

Child and Family File – Subpoena Procedure

Policy/ Approach:

A subpoena is a document that requires a person to appear in court or requires a person or agency to produce documents for examination in court; or both. If the subpoena is for testimony at a trial, hearing or deposition, and also requests documents, the person subpoenaed must bring the original documents with them.

Oregon Administrative Rules (OAR): OAR 581-021-0340 – Exception to Prior Consent:

This disclosure is to comply with a judicial order or lawfully issued subpoena.

Procedures:

When a subpoena is received by an Agency Staff member, the Staff member will inform their Site Manager immediately.

The Site Manager will inform the HR Director. The HR Director will inform the 0-5 Head Start Director. The HR Director will contact the attorney who has issued the subpoena and gather additional information on the scope and purpose in order to ensure all the necessary records are provided.

A. If the subpoena requires records:

Data Monitoring and Compliance Manager or ERSEA Manager will:

1. Print out all required reports and documents.
2. Route them to Department Managers/Directors for review.
3. If the child is no longer enrolled in the program, a letter and a copy of the subpoena will be sent to the parent's last known address to notify the parent that we are complying with a judicial order.
4. If the subpoena calls for staff to testify, the records will be provided to the staff member.
5. If the subpoena is for records only, the staff member who prepared the reports will include a signed letter of declaration that it is a true copy of all records responsive to the subpoena and mail the records to the person specified in that subpoena.

B. When the subpoena is for medical records:

There are specific rules governing subpoenas for medical records. These rules are in place to comply with the requirements of HIPAA. Any subpoena requiring production of medical records should be accompanied by a qualified protective order from the court, or a "HIPAA Release." If neither of these documents are included with the subpoena, medical records cannot be released. If the records are properly requested, compliance with the subpoena requires the following:

The copy of the records shall be separately enclosed in a sealed envelope on which the title and number of the action, name of the witness, and date of the subpoena are clearly inscribed. The sealed envelope shall be enclosed in an outer envelope and sealed. The outer envelope or wrapper shall be addressed as follows: (i) if the subpoena directs attendance in court, to the clerk of the court, or to the judge thereof if there is no clerk; (ii) if the subpoena directs attendance at a deposition or other hearing, to the officer administering the oath for the deposition, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business; (iii) in other cases involving a hearing, to the officer or body conducting the hearing at the official place of business; (iv) if no hearing is scheduled, to the attorney or party issuing the subpoena.

The records shall be accompanied by a declaration of a custodian of the records, stating in substance each of the following: (i) that the affiant or declarant is a duly authorized custodian of the records and has authority to certify records; (ii) that the copy is a true copy of all the records responsive to the subpoena; (iii) that the records were prepared by the personnel of the entity or person acting under the control of either, in the ordinary course of the entity's or person's business, at or near the time of the act, condition, or event described or referred to therein.