

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

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In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

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**FINAL  
DETERMINATION  
AND ORDER  
AFTER HEARING**

**Adjud. Case #:**

[REDACTED]  
[REDACTED]

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
Appearance Waived

New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
By: Thomas Parisi, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

By: Jason Jaros, Esq.  
8207 Main Street, Suite 13  
Williamsville, New York 14221

████████████████████

The Findings of Fact and Conclusions of law are incorporated from the Recommendations of the presiding Administrative Law Judge's Recommended Decision.

**ORDERED:** The request of ██████████ that the substantiated report dated ██████████, ██████████ be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

The substantiated report is properly categorized, as a Category 3 act.

The request of ██████████ that the substantiated report dated ██████████, ██████████, be amended and sealed is also denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

The substantiated report is properly categorized, as a Category 3 act.

The request of ██████████ that the substantiated report dated ██████████, ██████████, be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

The substantiated report is properly categorized, as a Category 3 act.

████████████████████

NOW, THEREFORE, IT IS DETERMINED that the record of these reports shall be retained by the Vulnerable Persons' Central Register, and will be sealed after five years pursuant to SSL § 493(4)(c).

This decision is ordered by David Molik, Director of the Administrative Hearings Unit, who has been designated by the Executive Director to make such decisions.

**DATED:** August 24, 2016  
Schenectady, New York

  
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David Molik  
Administrative Hearings Unit

**STATE OF NEW YORK  
JUSTICE CENTER FOR THE PROTECTION OF PEOPLE  
WITH SPECIAL NEEDS**

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In the Matter of the Appeal of

[REDACTED]

Pursuant to § 494 of the Social Services Law

---

**RECOMMENDED  
DECISION  
AFTER  
HEARING**

**Adjud. Case Numbers:**

[REDACTED]  
[REDACTED]

Before:

Mary Jo Lattimore-Young  
Administrative Law Judge

Held at:

New York State Justice Center for the Protection  
of People with Special Needs  
Administrative Hearings Unit  
1200 East and West Road  
West Seneca, New York 14224  
On: [REDACTED]

Parties:

Vulnerable Persons' Central Register  
New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
Appearance Waived.

New York State Justice Center for the Protection  
of People with Special Needs  
161 Delaware Avenue  
Delmar, New York 12054-1310  
By: Thomas Parisi, Esq.

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

By: Jason Jaros, Esq.,  
8207 Main Street, Suite 13  
Williamsville, New York 14221

## **JURISDICTION**

The New York State Vulnerable Persons' Central Register (the VPCR) maintains reports substantiating [REDACTED] and [REDACTED] (the Subjects) for neglect. Both Subjects have requested that the VPCR amend the reports to reflect that they are not subjects of the substantiated reports. The VPCR did not do so, and a hearing was then scheduled in accordance with the requirements of Social Services Law (SSL) §494 and Part 700 of 14 NYCRR.

## **FINDINGS OF FACT**

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found that the VPCR contains "substantiated" reports involving the neglect of two Service Recipients by the Subjects.

1. The VPCR contains two "substantiated" reports dated [REDACTED] [REDACTED] and [REDACTED] [REDACTED] of neglect by [REDACTED] of Service Recipients.

2. Additionally, the VPCR contains a "substantiated" report also dated [REDACTED] [REDACTED] of neglect by [REDACTED] [REDACTED] of a Service Recipient.

3. After the investigation of Subject [REDACTED] role in the report dated [REDACTED] [REDACTED], the Justice Center concluded that:

### **Allegation 1<sup>1</sup>** [REDACTED]

It was alleged that between [REDACTED] and [REDACTED] at the [REDACTED] [REDACTED] located at [REDACTED], while acting as a custodian, you committed neglect when you instructed one service recipient to assault another service recipient and break his personal belongings.

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<sup>1</sup> The instant and second "Allegation 1" was substantiated against Subject [REDACTED]. However, the specific dates of occurrences of the neglect alleged were not definitively established in the record.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to Social Services Law § 493(4)(c).

4. After the investigation of [REDACTED] role in the report dated [REDACTED], the Justice Center concluded that:

**Allegation 2<sup>2</sup>** [REDACTED]

It was alleged that between [REDACTED] and [REDACTED], at the [REDACTED] located at [REDACTED], while acting as a custodian, you committed neglect when you obtained and allowed a service recipient to possess items specifically prohibited by his Behavior Support Plan.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to Social Service Law § 493(4)(c).

**Allegation 3<sup>3</sup>** [REDACTED]

It was alleged that on or about [REDACTED] at the [REDACTED] located at [REDACTED] while acting as a custodian, you committed neglect when you discussed your personal gun collection with a service recipient, talked about blowing up the group home, and allowed him to watch violent movies.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to Social Services Law § 493(4)(c).

