



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

ANDREW M. CUOMO
Governor

DENISE M. MIRANDA
Executive Director

November 26, 2018

Kerry A. Delaney
Commissioner
Office for People with Developmental Disabilities
44 Holland Avenue
Albany, New York 12229

Dear Ms. Delaney:

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 1, 2018, the Justice Center issued a draft of our review of supervision entitled *Review of the Supervision in OPWDD Voluntary Programs with Substantiated Category 4 Findings*.¹ The Justice Center received a response from the Office for People with Developmental Disabilities (OPWDD) dated November 21, 2018, outlining actions your office has already taken in follow up to the review findings as well as plans for additional corrective measures to be implemented in the near future. The final review findings, including the response from OPWDD, is attached.

This review was conducted by the Justice Center and would not have been possible without the cooperation and professionalism that staff from the Cardinal Hayes Home for Children, Paul J. Cooper Center for Human Services, Brookville Center for Children, and the Adirondack ARC provided during the course of 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

¹This 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.

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

Prevention and Quality Improvement

Review of the Supervision in OPWDD Voluntary Programs with Substantiated Category 4 Findings

November 2018

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.

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Executive Summary

Purpose

This systemic review, conducted by the Justice Center for the Protection of People with Special Needs (Justice Center), was initiated after auditing Corrective Action Plans (CAPs) developed in response to a Category 4 finding that conditions at these provider agencies exposed people receiving services to harm or risk of harm. Supervision of people receiving services contributed to the substantiated Category 4 finding of neglect at all provider agencies included in this review.

The purpose of this review was to identify factors that may have contributed to incidents of abuse and neglect, and to offer recommendations and outline best practices to improve the quality of supervision practices and related health and safety issues, including community inclusion.

Program Descriptions

The New York State Office for People with Developmental Disabilities (OPWDD) is one of six state agencies with programs in the Justice Center's jurisdiction. OPWDD certified the four agencies selected for this review. These programs provide residential services and are staffed by interdisciplinary teams of clinical and non-clinical staff, including: clinicians, nurses, management, and direct care staff.

The Millbrook Intermediate Care Facility (ICF) is a voluntary program operated by the Cardinal Hayes Home for Children, located in Millbrook, NY.¹ The agency provides residential and day habilitation services, and operates a school for children with special needs. The Millbrook ICF St. Elizabeth Residence is home to eight men diagnosed with developmental disabilities between the ages of 17 and 45 years old. The Justice Center conducted its site visit on December 27, 2017. (Home #1)

The Jerome Street ICF is a voluntary program operated by the Paul J. Cooper Center for Human Services, located in Brooklyn, NY. The agency provides residential and day habilitation services, as well as crisis in-home respite programs. The Jerome Street ICF is home to 11 men and women diagnosed with developmental disabilities between the ages of 26 and 59 years old. The Justice Center conducted its site visit on January 2, 2018. (Home #2)

¹ As defined by the OPWDD website: Intermediate Care Facilities (ICFs) are designed for those individuals whose disabilities limit them from living independently. Services may be provided in an institutional or a community setting. For the most part, ICFs serve individuals who are unable to care for their own basic needs, require heightened supervision and the structure, support and resources that define this program type. ICFs provide 24-hour staffing supports for individuals with specific adaptive, medical and/or behavioral needs and includes intensive clinical and direct-care services, professionally developed and supervised activities (day services) and a variety of therapies (e.g., physical, occupational or speech) as required by the individual's needs.

The Sea Spray Drive ICF is a voluntary program operated by the Brookville Center for Children, located in Brookville, NY. The agency provides residential and day habilitation services, and operates a school for children with special needs. The Sea Spray Drive ICF is home to six males diagnosed with developmental disabilities between the ages of 12 and 17 years old. The Justice Center conducted its site visit on January 29, 2018. (Home #3)

The School Street Individualized Residential Alternative (IRA) is a voluntary program operated by the Adirondack ARC, located in Tupper Lake, NY.² The agency provides residential and day habilitation services. The School Street IRA is home to 11 men and women diagnosed with developmental disabilities between the ages of 37 and 79 years old. The Justice Center conducted its site visit on April 5, 2018. (Home #4)

Key Findings

1. Standards for supervision were unclear in all the programs.
2. Documentation used for fire safety planning and supervision was inadequate.
3. Restrictions on individuals' rights were not adequately documented and were improperly applied.
4. Staffing issues adversely affected participation in community inclusion.
5. Community inclusion tracking was inconsistent and incomplete.

