



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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ASSISTANT COMMISSIONER
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neglect and other conduct that may jeopardize their health, safety and welfare,
including:

SECTIONS 200.7 & 200.15 OF THE REGULATIONS OF THE COMMISSIONER

maladaptive behaviors, including such interventions as: contingent application of noxious, painful, intrusive stimuli or activities; strangling, shoving, deep muscle squeezes or other similar stimuli; any form of noxious, painful or intrusive spray, inhalant or tastes; contingent food programs that include the denial or delay of the provision of meals or intentionally altering staple food or drink in order to make it distasteful; movement limitation used as a punishment, including but not limited to helmets and mechanical restraint devices; or other stimuli or actions similar to the proceeding interventions. The term does not include such interventions as voice control, limited to loud, firm commands; time-limited ignoring of a specific behavior; token fines as part of a token economy system; brief physical prompts to interrupt or prevent a specific behavior; interventions medically necessary for the treatment or protection of the student; or other similar interventions.

- o Obstruction of reports of reportable incidents: Conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a student by falsifying records related to the safety, treatment or supervision of a student, actively persuading a mandated reporter from making a report of a reportable incident to the Vulnerable Persons' Central Register (VPCR) with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing regulations, policies or procedures; or for a mandated reporter who is a custodian, failing to report a reportable incident upon discovery.
 - o Unlawful use or administration of a controlled substance:
 - f* Any administration by a custodian to a student of a controlled substance as defined by article 33 of the Public Health Law⁴, without a prescription;
 - f* Any administration by a custodian to a student of other medication not approved for any use by the United States Food and Drug Administration; or
 - f* A custodian unlawfully using or distributing a controlled substance as defined by article 33 of the Public Health Law⁴
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Staff exclusion list (SEL)

The register developed and maintained by the Justice Center pursuant to section 495 of the Social Services Law⁶, of subjects of reports who have been found to have a substantiated category one case of abuse or neglect.

Subject of the report: means a custodian who is reported to the Vulnerable Persons' Central Register for the alleged abuse or neglect of a student.

Vulnerable Persons' Central Register (VPCR)

The statewide central register of reportable incidents involving vulnerable persons established and operated in accordance with section 492 of the Social Services Law⁶.

Note:

Chapter 501 defines abuse and neglect of vulnerable persons in broad terms, including both actual harm and the risk of harm. Examples of custodian behaviors that constitute abuse and neglect, as well as examples of what constitutes a significant incident, are available in the Justice Center's Notice to Mandated Reporters <https://www.justicecenter.ny.gov/mandated-reporters>

SECTION 200.15(c) - PERSONNEL SCREENING PROCEDURES

Consistent with requirements in effect prior to the enactment of Chapter 501, residential schools must establish, subject to and consistent with provisions of the Civil Service Law, written procedures to review, evaluate and verify the backgrounds of, and information supplied by, all applicants for employment or voluntary work.

Such procedures must include, but need not be limited to, the gathering of:

- x a statement or summary of the applicant's employment history, including, but not limited to, any relevant child-caring experience;
- x the names, addresses and telephone numbers of references who can verify the applicant's employment history, work record and qualifications;
- x a statement or summary of the applicant's educational experience showing elementary school(s), secondary school(s), or college(s) attended, highest grade level or degree attained, any additional credits earned, and certifications and/or licenses awarded;
- x the names and addresses of elementary and secondary schools and other educational institutions that can verify the applicant's educational information;
- x a listing of special skills or completed training courses which might aid in the performance of duties of the position for which he or she is applying;
- x the names, addresses and telephone numbers of at least two personal references, other than relatives, who can attest to the applicant's character, reputation and personal qualifications; and
- x a sworn statement by the applicant, indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this State or any other jurisdiction and that all statements in the application are true, to the best of his or her knowledge.

⁶ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

SECTION 200.15(e) - STAFF SUPERVISION

No substantive changes were made to section 200.15(e) of the Regulations of the Commissioner of Education relating to staff supervision (formally section 200.15(d)). This section requires that residential schools develop written procedures for the supervision of employees and volunteers who have potential for contact with students in residential schools. Such procedures must be designed to protect students from abuse, neglect and significant incidents by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the school.

The procedures must include, but need not be limited to, the following:

- x staffing patterns and the rationale for such;
- x responsibilities of supervisors;
- x the method by which staff and volunteers will be made aware of the identity of all supervisors, including designated on-site supervisors;
- x provision of written supervisory guidelines to employees and volunteers;
- x periodic observations by supervisors of employees and volunteers in interaction with students;
- x periodic supervisory conferences for employees and volunteers; and
- x written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the Civil Service Law and existing collective bargaining agreements.

SECTION 200.15(f) - PROCEDURES FOR THE PROTECTION OF STUDENTS

Section 200.15(f) of the Regulations of the Commissioner of Education (formally section 200.15(e)) relating to the written procedures for the protection of students.

