

<b>POLICY # 205</b>	<b>SUBJECT: Confidentiality of Client Records</b>
<b>EFFECTIVE DATE:</b> April 4, 1989 <b>REVISION DATE:</b> February 27, 1996 <b>REVISION DATE:</b> March 1, 2011	<b>PAGE 1 of 27</b>
<b>AUTHORIZED SIGNATURE:</b>	

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## **I. PURPOSE**

The purpose of this policy is to ensure that the management of confidential client information in the Department of Services for Children, Youth and Their Families (DSCYF) is consistent with applicable statutes, regulations, and professional practice. This policy establishes guidelines to support appropriate maintenance, use, and disclosure of confidential client information in providing services to children, youth, and their families in the DSCYF integrated services environment.

## **II. POLICY**

Services integration is based on a partnership among Department staff, other service providers, and families. It is the policy of DSCYF that:

In the process of developing, implementing and evaluating integrated service plans, Department staff and other service providers share information that is relevant, accurate and timely without any unnecessary barriers to information exchange.

Any necessary constraints on the process of information sharing are based in state or federal statutes and regulations or in professional practice standards. Service team members work together in good faith to establish acceptable procedures for sharing information that will further the goals of effective, efficient, and integrated service planning and delivery.

Clients and families are encouraged to participate in service planning, delivery, and evaluation. Clients and families are informed of their rights to consent to the release of information and to review information held in their Department files.

Department staff and service providers are informed of their responsibilities for maintaining the confidentiality of information which they encounter or to which they have access, for ensuring the appropriate management of information in planning and implementing client services, and for remaining current in their knowledge of confidentiality policy and practices.

Department management assumes responsibility for providing continuing education and the necessary consultation services as staff carry out their responsibilities under this policy.

### III. SCOPE

This policy applies to: (1) all staff of DSCYF and to all persons acting on behalf of the Department including service providers, contractors, volunteers, interns, students, researchers, auditors or any other person acting for DSCYF who may come in contact with client information; and (2) establishes guidelines for obtaining, maintaining, sharing, and releasing confidential information related to client services. It does not:

1. Prescribe the specific content or format for a client record or record system.
2. Prescribe client eligibility criteria, procedures for admission to provider services, or requirements for consent to interventions or treatment services.
3. Specify procedures for storage, security, or retention of written, electronic or other records.
4. Specify procedures for obtaining access to written or electronic records.
5. Provide detail on the composition or responsibilities of Division or Interdivisional Service Teams.

The DSCYF Cabinet Secretary shall appoint a Privacy Officer consistent with HIPAA requirements. The privacy officer shall coordinate Department confidentiality concerns with the Information Security Officer (ISO). Other DSCYF policies, for example, Department Service Coordination, Computer Asset Management, and DTI's Acceptable Use Policy provide guidance in some of these areas.

Divisions should develop procedures as necessary for handling client information that are specific to their own operations. For example, Division procedures for record storage and security, for the content of records, and for maintaining records of information disclosure may be helpful.

### IV. DEFINITIONS

- A. **Consent to Obtain or Release Confidential Information:** When releasing information to or requesting information from sources outside the Department or its provider network, written informed consent must be secured from the client and / or the minor's parent, guardian, or Educational Surrogate Parent as appropriate to the nature of the information requested or released.
- B. **Confidential Information:** Any item, collection or grouping of information which contains the name of an individual or any identifying number, symbol, other identifying characteristics, or any unique grouping of information which makes the individual as recognizable as if a name had been affixed.

- C. Court Appointed Special Advocate (CASA): By state statute (31 Del.C. , Ch. 36), the CASA volunteer serves as guardian *ad litem* for abused and neglected children who come before the Court and is appointed through an order executed by a Family Court Judge. The CASA is charged with representing the best interest of the child and is a full party to court proceedings.
- D. Custody: For purposes of this policy, custody refers only to those circumstances in which a court has given custody to DSCYF or a Division. Although a parent or guardian generally must consent to obtain or release information, in limited circumstances when a parent is unavailable or unwilling to consent, a representative of the custodial Division may consent to obtain or release information. Supervisory or legal counsel should be obtained before proceeding.
- E. Department: The Department of Services for Children, Youth and Their Families, or any of its Divisions.
- F. Educational Surrogate Parent: An Educational Surrogate Parent is a person appointed to represent a student who receives or may be in need of special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free, appropriate public education. An Educational Surrogate Parent may give consent for release of educational records only.
- G. Guardian: An individual who has been granted guardianship by a court. A guardian holds some or all of the rights of a parent and may give consent to the release of or request for information.
- H. Guardian Ad Litem: An individual appointed by the Family Court to represent the best interests of a child whether or not that reflects the wishes of the child, who by his or her appointment shall be a party to the child welfare proceeding. The guardian ad litem is charged with obtaining a clear understanding of the situation and needs of the child, and making recommendations to the Court as to what is in the best interests of the child. 29 Del. C., Ch. 90A §9002A(11). Typically, a GAL is either an attorney through the Office of the Child Advocate or a CASA. 13 Del. C. §2504(f).
- I. Information Security Officer: Responsibilities include ensuring the security and safety of information system hardware and software. (See DSCYF Policy 108 Computer Asset Management)
- J. Informed Consent: Voluntary agreement to an action to be taken following presentation of information and affirmation by the consenting party that the information and the action to be taken are understood. A signed consent form that is not completely filled out is null and void. Consent to the release of confidential information should be in writing and include the following elements:

