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SPECIAL EDUCATION FIELD ADVISORY

TO: Executive Directors of Approved Private Residential Schools
Superintendents, Special Act School Districts
Superintendents, State-Operated Schools
Superintendents, State-Supported Schools with a Residential Component
Out-of-State Residential Schools

FROM: James P. DeLorenzo

SUBJECT: Requirements relating to Chapter 501 of the Laws of 2012 (“Protection of People with Special Needs Act”)

Sections 200.7, 200.15 and 200.22 of the Regulations of the Commissioner of Education have been amended to conform to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center. The regulations, which first became effective June 30, 2013, were subsequently revised and were adopted on a permanent basis effective on May 14, 2014. A copy of the amendment may be found at (<http://www.regents.nysed.gov/meetings/2014/April2014/414monthmat.html>.)

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs and created uniform safeguards for vulnerable persons in facilities or provider agencies that are operated, certified, or licensed by State agencies, in State-operated and licensed facilities, including residential schools under the State Education Department’s (SED) oversight (i.e., State-operated schools, State-supported schools which have a residential component, special act school districts, and approved private in-State residential schools). The purpose of the Act is to protect vulnerable persons against abuse, neglect and other conduct that may jeopardize their health, safety and welfare. The law also established requirements for the notification and investigation of allegations of abuse and neglect of individuals placed in residential schools or facilities located outside of New York State.

The purpose of this memorandum is to provide information to residential schools on the requirements pertaining to standards for the protection of both day and residential students who attend residential schools governed by SED against abuse,

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

- relevant definitions;
- personnel screening procedures;
- procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents;
- staff training;
- code of conduct and staff orientation;
- incident review committees; and
- access to residential schools and records necessary to carry out the provisions of Chapter 501.

All residential schools should carefully review the requirements relating to Chapter 501 and take steps to ensure that their policies and procedures align with the standards for the protection of day and residential students who attend a residential school. To assist schools in the implementation of these requirements SED has developed a dedicated website relating to Chapter 501 and the Justice Center (<https://www.nysed.gov/special-education/justice-center-protection-people-special-needs>). We strongly encourage you to check this site frequently for the most up-to-date announcements, information and guidance. Additional information is also available at the Justice Center's website (<https://www.justicecenter.ny.gov/>).

Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878 or to the Special Education Incident Management Unit at 518-473-1185.

Attachment

SECTIONS 200.7 & 200.15 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

“STANDARDS FOR THE PROTECTION OF DAY AND RESIDENTIAL STUDENTS WHO ATTEND A RESIDENTIAL SCHOOL”

Effective June 30, 2013

SECTION 200.15(a) – PURPOSE AND APPLICABILITY

The purpose of section 200.15 of the Regulations of the Commissioner of Education is to protect **both day and residential students** who attend residential schools against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, consistent with the provisions of Chapter 501 of the Laws of 2012 “Protection of People with Special Needs Act.”

The provisions of this section apply to residential schools, with respect to their day and residential components, including approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts and, except as otherwise indicated, approved out-of-State residential schools.

SECTION 200.15(b) – DEFINITIONS

The following definitions have been added to section 200.15(a) of the Regulations of the Commissioner of Education consistent with the definitions of such terms in Article 11 of the Social Services Law¹:

Custodian

A director, operator, employee or volunteer of a residential school; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a residential school pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the residential school.

Justice Center

The Justice Center for the Protection of People with Special Needs established pursuant to Article 20 of the Executive Law¹.

