

Office of Child Support **POLICY SHEET**

SUBJECT

Voluntary Acknowledgements of Parentage

PS# 12-04

SUMMARY

A fully executed Vermont Voluntary Acknowledgement of Parentage (VAP) form filed with the Vermont Department of Health is equivalent to an adjudication of parentage, subject to rescission and challenge as provided for by law. *See* 15C V.S.A. §§ 301-312. A VAP, or equivalent thereof, duly executed in another State likewise operates as a legal determination of parentage that must be recognized in Vermont.

POLICY

- A VAP must meet statutory requirements to be valid.
- OCS does not retain the original certified copy of a VAP after the VAP is imaged.
- A fully executed and unchallenged VAP is the equivalent of an adjudication of parentage.
- OCS shall give full faith and credit to a voluntary acknowledgment of parentage, or equivalent thereof, executed in another State.
- If a party wishes to rescind a Vermont VAP, the party must do so in writing to the Vermont Department of Health (VDH) or by filing a court action. This action must be taken within 60 days of the VAP's effective date.
- If a party wishes to challenge a VAP after the expiration of the rescission period, a judicial action must be commenced, as provided for by statute.
- If the acknowledging parent signed the VAP as the child's genetic father, but the parties knew the acknowledging parent is not the child's genetic father, then the VAP is considered a "fraud upon the court" under Vermont Supreme Court caselaw and OCS should seek to have it set aside on this basis as part of a court action in which the VAP otherwise would be relied upon as the equivalent determination of parentage.
- OCS cannot pay for genetic testing in cases with a valid VAP unless the court finds that the VAP should be challenged or set aside based upon the relevant statutory criteria.
- OCS will decide on a case-by-case basis whether to assist a non-signatory of a VAP in seeking to challenge the VAP.

PROCEDURES & RATIONALE

I. Obtaining VAPs

If OCS learns a VAP may exist while preparing to file to establish child support, including during an appointment with a custodial parent about a planned filing, OCS staff shall seek to obtain the VAP. OCS will not accept a VAP directly from a parent or party, but rather will obtain VAPs as follows:

OCS's Quality Assurance Unit (QA) generates a weekly list of cases in which a Vermont VAP should be requested from the Vermont Department of Health. Each week, QA emails the list to the Vermont Department of Health, which, in turn, searches its records for Vermont VAPs for those children. VDH responds to OCS's request by confirming whether a VAP is on file. VDH also provides OCS with digital copies of all VAPs, which bear a VDH stamp including the date on which it was sent to OCS. QA processes the VAP, by imaging it and making notes in ACCESS. QA also conducts a preliminary review of each VAP to confirm whether it was signed by each parent and witnessed, as required by the Vermont Parentage Act. QA notifies regional staff via DAIL message regarding any possible issue concerning a VAP, which regional staff thereafter address with the parties or in court, or both, as necessary.

OCS will accept another State's VAP from that State's official document repository or child support agency. OCS will not accept a VAP from a party to an OCS case.

II. VAP Requirements

The law allows a birth parent, alleged genetic parent, intended parent, or presumed parent to acknowledge parentage by signing a VAP. *See* 15C V.S.A. § 301(a). Minor parents are allowed to sign a VAP *without* the co-signature of a parent or guardian. *See* 15C V.S.A. §304(d).

To be valid, a VAP must be signed by the birth parent and acknowledging parent; the signature of each parent must be witnessed by at least one other person; the VAP must be filed with the Vermont Department of Health; and at the time the VAP is signed, there must be no person other than the acknowledging parent who is a presumed parent and no person other than the birth parent who is an acknowledged, admitted, or adjudicated parent, or an intended parent under Chapter 7 or 8 of the VPA. *See* 15C V.S.A. §§ 301(b), 302, 304(a).

The Vermont Department of Health VAP form is available to the public. The form includes fields for various information, such as the parents' addresses and social security numbers. This form also asks for information about any other parent or possible parent of the child. OCS's position is that a VAP that lacks any of this additional information is still valid so long as it is properly signed and witnessed and filed with the Department of Health.

