



Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Youth Services

Official Policy

Policy Name: Investigations and Internal Reviews

Policy #: 01.03.06 **Effective:** 7/1/23

References: DYS Policies on Serious Incident Reporting; Prevention of Sexual Abuse/Sexual Harassment of Youth; Code of Employee Conduct; Workplace Violence Prevention and Crisis Plan
DYS Legal Advisory on 51A-51B Reports
NLRB v. Weingarten, Inc., 420 U.S. 251 (1975)
Carney v. City of Springfield, 403 Mass. 604 (1988)
Garrity v. New Jersey, 385 U.S. 493 (1967)
606 C.M.R. 304(3)(e), Standards for Licensing Residential Programs Serving Children

Signature:

6/21/ 2023

Cecely A. Reardon, Acting Commissioner

Applicability: This policy shall apply to DYS state employees, contracted provider employees, volunteers, and interns working in DYS state and provider programs. This policy does not relieve DYS state programs, contracted provider programs, and individuals from their legal obligation to file reports with the Department of Children and Families, the Department of Early Education and Care and other protective services or oversight agencies.

Policy

It is the policy of the Department of Youth Services (“DYS”) that state and contracted provider employees, volunteers and interns shall conduct themselves in compliance with all applicable DYS policies, including the DYS Serious Incident Reporting Policy and the DYS Code of Employee Conduct.

Alleged violations of DYS policies may be investigated and/or reviewed by the DYS Investigations Unit in accordance with this policy and its procedures. The DYS Investigations Unit review may include an investigation by the Investigations Unit; a request for an internal review; referral to law enforcement; review by the Human Resources Division Investigations Center of Expertise (COE); and/or report to Early

Education and Care, Department of Children and Families, Disabled Persons Protection Commission, and/or another investigative agency.

The Investigations Unit is responsible for reviewing all serious incidents and any other incidents referred it to determine whether to: (1) close administratively; (2) refer for an internal review; or (3) conduct an investigation. In conducting an investigation, Investigators shall engage in a thorough and objective review of the incident to make factual findings and reach conclusions as to whether DYS policy violations have occurred, or other requirements have not been followed.

The Commissioner or designee may appoint an independent investigator to complete an investigation into any incident involving the Department.

Procedures

A. Definitions

1. The following definitions shall have the meanings assigned to them in this policy for purposes of interpreting this policy.

Administrative Memorandum: A report completed by an Investigator after an investigation/review of an incident involving a contracted provider operated program and its employees.

Investigations Center of Expertise (COE): Human Resources Division (HRD) entity responsible for investigating most HR-related complaints across Executive Departments. The COE investigates complaints related to: Discrimination, Sexual Harassment, Domestic Violence/Sexual Assault/Stalking, Workplace Violence, and Retaliation.

Closed Administratively: The determination made after review of an incident by the DYS Investigations Unit that no additional information is required, and no further review or investigation is warranted.

Communications Information Center (CIC): DYS Central Office Unit staffed twenty-four hours per day, seven days per week to receive reports of serious incidents, coordinate the issuance of warrants, make notifications to senior managers, and perform other emergency-related tasks.

Contracted Provider Employee: Individual employed as a contracted employee or by a contracted provider individually or on a capacity building contract for DYS.

Employees: For the purposes of this policy, employees include state and contracted provider employees unless specifically stated otherwise.

Executive Leadership: The DYS leadership team that includes but is not limited to the following DYS employees: Commissioner, Deputy Commissioner for Operations, Deputy Commissioner for Administration and Finance, Chief of Staff, Assistant Commissioner for Support Services, and General Counsel.

Investigation Report: A report prepared by a DYS investigator or Independent Investigator of an investigation of an incident involving a DYS state operated program and/or its employees with findings, conclusions, and recommendations.

Independent Investigator: An individual engaged by DYS to conduct an investigation who is not a part of the Investigations Unit or any DYS Department.

Internal Review Report (IRR): A written report prepared by a DYS state or contracted provider operated program after their review of an incident with description of allegations, investigation activities, findings, conclusions, and corrective action plans that is submitted to the Investigations Unit and to the Department of Early Education and Care (DEEC), as required.