Reportable incident

Reportable incident means the following conduct that a mandated reporter is required to report to the Vulnerable Persons’ Central Register upon discovery. Discovery occurs when the mandated reporter witnesses a suspected reportable incident or when another person comes before the mandated reporter in his or her professional or official capacity and provides the mandated reporter with reasonable cause to suspect that a student has been subjected to a reportable incident:

¹ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

- **Abuse:** Means physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, unauthorized use of aversive interventions, obstruction of reports of reportable incidents, and unlawful use or administration of a controlled substance.
 - **Physical abuse:** Conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student or causing the likelihood of such injury or impairment. Such conduct may include but is not to be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse does not include reasonable emergency interventions necessary to protect the safety of any person.
 - **Sexual abuse:** Any conduct by a custodian that subjects a student to any offense defined in article 130 or sections 255.25, 255.26 or 255.27 of the Penal Law²; or any conduct or communication by such custodian that allows, permits, uses or encourages a student to engage in any act described in articles 230 or 263 of the Penal Law², except as otherwise provided in section 488(1)(b) of the Social Services Law³.
 - **Psychological abuse:** Conduct by a custodian intentionally or recklessly causing, by verbal or nonverbal conduct, a substantial diminution of a student's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but is not limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a student as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.
 - **Deliberate inappropriate use of restraints:** The use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a student's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable federal or State laws, regulations or policies including but not limited to the prohibition of the use of corporal punishment and aversive interventions in section 19.5 of the Rules of the Board of Regents, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other person. Restraint includes the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a student to freely move his or her arms, legs or body.
 - **Use of aversive interventions:** An intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors as such term is defined in section 19.5(b) of the Rules of the Board of Regents. Aversive intervention, as used in section 19.5 means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing

² Consolidated Laws of New York: <http://public.leginfo.state.ny.us/menuf.cgi>

³ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

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.

- **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.
- **Unlawful use or administration of a controlled substance:**
 - 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;
 - 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
 - A custodian unlawfully using or distributing a controlled substance as defined by article 33 of the Public Health Law⁴, at the workplace or while on duty.
- **Neglect:** Any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student. Neglect includes, but is not limited to, failure to provide:
 - proper supervision, including lack of proper supervision that results in conduct between students that would, if committed by a custodian, constitute abuse;
 - adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with any rules and regulations governing the same, provided that the residential school has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or
 - access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of Part one of

⁴ Article 33: NYS Controlled Substances Act:
https://www.health.ny.gov/professionals/narcotic/laws_and_regulations/

article 65 of the Education Law and/or the student's individualized education program (IEP).

- **Significant incident:** An incident, other than an incident of abuse or neglect that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a student and includes but not be limited to:
 - conduct between students that would, if committed by a custodian, constitute abuse; or
 - conduct on the part of the custodian, which is inconsistent with a student's individual treatment plan or IEP, generally accepted treatment practices and/or applicable federal or State laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a student, including but not limited to:
 - **unauthorized seclusion**, which means the placement of a student in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will, or the placement of the child unsupervised or unobserved in a room from which the student cannot exit without assistance;
 - **unauthorized use of time out**, which means the use of a procedure in which a student is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but does not include the use of a time out as an emergency intervention to protect the health or safety of the individual or other persons or the use of a time out room used in conjunction with a student's IEP or behavioral intervention plan pursuant to section 200.22(c) of the Regulations of the Commissioner of Education⁵;
 - except for the unlawful use or administration of a controlled substance, the **administration of a prescribed or over-the-counter medication**, which is inconsistent with a prescription or order issued for a student by a licensed, qualified health care practitioner, and which has an adverse effect on a student. Adverse effect means the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of the student; or
 - **inappropriate use of restraints**, which means the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is inconsistent with a student's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable federal or State laws, regulations or policies including but not limited to the prohibition of the use of corporal punishment and aversive interventions in section 19.5 of the Rules of the Board of Regents. Restraint includes the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a student to freely move his or her arms, legs or body.

⁵ 8 NYCRR section 200.22(c): Authorizes the limited use of unlocked time out rooms where a student is observed by staff at all times when a student needs an area to safely deescalate, regain control and prepare to meet expectations to return to his or her education program. Except for unanticipated situations that pose an immediate concern for the physical safety of a student or others, the use of a time out room must be used only in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors. (See <https://www.nysed.gov/special-education/behavioral-interventions-and-supports-discipline-procedures-students-disabilities>)

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:

- a statement or summary of the applicant's employment history, including, but not limited to, any relevant child-caring experience;
- the names, addresses and telephone numbers of references who can verify the applicant's employment history, work record and qualifications;
- 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;
- the names and addresses of elementary and secondary schools and other educational institutions that can verify the applicant's educational information;
- 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;
- 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
- 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>

