiding memos from the Administration for Children and Families², it appears that this relative notice requirement must be viewed as a three prong “due diligence” test, all of which must be satisfied:

- 1) What has been done to identify adult grandparents and other relatives;
- 2) What has been done to locate (current addresses) those identified³; and
- 3) What has been done to provide notice to those we have identified.

In order to satisfy any one these requirements, a firm, working understanding of the term “due diligence” is imperative. Let’s explore what is known so far.

Due Diligence is a legal expression used throughout the legal community. Ask any lawyer. He or she will likely provide different examples, based upon the circumstances, rather than a precise definition. *Black’s Law Dictionary* formulates a general definition based upon case law. It can be summed up as ...*the measure of efforts a prudent person, under the same set of circumstances and provided with the same opportunities would have put forth*⁴.

Most definitions of due diligence stem from state or federal case law and are usually centered around corporation regulations or service of process. Consider a California's appellate court's definition which is outlined in a juvenile dependent case and which uses the term "reasonable diligence" "when searching for a father in a termination of rights hearing "...refers to the level of judgment, care, prudence, determination and activity that a person would reasonably be expected to do under particular circumstances." The Court continues its description as "...a thorough, systematic investigation and inquiry conducted in good faith."⁵ Also, consider that some courts expand this duty as one that is continuous in nature and without inexplicable delays⁶.

Arguably, one could view the due diligence standard as synonymous with reasonable diligence. Some would counter that due diligence is something a step beyond what is merely "reasonable," that is taking the search a step further when there is an opportunity or obligation to do so. The Federal statute specifically uses the terminology "due diligence" not "reasonable diligence." Clearly, the legislative intent is to actually identify, locate and notice these relatives rather than merely a cursory attempt to seek them out.

The US Department of Health and Human Services has relayed that state agencies have "the flexibility to determine what constitutes 'due diligence' and when exceptions are appropriate." Since a hearing judge will be required to make a ruling as to whether or not due diligence was employed, it would be in the states' interest to establish their own specific definitions and guidelines for those who are conducting searches and notifying relatives under the Fostering Connections Act. Thus, the finding by the court will be, based upon the evidence submitted, whether or not the agency exercised due diligence in accordance with those outlined requirements.

However, not all states have passed legislation, rules or policy on what constitutes due diligence in this area. This article attempts to further explain this concept and alongside our previous blast, seek to provide guidance for all those charged with identifying and locating relatives.

One of the first steps you can take to ensure you are meeting this due diligence requirement is to check your standard procedures, agency handbook or other agency and court guiding documents. Absent these documents, ask your supervisor or manager about developed policies and standard of practice. Find out who in your agency or organization is charged with reviewing state statutes, rules or case law and see if there have been any informational letters released. Perhaps it is counsel for your agency.

Next, consider the following efforts which some states have included in their Relative Notification Due Diligence guidelines⁷:

1. Interviews with the child's parent during the course of an investigation;
2. Interviews with already identified and known relatives;
3. Interviews with any other person who is likely to have information about the identity or location of the person being sought;
4. Comprehensive searches of databases, including, but not limited to: employment, residence, utilities, vehicle registration, child support enforcement, law enforcement, and corrections records
5. Conduct a comprehensive relative search and include both maternal and paternal relatives of the child;
6. Obtain information from the child (in an age-appropriate manner) about who the child considers to be family members and important friends with whom the child has resided or had significant contact;
7. Fulfill the agency's duties under the Indian Child Welfare Act regarding active efforts to prevent the breakup of the Indian family and meet placement preferences

8. Reviewed the child's case file for any information regarding relatives;
9. Used Internet search tools to locate relatives identified as supports;
10. Consult tribes
11. Ask school and neighbors
12. Use the Federal Parent Locator Service
13. Utilizing tools to help the child or parents to identify relatives, including a genogram, family tree, family map, remembered people chart or other diagram of family relationships;
14. Search court, school, and child care provider's records
15. Review Juvenile Justice Records
16. Use the Child Support Index

Lastly, review NIPFC's list of effective discovery techniques in identifying relatives:

- Ask the child in an age appropriate manner about relatives by using "probing" questions, such as:
 - Where do you usually go for Holidays?
 - Who comes for your birthday parties?
- Ask the already known relatives the same type of probing questions, including:
 - How big is your family?
 - Who puts together the family reunions?
 - Has there been a recent family funeral?
 - Who attended these gatherings?
 - Does anyone keep a list of relatives or family tree?
- Review other files, including court records, educational and group home records. Look for anyone who called about the youth, provided support for the family (parents), attended a court hearing, visited the youth, sought placement
- Schools – Ask teachers, counselors, special education, coaches, and administrative staff. Review all emergency contact sheets
- Contact neighbors, including current and former;
- Contact current and former foster parents, guardians and caregivers;
- Contact daycare providers;
- Work with the parents and/or youth by using additional charts and graphs such as connectedness map; Remembered People Chart; genograms, Mobility Maps, Lifebooks, Tree of Life, etc.
- Use only **reputable internet search sites**

So now that you have a better understanding of what is required, take a moment to step back and ask yourself this question upon conclusion of your efforts to identify relatives:

Is it possible that another caseworker, with my level of expertise and with access to all methods available to me, could employ further efforts?

If the answer is no, you have most likely met your due diligence standard. If the answer is yes, you are not finished looking and should take that extra step. It could make all the difference for that youth and family. The final piece of this three part series will identify engagement strategies and activities to involve those identified via your due diligence efforts in the process and provide them with the chance to share in the responsibility of supporting the child and family impacted or in danger of entering foster care.

[1] Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351)

[2] US Dept. of Health and Human Services, ACF, Program Instruction, ACYF-CB-PI-10-11, July 9, 2010, <http://www.acf.hhs.gov/programs/cb/resource/pi1011>

[3] Last Blast (need date sent out) discusses diligent internet searches which help to identify and locate unknown relatives;

[4] Such a measure of prudence, activity, or assiduity (constant or close application or effort; diligence; industry), as is properly to be expected from, and ordinarily exercised by, a **reasonable** and prudent person under the **particular circumstances**; not measured by any absolute standard, but depending on the relative facts of the special case.” : <http://thelawdictionary.org>;

[5] David B. v. Superior Court (1994) 21 Cal.App.4th 1010, 1016

[6] See: Gundermann v. Buehring, 2006 WL 240517 (Tx. App. Corpus Christi), page 4. "...from the date the suit is filed until the date the defendant is served." "Lack of diligence can be found...where plaintiff offers no valid excuse for lack of service or the lapse of time..."

[7] Georgia, Wyoming, California, Minnesota

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