

REPORT BY MONITOR JUDGE ISAAC BORENSTEIN (RET.) FOR THE
JUDGE ROTENBERG EDUCATIONAL CENTER (JRC)

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I) INTRODUCTION

A) Judge Rotenberg Center

Founded in 1971, the Judge Rotenberg Educational Center ("JRC"), previously the Behavioral Research Institute, is a residential education and treatment program in Canton, MA. JRC provides behavior modification therapy for two hundred thirty-six special needs children and adults from several different states. The students at JRC suffer from behavior disorders, unable to be treated by prior treatment programs and hospitals. Prior to arriving at JRC, many students were incarcerated, institutionalized, and/or homeless. JRC currently serves the largest collection of individuals with difficult-to-treat, self-abusive, aggressive, and severely harmful behaviors in the country.

JRC utilizes positive procedures, such as rewards, in order to help encourage students' positive behaviors. In addition to positive procedures, JRC also employs the use of correctional consequences, or aversives, for a number of students who do not respond to only positive procedures. Typically, these aversives come in the form of a two-second "shock" to the surface of the skin when a student exhibits an inappropriate behavior. At JRC, the device used to administer these shocks is called the Graduated Electronic Decelerator ("GED") and must be approved by a Probate Court Judge prior to being used as part of a student's behavior treatment program. JRC was one of the first programs in the United States to utilize technologies like the GED.

The GED devices are developed and maintained by JRC and consist of small, round metal discs connected to electrical wiring, called electrodes. The electrodes are placed usually on the arm or leg of a student within a Velcro strap with a locking mechanism so that students are not able to remove the devices themselves. The electrodes are connected to a battery pack usually contained in a fanny pack or back pack worn by the student. Each GED device is connected wirelessly to a transmitter worn by a JRC staff member. The transmitter, or "sled," contains the student's name, a photograph of the student, and a button that a staff member presses to activate the electrodes and administer a shock. This shock is often described as having a similar feeling to a bee sting. The sleds are covered by a plastic case to avoid accidental applications.

Currently, JRC maintains two school buildings in Canton, Massachusetts and thirty-six residences throughout the south shore of Massachusetts, within reasonable driving distance of the school. JRC students are transported to and from the school in Canton from their residences Monday through Friday, and spend the weekends either at the individual residences or on pre-arranged field trips.

B) Description and Purpose of Report

The catalyst for this report was a very serious incident that occurred at JRC on August 26, 2007, during which two JRC students received a significant number of inappropriate GED applications. This incident was the result of a hoax perpetrated by a prior JRC student who had eloped from JRC while on a trip to New York State. Immediately after the incident, state agencies were notified of what had occurred and investigations were initiated and completed by them, as well as by JRC.

After these investigations were complete, and after changes in policies and procedures were implemented at JRC, Dr. Matthew Israel, then Executive Director of JRC, was indicted by a special grand jury in Norfolk County on charges of Accessory After the Fact and Misleading an Investigator or a Witness on May 20, 2011. [REDACTED]

[REDACTED] At Dr. Israel's arraignment on May 25, 2011, he entered into a sentencing agreement for pretrial probation, which required Dr. Israel to resign from his position as Executive Director and prohibited him from working for JRC or being on its board for five years. The Attorney General for the Commonwealth of Massachusetts ("AGO"), and JRC's Board of Directors ("the Board") then entered into a Deferred Prosecution agreement, whereby an Independent Monitor would be appointed to review and assess safety at JRC in connection with the August 26, 2007 incident in order to ensure that a similar event would not reoccur.

i) Appointment of Judge Isaac Borenstein (Ret.) as Monitor

On May 25, 2011, the Hon. Isaac Borenstein (Ret.), of Counsel, of the firm Kajko, Weisman, Colasanti & Stein, LLP (formerly Rubin, Weisman, Colasanti, Kajko & Stein, LLP), was retained to act as an Independent Monitor. In summary, the agreement provided for Dr. Israel to resign from his position with JRC and refrain from working for JRC excepted in a limited consultation capacity until December 31, 2011. Dr. Israel may act as a consultant to JRC at the request of a student's Clinician and on approval of the monitor, Judge Borenstein. As to the scope of the investigation, the Deferred Prosecution Agreement states as follows:

“... [T]he Monitor shall conduct an evaluation and review of the incident that occurred at JRC on August 26, 2007 ... The Monitor may review any JRC policy or procedure that he believes contributed to the occurrence of the August 26, 2007 Incident, which may include but is not limited to, JRC policies on hiring, training, supervision, and video monitoring; the operation and management of JRC; and the composition of the human rights committee. The Monitor may also review at JRC any information he believes is necessary to evaluate whether JRC has instituted sufficient measures to prevent a similar incident from recurring, including, but not limited to, current JRC policies and procedures, the present operation and management of JRC, and the current composition of the human rights committee. The review and evaluation shall not include any review of the efficacy of the aversives or any other treatment provided by JRC. The monitor shall complete the evaluation and issue a report which shall include, but not be limited to, a determination of whether JRC instituted sufficient measures to prevent a similar incident from recurring. If the Monitor concludes that sufficient measures do not exist, the report shall recommend specific measures JRC should institute to prevent a similar incident from recurring.”

JRC is solely responsible for the costs associated with Judge Borenstein's services, as well as the services of other staff at his law firm who work on the investigation. Upon receipt of the Monitor's Report and recommendations, the JRC Board will have one month to vote on whether to adopt the recommendations in the monitor's report.

Subsequent to the Deferred Prosecution Agreement, on June 28, 2011, JRC, the AGO and Judge Borenstein entered into a fee agreement which set out the terms of payment by JRC to Judge Borenstein's law firm, as well as the scope of the monitor's duties and provisions for the full cooperation of JRC's Board of Directors in the investigation. The fee agreement tracks the Deferred Prosecution Agreement with respect to the scope of the investigation by and JRC's obligation to cooperate with the Monitor.

After the Report is issued and submitted to both the AGO and JRC, the Board will have one month to vote on whether to implement the changes recommended by the Monitor. Within three days of such vote, the Board will inform the AGO in writing of which measures, if any, it did not approve and whether the Board would like to meet with a representative from the AGO. The Board shall have an opportunity to present facts and evidence to support their decision not to adopt certain recommendations of the Monitor, and this must be completed within two months of the issuance of the Report.

Within one month of the Board's vote, JRC will implement all changes approved by the Board. When JRC notifies the Monitor that all changes have been implemented, the Monitor will begin three quarterly reviews of the changes. The Monitor's quarterly reports are due one month after the end of a quarter.

The one hundred twenty seven pages of this Report do not adequately reflect the amount of work that the Monitor and two attorneys working closely with him dedicated to the tasks at hand. Thousands of hours were spent interviewing individuals, reading reports and other documents, and learning everything possibly related to the mandate for the Monitor. All JRC staff and administrators were extremely cooperative and supplied all relevant information as requested by the Monitor and his team.

C) Documents Reviewed

i) JRC Policy and Procedure Documents

- DVR Operating Manual, revised July 20, 2011
- Basic Training Manual, revised June 29, 2011

- GED Training Tests, date of revision unknown
- Human Rights Committee Responsibilities and Description, date of revision unknown
- JRC Policy on Human Rights, revised March 19, 2010
- Student Training Materials on Human Rights, revised December 22, 2010
- Human Rights Committee Meeting Minutes for January through May 2011
- JRC Policy on Incident Review Committee, date of revision unknown
- JRC Policy on Conducting Investigations, revised September 13, 2011
- JRC's Anti-Harassment Policy, revised July 24, 2007
- JRC's Anti-Discrimination Policy, revised July 12, 2011
- JRC Policy on Filing a Complaint Under DDS Investigations and Reporting Regulations 115 CMR 9.00
- JRC Employee Manual, revised March 22, 2011
- Trainee Welcome Letter from Executive Director, date of revision unknown
- JRC Complaint Procedure, revised September 26, 2011
- JRC Policy on Student/Client Evaluation of Staff, date of revision unknown
- Procedures on Programmed Opportunities, revised February 23, 2006
- Reporting Directives Inconsistent with JRC Policies and Procedures: Using Good Judgment, date of revision unknown
- Procedures and Rules for GED Applications and Approvals, revised June 7, 2011
- GED Quality Assurance, date of revision unknown
- JRC Policy on Evaluating Staff, revised June 29, 2011
- JRC Policy on Inappropriate Conversations, revised February 22, 2006
- JRC Policy on Staff/Student Interaction, revised February 22, 2006
- JRC Policy for Residential Phone Calls, revised December 5, 2007 and October 4, 2009
- JRC Policy on Personal Telephone Calls and Cell Phones, revised May 3, 2007 and December 7, 2010
- JRC Policy and Procedure on Court Authorized Supplementary Aversives (Level II and III Interventions), revised June 29, 2011

- JRC Notification Procedures, revised June 3, 2007, September 11, 2007, and June 29, 2011
- Primer on Aversives, May 20, 2008
- Aversives at JRC: A Better Alternative to the Use of Drugs, Restraint, Isolation, Warehousing, or Expulsion in the Treatment of Severe Behavior Disorders, date unknown
- JRC Policy on Emergency Medical and Mental Health Care, revised September 26, 2011
- JRC Policy on Administration on Medication, revised September 26, 2011
- JRC Policy on Care of Student with "Do Not Resuscitate" or "Comfort Care" Order, revised February 23, 2006
- JRC First Dose Monitoring Procedures, revised February 23, 2006
- JRC Policy on Medical Services, revised September 26, 2011
- Medication Inventory Policy, revised September 26, 2011
- JRC Policy on Meeting the Nursing Needs of the Student Population, revised September 26, 2011
- JRC Policy for Body Checks and Reporting Student Illness/Injury, revised July 27, 2007
- JRC Policy on First Aid and CPR Requirements for Staff, date of revision unknown
- JRC Human Resources and Evaluations Records/Reports:
- JRC Final Investigation Report and Corrective Action, September 2007
- End of Shift Reports for July 15, 2011 through July 20, 2011
- Resignation Summary Report for April 1, 2011 through June 30, 2011
- Second Quarter 2011 Staff Evaluations
- Staff Infractions List, revised July 1, 2011
- Employment Job Descriptions, revised June 29, 2011
- Student Investigator Notes for January through June 2011
- Student Investigator End of Week Questionnaires for January through June 2011
- List of JRC Staff Involved in August 2007 Incident
- Staff Schedules for Week of August 2007 Incident
- [REDACTED] Human Resources Records

- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- [REDACTED] Human Resources Records
- Letters from Dr. Robert Von Heyn to Dr. John Daignault regarding GED Spontaneous Activations and Misapplications for October 2010 through May 2011
- Status emails from Ted Condon, Security Consultant for December 2010 through October 2011
- JRC Policy on Restraint Committee, revised October 12, 2011
- Minutes from Restraint Committee Meetings for October 2007 through January 2008
- JRC Safety Committee Procedures, revised October 12, 2011
- Minutes from Safety Committee Meetings for June 2011 through October 2011
- Incident Review Committee Meeting Minutes, September 30, 2011

ii) Student Records

James Roe Records:

- Medical History
- Medical Exams Summary
- Medical Consultations
- Current Medications
- Dental Exams
- Nutritional Consultation
- Psychiatric Evaluations
- Psychiatric/Neurological/Medical Contraindication Forms
- Immunizations
- Restraint Form, August 26, 2007
- Nursing Notes, August 27, 2005 through August 26, 2007
- Nursing Emails dated May 21, 2007, May 24, 2007, May 25, 2007, and April 21, 2007

- Proposed Behavior Modification Plan, October 14, 2004
- Affidavit of Christine Chiudina, Psy. D., Clinician at JRC, May 23, 2006
- Affidavit of Mitchell Abblett, Ph.D., psychologist at JRC, dated December 16, 2004
- Decree of Permanent Guardianship, dated June 24 of an unknown year
- Order Regarding Substituted Judgment, Guardianship, and Treatment Plan, July 11, 2006
- Program Description
- Proposed Amended Behavior Modification Treatment Plan, August 2, 2007
- Weekly Charts of Behaviors for September 17, 2006 through May 2, 2010
- Weekly Chart of GED Applications for March 12, 2006 through July 30, 2006
- Daily Logs for August 25, 2007 and August 26, 2007
- Proposed Amended Behavior Modification Plan, September 12, 2008 and accompanying Court Order, October 30, 2007
- Proposed Behavior Modification Plan, March 21, 2006
- Decree of Permanent Guardianship, September 19, 2006
- Dr. Chordirker Medical Report, August 27, 2007

John Doe Records:

- Medical History
- Medical Exams Summary
- Medical Consultations
- Current Medications
- Dental Exams
- Psychiatric Evaluations
- Psychiatric/Neurological/Medical Contraindication Forms
- Immunizations
- Program Description
- Nursing Notes, March 18, 2006 through June 22, 2010
- Body Check Notes for June 4, 2007 through June 10, 2007, June 26, 2007 through July 1, 2007, July 16, 2007 through July 29, 2007, and various other dates
- Restraint Form for August 25, 2007

Mark Poe Records:

- Background Documents
- Intake Forms

- Quarterly Progress Reports to State Agencies for September 2004 through September 2007
- Psychological Evaluation
- Note: Mark Poe's file did not contain a behavior modification treatment plan, a program description, or recording sheet
- Social Summary
- Amended Behavior Modification Treatment Plan dated January 111, 2007
- Quarterly Progress Reports to State Agencies for September 2003 through September 2007

Paul Noe's Records:

- Background Documents

iii) Agency Documents

- Department of Early Education and Care Report, November 1, 2007
- Department of Early Education and Care Letter to Glenda Crookes, February 6, 2008
- Disabled Person's Protection Commission Report, January 8, 2008
- Disabled Person's Protection Commission Intake Forms, August 26, 2007, August 30, 2007, and October 16, 2007
- Disabled Person's Protection Commission Memo from Nancy Alterio to Jean McGuire - Summary of DPPC's involvement with JRC post 8/26/07, December 23, 2008
- Note: The Monitor did not review the Critical Incident Report filed on behalf of James Roe with the Department of Social Services.²

iv) State Regulations

- Department of Early Education and Care – Residential Care Regulation, 102 CMR 3.00
- Department of Developmental Services – Standards to Promote Dignity, 115 CMR 5.00 (effective September 4, 2009 and October 30, 2011)
- Department of Elementary and Secondary Education – Safety Standards for Approved Public or Private Day and Residential Special Education School Programs, 603 CMR 18.00

² According to Seana Miller of the Disabled Persons Protection Commission, she worked with investigators from the Department of Social Services and the Department of Early Education and Care to investigate reports of abuse.

D) People & Agencies Interviewed

i) JRC Administrators

- Anthony Barbosa – Evaluations Director
- Doris Baron – Director of Medical Services
- Cherie Boisvert – Director of Training
- Danielle Brewer – Director of Residences
- Robert Bruno – Director of Quality Control
- Tanya Chiarella – Compliance Regulations Officer
- Glenda Crookes – Interim Executive Director of JRC
- Robert Duquette – Director of Human Resources, Assistant Executive Director of JRC
- Dr. Matthew Israel – Former Executive Director of JRC
- Carla Meloné – Director of Compliance/Special Projects/Program Director
- Susan Parker – Director of Programming
- Lynn Parillo – Assistant Director for Programming
- Robert Von Heyn – Director of Clinical Services
- JRC Board of Directors – Margaret Vaughan; Bert Davis; Richard Malott; Henry Slucki; and Paul Sullivan

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ii) Current JRC Staff, Students, and Parents

Seven Mental Health Assistants, two High Crisis Specialists, one Workshop Coordinator, three Residential Supervisors, one Weekend Supervisor, three Special Education Teachers, and JRC's Security Consultant/Off-duty State Trooper were interviewed: Judge Borenstein attended a portion of a Parent Association meeting at JRC on October 29, 2011.

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Seven parents/guardians of JRC clients and two students currently on the GED were also interviewed.

7+2

iii) Staff and Students Involved in August 2007 Incident

██████████ Quality Control Monitor assigned to monitor the Stoughton Residence

Letters were sent to former staff members [REDACTED] requesting interviews; however all letters were returned because the addresses were no longer current and the post office did not have a forwarding address. Similar letters were sent to former staff members [REDACTED]; however no response or returned envelope was received.

John Doe, one of the student's who received the inappropriate GEDs, was interviewed for this report. JRC could not provide current addresses for the other students involved (James Roe, Mark Poe and Paul Noe), all of whom were discharged from JRC in 2007, soon after the incident.

iv) State Agencies and Non-Profit Organizations

- Attorney Gail Quinn, Disabled Person's Protection Commission
- Investigator Seana Miller, Disabled Person's Protection Commission
- Attorney Richard M. Glassman, Disability Law Center, Inc.
- Attorney Alan Kerzin, Disability Law Center, Inc.
- Marianne Meacham, General Counsel for the Department of Developmental Services³
- Maureen McGee, General Counsel for the Executive Office of Health and Human Services
- Carmel Sullivan, Acting General Counsel for the Department of Early Education and Care
- Lester Blumberg, General Counsel for the Department of Mental Health
- Carrie Wicker from the Office of the Governor's Legal Counsel
- Jennifer Grace Miller, Chief of the Government Bureau for the Office of the Attorney General

³The monitor met with this agency representative, as well as the subsequent representatives on this list, on May 13, 2012, after the "final report" was submitted to the Attorney General's office in April 2012. Through no fault of the agency or the monitor, an interview with these representatives was not completed prior to the submission of the Monitor's report. Please see Report Addendum for further information.

- Dianne Curran, Associate General Counsel for the Department of Elementary and Secondary Education

v) Other Persons

- Dr. John Daignault – Court Monitor
- Michael Flammia, Esq., Counsel for JRC

II) JRC PROGRAM AND GED TREATMENT

A) JRC's Treatment Approach

JRC employs behavioral psychology techniques without "psychotropic drugs" in order to educate, treat, and counsel autistic and behaviorally disordered children and adults, some quite serious in terms of the health and safety of themselves and others. Behavioral psychology uses "rewards and punishments to encourage desired behaviors and decrease or eliminate undesired behaviors."⁴ JRC has a process for assessing the needs of each client and identifying key behaviors. All individuals are first treated with a "positive-only" treatment program, rewarding them for good behaviors, along with non-physical consequences for negative behaviors. For 39% of JRC's population, this type of program is not sufficient to decrease or eliminate negative behaviors, so JRC utilizes aversives, typically in the form of a GED device, to apply corrective consequences for these behaviors. JRC's goal is to use the "least restrictive and most effective procedure" with each student, which includes the GED if necessary. JRC reports that it utilizes the GED in a student's program for the following reasons: it avoids delay; it is easier to quantify; the amount of "aversiveness" is standardized and controlled; it avoids the difficulty of administering alternative procedures; the individual cannot avoid or escape the consequence; it avoids rewarding social interaction; it avoids rewarding escape from demands; it does not interfere with ongoing activities; it avoids exposing the client to aversive stimuli that linger; and it has no dangerous side effects. Under a behavior modification model, the causes of problematic behavior are analyzed and techniques are employed to eliminate events that trigger the occurrence of these behaviors.

The parents of JRC students interviewed for this Report all report that they have observed and experienced significant improvement in their children's behavior after being treated at JRC with both positive reinforcements, such as contracts and rewards, and the GED. The parents all

⁴ Matthew L. Israel, *Primer on Aversives*, May 20, 2008, at 4.

have children who are either severely self-aggressive or assaultive towards others, had been through numerous other treatment programs, and a number of whom had previously been medicated, in prison, jail, or in detention in juvenile and adult facilities. All of these parents stated that JRC was their child's last option, and that without JRC, they felt that their child would now either be deceased, institutionalized under heavy medication, or in a correctional facility. These parents felt that their children were very safe at JRC, that they had access to their children in person and via telephone 24/7, and that they could easily reach JRC administrative staff and their child's treatment team when necessary.

Two higher-functioning students currently on the GED were also interviewed for this report⁵. They expressed the feeling that, while they would rather be at home with their families, they felt that JRC has been good for them and have seen improvements in their behavior since coming to JRC. Both understood their programs, including their contracts, and were able to articulate what some of their negative behaviors were. Each student also understood how to make human rights complaints and how to reach their treatment teams if they had questions or concerns. One of the students previously filed a human rights complaint against another student after observing him kick a smaller student.

B) JRC's Student Population

There are approximately two hundred thirty-six students at JRC. 35% of JRC's clients are emotionally disturbed, behaviorally disordered adolescents, while 65% are autistic, developmentally delayed children and adults. 17% of JRC's school-aged clients are court approved for the GED. Of this 17%, 99.9% are autistic and developmentally delayed. The Executive Director of JRC indicated that the school currently has more adults than it has in the past, and that more clients are choosing to stay at JRC to finish their education after they have turned eighteen.

⁵ Interim Executive Director Glenda Crookes reports that there are very few "higher functioning" students with the GED in their program because of changes in New York state regulations that affect a majority of the student population. The term "higher functioning" is an imperfect term used by the Monitor to distinguish JRC students who are able to communicate verbally and function more independently than other students at the school. The victims of the August 2007 incident could all be described as "high functioning."

C) Court Approval of Treatment Programs

The current regulations regarding the Court approval process for Behavior Modification Treatment Plans resulted from a 1985 lawsuit brought by parents of JRC students and JRC seeking an injunction to stop the Massachusetts Office for Children from enforcing its decision to take away JRC's license to operate because of JRC's use of aversives. Eventually, the parties entered into a Settlement Agreement in 1986. Under this agreement, substituted judgment hearings must be held for each student JRC is seeking to use aversives with, a Court Monitor was appointed to visit JRC periodically and report on JRC's treatment and education program to the Court, and the Office for Children's licensing power was transferred to the Massachusetts Department of Mental Health. JRC then worked with the Department of Mental Health to promulgate new regulations related to aversives. Subsequently in 1988, these licensing powers were transferred again to the Massachusetts Department of Developmental Services.

Today, under 115 C.M.R. § 5.14, a Massachusetts Probate Court Judge must approve the use of aversive interventions for each student before they may be used. The Probate Court Judge first assigns the student independent counsel to evaluate the student and his/her treatment needs. A substituted judgment hearing is then held to review evidence of the student's diagnosis, treatment history, and treatment options, in order for the Judge to determine whether aversive interventions are appropriate. Prior to this hearing, JRC must submit a treatment plan recommended by the student's experienced and trained treating Clinician containing the behaviors to be treated, the student's parent(s)/guardian(s)'s written consent, and an evaluation by a physician indicating whether any medical reasons exist that prohibit the use of aversive treatment. JRC facilitates meetings of a Human Rights Committee and a Peer Review Committee, who must also approve the treatment plan prior to the plan being submitted to the Probate Court.

III) SUMMARY OF LICENSING AND REGULATIONS THAT AFFECT STUDENT SAFETY

JRC is required to follow numerous State and Federal Regulations. These include safety and education regulations and requirements for Massachusetts and for those states that send students to JRC, as well as all applicable Federal regulations. The key licensing regulations – and the regulations that directly affect how JRC protects the safety of the students – are found in the regulations for the Department of Early Education and Care (102 CMR 3.00), the Regulations of the Department of Developmental Services (115 CMR 5.00) and the Department of Elementary and Secondary Education Regulations (603 CMR 18.00). These three bodies of law make up the primary legal requirements that JRC must follow when developing safety policies and procedures for its students.

