



Policy & Procedures Manual

Addressing Allegations of Employee Misconduct in the Supervision of Youth in OCFS Facilities (PPM 3247.17)

Approved By: <i>Gladys Carrión (signed)</i> Gladys Carrión, Commissioner	Date Issued: May 21, 2012	Number of Pages: 8	Appendix Pages:
Related Laws: Civil Service Law 75	Division/Office: Juvenile Justice and Opportunities for Youth	Contact Office/Bureau/Unit: Special Investigations Unit (SIU)	
Supporting Regulations: N/A	American Correctional Association Standards (ACA): N/A		
Regulatory Bulletins & Directives: CSEA and PEF Negotiated Agreements, Article 33	Related Policies: Reporting Crimes (PPM 1810.00) PPM Prevention of Sexual Abuse/Assault of Youth in OCFS Care (PPM 3247.01) Reportable Incidents (PPM 3249) Child Abuse and Reporting in OCFS Programs Operating Pursuant to Article 19-G of the Executive Law (PPM 3456.00) Crisis Prevention and Management (PPM 32247.13) Supervision of Youth (PPM 3247.03) Employee Discipline (PPM 2651) Employee Counseling (PPM 2652)	Supersedes: N/A	

SUMMARY:

This policy outlines the responsibilities of Office of Children and Family Services (OCFS) staff regarding allegations of misconduct related to supervision of youth in OCFS facilities. This policy will be implemented in phases, beginning at Finger Lakes Residential Center, Lansing Residential Center and the Tryon Girls Center. This policy will eventually apply to all OCFS operated facilities.

I. POLICY

OCFS does not tolerate unnecessary, inappropriate or excessive use of force or other abuse of youth in OCFS care. OCFS requires allegations of such misconduct to be investigated thoroughly and promptly by trained neutral investigators. This policy sets forth protocols for the investigation of allegations of misconduct and determinations following those investigations. Findings of employee misconduct shall result in prompt and appropriate action reasonably calculated to correct the behavior or, if necessary, to dismiss the employee from employment. Investigations will be conducted with as much confidentiality as possible consistent with the need to investigate and address allegations. Persons who make allegations and/or cooperate in investigation and remediation, shall not be subjected to retaliation.

II. DEFINITIONS

Allegation of Employee Misconduct: For purposes of this policy, a complaint of employee misconduct or incompetence regarding the supervision of youth, or circumstances involving employee supervision of youth that require a review of employee conduct.

Deputy Commissioner: The Deputy Commissioner of OCFS' Division of Juvenile Justice and Opportunities for Youth (DJJOY) or person acting in that capacity.

Reportable Incident: An incident that is likely to have a serious negative impact at or beyond the local program level, which adversely affects the health, safety, and/or security of youth, staff, or community or has a significant impact on an OCFS program (PPM 3429 "Reportable Incidents").

Special Investigations Unit (SIU): A unit under the supervision of OCFS' Executive Deputy Commissioner that is responsible for addressing allegations of misconduct, fraud, abuse or corruption within OCFS or its funded programs independently or jointly with other OCFS Divisions, and providing technical assistance in its areas of expertise.

III. PROCEDURE

The following procedures outline the steps that will be taken when there is an allegation of employee misconduct in the supervision of youth.

A. The Facility Director or designee(s) shall:

1. provide for the immediate safety and security of youth and staff;
2. take all immediate steps required by policies and procedures that are specific to the incident;
3. once safety and security needs are addressed, notify the Facility Director or Assistant Director if there has been no notification;
4. contact the Special Investigations Unit (SIU) promptly;
5. make a report of the incident as required by OCFS policy (including, but not limited to PPM 3429.00, "Reportable Incidents" PPM and PPM 3456.00 "Child Abuse and Neglect Reporting in OCFS Programs Operated Pursuant to Article 19-G of the Executive Law");
6. contact the Facilities Manager;
7. contact the Associate Commissioner for Facilities Management; and
8. notify the youth's parent/person responsible for care as soon as is practicable.

B. SIU will promptly:

1. assess the actions taken thus far; and
2. identify any actions needed to be taken including securing evidence and gathering preliminary information from the reporter.

C. Level of Contact with Youth Pending Investigation

After an allegation is made or an incident has occurred, the Facility Director or designee, in consultation with the Associate Commissioner for Facilities Management or the Facilities Manager, shall promptly make a determination regarding the appropriate level of contact between an employee and youth in light of the nature of the allegation and a preliminary assessment of the credibility of the allegation. The determination must be consistent with the safety needs of all youth. The provisions of section III.B. of PPM 3456 "Child Abuse and Reporting in OCFS Programs Operating Pursuant to Article 19-G of the Executive Law," must be considered and followed to create a safety plan in the event an allegation of maltreatment is accepted for investigation by the Statewide Central Register (SCR) of Child Abuse and Maltreatment. The determination regarding level of contact must not be based on staff shortages.