Key Recommendations

1. Standardize supervision levels and require documentation of such in a designated place available to all staff.
2. Retrain provider agencies in OPWDD's Essential Elements of a Fire Evacuation Plan and develop mechanisms to ensure agencies are adhering to the elements of fire evacuation plans.
3. Retrain Human Rights Committees regarding individual rights restrictions.
4. Review staffing patterns to ensure effective and efficient use of resources.
5. Consider creating a standardized form to track community inclusion.

Background

The Justice Center for the Protection of People with Special Needs (Justice Center) is charged with protecting individuals in the care of facilities under its jurisdiction against abuse, neglect and other conduct that may jeopardize their health, safety and welfare

² As defined by the OPWDD website: An Individualized Residential Alternative (IRA) is a type of community residence that provides room, board and individualized service options. Supervised IRAs provide 24-hour staff support and supervision for up to 14 residents, whereas *Supportive* IRAs are limited to 3 or fewer individuals and provide need-based supports and services for those who are living in their own homes or apartments, but do not require 24-hour staff support and supervision. Day services are also available for individuals living in IRAs and may include day habilitation, prevocational services and supported employment. Depending upon the individual's skill level, some may be competitively employed.

pursuant to Article 20 of the New York Executive Law. The Justice Center conducts systemic reviews to identify, and make recommendations to reduce risks to the health, safety and welfare of people receiving such services.

The Justice Center audited all closed Corrective Action Plans (CAPs) for substantiated allegations of neglect that occurred due to inadequate supervision but individual staff culpability was mitigated by systemic problems present in the program.³ Systemic problems identified related to supervision included a lack of clarity and/or feasibility of staff expectations, assignments, and training.

Scope and Methodology

The Justice Center conducted a tour of each of the programs, interviewed staff, and reviewed documentation.

Program-Specific Documentation

- Agency defined levels of supervision
- Documentary evidence supporting that staff received training on the defined levels of supervision
- Staffing schedule from December 10-24, 2017
- Minimum staffing ratios for all shifts
- Staff assignment sheets for all shifts December 10-24, 2017
- Site-specific Plan of Protective Oversight
- Site-specific Fire Evacuation Plan

Person-Specific Documentation

- Individualized Plans of Protection
- Individualized Service Plans/Comprehensive Functional Analyses
- Behavior Support Plans (when applicable)
- Dining plans (when applicable)
- Documentation of community inclusion from May 2017 to November 2017

Review Findings

Supervision

- 1. None of the homes had clear definitions of supervision for all activities.**

³ A corrective action plan is a plan developed and implemented by the provider that identifies actions to be taken to mitigate the risk of the same or similar situation from re-occurring.

Home #1 did not have clear and consistent definitions of enhanced supervision levels, nor did they consistently use their own terminology when referencing or identifying supervision levels. For example, the agency used two very similar terms, *standard supervision* and *general agency supervision standards*, for distinctly different levels of supervision. *Standard supervision* was defined as, “Unless determined otherwise, each individual we support is afforded supervision. A staff member is typically assigned two to four individuals and is responsible for maintaining supervision and programming of the assigned individuals. The staff member should know the whereabouts of each assigned individuals [sic]. It may not be possible, nor is it necessary, that a staff member keep each individual in his/her line of sight at all times.” *General agency supervision standards* were defined as, “Vehicle: All individuals must have at least one staff present in vehicles at all times unless otherwise noted. Community: All individuals must be accompanied by staff at all times unless otherwise noted. Water Safety/Swimming: All individuals must have **one to one** supervision at all times unless otherwise noted.” However, the Comprehensive Functional Assessment (CFA) for one of the people receiving services documented that he required the, *agency standard level of supervision*. This third term with the use of the word “standard” was not defined in any of the documentation reviewed by the Justice Center. Terms and phrasing such as these, that lack a clear distinction, are confusing and may increase the risk of staff breaching a person’s supervision level.

Home #2 developed standardized supervision levels following a Justice Center documentation request, but two out of the five defined levels of supervision were essentially the same. Both of those definitions directed staff to remain within arm’s length of the person receiving services, and to ensure that the person stayed within their visual range. Additionally, supervision levels during hygiene activities were not specified.

Home #3 included clear definitions of enhanced supervision in an agency guidance document, but those supervision levels were not assigned to people while dining.

Home #4 had implemented standardized supervision levels specifically for dining but, did not standardize levels of enhanced supervision for anything else. Comprehensive Functional Assessments (CFA) also did not consistently use agency-specific terminology about supervision levels. For example, an Individual Plan of Protection (IPOP) for one person documented that she required, “full staff support” for dining but, this was not a defined level of supervision and no further direction on how to assign staff to provide “full staff support” was provided. Additionally, an IPOP for another person documented that she required a dining-specific level of supervision called, “distant supervision.” However, this supervision level was defined differently in the agency’s Mealtime Supervision Guidelines than it was in the person’s IPOP.

