



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

**SOA Investigations of Allegations of Abuse,
Neglect and Significant Incidents**

Course Outline

JULY 17, 2018

SOA Investigations of Allegations of Abuse, Neglect and Significant Incidents

Curriculum Outline

A. Introductions & The Protection of People with Special Needs Act

1. Creation of the Justice Center
2. Covered Agencies
3. Definitions of Abuse, Neglect and Significant Incident
4. Definitions of Categories of Substantiation

B. The Incident Intake Process

1. Justice Center Intake Unit Procedures

- a. Telephone Reports
- b. Web Based Reporting
- c. Incident Types (Not an Incident, Non-Justice Center, Significant Incident, Abuse and Neglect, Death, Financial)
- d. Additional information obtained during an investigation

2. Individual and Family Support Services Overview

- a. Incident and Case Inquiries
- b. Information on Notifications and Investigative Procedures
- c. Referrals and Liaisons
- d. Outreach and Presentations
- e. Responsibilities in Justice Center Led Investigations
- f. Disability Resource Clearinghouse

3. Triage Unit Procedures

- a. Triage queue receives all abuse/neglect allegations assigned to the NYJC, administrative death and abuse/neglect death cases
- b. Read the incident(s) narrative
- c. Query the provider in the VPCR, review past incident to identify patterns of reports involving nature of allegation, suspect and victim
- d. Contact Quality Assurance, Risk Management or the Executive Director to obtain additional information if needed to appropriately classify and assign the case
- e. If the narrative appears to be criminal in nature determine whether law enforcement has been contacted and make notifications to the Special Prosecutor's Office as well as the agency to contact law enforcement if they have not already
- f. Based on the information contained in the narrative, additional documentation/information received determine whether the case will be assigned to the NYJC and assign it to the appropriate region with notification
- g. If based on the additional information obtained it is determined to be less egregious and can be reassigned to the State Oversight Agency, the case will be reassigned and notifications will be made

- h. Review all State Oversight Agency completed Investigation and complete letters of determinations for unsubstantiated cases and send substantiated cases to our Office of General Counsel
- i. Maintain an authorized personnel list for our SCR checks and complete SCR checks in Connections on all suspects named in abuse/neglect cases for Justice Center Investigators as well as the State Oversight Investigators excluding Office of Children and Family Services.

C. Incident Response – Immediate Actions

1. Prompt Assignment
2. Timely Arrival
3. Immediate Actions After Discovery of an Incident
 - a. Medical Care
 - b. Medical Documentation and Photographs
 - c. Securing the Scene and Documenting the Scene
 - d. Securing Physical and Demonstrative Evidence
4. Implementation of Immediate Safety Plan
5. Separation of Witnesses (directions not to discuss)
6. Documentation of incident by all witnesses (prompt completion of detailed incident report)

D. Assigned Investigator - Conducting the Preliminary Investigation

1. Interview the reporter
2. Review videos, incident reports and other relevant staffing assignments and log books
3. Review alleged victim's clinical record and speak with clinician
4. Interview the alleged victim
5. Interview direct witnesses
6. Summarize interviews and other evidence
7. Determine next steps (with supervisor)

E. Collection, Preservation and Documentation of Evidence

1. Types of Evidence
2. Securing Evidence
3. Preserving and documenting the scene
4. Logging evidence and uploading to the VPCR

F. Small Group Exercise on Initial Incident Responses, Safety Planning, Evidence Preservation and Investigation Planning

G. Formal/Full Investigation Planning

1. Investigation Planning – Identify Case Questions
2. Scheduling investigative activities
 - a. Reporter
 - b. Clinicians
 - c. Supervisors

- d. Other Experts
- e. Victim and Service Recipient Witnesses
- f. Staff Witnesses
- g. Subject of the Investigation

H. Conducting Investigative Interviews

1. Forensic Interviews of Individuals with Disabilities

- a. Interview location
- b. Introducing yourself
- c. Developing rapport
- d. Providing for recipient needs
- e. Assessing cognitive and communication abilities and memory
- f. Ground rules
- g. Conducting the interview – NICHHD Practice Guidelines
- h. Continued awareness of recipient personality traits that may affect the interview
- i. Interviewer patience and demeanor
- j. Signals and control
- k. Protocols for interviewing Service Recipients
 - i. Purpose of Chapter 394 of the Laws of 2014
 - ii. Notifications of personal representative
 - iii. Information from service provider
 - iv. Exceptions when clinically contraindicated
 - v. Information obtained from personal representative
 - vi. Presence of personal representative
 - vii. Explanations during interview introduction
 - viii. Instructions at closure of interview