A VAP is void, however, if, at the time of its signing, a person other than the individual seeking to establish parentage is a presumed parent of the child, unless a denial of parentage (DOP) has been signed by the presumed parent, witnessed, and filed with the Department of Health. The Department of Health DOP form is available to the public. *See* 15C V.S.A. §§ 302-303. A VAP is also void if, at the time of its signing, in addition to the

child's birth parent, there is already an acknowledged, admitted, adjudicated, or intended parent. *See* 15C V.S.A. § 302(2).

In some cases, a VAP that does not meet these minimum requirements for validity is filed with and provided to OCS by the Department of Health. In others, a VAP is void for reasons OCS can confirm. For example, OCS may receive a VAP in which one of the parties' signatures is not witnessed. Or, OCS may receive a VAP for a child whose birth mother was married to a person other than the acknowledging parent when the child was born, as reported by the mother, or divorced from another person within 300 days of the child's birth, as confirmed by reviewing relevant divorce docket information in the Vermont Judiciary Portal.

In other cases, however, a court will need to decide whether a VAP is valid or void. For example, the date of a party's signature may be different than the date of the purported witness to that party's signature. Or, a party other than the acknowledging parent may be the child's presumed parent, but the existence of the presumption may need to be proven in court.

OCS's legal staff will review whether a VAP meets the minimum statutory requirements for validity as part of reviewing cases for the establishment of child support and in other appropriate circumstances. In some cases, OCS may reach the conclusion that the VAP is invalid, such as when a party's signature is unwitnessed, or void, such as when there is another verifiable presumption of parentage. In these cases, OCS shall seek to establish parentage accordingly. In cases in which a court must or should decide whether a VAP is valid or void, OCS should prompt the court to make this decision by filing a motion for the court to decide the VAP's validity.

III. Legal Significance of VAPs

"An acknowledgment of parentage or denial of parentage takes effect on the date of the birth of the child or the filing of the document with the Department of Health, whichever occurs later." *See* 15C V.S.A. § 304(c). A valid, unrescinded, unchallenged VAP is the equivalent of an adjudication of parentage. This means it operates as a legal determination of parentage. OCS must honor the VAP as a legal determination of parentage by not seeking to reestablish parentage with a parentage order.

Court ratification of a valid, unchallenged VAP is neither required nor permitted. *See* 15C V.S.A. §§ 305(a)- (b). This means a court cannot issue a parentage order for a child for whom there's a VAP. An OCS case presenter should also object to any party's request for a parentage order in a case in which there's a valid, unchallenged VAP. If a parentage order issues in a matter with a pre-existing VAP, the case should be brought to the regional staff attorney to consider filing a motion to reconsider or vacate the parentage order.

IV. Rescinding and Challenging VAPs

A. Rescission

Rescinding a VAP means "taking it back." A person can rescind a VAP as set forth in statute, including, within 60 days after the VAP's effective date, by filing a rescission

form with the Department of Health or by filing a court action. A rescinded VAP is invalid. *See* 15C V.S.A. § 307(a)-(b).

B. Challenge

Challenging a VAP means contesting in court the validity of a VAP on a ground specified by law. The required timing and available grounds for challenging a VAP differ depending upon whether the challenge is brought by a person who signed the VAP or a person who did not. A challenge to a VAP must be made by means of a court filing. The grounds upon which a VAP is challenged must be proven by clear and convincing evidence. *See* 15C V.S.A. § 308(c). OCS's legal staff should be consulted as necessary regarding a VAP challenge.

1. Challenge by a Signatory

After the 60-day period within which a VAP may be rescinded has ended, a person who signed a VAP may, within two years after the VAP's effective date, challenge a VAP "on the basis of fraud, duress, coercion, threat of harm, or material mistake of fact." *See* 15C V.S.A. § 308(a).

Fraud includes parties' signing a VAP while knowing the acknowledging parent is not the child's genetic father. A VAP signed under such circumstances is considered a "fraud upon the court" under the Vermont Supreme Court case *Gonyo v. McGee*, 2016 VT 8. OCS should seek to have such a VAP set aside, meaning declared invalid, on this basis as part of a court action in which the VAP otherwise would be relied upon as equivalent to a determination of parentage. OCS cannot itself decide that a VAP is invalid due to fraud. Rather, in cases in which OCS learns a VAP may have been executed fraudulently, OCS must seek a court decision on this issue.

