



**Justice Center for the
Protection of People
with Special Needs**

ANDREW M. CUOMO
Governor

DENISE M. MIRANDA
Executive Director

November 3, 2017

Mr. Christopher Suriano, Assistant Commissioner
New York State Education Department
Office of Special Education
89 Washington Avenue, Room 309 EB
Albany, New York 12234

Dear Mr. Suriano:

The Justice Center for the Protection of People with Special Needs (Justice Center) is charged with protecting people receiving services in facilities under its jurisdiction from abuse, neglect and other conduct that may jeopardize their health, safety and welfare pursuant to Article 20 of the New York Executive Law. To that end, the Justice Center conducts systemic reviews in order to identify risks to the health, safety and welfare of people receiving such services.

On October 17, 2017, the Justice Center issued a revised draft of our review of incident reporting to the Justice Center at six SED-approved schools, entitled *Review of Incident Reporting to the Justice Center from State Education Department Programs*.¹ The Justice Center received a response from New York State Education Department (NYSED) Office of Special Education dated October 26, 2017, outlining the actions your office has already taken in follow up to the review findings as well as additional prevention measures that will be implemented in the near future. The final review findings, including the response provided by your office, is attached.

This review was conducted by the Justice Center and would not have been possible without the cooperation and professionalism that staff from all six SED-approved school and NYSED provided during the review. We appreciate and join you in your continuing commitment to the care of vulnerable people in New York State.

Sincerely,

Denise M. Miranda, Esq.
Executive Director

¹ This Review was performed pursuant to the Justice Center's authority as set forth in the Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012.

Cc: Laura Darman, Justice Center
Davin Robinson, Justice Center
Colleen Carroll-Barbuto, Justice Center
Richard Neaton, Justice Center
Alan Mueller, NYSED

NOTE: All correspondence related to this matter will be available for public inspection under Article 6 of the Public Officers Law. Material which will be required to be kept confidential or which is protected from disclosure under the Public Officers Law or other laws will be redacted prior to such disclosure.



October 26, 2017

Denise M. Miranda, Esq.
Executive Director
Justice Center for Protection of People with Special Needs
161 Delaware Avenue
Delmar, NY 12054

Dear Ms. Miranda:

The New York State Education Department's (NYSED) Office of Special Education is in receipt of the revised draft report entitled, "Review of Incident Reporting to the Justice Center from State Education Department Programs," that was conducted by the Justice Center's Prevention and Quality Improvement Unit during the 2016-17 school year in six NYSED-approved private residential schools that fall under the jurisdiction of the Justice Center (NYSED-covered schools). We would like to thank the Justice Center for its proactive approach in reviewing a sample of NYSED-covered schools and for the high degree of cooperation between the Justice Center and the Office of Special Education's Incident Management Unit (IMU). I appreciate the opportunity to review the revised draft findings and recommendations dated October 2017. I would like to thank you for revising this draft based on the points of clarification made by NYSED in my letter to you dated October 12, 2017.

I would like to take this opportunity to share with you the efforts currently underway by this Office to clarify agency staff responsibility to report all reportable incidents to the Vulnerable Persons' Central Registry (VPCR), which is maintained by the Justice Center. Immediately following the site visits, the Justice Center issued exit letters to each school. IMU reviewed the exit letters, contacted the schools, and requested a response with evidence to ensure that each school had addressed all preliminary findings and recommendations which identified staff training, policies, and supervisory approval as the underlying cause of the underreporting. At this time, IMU has determined that each of the six schools reviewed by the Justice Center has revised policies, retrained staff, and reinforced reporting requirements.

In addition, IMU has been proactive in its oversight and training of staff in NYSED-covered schools as indicated below:

- During the 2016-17 school year, IMU provided on-site training to 55 of the 106 in-State and out-of-State residential programs approved to serve New York State students on the topic of NYSED regulations (8 NYCRR §200.15) that conform to Justice Center requirements.

