

Out-of-State Placement Questions and Answers

--Will a faxed report of our incident report suffice for "immediate" notification?

Compliance with the immediate notification requirement shall be through the Justice Center 24 hour toll free hotline number:

855-373-2122 main number
855-373-2123 TTY
855-373-2124 Death

--For clients over 18 years of age will our investigative report suffice or will this automatically require an investigation by the Justice Center?

The Protection of People with Special Needs Act (Act) requires that an investigation be conducted by the Justice Center, or where that is not practicable, by a state agency or other entity authorized or required to investigate complaints of abuse or neglect under the laws of the state in which the facility or school is located. The Act does not make any distinctions as to the type of investigation based upon age of the service recipient.

--If an investigation is conducted by your office what types of documents will be requested?

The types of documents that will be requested include but are not limited to the abuse/neglect report, incident logs, investigative report, incident management committee meeting minutes, police reports, criminal court complaint, indictment, any case records including progress notes, clinical records and other records relating to the care and services provided to the vulnerable person and the conduct of the investigation.

--If the Center investigates what are the timelines for arrival and receipt of a written report?

Regarding an investigation conducted by the Justice Center concerning out-of-State residential schools or facilities, the Act does not establish a timeline for the Justice Center to provide a written report. If the Justice Center conducts an investigation, it is expected that other investigations conducted by the out-of-State school will proceed in accordance with its state law

--Please clarify definition of "physical injury or protracted impairment".

The Act defines "physical injury" and "impairment of physical condition" as any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's physical condition. "Protracted" means lasting for a long time.

--Do abrasions after a restraint meet the definition of "physical injury" and "impairment of physical condition"?

The definition of abuse includes physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, and the unlawful use of or administration of a controlled substance.

Regarding inappropriate use of restraints, physical injury or impairment of physical condition are not required. Deliberate inappropriate use of restraints means use of restraint when the use or manner of use is deliberately inconsistent with the vulnerable person's written plan, generally accepted practices, law or policy. Examples of misuse of restraints that are reportable include use of a restraint with excessive force, as a punishment, or for the convenience of staff. Abrasions after use of a restraint may be an indication that the restraint was used inappropriately, but the presence of bruising or abrasions is not, by itself, dispositive of the issue of whether the incident is reportable. (Use of restraint as a reasonable emergency intervention to prevent harm to a vulnerable person or other person does not constitute the deliberate inappropriate use of restraint.)

Physical abuse means intentional or reckless conduct by a custodian towards a vulnerable person and requires some type of physical contact between the custodian and vulnerable person. The type of physical contact required to establish physical abuse and the range of severity is broad; some examples include hitting, kicking, shoving, smothering, burning, cutting or the use of corporal punishment. Physical injury is not required to establish physical abuse, as the likelihood of causing physical injury is a factor for consideration. In addition, the physical, mental or emotional condition of the vulnerable person as a result of the physical contact are factors for consideration. Thus, for example, it may separately constitute "physical abuse" if as part of a restraint incident, a custodian were to intentionally or recklessly hit, kick or smother a vulnerable person. (Reasonable emergency interventions necessary to protect the safety of any person are not included in the definition of physical abuse.)

--Does definition of abuse include "client to client" or just limited to staff allegations?

The definition of abuse references conduct of a custodian, not conduct between persons receiving services. The definition of neglect, however, includes the failure to provide proper supervision, including a lack of proper supervision that results in harmful interactions between persons receiving services that could reasonably be prevented, where such interactions result in or are likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient.

--For psychological abuse, how do you measure "substantial diminution of service recipient's emotional, social or behavioral development"?

Psychological abuse means intentional or reckless conduct by a custodian towards a vulnerable person. Verbal and non-verbal conduct may be considered psychological abuse. In determining whether psychological abuse has occurred, the effect or likelihood of effect upon the vulnerable person's emotional, social or behavioral condition is a consideration. For purposes of reporting, consider whether there is an effect or likelihood of effect on the service recipient and look at significant negative changes or the likelihood of significant changes in the service recipients' emotional, social or behavioral development. In addition, a clinical assessment is required to support a finding of psychological abuse,

but it is not required that the clinical assessment be conducted before reporting psychological abuse. Some examples of psychological abuse include taunting, name calling, use of threatening words or gestures.