Investigation: The process, in response to a serious incident or other incidents, which includes but is not limited to collecting evidence in the form of interviews of youths, employees and witnesses; reviewing documentary materials; and reviewing of electronic records, videos, photographs and social media sites.

Investigations Unit: DYS Unit comprised of the Director of the Investigations Unit, investigator(s), and paralegal(s) within the DYS General Counsel's Office.

Investigator: A member of the Investigations Unit or a person designated an investigator by the Director or Executive Leadership under the supervision of the Director of Investigations.

Juvenile Justice Enterprise Management System (JJEMS): DYS' electronic client information system that holds critical demographic, clinical, educational, and other data about each DYS youth that is used by all DYS state and contracted provider staff.

Personnel Related Serious Incidents: Allegation(s) that include but are not limited to sexual harassment, workplace bullying/harassment, workplace violence, discrimination as defined by G.L. c. 151B, retaliation and/or are serious incidents as defined by DYS and involve state employees, contracted provider employees, interns, or volunteers. These incidents do not involve any DYS youth.

Serious Incident: An incident defined by DYS Serious Incident Reporting Policy.

Serious Incident Report (SIR): A report submitted to CIC electronically through JJEMS or on a standardized paper SIR form that describes incidents meeting the criteria in the Serious Incident Reporting to DYS CIC and through JJEMS Policy. Paper SIRs are only submitted where the incident involves a Personnel Related Serious Incident as defined in this policy or if otherwise requested.

2. Terms that are defined Policy #01.01.04, "Policy Definitions" shall have the meanings assigned to them in that policy, unless a contrary meaning is specified.

3. Terms not defined in Policy #01.01.04 or in this policy shall have the meanings assigned to them by reasonably accepted standard dictionary definitions of American English.

B. General Requirements

1. In accordance with the DYS Code of Conduct, all employees shall cooperate with Internal Reviews and Investigations in a truthful and professional manner.
2. Employees who are covered by a Collective Bargaining Agreement are entitled to their rights in accordance with *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Carney v. City of Springfield*, 403 Mass. 604 (1988) as they relate to investigations and related proceedings.
3. *Video Recording Requirements* for DYS state and contract provider residential locations where there is video recording:
 - a. Employees shall retain (not record over) security video footage for up to 30 days or the longest time frame available based on the system if 30 days is not possible.
 - b. Notwithstanding section c. below, no employee identified in an incident report or Serious Incident Report as a witness or as involved in said incident may review the video of the incident prior to submission of an incident report or while the investigation is pending. Prior to their investigator interview, employees shall be allowed to review the SIR, their report and relevant preserved video with their union representative.
 - c. Institutional Security Officers and Location Managers, including Program Directors, Assistant Program Directors, and District Managers may review video in the regular course of their duties and responsibilities.
 - d. The Location Manager or designee shall save and make a copy for the Investigations Unit of the video recording of all footage available of two (2) hours prior to and following any Serious Incident involving:
 - i. An injury to youth or staff;
 - ii. The filing of a 51A report due to abuse/neglect;
 - iii. A Group Disturbance; or
 - iv. Allegations of sexual abuse, sexual exploitation or sexual harassment of youth or staff.
4. *Photograph Requirements* - For any youth observed to be injured in connection with a restraint, assault or accident, employees shall take a photo with a witness of the injured area after asking the youth for verbal consent. Such photo shall be uploaded to the JJEMS Incident folder using the attachment Type "Photograph-Evidence", with the youth's name and date of incident indicated in the "Description" field. Employees shall document youth's consent in the "Notes" field of the Attachment. If the photo is taken by regional health services staff, it shall be

uploaded to the same JJEMS incident folder and available to the Investigation Unit and other authorized external parties as needed to complete the investigation.