5. After the investigation of [REDACTED] role in the report dated [REDACTED], the Justice Center concluded that:

**Allegation 2** [REDACTED]

It was alleged that between [REDACTED] and [REDACTED], at the [REDACTED] located at [REDACTED], while acting as a custodian, you committed neglect when you obtained and allowed a service recipient to possess items specifically prohibited by his Behavior Support Plan.

This allegation has been SUBSTANTIATED as Category 3 neglect pursuant to

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<sup>2</sup> As to both of the Subjects, "Allegation 2" of the [REDACTED] reports are identical. However, the individual dates of occurrences of the neglect alleged were not definitively established in the record. (Refer to Justice Center Exhibits 1 and 1a of [REDACTED])

<sup>3</sup> Allegation 3 of the substantiated report dated [REDACTED] is asserted only against Subject [REDACTED]. The individual dates of occurrences of the neglect alleged were not definitively established in the record.

Social Service Law § 493(4)(c).

6. An Administrative Review was conducted and as a result the substantiated reports were retained.

7. The facility, located at [REDACTED], is a State Operated Individual Residential Alternative (SOIRA) for developmentally disabled persons. The SOIRA is operated by New York State Office for People with Developmental Disabilities (OPWDD), which is a provider agency that is subject to the jurisdiction of the Justice Center. There are eight residents who live at the facility.

8. At the time of the alleged neglect, Service Recipient 1 had been a resident of the facility since at least [REDACTED]. Service Recipient 1 was a high functioning thirty-five year old male who was able to verbally communicate with staff. He wore support braces on both knees while walking, but was able to independently ambulate. (Justice Center Exhibit 8 of Adjudication Case [REDACTED] and Justice Center Exhibit 16 of Adjudication Cases [REDACTED] and [REDACTED])

9. Service Recipient 1 was a person with diagnoses of a mild intellectual disability, Obsessive Compulsive Disorder and Post-Traumatic Stress Disorder, for which he received psychiatric medication and services. (Justice Center Exhibits 6-10 of Adjudication Case [REDACTED] and Justice Center Exhibits 10-13 and 15-18 of Adjudication Cases [REDACTED] and [REDACTED])

10. Service Recipient 1 had a history of arrests. One of the arrests involved the theft of toy school buses, which theft was self-reported. [REDACTED] [REDACTED]  
[REDACTED] Service Recipient 1 was known to evade supervision to obtain access to those prohibited items considered unsafe for him. Service Recipient

1 also had a history of fire-setting and threats of harm toward himself and others, along with a morbid or unhealthy interest in media with violent themes. In addition, he sought to access prohibited media-related items with violent themes, such as movies, television shows and video games. (Justice Center Exhibits 10, 15-17 of Adjudication Cases [REDACTED] and [REDACTED])

11. Service Recipient 1's Behavior Support Plan (BSP) and Plan of Protective Oversight (POPO) specifically stated that "toy buses," "media with violent themes" and R-rated movies were unsafe and prohibited items for Service Recipient 1 to access or possess. While Service Recipient 1 was engaged in the community or in public on shopping outings, Service Recipient 1's POPO required staff supervisory levels to be "range of scan," meaning nearby, in order to enable staff to be alerted and assured that Service Recipient 1 engaged in the permissible access to items or purchase of items. Additionally, Service Recipient 1's Risk Management Plan (RMP) specified that if Service Recipient 1 violated the terms of his safety plan, the activity was to be terminated and he was to return home and, thereafter, undergo a coaching session. The long term goal was to allow Service Recipient 1 to enter a community store where staff had a clear view of him to allow him to make his own purchases. (Hearing testimony of Justice Center Investigator [REDACTED], Justice Center Exhibits 7-8 of Adjudication Case [REDACTED]; and Justice Center Exhibits 10, 15-17 of Adjudication Cases [REDACTED] and [REDACTED])

12. At the time of the alleged neglect, Service Recipient 2 was a verbal twenty-eight year old male resident of the [REDACTED] who was able to communicate with staff. He was a resident of the facility since at least [REDACTED], 2013. Service Recipient 2 had diagnoses of a mild intellectual disability, Obsessive Compulsive Disorder and was prescribed psychotropic medication for related symptoms. (Justice Center Exhibit 11-12 of Adjudication Case [REDACTED])



13. At the time of the alleged neglect, Subject [REDACTED] was employed by the OPWDD and had worked at the [REDACTED] as a Direct Support Aide (DSA) since [REDACTED]. Subject [REDACTED] had known Service Recipient 1 since [REDACTED] 2008. Subject [REDACTED] worked [REDACTED] Thursday until Monday. Subject [REDACTED] was a custodian as that term is so defined in Social Services Law § 488(2). (Hearing testimony and investigative interrogation of Subject [REDACTED] and Justice Center Exhibit 19)