Fire Safety Supervision

2. Documentation used for fire safety planning and supervision was inadequate.

Four of the eight people living in Home #1 were not included in the Fire Evacuation Plan. According to the CFAs for those four people, three of them may need verbal prompts to evacuate and, required close supervision and the support from two staff while in the community due to behavioral challenges, and the fourth person was independent in evacuation.

Home #2 had a sufficient site-specific Fire Evacuation Plan that was updated in October 2017 after the Justice Center CAP audit. During that audit, the Justice Center discovered that the building housed both an IRA and an ICF. However, the agency only wrote one Fire Evacuation Plan to address the evacuation needs for people living in both the IRA and the ICF. Additionally, the agency reported that eleven people lived just at the ICF, yet the Fire Evacuation Plan only identified nine people. This finding was confirmed by the agency's Director of Quality Assurance and Incident Management on October 2, 2017, and the agency produced updated, separate Fire Evacuation Plans for both the ICF and the IRA.

The Fire Evacuation Plan for Home #3 did not include accurate individual-specific safeguards regarding ability to evacuate, or to remain at the designated safe area. The CFAs for three out of eight people living in the home contained information that was inconsistent with information in the Fire Evacuation Plan. For example, one of those CFAs documented that a person may need verbal/physical prompts for evacuation, while the Fire Evacuation Plan documented that the same person required physical assistance for evacuation. Additionally, the Fire Evacuation Plan did not document the supervision needs for four out of the eight people regarding their ability to remain at the designated safe area.

The Fire Evacuation Plan for Home #4 documented different fire zones than the staff assignment sheets, and staff were not consistently assigned to evacuation responsibilities, as required by the Fire Evacuation Plan and OPWDD guidance.⁴ Additionally, the staff assignment sheet included the name of a person who was deceased on the list of those requiring evacuation.

⁴ According to OPWDD's Essential Elements of a Fire Evacuation Plan, component 4, "All plans must list the specific responsibilities of staff during the evacuation process. Staff shall be given assignments by floor/area, rather than being assigned to specific residents, except when an individual requires two staff to evacuate or has been designated to have 1:1 staffing. All staff must know exactly what their job is when the alarm sounds and must be trained to react properly and quickly."

Rights Restrictions

3. Restrictions on individuals' rights were not adequately documented or properly applied in two out of four of the homes.

At Home #2, Behavior Support Plans (BSPs) were implemented that contained restrictive elements for all eleven-people living in the home without the completion of a Functional Behavioral Analysis or, obtaining approval from the Human Rights Committee, as required by regulations. Further, behavioral staff reported being unaware of this requirement, and had never received this type of training or guidance. There were also environmental restrictions in place, without clinical justification. For example, the standing freezer located in the kitchen was padlocked. Management was unaware of any clinical need for the lock, and believed that it was locked to prevent staff from stealing food. Another example from this home is the use of window guards that were installed on a person's bedroom window due to an elopement history. Although this person's CFA identified the use of the window guards, and referenced a respective *Window Protocol*, this was not documented in the BSP and it was not reviewed or approved by the agency's Human Rights Committee, which were required by regulations.

Environmental restrictions documented at Home #4 were inconsistent. For example, the BSP and IPOP for four individuals stated the pantry was locked while the BSP and IPOP of seven individuals did not say the pantry was locked. In addition, a BSP addendum for another person included a fading plan for the use of enhanced supervision, which was an approved restrictive intervention. However, the fading plan did not provide objective or measurable behavioral standards necessary to fade the restriction.

Staffing

4. Insufficient staffing adversely affected participation in community inclusion in three homes.

The enhanced supervision levels people required while in the community were not consistently provided in Home #1 and Home #2. A review of agency-specific community inclusion documentation for both homes revealed that two different people were not provided their required two-to-one staffing level while in the community for a combined total of at least 28 times throughout the sample period.⁵

Staffing related issues at Home #4 prevented four people from attending their social club which they were members of, going swimming, and other activities 17 times in a four-month period⁶. Participation in religious activities was also

⁵ Designated time-period of review was May 2017 to November 2017.

⁶ May 3, 2017 – September 1, 2017.

impacted by staffing related issues in this same home. A review of the day habilitation and residential habilitation monthly staff commentary documentation revealed that insufficient staffing prevented two people from attending church and/or church events four times total in May 2017 alone.