The options for providing safety include, but are not limited to:

- No contact between the subject and youth (mandatory where an allegation of child abuse or neglect has been accepted by the SCR for investigation)
- No contact between the subject and all or a group of youth

Youth safety must be addressed without moving the youth from his/her location, unless circumstances dictate otherwise (see, PPM 3456 “Child Abuse and Reporting in OCFS Programs Operating Pursuant to Article 19-G of the Executive Law”)

The facility director shall implement the determination regarding the level of contact immediately. Any determination to remove an employee from the worksite pending an investigation must be made in consultation with the Associate Commissioner of Human Resources and the Director of Labor Relations.

All determinations regarding level of contact pending completion of investigations and resulting actions (such as disciplinary proceedings) will be documented by the Facility Director or designee within one business day of the determination on Form 2097, "Allegation of Employee Misconduct Level of Contact with Youth Determination." Such documentation shall include the name of the employee, the date and nature of the incident giving rise to the allegation, the determination made regarding youth contact, the start date of any change in the nature of contact, and the name of the approving Facilities Manager or Associate Commissioner. Form 2097 will be maintained at the facility.

Any changes in the employee’s level of contact pending resolution of the investigation and subsequent employment actions must be approved by the Associate Commissioner for Facilities Management or the Facilities Manager. The Facility Director shall document the change and the reasons for the changes using Form 2097.

Law enforcement authorities will be contacted regarding alleged misconduct in accordance with PPM 1810, "Reporting Crimes."

D. Responsibility for Investigations

SIU will be responsible for the investigation of all allegations of employee misconduct connected with:

1. youth death;
2. sexual abuse or sexual assault;
3. inappropriate use of restraints;
4. use of excessive force; and
5. youth injury, suicide attempt, or self-injurious behavior.

SIU will review all other allegations of employee misconduct in connection with supervision of youth that constitute Reportable Incidents (see, PPM 3429 “Reportable Incidents) and will determine whether the investigation will be conducted by SIU or at the facility level. Each determination will be documented by SIU.

E. Conduct of Investigations

SIU and facility investigators will adhere to the following standards:

1. Priority of Investigations - Investigations will be prioritized based upon the seriousness of the allegation, the nature of the injury, the status of the employee pending the investigation and other factors relevant to the circumstances.
2. If a full investigation is not warranted, the reasons for that determination shall be documented in writing. In cases where a youth withdraws an allegation, a preliminary investigation shall be conducted to determine the reasons for the withdrawal and, in cases where it is warranted, a full investigation will be conducted.
3. Assignment of the investigator. The individual assigned to conduct the investigation shall:
 - a. be trained in the conduct of investigations; and
 - b. have no involvement in the incident being investigated and not be subordinate to a significant actor in the matter to be investigated. If there is no uninvolved person at the facility, the Facility Director will contact the Facilities Manager who shall arrange for another qualified person to investigate.
4. At the outset and during the course of the investigation, investigators will confer with staff of the Bureau of Labor Relations regarding relevant agency policies and the development of evidence.
5. Investigators shall be mindful of the level of contact between staff and youth pending investigation. If, during the course of the investigation it is believed that the level of contact should be adjusted, the Associate Commissioner for Facilities Management or the Facilities Manager shall be notified.
6. Conflicting evidence must be evaluated and addressed, particularly in circumstances where evidence of injuries to youth, including complaints of pain or injury due to inappropriate use of force, conflicts with the statements of the employee or other witnesses.

7. Investigations must be thorough. Where allegations involve use of force, the entire sequence of events must be examined against OCFS' requirements (e.g. use of de-escalation techniques, justification for use of force, technique and truthful reporting; see PPM 3247.13 "Crisis Prevention and Management").
8. Investigation reports will be reviewed by supervisors who had no involvement in the incident and who did not conduct the investigation. An investigation conducted by SIU staff will be reviewed and approved by the Chief of Investigations. An investigation conducted by facility staff must be reviewed and approved by the Facility Director and the designated Facilities Manager.
9. Investigations must be completed and reviewed promptly, in general no later than 60 days from the beginning of the investigation. Depending on the nature of the case, law enforcement agencies may conduct a concurrent investigation/prosecution and it may be appropriate to defer to a criminal investigation. OCFS' Institutional Abuse Investigation Unit may conduct a concurrent investigation (PPM 3456 "Child Abuse and Reporting in OCFS Programs Operating Pursuant to Article 19-G of the Executive Law"). Concurrent investigations, particularly criminal investigations, may result in a delay of or supplant an investigation pursuant to this policy, but does not diminish the responsibility to address allegations of misconduct.

