Child Welfare Policy Manual

Section 2.1B: CAPTA, Assurances and Requirements, Appeals

2.1B. CAPTA, Assurances and Requirements, Appeals

Question 1. Please explain the requirements in the Child Abuse Prevention and Treatment Act (CAPTA) for appealing findings of child abuse or neglect.

Answer

States are required to have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.
The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:
1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.
2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.
3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.
4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

Source/Date

ACYF-CB-PI-98-08 (6/29/98); 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)(xv)

Question 2. To whom does the appeals process under 106(b)(2)(B)(xv)(II) apply?

Answer

CAPTA requires States to establish provisions, procedures and mechanisms by which individuals who disagree with an official finding of abuse and neglect can appeal such finding. We understand this provision to apply to the perpetrator; however, individuals with standing under State law are not precluded from participating in the appeals process should such individuals disagree with a finding of abuse or neglect.

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(b)(2)(B)(xv)(II)

Question 3. The Department has stated that an appeals process under CAPTA should include steps to assure that individuals with appeal rights receive timely notification of the right to appeal a finding of child abuse and neglect. What is considered timely notification (e.g., at the time individuals come to the attention of the agency or after the finding of abuse and/or neglect)?

Answer

While there is nothing in Federal statute or regulation which defines "timely notification" for this purpose, we believe that the term is directly related to an official finding of abuse or neglect. Therefore, States

should implement processes and procedures to assure that individuals are notified of their right to appeal upon a final finding of abuse or neglect.

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(b)(2)(B)(xv)(II)