C. Initial Review of an Incident

1. The Investigations Unit shall review all electronic Serious Incident Reports within two (2) business days of submission to determine whether DYS policy violations may have occurred and do one or more of the following:
 - a. Determine if additional information is needed and request such from the Regional Director or designee.
 - b. Request an Internal Review Report from the Regional Director/designee.
 - c. Assign the incident to a DYS Investigator to investigate or, refer the allegation to another investigative agency based on the nature of the incident;
 - d. Administratively close.
3. Upon receipt of a Personnel Related Serious Incident regarding state employees, the Director of Investigation shall, in consultation with the DYS General Counsel and DYS' HR Liaison:
 - a. Determine if there are any safety concerns that need to be immediately addressed with the employees and/or youth involved, and work with Regional Management to develop a safety plan.
 - b. Determine, within one business day of receipt, whether to refer the incidents to COE, EOHHS Human Resources and/or conduct a DYS investigation. If referred to COE, DYS shall suspend any investigation of a Personnel Related Serious Incident pending the COE's determination of its jurisdiction. If COE refers the matter back to DYS, the Director of Investigations, in consultation with the General Counsel's Office and the HR Liaison shall determine how to proceed.
4. In the case of an emergency grievance as defined by DYS Policy on the Prevention of Sexual Harassment, Sexual Abuse and Sexual Exploitation of Youth, CIC shall call the Director of Investigations immediately upon receipt of the grievance. The Investigations Unit shall respond within forty-eight (48) hours with an initial response and shall complete a final written determination within five (5) calendar days, that addresses whether the youth is at risk of imminent sexual abuse or harassment and recommended action.
5. The Director of Investigations shall immediately notify the Regional Director and Executive Leadership if an SIR involves possible criminal conduct and coordinate any necessary referrals to law enforcement.

6. The Director of Investigations or designee shall forward a list of new internal reviews and investigations to the General Counsel, Deputy Commissioner of Operations, Regional Directors and their designee(s) on a weekly basis.

D. Administrative Closure of Incidents

1. The Investigations Unit shall administratively close incidents if an initial determination is made that no policies have been violated and no additional review or investigation is needed. The Investigation Unit shall document administratively closed incidents in JJEMS within 2 business days of reviewing the SIR and immediately notify the Regional Director or designee or Central Office supervisor if Central Office staff involved.
2. The Director of Investigations has the discretion to re-open any incident at any time based on additional information received.

E. Requirements for Internal Review Reports

1. The Investigations Unit may request an Internal Review Report from the Regional Director or designee for any incident.
2. Locations shall comply with all reporting requirements of the Department of Early Education and Care for incidents, including but not limited to 51A incidents, independent of DYS investigations.
3. All Internal Review Reports shall be submitted to the Investigation Unit's designated email address dysinternalreview@mass.gov within fourteen days (14) days of the request. Any request for an extension time must be approved in writing by the Director of Investigations or designee.
4. All Internal Review Reports shall be reviewed by the Investigations Unit within 2 business days of receipt. The Investigations Unit may seek information or clarification from a location after reviewing an Internal Review Report.
5. All Internal Review Reports shall be completed using the DYS Internal Review Report Form attached as Appendix A and comply with the following requirements:
 - a. Refer to the youth by their initials only.
 - b. Refer to employees using their full first and last names.
 - c. Make factual findings and conclusions about any policy violations.
 - d. Include a recommendation based on the policy violations found, as to whether discipline should be considered. There shall be no recommendation as to the specific type of discipline.
 - f. Upload the Internal Review Report to the DEEC Portal, as required by Regulation, if necessary.
 - g. Submit the completed Internal Review Report to the DYS Investigations Unit email address.

6. An employee's refusal to be interviewed or cooperate shall be documented in the Internal Review Report.
7. The Director of Investigations may assign an investigator to conduct a full investigation of any incident after reviewing an Internal Review Report.
8. Internal Review Reports are confidential. Internal Review Reports shall only be shared with those deemed necessary as determined by the Director of Investigation.
9. Upon submission of the Internal Review, the Investigation Unit shall review the report determine if there has been a policy violation or any additional action is necessary.
10. The Regional Director or designee shall notify the employee(s) involved in the Internal Review that a review is occurring and the final determination.