1. Name of the person who is the subject of the information.
  2. Name of the person, program, or agency holding the information.
  3. Name of the person, program, or agency with whom the information will be shared.
  4. Reasons for sharing the information.
  5. Description of type of information that will be shared.
  6. Signature of the person who is the subject of the information or, if the client is a minor, the signature of the parent or guardian, unless the signature of the client is required by law or regulation.
  7. Date the consent form is signed.
  8. A statement that the consent form is subject to revocation at any time by the subject (or parent / guardian or Educational Surrogate Parent) of the information.
  9. An expiration date for the consent form or an event (such as the end of a school year, a statutory review date, or completion of intervention) that will terminate the consent.
  10. A statement that the subject (or parent / guardian or Educational Surrogate Parent) of the information has a right to a copy of the consent form.
- K. Minor: An individual who has not yet reached his or her eighteenth birthday.
- L. Need to Know: No matter what information is available, staff will seek only that information that is necessary to carry out their specific job functions and only for periods of time of direct responsibility. In fulfilling a request for release of information, the holder of information has the responsibility to determine a recipient's need to know.
- M. Office of the Child Advocate (OCA): The state agency charged with safeguarding the welfare of Delaware's children through educational advocacy, system reform, public awareness, training, and legal representation of children as set forth in 29 Del. C., Ch. 90A.
- N. Parent: A biological or adoptive parent whose parental rights have not been terminated. Either parent may consent to the release or obtaining of information. No one parent can cancel the consent of the other parent.

- O. Privacy Officer: The Department has an administrative requirement under HIPAA as the designated covered entity to designate a privacy official who is responsible for the program's privacy policies and procedures. This official shall be designated by the Cabinet Secretary and will assume duties consistent with this policy and all other governing laws, policies, and regulations.
- P. Provider: Any agency, person, or program providing client services on behalf of the Department, through purchase or other agreement.
- Q. Records: Any item, collection, grouping, or information that is maintained by DSCYF and contains personally identifiable information.
  - 1. Primary Records: Primary records are all records originated by DSCYF or a contracted service provider. Primary records are the property of the Department.
  - 2. Secondary Records: Secondary records are all records that did not originate in DSCYF or a contracted service provider.

## **V. STAFF RESPONSIBILITIES IN HANDLING CLIENT INFORMATION**

- A. Department staff shall inform clients of their rights regarding confidentiality (See Section XII and Appendix B).
- B. DSCYF staff responsibilities regarding confidential client information and records include:
  - 1. Knowing the DSCYF Confidentiality Policy, DTI's Acceptable Use Policy, DSCYF Computer Asset Management Policy, as well as Division specific policies, state statutes and regulations governing HIPAA and substance abuse information outlined in CFR 42 Part 2.
  - 2. Signing the DSCYF Staff / Contractor Non-Disclosure and Confidentiality Agreement (Appendix C).
  - 3. Maintaining current knowledge of issues and procedures relating to client confidentiality and informing the Department of any changes in statutes and regulations or professional standards which may include implications for this policy or associated procedures.
  - 4. Consulting with supervisors, Department or State Confidentiality Committees, or with legal counsel as questions arise regarding specific client confidentiality issues.

5. Obtaining the necessary consent when disclosing confidential client information or when requesting confidential information from sources outside the Department / service provider network.
6. Releasing only confidential information that is necessary, relevant, accurate and timely with regard to the purpose of the release.
7. Maintaining records of disclosure that accurately document the date, nature and purpose of each release, and the identity of the recipient of the information.
8. Seeking only the client information which staff have a legitimate need to know in fulfilling their job responsibilities.
9. Safeguarding the security of confidential records, client file storage areas, computer files and passwords, and working field files. Confidential records shall not be removed or taken from Department offices without supervisory authorization and the appropriate recording of location.
10. Accompanying a written disclosure of confidential information with a copy of the release including a written statement substantially as follows:  
“This information has been disclosed to you from records whose confidentiality is protected by federal and state law. You are prohibited from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by federal or state regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.”
11. Ensuring, insofar as is reasonably possible, that confidential information sent from the Department reaches the intended recipient. Staff are advised to confirm the sending and receipt date or time by telephone and to include a cover sheet with the Department and Division name, address, telephone number, and a confidentiality notice reading substantially as follows:  
“This information (this page and accompanying page[s]) is intended only for the use of the individual or entity to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or the taking of any action in reliance on the contents of this information, may be strictly prohibited. If you have received this information in error, please notify us immediately by telephone and return the original to us at the above address. Thank you.”