A) Department of Early Education and Care – Residential Regulations (102 CMR 3.00)

i) **3.04(5): Required Notifications**

EEC must be notified when a 51A report has been filed with the Department of Children and Families. In the event of a serious illness, JRC must notify the resident's parent or guardian, the referral source, and the Department of Education when applicable. In the event of a serious accident or death, JRC must also notify the office of the DEEC. In the event of a serious injury to a resident resulting in hospitalization or an incident involving escape from a secure facility, JRC must notify the DEEC office within 24 hours of the injury or incident. JRC must notify the DEEC office prior to any substantial change in the program, physical facility, staffing, population serviced, policies, or services offered.

JRC must supply a quarterly report to the office of all restraints and injuries related to restraints in the program.

ii) **3.04(7): Orientation and Training**

Each new employee of a program which uses restraint must receive a minimum of sixteen hours of training in the prevention and use of restraint, which must include: the needs and behaviors of the population served; relationship building; prevention of restraint; de-escalation

methods; avoiding power struggles; thresholds for restraints; the physiological impact of restraint; monitoring physical signs of distress and obtaining medical assistance; legal issues, positional asphyxia; escape and evasion techniques; time limits; the process for obtaining approval for continued restraints; procedures to address problematic restraints; documentation; processing with children; following up with staff; and investigation of injuries and complaints. Prevention/restraint training must also include: role-playing in de-escalation; demonstration of proficiency with each hold taught; and written post-training tests.

JRC must provide on-going staff training programs and must describe in writing the program's plan for staff training and refresher training. The plan for staff training must include a minimum of eight hours of annual refresher training for each staff in effective de-escalation and safe restraint methods, written post-training tests, and regular review of restraints implemented. Full-time childcare, professional and supervisory staff must attend a minimum of twenty-four hours of training per year. Part-time and weekend staff must attend a minimum of twelve hours of training per year.

iii) 3.04(8): Supervision

JRC must make all childcare and clinical staff directly responsible to a staff person who has supervisory or administrative responsibility. Childcare and clinical staff must have regular, scheduled conferences with the assigned supervisor regarding children's needs and how to meet them. Supervisors must conduct and document evaluations at least yearly of all childcare and clinical staff, which must consider implementation of restraints, attendance at trainings, and ability to implement residents' service plans.

iv) 3.06(11): Unusual or Extraordinary Treatment

JRC is authorized to use aversives as indicated on its EEC license: "Program policies approved and aversives administered subject to DMH Level III Certification. The program may utilize transportation restraint according to the approved variance, 3.07(7)(j). The program obtains court approval and DMR Level III certification for certain aspects of behavioral treatment plans.

v) 3.07(2): Staff-Child Ratios

JRC must establish a written description of the staffing of the facility on a twenty-four hour per day, seven-day per week basis. The staffing plan must include the availability of administrative and/or clinical staff on an on-call basis as well. The staff-child ratio must be appropriate to the age, capabilities, needs and service plans of the residents in the facility and sufficient to carry out the requirements of 102 CMR 3.00.

vi) 3.07(7): Behavior Management

JRC must maintain a written statement defining rules, policies, and procedures for behavior management. It must include a description of the safeguards for the emotional, physical and psychological well being of the population served, as well as positive responses to appropriate behavior. The statement must define the use of behavior management procedures used in the facility, including a level/point system of privileges; the type and range of restrictions a staff member can authorize for misbehavior; the form of physical restraint used, the behavioral interventions used as alternatives to restraint, and controls on abuse of such restraints; the circumstances under which the program would restrain a resident; the name of the restraint coordinator; the procedure for regular review of restraint data by a Restraint Safety Committee; the names and positions of members of the Restraint Safety Committee; the use of the practice of separating a resident from a group or program activity; and any denial or restrictions of on-grounds program services.

Unless JRC obtains a variance prior to implementation, the use of any form of restraint other than passive physical restraint is prohibited. Restraint may only be used when the resident is demonstrating that he/she is dangerous to him/her self or others and no other intervention has been or is likely to be effective in averting the danger. No resident may be restrained for purposes of punishment or for the convenience of others. No resident may be restrained solely for non-compliance with a program rule, staff directive or expectation. Only staff trained in physical restraint can participate in restraining residents. The administrative designee must be notified immediately whenever physical restraint is used. After the first five minutes of a restraint, steps must be taken to contact the on-call administrative or clinical staff. The form of the restraint must be the least intrusive means. If a resident needs to be restrained for more than 20 minutes, the approval of the chief administrative person or his designee must be obtained. The

physical condition of a resident who is being restrained must be constantly monitored. A resident who exhibits signs of significant physical distress during a restraint must be released and medically treated. Any resident who has been restrained more than five times in any seven day period must receive a review of his/her clinical and behavioral needs by her/his assigned Case Manager or Clinician within three working days of the fifth restraint. All restraints must be documented.

B) Department of Developmental Services – Standards to Promote Dignity (115 CMR 5.00)^{6, 7}

i) 5.06: Special Sanctions for Violations of Rights of Individuals

Mistreatment of an individual by a person who works for or is subject to the direction of JRC is grounds for suspension or revocation of the certification and license of JRC by the Department, and is grounds for disciplinary action, which may include dismissal.

Failure of an employee of JRC to report to the Department any allegation or instance of mistreatment is grounds for disciplinary action, which may include dismissal. Failure of the head of JRC to report any allegation or instance of mistreatment to the Department is grounds for action by the Department including revocation or suspension of the certification and license of the provider.

ii) 5.08: Informed Consent

The informed consent of an individual or guardian is required prior to the initiation of level II or level III behavior modification interventions. The consent of the individual or guardian must be in writing and the consent expires upon completion of the specific procedure for which it applies or one year after it is signed. A written record must be made that details the procedure used to obtain the consent. The person securing the consent must explain the intended

⁶ Note: there is nothing contained in this regulation regarding the application of GEDs or Level II or III interventions – i.e. how such interventions should be applied, training staff on such interventions, etc.

⁷ Effective October 30, 2011, the Department of Development Services has amended this regulation to prohibit the use of electric shock devices on any clients at residential facilities who do not have a Behavioral Modification Treatment Plans approved by a Probate Court Judge prior to September 1, 2011.

outcome, the nature of, and procedures involved in the proposed treatment or activity; the risks, including side effects, as well as risks of not proceeding; alternatives to the proposed treatment or activity; and must explain that consent may be withheld or withdrawn at any time.

iii) 5.11: Emergency Restraint

An emergency exists when a reasonable person would perceive one or more of the following: 1) the present occurrence of serious self-injurious behavior, 2) the present occurrence of serious physical assault, 3) the imminent threat of serious self-injurious behavior or behavior which is likely to lead to self injury, where the individual has the present ability to effect such behavior and has engaged in any action which indicates a present intention or inclination to carry out such behavior immediately, and/or 4) the imminent threat of serious physical assault, where the individual has the present ability to effect such assault and has engaged in any act which indicates a present intention or inclination to carry out such assault immediately. Property damage is not an emergency unless such damage is also likely to lead to the serious self-injury of the individual or those present. The use of emergency restraint is restricted to emergencies as defined above.

Emergency restraint may be used only after the failure of less restrictive alternatives or after a determination based on professional judgment that such alternatives would be ineffective. It can only be used for the period of time necessary to accomplish its purpose, but can never be used beyond two hours, unless the head of JRC, his or her designee, authorized physician, or authorized staff person issues a renewal of the restraint after determining that it is necessary to prevent the continuation or renewal of an emergency condition. JRC must train all direct contact staff in the safe and appropriate use of physical or mechanical restraints.

JRC can use no form of mechanical restraint other than mitts, unless a waiver for a particular individual is obtained. Any mechanical restraint used by JRC pursuant to a waiver must be used in accordance with all other requirements under 115 CMR 5.00. Any device used for mechanical restraint must provide appropriate and safe ventilation, and must allow for appropriate attention to the physical and emotional comfort of the individual in restraint.

The head of JRC or an authorized physician can authorize the use of restraint if either of these two individuals is present for an emergency justifying the use of the restraint. Otherwise, a designated person who is authorized to act for the head of JRC in his or her absence may authorize restraint. If the designated person is not present for the emergency, a staff person authorized to give such orders by the head of the JRC can issue a restraint order. The reasons for the order must be recorded in writing at the time of its issuance. If the head of JRC, an authorized physician, or designee authorizes the order, it cannot be for more than two hours, and it can be renewed for no more than two hours by the same if it is necessary to prevent the continuation or renewal of an emergency condition. If an authorized staff person authorizes the order, it cannot be for more than one hour, and the same authorized staff person can renew it for no more than one hour.

Whenever an individual is in restraint, a staff person trained to understand an individual's emotional and physical reactions to restraint must be in attendance – the individual must be situated so that the staff person is able to communicate with and see the individual at all times. In the case of physical restraint, the staff person applying the restraint can also be the staff in attendance, as long as a separate staff person who is not applying the restraint observes the individual being restrained periodically every fifteen minutes. Where someone trained in the reactions of an individual in restraint is not available, an adult may be kept in restraint for no more than two hours as long as for mechanical restraint the staff observes the adult every five minutes.

Mechanical restraints must be checked every fifteen minutes for comfort, body alignment, and circulation by an authorized staff person or staff-in-attendance.

No one can be restrained for a continuous period exceeding six hours. No adult may be restrained mechanically for more than eight hours in any twenty-four hour period.

Any minor placed in restraint must be examined by an authorized physician or registered nurse, nurse practitioner, or certified physician's assistant within fifteen minutes of the initial order; however a physician must examine the minor within one hour of the initial order. The restraint order and status of the minor must be reviewed every hour. Any restraint on a minor exceeding one hour in any twenty-four hour period must be reviewed within two working days

by the head of JRC, who must forward a copy of his/her report on the restraint to the Human Rights Committee and the Department.

Relief periods for individuals in restraint must occur for at least ten minutes of every two hours of restraint, except where there is an obvious and substantial risk of harm. An individual must be released from restraint if a person authorized to issue an order for restraint determines that the restraint is no longer needed to prevent the continuation or renewal of an emergency condition. An individual must be released if he/she is asleep.

Where behavior necessitating the use of restraint recurs beyond the first twenty-four hour period more than once within a week or more than two times within a month, an intervention strategy must be promptly developed to respond to the behavior and reduce the likelihood of its recurrence.

Restraint forms must be completed whenever an individual is placed in restraint. The form must be approved by DDS and must be filed with the Department's Human Rights office, the area office director, and JRC's HRC.

C) Department of Elementary and Secondary Education Regulations (603 CMR 18.00)

i) 18.03(2): Childcare Worker to Student Ratio

Department may approve a student to childcare worker ratio not lower than 4:1 nor greater than 6:1 during non "school-day" waking hours and not lower than 6:1 nor greater than 8:1 during sleeping hours or an alternative ratio justified by the special education school.

ii) 18.03(3): Childcare Worker Staff Development and Training

JRC must develop and implement a detailed written plan for staff development and in-service training of all childcare workers. This training plan must be ongoing and provide for a minimum of two hours of formal training per month and must include procedures for orienting new childcare workers to the role and purpose of the school, information and discussion on the nature and needs of the students enrolled, the role of the childcare worker in the growth and development of students, emergency procedures, basic first aid, and how to deal with disruptive and violent behavior and non-violent restraint.

iii) 18:03(4): Supervision of Childcare Workers

JRC must provide ongoing and regular supervision of all childcare workers by professional staff that has supervisory and administrative responsibility, which includes regularly scheduled conferences between childcare workers and supervisors; conferences between teachers and childcare workers; and review and discussion of ongoing case logs.

IV) AUGUST 2007 INCIDENT

The catalyst for this Report was an incident that took place in the early morning hours of August 26, 2007 at a JRC Residence located in Stoughton, Massachusetts. An individual, later identified as a former JRC student, called into the residence and pretended to be a member of the Quality Control Department. At the direction of the caller, members of the JRC staff administered seventy-seven GED applications to one student, and thirty applications to a second student. Staff woke a third student and prepared to give him GED applications until they realized that the caller was not from DVR. Serious mistakes by members of the JRC staff, as well as some unclear policies and procedures on the part of JRC, lead to a failure of the JRC program for student safety with regard to these two residents. The following section lays out a detailed summary of the events of August 26, 2007, which sets the foundation for a more complete discussion of the particular policies and procedures in place at that time which failed on that night, and an analysis of the changes that JRC has made since that time to improve the safety of JRC's students.

A) Background of the Students Involved⁸

All three of the victims and the former student who called into JRC were emotionally disturbed individuals with a long history of aggressive and dangerous behaviors. All four young men had been in numerous residential treatment programs before they became students at JRC. Some of them had been hospitalized in a psychiatric facility, and some had faced criminal charges as a result of attacks on staff at previous placements. All of them had been the subject of abuse or neglect prior to attending JRC.

i) John Doe

John Doe was nineteen years old at the time of the incident and was a Massachusetts native. His father was his court-appointed guardian. JRC Clinicians diagnosed John Doe with Mood Disorder and Sexual Disorder. John Doe's Behavior Modification Plan, dated March 21, 2006 and modified on September 12, 2006, identified specific negative and positive behaviors.

⁸ The names of the three victims and the former student responsible for the call to the residence have been changed to protect their privacy.

Aspects of John Doe's plan at JRC at the time of the incident included behavior contracts, movement limitation, use of a helmet, contingent food program, and the GED-4 device. JRC was required to notify the Court Monitor if John Doe received more than fifty GED-4 applications in a twenty-four-hour period. Staff were required to notify John Doe's Clinician after ten GED-4 applications within a twenty-four-hour period. Examples of behavior for which JRC could use the GED treatment included: inappropriate sexual talk, verbal threats to run away, rude gestures, failure to follow student rules, and talking out. The Behavior Modification Plan stated that the Human Rights Committee would review the Plan prior to the use of any level II or III procedures (i.e. GED-4, mechanical restraints). JRC's goal is to exhaust positive reinforcement methods before relying on aversive procedures. The amended plan, dated September 12, 2006, included data on the rate of John Doe's behaviors and stated goals for behavior reduction based on such data. The Decree of Permanent Guardianship named John Doe's father as John Doe's guardian and approved the Treatment Plan described above on September 19, 2006, with such plan expiring after eighteen months, and reviewable after twelve months. The plan was reviewed and approved by the Court again on October 30, 2007.

John Doe's Daily Log from August 25, 2007 shows that John Doe had a "good evening" on the night before the incident with no behaviors noted. There is no indication that John Doe exhibited behaviors during the 9:00 P.M. hour, as alleged by the caller. The sheet indicates that [REDACTED] all signed the log. Of note in the subsequent pages of the log include the following instructions: John Doe recently made use of the phone without permission and must be closely monitored around the phone and John Doe's Clinician is to be notified if there are more than two hours of latency (delay). The attached GED sheet does not show that John Doe received any GED applications for the time period. John Doe's Daily Log from August 26, 2007 shows that [REDACTED] wrote, "John Doe had a good evening" for the evening of the 25th. Evening notes from John Doe's August 26, 2007 recording sheet show that John Doe went on a field trip and was "venting a little on what happened." The report also states that John Doe was "faded" from the GED. The August 26, 2007 restraint and GED sheets do not indicate that John Doe was restrained or received any GED applications.

John Doe's Program Description, which is undated, indicates that John Doe is approved for use of a four-point board for up to one hour without the approval of his Clinician. Program

description makes no reference to GED, so it was presumably developed after the incident. The Program Description does provide for the use of the four-point board as an aversive treatment for inappropriate behavior. John Doe's Amended Behavior Modification Treatment Plan, originally approved by the Probate Court on [REDACTED] 2006, was reviewed and approved by the Probate Court again on [REDACTED] 2007. This plan states that John Doe is approved for use of a four-point board, as well as GED. However, according to John Doe's Program Description, use of the GED for John Doe was suspended.

John Doe's medical records consisted of a medical report by Dr. Chordirker, body check notes, Nursing emails, and Nursing Notes. Dr. Chordirker's record, dated August 27, 2007, indicates that John Doe had multiple red marks on his lower abdomen from the GED. John Doe's Daily Log/ GED sheet states that the electrodes are to be positioned on John Doe's right and left legs. The body check notes do not cover the week following the incident, but suggest that John Doe received a body check once a week on Tuesday at school. The nursing email, dated October 3, 2007, reports that John Doe was restrained on a four-point board and complained that he was having trouble breathing. Nursing notes do not cover the time period of the incident.

ii) James Roe

James Roe was sixteen years old at the time of the incident and was a ward of the Virginia Department of Social Services. James Roe has been diagnosed with Bipolar Disorder, Conduct Disorder, Attention Deficit Hyperactivity Disorder and Borderline Intellectual Functioning. James Roe's Behavior Modification Plan identified specific negative and positive behaviors. Aspects of James Roe's plan at JRC, dated August 2, 2007, included behavioral contracts, movement limitation, use of a helmet, contingent food program, and the GED-4 device. JRC was required to notify the Court Monitor if James Roe received more than fifty GED-4 applications in a twenty-four-hour period. Examples of behavior that JRC could use the GED treatment include: verbal threats of aggression, getting out of his seat without permission, threats to destroy property, swearing, yelling, attempting to remove GED device, stopping work for more than five seconds, or arguing with staff. The Plan stated that the Human Rights Committee would review the Plan prior to the use of any level II or III procedures (GED). The Court Order in James Roe's Guardianship case, dated July 11, 2006 was set to expire eighteen

months from the date of the order, with a review twelve months. James Roe's August 2, 2007 amended treatment plan also calls for the use of the four-point board and GED device; however no order from the Probate Court approving this amended plan was provided by JRC.

James Roe's Daily Log from August 25, 2007 shows that James Roe had a "good evening" on the night before the incident with only one behavior described as "talkout" at 8:00 P.M. There is no indication that James Roe exhibited behaviors during the 9:00 P.M. hour, as alleged by the caller. The sheet indicates that staff [REDACTED] and another staff person all signed the log. Of note in the subsequent pages of the log include the following instructions: 1) contact James Roe's Clinician, Dr. Vlok, in an emergency requiring restraint; 2) James Roe's latency period for GED applications is twenty-four hours, James Roe's Case Manager is to be notified after GED. James Roe's Daily Log from August 26th shows that staff person [REDACTED] wrote "James Roe had a good evening" referencing the evening of the 25th. The evening staff notes for August 26, 2007 report "Seemed very tired. Was falling asleep through movie." The first page of the report also shows that James Roe was "faded"⁹ from his GED device. Another note states "Off left leg" suggesting that James Roe's electrode on his left leg was removed first or may have been the only electrode removed that day. The August 26, 2007 restraint form for James Roe does not indicate whether James Roe was restrained on that date or not. At 6:00 P.M. there was a "fifteen minute restraint check." The form indicates that James Roe was in a "2pt. Chair" that evening at 8:33 P.M.; however this note appears crossed-out. James Roe was put in a shower cuff at 8:33 P.M.

The nursing notes for James Roe are unremarkable but for the notes about August 26th and 27th of 2007. An email from Derek Terrell, a JRC nurse, states that a student named [REDACTED] informed the nursing staff of the incident involving James Roe the night before. The student reported that James Roe received sixty GED applications to only his left leg device. James Roe was brought to the nursing station shortly thereafter, and had a "stage II ulcer on his left calf." Nurse Terrell "decided also to remove the GED device from [James Roe's] left leg."

⁹ "Faded" indicates that a student was previously on the GED device but that the device has been removed from the student as he or she shows improved behavior. The student's treatment team determines how and when to "fade" a student. JRC's goal for all students on the GED is to eventually fade them from the device.

iii) Mark Poe

Mark Poe, the former student who called into JRC, was sixteen years old at the time of the incident and was a native of New York. JRC intake forms indicate staff feared Mark Poe's behavior was very dangerous based on his apparent lack of a conscience or remorse for his abusive actions. A May 10, 2007 psychiatric progress note indicates that Mark Poe exhibited dangerous behavior in the aftermath of the Virginia Tech shootings, as well as a desire to cause mass deaths. Direct care staff also indicated significant fear of Mark Poe and his potential for violent behavior. The psychiatric evaluator believed Mark Poe was capable of causing significant harm inside and/or outside the JRC community. Upon the monitor's request, JRC provided Mark Poe's student file, which did not include a copy of his behavior modification treatment plan or Program Description.

On August 16, 2007, Mark Poe went to New York with JRC staff to take his Regents examinations and walked out of the testing site. The JRC staff filed a report with police but did not know where Mark Poe was at the time of the August 26, 2007 incident. He was officially discharged from JRC on September 12, 2007.

iv) Paul Noe

Paul Noe, the third student, was fifteen at the time of the incident, and was a native of New York. Paul Noe's January 11, 2007 Amended Behavior Modification Plan indicates that he was diagnosed with Mood Disorder and Conduct Disorder, Childhood Onset at JRC. At that time, his behavioral concerns were aggressive behavior, health dangerous behavior, destroying behavior, major disruptive behavior, non-compliance behavior, educationally/socially interfering behavior, and inappropriate verbal behavior. Paul Noe initially began treatment with the GED in August 2004, after being at JRC for over a year. GED was removed from his program in 2006 due to changes in New York State regulations, during which time his non-compliant and major disruptive behaviors increased. Paul Noe was put back on the GED device on June 23, 2006 after another change in NY state regulations and due to his regression.

His January 2007 plan requested authorization to use the GED to treat Paul Noe's aggressive, health dangerous, destroying, major disruptive, and non-compliant behaviors. After

the August 2007 incident, Paul Noe was taken off the GED. Paul Noe was eventually discharged in November 2007.

B) Direct care and monitoring staff backgrounds

i) Direct Care Staff

Six direct care staff were working at the Stoughton residence during the early morning hours of August 26, 2007. C.G., a High Crisis Intervention/Security Specialist, was working an 8:00 A.M. – 8:00 A.M. shift. [REDACTED] a Mental Health Assistant, was working a 7:00 A.M. – 7:00 A.M. shift. [REDACTED] a Weekend Supervisor, was working an 8:00 A.M. – 8:00 A.M. shift. All three of these staff were scheduled as sleeping aides during the overnight hours.¹⁰ [REDACTED] a Mental Health Assistant, was working a 4:00 P.M. – 8:00 A.M. awake shift, and [REDACTED] also a Mental Health Assistant, was working a 10:00 P.M. – 8:00 A.M. awake shift. [REDACTED] a Mental Health Assistant according to Human Resources records, was working 4:00 P.M. – 8:00 A.M. as the Shift Supervisor. A seventh staff person, who was the scheduled Shift Supervisor, had called out sick for the shift.

At the time of the incident, [REDACTED] was thirty-nine years old and had been working at JRC for three years and ten months. [REDACTED] was twenty-seven years old and had been working at JRC for five weeks. [REDACTED] was thirty-six years old and had been working at JRC for eighteen and a half months. [REDACTED] was twenty-three years old and had been working at JRC for five weeks. [REDACTED] was thirty-five and had been working at JRC for eleven weeks, and [REDACTED] was twenty-five years old and had been working at JRC for eleven weeks. All of these staff members, with the exception of [REDACTED] were discharged during the week of October 2, 2007 for “poor decision making skills,” for “failing to react properly to a staff who gave two students a number of unwarranted GED applications,” and for “violating several JRC policies.” [REDACTED] was discharged for “poor decision making skills,” for “exercising poor judgment,” and for giving “two students a high number of GED applications at the command of a student pretending to be a DVR Monitor.”

¹⁰ A sleep aide is a person who sleeps during the shift but can be available to assist the awake staff if a crisis arises.

ii) DVR Monitoring Staff

Three DVR Monitoring staff were working overnight shifts on August 26, 2007. [REDACTED] were all working a 12:00 A.M. – 8:00 A.M. shift as quality control monitors. At the time of the incident, [REDACTED] who was responsible for viewing the Stoughton residence that night, was thirty-nine years old and had worked for JRC for five years and eight months; [REDACTED] was thirty years old and had been working at JRC for three years and four months; and [REDACTED] was thirty-nine years old and had been working at JRC for three years and eleven months. In April 2006, [REDACTED] was demoted from a Quality Control Monitor to a High Crisis Intervention/ Security Specialist for taking an extended break; however he was promoted back to Quality Control on February 16, 2007.