- IMU will continue to provide training on 8 NYCRR §200.15 to an additional group of schools during the 2017-18 school year.
- IMU has contacted each of the NYSED-covered schools informing them of the new guidance issued by the Justice Center on "Relief from Requirements for Multiple Reporting of Reportable Incidents," and NYSED has issued a formal memorandum providing this clarification from the Justice Center.
- A one-page reference tool is under development which will clarify for NYSED-covered schools what constitutes significant incidents and abuse/neglect incidents that must be reported to the Justice Center. This document will assist all NYSED-covered schools with developing appropriate training for staff who are mandated reporters. It is still NYSED's intent to refer schools and staff to the Justice Center's website for comprehensive guidance on reportable incidents.
- A joint memorandum co-authored by the Office of Children and Family Services (OCFS) and NYSED clarifying how each agency defines restraint and seclusion is under development. This guidance is to clarify confusion in the field regarding the use of physical interventions, including the use of physical restraints, in programs for children operated/approved/licensed by OCFS that are co-located with an approved NYSED residential school program.
- The Special Education Quality Assurance Nondistrict Unit will implement a new self-assessment tool this fall for all NYSED-covered schools to assess compliance with requirements under 8 NYCRR §200.15.
- Beginning in 2018 after the self-assessments are completed, the Nondistrict Unit will conduct monitoring reviews of NYSED-covered schools for compliance with 8 NYCRR §200.15 and issue compliance assurance plans to address any identified noncompliance.

NYSED takes the health and safety of students in all its approved schools seriously and appreciates the efforts undertaken by the Justice Center to protect the health, safety, and welfare of the students in NYSED-covered schools. We appreciate your consideration of our recommended changes to the draft report before issuing the final report. We look forward to our continued collaboration on behalf of these students. Please contact Alan Mueller at (518) 473-1185 to discuss any aspect of the report or our plan for oversight of these schools.

Sincerely,



Christopher Suriano

c: Jacqueline Bumbalo
Eileen Borden
Alan Mueller



**Justice Center for the
Protection of People
with Special Needs**

Justice Center for the Protection of People with Special Needs

Prevention and Quality Improvement Unit

Review of Incident Reporting to the Justice Center from State Education Department Programs

November 2017

The Justice Center's Promise to New Yorkers with Special Needs and Disabilities

OUR VISION

People with special needs shall be protected from abuse, neglect and mistreatment. This will be accomplished by assuring that the state maintains the nation's highest standards of health, safety and dignity; and by supporting the dedicated men and women who provide services.

OUR MISSION

The Justice Center is committed to supporting and protecting the health, safety, and dignity of all people with special needs and disabilities through advocacy of their civil rights, prevention of mistreatment, and investigation of all allegations of abuse and neglect so that appropriate actions are taken.

OUR VALUES AND GUIDING PRINCIPLES

Integrity: The Justice Center believes that all people with special needs deserve to be treated with respect and that people's rights should be protected.

Quality: The Justice Center is committed to providing superior services and to ensuring that people with special needs receive quality care.

Accountability: The Justice Center understands that accountability to the people we serve and the public is paramount.

Education: The Justice Center believes that outreach, training, and the promotion of best practices are critical to affect systems change.

Collaboration: Safe-guarding people with special needs is a shared responsibility, and the Justice Center is successful because it works with agencies, providers, people who provide direct services, and people with special needs to prevent abuse and neglect.

Table of Contents

Executive Summary	1
Review Findings	4
• Reporting.....	4
• Training.....	5
• Incident Reporting Policies.....	6
• Supervisory Approval for Incident Reporting.....	7
Recommendations	8
Appendices	10

Contact Information:

Patricia Efner, Lead Quality of Care Facility Review Specialist
Justice Center for the Protection of People with Special Needs
Prevention and Quality Improvement
161 Delaware Avenue
Delmar, New York 12054
(518) 549-1248

Danielle Hosterman, Lead Quality of Care Facility Review Specialist
Justice Center for the Protection of People with Special Needs
Prevention and Quality Improvement
161 Delaware Avenue
Delmar, New York 12054
(518) 549-0322

Richard Neaton, Supervising Quality of Care Facility Review Specialist
Justice Center for the Protection of People with Special Needs
Prevention and Quality Improvement
161 Delaware Avenue
Delmar, New York 12054
(518) 549-1253

