



Justice Center for the
Protection of People
with Special Needs

Teachable Moments and a Focus on Prevention

*13th Annual Quality & Compliance Challenges Conference
for Providers Serving People with Disabilities*

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Special Prosecutor & Inspector General

Agenda

- The Substantiation Process: Start to Finish
- The Protection of People with Special Needs Act
- Appeals Process
- Prevention of Abuse and Neglect

The Substantiation Process: Start to Finish

When The Investigation Is Complete

- Justice Center reviews all investigations, makes a final determination and notifies all parties
- Justice Center oversees corrective action plans as appropriate

Unsubstantiated Reports

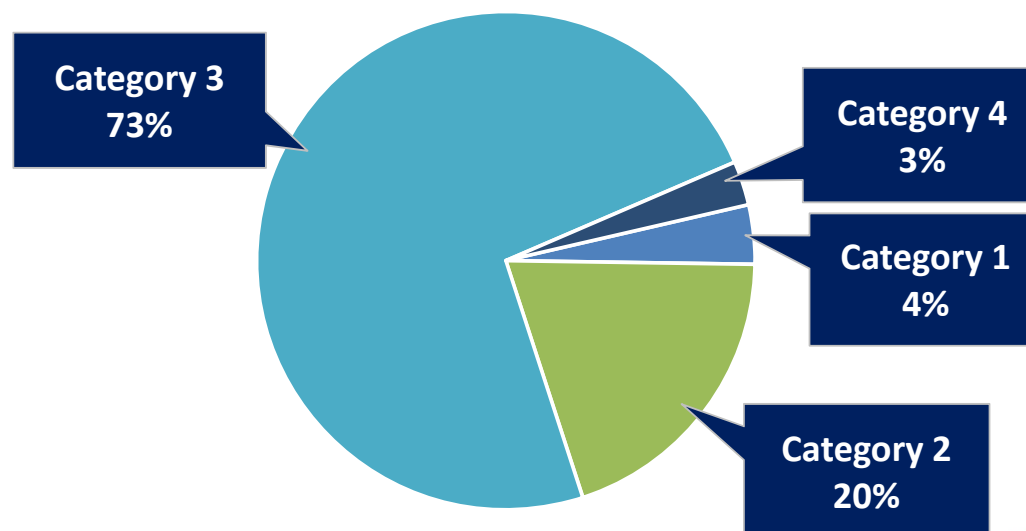
Reports that are unsubstantiated (including false allegations) are not publicly available and cannot be accessed by future employers.

Substantiated Reports

- Substantiated reports of abuse or neglect are classified into one of four categories
- Approximately 1/3 of Abuse and Neglect allegations are substantiated

Abuse and Neglect Case Categories

Substantiated Cases by Category: 2019 (N = 3,745)
Statewide



Category 1

- Serious physical abuse, sexual abuse or other serious conduct by custodians
 - ✓ 14 types of conduct defined in statute
- Placement on Staff Exclusion List
 - ✓ Two Category 2 findings in a 3-year period, OR
 - ✓ One Category 1 finding
- Names of staff with a substantiated Category 1 finding are not publicly available

Staff Exclusion List

Individuals on the Staff Exclusion List are prohibited from being hired by any state operated, certified or licensed agencies or providers that serve people with special needs.

- Over 600 people on the Staff Exclusion List
- Since 2014, there have been more than 150 times that a check has resulted in a match and a provider has been notified that the applicant was on, or pending placement on, the Staff Exclusion List

Category 2

- Conduct in which the custodian “seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect”
- Two Category 2 findings in a 3-year period results in a Category 1 finding and placement on Staff Exclusion List
- Category 2 findings not elevated to Category 1 are sealed after 5 years

Category 3

- Substantiated findings of abuse or neglect but the conduct does not meet the definition of Category 1 or 2
- Substantiated Category 3 findings are not publicly available and cannot be accessed by future employers

Teachable Moments

- Category 3 finding is not meant as punishment
- Brings “near misses” to attention of QA, prevention is goal
- Examples

