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	Chapter No./Name	1- Administrative Policy
	Part No./Name	5- Confidentiality
	Section No./Name	1-520 Release In CINC or TPR Proceedings
	Effective Dates	September 2010

1-520 RELEASE IN CINC OR TPR PROCEEDINGS

A. RELEASE TO A CHILD OR PARENT’S ATTORNEY

1. Release to Child’s or Parent’s Attorney Pursuant to a Discovery Order


The LA Children’s Code in Articles [652](#) and [1027](#) provides for the discovery of case record material by the child or parent’s attorney for “child in need of care” and “termination of parental rights” proceedings. *Article 652 refers to Child in Need of Care Proceedings only, while Article 1027 refers only to Termination of Parental Rights proceedings.**

An attorney for a child or parent in a child abuse or neglect case where court action is being taken in a "Child in Need of Care" proceeding, may file a discovery motion with the court. This can be filed at any stage in the proceeding (includes all hearings with the proceeding). Similarly, an attorney for a child or parent may file a discovery motion under Article 1027 for a "Termination of Parental Rights" proceeding. The court shall then order the District Attorney or the department to permit counsel to inspect and copy all records, documents, etc., that the state intends to offer into evidence at the adjudication and/or termination hearing. Additionally, the court may order that counsel be allowed to inspect reports of investigations, reports of evaluations or tests pertaining to the child, and case records pertaining to the child and the parent, except as prohibited by [LA R. S. 46:56](#) or a restrictive order.

*Per the Louisiana Children’s Code, Article [652](#) (Child in Need of Care proceedings):

At any stage of the (CINC) proceeding, upon written motion of counsel for the child or his parent, the district attorney, or the department, and after a contradictory hearing and a showing of good cause, unless all parties agree, the court shall order the other party to permit counsel to obtain discovery not provided for in paragraphs A and B of Children’s Code Article [652](#) regarding any matter, not privileged, including but not limited to attorney-client privilege or information not otherwise protected under R. S. 46:56 and 2124.1 or by restrictive order pursuant to [Article 653](#), which is relevant to the subject matter involved in the adjudication hearing including the existence, description, nature, custody, condition and location of any books, documents, or any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The discovery permitted under Articles 652 *(regarding Child in Need of Care proceedings)** and 1027 *(regarding Termination of Parental Rights proceedings)** does not include the disclosure of the identity of the reporter (it is protected under LA R.S. 46:56); any part of a writing that reflects the mental impression, conclusions, or

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theories of an attorney; records of investigations with final findings of invalid or inconclusive that were not used as the basis for a later investigation with a valid finding; *identification and location information regarding a victim of domestic abuse, victim of dating violence; attorney-client privilege information; ** or any information covered by a restrictive order rendered pursuant to Article [653](#) (restrictive orders in “Child in Need of Care” proceedings); or Article [1028](#) (restrictive orders in “Termination of Parental Rights” proceedings). *The regional attorney may be consulted as needed for clarifications regarding releasing information in accordance with state and federal statutes. **

The Home Development record of foster parents shall not be subject to disclosure. Refer to Section [9-805](#), Confidentiality of the Foster and Adoptive Home Case Record.

2. Release to a Child’s Attorney without a Discovery Order

LA R.S. 46:56 states that case records of children in abuse and neglect and foster care cases may be reviewed *** by attorneys who are appointed by a court of juvenile jurisdiction to represent the sole interest of children. However, prior to a court hearing, an attorney for a child may be provided copies of the most current case plan for the child and his family; the most recent court order and court report; and, the child’s most recent medical report.

B. RELEASE TO A COURT APPOINTED SPECIAL ADVOCATE


LA Children’s Code [Article 424.6](#) and [LA R.S. 46:56](#) include provisions for a CASA volunteer, pursuant to a court order, to review department case records relating to the child and his family and to other matters involved in the proceeding to which he is appointed. It also requires a CASA volunteer to maintain the confidentiality of all records and information reviewed in the course of his appointment, except or otherwise ordered by the court.

The case records review shall not include any restricted information as listed below in 1-520 C. In addition, the foster parents’ Home Development record may not be reviewed.

Pursuant to [LA R.S. 46:56](#) prior to a court hearing, the CASA volunteer may be given copies of the most current case plan for the child and his family, the most recent court order and court report, and the child’s most recent medical report.

C. PROCEDURES FOR COURT ORDERS FOR RELEASES

No information shall be released, other than releases specifically permitted by law, to a parent’s attorney, child’s attorney or CASA volunteer until a court order is duly served. Once the court order has been duly served, the following procedures shall be followed:

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1. Any court order shall be carefully reviewed by a supervisor and when necessary in consultation with the agency's Regional Attorney. If it specifically includes information for which release is prohibited by law or a disclosure that the agency believes requires a protective order, the Regional Attorney shall be contacted for consultation.