12. The sending Division is required to:
  - a. Fully inform client / parents / guardians, in native language if necessary, of the disclosure, a description of the child / children of whom personally identifiable information is maintained, how information was gathered and sought and how it is used, a summary of policies and procedures of how records are kept and shared.
  - b. Keep a record of parties obtaining access to records, including their names, date access was given and the purpose for which the party is authorized to use the record.
  - c. Provide upon request, a list of names and positions of employees who have access to records.
13. Make every effort to protect the confidentiality of records associated with the transmission of confidential client information. (See Acceptable Use and Computer Asset Management policies and guidelines) This shall include protecting the identification of clients and families within e-mail and other electronic transmission of data. Options to protect the person's information include the use of PID number or the use of initials.

## **VI. SHARING CLIENT INFORMATION AMONG DSCYF STAFF**

- A. When DSCYF services are provided by only one Division, a Case Manager or Division Service Team shall gather the child and family information that is necessary and relevant to the provision of services to child and family. Staff have responsibility for ensuring the accuracy and current value of information collected for the record.
  1. Information held by DSCYF is available to the Case Manager or Division Service Team on a need to know basis.
  2. Appropriate staff in the Division providing services will have access to information required to carry out their roles and responsibilities.
  3. Staff in the Department with oversight or support roles and responsibilities, for example, fiscal, cost recovery, interdivisional review groups, assessment, and monitoring and evaluation staff, will have access to the specific information they need to carry out their job responsibilities.
- B. Interdivisional Service Team (IST) members may have access to information across Divisions on a need to know basis. In addition to the responsibilities of each Division for the collection of information, when a client is provided with services by more than one Division concurrently, there shall be an Interdivisional Service Team comprised of DSCYF staff that are responsible for developing a unified

service plan.

1. Appropriate staff in the Divisions represented on an Interdivisional Service Team will have access to information required to carry out their roles and responsibilities. Should a member of a Division not represented on an Integrated Service Team request information, this should be through direct consultation of the involved IST team members.
2. Staff in the Department with oversight or support roles and responsibilities, for example, fiscal, cost recovery, interdivisional review groups, assessment, and monitoring and evaluation staff, will have access to the specific information they need to carry out their job responsibilities.

## **VII. SHARING INFORMATION WITH DSCYF CONTRACTED PROVIDERS**

In some instances, DSCYF services are provided solely by Department staff. In the majority of cases, services are provided by a combination of DSCYF staff and contracted service providers. Both in the pre-admission planning of services and in the post-admission provision of services, sharing of information held by the Department with service providers may be necessary.

- A. Prior to admission to a contracted service, there is no relationship between the client and provider.
  1. When possible, a signed consent to release confidential information should accompany pre-admission reports sent to a potential provider.
  2. Where it is not possible to obtain the signed consent of a parent or legal guardian:
    - a. and DSCYF or a Division is the custodian or required to provide services under commitment or other order of a Court, information may be shared without consent of the parent / legal guardian.
    - b. and the only information to be released is the educational record, an Educational Surrogate Parent, or the student, if age 14 or over, may sign the consent form.
- B. Preadmission confidential information requires releases consistent with Section VIII. When it is necessary to share pre-admission information without a signed consent, it is incumbent on each Division to release only that information which is necessary and relevant to the specific purpose.
- C. Only the Division that is the originator of the information of the primary record may release information to an outside agency.

- D. When an Interdivisional Service Team is considering sharing information originating in a Division not represented on the service team with a contracted service provider, team members will consult with a representative of that Division prior to the release of information.
- E. In all cases, the release of alcohol / drug information from DSCYF to a contracted service provider requires a consent form signed by the client if age fourteen (14) or older. For youth under fourteen years of age, the consent must be signed by a parent or legal guardian.
- F. Following admission to a provider's services, information may be released to the service provider by a Division Case Manager or by the Interdivisional Service Team. Special care must be taken to ensure that only information which is necessary and relevant to the admission of a specific client is released.

### **VIII. SHARING INFORMATION OUTSIDE THE DSCYF NETWORK**

In providing comprehensive and integrated services to DSCYF clients, it is often necessary to interact with agencies outside the Department and with service providers not under contract to DSCYF.

- A. To protect the confidentiality rights of clients, information may be shared with outside agencies only with an appropriately executed consent form except when statute stipulates otherwise, such as the Office of the Child Advocate. (See Section IX, Disclosing Information Without Informed Consent.) Please note that there are special rules governing the release of information relating to substance abuse, sexually transmitted diseases (STDs), HIV and pregnancy.
- B. Only the Division that is the originator of the information of the primary record may release to an outside agency. Even with a valid release, it is incumbent on each Division to release only that information which is necessary and relevant to the specific purpose of the consent form.
- C. DSCYF is prohibited from releasing secondary information without appropriate written consent. It is preferable for the requesting party to seek the information directly from the originator.
- D. The Department supports and will follow the guidelines established in the Interagency Confidentiality Agreement for Accessibility and Data Sharing Between Participating Organizations. Procedures and forms authorized by this agreement will be used in requesting / releasing information held by participating agencies.