Note :

- 9 Schools must have at least two administrative emergency contact persons available both during school and nonschool hours.
- 9 The State will contact the school administrators by telephone to ensure the school has taken the appropriate safety steps.
- 9 The school must notify the parent(s) of student(s) affected by an alleged incident of abuse or neglect¹².
- 9 A copy of the checklist that residential schools must use to document the actions it has taken relating to each incident is available in SED's July 2013 field memorandum Chapter 501 of the Laws of 2012 ("Protection of People with Special Needs Act") - Immediate Protections Safety Assessment and Off Hours Emergency Contact Information for Residential Schools which can be found at <https://www.nysed.gov/special-education/guidance-documents-related-justice-centerimu>.
- 9 A copy of the Immediate Protections Safety Assessment form must be faxed to SED at (518) 474-6963 within 24 hours of the reported incident.
- 9 Schools should notify SED of any changes to their emergency contact persons by faxing an updated copy of the Off Hours Emergency Contact Information form to (518) 474- 6963.

Investigations and report of findings

Section 200.15(f)(3) of the Regulations of the Commissioner of Education adds the following requirements relating to investigations of reportable incidents and the report of findings.

- x Residential schools must take appropriate action to support a request for information from the Justice Center, its representative or designee, or SED when such requests are made in accordance with law and regulation.
- x Residential schools must promptly report to the Justice Center the resignation or termination of a subject of a report of alleged abuse or neglect from his or her position while an investigation is pending.
- x If so directed, in-State residential schools must, promptly investigate a report of a significant incident consistent with guidelines issued by SED. A report of the findings must be submitted to SED within 60 days of date the Vulnerable Persons' Central Register accepted the report of the significant incident.
- x Schools must maintain all information, including information identifying the subject of the report of alleged abuse or neglect and other persons named in the report to the Vulnerable Persons' Central Register, in accordance with section 496 of Social Services Law¹³. All personally identifiable data information or records with respect to a student are subject to the requirements of section 200.2(b)(6) of the Regulations of the Commissioner of Education relating to confidentiality of personally identifiable data, information or records pertaining to a student with a disability.

¹² Schools should also exercise appropriate discretion to notify parent(s) of a student(s) affected by a significant incident, particularly if the incident resulted in harm to the health, safety or welfare of that student(s).

¹³ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

Note :

The SED guidelines for conducting an investigation of a significant incident and a copy of the Residential School's Written Findings of the Investigation of a Reported Significant Incident Template, which must be used to document the findings of the investigation, are available at <https://www.nysed.gov/special-education/justice-center-protection-people-special-needs>.

Plans of Prevention and Remediation

Abuse and neglect: Section 200.15(f)(4)(i) of the Regulations of the Commissioner of Education requires the residential school to develop a plan of prevention and remediation upon receipt of an investigative report of abuse or neglect that identifies the need for corrective action. In developing this plan, the school must consider any recommendations of the Justice Center, its representative or designee, and/or SED.

- x Unless immediate corrective action is warranted, within 10 days of receipt of such a report, a residential school must develop, implement and submit to SED, a written plan of prevention and remediation to be taken with respect to an individual employee or volunteer and/or the residential school to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect, which must include, at a minimum, those actions previously taken by the residential school to ensure the safety of student(s) upon being notified that an allegation of a reportable incident was made to the VPCR.

- x In the event a report of abuse or neglect determines that such abuse or neglect may be attributed in whole or in part to noncompliance by the facility with provisions of article 11 of the Social Services Law, or sections 4212, 4314, 4358 or 4403(11)-(12) of the Education Law or the Regulations of the Commissioner of Education, the residential school must develop and implement a plan of prevention and remediation, which must address, at a minimum, those areas in which the facility has been found to be out of compliance and indicate the manner in which the facility will come into compliance. The plan must be developed and submitted for approval to the appropriate designee of the Commissioner within 36 (nu)10 (duc)12t



SECTION 200.15(g) - OUT-OF-STATE RESIDENTIAL SCHOOLS

Section 200.15(g) of the Regulations of the Commissioner of Education has been added relating to requirements pertaining to out-of-State residential schools.

- x When there is an allegation of abuse or neglect of a NYS student attending an out-of-State residential school , the residential school must immediately notify the Justice Center, SED and any local social services district and/or school district who placed the student in the residential school or the State agency funding the placement of that student.