Category 4

- Made against a facility or provider agency, NOT a custodian
- Two types:
 - ✓ Staff culpability mitigated by systemic problems at a facility or provider agency
 - ✓ Abuse or neglect substantiated but perpetrator can't be identified

Category 4 – Systemic Example

Category 4 – Identity Unknown Example

Notifications at Conclusions of Investigations

- Family Members and/or Victims
- Providers
- State Oversight Agency
- Subjects

Corrective Action Plan (CAP) Audits

- The Justice Center conducts audits of some of the corrective action plans for substantiated allegations of abuse or neglect
- CAP Audit Findings Letters are sent to providers and copied to the State Oversight Agency to communicate audit findings, and any recommendations made to reduce future risk of abuse and neglect and to improve the quality of care

Quick Break and Stretch

The Protection of People with Special Needs Act (PPSNA)

The Goal of “Justice” under the PPSNA

“Accordingly, the purpose of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety, and welfare and to provide fair treatment to the employees upon whom they depend.”

(Legislate findings and purpose of the PPSNA)

A Just Outcome

- Correct
- Based in fact
- Reasonable
- Not based on who should be punished, or how they might be punished

Goals of the Law: A Comparison

	Criminal Law	Social Services Law
Deterrence	X	Prevention
Incapacitation	X	SEL
Rehabilitation	X	Teachable Moment, Legislative Intent
Retribution	X	NOT SSL!

Requirements of the SSL

“The justice center SHALL cause the findings of the investigation to be entered into the Vulnerable Persons’ Central Register.”

Appeals Process

Appeal Process

The subject of a substantiated report of abuse or neglect, regardless of the category of finding, has the right to challenge the finding(s) within 30 days.

Layers of Review

- 1) Field Investigator
- 2) Case Closure Unit / JC's Office of General Counsel
- 3) De Novo Unit
- 4) Administrative Law Unit Attorney
- 5) Administrative Law Judge
- 6) Executive Director

How To Appeal The Findings

No specific form

- May be just a letter, which includes the VPCR Case Serial Number and says “I want to appeal.”
 - ✓ May include the reasons why subject thinks the determination is wrong, but this is not required.
- Must be timely: sent within 30 days of determination letter
- Late notice of appeal – in “extraordinary circumstances” the Executive Director of the Justice Center may accept a late request for amendment

Multistage Appeal Process

1. Subject requests an appeal within 30 days. The requirement is in the determination letter mailed to the Subject
2. Justice Center's Administrative Appeals Unit conducts a review of the investigation to see if a preponderance of the evidence supports a finding of abuse or neglect; and
3. If the appeal is denied, a fair hearing before an Administrative Law Judge is scheduled

Request for “Amendment”

- Subject is requesting that Letter of Determination be changed, or amended
- Request for Amendment: more is more
- Justice Center regulations permit Subject to submit evidence for consideration with a request for amendment

Potential Outcomes of an Appeal

1. Original finding is upheld (e.g. substantiated and Category Level remains the same)
2. Amend the substantiation by reducing the Category Level (can never increase the Category Level)
3. Findings are unsubstantiated entirely and the record is sealed

Supporting Subject During Process

- Understand process
- Be aware of timelines
- Relay that additional evidence submitted will be considered
- Can choose to provide legal counsel

Layer 3: The De Novo Unit

- Team of independent reviewers
- Review each allegation as to each Subject
- De Novo can:
 - ✓ Uphold Letter of Determination entirely
 - ✓ Modify Letter of Determination (i.e. reduce)
 - ✓ Un-substantiate entire Letter of Determination

Layer 4: Administrative Law Unit Attorney

- New legal review in preparation for hearing
- Discuss case at Pre-Hearing Conference
- Continual review of preponderance standard, including Final Status Conference

The Hearing

- Closed hearing
- Confidential
- Representation permitted
- Can proceed “pro se”
- Virtual, In-Person, or a bit of both
- Burden of Proof on Justice Center

Layer 5: The Administrative Law Judge

- Administrative Law Judge
 - ✓ Separate Unit of Justice Center attorneys
- After hearing, submits report to Executive Director
- Based solely on evidence at hearing