14. At the time of the alleged neglect, Subject [REDACTED] had been employed as a DSA with OPWDD since [REDACTED], 2007. Subject [REDACTED] had been assigned to work at the [REDACTED] as a DSA from [REDACTED]. Subject [REDACTED] worked [REDACTED] at the facility from Sunday until Thursday. Subject [REDACTED] worked together with Subject [REDACTED] during at least three of five work days per week. Subject [REDACTED] was a custodian as that term is so defined in Social Services Law § 488(2). (Hearing testimony and investigative interrogation of Subject [REDACTED]; and Justice Center Exhibit 19)

### **FINDINGS OF FACT 1**

#### **Report (Adjudication)**

#### **ALLEGATION 1 [REDACTED]**

#### **[Assaultive Behavior/Personal Property Damage]**

15. On occasions between [REDACTED] and [REDACTED], while supervising the Service Recipients, Subject [REDACTED] instructed Service Recipient 1 to assault Service Recipient 2 when they were playing catch on facility grounds. The assaults occurred when Service Recipient 1 would throw balls at Service Recipient 2 to try to hit and hurt Service Recipient 2, with Subject [REDACTED] encouragement and participation. During that same time period, Subject [REDACTED] also encouraged and allowed Service Recipient 1 and Service Recipient 2 to wrestle in a manner that was rough, aggressive and assault-like, during which Service Recipient 1 placed choke holds on

Service Recipient 2. (Audio recording of investigative interview of Service Recipient 2, hearing testimony of Justice Center Investigator [REDACTED]; and Justice Center Exhibits 6 and 14 of Adjudication Case [REDACTED])

16. During the period from [REDACTED] through [REDACTED] Subject [REDACTED] told Service Recipient 1 to break or damage personal property (CDs) belonging to Service Recipient 2, if Service Recipient 2 “messed with” Service Recipient 1. (Audio recording of investigative interviews of Service Recipient 1 and Service Recipient 2, hearing testimony of Justice Center Investigator [REDACTED]; and Justice Center Exhibits 6 and 14 of Adjudication Case [REDACTED])

**Report (Adjudication [REDACTED])**

**ALLEGATION 2 [REDACTED]  
[Possession of Toy Buses]**

17. Possession of toy buses was specifically prohibited by Service Recipient 1’s BSP, POPO and RMP, due to Service Recipient 1’s unhealthy psychological interest in toy buses.

18. From [REDACTED] to [REDACTED] Subject [REDACTED] either alone or together with Subject [REDACTED] took Service Recipient 1 on several shopping outings to various stores, including but not limited to, the [REDACTED] Walmart and Tractor Supply. During these shopping trips and while under the supervision of Subject [REDACTED] Service Recipient 1 purchased or gained possession of nine toy buses, which were known by both Subjects to be unsafe items for Service Recipient 1 to possess. (Hearing testimonies of Subject [REDACTED], Subject [REDACTED], Justice Center Investigator [REDACTED]; and Justice Center Exhibits 10, 14-17, and 19-20 of Adjudication Case [REDACTED])

19. At 4:00 p.m. on [REDACTED], prior to a search of Service Recipient 1’s bedroom to find a missing object, Service Recipient 1 showed staff the nine toy buses that he had hidden in

his bedroom. Service Recipient 1 further disclosed to staff that Subject ██████ told him to hide the toy school buses and that both of the Subjects told Service Recipient 1 not to tell anyone he had the buses in his possession. (Audio recording of investigative interviews of Service Recipient 1 and Service Recipient 2, hearing testimony of Justice Center Investigator ██████; and Justice Center Exhibits 9-10 and 19-20)

**██████████ Report (Adjudication ██████████)**

**ALLEGATION 3 ██████████**

**[Talk of Blowing up ██████████ and Allowing Viewing of Violent Movies]**

20. Service Recipient 1's BSP, POPO and RMP mandated that, due to his unhealthy interest in extremely violent media, Service Recipient 1 was prohibited from possessing and/or watching violent media. Subject ██████ was aware of this prohibition. (Hearing testimony of Subject ██████ and Justice Center Exhibits 15-16 of Adjudication ██████████)

21. In February ██████, Subject ██████ permitted Service Recipient 1 to watch violent videos/movies on his cellular telephone. Subject ██████ also allowed Service Recipient 1 to regularly watch violent media, including the television series about zombies called the "Walking Dead." (Audio recorded investigative interviews of Service Recipient 1 and Service Recipient 2, hearing testimony of Justice Center Investigator ██████████ and Justice Center Exhibits 10, 14-17, and 19-20)

22. During his supervision of Service Recipient 1 in ██████████ Subject ██████ told Service Recipient 1 that he owned "seven AR 15s" (assault-style rifles) and that Subject ██████ was going to blow up the facility in the event of a civil war. Subject ██████ threatening verbal statements frightened Service Recipient 1. (Audio recorded investigative interview of Service Recipient 1, hearing testimony of Justice Center Investigator ██████████ and Justice Center Exhibits 10 and 19)