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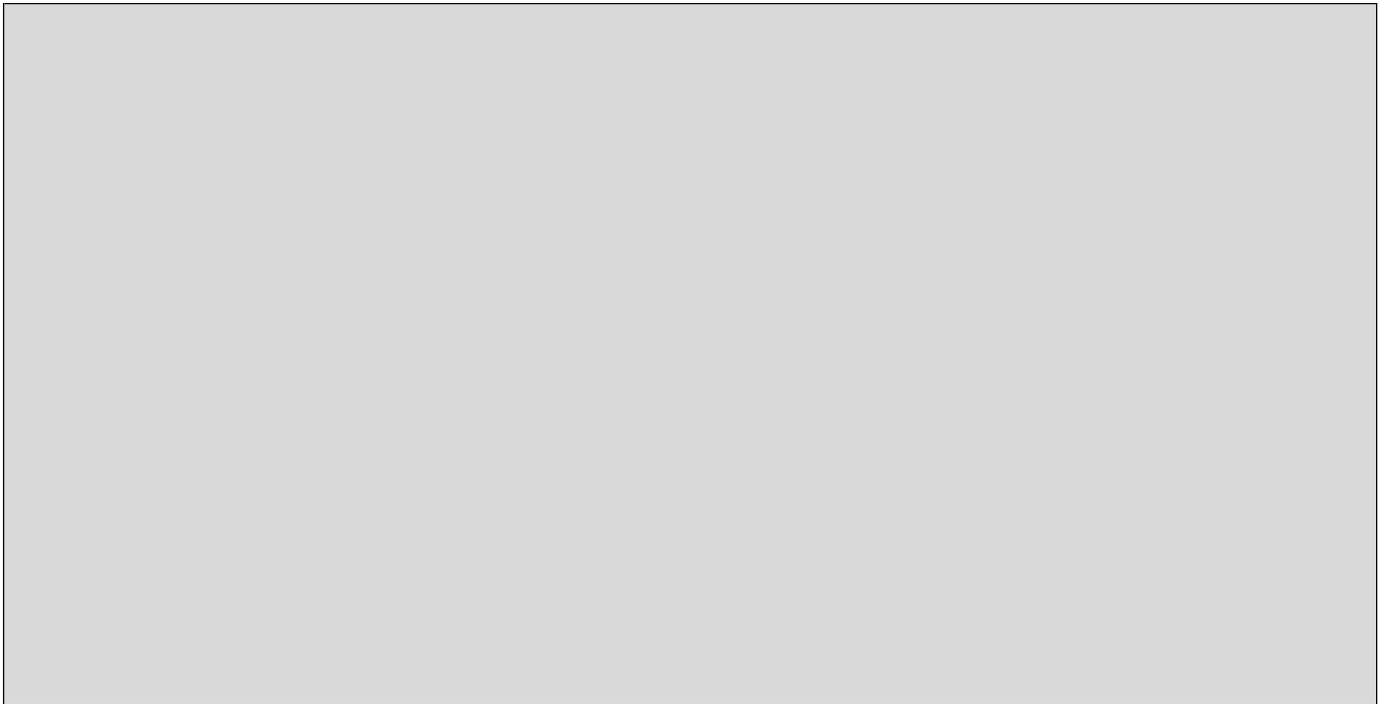
Notes :

- 9 A copy of the Code of Conduct for Custodians of People with Special Needs developed by the Justice Center and the corresponding cover letter is available at <https://www.justicecenter.ny.gov/code-conduct>
- 9 The code of conduct must be read and signed at least annually by all custodians. Existing custodians were required to read and sign the code of conduct by June 30, 2013. All other custodians must read and sign at the time of employment or affiliation.
- 9 Additional information on the new requirements relating to the code of conduct is available in the SED June 2013 field memorandum Chapter 501 of the Laws of 2012 (“Protection of People with Special Needs Act”): Code of Conduct for Custodians and Notice to Mandated Reporters <http://www.p12.nj.gov/office/7/10/ofis/2/i/w6/Tstiw>

Incident review committee membership

The incident review committee must be composed of at least one member of the governing body of the residential school and other persons identified by the chief administrator of the residential school including but not limited to one representative of each of the following, but not the chief administrator of the residential school:

- x direct support staff;
- x licensed health care practitioner;
- x students or service recipients of the school; and
- x



Reporting requirements

The chief administrator of the residential school must submit a report of incident patterns and trends, and patterns and trends in the reporting and response to reportable incidents to SED in the form and manner required by the Justice Center.

Notes :

- 9 Additional information on the report of incident patterns and trends that must be submitted to SED will be issued in a separate field advisory and posted on SED's web site <https://www.nysed.gov/special-education/justice-center-protection-people-special-needs> when it becomes available from the Justice Center.
- 9 A copy of new Part 704 of the Mental Hygiene Regulations Incident Review Committee Requirement is available at https://omh.ny.gov/omhweb/policy_and_regulations

SECTION 200.15(l) - ACCESS TO RECORDS AND SCHOOLS

New section 200.15(l) adds the following requirements relating to access to records and residential schools.

- x Residential schools are required to grant SED, other State oversight agencies and the Justice Center, at any and all times, access to the residential school, (consistent with requirements relating to confidentiality of personally identifiable data, information or records pertaining to a student with a disability) to all books, records, and data pertaining to any school deemed necessary for SED, State oversight agency and the Justice Center to carry out its functions, powers and duties.
- x Records of in-State residential schools not otherwise subject to Article 6 of the Public Officers Law must be made available for public inspection and copying, when they relate to abuse and neglect of students (consistent with requirements relating to the confidentiality of personally identifiable data, information or records pertaining to a student with a disability).
 - o Any request for records relating to abuse and neglect must be referred to the Justice Center.
 - o Schools must cooperate with the Justice Center and provide any records that the Justice Center deems subject to disclosure, in accordance with the provisions of 14 NYCRR section 703.