In addition to the provisions above, the regulations have been amended to add the following requirements relating to personnel screening procedures:

- **In-State residential schools** must, as part of their personnel screening procedures, gather other information as may be required by the Justice Center to determine whether an applicant is included on the SEL.
- **In-State residential schools** must check the SEL, pursuant to procedures developed by the Justice Center, before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor to have regular and substantial contact with a student.
 - Consistent with applicable collective bargaining agreements, if a person is listed on the SEL, the in-State residential school may not hire such person to have regular and substantial contact with a student.
 - If the result of the inquiry is that the person is not on the SEL, the school must make an inquiry of the Statewide Central Register of Child Abuse and Maltreatment (SCR) pursuant to section 424-a of the Social Services Law⁷.
- For **in-State residential schools**, consistent with existing collective bargaining agreements and applicable provisions of the Civil Service Law, a custodian is subject to immediate termination if he or she is convicted of any crime as defined in subdivision six of section 10.00 of the Penal Law⁸ that relates directly to the abuse or neglect of a student, or is placed on the SEL.

Notes:

- ✓ New Part 702 of Mental Hygiene Regulations outlines the Justice Center’s procedures for obtaining and using social security numbers to assist in verifying the identity of individuals who must be screened against the staff exclusion list: <http://www.justicecenter.ny.gov/regulations-guidance/regulations/adopted/uossn>.
- ✓ Information regarding the SEL, including a “Request for Staff Exclusion List Check Form” and “Staff Exclusion List Checklist,” is available at the Justice Center’s *Staff Exclusion List Management* webpage: <http://www.justicecenter.ny.gov/investigations-prosecution/sel/management>.
- ✓ Additional information regarding requirements relating to the SEL is available in the SED May 2013 field memorandum *Justice Center Staff Exclusion List*: <https://www.justicecenter.ny.gov/staff-exclusion-list>

SECTION 200.15(d) - PERSONNEL QUALIFICATIONS

No changes were made to section 200.15(d) of the Regulations of the Commissioner of Education relating to personnel qualifications (formally section 200.15(c)). All professional instructional and supervisory personnel employed at residential schools must be appropriately certified in accordance with the provisions of Part 80 and sections 200.6, 200.7 and 200.15(d)(2)-(4) of the Regulations of the Commissioner of Education.

⁷ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

⁸ Consolidated Laws of New York: <http://public.leginfo.state.ny.us/menuf.cgi>

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:

- staffing patterns and the rationale for such;
- responsibilities of supervisors;
- the method by which staff and volunteers will be made aware of the identity of all supervisors, including designated on-site supervisors;
- provision of written supervisory guidelines to employees and volunteers;
- periodic observations by supervisors of employees and volunteers in interaction with students;
- periodic supervisory conferences for employees and volunteers; and
- 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 from abuse, neglect and significant incidents has been amended as follows:

Duty to report

Section 200.15(f)(1)(i) adds the following requirements relating to the duty to report abuse, neglect and significant incidents:

- **In-State residential schools** must ensure that allegations of reportable incidents, including any death for which there is any reason to believe that abuse or neglect may be involved, be identified and immediately reported to the VPCR upon discovery by a mandated reporter in accordance with the provisions of sections 491 and 492 of the Social Services Law⁹.

Nothing prohibits a mandated reporter from contacting or reporting to law enforcement or an emergency services organization as defined in section 155.17(c)(5) of the Regulations of the Commissioner of Education¹⁰, before or after reporting to the VPCR.

⁹ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

¹⁰ 8 NYCRR §155.17(c)(5): Emergency services organization means a public or private agency, organization or group other than a governmental agency, which provides police, fire, medical, ambulance, rescue, housing or other services for the relief of human suffering, injury or loss of life or property as a result of an emergency.

- **In-State residential schools** must provide students' parents with written information explaining the reporting requirements and processes regarding allegations of reportable incidents, consistent with Article 11 of the Social Services Law¹¹, at the time the student is placed in the school. Such information must also be made available upon request to any person.