**FINDINGS OF FACT 2****Report (Adjudication)****ALLEGATION 2****[Allowing Possession of Toy Buses]**

23. The facility's residential notes indicate that from [REDACTED] to [REDACTED], Subject [REDACTED] either alone or together with Subject [REDACTED] supervised Service Recipient 1 on several shopping outings to various stores, including but not limited to, the [REDACTED], Walmart and Tractor Supply. During these shopping outings and while under Subject [REDACTED] supervision, Service Recipient 1 was allowed to purchase or otherwise gain possession of nine toy buses. Subject [REDACTED] knew that Service Recipient 1's BSP, POPO and RMP prohibited him from possessing the toy buses. (Hearing testimonies of Subject [REDACTED] and Justice Center Investigator [REDACTED]; and Justice Center Exhibits 14, 19-20 of Adjudication Case [REDACTED])

**ISSUES**

- Whether the Subject(s) has/have been shown by a preponderance of the evidence to have committed the act or acts giving rise to the substantiated report(s).
- Whether the substantiated allegations constitute neglect.
- Pursuant to Social Services Law § 493(4), the category of neglect that such act or acts constitute.

**APPLICABLE LAW**

The Justice Center is responsible for investigating allegations of neglect in a facility or provider agency. [SSL §492(3)(c) and 493(1) and (3)] Pursuant to SSL §493(3), the Justice Center determined that the initial reports of neglect presently under review were substantiated. A "substantiated report" means a report "... wherein a determination has been made as a result of an

investigation that there is a preponderance of the evidence that the alleged act or acts of abuse or neglect occurred...” [Title 14 NYCRR 700.3(f)]

The neglect of a person in a facility or provider agency is defined under SSL §488(1)(h) as follows:

“Neglect,” which shall mean 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 service recipient.

Substantiated reports of neglect shall be categorized into categories pursuant to SSL §493(4), including Category 3, which is defined under SSL §493(4)(c) as follows:

Category three is abuse or neglect by custodians that is not otherwise described in categories one and two. Reports that result in a category three finding shall be sealed after five years.

The Justice Center has the burden of proving at a hearing by a preponderance of the evidence that the Subject(s) committed the act or acts of neglect alleged in the substantiated report(s) that the subject(s) of the proceeding and that such act or acts constitute the category of neglect as set forth in the substantiated reports. Title 14 NYCRR §700.10(d).

If the Justice Center proves the alleged neglect, the report(s) will not be amended and sealed. Pursuant to SSL §493(4) and Title 14 NYCRR 700.10(d), it must then be determined whether the act or acts of neglect cited in the substantiated report(s) constitutes the category of neglect as set forth in the substantiated report(s).

If the Justice Center did not prove the neglect by a preponderance of the evidence, the substantiated report(s) must be amended and sealed.

### **DISCUSSION**

With respect to Subject [REDACTED] there are two separate reports. The first report dated [REDACTED] contains one substantiated allegation of neglect. The second report dated

██████████ contains two substantiated allegations of neglect. (Justice Center Exhibits 1 of Adjudication Cases ██████████ and ██████████)

With respect to Subject ██████████ there is one report dated ██████████ that contains one substantiated allegation of neglect. (Justice Center Exhibit 1 of Adjudication Case ██████████)

The Justice Center has proven by a preponderance of the evidence that Subject ██████████ and Subject ██████████ committed the acts of neglect as alleged.

In support of its substantiated findings, the Justice Center presented at the hearing a number of documents obtained during the investigation and audio recordings of Justice Center interviews of both Service Recipients, facility staff and the interrogations of the Subjects.<sup>4</sup> (Justice Center Exhibits 1-14 of Adjudication Case ██████████ and Justice Center Exhibits 1-20 of the related matter under Adjudication Case ██████████)

The investigation underlying the substantiated reports was conducted by former Justice Center Investigator ██████████ and Justice Center Investigator ██████████ the latter having testified at the hearing on behalf of the Justice Center. At the hearing, Subject ██████████ testified via the telephone and presented no other evidence. Subject ██████████ testified at the hearing and provided no other evidence.

**Subject ██████████**

**██████████ Report (Adjudication ██████████)**

Allegation 1 of the substantiated report dated ██████████ alleges that Subject ██████████ committed neglect when he instructed Service Recipient 1 to assault Service Recipient 2

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<sup>4</sup> The hearing was conducted as a consolidated hearing in regards to all of the pending allegations against the two Subjects.

and to break his personal belongings. (Justice Center Exhibit 1 of Adjudication Case [REDACTED])

The evidence establishes that Subject [REDACTED] participated in and encouraged Service Recipient 1 to target Service Recipient 2 while the Service Recipients were playing catch with a ball and when wrestling. The evidence also establishes that Subject [REDACTED] encouraged Service Recipient 1 to break the personal belongings of Service Recipient 2 by telling him to do so if Service Recipient 2 “messed with” him.