C) Summary of the Facts of August 26, 2007

i) Background

Apparently two weeks prior to the August 2007 incident, Mark Poe ran away from JRC staff that was traveling with him so that he could take the Regents Exams in New York. Mark Poe had been a resident of the Stoughton residence and had “intimate knowledge” of the students, staff, and layout of the residence.

There were six staff persons working at the residence, which houses twelve students. Three of the staff [REDACTED] were assigned shifts that required them to remain awake throughout the night. Three of the staff, [REDACTED] had worked a whole day shift on Saturday August 25th (beginning at 7:00 A.M. for [REDACTED] and 8:00 A.M. for [REDACTED], and were assigned as “sleep aides” for the overnight shift, meaning that they would sleep unless there was a crisis and the awake staff needed assistance. Four of the staff had been employed for less than three months at JRC. [REDACTED] who was the assigned supervisor that evening, had worked at JRC for three months to the day.

There were three staff persons working in the DVR Monitoring department on the night of the incident: [REDACTED]. All three staff were on a 12:00 A.M. to 8:00 A.M. shift and they were charged with monitoring thirty-six total residences.

ii) Events at the Stoughton House¹¹

Mark Poe called the Stoughton residence at 1:57 A.M. on August 26, 2007. [REDACTED] answered the phone. Mark Poe claimed to be a JRC employee, [REDACTED]² from the JRC DVR Monitoring department, and asked for the identity of the supervisor, and [REDACTED] replied that it was [REDACTED]. [REDACTED] stated that he would get [REDACTED] and Mark Poe told him not to do this. Mark Poe told [REDACTED] that John Doe had exhibited behaviors at 9:00 P.M. that needed to be consequted. Mark Poe stated that he had "pre-verified" the GED applications with John Doe's Clinician and senior staff at JRC. The staff later claimed that they did not follow verification procedures because they believed the GEDs had been "pre-verified." [REDACTED] briefly spoke with Mark Poe and handed the phone back to [REDACTED].

[REDACTED] looked at John Doe's recording sheet and confirmed that the behaviors named by Mark Poe were GED consequted behaviors. [REDACTED] told both investigators from DEEC and DPPC that he was not aware of the events initially, but review of DVR recordings show [REDACTED] was present the entire time. [REDACTED] initially delivered GED applications to John Doe while he was in bed and [REDACTED] did not try to wake John Doe first.

When John Doe received the initial GEDs, he reminded staff that his recording sheet only permitted two hours of latency.¹³ When Mark Poe told [REDACTED] to put a torso GED device on John Doe, he protested, stating that his program does not call for torso devices. John Doe asked staff to call his Clinician and even told them where the phone directory was located.

Staff reported that they did not question Mark Poe's instructions because the caller told them they would be "evaluated" for failure to cooperate. Staff assumed that they were being watched by DVR Monitoring and that they might be the subjects of a "program op." exercise. One of the sleep staff explained that he did not ask questions when he realized what was going on because in a crisis "you do not ask what happened if you were not there." The staff claimed

¹¹ This description of events is derived primarily from the three investigation reports conducted in the months following the August 2007 incident: the JRC Internal Investigation Report; the Report of the DEEC; and the Report from DPPC. [REDACTED]

¹² [REDACTED] was not working on the morning of August 26, 2007.

¹³ "Latency" refers to the time between an inappropriate behavior and the GED consequence.

that they were reluctant to follow Mark Poe's directions, but ██████ told them "It's DVR man." The staff reported to investigators that they "needed jobs" and did not want to be terminated or lose shifts because of insubordination. Another staff stated, "We don't question DVR." ██████ who was assigned as the Shift Supervisor, reported that he had no prior experience with administering aversive treatment and that he looked to more experienced staff for guidance.

Next, there was a standoff in the hallway between John Doe and ██████ that lasted approximately one half hour. John Doe had removed the batteries from his GED device, and ██████ had another GED device to place on John Doe. Some staff questioned the idea of putting another student's GED device on John Doe, but other staff admonished them for questioning the directions of DVR. John Doe asked the staff to make sure they knew who was really on the telephone. Staff eventually restrained John Doe and escorted him downstairs to the recreation room. Mark Poe told the staff that they would be evaluated if they did not get John Doe on the four-point restraint board. John Doe told staff that the board is not part of his program and that they needed to check with his Clinician or others. John Doe was compliant at this point, and staff placed John Doe on the board with a torso GED device.

██████ administered the first GED downstairs (eighth overall) without verbally pinpointing the inappropriate behavior that was the reason for the GED application. Mark Poe told ██████ to pull the straps tighter, which made staff think that DVR Monitoring was watching them. John Doe began to complain that he could not breathe. ██████ proceeded to administer seventy GED applications. Some applications had pinpoints for behavior, but others did not. Pinpoints included three for "verbal threats to destroy," six for "aggressive posturing," four for "failing to follow directions." The electrodes were intermittently rotated. The rotations occurred infrequently, with six or more GED applications between rotations. After the tenth GED, John Doe asked for water, which the staff gave to him along with a tissue to wipe his nose. After the thirteenth GED, John Doe began shaking and breathing deeply. The staff failed to count all of the GED applications, counting nine total when there had been fifteen given. After the forty-ninth GED, John Doe asked if he could receive the rest of the applications in the morning because he was really tired. When sixty GEDs had been given, the staff's count was at forty-seven. When seventy GEDs were administered in the basement, John Doe was moved to Mark Poe's former bedroom at the residence to sleep. Staff observed that John Doe's skin was red. When he was in

bed, John Doe told staff that his mouth was dry, blood pressure racing and he was sweating. John Doe said he felt like he was about to have a stroke. Staff took no action.

Mark Poe also directed staff to administer GEDs to James Roe. In total, James Roe received twenty-nine GED applications. [REDACTED] also administered the first GEDs to James Roe while he was in bed. James Roe was also put on the four-point board in the basement and received additional GEDs there. James Roe protested to the staff that the caller was not really from DVR. The staff did not rotate James Roe's electrodes at all. James Roe told staff that his leg was "killing" him and asked them to call a nurse. The staff did not act in response to these complaints.

At approximately 5:00 A.M. Mark Poe instructed staff to bring a third student, Paul Noe, to the recreation room and put him on the board for GEDs. A staff person who had been with Paul at 9:00 P.M. questioned Mark Poe's instructions because the staff person did not personally observe the behaviors. Before Paul Noe received any GEDs, the cordless phone went dead, and staff called DVR Monitoring directly. It was at this point that staff realized that they had been on the phone with someone other than [REDACTED] of the DVR Monitoring Department the entire morning.

iii) Concurrent Events at the DVR Monitoring Center

[REDACTED] was responsible for watching the Stoughton residence that evening. He told investigators that he viewed the residence according to standard operating procedure and did not notice anything amiss until sometime after 4:00 A.M. The DVR recording system indicated that [REDACTED] did not view the Stoughton residence from 12:45 A.M. to 4:41 A.M. Immediately upon starting his shift [REDACTED] began checking work emails [REDACTED] failed to complete the following tasks according to standard operating procedure: scroll through residence views regularly to check for unusual activity, call each residence at the start of the shift to identify himself as the monitor for that shift, and use his headphones to listen to each residence [REDACTED] went on break from 3:30 A.M. to 4:15 A.M. and [REDACTED] covered both [REDACTED] residences as well as his own, twenty-two in total. [REDACTED] did not look at the Stoughton residence during that time because he had worked there from 4:00 P.M. to 11:00 P.M. that day and knew that there were no incidents. All three reports found inconsistencies in [REDACTED] recitation of events.

At 5:12 A.M. [REDACTED] called the Stoughton residence several times before he was able to get through to anyone. The residence staff were reluctant to speak with [REDACTED] and were arguing among themselves. At 5:45 A.M. [REDACTED] spoke with the Stoughton staff and told them to take Paul Noe off the board [REDACTED] then drove to the residence.

According to [REDACTED], he was assigned eleven residences to monitor that evening, in addition to his assigned students who were on the "Watch List" and required constant monitoring. One of these students lived in the Stoughton residence and required [REDACTED] to check on him every hour. [REDACTED] further stated that JRC used to assign one DVR Monitoring staff member to monitor the "Watch List," while other DVR Monitoring staff would scroll through all of the residence views. [REDACTED] has stated that although there were written DVR Monitoring staff assignments, there was no written break schedule. At the start of his shift, [REDACTED] says that he called each of his eleven assigned residences to let them know he was the monitor that night. [REDACTED] says that when he called the Stoughton residence, a sleep aide answered the phone, as the supervisor was in the bathroom at the time. According to [REDACTED], he took his break from 3:00 A.M. – 3:45 A.M. and then drove to the Stoughton residence at 4:00 A.M. after he discovered something was wrong. Prior to leaving for the Stoughton house, [REDACTED] called the Scheduling Manager to ask permission to drive to the residence. He also spoke with [REDACTED] and told her he would call her when he arrived at the residence, and that they would contact the DVR Monitoring Supervisor. [REDACTED] indicates that when he spoke to the DVR Monitoring Supervisor, she told him to dismiss all of the direct care staff at the Stoughton residence, which [REDACTED] questioned out of fear that he would not be able to supervise all of the students himself.

iv) Events Immediately Following the Incident

[REDACTED] from DVR Monitoring, was the first person to arrive at the Stoughton residence after [REDACTED] the assigned DVR Monitor for the residence. The weekend supervisor was notified at 6:00 A.M. At 6:45 A.M. JRC's senior administrators were notified of the incident. At 8:00 A.M., Dr. Matthew Israel, Glenda Crookes, and Robert Duquette arrived at JRC and began to interview staff. The relevant state agencies, as well as the Stoughton Police were notified of what had occurred. According to DPPC intake forms, the first call was made to the agency at 3:10 P.M. on August 26, 2007 by Robert Duquette. That afternoon, Mark Poe again called the DVR

Monitoring center, where two DVR staff recognized Mark Poë' voice. Mark Poe claimed credit for calling the Stoughton residence the night before. JRC terminated [REDACTED] immediately. JRC took all students off the GED immediately except for a small handful of students who were moved to a single residence where a Clinician monitored all GED applications twenty-four hours a day. JRC administrative staff notified all parents/guardians of JRC clients regarding what had occurred and what steps JRC was taking in reaction to the incident. Administrators also immediately began meeting in large groups to discuss what went wrong on the night of the incident and what changes should be made to prevent something similar from happening in the future. JRC suspended, and eventually terminated all six Stoughton Staff members. James Roe and the unnamed third victim were removed from the program. John Doe remained at JRC but the GED-4 was removed from his program.

v) Summary of [REDACTED] Grand Jury Materials

The Monitor had an opportunity to review grand jury materials as part of his official duties, but pursuant to the Order to Disclose Grand Jury Materials, the monitor will not discuss the contents of the materials in this report.

vi) Investigations Completed Following the Incident

JRC Internal Investigation: Robert Duquette, the Director of Human Resources for the Judge Rotenberg Center completed the internal report on or about September 21, 2007. Duquette interviewed the six staff members who were at the Stoughton residence, the five DVR Monitoring Center Staff and the two students involved. [REDACTED]

[REDACTED] Nursing reports were not mentioned.

DEEC Report: Angela Goss completed the investigation and report on behalf of the Department of Early Education and Care on November 1, 2007. She interviewed the Director of Student Services, five mental health assistants, the Director of Clinical Services, the Assistant Executive Director, three DVR Monitoring staff, a Crisis/Security specialist, a Clinician, a Nurse, and the Director of Quality Control. She reviewed DSS 51A reports, Critical injury

reports, three resident files, internal investigation, staff records and training, DVR monitoring logs for the night of the incident, GED policies, and Notification procedures.

In its report, DEEC created a list of compliance issues for JRC to address. Some time thereafter (the document is undated), JRC filed a Response to Statements of Outstanding Compliance Issues. The response addressed issues of: termination of the staff found responsible for abuse, neglect, and providing false information to investigators. The Response also outlined revisions to JRC's policies and procedures regarding the use of the GED, emergency medical care, body checks, reporting student injuries, re-training on telephone policies, monitoring, delayed consequences, program opportunities, training and experiences of supervisory level staff, supervision, emergency notification, mandated reporting, and monitoring of DVR staff.

DPPC Report: Seana Miller completed the investigation and report on behalf of the Disabled Persons Protection Commission on January 8, 2008. She interviewed forty-three individuals, including the victims, representatives from the Department of Social Services in Massachusetts and Virginia, police detectives, a Probate Court Judge, the JRC staff involved in the incident, the investigator for DEEC, and other employees and management for JRC. She reviewed records from the Disabled Person's Protection Commission, the Stoughton Police Department, the Department of Social Services, the JRC, and the Bristol County Probate Court.

vii) Interview With the Board of Directors for JRC

On August 26, 2011, the Monitor met with JRC's Board of Directors at the school during one of their regular meetings. The Board consists of five members, although they reported that they would like to expand the size and that they have a list of seven candidates. The Board recognized the seriousness of the events of August 2007 and explained that they are all notified any time a serious incident occurs at the school, such as an elopement or a hospitalization. The members commended the JRC staff for: dealing with serious behaviors that one does not see anywhere else; educating students who were never able to receive an education in prior placements because of the seriousness of their behaviors; handling the difficult situation in August of 2007 and the many difficult situations that have occurred since that incident.

The Board is interested in making themselves more accessible to the direct care staff and the parents of JRC students. Immediately following the incident at issue, the Board had discussed

appointing one member to be a liaison with the staff, but the idea fell to the wayside over time. The Board members each affirmed their desire to make changes at the board level that will improve the safety of the students at JRC. The Monitor discussed with them the idea of having an “ombudsman” figure at JRC.

V) REVIEW OF POLICIES AND PROCEDURES THAT CONTRIBUTED TO THE INCIDENT IN 2007 AND THE CHANGES THAT HAVE BEEN MADE SINCE 2007

After a review of the August 2007 incident, reports completed by state agencies, JRC's own internal review of what occurred, documents related to JRC's policies and procedures, and interviews with JRC staff, it is clear that several JRC policies and procedures contributed to the August 2007 incident. For example, staff were uncertain about the ability of a member of Quality Control to order over the phone GED applications. An inexperienced staff person was assigned the role of supervisor and failed to take the required lead during the crisis. JRC's policies and procedures for verifying the identity of a caller were insufficient to protect from prank callers. Staff did not have adequate training on JRC procedures relative to the GED device. There was also a lack of supervision / accountability for the staff in the Quality Control department.

In addition to these policies and procedures, work environment issues were also identified as possible contributors to the August 2007 incident, including staff fear to question the DVR Monitoring Department, to exercise independent judgment and verification, as well as distrust of the Evaluations Department and evaluations system.

This portion of the Report (Section V) addresses each of the issues that contributed to the August 2007 incident by subject areas. First, we discuss what went wrong during the incident. Next, we describe the steps taken by JRC in the wake of the incident. Finally, we explore the current policies and procedures in effect today. Section VI of this report provides recommendations for additional measures JRC could take to further address the issues identified in the wake of the August 2007 incident.

A) Quality Control and Monitoring

The Quality Control Department is charged with all of the video and audio surveillance of the JRC school property and residences, twenty-four hours a day, seven days a week. The staff who work within this department are seasoned JRC employees who are well versed in the policies and procedures of the center, able to recognize violations of such policies and take steps to correct the behavior. During the daytime, the Monitoring Department at 240 Turnpike Street Campus monitors live feed of the school and its surrounding area. Simultaneously, at the 250

Turnpike Street building, the DVR Department supervises the Monitoring department at the 240 building and downloads, reviews and saves necessary footage. In the evening, when all of the students return to the residences, the DVR Department takes over monitoring all of the video feed at the residences. Members of the Quality Control Department are also stationed at the residences in various capacities.

i) Issues Identified Following 2007 Incident

It is apparent from the events that unfolded on August 26, 2007, that there was a lack of accountability and supervision of the DVR Monitoring staff at that time. There were three DVR Monitors on the shift from 12:00 A.M. to 8:00 A.M., but there was no system to ensure that the monitors carried out their assignments. The monitor assigned to the Stoughton residence that morning failed to scroll through residential views and failed to make auditory scans of the residences continuously throughout his shift. When the monitor assigned to the Stoughton residence took his break, one of the other two monitors was required to monitor both of their assignments at the same time. Monitoring staff used time at the start of their shift to check work email. DVR Monitoring staff was unable to get through to the Stoughton residence when they realized something was wrong because the only phone line was in use. The Monitoring staff failed to check the Stoughton residence camera views because it was not a residence "of concern." Additionally, the direct care staff at the Stoughton residence did not understand that DVR Monitoring did not have the authority to order GED applications over the phone (according to JRC policy in place at the time of the incident).

ii) Changes Made by JRC

Following the August 2007 incident, JRC installed in-residence DVR Monitoring systems at all residences where the GED is used and staffed each residence with an overnight In-House Monitor, who is responsible for monitoring that residence for the evening and supervising any aversive treatment, including GED applications. JRC increased the number of Quality Control staff by fifteen. In the DVR Office at 250 Turnpike, there is a Designated Shift Supervisor who assigns duties to other staff, monitors staff during shifts, and performs random checks on DVR staff to ensure they are scrolling through all residence screen views. Shifts for DVR staff overlap by thirty minutes to allow staff to complete paperwork and respond to work

emails. The Quality Control Department sends out an End of Shift report to JRC administrators, with information about any incidents that occurred over the course of the shift.

The Monitoring Shift Supervisor now also sends out a daily email to each residence at the start of each shift to identify which DVR Monitor will be monitoring each residence and what extension he/she can be reached at. This identification of DVR Monitors for each residence is in addition to the pre-existing requirement that DVR Monitors call the residences they are responsible for at the start of each shift in order to identify themselves as the Monitor for that shift. Key views of every residence are identified for DVR staff, which must be kept open at all times during the shift. However, DVR staff is primarily responsible for monitoring residences that do not have In-House Monitors. In addition to the End of Shift Reports sent to senior management by Monitoring Shift Supervisors, In-House Monitors must also send reports to senior management at the end of each shift.

The Director of Quality Control, the Overnight School Supervisor, and other administrators perform spot checks on the DVR and Monitoring Staff several times each day. The DVR training program was modified to train staff to be aware of the possibility of similar incidents.

iii) Summary of Current Policies and Procedures According to Staff Role

DVR Monitoring Shift Supervisor: The DVR Monitoring Supervisor must send out an email to the residences at the start of each shift or prior to a transport including the following information: the name of the DVR Monitor who is monitoring each residence and what his/her extension is, nursing routes, policy updates/changes, and policy reminders. The Supervisor also makes sure that certain residences are being monitored at all times during the evening and overnight hours, and must send a report to senior management after each shift detailing whether the Monitors carried out their duties properly during that shift. He/she must ensure that the Monitor keeps the DVR alarm function turned on during each shift. The Supervisor is also responsible for phone calls that come into the direct phone line.

Scheduling Monitor: The Scheduling Monitor sits at the front desk at 250 Turnpike Street to admit people into the building.

DVR Monitoring Staff: During the school day, Monitors watch what is happening live at the 240 building, while DVR Monitors in the 250 Turnpike building keep an eye on both buildings. DVR Monitoring staff also make sure that schedules are being followed during the academic day. They ensure that students are spread out within the two buildings in order to help staff maintain control. Monitoring is responsible for coordinating appointments and field trips, and makes all necessary notifications when there is an elopement.

During the overnight and weekend hours, DVR Monitors are primarily responsible for monitoring residences that do not have In-House Monitors, although Monitors will spot check residences that do. Three Monitors are in the DVR Monitoring room, while three DVR Monitors rove between the residences. Key views will be identified for each residence that should be monitored by DVR Monitoring staff – these views must be kept open at all times during the shift. However, Monitors also keep an eye on all the screens and help other Monitors do the same. Monitors are also responsible for constantly watching students on the “Watch List.” This list of 5-fourteen students must be monitored twenty-four/seven.

DVR Monitors must call each residence that is assigned to him/her at the beginning of each shift to identify him/herself and inform the Residence Supervisor that he/she will be monitoring the house during that shift. This call is logged into the phone log at the residence. DVR Monitors also verify that bed checks are completed when required. DVR Monitors will call residences with feedback and corrective measures if necessary. If Monitors observe something that is against JRC policies and procedures, they must notify the residence and School Supervisor, and must immediately watch the DVR footage to determine if it is necessary to send staff home.

The direct care staff and supervisors who were interviewed for this report indicated that DVR/Monitoring will also call the residences if students are not being properly supervised, if there is a maintenance or safety issue in the house (e.g. if a light is out, something has fallen, etc.), or to warn staff of potentially escalating behavior by students. Staff interviewed for this investigation reported that DVR will not call the residences in order to have staff administer aversive consequences, but rather to make them aware of any potentially unsafe or dangerous situations that may arise. If a DVR Monitor witnesses a behavior that would normally be treated

with a GED, but none of the staff who are at the residence witnessed the behavior, then the GED will not be administered. An alternate consequence may be administered.

In-House Monitoring and Supervisory Staff: At residences where the GED is used, the designated supervisor will be the In-House Monitor, who is responsible for everything taking place in the residence during the evening/overnight hours, including: answering all phone calls, reporting everything happening of significance to the Overnight School Supervisor as soon as possible, asking for guidance from the Overnight School Supervisor if necessary, sending a report to senior management each night, and monitoring (or delegating to monitor) the audio-visual viewing station at the residence. The In-House Monitor must also fill out an End of Shift report that is sent to JRC administrative staff every morning. In addition to the In-House monitor, there is also a Shift Supervisor who delegates tasks and responsibilities to the rest of the direct care staff.

Paperwork: DVR Monitor shifts overlap by thirty minutes. During this thirty-minute overlap, the Monitors should be doing paperwork/forms/reports. Monitors should never be completing paperwork while they are assigned to watch the school or residences. The only exceptions are that DVR Monitors must input GED applications into the computerized GED database immediately after the application occurs. The same is true for restraints as they occur.

Breaks: the DVR Supervisor schedules Breaks. Monitors get one thirty-minute break during a shift and must notify the School Supervisor when they leave and return from break. During evening or overnight hour shifts, the Scheduling Monitor covers the break of a monitoring staff member. If the Scheduling Monitor cannot cover the break, the staff member taking the break must change the audio output from headphones to speaker.

Alarm Monitor: The alarm function in the DVR software detects any sound or movement in a room and wakes up the appropriate screen so that the Monitor sees it. It allows constant monitoring of an environment even if the active DVR window is not open. This function must be activated/enabled at all times.

Experience: Direct care staff must have strong evaluations scores and substantial experience in order to be considered for a DVR promotion. Most staff who enter DVR have been JRC employees for at least one year.

Emergencies: If the power goes out at the JRC campus and/or any of the residences, then the DVR Monitoring staff would “rove” or drive to each residence to ensure that the students are safe and that policies are being observed.

Training: The DVR training is now supplemented with “situational awareness training” where staff are given hypothetical scenarios to help them become more aware of the possibility of a similar hoax at JRC.