Note:

- ✓ Abuse, neglect and significant incidents are to be reported to the Justice Center by calling the VPCR at 1-855-373-2122. The *Web Intake Incident Form* can also be used by "custodians" to submit reportable incidents to the Justice Center and fulfill their obligation as a mandated reporter. A copy of the form and the *Use of Incident Web Form Guide* are available at <https://vpcr.justicecenter.ny.gov/WIRW/#/>
- ✓ An overview of the legal duties of mandated reporters under Chapter 501 to report abuse, neglect and significant incidents to the VPCR is provided in the *Notice to Mandated Reporters* <https://www.justicecenter.ny.gov/mandated-reporters> Additional information is also available in the *Frequently Asked Questions - Mandated Reporter* <https://www.justicecenter.ny.gov/mandated-reporters>
- ✓ Residential schools must take immediate steps to ensure that staff are aware of their reporting requirements. The VPCR Hotline posters (English and Spanish) that each residential school received should be prominently displayed in high traffic areas in the school, where they will be most visible to staff and the public. Electronic copies of the poster and wallet cards for the hotline are available at <https://www.justicecenter.ny.gov/system/files/documents/2019/03/jcpostereng.pdf>

Reporting deaths

Section 200.15(f)(1)(ii) adds that the death of any New York State (NYS) student attending an **in-State or out-of-State residential school** must be immediately reported to the Justice Center, in the form and manner prescribed by the Center, and to the Commissioner of Education or his or her designee.

Note:

- ✓ Every Director (or their designee) of a facility or program under the jurisdiction of the Justice Center is required to immediately report the death of any student upon discovery (witnessing or learning) of such death, and in no event later than 24 hours after discovery, regardless of where the death occurred. This immediate report of death must be made by calling the VPCR Death Reporting Line 1-855-373-2124, which is a distinct reporting line and is separate from the VPCR Hotline to report abuse, neglect, and significant incidents.
- ✓ Instructions for reporting deaths and the *Report of Death to the Justice Center* form are available at <http://www.justicecenter.ny.gov/investigations-prosecution/vcpr/report-death/guidance>. Additional information is also available in the Frequently Asked Questions – Report a Death <https://www.justicecenter.ny.gov/mortality-review>

¹¹ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

- ✓ The death of any student must also be reported to SED by faxing the form “Report of the Death of a Student in a Residential School” available at <https://www.justicecenter.ny.gov/mortality-review> Schools must also ensure the student’s school district of residence has been notified.

Safety

Section 200.15 of the Regulations of the Commissioner of Education establishes the actions that must be taken by a residential school to ensure the safety of student(s). Upon notification that an allegation of a reportable incident has been made to the VPCR, the chief administrator of the residential school or his or her designee must:

- with consideration for causing as little disruption as possible to the daily routines of the students in the program, evaluate the situation and immediately take appropriate action to assure the health and safety of the student(s) involved in the report and of any other students similarly situated in the facility or program;
- take additional action as is necessary to prevent future acts of abuse, neglect or significant incidents. Such action may include:
 - consistent with appropriate collective bargaining agreements and applicable provisions of Civil Service Law, removal or transfer of the subject of the report; increasing the degree of supervision of the subject of the report; and/or initiation of appropriate disciplinary action against the subject of the report;
 - provision of increased training and/or increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse, neglect and significant incidents;
 - temporary removal of the student(s) from a program and reassignment of the student(s) within the facility, as an emergency measure, if it is determined that there is a risk to the health or safety of such student(s) in remaining in that program. Whenever a student is removed from a special education program or service specified in his or her IEP, it must be immediately reported to the Commissioner or his designee and to the appropriate committee on special education (CSE) for review; and/or
 - provision of counseling to the student(s) involved in the report and any other students, as appropriate.
- preserve any potential evidence through such actions as securing the area wherein the suspected reportable incident occurred; and
- obtain proper medical evaluation and/or treatment of a student, as needed, with documentation of any evidence of the reportable incident.