2. Interviews of other witnesses

- a. Introduction of self and purpose of interview
- b. Conducting the interview – building rapport, role setting
- c. Sequencing and eliciting detail
- d. Drawing the diagram
- e. Active listening – clarifying details and exploring contradictions
- f. Summarizing major points
- g. Going beyond the incident – care and programmatic concerns, interpersonal issues
- h. Interview assessment/progress notes

3. Subject Interviews

- a. Interview preparation
- b. Scheduling, representation and rights notifications
- c. Requirement for cooperation
- d. Introduction of allegation
- e. Open narrative
- f. Eliciting detailed descriptions

- g. Addressing omissions and contradictions
- h. Seeking explanations without passing judgment
- i. Admissions and confessions

I. Video Exercise – Observe and Critique the performance of others

J. Paired - off Supervised Interview Exercises

Alternating 30 minute practice sessions based on real incidents on video with subsequent review with interviewers and interviewees

K. Justice Center Determinations

- 1. Justice Center abuse and neglect offenses and required elements for substantiation
- 2. Offense Categories 1 through 4

- End of Day 1

L. Video Exercise – Observe and Critique Subject Interrogation

M. Detecting Deception

- 1. Determining baseline presentation
- 2. Physical indicators of deception
- 3. Changes in content or pacing
- 4. Using silence to generate additional information
- 5. Maintaining self-control while expressing your concerns

N. The Written Statement

- 1. Purpose – to document Information and commit the witness
- 2. Method of recording
- 3. Techniques for content
- 4. Final reading
- 5. Closing clause
- 6. Signatures

O. Second Interview Practice Session with written statement – Part 1
(abuse incident video)

Second Interview Practice Session with written statement – Part 2
(abuse incident video)

P. Evaluation of the Evidence

- 1. Re-Identify case questions (including those raised during investigation)
- 2. Conduct an evidence review
- 3. Assess witness reports
 - a. Evaluating staff witness statements:
 - i. Motivation

- ii. Consistency with other reporters and evidence
 - b. Evaluating service recipient statements:
 - i. Reliability
 - ii. Credibility
 - iii. Interviewing clinicians regarding reliability and evidence of psychological injury
- 4. Assess similarities and differences
- 5. Resolving conflicting evidence
 - a. Statements contradicted by reliable evidence
 - b. Remain objective.
 - c. Consult/debate theories and conclusions with partner or supervisor
- 6. Establishing independent corroboration and obtaining expert opinions
 - a. Attending clinicians
 - b. Supervising clinicians, central office staff
 - c. Other experts
- 7. Determine if/what additional investigative steps are required
 - a. More interviews
 - b. Re-interviews
 - c. Additional documents
 - d. Additional clinical assessments or expert opinions
- 8. Analysis of Elements of Allegation(s)
 - a. Do acts support legal definition?
 - b. Is there sufficient evidence to support each element?
 - c. If not, is additional investigation likely to uncover required evidence?

Q. Recommending Case Determinations

- 1. Developing and challenging theories of the case
- 2. Hearsay evidence
- 3. Systemic issues potentially mitigating individual culpability
- 4. Potential determinations and necessary evidentiary supports
- 5. Identifying areas of recommendation
 - a. Staff misconduct vs. mitigating circumstances
 - b. Training needs
 - c. Policy/Procedure Concerns
 - d. Identified safety issues
 - e. Living condition concerns

R. Update VPCR (NIMRS or IRMA)

- 1. Upload Evidence
- 2. Update Contacts
 - a. Identify personal representatives
- 3. Requesting SCR checks
- 4. Reviewing all incidents
- 5. Determinations listed for each subject and all allegations