B) Telecommunications

JRC’s telecommunication policies and procedures are a critical component to ensuring the safety of the students now and in the future. Other than a student pretending to call the school – as happened in the August 2007 incident – it is conceivable that a critic of the school might attempt to manipulate the telecommunications system to make a threat against JRC, which could endanger students.

i) Issues Identified Following 2007 Incident

In August 2007, there was no verification process to ensure that individuals calling into the residence were authorized and properly identified. This allowed the caller to call the residence and convince the staff at the residence that he was, in fact, calling from the DVR Monitoring Department. Even when the staff grew concerned about the strange instructions from the caller, they failed to call the DVR Monitoring office to verify the identity of the caller. There was no caller-id system installed in the phones at the residences, so the staff could not verify that the caller was from an authorized phone number. There was only one non-cordless phone in each residence, with no other available phones, because staff is required to lock their phones up during their shifts. The internet was down that evening, making it difficult for staff to access emergency contact information. The Shift Supervisor was not the person who answered the phone, and he failed to take over the phone call when he was able to do so. Also, direct care

staff at the residence reported that they did not know how to contact a student's Clinician directly.

ii) Changes Made by JRC

Following the 2007 incident, JRC changed all residence phone numbers and no longer publishes these numbers. All of the cordless phones at the residences have caller identification and cannot receive calls from unlisted or blocked numbers. A second phone on an IP (internet) phone line was installed in all JRC residences where the GED is used, which keeps the phone numbers of key JRC contacts on speed dial. All incoming calls to students at the residences must go through the DVR Monitoring Department for verification before being forwarded to the residence on the IP phone. Further, each residence has a list of approved phone numbers and the individuals associated with these numbers. Should the IP phone line go down, incoming calls must be answered by the highest ranking supervisor on shift, who verifies the phone number provided by the caller and the caller's name against both the phone's caller-ID and the residence's list of approved numbers. Additionally, parents are encouraged to call students during school hours between 2:00 P.M. and 7:00 P.M. to minimize the number of calls to residences at night.

iii) Current Policies and Procedures

The DVR Monitoring office is not authorized to call staff and instruct staff to consequence GED behaviors, and cannot authorize staff to give additional numbers of GED consequences.

(1) Procedure

All residential phone calls are made to the JRC main number and are then screened by the DVR office and transferred to the residence via IP phone, or the residence is contacted by DVR and instructed to call the individual back. This is the procedure regardless of whether the caller is a parent, guardian, friend, etc. or a staff member, such as a Case Manager, Clinician, or Residential Supervisor. If someone calls a residence directly, they are redirected to call the JRC main number.

The Designated Supervisor is required to answer all incoming phone calls unless there is an emergency or the Supervisor is taking a scheduled break. The Supervisor must also keep the residence's cordless phone with him/her at all times. All calls must be logged by the Designated Supervisor, including the call made by the DVR Monitor assigned to the residence at the start of his/her shift. Some inconsistency with this policy was noted throughout interviews with direct care supervisors and staff. All reported that any staff member could answer the phone at the residences, and that supervisors were not required to speak with every caller, which is inconsistent with JRC's written policy on this subject.

The Anonymous Call Rejection system automatically rejects calls from people who intentionally block their number or name. All JRC internal extensions can be accessed through JRC's internal IP phone line.

If the IP phone or JRC main line is down, all incoming phone calls must be verified by the Designated Supervisor, who must: ask the caller for their name, reason for calling, and phone number; tell the caller he/she will call them back; check the emergency phone number sheet and verify the phone number for calls received from a JRC employee; check the student's phone call approval list and verify the phone number for calls received from a parent or agency; contact Danielle Brewer, the Residential Director, if a phone number cannot be verified; and log the call in the residential phone log once the phone number has been verified. Staff should not verify a phone number by checking only the caller-ID.

All direct care staff and supervisors interviewed noted that when parents or other individuals call the residences directly, staff would re-direct them to DVR for verification. Throughout interviews with both direct care staff and JRC administrators, there was some confusion about whether JRC staff, including students' treatment teams, can call the residences directly or if they need to go through DVR as well. Although direct care staff and supervisors noted that this rarely, if ever, happens, some thought that treatment teams are able to call the residences directly through the IP phone line, while others believed that they would have to go through DVR just as any other caller would. JRC administrators also had different understandings on this issue.

(2) Calls from Parents/Guardians and Other Individuals

Parents and Guardians (and other individuals on the student's call list, attorneys, social workers, and clergy) are asked to call their children at the JRC school building between 2:00 P.M. – 7:00 P.M. If a parent or guardian must call his/her child at the child's residence, the designated supervisor should direct the call to DVR monitoring to be verified. A DVR Monitor must verify the number and call the residence to let the Designated Supervisor know that the student can make an outgoing phone call to the parent. Then, the student can then make the call from his/her residence to the parent.

(3) Personal Telephone Calls

Personal calls are not allowed at the school or residences. Staff may receive emergency calls at work. Staff should give anyone who may need to contact them in an emergency the main number to the school. Then, the caller should clearly state that it is an emergency and give the full name of the person they are trying to contact. On nights and weekends, emergency calls are directed to the DVR office.

(4) Cell Phones

Certain staff, such as Clinicians, have JRC cell phones and Nextel pagers. Non-JRC cell phones cannot be brought to school or residences, except for staff that travel to and from work by means other than a car. In that case, phones must be immediately locked up.

(5) JRC Cell/Nextel Phones

Must be turned off or on vibrate during meetings. Unless it is an emergency, calls received during meetings should be forwarded to voicemail. Staff must notify the front desk that they will be unavailable to receive phone calls during the meeting.

C) Staff Hiring, Training, and Retention

i) Issues Identified Following 2007 Incident

Immediately after the 2007 incident, JRC staff reported that they were unfamiliar with the use of aversives (GED), delayed consequences, and reporting abuse and/or neglect. Direct care staff felt that DVR Monitoring staff had more experience and believed that DVR's instructions

trumped direct observation and training received by the staff. [REDACTED] (the Shift Supervisor at the time of the incident) received no specialized training to be a supervisor and had only been a JRC employee for three months. Staff also could not recall whether their training instructed them to question the appropriateness of GED applications. In August 2007, JRC was also utilizing Programming Opportunities, whereby staff would be instructed to purposefully present a stimuli to a student in order to seek a proper response after training and prompting the student to help him respond correctly. If the desired response was not achieved, the student was consequence appropriately. Some staff involved in the incident believed that the directives being issued by the caller were Programming Opportunities.

Procedurally, the staff involved in the incident was unable to determine whether the GED device was working correctly. They also questioned the caller's instructions to put another student's GED pack on John Doe, but agreed to do it anyway. The staff failed to notify nursing even though both students had marks from the GED applications and were complaining of pain. Four of the six staff on duty at the Stoughton residence had worked at JRC for eleven months or less.

ii) Changes Made by JRC

As a result of the 2007 incident, all staff were immediately retrained on the policy that prohibits DVR from ordering aversive treatment over the phone.¹⁴ Staff were also retrained on reporting employee behavior that is inconsistent with policy. It was emphasized in training and communications that such reporting is highly encouraged. Staff were also retrained on how to contact senior staff to report concerns, were informed that they could do so without fear of discipline, and were told that disciplinary action would only be taken for failing to report inconsistencies and following instructions that are inconsistent with policies. JRC staff were instructed not to assume that senior staff always carried out duties correctly, and were told to be assertive in bringing problems to senior staff/management. JRC provided retraining regarding following state requirements for reporting abuse/neglect and being alert to the possibility of phony calls.

¹⁴ All JRC administrative staff interviewed for this report stated that the policy in effect at the time of the incident was that DVR Monitoring was not permitted to order GED treatment over the phone.

JRC also no longer utilizes Programming Opportunities as part of its treatment program. Basic training also reflects the fact that staff are not permitted to administer GED applications hours after a student exhibits a behavior. New staff must also go through a probationary period and additional GED training before they can work with students who are on the GED.

Additionally, new staff now meets with senior staff during training and are provided with the phone numbers of staff to contact with concerns. Human Resources also emails monthly reminders about reporting discrepancies to all staff. JRC has also obtained additional safety equipment and provides additional safety training to staff in order to help decrease the amount of staff injuries.

iii) Current Policies and Procedures

(1) Staff Hiring

JRC employs several different methods to recruit new hires, including running advertisements in local publications and on Craig's List, posting job openings on JRC's website, and taking referrals from current employees.

The Job Description for Mental Health Assistant, Overnight Program Supervisor, Crisis Specialist, and Monitoring Quality Control were reviewed. A Mental Health Assistant must have a high school diploma. Experience in human services or education is preferred but not required. A Crisis Specialist must have a high school diploma and experience in law enforcement is preferred but not required. The Overnight Program supervisor (a new position created after the incident) must have a Bachelor's degree in psychology or education and have one to five years experience in a residential program serving a mentally/behaviorally disordered population. The Monitoring Quality Control position also requires a bachelor's degree in psychology or education and one to five years in a residential program serving a mentally/behaviorally disordered population. All staff must complete two and a half hours of in-service training each month.

Typically, Quality Control staff are promoted from within JRC. Only staff that have strong evaluation scores are eligible for promotion to DVR or In-House Monitoring; staff that

have a history of being evaluated¹⁵ will not be considered for monitoring positions. Quality Control staff must be team players, have good communications skills, and use good judgment.

All of the JRC administrative level staff were asked about other positions within JRC they held prior to their current positions. All of the JRC administrative staff obtained their positions through internal promotions. All staff reported starting at JRC as Mental Health Assistants and working their way up to the administrative level. It appears that there is very little lateral hiring for administrative positions, and that most persons in high-level positions have been JRC employees for fifteen or even twenty years.

All prospective employees must fill out an employment application, questionnaire, and complete a writing sample, all of which is then reviewed by a Human Resources recruiter who determines if the candidate should be interviewed. If the interview is successful, a job offer is made and the candidate is asked to complete a CORI form authorizing JRC to run a criminal records check on both the candidate's given name and any aliases.¹⁶ Once the CORI is returned, Human Resources checks any offenses against the EEC's list of discretionary vs. mandatory offenses in order to determine if the candidate is eligible to begin employment. JRC will typically not hire any candidate who has any discretionary offenses on his/her CORI report. JRC will also check to make sure a potential employee is not listed on EEC's online database of individuals who have substantiated claims of child abuse or neglect in their history.

Once the CORI process is complete, candidates must fill out an I-9 form and provide the required work authorization documentation. If such documentation is not provided within a certain period of time, the candidate is told they cannot be hired. Once all paperwork is completed, the new employee is given a date to return for mandatory Basic Training prior to being put on the schedule.

¹⁵ See a detailed discussion of the JRC Evaluations system starting on page 71.

¹⁶ After the August 2007 incident, one state agency recommended that all CORI searches be run for aliases, because one of the Stoughton Staff had a criminal record under a different name.

(2) Basic Training

All newly hired staff go through three weeks of paid basic training, which covers the five chapters contained in the Basic Training Manual, including GED administration and restraint regulations, JRC's good judgment policy, CPR, and First Aid. Staff must score at least an 80% on each chapter quiz, with the exception of chapter quizzes on GED administration and restraint regulations, on which staff must score a 100%. If the 80% required for all non-GED quizzes is not obtained, staff have the option to take the tests again up to three times while on a probationary period. However, this option is only available for staff that scored at least a 50% on the initial test. Included in these three weeks is three days of physical restraint training, with the third day reserved specifically for practicing restraint techniques. Additionally, staff are trained in First Aid and CPR, and receive good judgment training. Trainees also work two to three practical shifts during Basic Training where they shadow a current staff member at a residence and at the school.

The JRC basic training manual consists of five chapters. Chapter One covers "Recording Sheet Packets and Behavior Categories." Chapter Two covers "Contracts, Daily/Hourly Aims and Reward Stores." Chapter Three covers "GM / Residential/ Classroom Routines." Chapter Four covers "Decelerating Consequences – DC's." Chapter Five covers "The Academic Program at JRC." The entire basic training manual consists of seventy-seven pages, and each chapter has a "self-study" section at the end of the chapter for the staff to quiz themselves on the concepts of the chapter.

Chapter One – Recording Sheet Packets and Behavior Categories:

Chapter One explains the proper use of verbal rewards, the concept of behavior reinforcement, the importance of the recording sheets, and the meaning of the various acronyms used on the recording sheets to reference different types of behavior (i.e. Health Dangerous Behavior is "HDB," Inappropriate Verbal Behavior is "TVB"). Staff is instructed to "keep recording sheet packets in their possession at all times. At no time should they be left on desks in the classrooms or on tables/counters at the residence."

Chapter Two – Contracts, Daily/Hourly Aims and Reward Stores:

Chapter Two explains the Token System and the Contract System. Students receive tokens throughout the day for exhibiting appropriate behaviors identified in their treatment plan. When students exhibit a minor behavior, they lose one token. When they exhibit a major disruptive behavior, they lose all of their tokens. Students can then use the tokens to purchase rewards. The staff is provided with a script to follow when setting a contract with a student according to the student's program description. When a level III aversive food program is part of a student's court approved plan, meaning the student must earn portions of their meals by exhibiting appropriate behavior, staff are charged with dividing up a student's meal into portions according to the length of a contract.

Chapter Three – GM/Residential/Classroom Routines:

Chapter Three instructs staff on how to manage groups of students as well as students one-to-one. In group settings, students must always be involved in some type of productive activity. Staff is instructed to do bed-checks four times per hour during the overnight hours, but at random times because "students are very intelligent and know when checks will be done." All staff purses, keys, cell phones and wallets are to be locked up when the staff is in the classroom or a residence. Staff is warned that students have run away in the past and could use staff cars if they have access to the keys. Staff must search students prior to transport to ensure that students do not have pens that could be used as weapons.

Chapter Three also instructs staff on how to address injuries. When a staff person notices an injury in the course of a required body check and he or she suspects it is a result of a GED application, or the injury is unexplained, then the staff should notify nursing and the Monitoring Department immediately. There is a nurse on-call during the overnight hours. Staff should inform the Shift Supervisor and the Monitoring Department in the event of illness or injury. A nurse should be asked to do an in-person assessment in the event of a potentially serious illness or injury. If a nurse is not available, Monitoring and the staff person with the student will follow a checklist to evaluate the student. The student will be asked if he or she wishes to see a nurse in person. If that nurse is not available to do a necessary in person evaluation, the staff will call 911. Monitoring is responsible for contacting the on-call nurse.

Chapter Four – Decelerating Consequences:

Chapter Four instructs staff on skin shock treatment (GED and GED 4), as well as other aversive therapies. Staff must contact the Clinician directly prior to giving multiple GED applications for a behavior, but not prior to single applications. DVR monitoring can never authorize multiple aversives. All direct care staff interviewed relayed that this information is reviewed multiple times in Basic Training, and thereafter. They all reported that under no circumstances could DVR call staff and direct them to administer aversives. Level III, Court ordered aversives include: Water Spray, GED, Contingent Food (specialized and regular), and Limitation of Movement. Potential consequences of the GED are “temporary skin redness, which clears up within a few minutes or a few days at most, and the extremely rare possibility that a small blister may appear.”¹⁷ A nurse should see students within twenty-four hours of receiving GED.

Staff must rotate the electrodes every hour and after each application. If a student is found to have an injury where the electrode is located, the GED device is to be immediately removed and the Monitoring Department notified. Shift Supervisors are required to check the GED devices for all students who wear a GED device prior to the students going to bed. The supervisor and a witness staff then must sign the recording sheet document the inspection.

At residences where students are treated with the GED during residence hours,¹⁸ there is an In-House Monitor, a specially trained administrative staff member, who directly supervises all GED applications. If a student has received ten GED applications, then the most senior staff person must contact the Clinician. The Clinician then contacts the DVR Monitoring Department. The DVR Monitoring Department cannot instruct staff to administer GED applications. Latency periods, the time between an inappropriate behavior and an aversive consequence, in each student’s program varies according to the student’s ability to understand, but in no event will go past thirty minutes. If a GED does not work, it must be removed and delivered to DVR Monitoring and a Therapy Note must be filled out immediately. Staff is instructed on proper

¹⁷ JRC Basic Training Manual, at 36.

¹⁸ Some student programs do not require students to wear GED devices when they are at the residence, only when they are at the JRC campus.

procedure for administering the GED, self-care for students on GED and how to check the batteries for the GED devices.

Some students may display a variety of inappropriate behaviors following a pinpoint of an initial behavior, during tantrums or at other times. Included in this variety of behaviors may be one or more flurries. When a flurry occurs, and when the staff member is unable to consequent each individual occurrence of the behaviors that are displayed during the flurry, JRC protocol dictates that it is acceptable to arrange one consequence for the entire flurry. Staff does not have to rotate the electrodes after each GED application in a flurry situation and should wait until it is safe to do so. For certain behaviors with certain students, the staff must pinpoint a student's behavior, give the student a three second opportunity to modify his or her behavior, and then give the GED application. Staff must learn to distinguish between situations where a GED is the first consequence and when other steps are taken (i.e. saying "NO") before a GED is used.

Staff is given a list of the possible "collateral" effects of the GED program, including: changes in sleep patterns, mood swings, loss of interest etc. Staff should notify the student's Clinician if such changes are observed.

Staff who work with a student must print his or her name on the student's recording sheet. Staff is told that the recording of behaviors is very important for monitoring the students' progress. GED applications must be recorded on the recording sheet and on the separate GED recording sheet. Staff should keep a running total of the GED's for each hour and day.

The Basic Training Chapter Four Quiz consists of twenty-three questions. Staff must pass ten specific questions with 100% accuracy. All questions require a written response in the form of sentences. The space for answering each question seems small considering the amount of information contained in Chapter Four and the requirement that students provide 100% accurate answers to certain questions.

Chapter Five – The Academic Program at JRC:

Chapter Five describes the method used for teaching students and how their progress is tracked in the computer system. The Classroom Teachers or Aides in the classroom supervise

staff. Staff learns about the system of academic rewards and skills building activities that are available for students at different levels.

(3) Staff Training on GED

Newly graduated direct care staff will be restricted from working with students who receive GED until they have undergone several levels of training. During pre-service training, staff will receive instruction on the use of the GED and will demonstrate within the Training Center, the ability to properly test and change batteries, give GED self-care, and administer a GED application.

Once direct care staff graduates from Basic Training, they work with students who do not receive GED. Because such new staff are often in the same classroom or residence as GED students, they are trained to recognize a duplicate or spontaneous activation and to remove the GED device from a student, as well as to rotate the electrodes.

To pass the Pre-Service GED Training, the Post-Service GED Training, and the Re-Certification GED Training, a staff person must demonstrate the following abilities: testing and changing the batteries; GED Application and Verification; GED Self-Care procedures; GED Notification Procedures; and pass the Basic Training Chapter Four Quiz. The only written portion is the Basic Training Quiz. This Quiz (which is different from the quiz described in the discussion of the Basic Training Manual) consists of twenty-seven multiple-choice questions. Students must score 80% or better on the overall quiz, and answer twelve specific questions with 100% accuracy. Test takers are informed that each question may have more than one correct answer. Test takers must select all of the correct answers to receive credit for the question.

Once staff has worked a minimum of three months and thirty-six shifts (the Director of Training indicated that the requirement is three months and sixty shifts; however JRC's Procedures and Rules for GED Applications and Approvals states the requirement is three months and thirty-six shifts), the direct care employee returns to the Training Department for an eight hour GED training, which instructs on the GED and GED-4. The employee must demonstrate the ability to properly test and change batteries, give GED self-care, and administer a GED application. Employees must also pass a written exam with 100% accuracy. If an

employee is unable to achieve 100% accuracy, they will be placed on a one-month probationary period and will continue to work with students who do not receive GED. During the one-month period, the employee will have two opportunities to demonstrate 100% accuracy. Otherwise he or she will be terminated.

After completing the eight-hour re-training and meeting the 100% accuracy criteria, the employee can work with all students. A trainer or designee will observe the employee for a minimum of one month and twelve shifts, during which time the employee can observe and verify battery testing and changing, GED self-care, and application procedures. Under supervision of GED certified staff, the employee can also perform these tasks. However the employee cannot work with students whose programs call for pre-verification procedures.¹⁹

After three months, thirty-six shifts, and the eight-hour re-training program have been completed, a trainer or designee will attest that the employee has demonstrated the competencies required to receive GED certification. If after this period, the trainer or designee believes the employee requires further supervision, the employee will be on probation for one month. If after this one month, the trainer or designee still does not believe the employee is ready to receive certification, the employee will be terminated.

Professional staff completes the same pre-service training as direct care staff. However, they are not required to attend the eight-hour GED training and are not required to complete three months and thirty-six shifts of employment in order to receive GED certification. Professional staff is given three opportunities to demonstrate 100% accuracy during the pre-service training and will be terminated if they are unable to meet this criterion during the pre-service training.

A trainer or designee will also observe the new employee for a minimum of one month and twelve shifts before recommending certification or an additional one-month probation.

(4) Yearly Re-Certification

¹⁹ Pre-verification procedures are used for a small number of students. The student must have pre-verification procedures in his or her court approved program, and the Executive Director must sign off on the procedures. These students typically have a specially trained one-to-one staff person working with him or her.

Once an employee is trained and GED certified he/she must receive an annual three-hour recertification. If the employee does not properly demonstrate the required skills with 100% accuracy, they will be placed on probation for one month. Under the supervision of GED certified staff, the employee will be allowed to test and change GED batteries, supervise GED self-care, administer a GED application, and be given two additional opportunities to demonstrate skills with 100% accuracy, otherwise he/she will be terminated. The Director of Training, Cherie Boisvert, indicated that if 100% accuracy cannot be achieved in these three opportunities, the staff member would have to re-take the eight-hour GED training class. In contrast, JRC's Procedures and Rules for GED Applications and Approvals indicate that staff members are terminated if they are unable to demonstrate 100% accuracy within these three attempts.

The employee must also complete a written exam with 100% accuracy. If he/she does not score 100%, they will come back in one week to take the test again. If they do not score 100% on this second attempt, they will be put on one month's probation and will be given one more opportunity to score 100% during this month.

(5) Quality Control Department Training

Quality Control Staff, including DVR Monitors, Monitors at the 240 Turnpike Building, In-House Monitors, and Roving Monitors, all receive the same basic training new employees receive, in addition to GED training, restraint policy and procedure, notification procedures, and the DVR Operating Manual. Prior to being put on the schedule as a Monitor, staff must complete three days, or three to four shifts of additional DVR training, must work two shifts in DVR, and one shift shadowing an In-House Monitor.

In training, Monitoring staff learn how to complete necessary reports, make emergency notifications, and add information to the electronic database. They also receive the DVR Operating Manual and the most recent copy of the Basic Training Manual to review JRC policies and procedures. DVR staff also now receive "Situational Awareness" training, which teaches them how to be proactive and recognize inappropriate situations. This training was developed by the Director of Quality Control in response to the August 2007 incident, although it does not specifically address the incident in any particular exercise.

(6) Staff Retention

Many prospective staff do not graduate from the JRC Basic Training because they cannot pass the tests or they stop coming to training. Once staff do graduate, some leave before completing a year of employment. For staff hired between September 23, 2010 and September 23, 2011, 44.25% of staff left JRC within six months of being hired. JRC administrative staff felt that some common reasons employees voluntarily leave include attending college, obtaining another job in their desired field of employment, the JRC evaluation system, the travel associated with the job, and injuries to staff. JRC administrative staff felt that some common reasons employees are terminated include failing to call or show up for a shift, failure to follow students' programs, misconduct/insubordination, and poor performance. In interviews with direct care staff, most felt that direct care employees voluntarily leave or are terminated from JRC because they cannot handle the demands of the job and the students, or because they cannot follow JRC procedures.