Note:

- ✓ Schools must have at least two administrative emergency contact persons available both during school and nonschool hours.
- ✓ The State will contact the school administrators by telephone to ensure the school has taken the appropriate safety steps.
- ✓ The school must notify the parent(s) of student(s) affected by an alleged incident of abuse or neglect¹².
- ✓ 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>.*
- ✓ 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.
- ✓ 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.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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 30 days** of receipt of such a report.

Significant incidents: Section 200.15(f)(4)(ii) of the Regulations of the Commissioner of Education requires that upon a determination of the need for preventative or remedial action associated with a report of a significant incident, a residential school must develop and implement a written plan of prevention and remediation to address the investigative findings. In developing this plan, the school must consider any recommendations of SED. The plan must be developed and submitted to SED **within 30 days** of such determination.

Plans of prevention and remediation: Plans of prevention and remediation required to be developed for reports of abuse and neglect or a significant incident must be endorsed with the signature of the chief administrator of the residential school or his or her designee and, at a minimum, include the:

- actions to be taken to address the investigative findings;
- person(s) responsible for assessing the efficacy of the remedial action(s); and
- monitoring dates or interval of monitoring dates, if appropriate.

Note:

Additional information and copies of the templates to be used for *Plans of Prevention and Remediation* for abuse and neglect or a significant incident are available at <https://www.justicecenter.ny.gov/>

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**.

- 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.
- The residential school must comply with the procedures for the protection of students in section 490(5)¹⁴ of the Social Services Law and cooperate with any investigation conducted by the Justice Center.
- If the investigation of the abuse/neglect allegation is not conducted by the Justice Center, the **out-of-State residential school** must forward the findings of the investigation that was conducted by the applicable agency in the state in which the school is located to the Justice Center, SED, the CSE and the social services district in NYS **not later than 90 days** from the report of the allegation¹⁵.
- **Failure to comply with the above requirements is grounds for revocation of approval to accept new admissions of NYS students or termination of private school approval.**

In addition to the above requirements, **out-of-State residential schools** must also comply with the provisions in section 200.15 of the Regulations of the Commissioner of Education relating to: personnel screening procedures, personnel qualifications, staff supervision, reporting deaths, safety procedures, supporting requests for information from the Justice Center and SED, reporting to the Justice Center the resignation or termination of a subject of a report of alleged abuse or neglect while an investigation is pending, plans of prevention and remediation, staff training, staff orientation procedures regarding the protection of students from reportable incidents, instruction of students, and access to records and schools.

Note:

Additional information on the requirements relating to **out-of-State residential schools** is available in the Justice Center's *Frequently Asked Questions - Out-of-State Placement*: <https://www.justicecenter.ny.gov/>

¹⁴ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

¹⁵ If an investigation is not completed within 90 days, the notification of the status, any interim findings, and expected date of completion, if known, should be provided to the Justice Center during that time period, with the final findings submitted as soon thereafter as possible.

SECTION 200.15(h) – STAFF TRAINING

No substantive changes were made to section 200.15(h) of the Regulations of the Commissioner of Education (formally section 200.15(f)) relating to staff training. Residential schools must provide, or ensure the provision of, child abuse prevention and identification training to all administrators, employees and volunteers on a regular, but at least annual, basis. The purpose of such training must be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill development in areas including, but not limited to, the following:

- child abuse prevention and identification;
- safety and security procedures;
- principles of child development;
- characteristics of children in care;
- techniques of group and child management, including crisis intervention and appropriate restraint training;
- laws, regulations and procedures, including appropriate reporting responsibilities, governing the protection of students from reportable incidents; and
- any relevant information provided by SED.

Note:

The Justice Center's *Mandated Reporter Training Webinar*, <https://www.justicecenter.ny.gov/mandated-reporters> which provides mandated reporters with an overview of their legal duties under Chapter 501 to report abuse, neglect and significant incidents, may be used by residential schools for the internal training of staff. A copy of the PowerPoint used in the webinar is available at <https://www.justicecenter.ny.gov/mandated-reporters>

SECTIONS 200.7(b)(3) & 200.15(i) – CODE OF CONDUCT AND STAFF ORIENTATION

Section 200.15(i) of the Regulations of the Commissioner of Education (formally section 200.15(g)), requires residential schools to provide each new employee or volunteer, immediately upon commencement of duties, an orientation to the procedures of the school and the policies and procedures of SED regarding the protection of students from reportable incidents.