Community Inclusion

5. Community inclusion tracking was inconsistent and incomplete at three of the homes.

Home #1 and Home #2 tracked community inclusion on a specific form. A review of that documentation revealed that it was incomplete, inconsistent, and disorganized; which made it difficult to determine whether community inclusion occurred.⁷

Home #3 tracked community inclusion activities through the individuals' personal daily schedules and transportation documentation. This documentation revealed that each person in the home participated in community inclusion on a daily or almost daily basis and, included activities such as horseback riding, sports, cooking groups, and social events.

Home #4 relied on monthly billing documentation to identify when a person engaged in a community inclusion activity. A review of that documentation revealed that it was incomplete, inconsistent, and disorganized; which made it difficult to determine whether community inclusion occurred.

Recommendations

The Justice Center's specific recommendations are detailed below. While this review focused on these four homes, the Justice Center recommends that OPWDD assess all programs with attention to these findings and apply the recommendations across all programs, as appropriate.

Supervision

1. Standardize supervision levels for all providers, and consider designating a section in a person's individual-specific written plan that documents their required levels of supervision for all activities of daily living. Review all written plans to ensure documented supervision levels are accurate and consistent with agency definitions of supervision levels, for agencies that have already standardized supervision levels.

⁷ Designated time-period of review was May 2017 to November 2017.

Fire Safety

2. Retrain provider agencies in OPWDD's guidance, Essential Elements of a Fire Evacuation Plan, found in ADM #2012-02 Fire Safety Attachments, to ensure that all required information is appropriately documented. Implement a quality assurance review to ensure that all documentation used regarding staff assignments accurately reflects the site-specific Fire Evacuation Plan and the needs of the people residing in the homes.

Rights Restrictions

3. Retrain provider agencies and their Human Rights Committees in the appropriate approval processes regarding individual rights restrictions. Review all written plans containing restrictive elements to ensure proper approval and documentation of rights restrictions. Lift restrictions as needed.

Staffing

4. Develop practical strategies for provider agencies to review their use of staffing to ensure that their resources are being used as effectively and efficiently as possible for community inclusion.

Community Inclusion

5. Consider creating a standardized form to track community inclusion adapted after OPWDD's ADM #2014-04, OPWDD Home and Community Based Settings Preliminary Transition Plan Implementation. Review documentation to ensure that people receiving services are regularly provided opportunities for community inclusion activities based on their needs and preference.



Office for People With Developmental Disabilities

ANDREW M. CUOMO
Governor

KERRY A. DELANEY
Acting Commissioner

November 21, 2018

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

Dear Ms. Miranda,

I am writing to follow up on your correspondence dated October 3, 2018, in which you shared a report regarding the findings of a systemic review conducted by the Justice Center at several voluntary operated group homes certified by the Office for People With Developmental Disabilities (OPWDD). The systemic review focused on identification of potential risks to the health, safety and welfare of people receiving services in facilities under the jurisdiction of the Justice Center, and specifically identified some concerns related to supervision at four group homes (three Intermediate Care Facilities and one Individualized Residential Alternative program) located in Central New York, New York City and Long Island.

We appreciate receiving the findings of the audit from the Justice Center, as this feedback provides OPWDD with the opportunity to improve our services to better meet our agency mission of helping individuals with developmental disabilities lead richer lives. OPWDD's expectation is that the providers will utilize the Justice Center's recommendations to examine these critical areas and address any concerns. OPWDD will be reviewing the issues identified in this report as part of its annual survey and certification activities and on-site visits to these programs.

In addition, OPWDD continues to partner with the New York State Department of Health on the certification of Intermediate Care Facilities (ICFs) and with the Office of Fire Prevention and Control (OFPC) to address fire safety and fire evacuation concerns. Furthermore, OPWDD's Early Alert process provides enhanced monitoring for providers identified as facing challenges that may jeopardize their ability to operate. OPWDD seeks to promote best practices related to levels of supervision and the potential for adverse events.

Executive Office

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Thank you again for sharing these important findings with OPWDD. We appreciate your advocacy on behalf of individuals in New York State with developmental disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamika R. Black".

Tamika R. Black, Ph.D.
Deputy Commissioner
Division of Quality Improvement and
Performance Management

cc: Kerry Delaney, Acting Commissioner
Roger Bearden, Acting Executive Deputy Commissioner
Tammy Devine, Deputy Director, DQIPM
Brian O'Donnell, Downstate Regional Director, DQIPM, Bureau of Program Certification
Shelly Glock, Director, Division of Nursing Homes and ICF/IID Surveillance, Dept. of Health
Lee Weissmuller, Director, Bureau of ICF/IID Surveillance, Dept. of Health