During his interview with former Justice Center Investigator [REDACTED] Service Recipient 2 provided a compelling and detailed eyewitness account of incidents that occurred on several occasions. Service Recipient 2 told the investigator that while playing ball Subject [REDACTED] told and encouraged Service Recipient 1 to forcefully throw or “chuck” the balls at Service Recipient 2 with the intent to hit Service Recipient 2 in the face in order to make him angry and Service Recipient 1 complied.<sup>5</sup> Service Recipient 2 further stated that Subject [REDACTED] himself participated in aggressively throwing balls at Service Recipient 2 to try to hit and hurt him. Service Recipient 2’s claims were re-iterated during his [REDACTED] interview with Justice Center Investigator [REDACTED] in the related case. Service Recipient 2 stated in his interview the same facts as he had initially reported to the Direct Assistant 1 (DA1) regarding the assaultive conduct involving Subject [REDACTED] and Service Recipient 1 who threw balls hard at him on various occasions while playing catch on facility grounds. Additionally, at some point, Service Recipient 2 had also reported to the facility’s DA1 that while wrestling, Service Recipient 1 tried to choke him because Subject [REDACTED] told him to do so. Service Recipient 2 further stated in his investigatory interview that Subject [REDACTED] provoked and encouraged the two Service Recipients

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<sup>5</sup> There is no mention of the interview date on Service Recipient 2’s audio recorded interview. However, the interview was likely done sometime between [REDACTED] (the date the [REDACTED] reporter notified the Justice Center of the incident) and [REDACTED] the date of former Justice Center Investigator [REDACTED] investigative report.

to wrestle aggressively, which was an impermissible activity. (Hearing testimony of Justice Center Investigator [REDACTED], Justice Center Exhibit 6; Audio recorded interview of both Service Recipients by former Justice Center Investigator [REDACTED] Justice Center Exhibit 14 of Adjudication Case [REDACTED]; and Audio recorded interview of Service Recipient 2 and DA1 by Justice Center Investigator [REDACTED] Justice Center Exhibit 19 of Adjudication Case [REDACTED])

Service Recipient 2 stated during his interview that, because he had become so fed up with how he was being mistreated by Subject [REDACTED] it lead to his behavioral incident on [REDACTED]. Subsequent to the behavioral incident, Service Recipient 2 had reported Subject [REDACTED] conduct to a staff member. The residential notes in the related case confirmed that Service Recipient 2 had a behavioral incident on [REDACTED]. Furthermore, Service Recipient 2's [REDACTED] psychological assessment concluded that there appeared to be a "...correlation to an increase in his demonstration of maladaptive behavior..." on shifts when Subject [REDACTED] worked, but that it was difficult to determine if that was the sole cause or if there were other contributing factors. (Justice Center Exhibits 6 and 13-14 of Adjudication Case [REDACTED] and refer to Justice Center Exhibits 10, 14 and 19 of the related matter, Adjudication Case [REDACTED])

The evidence also establishes that Subject [REDACTED] instructed Service Recipient 1 to break the personal belongings of Service Recipient 2. Both Service Recipients 1 and 2 told Justice Center Investigator [REDACTED] on [REDACTED] that Subject [REDACTED] had repeatedly instructed Service Recipient 1 to break Service Recipient 2's CDs if he "messed" with Service Recipient 1. (Service Recipients' audio recorded interviews, Justice Center Exhibit 14 of Adjudication Case [REDACTED]; and Service Recipient 2's audio recorded interview, Justice Center Exhibit 19 in the related case under Adjudication Case [REDACTED])



At the hearing, Subject [REDACTED] offered general denials to all of the allegations. As to Subject [REDACTED] involvement in Service Recipient 1's assaultive behavior against Service Recipient 2, Subject [REDACTED] testified that although he did play catch with the Service Recipients, he never instructed Service Recipient 1 to assault Service Recipient 2 during that activity. As to the allegation that Subject [REDACTED] directed Service Recipient 1 to damage personal property (CDs) of Service Recipient 2, he argued that there was no physical proof of damaged CDs. However, the fact that there is no physical evidence of damaged CDs is irrelevant. The key issue here is that Subject [REDACTED] told Service Recipient 1 to damage Service Recipient 2's CDs. Therefore, proof of actual damage to the CDs is not necessary because Subject [REDACTED] alleged misconduct was his instruction to Service Recipient 1 to damage another's property. Subject [REDACTED] further claimed that he was being set up because he no longer worked at the facility, that Service Recipient 2 was being manipulated as to what to say by staff, specifically the DA1, and that Service Recipient 2 had a history of fabricating. However, Subject [REDACTED] claims are self-serving and unsupported by sufficient corroborating proof. The eyewitness accounts of Service Recipients 1 and 2 are accepted as credible evidence of Subject [REDACTED] misconduct.