Executive Summary

Purpose

This review, conducted by the Justice Center for the Protection of People with Special Needs (Justice Center) with assistance from the State Education Department (SED), was initiated in response to concerns from SED and data analysis from the Vulnerable Persons Central Register (VPCR) that indicated a lack of reporting or under-reporting of reportable incidents from SED-approved schools under the Justice Center's jurisdiction. To address these concerns, six SED-approved schools were selected from across the state for assessment of policies, procedures and practices regarding incident reporting. The schools varied in location, size and population served. The Justice Center examined relevant documentation including policies and training records, and conducted site visits at each school which included interviews with staff. This review identifies factors that appear to be contributing to the lack of reporting or under-reporting at the identified schools and offers recommendations to ensure the health, safety, and welfare of people receiving services at SED-approved schools.

This review could not have been completed without the cooperation and professionalism of the staff at schools included in this review.

Program Descriptions

Charlton School

Located in Burnt Hills, New York, The Charlton School is a not-for-profit, residential treatment center and special education school for girls in the 8th to 12th grades. The school utilizes SED learning standards, assessments, and curriculums with the intent of preparing people in care to pass Regents examinations and graduate from high school. A structured school environment includes guidance from a child psychiatrist, counselors, teachers and support staff. As of January 17, 2017, the school served 23 students who resided on campus and 11 day students from local school districts. The agency has 72 staff, some of whom work in the residence and the school.

Harmony Heights School

Harmony Heights School, located in East Norwich, New York, is a residential treatment program which serves girls from 8th to 12th grade. The students of Harmony Heights are referred to the school from local school districts because they are experiencing serious emotional crises or trauma and/or after a psychiatric hospitalization. Students who are physically violent, drug dependent or diagnosed with conduct disorder are not accepted. The school employs a diverse staff including clinical staff, to help students address their

emotional needs and graduate from high school. On May 25, 2017, there were 56 day students from local schools and 30 students who resided on campus.

Mountain Lake Academy

Located in Lake Placid, New York, Mountain Lake Children's Residence is a residential treatment program that includes academic programs for adolescent males, ages 12 to 21, with social-emotional and educational needs. The residence has two separate programs, Mountainview and Brookview and students from both programs attend the Mountain Lake Academy. Students are referred by school districts, county Department of Social Services, and the Office of Children and Family Services. The residential program has a capacity of 44 students. On March 31, 2017, there were 36 students in residential care. There were no day students. There are 20 staff at the school, including teachers, teacher aides, and a social worker.

Henrietta G. Lewis School

The Henrietta G. Lewis School is located on the grounds of the Wyndham Lawn Home for Children. The school serves students who are experiencing educational, emotional and behavioral challenges who reside in the Wyndham Lawn Home for Children as well as day students from surrounding public school districts. The school offers classes for children in grades Kindergarten through 12th grade. At the time of the site visit, there were 98 students enrolled, with a maximum capacity of 102. The agency employs 72 staff members divided between administration, teaching, and support staff.

St. Mary's School for the Deaf

St. Mary's School for the Deaf is in Buffalo and provides academic programming for deaf students from birth through age 21. The Elementary Program serves children from birth through 5th grade and includes the Special Needs Achievement Program (SNAP) and alternative classes for children with multiple disabilities. The Secondary Program has middle school (grades 6-8) and high school (9-12 grade). For alternative learners, St. Mary's offers modified academic classes that include vocational and occupational training. St. Mary's uses all methods of communication including amplification (hearing aids, cochlear implants and assistive technology), speech, and auditory training, sign language, speech reading, voice, written English and visual imagery. At the time of our visit, there were 102 children attending from 8 counties. There were 131 staff members.

The Phyllis L. Susser School for Exceptional Children

Phyllis L. Susser School for Exceptional Children is a part of Birch Family Services and is located in Flushing, New York. It is a New York State approved non-public school that provides a 12-month special education program for students age 11-21 funded by their local school districts. The school serves students with the following educational classifications: autism, speech and language impairment, intellectual disability, emotional

disability, multiple disabilities, other health impairment and traumatic brain injury. The census at the time of our visit was 83 students and 63 staff.