A material mistake of fact is a purported fact unknown to a party at the time a VAP is signed, knowledge of which would have led the party not to sign the VAP. For example, the fact that a birth mother had sexual intercourse with a person other than an acknowledging parent around the time of the child's conception would be a material mistake of fact if it was unknown to the acknowledging parent at the time of the VAP's execution and if the acknowledging parent would not have signed the VAP had he known this fact. Other grounds for a signatory's challenging a VAP—duress, coercion, threat of harm—must be defined by the court.

2. Challenge by a Non-Signatory

A person who did not sign the VAP may "challenge the validity of the acknowledgment and adjudicate parentage . . . within two years after the effective date of the acknowledgment unless the person did not know and could not reasonably have known of the person's potential parentage due to a material misrepresentation or concealment, in which case the proceeding shall be commenced within two years after the discovery of the person's potential parentage." *See* 15C V.S.A. § 308(b).

OCS will determine on a case-by-case basis whether to assist an alleged genetic parentage who seeks to challenge a VAP as a non-signatory under § 308(b). OCS attorneys shall determine whether such a challenge is authorized under the statute and in the child's best interests, including in consultation with the child's custodial parent. A case in which OCS determines it will not assist the challenging party will be closed for Reason 29 as unenforceable. OCS shall document the basis for its decision in such cases.

3. VAP Challenges, Genetic Testing, and Non-Parentage Orders

A VAP challenge may include a request for genetic testing. In a case in which there is what appears on its face to be a valid VAP, OCS will pay for genetic testing only pursuant to a court order. OCS case presenters shall seek to ensure that genetic testing is ordered in cases in which there is a valid VAP only after an evidentiary hearing at which the court makes requisite findings and conclusions under § 308(a) or § 308(b), including that the genetic testing is in the child's best interest.

For instance, in the case of a challenge brought under § 308(a) on the basis of fraud or material mistake of fact, a genetic testing order should be based upon testimony supporting the court's finding that the asserted fraud or material mistake of fact has been established. Or, in the case of a challenge brought by a non-signatory asserting that he is a child's genetic father, a genetic testing order should be based upon testimony supporting the court's finding that there is a reasonable likelihood that the challenger may be the child's genetic father and that the challenger's claim is not time-barred (i.e., it was brought within two years of discovering their potential parentage).

In cases in which there is a valid VAP and the court orders genetic testing without appropriately applying § 308, as described above, regional staff should consult with their regional attorney regarding whether OCS will pay for testing without further court action.

If a VAP is challenged and genetic testing results exclude the acknowledging parent as the child's genetic father or establish that a non-signatory is the child's genetic father, or both, OCS should request a genetic non-parentage order or genetic parentage order, or both, accordingly. Staff should consult with their regional attorney in order to determine what type of order(s) are appropriate based on the facts of the case.

V. VAPs Executed in Other States

“A court of this State shall give full faith and credit to a determination of parentage and to an acknowledgment of parentage from another state if the determination is valid and effective in accordance with the law of the other state.” *See* 15C V.S.A. § 116. To give “full faith and credit” means to recognize the VAP as a legally binding determination of parentage in Vermont if it would be considered as such under the law of the State in which it was executed.

VAPs executed in other States may have alternative names. For instance, in New Hampshire, a VAP is called an “Affidavit of Paternity.” A document should be treated as a VAP if it includes an acknowledgement of parentage, or paternity, and functions as a legal determination of parentage under the law of the State in which it was executed.

OCS legal staff should be consulted as necessary regarding a VAP executed in another State, including about a possible challenge to it.

Date	Action	Description
10/17/2012	Created	
05/04/2017	Revised	Added Gonyo case, updated that QA handles requests and processing of VAPs, clarified required fields on form
08/03/2017	Revised	Revised policy to confirm with the requirements of the Vermont Parentage Act
11/21/2019	Revised	Added additional procedures for situations where VAP already on file and another case is created with an additional alleged genetic parent
11/27/2023	Revised	Updated and clarified procedures overall