

North Carolina Infant-Toddler Program Procedural Guidance

Reference: Procedural Safeguards Policy

Request for Information re: Subpoena

Introduction

The Infant-Toddler Program (ITP) shall ensure the effective implementation of procedural safeguards to govern confidentiality and privacy of information of the families served when ITP records are requested.

This document is intended to provide guidance on how to respond to a subpoena/court order.

Definitions

Subpoena is a legal document summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body.

Procedures

1. Fax or deliver the subpoena/court order directly to the CDSA Director as soon as possible. If the Director is not available, contact the team leader.
2. If the subpoena/court order is related to unusual circumstances requiring consultation with the EI Section Program Director, the CDSA Director (or his or her designee) will immediately fax the subpoena or court order to the EI Section office (919-870-4834). The CDSA Manager or EI Section Program Director will be in contact with the CDSA Director (or his/her designee) to discuss the unusual circumstances and any desired follow up. One example of an unusual circumstance might be a custody case in which a family member or attorney has specifically requested testimony from a CDSA employee to support his/her case, outside the documented medical record.
3. The person who receives the subpoena or court order should contact his or her supervisor. The supervisor in consultation with the Director will determine the level of support necessary for the employee, which may range from accompanying the person to Court to providing resource information and answering questions.
4. The EISC should ensure a complete and accurate file/record. The EISC should complete any notes that the EISC has started or draft any notes with information that the EISC has recently obtained but has not yet entered into the record/file. The EISC needs to be sure that he or she can honestly state that no changes in the record were made after receiving the subpoena or court order.
5. For subpoenas, the Director determines who (Director, Supervisor, EISC) should call the attorney named on the subpoena to:

- Discuss the subpoena or court order and determine whether an alternative rather than going to Court is possible.
 - If the record has been subpoenaed, offer notarized copies of the record instead **with parental consent**.
 - *If the parent does not give consent or is unavailable to give consent, inform the attorney that CDSA records are confidential, and record cannot be divulged unless the judge so orders.* * Subpoenas signed by an attorney do not constitute a court order.
 - Inform the attorney that the CDSA representative will request that the court record be sealed.
6. The CDSA director may send a letter to the attorney, per the standard format attached.
 7. If the CDSA staff person must appear in Court, they will bring a notarized copy of record, if the record has been subpoenaed. If the record has not been subpoenaed the CDSA staff person may bring notes with him that they have reviewed with the CDSA director, but these notes may be included in the Court evidence. **Prior to releasing any written information or testifying, the CDSA staff person must inform the judge that he or she can not comply unless ordered to do so by the Judge and that as our records are confidential, request that the information be sealed. For example, the staff may say:**
 - In response to the subpoena received by staff of the Children’s Developmental Services Agency in (county of primary CDSA office) NC, the Children’s Developmental Services Agency requests that information in the record of (child’s name) be sealed. This information is considered confidential information under the federal Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA). Pursuant to guidance from the North Carolina Department of Health and Human Services, Division of Child and Family Well Being, Early Intervention Section, this information is prohibited from disclosure and cannot be divulged unless ordered by the court.
 8. EISC contacts with Supervisors, Assistant Director, or Director should be recorded in service notes. The note should only contain information related to agency procedures, e.g., “Informed Director that Subpoena was served”, “Forwarded Subpoena to Director”, “Reviewed agency guidance on court testimony with Jane Doe, Supervisor”.
 9. Email should not be used to communicate with supervisors and/or EI Section office staff regarding content of subpoenas and/or contacts from attorneys.

Special Note:

Subpoenas by Fax – If an individual is subpoenaed by fax and is not or will not be present in the office on the day the subpoena is received, then

the person retrieving the fax from the machine should immediately:

1. Give or fax the subpoena to Director.
2. Notify the employee of the subpoena.
3. Notify the employee’s supervisor of the subpoena.

Notification can occur via phone (voicemail), face to face or via email.

*“Client information may be disclosed without the consent of the client in response to a court order.” See 10A N.C.A.C. 69.0505

References:

[The North Carolina Infant Toddler Program Procedural Safeguards Policy](#)