- E. Information, including secondary information, shall be shared with OCA as provided for in Section IX, Disclosing Information Without Informed Consent, Paragraph B.

## **IX. DISCLOSING INFORMATION WITHOUT INFORMED CONSENT**

Consent to release information is not required in the following circumstances:

- A. State statutes require that relevant information be shared in situations of:
1. Reports or investigations of suspected child abuse or neglect, and suspected impaired adult abuse or neglect.
  2. Medical Emergencies.
  3. Imminent threat or danger to the client or to protect others. This includes provisions outlined in Title 16, Chapter 54, Health and Safety, §5402 Duty to Warn.
- B. The Office of the Child Advocate statute, 29 Del. C., Ch. 90A, requires the disclosure of confidential client information, including secondary information. OCA is not entitled to hotline reporter identifying information or to attorney/client communications. OCA must have consent or a court order to access secondary parental substance abuse records and mental health records of parents when they were children and treated by the Division of Child Mental Health Services. OCA and DSCYF shall work together to coordinate the gathering and sharing of secondary information, including obtaining court orders and/or consents for substance abuse and mental health records.
- C. Federal statutes require that relevant information be shared in the following circumstances: as outlined under the provisions of CAPTA, reauthorized as Keeping Children and Families Safe Act of 2003. (42 U.S.C.A §5106a)
- D. Confidential client information is also provided for administrative and progress monitoring purposes to:
1. The Child Placement Review Board for reviewing permanency planning.
  2. Court Appointed Special Advocate (CASA) or guardian *ad litem* who may inspect and copy any records relating to the child and his or her family / guardian.
  3. The Family Court or Child Placement Review Board for the review and monitoring of decisions regarding the mixing of delinquent and non - delinquent youth in residential settings.
  4. The Interstate Compact Office of the applicable jurisdiction for monitoring of interstate or inter-country cases.

5. The Department of Health and Social Services on a limited need to know basis as specified in DSCYF's enabling legislation. This includes exchange of information with Medicaid for cost recovery purposes, Child Support, POC.
  6. The Family Court and the Office of the Child Advocate for the purposes of ensuring and monitoring the legal representation of children in DSCYF custody as required by CAPTA and its required assurances.
  7. Department of Education for reporting academic progress for those children educated by DSCYF Education Unit Staff, children served as a part of the K-5 school program, as well as to meet other State and Federal statutory requirements related to educational performance of children in the custody and care of the Department of Services for Children, Youth and Their Families.
- E. The transfer of educational records among school agencies is allowed without signed consent.
- F. Signed consents are not required for administrative audits, program evaluations, or research where no personally identifiable information is disclosed or only aggregate data are used.
- G. Information may be obtained or released which is necessary to establish client eligibility for services, to apply for benefits to which the client may be entitled, and to recover costs of services provided.
- H. Information may be released to comply with a subpoena or other valid court order. Supervisory and/or legal consultation is recommended to satisfy these requests.

Exceptions may include privileged communications of clients to licensed physicians, psychologists and social workers, where client consent may be required. Supervisory or legal consultation should be obtained prior to a response to a subpoena or other court order.

## **X. DISCLOSING INFORMATION WITH INFORMED CONSENT**

Except in circumstances noted in Section IX or other statutory or regulatory circumstances, DSCYF shall not release or knowingly permit the disclosure of any information, by any means of communication, to any external person or agency /organization except with written informed consent. Consent must be voluntarily given. Consent may be revoked at any time although this revocation does not invalidate actions that have already been taken based on the prior voluntary consent. There are some circumstances in which the release of information, even with consent, is strictly regulated as outlined in Sections C, D, and E below:

- A. In sharing information with cooperating agencies who have signed the Interagency Confidentiality Agreement for Accessibility and Data Sharing Between Participating Organizations, DSCYF staff will use the Interagency Consent for Release of Information Form or a division applicable consent form.
- B. A signed consent for release of information does not require DSCYF to release information. DSCYF staff must carefully consider the best interests of the client and family before complying with a request for information. In the event that the identity of the requesting person cannot be verified, it is appropriate to require a notarized consent form.
- C. Release of alcohol / drug referral, diagnosis, or treatment information is strictly regulated in Federal statute.
  - 1. This information may not be shared outside the Department except with informed consent to release signed by the client if age fourteen (14) or older, or by the parent or guardian if the client is younger than fourteen.
  - 2. This information can not be shared with the parent except with the prior consent of the client if age fourteen or older.
  - 3. Although some exceptions to these strict regulations exist, they are sufficiently complex that it is advisable that the Service Team obtain supervisory or legal consultation prior to any other release.
- D. Information regarding HIV status, sexually transmitted diseases (STDs) and pregnancy is strictly regulated by Delaware Statute 16 Del. C §710; 711; 712 and 16 Del. C Section 120-1232; State HIPAA/HIV Laws. Supervisory or legal consultation is advised prior to any release of information.
  - 1. Information that a person, for example, a child or family member, has been tested for HIV (or the result of a HIV test), may not be disclosed to anyone without a release signed by the person tested or the parent or legal guardian (for a child below the age of 12). Disclosure of HIV information without written consent is permitted for:
    - a. Emergency medical care and to health care workers under specified circumstances.
    - b. Child abuse investigations.
    - c. Activities related to the control of sexually transmitted diseases (STDs).