As a custodian for the Service Recipients, Subject [REDACTED] had a duty to follow the Service Recipients' BSP, POPO, BRM plans and facility policy regarding the Service Recipients' protection and safety. Subject [REDACTED] participation and encouragement of Service Recipient 1 to engage in assault-like behavior towards Service Recipient 2 and to damage Service Recipient 2's CDs constituted a breach of Subject [REDACTED] custodial duties to the Service Recipients. Given the Service Recipients' issues and vulnerabilities, Subject [REDACTED] conduct was likely to have resulted in physical injury or serious or protracted impairment of the physical, mental or emotional condition of the Service Recipients in accordance with SSL§ 488(1)(h).

**Report (Adjudication Case**

Allegation 2 of the second substantiated report against Subject [REDACTED] dated [REDACTED] alleges that Subject [REDACTED] obtained and allowed Service Recipient 1 to possess toy buses specifically prohibited by his BSP. (Justice Center Exhibit 3a of Adjudication Case [REDACTED])

Service Recipient 1's BSP, POPO and RMP mandated that he not be allowed to possess yellow/orange toy buses due to his unhealthy psychological interest in those items. Service Recipient 1's BSP further dictated that while out in the public/community, staffs' supervisory level is required to be "range of scan." (Hearing testimony of Justice Center Investigator [REDACTED]; Justice Center Exhibits 10 and 15-17 of Adjudication Case [REDACTED])

The evidence demonstrates that, prior to the [REDACTED] search of his bedroom, Service Recipient 1 told staff that he had hidden nine toy buses. He revealed that six of the toy buses were concealed in his bedroom cabinet and the other three were contained in a bag in his bedroom. Service Recipient 1 told facility staff on [REDACTED] as well as the Justice Center's investigator during his interview on [REDACTED] that Subject [REDACTED] and Subject [REDACTED] allowed him to purchase toy buses while on shopping outings to various stores. Service Recipient 1 further told the investigator that Subject [REDACTED] and Subject [REDACTED] said to him that if anyone ever asked how he obtained the buses, he was to respond that he alone purchased them. The facts regarding Service Recipient 1's purchase and possession of toy buses were corroborated by Service Recipient 2, who stated during his [REDACTED] investigatory interview that on various occasions he heard Service Recipient 1 ask Subject [REDACTED] and/or Subject [REDACTED] to take him shopping to buy buses. Service Recipient 2 further stated in his interview that he saw Service Recipient 1 return from shopping trips with Subject [REDACTED] and/or Subject [REDACTED]. Then, at some point thereafter,

Service Recipient 2 saw Service Recipient 1 retrieve the toy buses from his bedroom cabinet. (Hearing testimony of Justice Center Investigator [REDACTED] Justice Center Exhibits 9-10; and Service Recipient 2's audio recorded interview with photograph of toy buses, Justice Center Exhibits 19-20 of Adjudication Case [REDACTED])

At the hearing, Subject [REDACTED] admitted that he accompanied Service Recipient 1 on shopping outings. However, Subject [REDACTED] stated that he never permitted Service Recipient 1 to buy or obtain toy buses. Subject [REDACTED] raised many claims in his defense, all of which lacked merit. He argued that there were other staff members who took Service Recipient 1 on shopping trips and that the toy buses in Service Recipient 1's possession were found after he and Subject [REDACTED] were no longer working at the facility. During his testimony at the hearing, Subject [REDACTED] stated that on several occasions he and Subject [REDACTED] had transported Service Recipient 1 for family visits and that Service Recipient 1 must have obtained the toy buses there. Subject [REDACTED] argued that because Service Recipient 1's rights restrictions, prevented staff from searching Service Recipient 1 after a family visit, he could have brought the buses into the facility without detection. (Hearing testimony of Subject [REDACTED] and Justice Center Exhibit 14)

Subject [REDACTED] also submitted that because he was targeted for removal from the facility by the new DA1, with whom he had a personal problem, Service Recipient 1 was being manipulated by facility superiors to fabricate the allegations. Moreover, Subject [REDACTED] claimed that employees who were no longer working at the facility were usually the ones that were singled out and blamed for problems that occurred at the facility before they had left. (Hearing testimony of Subject [REDACTED])

Service Recipient 1 provided a detailed, compelling and persuasive eyewitness account of events. According to their investigative interviews, Service Recipient 1's account is, for the most

part, corroborated by Service Recipient 2's account of events. Moreover, Service Recipient 2's account of events is from an independent source who was not involved in the incident. (Justice Center Exhibits 10 and 19-20)

After carefully reviewing the evidence, it is determined that the Service Recipients' account of what occurred is credited evidence. All of Subject [REDACTED] claims are found to be self-serving, unsupported by sufficient evidence, and lacking corroboration from independent sources.

