

# Confidentiality Update/ Where to Find It

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# 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.

# CPS Manual- p. 56

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





Preventive Service Manual- p. 75





# 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 (1<sup>st</sup> 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).
- 1<sup>st</sup> 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

x CPS Manual

x Preventive Services Practice Guidance Manual

x

# 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—0o7 340.07 Tm [2.8(e)1.5 ]1.6( 4.7( ).6(n)1.6( (t)-1.4(e)1.6

# Where to Find it

OTDA

x



# Where to Find it

## NYSDOH

- Medicaid Resource Guide

# Where to Find it

Other Sources

# 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?





## Public Assistance and SNAP

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



Questions?

# Thank You!

Attorneys- remember to sign out for your CLE credit