Sections 200.7(b)(3) and 200.15(i) of the Regulations of the Commissioner of Education have been amended to add the following requirements relating to the staff code of conduct:

- The staff code of conduct developed by the Justice Center governs the conduct of custodians with respect to the safety, dignity and welfare of students attending **in-State residential schools**.
- Each custodian, at the time of initial employment and at least annually thereafter, must be provided with a copy of the staff code of conduct developed by the Justice Center.
- Each custodian must acknowledge that he or she has read and understands the staff code of conduct.
- The staff code of conduct is enforceable consistent with appropriate collective bargaining agreements.

Notes:

- ✓ 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>
- ✓ 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.
- ✓ 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.nysed.gov/specialed/justicecenter/fm-conduct-reporter-613.htm>.

SECTION 200.15(j) – INSTRUCTION OF STUDENTS

No substantive changes were made to section 200.15(j) of the Regulations of the Commissioner of Education relating to the instruction of students (formally section 200.15(h)). Residential schools must provide instruction to all students in techniques and procedures which will enable them to advocate for and protect themselves from abuse, neglect and significant incidents.

Such instruction must be described in a written plan and be:

- appropriate for the age, individual needs and particular circumstances of students' disabilities;
- provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and
- provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school.

Schools may choose to provide such instruction to students after school in the residence, or as part of an existing counseling program, rather than during school in the classroom. If provided during school, such instruction might be incorporated into the Health/Science or other curriculum.

SECTION 200.15(k) - INCIDENT REVIEW COMMITTEE

New section 200.15(k) has been added to require all **in-State residential schools** to establish an incident review committee pursuant to section 490(1)(f) of the Social Services Law¹⁶. The purpose of such committee is for reviewing individual reportable incidents and incident patterns and trends to identify and implement preventative and corrective actions, which may include, but is not limited to, staff retraining or any appropriate disciplinary action allowed by law or contract, as well as opportunities for improvement.

¹⁶ Chapter 501 of the Laws of 2012: <http://www.justicecenter.ny.gov/regulations-guidance/statute>

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:

- direct support staff;
- licensed health care practitioner;
- students or service recipients of the school; and
- representatives of family, consumer and other advocacy organizations.

Incident review committee training

Members of the incident review committee must be trained in confidentiality laws and regulations, and comply with section 74 of the Public Officers Law.

Duties of the incident review committee

The incident review committee must meet regularly to:

- review the timeliness, thoroughness and appropriateness of the school's response to reportable incidents;
- recommend additional opportunities for improvement to the chief administrator of the residential school, if appropriate;
- review incident trends and patterns concerning reportable incidents; and
- make recommendations to the chief administrator of the residential school to assist in reducing reportable incidents.

Guidance on Incident Review Committees

A residential school may use the same incident review committee established by the residential component of the school that is licensed or certified by a State agency other than SED to comply with the requirements of section 200.15(k) of the Regulations of the Commissioner of Education, provided that the members of such committee meet the requirements of section 200.15(k)(1).

Each incident review committee is expected to:

- ✓ review and evaluate all incidents.
- ✓ review and evaluate ongoing changes in practices and procedures to improve the provider's response to all incidents.
- ✓ meet as often as necessary, but not less than quarterly.
- ✓ keep written meetings of its deliberations and provide regular reports to the agency's governing authority.
- ✓ prepare a summary of incidents reviewed and recommendations made at each meeting.
- ✓ take any action necessary to follow up on recommendations.
- ✓ compile a collective report of the total number of incidents by type, its finding and recommendations.

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:

- ✓ 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.
- ✓ 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(I) - ACCESS TO RECORDS AND SCHOOLS

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

- 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.
- 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).
 - Any request for records relating to abuse and neglect must be referred to the Justice Center.
 - 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.