

Child Welfare Policy Manual

Questions & Answers

7.2 TITLE IV-B, Confidentiality

1. Question: What are the title IV-B confidentiality requirements?

Answer: In accordance with 45 CFR 1355.30 (p)(3) records maintained under title IV-B of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs. To the extent that the records of the title IV-B agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/27/97); ACYF-CB-PIQ-98-01 (6/29/98); updated 9/27/11
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50 Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(B) (viii), (ix), and (x) and 106(c)(4)(B)

2. Question: Who can release information? In particular, can parties other than the State title IV-B agency (such as the court) release information?

Answer: The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in State violation of the State Plan requirements for Foster Care and Adoption.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

3. Question: Do the title IV-E confidentiality requirements apply to court records of children served by the title IV-B agency?

Answer: Yes. While the State Plan requirements for Child and Family Services in Section 422 of the Social Security Act do not identify confidentiality restrictions, title IV-B services are subject to the confidentiality regulations identified in 45 CFR 205.50. See 45 CFR 1355.30 (p)(3).

The regulation prohibits redisclosure of information gained from the child welfare agency in 45 CFR 205.50 (a)(2)(ii), except for the purposes identified in 45 CFR 205.50 (a)(1)(i). This prohibition covers any information gained from the child welfare agency. The information to be safeguarded may be either written information or oral testimony. In addition to the types of information listed in 45 CFR 205.50(a)(2)(i), examples of child welfare information to be safeguarded include but are not limited to the following: referrals from other agencies to the child welfare agency, services provided by the child welfare agency to the child or family, referrals by the child welfare agency to other parties requesting services be provided to the child or family.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

4. Question: Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-B confidentiality requirements?

Answer: No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in a violation of State plan requirements. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in 45 CFR 205.50 would not apply.

- **Source/Date:** ACYF-CB-PIQ-95-02 (6/7/95)
- **Legal and Related References:** Social Security Act - section 471 (a)(8); 45 CFR 205.50

5. Question: Will States compromise compliance with title IV-B of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(B)(viii), (ix), and (x) of CAPTA?

Answer: Records maintained under title IV-B (which is subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs. There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(B)(ix), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Whereas the CAPTA provision is permissive (such as in sections 106 (b)(2)(B)(viii) (I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

- **Source/Date:** ACYF-NCCAN-PIQ-97-03 (9/26/97); 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

6. Question: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-B. Do the confidentiality provisions for title IV-B restrict the information that can be discussed in open court?

Answer: No. Section 471(c) of the Social Security Act allows States to set their own policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to titles IV-B or IV-E. Such policies must, at a minimum, ensure the safety and well-being of the child, his or her parents and family.

- **Source/Date:** 06/19/08
- **Legal and Related References:** Social Security Act - section 471 (a)(8) and (c)