

Confidentiality Update/ Where to Find It

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2025 Winter Conference
January 29, 2025

Introduction

What's New in the Handbook?

Current Issues and Questions

Where to Find it

What's New in the Handbook?

Training- p.15

The New York State Office of Information Technology Services policy- NYS-P03-002 for State Agencies

- The policy encompasses all systems, automated and manual, for which NYS has administrative responsibility, including systems managed or hosted by third parties on behalf of a State agency. It addresses all information, regardless of the form or format, which is created or used in support of business activities of State agency. Included in the policy is a training requirement, which may be fulfilled by training offered by a State agency for the particular type of local government employees that they regulate.
- Includes third parties, including local governments, that use or access any IT resource for which the State agency has administrative responsibility, including systems managed or hosted by third parties on behalf of the State agency.
- A State agency may adopt a different policy, but it must include the requirements set forth in NYS-P03-002.
- Example, in 2013, OCFS issued 13-OCFS-LCM-03, which provided information and guidance to local departments of social services staff regarding the availability of the OCFS Information Security Awareness training that can be used to fulfill the information security awareness training.

CPS Manual- p. 56

New York State Child Protective Services Manual
Chapter 13: Confidentiality and legal sealing
Confidentiality of CPS records

PINS Records- Foster Care Records- p. 66

The Family Court Act was amended, effective March 7, 2024 in relation to the expungement and sealing of records in persons in need of supervision (PINS) cases. OCFS issued 24 OCFS ADM-06. That guidance noted that:

- Where a local department of social services (LDSS) is the designated lead agency, the LDSS must comply with record retention rules regarding the expungement and sealing of records related to a PINS matter. However, preventive and foster care records maintained by LDSSs relating to a PINS matter are not subject to expungement or sealing and shall be held confidential in accordance with SSL Article 6.
- Therefore, all PINS Diversion Services records that are not part of a preventive or foster care record shall be sealed upon successful conclusion of the diversion case by the LDSS lead agency. This includes all copies and duplicates of such records. The LDSS shall notify the appropriate probation department and law enforcement agency in writing of such diversion when the diversion case involved a youth being the subject of a warrant or the referring agency was law enforcement, and upon receipt of the notification, those agencies shall expunge any records regarding the youth.

Continued...

PINS Records- Foster Care Records

- Upon notice from the court that the PINS matter has been withdrawn or dismissed for failure to prosecute, withdrawn or dismissed for any other reason at any stage, or related to an ACD, the LDSS, must expunge all PINS Diversion Services records that are not part of a preventive or foster care record.
- Upon notice from the court, or if the LDSS has knowledge of a PINS proceeding being terminated in favor of a respondent youth (as defined above), all PINS pre-dispositional placement (PDP) cases must be expunged.
- To be in compliance with the legislation, as of March 7, 2024, PINS PDP cases shall not be entered into CONNECTIONS. Such case files must be confidentially maintained separately at the local level.

Preventive Service Manual- p. 75

OCFS Preventive Services Practice Guidance
Manual
Chapter 9
Confidentiality

OTDA 18-LCM-10-T- p. 97

Use and Safeguarding of Protected Information

Updated September 12, 2024

Includes an attachment with Federal and NYS legal and regulatory references related to information security, confidentiality, and privacy

TA Source Book- p. 107

Temporary Assistance Source Book

02/13/2008

CHAPTER 4 - RECIPIENT APPLICANT RIGHTS

Section S - Confidentiality & Disclosure of Information

Disability Rights of New York- p. 138

Disability Rights of New York (“DRNY”) is New York State’s designated Protection and Advocacy (P&A) system, with federal and state authority to ensure the protection of the rights of individuals with disabilities. This includes individuals with developmental disabilities (PADD) and individuals with mental illness (PAIMI) under the Protection and Advocacy for Individuals with Mental Illness Act, the Developmental Disabilities Assistance and Bill of Rights Act, and Executive Law §558. DRNY is not a State agency, rather, it is the agency designated by New York State as having authority to monitor service provider locations and investigate abuse and neglect.

You might run across DRNY when you have a child or adult in your care and custody or for whom you are guardian, and there is a concern about their placement and/or an allegation of abuse or neglect.

Per 24-OCFS-ADM-05, DRNY has authority to monitor and investigate programs for individuals with developmental disabilities and for individuals with mental illness. Included in this is the right to obtain records related to the individual, and it appears that this right is notwithstanding any State law to the contrary per 42 USC 10805(a)(4), and 42 USC 15043(a)(2)(I).

Obtaining MH records by CPS (new case)- p.166

Matter of J.J.D. v M.D., 227 AD3d 441 (1st Dept., 2024)

- ACS argued that disclosure of documents pursuant to Family Court Act §1038 need not take into consideration the balancing test set out in Mental Hygiene Law §33.13(c)(1).
- 1st Department rejected that argument, but, applying the appropriate statutory standard, given Family Court's need to assess the mother's mental health, found that the interests of justice significantly outweighed the need for confidentiality of records from the respondent's mental health treatment facilities.
- The 1st Department also held that Family Court should have ordered the records produced to the court for an *in camera* inspection before the parties had access to the records.

Where to Find it

Utilization of Agency and Other Web Based Resources for Your
DSS Legal Practice

Where to Find it

- CPS Manual
- Preventive Services Practice Guidance Manual
- Foster Care Practice Guide for Caseworkers and Supervisors
- Adoption Services Guide

Where to Find it

Example:

You wish to enter CPS caseworker progress notes into evidence in an Article 10 case, but there is an objection as to the “timeliness” of the recording of the progress notes. What is the standard for “timeliness?”

Where to Find it

OTDA

- Temporary Assistance Sourcebook
- Supplemental Nutrition Assistance Program (SNAP) Source Book
- 2024-2026 TANF State Plan

Where to Find it

NYSDOH

- Medicaid Resource Guide

Where to Find it

Other Sources

- OCA Guide to NY Evidence
- Guardian and Fiduciary Services
- The Guardian Assistance Network

Questions From 2024

CPS

- Discovery of emails in an Article 10 case.
- FOIL request from the attorney for a child and her parents requesting CPS records from our CPS investigation of a daycare worker where the child was allegedly injured.
 - Sharing records with county MDTs.

APS

- Can a POA provide written permission to release an APS referral, for which the POA was the source alleging financial exploitation of his father, to Medicaid for the purpose of explaining the transactions and proof of a scam?
- An attorney who represents the estate of a deceased former APS client is suing the nursing home where he passed, and is looking for our complete APS file. The attorney is also the executor- would he be entitled to the file? Would a subpoena be necessary?

Adoption

- Can the LDSS give a copy of an order of adoption to an adoptive parent who has lost their copy or never received one?
- Unsealing of adoption records in a CVA case?

Medicaid

- Spouse requesting MA file of the other Spouse?

Child Support/Medicaid

- To what extent, if any, can information received from Support Collection Unit (such as support delinquencies) or from the Medicaid Unit (such as health insurance enrollment), be disclosed in a Permanency Hearing Report which goes to the Court, parties and their attorneys?

Public Assistance and SNAP

- Right of access of a recipient to their own SNAP or TA records?

Obtaining Records

- Can CPS directly obtain a copy of an autopsy from a Medical Examiner? The position of our Medical Examiner is that CPS must go through law enforcement for a copy of an autopsy, even when CPS has a duly executed release for the records of the Medical Examiner. Also, is there any authority for APS to receive such records?

Questions?

Thank You!

Attorneys- remember to sign out for your CLE credit!