Between April 1, 2011 and June 30, 2011, forty-eight employees resigned. Of those forty-eight, twenty-four had been working for a month or less when they resigned; six had been working at JRC between one and six months, five had been working at JRC for between six months and a year, and thirteen had been working at JRC for more than one year. Twenty-seven individuals abandoned their jobs, seven left because they found another job, seven left because of scheduling conflicts, five left because they were having difficulty performing required tasks, three left because they did not want to change from part-time to full-time or vice versa, one individual JRC was unable to contact, one left because the administration did not address his concerns, one left because of the intensity of the students and fear for her safety, and one left because of a family/personal emergency.

Between April 1, 2011 and June 30, 2011, thirty-three employees were terminated. Of those thirty-three, eleven had been working at JRC for one month or less when they were terminated, four had been working at JRC between one and six months, seven had been working at JRC between six months and one year, and ten had been working at JRC for more than one year. Eleven individuals were terminated because they failed training quizzes. Eight staff were terminated because they failed to follow JRC's policies and procedures. Two staff were

terminated for improper interaction with students and two were terminated because they were “no call/no shows.” Two staff were terminated for poor supervision of students and two were terminated because they were unprofessional. One staff was terminated for failure to follow the sick call policy and one was terminated for poor attitude. One staff was terminated for walking out on a shift and one was terminated because JRC was unable to contact him. Finally, one staff was terminated for poor follow-through skills and one was terminated for failure to follow treatment procedures.

JRC does appear to provide very good benefits to its employees. Direct care staff receive full medical and dental benefits, three paid sick days per year, paid vacation days, eleven paid holidays, on-job banking, disability and life insurance, education assistance for up to \$2,000 per semester, retirement benefits, and AFLAC. While there are differences in benefit levels for full time and part time employees, JRC seems to offer a comprehensive package.

D) Staff Independent Judgment

i) Issues Identified Following 2007 Incident

At the time of the 2007 incident, it appears that JRC policy – intentionally or not – did not encourage staff from questioning orders or the actions of other staff members and took decision-making away from the direct care staff and gave it to DVR staff. On the night in question, staff failed to think independently and question the instructions of the caller, who they believed to be a member of the DVR Monitoring department. Staff believed the instructions from DVR were a test or a “program op.” [REDACTED] (the Shift Supervisor) failed to take control of the residence as the designated Shift Supervisor for that evening. Staff reported feeling physically ill watching the GED applications, but did not speak up. Staff failed to question [REDACTED] actions when he gave sleeping students GED applications, even though staff was specifically trained not to do so.

Staff were unfamiliar with the administration of GEDs but did not ask questions. The staff failed to call DVR to verify the identity of the caller. The staff and the DVR Monitors failed to call the on-call nurse for that evening or the Clinician for the two victims who received the GEDs. The staff and the DVR Monitors did not call the police when they could not get through

to the Stoughton Residence by telephone. The staff and DVR Monitors did not contact JRC administrators immediately.

ii) Changes Made by JRC

After the August 2007 incident, JRC created a new policy on Good Judgment, which states, in part that staff should not follow any directive that compromises the safety and well being of a student and should notify JRC Administration if such a directive is given. The policy also details how staff should report such directives and states that the failure to report is grounds for disciplinary action, up to and including termination. Staff is encouraged to ask questions if they do not understand a particular policy or procedure. Staff is also encouraged to use good judgment through the receipt of rewards and benefits when concerning behavior is reported. New staff are trained and quizzed on this policy during Basic Training. New staff receive a card during basic training with the cell phone numbers of several administrators, including the Interim Executive Director, Glenda Crookes, and they are encouraged to contact these individuals with questions or concerns.

iii) Current Policies and Procedures

(1) “Reporting Directives Inconsistent with JRC Policies and Procedures: Using Good Judgment”

During Basic Training, trainers provide staff with a copy of JRC’s policy on Good Judgment, which states, in part, that staff should not follow any directive that compromises the safety and well being of a student and should notify JRC Administration if such a directive is given. There are no negative consequences if a staff contacts an administrator to question a directive, but failure to report deviations from JRC policies and practices and/or to report abuse or neglect will result in severe disciplinary action up to and including termination. Furthermore, reporting any discrepancies will earn staff advancement credit that will be considered when determining promotions, bonuses, and other benefits. The trainer must also tell staff that they are not to assume that JRC supervisors or co-workers are always carrying out their duties in accordance with JRC policies, and should be alert to the possibility of hostile persons impersonating JRC supervisors.

Trainers are instructed to question if staff has ever been asked to do something that goes against JRC policies and procedures or if they have ever given such a directive themselves, and are instructed to ask staff to provide examples of directives they were not comfortable with, without supplying any names or dates. Staff is provided with seven scenarios where there is a discrepancy between a directive given, and trainers discuss appropriate actions and steps to take. Trainers must also provide staff with information about supervisory groups, the JRC organizational chart, and administrative phone numbers. At the end of the training, staff is required to take a brief quiz.

(2) Current Policy on Inappropriate Conversations

JRC employees cannot engage in inappropriate conversations with staff or other people about students, which include comments that may tend to denigrate, degrade, threaten, or belittle students in any manner, as well as comments of a sexual nature.

Employees cannot discuss their own or another staff member's personal life or gossip with or in front of any students. A student interviewed for this report told interviewers that she became upset when she overheard a staff person discussing her personal life during the school hours. The student immediately reported the infraction to her Case Manager.

(3) Current Policy on Staff/Student Interaction

Staff cannot socialize or engage in social conversations or activities with students. They should not engage in informal discussions with students. Staff members should direct students to discuss personal issues with their Case Managers and Clinicians.

Staff may not engage in conversations with former students while staff is working at residences. Administrative staff may engage in a brief, polite conversation with former students at the school regarding an appropriate subject matter. Direct care staff may do so as well, as long as the classroom supervisor feels it can be done safely.

Outside of the work environment, JRC strongly suggests that staff do not interact with former students, but if staff does, JRC asks that they maintain a professional demeanor.

All direct care staff interviewed did not report experiencing difficulties abiding by this policy, although some noted that it could be more challenging with the higher-functioning clients.

E) Student / Staff Supervision and Safety

i) Issues Identified Following 2007 Incident

At the time of the August 2007 incident, four of the six staff at the Stoughton residence had less than three months of experience. The scheduled Shift Supervisor for that evening had called out sick and an experienced replacement was not found. Instead, [REDACTED] who had exactly three months of experience, was asked to act as the Shift Supervisor. JRC's policies require an emergency book with the phone numbers for all JRC clinicians, administrators, case managers and residential supervisors to be located in every residence. It is not clear whether such a book was present at the time of the incident, but the staff did not use the book to contact those individuals. The students made oral protests against receiving the GEDs and asked staff to contact JRC administrators to verify the instructions of the caller.

ii) Changes Made by JRC

Following the 2007 incident, the Overnight School Supervisor position was created and filled by two experienced staff members, who are responsible for conducting unannounced visits to residences, the DVR office, the In-House Monitors, and the Overnight Scheduler. Supervisors must now complete Supervisor Training prior to being put on the schedule as a staff supervisor. Additionally, Shift Supervisors must complete End of Shift Reports that are sent to administrative staff in order to evaluate and track staff performance. JRC also formed a Safety Committee, to review staff and student injuries, and an Incident Review Committee, to review all 51A and 19C reports.

Additionally, JRC hired an off-duty State Police Sergeant, Ted Condon, to act as a Security Consultant to JRC and check in on residences during weekend shifts.

After investigations, state agencies recommended that every shift have access to trained supervisory staff and that shifts not be staffed with only new employees. The agencies also

suggested that staff members on probation or other disciplinary status be unable to supervise shifts.

iii) Summary of Current Supervision Policies

(1) Student Supervision

Direct care staff are required to follow student programs, including using rewards to reinforce appropriate behaviors; providing students with rewards when they make any of their contracts; informing students when they break contracts; seeking medical care for students when necessary; delivering aversive treatment when necessary, including GED applications; utilizing emergency restraint methods when necessary; recording all consequences, inappropriate behaviors, and restraints on students' recording sheets; and ensuring proper residential and classroom routines are followed.

Additionally, direct care staff must adhere to any one to one and strict one to one procedures required for specific students. one to one supervision requires staff to keep the student in his/her sights at all times, assist with other duties in the classroom or residence, ensure the student's program is being followed, and assist in the student's academic program. If a student requires strict one to one supervision, a staff member must remain within arms reach of the student at all times.

(2) Staff Supervision

Most staff supervisors are hired through internal promotions; however JRC will hire supervisors from outside the school if they have the requisite supervisory experience. Administrators who are part of a supervisor Hiring Committee review a staff member's performance, including quarterly evaluations and End of Shift Reports, before promoting him/her to a supervisory position. The Committee sends out notices to other supervisors requesting their recommendations to fill supervisor positions when such positions become available.

Supervisory staff members oversee all direct care and monitoring shifts, and are responsible for making any necessary notifications and assigning staff tasks during the shift.

Residential Supervisors, Monitoring (In-House and DVR) Supervisors, the School Supervisor, and the Overnight School Supervisor must all complete daily reports that are sent to administrative staff. These reports detail exactly how each shift went generally, whether there were any student issues, whether any GED applications were given, whether any restraints took place, and positive and negative evaluations of staff that worked the shift. There is additional information contained in the daily reports depending on the role of the supervisor. For example, the Monitoring Supervisor will provide details regarding any students on the "Watch List" and the Residential Supervisor will indicate if any supplies are needed at the residence. All supervisors must evaluate staff members for their shift. These evaluations then play a role in the overall evaluations staff receive during the year.

The Overnight School Supervisor also fields questions from the residences during the night if any issue arises, and oversees staffing levels and supervisor assignments at the residences.

JRC has an on-call system to provide coverage in the absence of scheduled employees. Each shift has a designated number of on-call staff that are required to call into the Monitoring Department before the shift begins to see if they are needed. If they are needed, Monitoring will instruct them where to go and what time their shift will start. If additional staff is still needed, JRC will call upon other experienced staff members to work the needed shifts, and will then call relief staff if no experienced staff is available.

If a Supervisor is unavailable for a shift, the Overnight School Supervisor or School Supervisor will first see if there are any staff trained as supervisors available to cover the shift. If no supervisors are available, staff that has been at JRC for at least six months will be asked to cover the shift. If a Supervisor for a crisis residence is unavailable for a shift, a trained Crisis Supervisor will be asked to cover the shift.

When additional staff is needed at a residence because a client goes to a one to one staff level or because of a crisis, additional staff will be added for a shift temporarily. Thereafter, the staffing level for that residence will be increased to ensure the necessary staffing level is present.

iv) Current Safety Policies and Procedures

All staff receive safety care training prior to being put on the schedule at JRC. Additionally, all current staff members must complete periodic in-service training regarding safety. High-Crisis Specialists are required to complete crisis training prior to working in this role, in addition to annual re-training. JRC also provides staff with safety equipment and trains staff on how to use this equipment during safety care and crisis training.

(1) Safety Consultant

In 2009, JRC hired an off-duty State Police Sergeant, Ted Condon, to visit the residences during the weekends, as well as occasionally monitor the transition from the school building to the residences. Mr. Condon has two priorities: 1) preventing and identifying potential abuse of JRC students, and 2) assisting JRC as a liaison with local law enforcement. Mr. Condon does not perform any of his responsibilities at JRC in his official capacity as a State Police Sergeant. His responsibilities include visiting residences unannounced and monitoring what staff are doing with the students, how the students are doing, and looking for any injuries that do not appear to be self-inflicted. If there is anything he notices that is questionable, Mr. Condon will review what he saw with DVR in order to ascertain whether they viewed video footage related to the injury and determine whether the injury was due to abuse.

Mr. Condon reported that he has never seen anything questionable at the residences and has never observed or suspected any abuse at JRC. He feels that direct care staff and students are comfortable with his presence; however are often curious as to his role. Students will report issues to him; however often times they are of a frivolous nature. It does not appear that JRC staff or the Board of Directors have ever been formally introduced to Mr. Condon.

Mr. Condon has also created programs to assist JRC in working with the police and reported that he feels the relationship between JRC and local law enforcement has significantly improved. Mr. Condon has helped introduce the JRC program to local law enforcement, so that they may better understand the purpose of JRC and the work done there. He has also facilitated meetings between local police and staff Supervisors in order to ease fears by both police and JRC staff. Mr. Condon developed a K-9 program where units are brought into the residences when JRC has a concern that students may have brought drugs into the houses after home visits.

Sometimes Mr. Condon will accompany students to Court for probation related matters or hearings, based on his experience with the court system; however again, he does not do so in his official capacity.

Mr. Condon provides reports to the Director of Human Resources every two weeks regarding what he has been doing and what residences he has visited. He reports directly to the Executive Director and Director of Human Resources.

(1) Safety Committee

The purpose of the Safety Committee is to minimize accidents and injuries, and maintain a safe environment at JRC. The Committee is made up of Administrative staff from the Human Resources, Evaluations, Programming, Quality Control, Regulations and Compliance, Clinical Services, and Training Departments; however representation differs at each meeting. Meetings are held once a month or more as needed. The goal of the Committee is to decrease the overall number of injuries by 5%, decrease the severity of injuries, and raise awareness.

The agenda for each meeting includes suggestions from the staff discussion board, individual staff comments, general safety concerns, and individual injuries. DVR of injuries is reviewed when available. The Committee makes recommendations for corrective action to prevent future injuries, which may include evaluation of staff, retraining, modifying a student's program, or adjusting the environment.

Meeting Minutes – June 14, 2011:

The Committee met on June 14, 2011 and reviewed injuries for the period of May 9, 2011 to June 14, 2011. During this period, there were fifty-seven injuries at JRC. The Committee reviewed injury reports and DVR footage for ten of these injuries. The Committee determined that four of these injuries were the result of staff error because of either poor body positioning, poor restraint technique, failure to use available safety equipment, or need for additional safety training. The Committee issued Performance Improvement Opportunities²⁰ (“PIO”) to staff and

²⁰ Performance Improvement Opportunities are discussed on page 72.

recommended retraining. They also considered modifying restraint equipment and adding safety gear, modifying a student's staff levels, and modifying a student's program as corrective actions.

For three of the fifty-seven injuries reported by staff during this period, staff felt that additional staff or higher staff ratios were needed to prevent this type of injury from occurring again. For four of these fifty-seven injuries, staff suggested additional safety equipment as a possible prevention method.

Meeting Minutes – June 21, 2011:

The Committee met on June 21, 2011 and reviewed injuries for the period of June 14, 2011 to June 21, 2011. There were thirteen injuries during this period. The Committee reviewed DVR footage for five of these injuries and injury reports for three of these injuries (injury reports were not available for two injuries). For the injuries reviewed, the Committee determined that one was due to staff error for failing to wear available safety equipment.

For four of the thirteen injuries reported during this period, staff felt that more staff or higher staff ratios were needed to prevent this type of injury from occurring again.

In order to increase awareness about safety, the Committee included an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff. The Director of Human Resources, Robert Duquette, and the (then) Assistant Executive Director, Glenda Crookes, issued safety memos to all staff.

Meeting Minutes – August 9, 2011:

The Committee met on August 9, 2011 and reviewed injuries for the period of June 24, 2011 to August 9, 2011. There were sixty-eight injuries during this period. The Committee reviewed DVR footage for thirteen of these injuries and injury reports for eleven (injury reports were not available for two injuries). The Committee determined that seven of the thirteen injuries reviewed were due, in part, to staff error including poor communication, utilizing other types of restraints, failing to use safety equipment, and poor body positioning. The Committee also considered providing additional safety equipment for a residence, changes in bedroom

arrangements, changes to staffing levels, and making safety equipment mandatory for staff working in small conference rooms as further corrective actions.

For eight of the sixty-eight injuries, staff reported that additional staff and/or staff willingness to help during a crisis could have prevented the injury from occurring.

In order to increase awareness about safety, the Committee included an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff, and Safety Memos were issued by the Director of Human Resources/Assistant Executive Director.

Meeting Minutes – August 23, 2011:

The Committee met on August 23, 2011 and reviewed injuries for the period of July 21, 2011 to August 23, 2011. There were sixty-six injuries during this period, twenty-nine injuries occurred after the Committee's prior meeting on August 9, 2011. The Committee reviewed DVR footage and injury reports for nine of these injuries. The Committee determined that eight of these injuries were due, in part, to staff error, including failure to use safety equipment, poor communication, poor body positioning, poor reaction time, poor response from DVR/Monitoring, failure to address environmental factors, and inadequate supervision of staff by Shift Supervisor. The Committee issued PIOs and recommended retraining for some staff members as corrective actions. The Committee further ordered additional safety equipment and requested that current safety equipment be inventoried and cleaned.

For four of the twenty-nine injuries that occurred after August 9, 2011, staff reported that additional staff and/or staff willingness to help during a crisis could have preventing the injury from occurring.

In order to increase awareness about safety, the Committee included an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff, and the Assistant Director of Human Resources created a discussion board post on "How to Report a Work Related Injury."

Meeting Minutes – September 6, 2011:

The Committee met on September 6, 2011 and reviewed injuries for the period of August 1, 2011 to September 5, 2011. During this period, there were sixty-three injuries, nineteen of

which occurred after the Committee's August 23, 2011 meeting. The Committee reviewed DVR footage for eight injuries at the September 6, 2011 meeting and injury reports for seven injuries (an injury report for one injury was not available). The Committee determined that five of these injuries were due, in part, to staff error, including poor body positioning, failure to use safety equipment, and poor restraint technique. The Committee recommended retraining, following up regarding why staff was not utilizing safety equipment, modification of restraint equipment, and rearranging the seating of Case Managers and teachers in a classroom to prevent further injuries. The Committee also noted that inventory and cleaning of safety equipment was still ongoing, and included an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff.

For two of the nineteen injuries that occurred after August 23, 2011, staff felt that additional staff could have prevented the injury from occurring.

Meeting Minutes – September 20, 2011:

The Committee met on September 20, 2011 and reviewed injuries for September 1, 2011 to September 20, 2011. During this period, there were thirty-five injuries, twenty-six of which occurred after the Committee's September 6, 2011 meeting. The Committee reviewed DVR footage for ten injuries and injury reports for five injuries (injury reports were not available for five injuries). The Committee determined that four of the injuries resulted, in part, due to staff error, including poor body positioning and failure to use safety equipment. For two of the injuries, the Committee determined that the staff had poor body positioning, but that this may have been due to the size difference between the staff and student involved. The Committee recommended retraining, rearranging bedroom furniture, and adjusting lighting to prevent injuries from occurring again. The Committee noted that new safety equipment bags were distributed that will travel with staff/students from the residences to classrooms and back each day. They also recommended purchasing new safety jackets and/or adding padding to current safety jackets. The Committee again included an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff, as well as information regarding reporting a work related injury.

For four of the twenty-six injuries that occurred after the Committee's September 6, 2011 meeting, staff felt that additional staff and/or higher staffing ratios could have prevented the injury.

Meeting Minutes – October 4, 2011:

The Committee met on October 4, 2011 and reviewed injuries for September 1, 2011 to October 4, 2011. During this period, there were sixty-four injuries, twenty-nine of which occurred after the Committee's September 20, 2011 meeting. The Committee reviewed DVR footage for nine injuries and injury reports for six injuries (injury reports were not available for three injuries). The Committee determined that seven of these injuries resulted, in part, from staff error, including poor body positioning, poor restraint technique, failure to use safety equipment, and poor physical prompting technique. The Committee issued PIOs and recommended retraining to prevent these injuries from occurring again. The Committee again distributed an Injury Chart and Safety Reminder in the weekly News and Notes sent to staff, and created a discussion board post on reporting a work related injury.

For one of the twenty-nine injuries that occurred after the Committee's September 20, 2011, staff felt that additional staff could have prevented the injury.

(2) Incident Review Committee

The Incident Review Committee is comprised of administrative staff members from the Training, Evaluations, Student Services, Compliance, Clinical, and Programming Departments, as well as the Staff/Student Investigator.

The Committee performs a risk assessment after every 51A or 19C report is filed. The Committee determines if there are any areas of vulnerability in JRC policies and procedures. The Committee then recommends any corrective actions and is responsible for the execution and implementation of these remedial measures.

The Staff/Student Investigator schedules a Committee meeting once his/her investigation into a 51A or 19C report is complete. At the meeting, the Investigator presents the facts and makes recommendations for areas of further investigations and/or corrective actions. The Committee then also has the opportunity to make recommendations.

Meeting Minutes – September 30, 2011:

During this meeting, the Committee discussed an incident that occurred on August 30, 2011. The Staff/Student Investigator reviewed the facts of the incident and then the Committee asked questions regarding what occurred, and made recommendations for actions to be taken. The student involved made a complaint that a staff member had injured his arm during one restraint, and that the staff member held him incorrectly during a later restraint on the same evening.

After reviewing DVR footage from the two restraints on the student that evening, it was determined that during the first restraint, staff failed to use less restrictive methods prior to the restraint and that the student dropped himself to the floor, contributing to the injury, which was not described in the restraint form. During the second restraint, the Committee determined that: less restrictive methods were not used by staff; there was no need for staff to take away the ice the student had in his hand; staff unintentionally used improper restraint procedures; and that the staff member should have been restricted from the student. The staff person reported that he did not restrict himself from working with the student because he was the only crisis staff scheduled. The staff member was sent for re-training, and the Training Director reported that he was willing to learn and understood what he had done wrong.

In addition to the retraining of the alleged abuser, the Committee recommended retraining other staff involved, and sending notices to all staff regarding how to respond to signs of distress/injury during a restraint and how to switch off staff if they are escalating the situation or being targeted by a student. The Committee also discussed possibly extending the restraint regulation training to eight hours to include DVR footage from restraints in the training. The Committee decided that the Restraint Coordinator will now compare a random sampling of restraint forms against the DVR footage, and will send a notice regarding the need to accurately complete forms. Finally, the Committee decided that all Quality Control/Monitoring staff would be retrained on completing emergency medical checklists and the need for these checklists to be completed as soon as an injury is reported. DVR Monitoring will now be responsible for completing the checklist.

F) Staff Evaluations

i) Issues Identified Following 2007 Incident

Staff involved in the 2007 incident reported that they did not question instructions provided by the caller, who they thought was from the DVR Office, in part out of a fear of the evaluations system and accompanying disciplinary process. Staff did not appear concerned that student at the house would be able to report infractions.

ii) Changes Made by JRC

Following the August 2007 incident, JRC retrained staff on the importance of reporting any directives that are inconsistent with their training and using good judgment. Staff was told that they would not be evaluated for reporting such inconsistencies, but rather would only be evaluated for failing to report observing events that conflicted with JRC's policies and procedures. JRC also implemented an End of Shift report for all Shift Supervisors, in which Supervisors must evaluate the staff and list any performance improvement opportunities or performance credits that were distributed during the shift.

iii) Current Evaluations Policies and Procedures

The Evaluations Department is responsible for managing JRC's disciplinary system, taking disciplinary reports and necessary actions, handling investigations and grievances, and providing staff with corrective feedback. New staff are informed of the Evaluations Department and its role during Basic Training and receive a letter from the Executive Director explaining how the Performance Improvement Opportunity ("PIO") works. This letter also informs new staff that the JRC administration does not expect direct care staff to be perfect, particularly because of the population that they serve and the complexity of the treatment program at JRC.

Staff are evaluated at the end of each shift by the Shift Supervisor in the End of Shift report. Each non-supervisor staff member also has the opportunity to complete an End of Shift form and rate the performance of each staff he/she worked with for that shift. Supervisors reported that the staff is generally receptive to receiving feedback and re-direction. Typically, Supervisors will provide immediate feedback when they see staff doing something incorrectly. This initial re-direction is considered a friendly reminder or warning, and it is only after this feedback is ignored or not followed that the staff member will be evaluated.