Allegation 3 of the [REDACTED] report alleges that Subject [REDACTED] committed neglect when he talked to Service Recipient 1 about his personal gun collection and blowing up the group home in the event of civil war and when he allowed Service Recipient 1 to view violent media. (Justice Center Exhibit 3a of Adjudication Case [REDACTED])

The evidence establishes that about [REDACTED] Subject [REDACTED] told Service Recipient 1 that he owned "seven AR 15s" (assault-style rifles) and that he was going to blow up the facility in the event of a civil war, which threat, although idle, frightened Service Recipient 1. Service Recipient 1 explained in detail during his [REDACTED] interview with Justice Center Investigator [REDACTED] what Subject [REDACTED] had said to him. Service Recipient 1 stated in his interview that he believed Subject [REDACTED] was mad at someone at the facility, but did not know who it was. Service Recipient 1's account of what was said to him by Subject [REDACTED] was highly descriptive and detailed. (Hearing testimony of Justice Center Investigator [REDACTED]; and Justice Center Exhibits 10 and 19 of Adjudication Case [REDACTED])

The evidence further establishes that Service Recipient 1's BSP, POPO and RMP mandated that Service Recipient 1 was not permitted to watch violent videos and/or movies because of his unhealthy psychological interest in violent media. Subject [REDACTED] was aware of this restriction.

Service Recipient 1 told the facility treatment team leader on [REDACTED] and Justice Center Investigator [REDACTED] on [REDACTED] that Subject [REDACTED] allowed him to watch violent and prohibited movies on Subject [REDACTED] cellular telephone and on the television at the facility. Service Recipient 2 told Justice Center Investigator [REDACTED] on [REDACTED] that he saw Subject [REDACTED] and Service Recipient 1 watching violent videos/movies and that although he did not actually view the videos/movies himself he could hear the sound coming from the cellular telephone. Service Recipient 2 also stated that he saw Service Recipient 1 watching a violent television show called the "Walking Dead," while Service Recipient 1 was under Subject [REDACTED] supervision. (Hearing testimonies of Justice Center Investigator [REDACTED] and Subject [REDACTED] Justice Center Exhibits 9-10 and 19 of Adjudication Case [REDACTED])

During his hearing testimony, Subject [REDACTED] denied all aspects of Allegation 3. Subject [REDACTED] testified that, although he owned a gun collection at the time, he never discussed his gun collection with Service Recipient 1. Subject [REDACTED] argued that he was being targeted because he was now out of the facility and had experienced personal problems with the new DA1, whom he believed was manipulating Service Recipient 1 to make these false allegations. Subject [REDACTED] also testified that since he lived near the facility, staff could see the sign on his front lawn that read "Repeal the Safe Act," suggesting that staff, using his affinity towards guns, formulated a plan to bring these charges against him. Additionally, Subject [REDACTED] testified that Service Recipient 1 never asked him to watch the "Walking Dead" television show because Service Recipient 1 knew it was not part of his plans. Subject [REDACTED] also testified that although he knew that Service Recipient 1 was allowed to watch the news on television, he believed that watching the news was probably worse than watching violent movies on television.

Service Recipient 1 has provided consistent, detailed accounts of events regarding Subject

discussion with Service Recipient 1 about Subject personal gun collection and Subject desire to blow up the group home in the event of civil war. Service Recipient 1's eyewitness account of the events is found to be credited evidence regarding statements made by Subject about guns and an attack on the group home in the event of civil war. Additionally, Service Recipient 2's version of events regarding Subject actions in allowing Service Recipient 1 to watch violent videos/movies corroborates Service Recipient 1's account for the most part. Furthermore, Service Recipient 2's account came from an independent source who was not involved in the incident.

It is determined that the Service Recipients' account that Service Recipient 1 was allowed by Subject to view violent media is credited evidence. Service Recipient 1 had no motive to be untruthful. Subject, on the other hand, certainly would have had concerns about how his actions could affect his ability to continue to work in the health care industry. Subject claims were self-serving and unsupported by sufficient evidence.

Subject had a duty to follow Service Recipient 1's BSP, POPO and BRM plans in order to protect Service Recipient 1's psychological and physical well-being. Service Recipient 1 had a history of threats of harm to himself/others and an unhealthy psychological interest in violent media, which his plans sought to address. Subject misconduct violated Service Recipient 1's plans.

It is determined that Subject breached his custodial duty when he made inappropriate statements to Service Recipient 1 about his assault-style rifle gun collection and blowing up the group home frightening Service Recipient 1 and by allowing Service Recipient 1 to watch violent media. Subject conduct was likely to have resulted in a serious or protracted impairment of the physical, mental or emotional condition of the Service Recipient 1 in

accordance with SSL§ 488(1)(h).

**Subject** [REDACTED]

**Report (Adjudication Case** [REDACTED]

Allegation 2 of the substantiated report dated [REDACTED] alleges that Subject [REDACTED] committed neglect when he obtained and allowed Service Recipient 1 to possess items (toy buses) specifically prohibited by Service Recipient 1's BSP. (Justice Center Exhibit 3 of Adjudication Case [REDACTED])

The evidence established that Service Recipient 1 had consistently reported that Subject [REDACTED] took him on shopping outings, allowed him to purchase and/or otherwise possess some of the nine toy buses that were uncovered in Service Recipient 1's bedroom. On [REDACTED], Service Recipient 1 told the treatment team leader that he had toy buses in his bedroom and stated that he had obtained the buses when Subject [REDACTED] and Subject [REDACTED] took him on shopping trips to buy toy buses.