2. Information about the medical examination, consultation, or the treatment of a minor twelve years or older for sexually transmitted diseases (STDs), or for pregnancy-related conditions may not be released without the written consent of the minor. Parental consent cannot be substituted for the consent of the minor in these areas. Information may be released without consent only for:
  - a. Activities related to control and treatment of sexually transmitted diseases (STDs).
  - b. Public health reporting as required by law.
  - c. Child abuse investigations.
- E. Education records may not be released to assist a criminal court in making an Adjudication, i.e., determining a child's guilt or innocence.

## **XI. WHEN EXTERNAL DISCLOSURE IS NOT PERMITTED**

The following information may not be disclosed unless required by statute, requested by subpoena or valid court order, or for criminal or civil law enforcement:

- A. Information that would violate the confidentiality rights of others, reveal a source protected by guarantee of confidentiality, or release of records sealed by the court (for example, termination of parental rights or adoptions). Seek legal consultation prior to any release of information.
- B. Information compiled in reasonable anticipation of a court action or for enforcement of criminal laws shall not be released except as directed by the Attorney General's Office.

## **XII. CLIENTS RIGHTS**

Clients have a right to privacy and the right to consent to the disclosure of confidential information about themselves or their families. Clients will be informed that they have the following rights:

- A. Rights to Privacy: DSCYF has an ethical, professional and legal obligation to protect clients from undue intrusion of privacy. Recorded and / or unrecorded information received from clients, or regarding clients and families, must be safeguarded. Consistent with State and Federal statute and regulations, DSCYF staff will disclose information regarding clients and services when such sharing is professionally judged to be in the best interests of the children in its care and

there is a legitimate need and right to know.

- B. **Right to Be Informed About the DSCYF Confidentiality Policy:** Clients shall be informed of the Department's Confidentiality Policy and of limits on the confidentiality of information.
- C. **Right to Informed Consent:** When information is requested from or released to persons / agencies outside the Department and service provider network, informed consent must be obtained from the client or the client's parent or guardian in accordance with this policy.
- D. **Rights to Review Information:** Clients (or in the case of a minor, a parent or guardian) have the right to examine information held about them in Departmental records within established limitations.
  - 1. Clients have a right to review their records, including records documenting releases of information. Parents/guardians of clients who are minors cannot review information in their child's record relating to substance abuse, STDs and HIV without the child's permission. A child fourteen years or older must give consent related to substance abuse information and a child twelve years or older must give consent for STD and HIV information.
  - 2. Clients must submit a written request to review records. The identity of the requesting person must be verified. Access to records must be granted within 45 days. A fee may not be charged for this review. A fee may be charged for copies of record material.
  - 3. Prior to a client's review of his or her files, the record must be reviewed to determine that all information contained in the record is that of the client and that the material to be reviewed does not contain:
    - a. Information which, if released, would violate the confidentiality rights of others, including family members who have not given consent.
    - b. The identity of a source protected by a guarantee of confidentiality.
    - c. Records sealed by the Court.
    - d. Information judged by professional clinical staff to be detrimental to the well-being or best interest of the client if released. The basis for any decision to refuse access to information must be documented. Clients should be advised that such information may be disclosed to a qualified professional chosen by the client if requested in writing and accompanied by a release of information

form.

4. When a client reviews DSCYF records, a DSCYF staff member shall be present to answer any questions.
5. If the client is deaf or blind, DSCYF must provide an interpreter. If the individual has no written language or speaks in a language other than English, DSCYF may provide an interpreter.
6. When a client disagrees with information in the record, the client may provide a written statement to that effect and corrections of factual material to be included as a permanent part of their record. If the information has been released, the statement must be forwarded.
7. If information has been deleted from a file which is subsequently shared with a client, the client should be informed of the deletion and the reasons for it.
8. Federal law and regulations provide appeal rights in two distinct areas: denial of access to records and refusal to correct information in records that an individual believes to be incorrect. The following procedural guidelines should be used should this occur.

1. Denial of Access to Records

If a client is denied access to information from their record, the notice of such denial must be made in writing within 30 days and must be accompanied by a statement informing said client of their right to appeal the denial of access.