2. If the order does not specifically include information prohibited by law from release, or that the agency believes requires a protective order, staff shall prepare the record for review or copying. *Per Article 652, the party requesting discovery shall be responsible for reasonable copy costs associated with such discovery. Fees for copying shall be charged per DCFS policy 6-03, Uniform Fee Schedule for Copies of Public Records. If the child or parent is indigent, no charge shall be made for such copies. Each office shall maintain documentation of copies provided in association with discovery, including the case name, name of party requesting copies, and the total charge for the copies.**

The following categories of information shall be redacted *prior to the record being reviewed or copied:**

a. Reporter Information

Care shall be taken to redact the name of the reporter of abuse/neglect as well as any identifying information that could reveal the identity of the reporter;


The narrative, *case documentation notes** ACCESS Case Activity Logs and other content must be carefully reviewed for any reference to the reporter and steps taken, before copying the material, to remove such information.

b. Agency Attorney Consultations

All parts of the record that reflect the mental impressions, conclusions or theories of an attorney must be deleted. This includes all *case documentation notes,** ACCESS Case Activity Logs and other case record entries, forms and notes that include attorney consultations, conclusions, and recommendations. Any staffing in which an attorney is present is confidential and the notes, confirmations, minutes or other documentation of the meeting (including *case documentation notes,** or ACCESS Case Activity Log entries) are confidential and shall not be shared.

c. Investigations with Invalid and Inconclusive Findings

LA Children's Code Article 615 E. generally provides that all files, records, and pertinent information regarding the investigation of a report determined to be invalid or inconclusive shall be for the exclusive use of child protective services, to assist in future risk and safety assessments. The files, records, and information

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shall remain strictly confidential and shall not be disclosed or ordered to be produced in conjunction with any legal proceeding or other matter when it is a separate report/record.

Therefore, information regarding reports and investigations with overall final findings of invalid and inconclusive must be redacted from the case record. The exception is when the information was used as a basis for a later investigation for a finding of valid. In that case, the invalid/inconclusive investigation information is no longer maintained as a separate report and does not need to be redacted.

Also, investigations with individual invalid and/or inconclusive allegations, but having overall investigation findings of valid are not redacted.

d. Substance Abuse Treatment Information

Refer to Section [1-500 H. 2](#), for policy regarding substance abuse treatment records.

*e. Identifying information regarding a victim of domestic abuse or dating violence, per Article [652](#).**

3. The supervisor shall carefully review the ***record before it is made available to an attorney and review all**** copied materials before they are released to assure that all restricted/confidential information has been removed.
4. The actual case record is not made available to the attorney prior to the removal of material that may not be disclosed. If the attorney comes to the ***DCFS**** office, ***(s)he**** shall have no part in selecting or copying the information.


Copies of the case material shall only be given or sent to the child or parent’s attorney. It shall not be given or sent to the parents or the child. When an attorney represents only one parent, only the information about the parent represented is given to the attorney. No information about the other parent may be shared with an attorney for another parent.

D. DISCUSSING THE CASE WITH THE CHILD’S OR PARENT’S ATTORNEY

To comply with the concept of due process in judicial proceedings and still maintain the confidentiality of records in accordance with [LA R.S. 46:56](#), the following shall apply in regard to worker’s discussing a case with the parent’s or child’s attorney:

1. Child’s and/or Parent’s Attorney Makes Contact with Worker at Court Hearing

It is permissible for the worker to discuss some general information in a case with the parent’s or child’s attorney prior to the hearing.

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The worker may let the parent’s or child’s attorney know what general information the agency is planning to present to the court, and what recommendations will be made.

If the Assistant District Attorney or other attorney representing the agency is immediately available, that person should be included in the discussion. However, the worker shall not refuse to discuss the case with the parent’s or child’s attorney(s) if the other attorneys involved in the case are not available.

2. Child’s and/or Parents’ Attorney Contacts Worker Prior to Court Hearing

When the child’s or parent’s attorney contacts the worker prior to the court hearing, the worker shall advocate for a pre-trial conference with the assistant District Attorney or Regional Attorney, the parent’s attorney and the child’s attorney. This gives all the attorneys of record an opportunity to discuss the evidence in a case. It would be preferable for the agency to have its Regional Attorney ***or the District Attorney**** present at a pre-trial conference but this is not mandatory. A meeting with the parent’s attorney can be held without a Regional Attorney or the assistant District Attorney present. However, as a matter of professional courtesy, the District Attorney should be advised when a meeting with the parent’s attorney has been requested and is being planned.


E. TAKING THE CASE RECORD TO COURT

Although taking the case record to court does not violate [LA R.S. 46:56](#), it can make it difficult for the worker to protect information in the case record. Therefore, in the absence of a court order or request of the assistant District Attorney or Regional Attorney for the record, staff shall bring only copies of the case record material necessary to provide accurate testimony in the hearing. Workers may use notes as a substitute for the case record when testifying, however they must be sure that the notes provide all information from the case record necessary to give accurate and complete testimony.

If a court, District Attorney or Regional Attorney in a parish has a standing requirement that workers routinely bring case records to court, or if there is a court order to produce the record, it is permissible to bring either the original record or a reproduced copy of the record to a hearing. All information in the record shall be kept confidential unless release is permitted by law or mandated by order of the court.

F. EXCEPTIONS TO EVIDENTARY PRIVILEDGES

Louisiana law includes several exceptions to the confidentiality of certain information in proceedings involving child abuse/neglect.

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1. LA R.S. 14:403

[LA R.S. 14:403 B.](#) provides that in any proceeding concerning the abuse, neglect or sexual abuse of a child or the cause of such condition, evidence may not be excluded on any ground of privilege, except for communications between any attorney and his client or between a priest, rabbi, minister of Christian Science practitioner and his communicant.

2. Testimony of Licensed Social Workers

[LA R.S. 37:2718 C.](#) waives the privileged communications requirements for a social worker, permitting the voluntary testimony of a licensed social worker in a court hearing concerning adoption, child abuse and neglect, and other matters pertaining to children.