F. Determinations Following Investigations

1. The completed investigation report shall be forwarded to the Bureau of Labor Relations with copies to the Deputy Commissioner. SIU will transmit its reports to others as required by PPM 1600.00 "Special Investigations."
2. The Bureau of Labor Relations shall review and evaluate the investigation for completeness and content. If additional evidence/information is needed, Labor Relations will follow-up as necessary. If, during the course of review, it is believed that the level of contact should be adjusted, the Associate Commissioner for Facilities Management or the Facilities Manager shall be notified.
3. The Bureau of Labor Relations shall make recommendations for employment action as necessary. The recommendations fall into these general categories: (1) no corrective action is necessary; (2) no disciplinary action is necessary, but other action, such as counseling, retraining or probationary dismissal is necessary; or (3) disciplinary action is necessary (see, PPM 2651 "Employee Discipline"). If the Bureau of Labor Relations determines that disciplinary action is warranted, the Bureau will recommend a proposed penalty and

whether suspension without pay pending disciplinary proceedings is appropriate.

4. Staff of the Bureau of Labor Relations, the Associate Commissioner for Facilities Management, a representative of DJJOY's Office of Management Support, and any other DJJOY Associate Commissioner if necessary, will meet to discuss recommendations regarding what action is warranted. If suspension without pay pending disciplinary action is considered, the Associate Commissioner for Human Resources will be consulted prior to such determination. The final determination shall be made by the Deputy Commissioner, the Associate Commissioner for Facilities Management, or another DJJOY Associate Commissioner as appropriate. This determination shall be documented in a memorandum from the Director of the Bureau of Labor Relations to the Deputy Commissioner or designated Associate Commissioner and shall be signed by the appropriate Associate Commissioner.
5. When disciplinary action is approved, the Bureau of Labor Relations shall prepare and forward the Notice of Discipline to the Facility Director in accordance with PPM 2651 "Employee Discipline."
6. If review of an investigation results in a determination that the employee will receive counseling, retraining or any action short of disciplinary action, the Director of the Bureau of Labor Relations shall instruct the Facility Director to see that such action is taken by a stated date appropriate to the circumstances. In general memoranda should be issued to employees within two weeks of notice to the facility.
7. Review of investigations, determination of actions and issuance of notices to employees shall, in general, be completed within 30 days of receipt of an investigation by the Deputy Commissioner. Circumstances, such as criminal prosecution, may result in a delay of action.

G. Related or Collateral Issues

During the course of an investigation, it may become apparent that there are concerns other than potential employee conduct that should be addressed. For example, it may be found that a needed procedure is lacking or a physical plant condition needs to be rectified. If facility administrators and/or investigators recognize such gaps they must be communicated and steps shall be taken to address them. If possible, such steps should not await the end of the investigation/discipline process.

IV. CONDUCT/SETTLEMENT OF THE DISCIPLINE CASE

- A. The Bureau of Labor Relation shall be responsible for conducting a disciplinary case in accordance with PPM 2651 "Employee Discipline."
- B. Any proposed settlement negotiation and agreement shall receive the written approval of the Deputy Commissioner for DJJOY or appropriate designated DJJOY Associate Commissioner prior to a final execution of settlement terms. If circumstances preclude prior written approval, prior verbal approval shall be documented by the assigned labor relations representative with the date and name of the DJJOY Associate Commissioner providing approval.

V. CONFIDENTIALITY AND NON-RETALIATION

The credibility of the integrity of the investigative process depends upon the degree to which information and materials gathered during the course of investigations are maintained and processed in a confidential manner. The unauthorized release of confidential information or material may violate legal or contractual rights of youth and employees or members of the public, and, may compromise the ability to conduct a fair and objective investigation. Therefore, it is essential that all staff having access to and/or knowledge of investigative information or materials of a confidential nature not divulge or discuss such information or materials except as authorized in the conduct of their duties.

Staff assisting the designated SIU staff in the manner described above shall neither divulge nor discuss any confidential information or materials with co-workers, subordinates, superiors or individuals outside the agency unless specifically authorized to do so by the designated SIU staff. If such staff is being administratively directed or coerced to divulge confidential information, they shall contact the Chief of Investigations immediately.

VI. Non-Retaliation

There shall be no retaliation against any individual for cooperation in any aspect of reporting, investigating, and addressing allegations of misconduct.

VII. Training

All SIU investigators will receive training in the conduct of investigations. The Facility Director will designate staff who will receive training in preliminary procedures and investigations. The training shall include but not necessarily be limited to:

- gathering and preservation of evidence;
- interviewing witnesses and employee interrogations;
- evaluation of evidence; and
- attendance at Crisis Prevention and Management training.