F. Investigations Conducted by the DYS Investigations Unit

1. Upon review of an SIR, the Director of Investigations may assign a member of the Investigations Unit to investigate. The Director of Investigation shall document the assignment of an investigator in JJEMS.
2. Upon start of the investigation, when an employee is placed on administrative leave, the HR Liaison in consultation with labor relations shall notify the employee and the Regional Director in writing.
3. In investigating, the Investigator shall collect evidence from relevant sources including but not limited to:
 - a. face to face interviews of youths, employees, eyewitnesses, and other individuals the Investigator believes may have relevant information.
 - b. documentary materials, including but not limited to incident reports, logbooks, call sheets, medication administration forms, key control forms, medical records, clinical notes, or information contained in JJEMS.
 - c. videos and photographs.
 - d. images and/or text from social media sites; and
 - e. any other material deemed necessary to the investigation.
4. Employees shall cooperate with the Investigation as follows:
 - a. Notify a youth's parent or legal guardian that a youth has been involved in an incident. Such notification shall include:
 - i. a brief description of the nature of incident that maintains the confidentiality of the parties involved; and
 - ii. notice that the youth may be interviewed as part of any investigation of the incident with an attorney present.
 - b. Assist in coordinating the scheduling of employee interviews including the presence of a Union representative where requested.

- c. Assist in coordinating the scheduling of youth interviews with the youth's parent, legal guardian, or attorney if they wish to attend.
 - d. Provide requested records, including, but not limited to documents, photographs, and video footage to the Investigations Unit and/or any external Investigator who is legally entitled to the requested records.
5. Prior to beginning any investigation interviews, the Investigator shall explain their role and the nature of the matter under investigation, and the individual's rights related to their participation in the interview. The Investigator shall also provide the interviewee with an opportunity to review relevant video, the SIR, and their incident report(s) prior to any interviews with any investigator.
6. The Investigator shall document the refusal by an employee to be interviewed or cooperate with the investigation.
7. The Investigator shall make findings of fact and conclusions. All conclusions reached by the Investigator must be supported by a preponderance of the evidence as found during the Investigation. If an Investigation finds a conflict of facts, the Investigator shall make a determination in their report as to which facts are deemed to be credible with an explanation for any such determination.
8. At the conclusion of an Investigation, the Investigator shall prepare the following for the Director of Investigations:
 - a. If the incident involves a DYS contracted Provider, the Investigator shall prepare an Administrative Memorandum containing the findings and conclusions; or
 - b. If the incident involves a state employee, the Investigator shall prepare an Investigation Report ("Report") and appendices. The Report shall include:
 - (1) Factual findings
 - (2) Conclusions
 - (3) Findings of policy violations and
 - (4) If video review conducted, a chronology of what the video shows.
 - c. If the Investigation concludes that there has been a policy violation, the Investigation Report may recommend that discipline may be considered by Regional and/or Executive Leadership but NOT what specific discipline may be issued.
9. Investigations conducted by the DYS Investigations Unit shall be completed and the Investigation Report distributed in accordance with Section F.8 by the Director of Investigations no later than forty-five (45) days after assignment by the Director unless the Director approves a written request for additional time. The Director of Investigation may approve one extension of time not to exceed fifteen (15) days. Additional requests must be requested in writing and approved by the General Counsel in consultation with HR Liaison in writing.

10. Upon completion of an investigation of a state employee and review of the Investigative Report, the Director of Investigation, HR Liaison, General Counsel, Regional Director and designee, Deputy Commissioner, EOHHS Labor Relations Specialist, if employee is part of a collective bargaining unit, shall meet to review the final investigation and, within 15 days of receiving the final Investigation Report, determine any discipline. The Labor Relations Specialist shall notify the employee(s) in writing of the decision and send a copy of the notification letter to the Regional Director and HR Liaison.
11. The JJEMS Investigation database shall be updated to reflect completed investigations.
12. Administrative Memoranda and Investigation Reports are confidential and may only be shared with the Investigations Unit, Executive Leadership, the Regional Director, HR Liaison, and others deemed necessary by the General Counsel.
13. If an investigation reveals programmatic or operational concerns, the Regional Director shall complete a corrective action plan and submit it to the Director of Investigation and Executive Leadership within forty-five (45) days of receipt of the Investigation Report. Such corrective action plan and documented resolution of the identified issues shall be included in the Investigation's JJEMS file.