Key Findings

1. Reportable incidents are not being reported to the Justice Center.
2. Training on reporting to the Justice Center is not consistent across SED programs.
3. Schools are utilizing policies that do not include the requirement to report incidents to the Justice Center.
4. Staff have received incorrect reporting guidance from their supervisors.
5. Some schools require supervisory approval prior to contacting the Justice Center.

Key Recommendations

1. Ensure that all reportable incidents are reported to the Justice Center. Implement supervisory oversight and quality improvement processes in the schools to capture and address staff reporting deficiencies. Provide school staff with additional reminders on reporting expectations in addition to the regularly completed training.
2. Ensure training on the Justice Center is occurring at the time of hire and annually thereafter as required and develop mechanisms to confirm that staff are retaining information on reporting requirements. Evaluate the materials utilized for Mandated Reporting training in the schools and when appropriate use the most updated version of materials available on the Justice Center website.
3. Update policies to reflect Justice Center mandates and train all staff members on the revised policy.
4. Review all guidance documents currently used in the schools with SED to ensure compliance with Justice Center and SED regulations. Remove guidance documents issued or approved from other state oversight agencies from the schools.
5. Remove any requirement of obtaining supervisory approval before reporting to the Justice Center from all formal and informal reporting policies and practices.

Review Findings

Background

The Justice Center is charged with protecting people receiving services in facilities under its jurisdiction from abuse, neglect and other conduct that may jeopardize their health, safety and welfare pursuant to Article 20 of the New York Executive Law. To that end, the Justice Center conducts systemic reviews to identify risks to the health, safety and welfare of people receiving such services.

This review was launched in response to the concerns of SED that schools were not reporting incidents to the Justice Center as required by the Protection of People with Special Needs Act.¹ Data obtained from the Justice Center's incident management system and hotline, the Vulnerable Person's Central Register (VPCR) supported this concern about a failure to report incidents to the Justice Center.

Scope and Methodology

This review focused on six schools selected from across the state which are approved by SED and fall under the Justice Center's jurisdiction. The schools were selected through discussions with SED and from the data contained in the VPCR. At each school as part of this review, the Justice Center:

- Conducted on-site visits.
- Interviewed staff members with a variety of roles and responsibilities, including administrative, clinical, educational and support staff. In total, 79 staff were interviewed.
- Reviewed program policies and procedures on internal and external incident reporting.
- Examined school documentation including training records, incident reports, log books.
- Assessed efficacy of training provided to staff on reporting to the Justice Center.

Reporting

A. Reportable incidents were not being reported to the Justice Center.

The Justice Center reviewed all internal incident reports from a period of two-months prior to each site visit. This review found that five out of six schools had incidents that

¹ Chapter 501 of the Laws of 2012

should have been reported to the Justice Center. A total of 18 incidents were reported to the VPCR upon discovery [REDACTED] and assigned to SED.²

Examples of incidents that were not reported to the VPCR until the Justice Center's site visits include:

- While on 1:1 supervision, a student assaulted another student by grabbing her glasses and pushing her face towards a padded wall.
- A student was missing in school for a short period and when staff located her she was found to be huffing nail polish.
- A student punched a wall several times and had visible bruising and swelling. No medical assessment was completed at the time and the incident was not reported.

All these incidents were classified as significant incidents, and should have been reported to the Justice Center at the time they occurred.³

Training

A. Some staff did not recall receiving training on reporting to the Justice Center.

While administrative staff at all six schools reported that Justice Center training is provided, staff at two out of six schools did not recall receiving training on what to report to the Justice Center.⁴

- At one school, ten out of eighteen staff interviewed reported that they had not received training on the Justice Center.
- At another school, staff provided varied reports on whether they received training on reporting to the Justice Center. Some staff identified specific training on Justice Center reporting, while others were unable to recall having had any training about reporting to the Justice Center.

² [REDACTED]

³ Significant Incident is defined as: Any incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of a situation, may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services.

⁴ Staff interviewed included clinical staff, teachers, teachers' aides, and administration.

B. Staff did not know that significant incidents must be reported to the Justice Center.

At all schools, staff identified incidents of abuse and neglect and knew that these incidents should be reported; however, none of the staff at the six schools visited knew the definition of a significant incident or that significant incidents are reportable to the Justice Center. One such example is staff describing staff on student violence as a reportable but not student on student violence.