Each Division shall have an established procedure for filing such appeals, which provides instructions to clients. The procedure must include:

- a. How to file an appeal
- b. Timeline for appeal
- c. Items that are not subject to appeal (ex: psychotherapy notes; information compiled for a legal or administrative procedure/action; reporter of child abuse and neglect; information contained in DSCYF records from third parties)
- d. Designation of a neutral party to conduct the review

- e. Timeline for response (generally response must be within 30 days of receipt or within 60 days if information is off-site, with allowance for extension as needed to fulfill the requirements)

If a denial is upheld, individuals must be afforded the opportunity to enter a statement of disagreement into the record. Upon receipt, the statement shall be made a part of the record and the individual must be notified within 30 days that the statement has been added to the record.

## 2. Amendment of Records

Upon review of all or part of their record (s), an individual may request that information contained therein be amended; such request must be made in writing.

Each Division must have a process for granting or denying such requests.

- E. Minors may ask DSCYF staff to keep information concerning themselves from their parents or guardians. This request must be honored in the case of treatment of alcohol or drug abuse for clients 14 and older. This request must also be honored in the treatment of clients age 12 and over who have STDs, and pregnancy-related conditions. DSCYF staff shall seek legal advice before granting or denying such a request about any other information.

### **XIII. ACCESS TO DSCYF & DIVISION POLICIES**

Policies and Procedures of agencies within the State of Delaware are considered public information with the exception of any information that might compromise the physical security of a state facility, the safety, surveillance techniques, security systems, operational and evacuation plans or protocols, or personnel deployments. To the extent that the Policies and Procedures are in the public domain they may be posted on the DSCYF Policies and Information web page at <http://www.state.de.us/kids/information/policy.shtml>.

Any requests to view Department or Division policies, with the exception of those pertaining to the Physical structures or safety security procedures, should be directed to the internet.

Any requests to view Department or Division policies pertaining to the physical structures, or safety procedures guard scheduled rounds, etc., should be directed to the appropriate DSCYF facilities manager or security personnel. Once reviewed, if the information requested is deemed not to compromise the security or safety of any DSCYF facility or personnel, the information will be provided.

Any policies and procedures that are not considered discoverable through the Freedom of Information Act (FOIA) should be posted on the Intranet with restricted access.

#### **XIV. NONCOMPLIANCE**

Failure to comply with this policy regarding the confidentiality of client information could result in specific civil, criminal, and / or DSCYF penalties (in accordance with the progressive disciplinary guidelines found in the Merit Rules).

Any concerns regarding breaches in confidentiality can be addressed by bringing the concern to the attention of DSCYF's Privacy Officer or through the procedures outlined in DSCYF Policy # 214, Complaints Regarding Case Planning and Implementation Practice(s), or DSCYF Policy # 215, Constituent Concerns.

#### **XV. IMPLEMENTATION**

This policy shall become effective upon the signature of the Cabinet Secretary. Any of these policy guidelines which are found to be in conflict with federal or state laws shall be null and void. All other procedural regulations shall remain operative.

**APPENDIX A: REFERENCES****State Statutes and Regulations**

1. 13 Del. C. 924 Domestic Relations; Adoption; Minors; Confidential nature of Court records
2. 13 Del. C. 925 Inspection of Court Records
3. 13 Del. C. 926. Receiving child into State for adoption
4. 14 Del. C §4111 Education: General Regulatory Provisions; Disclosure of pupils' school records
5. STDs 16 Del. C. § 710; 711; 712
6. 16 Del. C. § 903 Health and Safety; abuse of children; reports required and duties of the receiving agency
7. 16 Del. C. § 905c. Telephone reports, Child Protection Registry and information System.
8. 16 Del. C. § 906(b) (18). State response to abuse or neglect
9. 16 Del. C. Section 1201-1232: State HIPAA/HIV laws
10. 16 Del. C. 2210; State Drug/Alcohol
11. 16 Del. C. § 5161; Mental Health Patients' Bill of Rights
12. 24 Del. C. 1768 Medical Peer Review Privilege
13. 24 Del. C § 3913 Professions and Occupations; Clinical Social Workers: Privileged Communications
14. 29 Del. C. 705(a) State Government; General Provisions; Powers of subpoena: administration of oaths or affirmation; penalties of noncompliance
15. 29 Del. C. 9001; Dept of Services for Children, Youth and their families
16. 29 Del. C. 9003(14) State Government; Dept of Services for Children, Youth and their Families; intent and purpose.
17. 29 Del. C. § 9017(d). Confidential Information
18. 29 Del. C. 90A Office of the Child Advocate
19. 31 Del. C. Section 3608 Confidentiality
20. 31 Del. C. §3610 Acquisition of Information by court-appointed special advocate
21. 31 Del. C. 3606 Welfare; Special Advocate Program; Court Appointed special advocates; rights
22. 31 Del. C. §3813(c) Welfare; foster Child Review Act; Records of Review
23. 31 Del. C. § 3816 Welfare; Foster Child Review Act; Foster Child review board duties of executive committee (Confidentiality Records)
24. Educational Regulations (State) 14 DE Admin Code Section 251