Most of Service Recipient 1's recount of events was corroborated by Service Recipient 2's statements made during his investigatory interview on [REDACTED] conducted by Justice Center Investigator [REDACTED]. Service Recipient 2 told the investigator that on various occasions, he heard Service Recipient 1 ask Subject [REDACTED] and/or Subject [REDACTED] to take him on shopping outings to buy buses. Service Recipient 2 further stated that he saw Service Recipient 1 return from shopping trips with Subject [REDACTED] and/or Subject [REDACTED]. Then, at some point thereafter, Service Recipient 2 saw Service Recipient 1 retrieve the toy buses from his bedroom cabinet and have them in his possession.

At the hearing, Subject [REDACTED] denied the allegations. Subject [REDACTED] argued that there were other staff members who also took Service Recipient 1 on shopping trips and that the buses were found after he had been transferred to work at a different facility. Subject [REDACTED] further

██████████ testified at the hearing that on several occasions he and/or Subject ██████████ had transported Service Recipient 1 for family visits where Service Recipient 1 wore large coats, suggesting that Service Recipient 1 could have obtained the toy buses during family visits and hid them in his large coat. Subject ██████████ also suggested that Service Recipient 1 brought toy buses to the facility in the holiday packages given to him by family members because his rights restrictions prevented staff from searching him after he returned from a family visit.

Additionally, Subject ██████████ claimed that the employees who were no longer working at the facility were usually the ones who were singled out and blamed for any problems that had occurred with facility service recipients.

Service Recipient 1 provided a detailed, compelling and persuasive eyewitness account of events that was corroborated in part by Service Recipient 2's statements made during his investigatory interview. Service Recipient 2's version of events came from an independent source who was not involved in the incident. It is determined that the Service Recipients' account of what occurred is credited evidence. Subject ██████████ and Subject ██████████ account of events surrounding Service Recipient 1's possession of the toy buses were, for the most part, very similar. However, the Subjects share a common interest in the outcome of this case in regards to their employment status in the industry given the allegations against them. All of the defenses raised by Subject ██████████ lacked sufficient proof, lacked corroboration from independent sources and lacked merit. Therefore, Subject ██████████ account of events is determined to be unreliable and is not credited evidence under the circumstances.

It is determined that Subject ██████████ breached his custodial duty by allowing Service Recipient 1 to purchase or otherwise obtain possession of toy buses that Subject ██████████ knew were prohibited under Service Recipient 1's BSP, POPO and RMP plans. Subject ██████████



conduct was likely to have resulted serious or protracted impairment of the physical, mental or emotional condition of the Service Recipients in accordance with SSL§ 488(1)(h).

Accordingly, it is determined that the Justice Center has met its burden of proving by a preponderance of the evidence that Subject [REDACTED] and Subject [REDACTED] committed the acts of neglect as alleged in the reports.

Although the reports against Subject [REDACTED] and Subject [REDACTED] will remain substantiated, the next question to be decided is whether the substantiated reports constitute the category of neglect as set forth in the substantiated reports. Based upon the totality of the circumstances, the evidence presented and the witnesses' statements, it is determined that all of the substantiated reports have been properly categorized as Category 3 acts. The substantiated Category 3 findings of neglect will not result in the Subjects' names being placed on the VPCR Staff Exclusion List and the fact that the Subjects have substantiated Category 3 report(s) will not be disclosed to entities authorized to make inquiry to the VPCR. However, these reports remain subject to disclosure pursuant to NY SSL § 496 (2) and will be sealed after five years.

**DECISION:** The request of [REDACTED] that the substantiated report dated [REDACTED], [REDACTED] be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

The substantiated report is properly categorized, as a Category 3, act.

The request of [REDACTED] that the substantiated report dated [REDACTED], [REDACTED], be amended and sealed is also denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

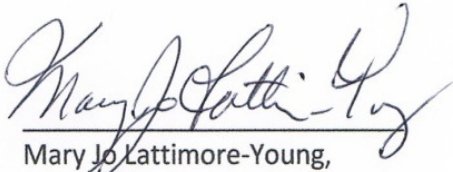
The substantiated report is properly categorized, as a Category 3, act.

The request of [REDACTED] that the substantiated report dated [REDACTED], [REDACTED], be amended and sealed is denied. The Subject has been shown by a preponderance of the evidence to have committed neglect as alleged in the report.

The substantiated report is properly categorized, as a Category 3, act.

This decision is recommended by Mary Jo Lattimore-Young, Administrative Hearings Unit.

**DATED:** August 15, 2016  
West Seneca, New York

  
Mary Jo Lattimore-Young,  
Administrative Law Judge