Recommended Decision

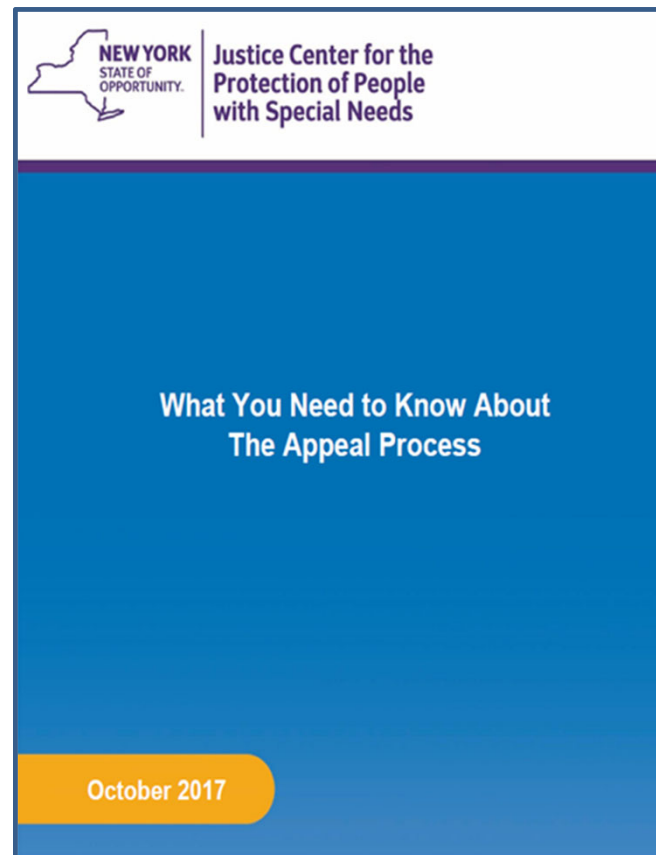
- Description of the issues
- Relevant facts
- Credibility assessment for witnesses
- Findings of fact
- Conclusions of law
- Recommendation of substantiation/unsubstantiation

Layer 6 – The Executive Director

The Justice Center's Executive Director can agree, or write her own decision

Appeals Process Guidance

Information and guidance resources on the appeals process can be found on the Justice Center Website in the Providers & Staff Tab

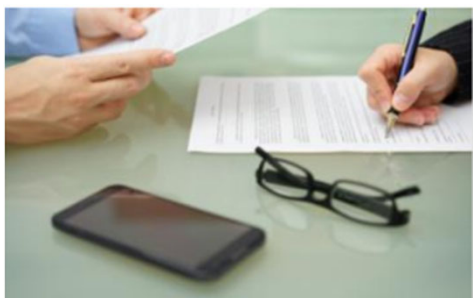


Layer 7: Article 78

- Legal rights beyond administrative hearing
- Appellate Division of Supreme Court will hear appeal of Administrative Law Judge decision, but not a new “trial”

Prevention of Abuse and Neglect

Spotlight on Prevention



Agency Self-Assessments

These tools support program efforts to develop a comprehensive approach to prevent abuse and neglect.



Best Practices for an Abuse-free Environment

Strategies for creating abuse-free environments



Code of Conduct

Ethical guidelines for caring for individuals receiving services

Found at: www.justicecenter.ny.gov/prevent-abuse

TOOLKITS

Spotlight on Prevention

The information contained in the Justice Center's Spotlight on Prevention toolkits is offered as a resource for provider agencies and staff. These resources are intended to be used as a guide that may be modified as needed to apply to particular types of programs and specific age groups of vulnerable people

**Dangers of Being
Left Unattended in
Vehicles**

**Dangers of Caregiver
Fatigue**

**Dangers of Intestinal
Obstructions**

**Maintaining
Professional
Boundaries**

**Reducing the Use
of Restraints**

**Securing
Wheelchairs in
Vehicles**

**Safety Benefits of
GPS Devices**

Found at: <http://www.justicecenter.ny.gov/prevent-abuse>

Contact Information

Report abuse or neglect:	1-855-373-2122
Information and referral:	1-800-624-4143
Individual Family & Support Unit:	1-800-624-4143
Other questions:	518-549-0200

www.justicecenter.ny.gov