**Federal Statutes and Regulations**

25. 5 U.S.C § 552 Freedom of Information Act /Privacy Act
26. 18 U.S.C. 5038 Use of Juvenile Records
27. 20 U.S.C. 1232g; Family Educational Right to Privacy Act (Buckley Amendment)
28. 20 U.S.C. 1480(2); 34 CFR 303.460; Early Intervention Program for Infants and Toddlers: Confidentiality of Information
29. 42 U.S.C. 290ee-3; Alcohol and Drug Abuse
30. 42 U.S.C. 290dd-3 (alcohol)
31. 42 U.S.C. § 671(a)(8); Foster Care and Adoption Assistance
32. 42 U.S.C. § 1396a: State plans for medical assistance
33. 42 U.S.C. § 5106(a). CAPTA Confidentiality

34. 42 U.S.C. § 5676; JJDPA General and Administrative Provisions: Confidentiality of Program Records
  
35. 42 U.S.C. § 5731; Runaway and Homeless Youth. Restrictions on disclosure and transfer
36. 45 CFR Parts 160 & 164 (HIPAA)
37. HIPAA Summary (federal)
38. 45 CFR § 205.50 Aid to Families with Dependent Children Program
39. 45 CFR § 1340.14(i) CAPTA Reg. Confidentiality

For more information in regard to the Federal Statutes and Regulations, please go to the following website: <http://uscode.house.gov/search/criteria.shtml>

#### **Cases and Other References**

40. Pennsylvania v Ritchie
41. Division of Family Services v Wallace (hard copy only) (confidentiality in dependency cases)
42. Jencks Act (Rule)
43. Brady Summary
44. Rule 503: Delaware Uniform Rules of Evidence; Physician and psychotherapist patient privilege
45. Family Court Civil Rule 90.1 Records Privacy
46. Family Court Civil Rule 90.2 Sealing Records
47. Family Court Criminal Procedures 62; Records Privacy
48. Family Court Criminal Procedures 63; Sealing Records

**APPENDIX B: CONFIDENTIALITY NOTICE TO CLIENTS**

We want you to know why we collect information about you and your family, the steps we take to protect your privacy, and your rights to know what we keep in our records.

**Why do we keep records?**

- Delaware law authorizes the Department to collect and keep information to carry out our duties. This information is used for planning and providing services to you and your family.

**Will this information be kept confidential?**

- All Department staff sign a Non-Disclosure and Confidentiality Agreement that describes their duty to protect the privacy of client information.

**Who else may learn this information?**

- Division Case Managers / Service Teams or Interdivisional Service Team members working with you and staff with oversight or administrative duties are permitted to see information about you and your family.
- When you receive services from organizations with contracts with the Department, information will be shared with the provider's case managers.
- Except in certain situations, such as alleged child abuse or neglect, emergencies threatening to health and safety, establishment of service eligibility or recovery of the costs of services, compliance with court orders, your written consent or that of the child client is required for the Department to share information about you or your family with others.

**Where and how is information stored?**

- All written records are stored in secured files or storage areas when not in use.
- The Department has a computerized client information system, the Family and Child Tracking System (FACTS), on which data is stored. Electronic information is protected by established computer access and security procedures.

**What are your rights?**

- You have the right to find out what records we have about you or your family, to review these records (with certain exceptions), and to grant or revoke your permission for the Department to share this information with others outside DSCYF.
- If information in our files is erroneous or you disagree with file information, you may state your differences in writing, and we will include your statement in our records.

**Do you have other questions?**

- If you have other questions about what is or will be placed in our records about you or your family, please ask them of the Department person working with you.
- Upon request, we will provide you with a copy of our Confidentiality Policy.



**APPENDIX C: DSCYF STAFF NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

The undersigned acknowledges that the services the Department of Services for Children, Youth and Their Families (DSCYF) performs for its clients and all other parties involved are confidential. DSCYF and its clients depend upon Department employees and others who have access to Department information or are authorized to visit Department areas, to keep all information about clients and services confidential. By reason of your duties at DSCYF, you may come into possession, or become aware of, information concerning clients and/or their families.

This agreement applies to information acquired in any way to include without limitation:

- Events or actions involving direct contact with clients/families or others.
- Learned by accessing an automated data system, client records to include documents and viewing, or causally observing, documents that may be displayed on computer screens or other electronic presentations.
- Orally through consultation with persons providing services or “overhearing conversations” in DSCYF areas.