Additionally, all staff, including professional, clinical, and administrative staff, are evaluated quarterly by their supervisors. Staff are evaluated according to a rating system of various categories of performance, including adherence to treatment programs, crisis skills, GED treatment, and completing necessary paperwork.

(1) Staff Infractions and Performance Improvement Opportunities

The staff infractions list outlines the many infractions that staff can be disciplined for and may result in the receipt of a Performance Improvement Opportunity (PIO). There are forty-nine sheets to the infraction list with an average of eleven infractions on each sheet, amounting to approximately five hundred thirty possible infractions. Each infraction has consequences for the first through sixth offense. GED related infractions and their consequences include:

- In-House Monitor – failure to follow notification procedures – twenty points, for first offense, suspension for five shifts after second offense.
- Deliberately exceeding a GED order given by a Clinician – Termination on first offense.
- Failure to follow the GED Verification Policy resulting in a misapplication – termination on first offense.
- Poor decision making skills resulting in a student receiving a GED – Suspension three shifts/no additional shifts for fourteen days on first offense, termination on second offense.

Other infractions on the list include: Failure to fill out GED Recording sheet, deliberately hiding off-camera, chewing gum while working with students, failure to report to classroom on time, failure to notify Human Resources of telephone number change/change in address, and failure to print name on the student recording sheets. There is a point system for many minor infractions, and a staff person will receive additional consequences for accumulating a certain number of points.

Some of the more common offenses involve treatment related issues (i.e. staff not following a student's treatment program, leaving students unattended, giving students unearned

rewards, inappropriate comments to students, violating the staff/student interaction policy, etc.); absenteeism and code of conduct violations (i.e. insubordination).

For low-level offenses committed during the first six weeks of employment, staff have the opportunity to be retrained without any disciplinary action being taken. While staff always has the opportunity to be retrained, it is only during the first six weeks that staff have the guarantee that no action will be taken against them.

PIOs are given when an individual commits one of the five hundred thirty offenses contained in the JRC infraction list. Each offense for which a PIO is received is assigned a point value based on the severity of the offense and whether the staff member had committed this offense previously. During evaluations at the end of each quarter, the total number of PIO points is added up and a percentage of this total is deducted from the total score an employee receives based on other substantive categories that measure job performance. PIOs for lesser offenses are no longer "active" six months after they are received and are not be calculated into the total number of PIO points in quarterly evaluations; however these PIOs remain part of an employee's record and are considered when making promotion decisions.

A staff member receiving a PIO will be provided with a copy of the completed PIO form, signed by the staff member who identified the possible infraction. The staff member receiving the PIO will be given an opportunity to speak to the Evaluations Department, which will determine if further investigation is necessary or if disciplinary action is warranted. The decision whether to investigate or take disciplinary action is based on the severity of the offense, mitigating factors, the staff member's past record, the length of the staff member's continuous employment at JRC, and the time interval between this infraction and past infractions. If the Evaluations Department investigates an incident, the investigation consists of interviews of the staff and students who were present, review of the DVR footage, and other reasonably necessary steps.

After reviewing all evaluations for the second quarter of 2011, it was noted that there were often discrepancies between the number of points one individual would receive for an offense versus the number of points a different individual would receive for the same offense. For example, an Education Assistant received twenty points for their first failure to punch in/out

for break, while a Workshop Assistant Coordinator received five points for the same first offense, a Licensed Practical Nurse received fifteen points for the same first offense, an After School Activities Coordinator received forty points for the same first offense, and a Driver received no points for the same first offense. JRC counters this observation with the following statement, "The discrepancy in points is correct because it is based on the number of similar offenses committed prior to the disciplinary action. The consequence increases in increments of five points for each subsequent violation. The employee goes back to zero if there are no violations over a six-month period." Despite this policy, the reports do not clearly convey the basis for different point values to the reader.

Some direct care staff indicated that while they understand what is contained on the list of infractions and what they are prohibited from doing, it is sometimes difficult to adhere to these rules on days when staff is rushed or overwhelmed for one reason or another. For example, cleaning of the residences came up consistently in interviews with Mental Health Assistants, who noted that when a shift is short staffed and/or the clients are not being cooperative in getting out of the residence in the morning, cleaning chores are often unable to be completed by staff members, who then receive poor evaluations or PIOs for failing to clean the residence adequately.

Additionally, some direct care staff members communicated a certain level of frustration with the lesser offenses contained on the infractions list and the impact these lesser offenses can have on a staff member's quarterly evaluations. All of the direct care staff interviewed agreed with the need for infractions related to treatment or client programs, and felt that staff needed to be reported and evaluated for such offenses; however some staff felt that it was sometimes too easy to be reported for a lower-level infraction and that the points taken off for these infractions had the potential to have a large impact on staff's overall evaluations.

(2) Reporting Staff Infractions or Concerns

JRC employees are encouraged to share their ideas and concerns in the Employee Manual. JRC provides the following methods by which staff can voice their ideas and concerns, and also learn about current events and new policies at JRC: 1) during new employee training, 2) through informal communications between staff members and supervisors, 3) through the

problem solving procedure, 4) through periodic employee meetings with the Executive Director, 5) through the employee discussion board, 6) through JRC periodic newsletters, 7) through letters JRC sends home to employees, and 8) through the open door policy of the Executive Director.

JRC has established the following procedure for staff to use in resolving questions or problems:

Step 1 – staff should ask for a conference to talk over the problem with their immediate supervisors, who keep written records of such conferences;

Step 2 – if a supervisor fails to resolve a staff member's problem within two workdays, the staff member may ask for a meeting with Human Resources, who will keep a written record of the meeting;

Step 3 – if Human Resources fails to resolve a staff member's problem within two workdays, the staff member may submit a written request to meet with the Executive Director.

If a staff member does not feel comfortable taking an issue to his/her direct supervisor, he/she should take the problem directly to Human Resources. All of the direct care staff interviewed indicated that they felt completely comfortable raising questions or concerns with treatment teams, supervisors, the Evaluations Department, and other JRC administrators.

Most of the direct care staff interviewed stated that, in order to correct the action right away, they prefer to first speak with the staff member they observed doing something incorrectly or against JRC policy or procedures. This immediate feedback is given to ensure it does not continue to occur. Then, if the incorrect behavior is repeated, direct care staff and Supervisors said they would report the behavior. In general, direct care staff feels comfortable asking questions and raising concerns with other staff, supervisors, and the JRC administration.

Additionally, staff may utilize JRC's internal, online discussion board to ask questions, raise concerns, or make general suggestions for improving JRC's program. Several direct care staff indicated that this discussion board is used often by staff, and is a resource that is checked

multiple times a day by employees. While most staff interviewed do not believe that they can post comments or questions to this discussion board anonymously, as staff must sign in prior to posting to the board, the majority direct care staff interviewed reported that they and others use the discussion board often and felt that it was an excellent method for communicating ideas and policy changes. They also reported feeling that suggestions posted to the discussion board are taken seriously by JRC administration and often see changes implemented as a result of discussion board ideas. There were a couple of staff interviewed that admittedly did not utilize the discussion board.

If a parent or staff feels that responsible care is not being provided to JRC students he or she should file a complaint with the Director of Student Services. Written and verbal complaints will be accepted. Once a complaint is received, the Director of Student Services or designee will conduct an internal investigation to determine if the complaint can be substantiated. The investigation will normally consist of interviewing staff, students, complainants, and others, as well as reviewing written documentation and viewing video of classrooms and residences. If the complainant disagrees with the results of the investigation, he/she may appeal it, in writing, to one of the Assistant Executive Directors.

Parents interviewed for this investigation reported that it is easy to make a complaint at any time. One set of parents described an incident during a treatment meeting when the parents informed staff that it was very bothersome to their son to wear anything knit, such as a sweater, because he found it extremely itchy. The student's teacher then suggested that the use of an itchy sweater be used as an aversive consequence in the student's treatment program. The parents made a complaint directly to Dr. Israel, and the teacher was immediately removed from the student's program. A few weeks later, the teacher was no longer working for JRC.²¹

(3) Investigating Staff Infractions

Investigations are conducted after a complaint or allegation is made through end of shift forms, PIOs, client or staff complaints, and/or any other means. After an allegation is made,

²¹ This incident took place when JRC was known as Behavioral Research Institute, or BRI, and when its main campus was located in Rhode Island.

staff from Evaluations and/or Human Resources interview the person who has lodged the complaint to decide whether an investigation is warranted. Additionally, if the complaint is one of abuse or neglect, the appropriate state agency is notified.

An investigation is conducted based on an assessment of the validity of the complaint, the nature of the complaint, and the circumstances surrounding the complaint. The majority of direct care staff interviewed felt that the Evaluations Department does a good job of listening to all parties involved and any reasonable explanations before making any disciplinary decisions. Once the decision is made to conduct an investigation, the investigator interviews all parties involved, including witnesses and the person the complaint has been lodged against. After the initial interview with the subject of the complaint, Evaluations and/or Human Resources decide either to discipline the staff member or continue with the investigation. If the investigation is continued, the investigator may also review footage from the DVR Monitoring system, as well as written or computerized records if necessary.

The investigation is conducted with confidentiality. During the investigation, the investigator may determine that it is in the best interest of all parties to suspend the staff member who is the subject of the complaint until the investigation is complete.

Once the investigation is complete, Evaluations and/or Human Resources notifies the subject of the complaint of the investigator's findings and informs them of any disciplinary action being taken. A staff person has a right to appeal the decision and to speak with senior administrators about their concerns.

Some of the direct care staff interviewed felt that JRC sometimes terminates employees when a suspension or a demotion may be appropriate. The direct care staff that expressed this concern were also those who felt that there was not enough direct care staff at JRC, and believed that the termination of employees impacted already low staffing levels. However, all of the direct care staff interviewed agreed that termination would be appropriate for certain treatment related offenses, and generally agreed with the discipline for treatment-related infractions as well.

(4) Student Evaluations of Staff²²

If a student has a complaint, staff direct him/her to the Student/Staff Investigator. Once a complaint is received, the Student/Staff Investigator or Human Resources will conduct an internal investigation. The nature of the complaint, the investigation procedure, the investigation conclusions, and corrective action will be documented in writing within thirty school days of when the complaint was made and is maintained by the Evaluations Department.

Students may submit anonymous complaints through the “submit an anonymous complaint” section of the student discussion board.

Students also have the opportunity to file Staff Evaluation Reports. Students and clients are encouraged to complete at least one evaluation of staff members every day via the computer. The evaluation form asks the student/client whether or not the staff followed his/her program and JRC policies, and asks the student/client to rate the staff member’s performance, provide suggestions for improvement, and any other additional information regarding the staff member’s performance.

Once complete, the evaluation is sent to the student/client’s treatment team and the Staff/Student Investigator, who will meet with the student/client and investigate the circumstances of any problems or complaints noted in the evaluation. The Investigator takes appropriate steps to verify the student’s story. For example, the Investigator reports on what they learned from a review of the DVR video, as well as interviews with other staff that were present. If a student sustains any injuries as the result of an incident, then the appropriate state agency is notified of the incident on the same day as the incident or the day after. The report must include a conclusion section where the Investigator determines whether the staff perpetrated any wrongdoing in the incident, and suggestions for changes in staffing or other program changes to avoid similar future incidents.

²² Student Evaluations of staff may overlap with a Human Rights complaint, discussed in detail later in this report. However, a Student Evaluation could also concern an action or failure by a staff that does not rise to the level of a violation of the student’s human rights.

For example, a student reported a staff member for threatening to punch the student in the face when the parties were outside of the residence. The Investigator interviewed the student, and all of the staff members who were present and all reported that they did not hear the staff person under investigation make any threats to the student. A review of the DVR video showed that the student's body language was calm until the staff person correctly pinpointed an inappropriate behavior, at which time the student declared that the staff person had threatened her. The Investigator reported specific facts to support the conclusion that the staff member did not act inappropriately.

In another incident, the Investigator spoke with students and staff regarding complaints from a neighbor to a residence that alleged that the male students were using profane words all day in a loud voice, and spending all day with their shirts off in the backyard. The Investigator confirmed that the neighbor's allegations were true and issued Performance Improvement Opportunities (PIOs) for the staff who were responsible for the students outside, and for the staff Supervisor who spent the day inside.

JRC students also have the opportunity to fill out "end of the week" staff evaluations. These evaluations are different from the previously discussed reports because they offer students an opportunity to commend staff for good behavior and negative incidents alike. Examples of student comments are as follows:

- A student reported that a staff person let another student have two peanut butter jelly sandwiches as a snack, even though reporting student believed that only one sandwich is considered a "snack"
- A student wrote, "she is a nice teacher I hope she be my teacher forever." For another staff person, the same student indicated that the staff person should receive a PIO.
- A student reported that a staff person was socializing with another staff person "instead of doing her job." The student also reported that when this staff person offered to do the student's required body search, the staff member commented, "You just want me to touch you."

- A student reported that a staff person failed to give the student her daily snack for no reason and talked on the phone in the van transporting students between the campus and the residence.

It is not clear from the records whether all of the student reports are investigated when they include allegations of misconduct on the part of the staff. It is not clear which complaints are followed up on and which are not. Some surveys suggest that students are frustrated that they have filed similar reports in the past and have not seen any changes. It is apparent that some students do not have the language skills to communicate their complaints. Often, the survey is filled out with just “yes” or “no” answers, with no elaboration as to the basis of the complaint.

G) GED and Restraint Administration

i) Issues Identified Following 2007 Incident

At the time of the 2007 incident, staff failed to follow any GED verification procedures, as the caller instructed them to bypass these procedures, claiming that the caller said he had obtained pre-verification from the students’ Clinician and JRC administrative staff. Pre-verification procedures were allowed by JRC policy at that time. Staff believed that JRC senior administrative staff had the authority to override all GED verification procedures for any student. The staff did not follow the JRC policies and procedures for emergency restraints.

Staff did not question the reasonableness of the directives and information given by the caller. Staff failed to verify the consequated behavior with someone other than the caller posing as DVR and administered the first GEDs to each student while they were in bed and asleep. Of equal importance, the staff did not listen to both residents who, at the time the GED was used, had been asleep.

Additionally, staff did not adhere to JRC notification policies. Staff failed to notify DVR Monitoring when each student received ten GED applications in order to get approval for further applications from the students’ Clinicians, and did not notify John Doe’s Clinician once he had received thirty GED applications. Staff did not notify nursing when both students complained of pain.

Staff also failed to comply with the students' program descriptions. JRC policy allowed for latency between behaviors and GED applications; however, the latency limits for GED applications in each student's plan were not adhered to. Staff placed another student's GED torso device on John Doe even though his program did not call for the use of a torso device and staff had been trained not to interchange students' devices. Staff did not verify that the four-point board was in each student's program and instead put a student from New York on the four-point board against New York State regulations. Staff also put John Doe on the four-point board while he was being compliant and was not displaying any signs of aggressive or dangerous behavior. After investigating the incident, state agencies recommended that JRC meet with licensing agencies to ensure that policies regarding restraint documentation are in line with state and federal guidelines (regardless of whether there is court authorization for restraints).

During the applications in August 2007, staff failed to count the correct number of GED applications to John Doe. Staff failed to verbally identify, or "pinpoint," behaviors for each GED application and did not rotate the electrodes after every GED application. Staff did not stop the GED applications or contact the on-call nurse when the students complained of pain.

ii) Changes Made by JRC

As a result of the August 2007 incident, delayed GED consequences are no longer permitted and must be carried out as soon as possible after a behavior and never more than thirty minutes later. Staff members cannot administer a GED for behaviors they did not witness and the In-House Monitor, a new position created following the 2007 incident, must personally witness all GED applications at residences.

The staff were retrained on the fact that DVR Monitoring staff can never instruct direct care staff over the phone to administer GEDs. Pre-verification procedures are no longer used with the exception of a handful of students. DVR Monitoring must be notified immediately after a GED application and DVR must then notify the student's treatment team. DVR Monitoring must also be notified of all GED misapplications and a GED Trouble Report must be completed. All GED applications are now logged into an electronic database and are reported in staff Supervisors' End of Shift Reports. Administrative staff also receives a list of all GED applications for the past twenty-four hours.

iii) Current GED Application Policies and Procedures

The DVR Monitoring office is not authorized to call staff and instruct them to consequent GED behaviors, or give additional numbers of GED consequences. Only a Clinician can authorize GED applications beyond increments of ten per day. The Clinician will notify the supervisor as to how many additional applications can be made without further authorization; however the additional amount can never exceed ten without requiring additional authorization. The Clinician then notifies the Assistant to the Director for Programming and Monitoring of the student's GED authorization.

Employees are instructed that they should never follow direction from anyone if it is inconsistent with the policies and procedures that the employee has been taught during the orientation-training period or through other means. Employees are told to be alert to the possibility of hostile persons making unauthorized calls to JRC and impersonating JRC supervisors.

All GED applications must be reported immediately according to protocol.

Pre-verification procedures are not used. Each GED application must be verified at the time the behavior occurs.

GEDs may not be applied during bathing or showering.

(1) Delivering GED Consequence

Step 1 – Staff observes inappropriate behavior, and then gets the recording sheet and remote trigger, or “GED sled.” Staff should be discreet in front of the student. Any delays to delivering the GED consequence must be limited to thirty minutes. A student can never receive a GED consequence for any behavior that was witnessed by a staff member that was not present, nor a behavior that happened more than thirty minutes prior. Anytime a student exhibits a GED targeted behavior that has a listed consequence of multiple GED applications, the designated supervisor must call and obtain approval from ONLY the student's Clinician prior to delivering the GED consequence;

Step 2 – Before administering the GED, staff must confirm the name on the recording sheet, the behavior, the consequence, and the name on the remote with another staff member;

Step 3 – Administer the GED;

Step 4 – If the GED fails while delivering the consequence, staff must first check to see if the LED light is activated. If it is activated, staff must not deliver additional applications with that unit and must remove the unit from the student. If the LED is not activated and the student is wearing multiple units, staff should use one of the other units. If the student is not wearing multiple units, staff should make additional checks to ensure the unit is connected and applied properly. If a GED is misapplied, spontaneously applied, or duplicated, staff must notify the Monitoring Department and fill out a GED Trouble Report and incident report. Monitoring must then notify the student's Case Manager and Clinician;

Step 5 – If none of the student's devices are working, only a Clinician, Monitor, or member of the Programming Department can approve removing the device from the student and borrowing another student's device. If a GED device must be removed for any other reason, approval is not required; however staff must notify the Monitoring Department;

Step 6 – Immediately after delivery of a GED application, staff must report the application to the appropriate department. If the application is made at the JRC school building, during a field trip, or during a doctor's appointment, the notification must be made to Monitoring or Nursing. For residences staffed with monitors, GED applications must be reported to nursing staff. During overnight hours, notification must be made to the Overnight School Supervisor and the nurse.

(2) Applications to NY State School Aged Students

NY state school aged students can only receive an application of an aversive intervention under the direct supervision or direct observation of an appropriately licensed professional (registered nurse, licensed psychologist, licensed teacher, or licensed social worker). The professional may observe the treatment via DVR only if he/she is in the same building where the treatment is being administered. The procedures for NY students is as follows:

Step 1 – Staff must notify the assigned licensed professional of the behavior;

Step 2 – The licensed professional will observe and supervise the application in person or via the DVR that has been set up for this purpose;

Step 3 – The staff administering the application must note on the GED recording sheet, which licensed professional observed and supervised the application;

Step 4 – if staff leave the room with one of the students, they must take a walkie-talkie with them;

Step 5 – if outside, the appropriately licensed professional must respond within the timeframe indicated for that student, or an alternate consequence must be administered;

Step 6 – if an alternate consequence is given, the reasons why must be recorded on the GED recording sheet;

Step 7 – if a GED cannot be administered due to the unavailability of a licensed professional, staff must contact the Shift Supervisor immediately and make note of the time and whom staff attempted to contact.

An appropriately licensed professional will be assigned while the student is at the residence and during transport.

(3) Latency

Latency is the period of time that elapses from when the behavior is exhibited until the time the consequence is delivered. Each student's current recording sheet must list if the student does or does not have latency in his/her program.

Consequences for all inappropriate behaviors should be delivered immediately; however sometimes it may not be safe to do so, or the student may have disabled/removed the device. In this case, there are two options for staff: 1) if the student has the cognitive ability to understand that his/her behavior was inappropriate after a time lapse, staff will have no more than thirty minutes to arrange a safe environment or place the device back on the student and deliver the

consequence; or, 2) if the student does not have the cognitive ability to understand, staff has no more than the time it takes to physically contain the student, and place the device back on the student, which should take no more than five minutes.

(4) Pre-Verification Procedures

Unless otherwise specified in a student's program, all GED applications must be verified with another staff member at the time the behavior occurs. Currently, a handful of JRC students have pre-verification procedures in their program descriptions. This means that the GED consequence may be administered immediately after a GED approved behavior occurs, rather than after a staff has been able to verify the behavior, recording sheet, and sled with another staff member. Such procedures are only allowed by approval of the Executive Director and can only be used for students with specially trained one to one staff.

(5) Delivery of GED Consequence Not on School Premises

At full program residences (residences staffed with In-House Monitors), students will be treated with the GED at the residence and during transport to and from the residence, and school.

If a residence is not staffed with a Monitor, the GED sleds will be collected prior to the students loading the buses/vans at the end of the school day, and placed in a secure area until the students' arrival the next day.

All students will be treated with the GED on field trips and doctor's appointments. If a field trip or doctor's appointment originates from a residence without a Monitor, staff must stop at the school to obtain a GED sled.

(6) Storage of GED Sleds

Staff members must wear the GED transmitter sleds for all students at all times except in workshops or when a student is faded. At full program residences, transmitter sleds must be worn at all times except during overnight hours or while a student is faded. Sleds for multiple students cannot be hooked together. Sleds should be split evenly between all staff present.

If a student is faded from his/her device, his/her device and sled must be locked up until there is a need to place the device back on the student.

During overnight hours at a full program residence with an In-House Monitor, the transmitter sleds may be hung up once the student has gone to bed, but must be worn by a staff person once the student gets out of bed.

During overnight hours at all other residences, the students' sleds may be hung up once all students are asleep; however once one student is awake, all GED sleds must be worn.

If the In-House Monitor is assigned as the sleep aide, the In-House Monitor will lock up all the sleds prior to going to sleep. If a student exhibits a behavior that is treated with GED, staff must wake the In-House Monitor so they can obtain the sled and witness the application.

(7) Verification and Calibration of GED Devices

The Shift Supervisor must verify that a student is wearing the correct type of device and match the transmitters to the actual GED device upon arrival at school, in the 4:00 P.M. hour when the evening Supervisors arrive, and just prior to a student going to bed. The verification must occur with another staff present in the classroom or residence. Both of the staff must then sign off on the GED recording sheet.

All GED devices must be calibrated every six months. GED-4 devices must be calibrated quarterly. The date of the device's last calibration is written on a label located on the top of each device.

iv) GED Spontaneous Activations and Misapplications

The Director of Clinical Services reports all spontaneous activations and misapplications of GED devices to the Court Monitor, Dr. John Daignault, every quarter. The quarterly reports for June 2010 through May 2011 were reviewed. Each quarter there were between five and seven misapplications caused by staff error, client-to-client application, accidental applications, spontaneous applications, and multiple applications. The reports also reference modifications to the design of the GED which are intended to decrease the occurrence of such misapplications.

