

Child Welfare Policy Manual

Questions & Answers

2.1I CAPTA, Assurances and Requirements, Referrals to IDEA, Part C

1. Question: Must a State refer every child under the age of three in a substantiated case of child abuse or neglect to the Individuals with Disabilities Education Act (IDEA) Part C agency, or may the State first screen these children to determine whether such a referral is needed?

Answer: The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xxi) requires that States have provisions and procedures for the referral of children under the age of three who are involved in substantiated cases of child abuse or neglect to early intervention services funded by Part C of the Individual with Disabilities Act (IDEA). Part C of the IDEA, which was reauthorized on December 3, 2004 by Public Law 108-446, contains a provision very similar to the one in CAPTA. The Conference Report accompanying the IDEA legislation indicates that the conferees did not intend the IDEA provision to require every child under the age of three who is involved in a substantiated case of child abuse or neglect to receive an evaluation. Rather, the intention was that such children be screened to determine whether a referral to early intervention services is warranted (House Report 108-779, p. 241).

CAPTA does not specifically require that *every* child under the age of three who is involved in a substantiated case of child abuse or neglect *must* be referred to Part C services. Therefore, States have the discretion as to whether to refer every such child under the age of three for early intervention services, or to first employ a screening process to determine whether a referral is needed. We believe that this is consistent with the purpose of the provision, which is to assure that all children who have a substantiated case of child abuse or neglect will be given special attention to determine whether they need early intervention services and to assure referral when such services are warranted.

It is up to the State to determine how children referenced in section 106(b)(2)(B)(xxi) of CAPTA will be screened and, if appropriate, referred to the Part C early intervention program in the State. The IDEA regulations at 34 CFR 303.321(d) provide procedures for use by *primary referral sources* for referring a child to a Part C agency for evaluation and assessment or appropriate services. Under 34 CFR 303.321(d)(3) *primary referral sources* include hospitals, physicians and social service agencies, which can include the Child Protective Services (CPS) agency, as well as other sources. Some State CPS agencies are using other primary referral sources to assist in screening a child (after substantiation), while

other State IDEA Part C programs are working with CPS agencies and training CPS social workers to conduct appropriate screenings. Both approaches meet the CAPTA requirements. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

- **Source/Date:** updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) § section 106(b)(2)(B)(xxi); Public Law 108-446; House Report 108-779, p. 241; 34 CFR 303.321(d).

2. Question: Can the provision at section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA), which requires referral of a child under the age of three who is involved in a substantiated case of child abuse or neglect to early intervention services, be read to mean that children who are wards of the State must be so referred?

Answer: No. The statute specifically requires the State to refer children under the age of three who are involved in *substantiated* cases of child abuse and neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act (IDEA). Therefore, since many children who are involved in substantiated cases of child abuse and neglect never come into foster care, we cannot narrow the requirement to children who are wards of the State. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

- **Source/Date:** updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) § section 106(b)(2)(B)(xxi)

3. Question: Does the "child" as mentioned in section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA) include only those children under the age of three who are involved in a substantiated case of child abuse or neglect or does this include any child in the family or household who is under the age of three?

Answer: CAPTA requires the State to refer any child under the age of three who is the *subject* of a substantiated case of child abuse or neglect to early intervention services under Part C of the Individuals with Disabilities Education Act. The State is not required to refer other children in the household under the CAPTA provision. However, we encourage States to refer all children who are suspected of having a disability and warranting a referral to early intervention services, taking into consideration Federal confidentiality restrictions when implementing this CAPTA provision.

- **Source/Date:** updated 9/27/11
- **Legal and Related References:** Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) § section 106(b)(2)(B)(xxi).