G. Investigations Conducted by an Independent Investigator

1. The Commissioner or their designee may appoint an Independent Investigator to conduct an investigation. An Independent Investigator shall be subject to the requirements of this policy and be granted the same access to information and witnesses as an Investigator in the Investigations Unit.
2. Independent Investigators shall report to the DYS Deputy Commissioner of Administration and Finance and/or the General Counsel, or their designee.

H. Interaction with Investigations by Other Entities

1. The Investigations Unit and employees involved in the investigation shall work cooperatively in scheduling interviews of youths, staff, and witnesses when investigators from providers and other state agencies, including but not limited to COE, EHS HR, DCF, DEEC, DPPC, and the Office of the Child Advocate, are conducting their own investigations of the same incident(s).
2. State agencies including DCF, DEEC, DPPC and the Office of the Child Advocate are statutorily entitled to access to any information, document, or personnel that their investigator deems relevant to their investigation. The Investigations Unit will notify the employees involved in the investigation which agencies may be investigating.
3. When an incident or matter is subject to investigation by any law enforcement entity, including but not limited to the state or local police or a county District

Attorney's Office, the Investigations Unit shall suspend its investigation until such time as it is notified by DYS General Counsel that it may proceed.

I. Notice of Investigation Decisions

1. Upon completion of the internal review or investigation of a serious incident, the Regional Director or General Counsel shall in writing notify the employee and/or youth who made the allegation that the review or investigation is complete and of any additional actions relevant to the employee or youth that are recommended in the investigation.
2. Such notice shall not include personnel information about the employee who committed the policy violation or any disciplinary information.
3. Upon the completion of an investigation into a youth's allegation of sexual abuse that occurred in a DYS residential location, the Regional Director or designee shall notify the youth that the allegation was substantiated, unsubstantiated or unfounded. The Regional Director shall work with the Program Clinical Director on how best provide notice to the youth. Such notice shall be in writing and documented in the youth's JJEMS progress notes and to the PREA Coordinator. Notice to the youth shall also include the following:
 - a. If the allegation of sexual abuse was substantiated or unsubstantiated against an employee, the following notice shall be provided to the youth:
 - i. Whether the employee is remains assigned to the program where the youth is placed
 - ii. Whether the employee subject to the allegation is remains employed by DYS or the contracted provider;
 - iii. Whether, if DYS knows, the employee has been indicted on a charge related to the sexual abuse incident;
 - iv. Whether, if DYS knows the employee has been convicted on a charge related to the sexual abuse incident.
 - b. If the allegation of sexual abuse was against a youth, notice to the youth making the allegation shall also include whether, if DYS is aware, the alleged abuser has been indicted and/or convicted on a charge related to the sexual abuse incident.
4. If DYS did not conduct the investigation, the Director of Investigation shall request the relevant information from the investigative agency and report as indicated above.

J. Review of Investigations

1. The Director of Investigations shall be a member of the DYS Safety Committee. The Director of Investigations may regularly present information on investigation trends and general issues about investigations to the Safety Committee that may be relevant to or assist with policy, training, monitoring, operations, and/or other safety related areas.

2. The Director of Investigations shall review the status of current investigations with the DYS Safety Administrator, and PREA Coordinator on a regular basis to review trends and potential policy or process changes.
3. The Director of Investigations shall communicate as needed with Regional Directors, Residential Operations, Community Operations, Policy and Training Director, or others deemed necessary to discuss issues requiring immediate action and/or improvements to processes.
4. If there are specific programmatic or community concerns identified as part of an investigation, such concerns will be forwarded to the Regional Director, appropriate Central Officer Director, and DYS residential/community monitor by the Investigator for follow up and a corrective action plan. Monitors shall report back to the Director of Investigations on the status until issue is resolved.

K. Internal Information Sharing for Training and Policy Development and Quality Assurance

1. The Director of Investigations and the Director of Policy and Training shall meet quarterly to discuss trends and general issues identified in investigations that relate to training and policy, as well as on an as needed basis to discuss emergent issues requiring immediate attention.
2. The Director of Investigations and the Director of Residential Operations shall meet quarterly to discuss trends and general issues identified in investigations and program monitoring.
3. Individual Investigators and Program Monitors shall also meet as needed to discuss specific issues or trends identified by either the Investigations Unit or the Program Monitor with a particular program.