Some misapplications are caused by a staff's failure to follow the verification procedures set out by JRC, which typically resulted in immediate termination.

v) **Current Restraint Policies and Procedures**

Emergency restraint policies do not apply to individuals for whom JRC has obtained a substituted judgment authorizing restraint when used as a consequence pursuant to a Behavior Modification Treatment Plan, gentle holding for a period of no longer than five minutes, gentle guidance of an individual to a particular destination, transportation restraint, and supports and health related protections. There is no separate written policy for non-emergency restraints which may be part of a student's treatment program. The Interim Executive Director, Glenda Crookes, estimates that JRC has three students who have level three aversives in their program that call for restraint procedures.

Interviews with JRC staff revealed that generally, when a crisis occurs and a staff member needs help restraining a client and/or maintaining control, the staff member will yell "help" and additional staff will respond to the area of the crisis to provide assistance. During this time, other staff will remain with the non-crisis clients in order to ensure they are safe and properly supervised. High Crisis Specialists are expected to take over and provide direction to other staff during a crisis. The majority of direct care staff and supervisors felt that this system worked well and that there was always a sufficient amount of staff to deal with a crisis. However, a few Mental Health Assistants expressed feeling understaffed at times, particularly during crisis situations. Additionally, some felt that there was not enough of a balance between experienced and new staff on some shifts, and that this sometimes impacted how staff dealt with a crisis.

(1) Types of Emergency Restraint

There are two types of emergency restraint used at JRC: 1) physical (manual) and 2) mechanical, which cannot be used on students from NY.

Mitts are the only mechanical restraint allowed for emergency restraint unless there is a waiver from DDS in which case students can be placed in mechanical restraints other than the mitt jacket including, Posey restraints, a restraint chair, or a four point board, all with Velcro

cuffs. Any such waiver will be clearly stated in the student's current recording sheet. Emergency restraint rules apply to all forms of mechanical restraint.

(2) What is an Emergency

An emergency exists when a reasonable person would perceive: 1) present occurrence of self-injury, 2) present occurrence of serious physical assault, 3) imminent threat of serious self-injury by an individual that has the ability to effect such injury and has engaged in an action which indicates a present intention or inclination to carry out such behavior, 4) imminent threat of serious physical assault if the individual has the present ability to effect such assault immediately and has engaged in any action which indicates a present intention or inclination to carry out such assault immediately, 5) property damage ONLY if the damage is likely to lead to serious self injury or serious harm to those present, and/or 6) less restrictive alternatives have failed or a determination that such alternatives will be ineffective has been made based on professional judgment.

If an emergency restraint is used, other staff present should assist that staff member in accomplishing the restraint.

(3) Notification Procedures

Every time an emergency restraint occurs, the Supervisor present must notify the Monitoring Department, who must notify the Clinician, the Office of Assistant to the Director for Programming, the Case Manager, and the Nursing Department.

Parents/guardians must be notified within one business day if a student is in an emergency restraint for twenty minutes or longer, or if a staff or student is injured during the restraint.

(4) Restraint Supervision Procedures

JRC's policies for the supervision of emergency restraints tracks the requirements set out by the DDS regulations on restraints. JRC identifies a Head of Provider ("HOP") designee for each shift who is responsible for reviewing a restraint and authorizing physical and/or mechanical restraint for up to two hours, after following specific guidelines for restraints. In the

event that the HOP is unavailable, then an Authorized Staff Person (“ASP”) who is specially trained and authorized by the Executive director may review a restraint and authorize up to one additional hour of restraint. All JRC staff are trained to act as a Staff In Attendance (“SIA”) who understands the emotional and physical reactions to a restraint and can offer support or access necessary support for a student.

(5) Asphyxia

All JRC staff are trained on positional asphyxia and how to avoid it.

(6) Limitations and Release of Emergency Restraint

Restraints may not be applied for a continuous period exceeding six hours. For a mechanical restraint, the use of such restraint on a non-continuous basis cannot exceed eight hours in a designated twenty-four hour period in conjunction with the typical JRC school day (8:00 P.M. – 8:00 P.M.). If an individual is in restraint during this transition, or has experienced a significant amount of time in restraint that evening, staff must communicate this to the next shift or in the log, so that the time period can carry over to the next period.

Temporary relief periods of at least ten minutes every two hours of restraint must be provided, except when there is an obvious and substantial risk of harm. These checks should be noted on the restraint form by the SIA. Provision must be made for reasonable access to drinking water and bathrooms.

Restraints must be checked every fifteen minutes for comfort, body alignment, and circulation by an SIA. Notation of such checks must be entered on the special restraint form.

An individual must be released from emergency restraint:

- 1) No later than the expiration of the order for the restraint,
- 2) Prior to the expiration of the order for restraint when the restraint is no longer necessary to prevent the continuation of the emergency (relaxation of a hold to determine if restraint is needed to prevent the continuation of the emergency is not considered to be a permanent release), or

3) If he/she is asleep.

The circumstances considered in arriving at the release determination must be documented and signed by the person making the determination.

A doctor must see minors within fifteen minutes of the initial order. If a doctor is unavailable, then a registered nurse, nurse practitioner, or certified physician's assistant must see the minor in the first fifteen minutes. A doctor must then see the minor within the first hour. If the restraint exceeds one hour within any twenty-four hour period, the HOP must review the use and a report must be submitted explaining the need for the restraint.

(7) Restraint Forms

A restraint form must be completed each time an emergency restraint is used and each time an order for emergency restraint is renewed. The form must be approved by DDS. The report must include (among others), a description of less restrictive alternatives utilized before the restraint, a description of the emergency, all examinations and safety checks, and when the SIA was in attendance. This form should be distributed to the person who was restrained and must be done no later than twenty-four hours after the individual's release from restraint.

The JRC student restrained must also receive a DDS approved form on which student can comment on the circumstance leading to the use of the restraint and the manner of restraint used.

At the end of each month, JRC sends copies of all restraint forms and attachments to the Department of Developmental Services and a Sub-Committee of JRC's Human Rights Committee for review.

(8) Restraint Committee

The Restraint Committee oversees all restraint-related matters involving EEC students, and reviews and signs off on all restraint incident reports to ensure JRC policy and procedure are followed. The Committee meets monthly to discuss restraint incident reports for each month. The Restraint Coordinator, Robert Bruno, who is also the Quality Control Director, leads the Committee and submits a quarterly report to EEC. The Committee is comprised of JRC Clinicians, psychologists, Programming Director, Special Education Director, Student

Programming Director, and Student Programming Assistant Director. At least three Committee members, as well as the Restraint Coordinator, must attend each meeting.

Meeting Minutes – October 16, 2007

During the October 2007 meeting, the Committee discussed issues concerning staff filling in the approved duration of the restraint on restraint forms, legibility of restraint forms, restraints lasting exactly until the authorized time, and wording used on restraint forms for transitional restraints. Clinicians reported observing students being held within proper body alignment and did not find any deviations with respect to students being restraint unjustifiably.

Meeting Minutes – November 6, 2007

At the November 2007 meeting, the Committee discussed restraints lasting exactly one hour with forms that had no in/out restraint times, no authorizing names, and times that were not feasible; and forms showing that staff did not notify the administrative designee until halfway through a restraint that lasted only fifteen minutes. The Committee found that Clinicians were being notified within an adequate amount of time after the start of a restraint or when a renewal was needed, but noted that DVR called the Supervising Clinician too quickly before giving the primary Clinician time to respond.

The Committee noted an improvement in the staff description of what behaviors warranted the restraint; however staff were still sometimes describing behaviors that did not necessarily warrant a restraint. The Committee also noted that students should not be writing on the restraint forms themselves; rather staff should document student's comments on the forms. Finally, the Committee highlighted that if a student is in a restraint for longer than authorized, the Clinician must be notified and a letter must be written to the EEC describing the situation.

Meeting Minutes – December 2007

At the December 2007 meeting, the Committee discussed inadequacies in the way staff were filling out restraint forms, including staff misunderstanding what needs to be included in restraint forms. The discussed how the forms can be reformatted to avoid mistakes or

misunderstandings. The Committee also discussed how to help staff avoid carrying students when they are non-compliant and combative, an action frowned upon by DEEC.

Meeting Minutes – January 5, 2008

During the January meeting, the Committee discussed delays in notifying the designee when a restraint occurred. The Committee felt that these delays could be caused by the increase in restraints and suggested that adding staff to the HOP list could help with this problem. The Committee again discussed concern with restraints going the entire hour without a renewal needed, as this raises questions with regards to justification. This concern was reviewed with DVR. Missing information and legibility of restraint forms was also reviewed.

JRC provided no additional meeting minutes.

H) Recording and Emergency Notifications

i) Issues Identified Following 2007 Incident

[REDACTED]

[REDACTED] A review of the recording sheets for both victims who received GED applications shows that none of the GEDs were recorded on the student's recording sheets. Some staff also failed to sign the recording sheets to show that they had read it that evening. The staff failed to call DVR directly to notify the DVR staff of what was going on, presumably because the staff believed that they were already on the phone with the DVR department. The staff and the DVR Monitoring department failed to contact the police at any time during the emergency. The staff failed to contact the appropriate agencies through the reporting hotlines to report abuse.

ii) Changes Made by JRC

JRC made changes to the recording sheets based on new policies and procedures that were implemented with regards to GED applications and tracking, restraints, and notification procedures. All Roving Supervisors and Monitors also check the recording sheets at each residence. Additionally, all Shift Supervisors (direct care and monitoring) must complete "End of Shift Reports" that provide a general summary of how the shift went, as well as details regarding

GED applications, restraints, staffing levels, injuries, staff infractions, phone call logs, and monitoring of students on the Watch List. Notification procedures changed in that the Overnight School Supervisor, a newly created position, is notified by DVR for all GED applications, restraints, and emergencies. Staff are able to contact the Overnight School Supervisor directly as well.

iii) Current Policies and Procedures

(1) End of Shift Reports

The substance of each End of Shift Report depends on the role of the supervisor completing the report. In-House Monitors, Residential Supervisors, Roving Monitors, DVR Monitoring Supervisors, and School Supervisors (Overnight and Day) must all fill out End of Shift reports that are emailed to JRC administration, clinical staff, and Case Managers. There are three eight-hour shifts each day.

The End of Shift reports for In-House Monitors and Residential Supervisors contain information regarding GED applications, restraints, staff and student infractions, injuries, staffing levels, behaviors requiring treatment, incoming and outgoing phone calls during the shift, any PCs and PIOs that were distributed, recording sheet checks, when DVR checked in with the residence, and any issues or concerns. Additionally, the In-House Monitor must report on whether the Residential Supervisor roved throughout the house during the shift.

Roving Monitors must complete a similar End of Shift report; however they are not required to provide information regarding GEDs or restraints, whether recording sheet checks were done, or information on incoming and outgoing calls. The report also requires the Roving Monitor to complete sections about whether hourly block schedules were posted and followed, what residences the Monitor visited, and which of those residences are crisis residences.

In addition to the information contained within the Residential Supervisor and In-House Monitor End of Shift report, the School Supervisor and Overnight School Supervisor must detail: anything that needs to be brought to JRC management's attention; any elopement attempts; if all behaviors were pinpointed and level rules were followed; information on crisis staffing and

Roving Monitors; information on the number of DVR monitors and monitoring; notifications made as a result of any GED applications; and any issues that arose during the shift.

The DVR Monitoring Supervisor's End of Shift report contains everything contained in the School Supervisor report, as well as residential departure checks for the morning transport to JRC, whether break rules for monitoring staff were followed for overnight shifts, and specific information regarding all students on the Watch List who required constant viewing to ensure specific behaviors and interactions do not occur.

Inconsistencies were noted within some of the reports. Generally, some staff chose to expand on comments and make use of the sections of the reports that allow staff to provide more details and narrative, while other staff keep their reports brief. There were also more specific inconsistencies found among the Roving Monitor End of Shift Reports. In one instance, two Roving Monitors visited the same residences within one day of each other. While one Monitor noted no issues at any of the residences, the very next day, another Monitor noted issues with individual student programs that treatment teams should address, security issues, a lack of activities to occupy clients, and GED device issues.

(2) Incident Reporting

Staff must submit written incident reports when there has been: a misapplication of GED; spontaneous application of GED; duplicate application of GED; accidental application of GED; an unintended application of GED during a battery change; an unintended application of GED by student; and GED failure. Incident reports must be written immediately after the occurrence of an incident.

On a daily basis, student services collects all paper incident reports, enters them into the incident reporting database, and reviews and organizes the incident reports for distribution to administration and professional staff.

An Assistant to the Executive Director for Programming will review certain incident reports with the Executive Director, along with any unexpected or unusual situation and particular students that are not responding as expected to JRC's treatment program.

Each Clinician will review all incident reports and document any actions taken or appropriate comments with regards to students assigned to him/her. After comments have been entered, a copy of the report will be placed in the student's file.

The Director of Human Resources or his designee will review incident reports to identify reports that require an investigation process, require the Clinician's attention, require the Nursing Department's attention, or require any other department's attention.

(3) Abuse or Neglect Reporting and Investigation

All direct care staff and administrators are mandated reporters of the abuse or neglect of children at JRC under seventeen years of age, as well as abuse or neglect of disabled/handicapped individuals at JRC over the age of eighteen. Direct care staff are informed of this mandate in the Employee Handbook distributed to each employee during Basic Training. If a staff person has reasonable cause to believe that a student at JRC less than seventeen years of age has been subject to either abuse or neglect by a caretaker at JRC or outside of JRC, staff are required to report this to the Department of Children and Families ("DCF") and the Department of Developmental Services ("DDS") through the abuse or neglect hotlines for these agencies. If staff has reasonable cause to believe a student at JRC over the age of eighteen has been subject to abuse or neglect by a caretaker at or outside of JRC, staff are required to report this to the Disabled Persons Protection Commission through the Commission's ("DPPC") abuse or neglect hotline. Staff are provided with these numbers during Basic Training.

JRC additionally requires staff to notify JRC administration when they have concerns about potential abuse or neglect. Employees are told that failure to report their concerns to a member of the administration, regardless of whether a report is made to DCF, DDS, or DPPC, is grounds for disciplinary action including termination.

Once a report of neglect or abuse has been made, the Director of Human Resources and the Human Rights Officer notifies the attending Clinician and Case Manager, performs an internal investigation, and informs and updates the Court Monitor. The Director of Human Resources or the Human Rights Officer must also notify the parent(s) or guardian(s) if the incident of abuse or neglect involves a physical injury to a client. During the internal

investigation, the Director of Human Resources and the Human Rights Officer remove the staff alleged to have caused any abuse or neglect from direct care responsibilities, interviews all relevant parties, reviews potential evidence of abuse or neglect, reviews any relevant documents, and takes steps to protect the safety of the alleged victim and other clients. At the conclusion of the investigation, a final written report must be prepared outlining the investigation procedure, conclusions, and actions taken in summary form.²³

After a report is made to DCF, DDS, or DPPC, the Director of Student Services acts as a liaison to the investigating agency and updates JRC administration as to the status of the agency's investigation. The Director of Student Services supplies any documents and evidence requested by the investigating agency and arranges for any interviews with relevant parties.

(4) Recording Sheets

Recording sheets detailing the student's program description, including latency, self-care, rewards, program changes, staffing requirements, status level, and dietary requirements are kept for each student. The sheets also contain a daily log that must be signed by each Shift Supervisor.

On the recording sheets, the direct care staff must report: all phone calls made to or from the student; any GED applications; restraints; any inappropriate behaviors exhibited by the student and the time such behavior was observed; any positive behaviors exhibited by the student and whether he/she was "on contract;" meals eaten; and searches performed on the student.

The direct care staff that were interviewed reported that the recording sheets take some time (several months) to become familiar with because they are highly detailed. Each recording sheet is unique to the student. The staff recognized the importance of filling out these sheets, but reported that this responsibility can be difficult when there is a crisis during the shift. A Special Education Teacher reported that she has memorized the behaviors and consequences listed in her student's recording sheets from spending so much time with the same students every day.

²³ Abuse and Neglect reports are also referred to the Incident Review Committee, which is described in detail on page 69.

Roving Monitors who visit residences randomly will review the recording sheets at each residence to ensure that they are being completed correctly.

(5) Notifications

In the event of serious injury or death of a student, criminal activity, or other serious incident affecting the well-being of any student, JRC will immediately notify the parents, the sending school district, any state agency involved in student care or program placement, and the Massachusetts Department of Elementary and Secondary Education. In the case of death, JRC will also notify DPPC and local law enforcement.

Injury/Illness:

Staff must notify a member of the Monitoring Department and complete an incident report. Monitoring will notify nursing, Student Services, the student's Case Manager, and Clinician. The nurse will notify the parent/guardian or DSS if more than first aid is administered.

If a staff member is injured, the Injury Coordinator or a member of HR, as well as a member of the Monitoring Department must be notified. Staff must also complete an incident report and an injury report.

Emergencies:

Staff are instructed to call 911 first in a serious emergency situation. In the event of any emergency, staff must notify Monitoring, who will then make the other proper notifications. During the evening hours, the DVR office must notify the Overnight School Supervisor, nurse, treatment team, and Programming. The Overnight School Supervisor would notify Glenda Crookes, the Executive Director, and Robert Duquette, the Director of Human Resources.

GED Notifications:

The Quality Control Department must be notified every time there is a GED application. The staff must report: why, who was there, what time, what were the antecedent behaviors. If the GED application happens at night, the DVR/Quality Control Department will notify the Nursing

Department and the Overnight School Supervisor immediately. DVR also sends a page to the student's Clinician.

If a student receives ten GED applications, the Designated Supervisor must notify the Clinician immediately. The Clinician will notify the Assistant to the Director for Programming and Monitoring/DVR of any authorization to go above ten GEDs.

If a student exhibits a GED targeted behavior that receives multiple GED applications, the Designated Supervisor must notify the Clinician to obtain authorization to administer the multiple GEDs.

If there is a GED misapplication, spontaneous application, or duplicate application, staff must notify a member of the Monitoring Department and fill out a GED trouble report and incident report. The Director of Clinical Services, the Director of Human Resources, the student's court-appointed attorney, and the Executive Director are all notified in the event of a misapplication.

If a GED must be removed from a student, staff must notify the Monitoring Department, who will notify the Case Manager and Clinician.

Restraint:

When any type of restraint is used, staff must notify the Monitoring Department, who will notify the HOP, the Nursing Department, the Case Manager, and Clinician.

Elopement:

If there is an elopement where the student is still in sight, staff must first contact Monitoring. If there is a pursuit and the student is not in sight, staff must first call 911, then Monitoring.

Threats to Harm Self or Others:

The staff member recognizing the threat must report it to the Supervisor in the classroom or residence immediately, and then complete a therapy note. The Supervisor must then report it to the Monitor.

(6) Tracking

On a daily basis, student services collects all paper incident reports, enters them into the incident reporting database, and reviews and organizes the incident reports for distribution to administration and professional staff.

I) Student Health / Nursing

i) Issues Identified Following 2007 Incident

At the time of the 2007 incident, staff failed to act when John Doe complained of dry mouth, racing blood pressure and sweating and after James Roe was observed walking with a limp after receiving GED applications to his leg. Further, staff failed to remove the GED device from James Roe's leg even though he had a stage II ulcer, meaning that the top layer of skin was broken.

Staff did not contact the nurse on-call for that evening after multiple GED applications were given to each victim; nor when the victims complained of pain, inability to breathe and exhaustion. John Doe was shaking and breathing heavily on the four-point board. Nursing was not notified when DVR monitor [REDACTED] first reached the residence that morning. A member of the Nursing Department learned about the incident through another student who happened to be in the nurse's office at 9:00 A.M. The victims who received GEDs were not seen by their physician until the following day, August 27, 2007.

ii) Changes Made by JRC

As a result of the 2007 incident, JRC created an "Overnight Nurse" position that views all GED applications and restraints via live video. A DVR Multiplex was created within the Nursing Office, which is similar to the In-House monitoring station. When a GED application is administered during the overnight hours, the Overnight Nurse watches the application through this monitor and enters nursing notes into the GED database. If the nurse notices any potential

health/ safety issues, he or she will notify the DVR Office. If the nurse must go out to a residence during the evening, he or she will notify DVR as well. The overnight nurse fills out an End of Shift report, which consists of questions and a checklist for GED applications to ensure that procedures were followed.

iii) Current Policies and Procedures

(1) Quality Control Policies

The staff person who witnesses or observes a student's illness or injury must notify the Shift Supervisor and Monitoring Department unless it is apparent that outside emergency assistance is necessary. In the event of a serious illness or injury, staff should request a face-to-face assessment of the student from the nurse. When nursing staff is available on site, the Monitoring staff must notify the Nursing Department upon notification. The staff person who witnesses or observes a student's illness or injury must complete an incident report. The Monitoring Department is responsible for notifying all appropriate administrative personnel.

(2) Clinical Staff

Each Clinician is also required to work one weekend shift every six weeks during which the Clinician roves between the residences. During this time, the Clinician checks on the health and safety of students at the residences ensures direct care staff is engaging in appropriate activities with the students, and checks on the maintenance of the residences.

(3) Nursing Policies and Procedures

The Nursing Department works collaboratively with all independent and JRC consulting physicians when administering medical care to students. There is a consulting physician who checks in with the Director of Medical Services, Doris Baron, R.N., every day. The physician also performs annual physicals on three-quarters of the students and reviews reports from doctor's visits. There are also other physicians and a psychiatrist in the area who regularly see students. A dentist comes to JRC once a month to see some students.

The students served at JRC are not typically medically fragile, nor do they require one-to-one nursing assistance. Several parents of JRC students who were interviewed for this report

praised the work of the nursing staff and JRC's ability to monitor their child's medical conditions, get the students to medical appointments, and provide care following surgery or during illnesses. Several parents reported feeling very confident in the safety of their child because the nursing staff pays close attention to the health of each student.

General Medical Services:

A registered nurse or licensed practical nurse is available to assist in the health care needs of JRC clients twenty-four hours per day, seven days per week. All JRC nurses also have a Nextel Phone assigned to them for immediate contact.

All first aid treatment is performed by the nursing staff whenever possible; however all direct care staff are certified in CPR and First Aid during the initial two-week training, and are then re-certified in CPR methods and first aid every two years. JRC maintains a list of staff that are CPR and First Aid trained that includes the name of these staff, their positions, and expiration dates of their current certifications.

Each student receives routine medical examinations as needed by the school nurse and physicians. Physical exams are given at the time of admission and annually thereafter. Any student who is in mechanical restraint is given a body check every fifteen minutes by a nurse or direct care staff member trained in this procedure. Students also receive dental services every six months or more frequently, if necessary.

Body Checks and Reporting:

Certain students are required to have body checks completed twice a day by either assigned staff or nursing. If body checks are required for a student, it will be noted in his or her current recording sheet. Staff must clearly document any marks or injury found on a student and must print their own name and the time of the body check in the space provided on the student's health sheet.

If an injury is noted near a GED electrode and if staff suspects it is due to the GED, or if any unexplained injury is found, Monitoring must be notified immediately. Monitoring must then notify the Nursing Department, who will make a decision about the seriousness of the

illness/injury and will immediately call 911 if an emergency exists. The Nursing Department must document any illness/injuries in the nursing notes and follow up with the student's treatment team or student services as appropriate.