By signing below you are indicating you understand and agree that:

- In compliance with Department policy, you are required to participate in Department training on confidentiality policies and procedures.
- To access the policy through the Intranet, click on the Internet icon on your state computer. That will bring you to the DSCYF site on the Intranet. Scroll down and click on Department Policies. From there scroll down to the Direct Client Service policy listing and click on Confidentiality of Client Records. The Intranet address for the policy is: <http://intranet.state.de.us/kids/confiden.htm>. The policy can also be found on the Internet at: <http://www.state.de.us/kids/pdfs/dsc205.pdf>. To read the policy on the Internet, you must have the Adobe Acrobat software on your computer. You can use tags on the DSCYF website to pull a free copy of Adobe Acrobat software off of the Internet. You are required to read and familiarize yourself with this policy and other appropriate Division confidentiality procedures prior to releasing any confidential information orally, in a written or automated format, or in any other form.
- You will only access, or seek access to, information in any form that is job-related and necessary for you to complete assignments given you by DSCYF supervisors or managers.

- You will not at any time, during or after your employment, duties or visitation at DSCYF, disclose any confidential information to any person except as permitted by statute, regulation, and/or as governed by policies of DSCYF or a written informed consent by the person(s) involved. Disclosure means the communication of information by any method including orally, by written document or through access to automated data systems.
- You will safeguard all client-related confidential information acquired orally or through automated or written documentation, so that no one is able to examine, acquire, or copy information unless authorized as indicated above.
- If you are an authorized user of any automated system containing confidential information, you will neither share your password or ID with anyone, nor will you keep a written record of your password or ID in an unsecured location where unauthorized individuals may access them.
- Employees are responsible for complying with all confidentiality policies in effect during their period of employment with DSCYF and / or during the period of their access to DSCYF information. All staff will be notified in writing or through training of revised or new confidentiality policies.

The penalty for unauthorized access, disclosure or misuse of confidential information will be based on progressive discipline guidelines in accordance with the Merit Rules. Criminal or civil prosecution may occur as applicable. If you have any questions regarding this document, please discuss fully with your supervisor before signing. This signed agreement will be retained in your DSCYF personnel file. A copy of this signed agreement will be provided for your own records.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX D: DIVISION OF CHILD MENTAL HEALTH CONSENT FORM**

**Please see the following link via the DSCYF internet website:**

[http://extranet.kids.state.de.us/kids/cmh/cmh\\_forms.shtml](http://extranet.kids.state.de.us/kids/cmh/cmh_forms.shtml)

**APPENDIX E: DFS AUTHORIZATION FOR RELEASE OF INFORMATION**

**STATE OF DELAWARE  
DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES  
DIVISION OF FAMILY SERVICES**

**AUTHORIZATION FOR RELEASE OF INFORMATION**

I, \_\_\_\_\_ hereby give consent for the release of information about myself or my minor child \_\_\_\_\_ DOB \_\_\_\_\_ to be released to or obtained from an authorized representative of the Division of Family Services during the course of an investigation or for planning regarding myself and/or my children. Planning includes obtaining information for the development of a holistic service plan aimed at achieving child safety and permanency.  
The Division of Family Services is requesting the following information from:

1. **School Name (include specific name of school):** \_\_\_\_\_  
 Attendance Records  Report Cards  IEP's  Progress Reports  Psychological/Educational Testing Results  
 Disciplinary Reports  School Counselor Reports  Nursing Reports  Other \_\_\_\_\_
  
2. **Medical Resources (include specific names of physicians, hospitals, etc.):**  
 Physician(s): \_\_\_\_\_  
 Hospital: \_\_\_\_\_  
 PH Clinic: \_\_\_\_\_  
 Immunizations  Birth Records  Laboratory Reports  X-ray Reports  Hx/Physical Exam Reports   
 Discharge Reports  Operative Reports  Consultation Reports  Therapy Reports  
 Other \_\_\_\_\_
  
3. **Mental Health Providers (include specific names):** \_\_\_\_\_  
 Attendance  Progress Reports  Psychological/Psychiatric Evaluations  Prescribed Medication
  
4. **Other Services, i.e. day care, WIC, probation/parole, public health, parent aide, other contracted services (please identify specific service):**  
 Name \_\_\_\_\_  
 Types of information being requested \_\_\_\_\_  
 Name \_\_\_\_\_  
 Types of information being requested \_\_\_\_\_  
 Name \_\_\_\_\_  
 Types of information being requested \_\_\_\_\_

**This authorization is valid until:**  
 \_\_\_\_\_ Six months from the date of signature or the following date \_\_\_\_\_

**I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. Pts. 160 & 164 and cannot be disclosed without my written consent unless otherwise provided for in the regulations.**

**I also understand that this consent may be revoked at any time, except to the extent that action has been taken in reliance on it. The person completing this form has a right to receive a copy. This form is invalid unless all sections are completed.**

Client Signature (if applicable)	Print Name	Date
Parent, Guardian, Custodian (Circle One)	Print Name	Date
Division of Family Services Representative	Print Name	Date

**The Interagency Consent to Release Information Form can be found on pages 12 and 13 at the following website:**

[http://kids.delaware.gov/pdfs/pol\\_mou\\_dscyf\\_PublicInstructionSchoolDistrictsDscyfDfs.pdf](http://kids.delaware.gov/pdfs/pol_mou_dscyf_PublicInstructionSchoolDistrictsDscyfDfs.pdf)