C. Staff at two schools were given incorrect information about reporting abuse and neglect.

Staff at two out of six schools stated during interviews that they had been instructed to report all incidents of abuse and neglect to the Justice Center, the State Central Register of Child Abuse (SCR) and the police. Staff reported these practices can be confusing, time consuming and are not correct. Incidents that occur at the school or on the campus should be reported to the Justice Center, not the SCR.

Incident Reporting Policies

A. Schools were utilizing policies that did not include the requirement to report incidents to the Justice Center.

A review of policies regarding incident reporting and management indicated that three out of six schools were utilizing policies which did not include the requirement to report incidents to the Justice Center.

- One of the schools had not updated their policy related to child abuse and maltreatment since July 2010. Additionally, this policy includes references to a state oversight agency other than SED. This same school has not updated their incident reporting policy since July 9, 2012.
- Another school's reporting policy outlined outside entities who should be contacted when an incident occurs, such as law enforcement and family members, but did not include the requirement to report to the Justice Center.
- A third school had an Employee Policy/Procedures Handbook updated in September 2016 that did not include the requirement to report incidents to the Justice Center.

B. Schools were utilizing unapproved guidance documents from other state agencies.

Interviews with staff at two schools revealed the use of a reference document regarding what is reportable to the Justice Center. Staff indicated that supervisors provided them with this document. The Justice Center reviewed this document while on-site and determined that it was a resource issued by the Office of Children and Family Services.

Supervisory Approval for Incident Reporting

A. Staff were not reporting incidents to the Justice Center until they received approval from a supervisor.

During interviews, staff at three out of six schools did not understand their role as mandated reporters.

- At one school, staff completed the incident report and a supervisor determined if a report to the Justice Center was required and made the call to the VPCR.
- Another school required that staff consult with a supervisor or social worker prior to making a call to the VPCR.
- At a third school, staff consistently reported they must share any reportable incidents with the director of administration and he determines which incidents to report to the Justice Center.

Recommendations

The Justice Center's specific recommendations are detailed below. While this review focused on incident reporting at these six schools, the Justice Center recommends SED assess all schools with attention to these findings and apply the recommendations across all of them, as appropriate.

1. Ensure all reportable incidents are reported to the Justice Center.
 - Implement supervisory oversight in the schools to ensure staff are making all required notifications when a reportable incident occurs.
 - Develop a quality improvement process to capture and address individual staff reporting deficiencies to ensure future compliance.
 - Provide reminders about Justice Center reporting expectations in addition to annual training to all staff, through staff meetings, memos, regular staff supervision, and/or ongoing trainings.
2. Ensure training on the Justice Center is occurring at the time of hire and annually thereafter as required.
 - Evaluate when and what materials are used for training on mandated reporting for school staff. Provide training in addition to what is received at orientation and required annual trainings.
 - Re-train staff on the role of a mandated reporter with specific attention to what encompasses a reportable incident. Justice Center training resources are available on the Justice Center website to help staff understand the definition of a reportable incident.
 - Develop a process to evaluate staff retention of training on reporting to the Justice Center. This can be done by utilizing measurement tools, supervision, and continuous quality improvement practices to ensure staff have retained information.
3. Review all guidance documents used in schools to ensure compliance with Justice Center and SED regulations and train all staff members on the revised policy.
 - Review and revise policies in the schools to reflect the requirement to report incidents to the Justice Center, as appropriate. Ensure the revised policies provide the current reporting requirements and outline each individual staff member's responsibility as a mandated reporter.

- Clearly outline in policies for staff what types of incidents should be reported to the Justice Center.
 - Train all staff on revised or newly developed policies and procedures.
4. Confirm that only SED-approved guidance on Justice Center reporting is utilized.
 - Assess all incident reporting guidance documents in place in the schools to ensure they are either issued by SED or approved by SED. Remove all incident reporting guidance documents which are not issued or approved by SED.
 5. Eliminate any policy that requires obtaining supervisory approval before reporting to the Justice Center.
 - Revise all formal and informal reporting practices in schools that require staff to obtain supervisory approval before making a report to the Justice Center.