S. Investigation Reports

1. Purpose of the Report
2. Potential Audiences/Customers
3. As Preparation for Testimony
 - a. Administrative or civil proceedings
 - b. Summarizing only relevant information
 - c. Ensuring accuracy
 - d. Sensitive to SR history relevant to case, no labeling
4. Contains needed information for OGC/AAU/Discipline to reach appropriate determination and category
5. Details consideration of preponderance of the evidence for each offense
 - a. assesses credibility of staff and recipients
 - b. details corroboration
 - c. considers internal consistencies/inconsistencies
 - d. differences between accounts and between witnesses
 - e. If one version is more logical or reasonable
6. An excellent Investigation report should
 - a. Only contain factual information, supported by evidence
 - b. Be precise, free of mistakes and errors
 - c. Be easily understood, avoiding ambiguous language and grammatically correct
 - d. Be complete, containing all necessary information, presented in an objective manner
 - e. Yet be concise, removing superfluous details,
 - f. Be completed and submitted as soon as possible

T. Investigation Report Structure

1. Headings
 - a. Case Number
 - b. Incident Number
 - c. Date of Allegation
 - d. Date Report submitted to the Justice Center
 - e. Facility Name and address (location of incident)
 - f. Parent Provider Name
 - g. Name of Investigator
 - h. Name of each victim
 - i. Name of each subject associated with that victim, along with each allegation type for that subject
2. Allegation Narratives
3. Summary of Investigative Process
4. Witness List
 - a. Witnesses interviewed
 - b. Witnesses not interviewed (with justification listed)
5. List of Documentary Evidence
 - a. Relevant documentation copied and uploaded to the VPCR, including:
 - i. Relevant training records

- ii. Summary of content of training
- iii. Staffing schedules
- iv. Staff sign-in sheets
- v. Progress notes
- vi. Incident Reports
- vii. Post-incident medical exams and assessments
- viii. Medication administration records
- ix. Psychological injury clinical evaluations
- b. Documentation reviewed but not uploaded, with rationale
- 6. List of Videos and other Evidence reviewed (Specify whether they were uploaded to VPCR, and if not why not)
- 7. Summary of Factual Findings
- 8. Summary of evaluation of relevant evidence and recommended determinations
 - a. Separate determinations for each subject
 - b. Detailing separate determinations for each allegation
- 9. Recommended Corrective and Preventative Actions

U. Justice Center Triage Unit Reviews of Submitted Investigation Reports

- 1. Report review
- 2. Examination of supporting evidence
- 3. Review of allegations and recommended determinations for all allegations for each subject
- 4. Review of background checks and personal representative listings
- 5. Discussion with primary investigator when warranted
- 6. Preparation of review memorandum
 - a. Summary of substance of investigations
 - b. Rationale to agree or disagree with each determination
 - c. Agree with recommendations or list additional areas of concern
- 7. Review by Triage Supervisor
- 8. Generate and mail unsubstantiated determination letter if primary investigator and triage in agreement with unsubstantiated finding
- 9. Upon approval, forward to Justice Center Office of General Counsel for final determination if Triage primary investigator disagrees with recommendation for unsubstantiation, or recommends substantiating one or more allegation

V. Office of General Counsel Review of Investigation

- 1. Final Determination based on:
 - a. Investigation Report
 - b. Attached Evidence initially submitted and that added after Triage review
 - c. Triage Unit Review Memorandum
- 2. May or may not agree with recommended determination based on compliance with legal standards to support recommended determination
- 3. May recommend additional corrective measures
- 4. Prepares and mails letters to subject(s), victim(s) or personal representative(s) and provider executive director, with copy of last letter sent to the SOA

W. Corrective Action Planning, IRC/SRC and the Prevention and Quality Improvement Unit

1. Corrective actions identified and implemented during course of investigation
2. Investigator recommendations from corrective and protective actions
3. Potential roles and duties of the Incident Review/Special Review Committee
4. Corrective Action Plan (CAP) Activities in the VPCR
5. Duties and Actions of the Justice Center Prevention and Quality Improvement Unit (PQI)

X. Justice Center Administrative Appeals Unit

1. Requesting a Fair Hearing
2. De Novo reviews of the report and case record
3. Evidence supporting retention upon appeal
4. Counsel's work with the primary investigator
5. Pre-hearing conference
6. Scheduling the fair hearing
7. Hearing procedures and practices

Y. Process Review – Wrap Up, Q&A Session and Evaluations

1. Additional Questions
2. Discussion of provider interactions with the Justice Center
3. Justice Center resources for Providers, staff and recipients of services
4. Completion of evaluations
5. Distribution of Certificates of Completion