Emergencies:

If a student is believed to be ill, injured, or has had an accident, the following procedures must be followed: 1) the staff person who witnessed or observed a student's illness or injury must notify the Shift Supervisor and Monitoring unless it is apparent that outside emergency assistance is necessary, in which case the staff person should call 911 and then the Nursing Department; 2) staff should request a face to face assessment of the student from the nurse if the illness or injury is serious; 3) the nurse should instruct the staff to call 911 or transport the student to the hospital if she is unable to honor the face to face request in a timely fashion; and 4) the Nursing Department is then responsible for ensuring the safety of the student and making sure all necessary medical treatment is provided including any follow-up treatment.

Whenever a nurse is not available, Monitoring staff will complete an Emergency Medical Checklist with the staff to assist in accurately assessing the situation and will determine if 911 should be called. If 911 is not needed or a face to face assessment is not requested, Monitoring will notify the On-Call Nurse, who will go through the Emergency Medical Checklist again with the staff.

If a student must be transported to the hospital, the Supervisor assigned by the Monitoring Department must ensure the emergency medical packet accompanies the student to the hospital, ensure a therapy note is filled out, and ensure that the examining doctor fills out a medical form and the accompanying staff member signs the form and documents any information gathered.

Monitoring is responsible for coordinating transportation to and from emergency medical treatment if an ambulance is not necessary.

The Nursing Department is responsible for notifying the parent/guardian and documenting the conversation in a Parent/Agency Contact. After a student returns from the

emergency room, the nursing staff will contact the parent or guardian to review the doctor's report in detail.

GED and Restraints:

When a GED application occurs, the Nursing Department is told the condition of the student, if there were any issues with the application, and when the electrodes were rotated. The Nursing Department also performs body checks for GED students. If any red marks are observed, the nurse will rotate the electrodes. If any marks are observed due to the buckle or lock on the device, the nurse will move the device. While any staff member can take a GED device off of a student, only the Nursing Department can put the device back on. The Overnight Nurse must watch all GED applications on the DVR Multiplex set up in the nursing office, and must fill out an End of Shift Report detailing all GED applications given that night. The Nursing Department is also notified any time a restraint occurs. A nurse must immediately check on the student in restraint to assess any pain.

J) Human Rights

i) Issued Identified Following 2007 Incident

The human rights of the students harmed in the August 2007 incident were certainly violated by the abusive and neglectful actions of the staff persons involved. The human rights of the students at JRC are monitored by the Human Rights Committee, which determines the policies and procedures for ensuring that students can understand their rights and file complaints for violations. JRC and the agencies that investigated the incident did not identify the Human Rights Committee as something that directly contributed to the breakdown during the incident. Nonetheless, the Human Rights Program is in place to monitor the safety of the students at JRC, and therefore it is worthwhile to discuss the committee and the ability of students to report concerns in light of the other safety policies and procedures in place at JRC.

ii) Changes Made by JRC

Because the Human Rights Program at JRC was more removed from the breakdown in the system than other aspects of program, i.e. the telecommunications policies, it did not appear to be an area of concern for the agencies or the administrators following the incident. Tanya Chiarella, the Compliance Regulations Officer, did meet with the Director of Human Rights for DDS to make sure that JRC's restraint recording policies were up to date. No formal changes were made to the Human Rights Programs as result of the August 2007 incident, although there are modifications made to the programs as issues present themselves, and according to changes in DSS requirements.

iii) Summary of Policies and Procedures

The Director of Student Services serves as the Human Rights Coordinator, who must schedule meetings of the Human Rights Committee, attend these meetings and take minutes, gather information relevant to JRC's ability to comply with regulations and promote human and civil rights of students, coordinate human rights officers in meeting their responsibilities, and assume any other duties as assigned by the Human Rights Committee.

(1) Student Human Rights Program

Students' Case Managers serve as their Human Rights Officers, and must participate in training programs offered or approved by DDS; implement means to inform staff, students, and families of individual rights; make copies of 115 CMR 5.00 available; train students annually in how to exercise their human rights and assist them in exercising these rights; provide students with opportunities to exercise their rights and inform them of the grievance process and right to go to the Human Rights Committee; provide legal information and referral services to students; and provide assistance in obtaining legal advice.

JRC has developed a computer program to teach developmentally delayed students or students who cannot read about their human rights. All other students take a series of quizzes based on several different "human rights scenarios," as well as on the policies and procedures of JRC with regard to human rights.

Students are asked to read a Human Rights Information document, sign, and date it. Then students take a one-page quiz on the information contained in this document. This information

includes who the student's Human Rights Officer is; that if a student has a human rights complaint, he/she should write a business letter to his/her HRO; alternate contacts for students if their HROs are unavailable; a list of fifteen rights that students have; and contact information for DMR, DPPC, and DSS.

Students are also given information about what physical abuse, sexual abuse, neglect, and emotional abuse are, how they can all affect children. Students take a three-question quiz on each topic after it has been reviewed with them. Students are then given information about how and when to report abuse and what will happen when abuse is reported.

Students are informed annually that they should report to their Human Rights Officer, DPPC, or DCF any time they believe that a student believes he or she has been abused or neglected, or if a reportable event has occurred. The fact that a student has a "loss of privilege" status will not affect their ability to communicate a human rights concern.

Students must let their teachers or residential supervisors know that they would like to speak to their Case Manager about a human rights issue. The teacher or residential supervisor must then attempt to contact the Case Manager in a timely fashion. If the Case Manager is unavailable or the grievance is against the Case Manager, the staff must contact the Human Rights Coordinator. Once inquiry into the matter is completed, the Human Rights Officer must inform the student of the results of the investigation and what action JRC has taken or plans to take to remedy the situation.

Students are informed annually that if their complaint is not satisfied, they have the right to contact DDS.

A staff is designated to serve as a student investigator. The student investigator solicits comments from students about staff and the JRC program using three methods: 1) end of the week questionnaires, 2) students ratings of staff they interact with on a daily basis on scale of one to ten, and 3) student interviews by the student investigator once a week.

The direct care staff reported that it is well understood that every human rights complaint made by a student must be reported to the appropriate person. If a complaint is made during the

overnight hours, an Overnight Program Supervisor reported that he would send a human rights officer to the residence immediately upon receiving notice of the complaint.

The direct care staff interviewed all stated that students make human rights complaints frequently during shifts, and that most of the human rights complaints made by students are dismissed after the Human Rights Officer speaks to the student and reviews the incident. If a complaint is of a serious nature (e.g. a student alleges that a staff member hit them), direct care staff believed that the staff member would be either put on restriction from working with that student or could be taken off the schedule pending the outcome of an investigation. Investigations can sometimes last three or four weeks, which can cause a hardship to the accused staff person, who cannot work or receive any pay during this time.

(2) Human Rights Committee

Powers:

The Human Rights Committee monitors and reviews: the authorization and use of behavior modification interventions proposed for students; the authorization and use of emergency restraints and other limitations on movement; the conduct of research at JRC; means utilized by JRC to inform students, staff, and families of student rights and means utilized by JRC to train the students, staff and families regarding these rights. The Human Rights Committee also provides students with opportunities to exercise these rights; and policies and procedures for compliance with DDS regulations. The Committee can make recommendations to improve human rights at JRC and can visit JRC without prior notice.

There are two separate and equal Human Rights Committees – one which focuses solely on cases involving students from New York State, and one which focuses on all other student cases. The Committees develop operating rules and procedures, as they deems necessary to accomplish its purpose. The Committees may appoint sub-Committees to perform specific functions.

Members agree that frank and candid discussion between JRC staff and members of the Committees is essential.

A decision to approve a Behavior Modification Treatment Plan must be by majority vote.

Review of meeting minutes reveal that the Committees meets once a month and discusses the prior month's restraints, as well as specific students programs and progress in order to approve individual plans.

Make-Up of Committee:

The Committee consists of 1) a doctor or nurse, 2) a psychologist or masters level practitioner with expertise in intellectual disability and developmental disabilities, mental illness, or applied behavioral analysis, 3) an attorney, law student, or paralegal with relevant expertise, and 4) at least three clients receiving services or supports provided, purchased, or arranged by DDS, or family of such clients.

The Committee which handles New York student cases consists of: a New York State education appointee; a JRC parent chairperson; a nutritionist; a licensed psychologist; a nurse practitioner; and a lawyer. The Committee which handles all non- New York student cases consists of: a JRC parent chairperson; a nurse, a Clinician (not associated with JRC); two JRC parent members; and the Director of Human Rights for DMR.

JRC does not employ committee members. The Committee who has no financial or administrative interest in JRC elects a chairperson.

Minutes of meetings are kept and copies are filed with DDS.

The Committee can consult with JRC's Peer Review Committee members for assistance. Committee members are not expected to have the expertise to propose treatment procedures.

Committee members are invited to participate in the Committee by either JRC or the Committee itself; however JRC makes the final decision with regards to membership.

The term for members is indefinite.

Meeting Minutes:

At the January 25, 2011 meeting, the Committee reviewed four individual treatment plans, all of which were approved.

At the February 10, 2011 meeting, the Committee reviewed and discussed restraints for the month of November 2010, the forty-four new admissions to the program during 2010, and eight individual treatment plans. The meeting minutes indicate that seven of these plans were approved. The Committee also reviewed JRC's Bullying Prevention and Intervention Plan, as well as the Student Policy on Participation in Sports.

At the March 16, 2011 meeting, the Committee reviewed and discussed restraints for December 2010 and January 2011; eight individual treatment plans, all of which were approved; eight individual special considerations, all of which were approved; and an investigation regarding a client by DPPC.

At the April 26, 2011 meeting, the Committee reviewed and discussed four individual treatment plans, all of which were approved.

At the May 11, 2011 meeting, the Committee reviewed and discussed restraints for the month of March 2011 (note: restraints for February 2011 do not appear in any meeting minutes); and eight individual treatment plans, six of which were approved by the Committee.

VI) FINDINGS AND RECOMMENDATIONS

It is important to note the difficulties any residential program has achieving all its goals without incidents involving the security of its students. This is particularly true when the JRC student population faces severe emotional and physical disabilities that often lead to erratic and volatile, unpredictable situations. All of the parents interviewed for this Report – and others – acknowledged this inevitable “human factor” with regards to safety at JRC, but still expressed feeling confident in the safety of their children. Overall, JRC has implemented a number of positive changes since August 2007 to address safety, staff training and supervision, the exercise of good judgment, and even reporting behavior that may be critical of JRC and its policies. Nevertheless, interviews with JRC administration, staff, and others, as well as review of numerous JRC documents, and other material including, but not limited to Grand Jury materials, have revealed a number of areas where JRC can further strengthen its practices, policies and procedures to further ensure the safety of the residents.

A) Quality Control and Monitoring

i) **Summary of Findings**

Overall, the DVR Monitoring system utilized by JRC goes a long way to ensuring the safety of both students and staff. The changes implemented by JRC since the August 2007 incident have improved oversight of the Monitoring Department and training of DVR and monitoring staff, including the addition of In-House and Roving Monitors, a DVR Monitoring Shift Supervisor, Situational Awareness Training for all DVR and monitoring staff, and a revised procedure for taking breaks by staff.

According to JRC policies and procedures, In-House Monitors may be assigned to overnight shifts as a sleep aides; however, DVR staff focus on monitoring houses without In-House Monitors during shifts at the residences.

ii) **Recommendations**

JRC should immediately implement a policy requiring DVR staff to monitor not only residences without In-House Monitors, but also houses where the In-House Monitor is assigned

as a sleep aide. If the In-House Monitor is awake, there is less of a need for DVR staff to monitor the residence; however when the In-House Monitor is asleep, it appears that there is essentially no monitor at the residence. During this time, DVR staff should – for example – be instructed to flip through screens of residences where the In-House Monitor is asleep with the same consistency as they flip through screens of residences without In-House Monitors.

B) Telecommunications

i) Summary of Findings

All JRC documentation and interviewed staff indicated that all calls made to the residences must first go through DVR for verification. However, it is possible for someone to call a residence directly through the IP phone system from the JRC campus.

Staff reported that if an individual calls the residence asking for a student, staff would direct that caller to phone the DVR/Monitoring Office. A DVR/Monitor will then verify the phone call and will call the residence back to either transfer the caller to the residence, or to request the residence have the student place a call to the individual who wishes to speak with him/her. Our concern is that, the Director of Clinical Services explained that he has the ability and will personally call the residences himself without first going through DVR. Additionally, direct care staff was very unclear about what the process should be if a Clinician or Case Manager would like to call a residence. Most staff interviewed had never had a Clinician or Case Manager call the residence; however they believed that if Clinicians or Case Managers did wish to call a residence, they could call directly on either the IP phone line or the regular phone line to the residence.

Additionally, according to JRC's Procedures for Residential Phone Calls, the designated supervisor for the shift must receive all incoming phone calls unless the supervisor is unavailable because of a crisis or on a scheduled break. All direct care staff and supervisors interviewed stated that any staff member might answer the phone at the residences, as long as they log the phone call in the phone log, which the supervisor reviews and inputs into his/her End of Shift Report.

ii) Recommendations

Clinicians and Case Managers must be clearly instructed not to call the residences directly, even through the IP phone system, and should be required to go through DVR as all outside callers are required to do. JRC should modify its IP phone system to restrict calls to the residences from the IP phone system on campus so that all calls go through DVR and follow the protocol for all incoming calls.

JRC should amend the Procedures for Residential Phone Calls to include this procedure. Although staff is trained and retrained that they cannot administer an aversive consequence without witnessing the behavior personally, there exists the possibility that staff may follow the directives of a Clinician or Case Manager even if the staff member did not witness any behaviors. Direct care staff reported that they would sometimes call Clinicians or Case Managers from the residences with questions about students' programs, indicating a high level of trust in the Clinicians and Case Managers with regards to program concerns. JRC training programs should also include instructing staff that Clinicians and Case Managers cannot direct staff to administer consequences if the staff member did not witness the behavior.

All direct care staff interviewed knew clearly that DVR/Monitoring cannot call a residence and direct staff to administer GEDs, and that staff cannot administer aversives without witnessing the behavior meriting the same. However, even if staff would most likely react properly, forcing Clinicians and Case Managers to verify themselves through DVR when they wish to call a residence would foreclose any possibility that an imposter would call a residence posing as a Clinician or Case Manager. JRC could also consider the use of personal employee codes or shift-specific passwords that JRC employees wishing to call a residence must provide to DVR/Monitoring before they are able to speak with anyone at a residence.

Additionally, JRC needs to enforce the written policy requiring supervisors to speak with all incoming callers. One of the concerns with the August 2007 incident is that the Shift Supervisor did not speak with the caller posing as a DVR Monitor. JRC justifiably then adopted a policy requiring the designated supervisor on a shift to receive all incoming phone calls with exceptions for a crisis or a scheduled break. Apparently, this policy is not being consistently enforced, as all direct care staff and supervisors interviewed stated that the supervisor does not need to answer all incoming calls or speak with all callers. A training or retraining may be

required on this policy, and DVR/Monitoring may need to be alerted to watch for this at the residences.

C) Staff Hiring and Retention

i) Summary of Findings

Based on interviews with staff and administrators, JRC does not often hire new employees for lateral staff and administrative positions. All of the current administrators were originally hired as direct care staff and were promoted from within until they reached their current position.

Given the nature of the work direct care staff performs at JRC, it is challenging for the school to keep direct care staff members. JRC goes a long way to attempting to make employment worthwhile for direct care staff. The benefits package for staff members is excellent, including education assistance, full medical and dental benefits, retirement plans, and paid holidays and vacation days.

The Monitor would like to raise as an on-going concern, the qualifications and training of all employees; particularly given that the level of experience, training, and supervision of the direct care staff involved in the August 2007 incident was a significant issue. To be fair, as otherwise noted in this Report, great strides have been made since the August 2007 incident in a number of areas, including the qualifications and skills of its staff.

ii) Recommendations

Given the nature of the population JRC serves, it is understandable that JRC may experience challenges in hiring qualified employees. However, continuing to endeavor to also hire from outside JRC to fill lateral staff and administrative positions may help provide diversity in opinions and experiences at the supervisory and decision-making levels. This type of diversity would help ensure that all potential problems are considered and would help JRC continue to develop robust safety policies – it would provide for a “fresh” set of eyes.

The Monitor recognizes the difficulties JRC faces when attempting to find qualified, responsible candidates to fill direct care positions, particularly given the sacrifices that

accompany working with the residents at JRC, the school must continue making efforts to hire direct care employees who are willing to learn, are responsible, and will take their work extremely seriously. Additionally, JRC must continue to scrutinize candidates for clinical positions to ensure that all clinicians have the requisite qualifications and experience to make sound therapeutic decisions for students.

D) Staff Training

i) Summary of Findings

The training program at JRC has changed and improved in important ways as a result of the August 2007 incident. New staff members now receive training on the exercise of good judgment and are required to go through an additional eight hour training and probationary period prior to being able to administer GED applications and perform GED self-care. Additionally, all staff are required to be re-certified every year in order to work with GED students.

In discussions with JRC staff members, it was also apparent that despite the extensive training new staff receive, it takes some time before staff members feel comfortable with JRC residents and the GED program. It is clear that a lack of understanding about JRC's treatment approach and the GED program contributed to the August 2007 incident, particularly given the limited experience of the staff at the Stoughton residence that evening. There appears to be very little, if anything, contained in the Basic Training related to the types of behaviors typically addressed by the GED and why these behaviors are appropriate for treatment with the GED.

Additionally, the Monitor has some concerns about whether the staff is required to complete any formal training related to how to identify behaviors that are appropriate for GED consequences. While staff must complete the GED certification program, currently there appears to be no training provided to staff to help them understand what types of behaviors are typically consequted with the GED, what the outcome is, and how to determine whether a client's behavior is appropriate for the GED. It may be that staff relied on Dr. Israel for significant guidance in these areas in the past.

While staff are instructed that they must witness a behavior in order to administer an aversive, and are told that DVR/Monitoring cannot instruct staff to administer aversives, the August 2007 incident itself in its entirety is not presented to trainees, nor is it used as a teaching scenario in the Basic Training for new staff.

It also appears that JRC employees are also not currently trained in when and how to contact local law enforcement. While mandated reporting to state agencies is thoroughly covered in both the Basic Training and in-service training, situations in which local law enforcement should be contacted are not reviewed with new or existing staff.

ii) Recommendations

A learning curve is expected in any job, and it is understandable that new employees may take some time to assimilate given the uniqueness of JRC. The school should institute a mentor program for new staff. After the initial three-week training, new staff work on a probationary status for three months or thirty-six shifts before they receive the additional eight-hour GED training. During this period, new staff are exposed to the JRC clients and the GED program, and may benefit from being assigned to or paired up with an experienced staff member to help them emotionally and physically understand the demands of their new job. All interviewed staff members reported feeling comfortable raising questions or concerns with supervisors, other employees, and administrative staff; however it would be prudent for JRC to consider a mentor program for new employees, who may not know what questions to ask and can rely on an experienced staff member to help guide them through the difficulties associated with the position of Mental Health Assistant and similar positions.

This type of mentoring system would not only provide a gradual way of transitioning new staff from training into work, but it would also provide JRC greater insight into potential problems before they arise. Mentors, as experienced staff members, would be in an ideal position to raise any issues with new staff or during the training program with JRC administration. This would provide another method by which JRC could address issues before they impact the safety of the students.

More in-depth training for direct care staff should be developed that covers the purposes of the GED, the goals for students on the GED, and what types of behaviors are appropriately addressed through use of the GED. This will help orient new staff to the uniqueness of the JRC program, and will assist them in identifying behaviors for use with the GED. The types of behaviors that are addressed by the GED should also be part of the Basic Training for direct care staff in order to ensure there is no confusion on the part of the JRC employees who apply the GED.

JRC should consider all aspects of the August 2007 incident as a teaching scenario in the Basic Training program. The Training Department certainly addresses some aspects of what occurred in August 2007 in training; however the full event in its entirety could be used as a scenario and example of exactly what should not occur at the residences. The Monitor understands that there may be privacy and other related issues that need to be considered for the more extensive use of [REDACTED] the details of the August 2007 incident, but as much of the incident as can appropriately be used in training, could be an invaluable tool.

Staff Supervisors, DVR and Monitoring staff, School Supervisors, and Overnight School Supervisors should all receive training regarding what types of scenarios call for notifying local law enforcement, and how to make those contacts. Ted Condon, the Security Consultant for JRC, could assist with developing this training, as well as input should be obtained from local law enforcement officials. For example, this training could be provided in the Supervisor, DVR and Monitoring trainings. This could help reduce any fears or hesitation on the part of JRC staff towards local law enforcement, reinforce the relationships developed between JRC and local police, and would provide an additional layer of safety for students at the residences.

E) Staff Independent Judgment

i) Summary of Findings

JRC's development of the Good Judgment Policy and training has been a critical step in ensuring that an event like the August 2007 incident does not happen again. Staff at JRC are instructed from their first day of training that questions and concerns are welcome, and that questioning a directive or an aspect of a student's program is encouraged. Further, employees are

told that if they fail to report behavior that is against JRC policies, disciplinary action will be taken against them. It is clear, based on interviews with both direct care staff and JRC administrators, that there has been a change in culture at JRC since August 2007 with regards to reporting issues and raising questions. Administrators from Human Resources, Regulations and Compliance, Training, and the Interim Executive Director all reported receiving significantly more reports and questions from staff members since the Good Judgment policy was enacted.

Currently, there is no independent, neutral individual whom staff can direct questions or concerns to in confidence, and who checks in with staff members periodically. It is positive that employees are encouraged, beginning in Basic Training, to report any questionable behavior by other staff members to various JRC administrators. New staff are provided with cards containing phone numbers and contact information for the administrators who should receive these reports, and these administrators meet with new staff during Basic Training to encourage staff to raise questions or concerns without fear of being unfairly evaluated. Staff are also able to report inappropriate behaviors of or raise concerns about other staff members anonymously through both email and a dedicated phone line for anonymous calls. Certain JRC Administrators, the Executive Director, Director of Human Resources, and the Director of Student Services, receive these anonymous reports. It is the Monitor's belief that a further step is necessary.

ii) Recommendations

Although JRC makes genuine and serious ongoing efforts to encourage staff and students to raise questions and concerns with administrative staff, employing a neutral and independent ombudsman that staff can report to – and who can report to staff – will help ensure that even the most hesitant of staff and residents would report any questionable behavior. There should be a person at JRC, other than the administration and an off-duty law enforcement officer, who would be independently available to staff and residents to receive questions and reports in confidence to ensure individuals are comfortable speaking up. Such a person need not be full-time or work in-house at JRC. The details of his/her duties, expectations, hours, and the like, can certainly be discussed and worked out; more importantly to this Monitor, is the importance of the position.

F) Staff Supervision and Safety

i) Summary of Findings

The addition of the Overnight School Supervisor position was an important change made by JRC after the August 2007 incident. This position fills the gap that previously existed with regards to reporting and notifications, and provides another important layer of oversight during shifts at the residences.

JRC seems to be making reasonable efforts to find experienced supervisors and staff to cover for shifts where the designated supervisor is absent. However, there is currently no written policy or procedure for the method by which the School Supervisor or Overnight School Supervisor can attempt to obtain coverage for these supervisor shifts. Additionally, staff who have been employed at JRC for more than six months, but have not completed the Supervisor Training, are able to serve as Shift Supervisors if there are no trained Supervisors available to cover the shift.

The supervisors interviewed reported that it can be difficult when direct care staff are different for each shift at a particular residence. While it seems that Residential Supervisors and Residential Coordinators are assigned to a particular residence for a certain period of time, many non-crisis direct care staff are rotated among the residences for every shift. Supervisors indicated that this can make handling a crisis or dealing with inappropriate behaviors by the students more difficult, as the students tend to act up more with staff they are not familiar or have a relationship with. Further, supervisors stated that staff is able to work more as a team when they work more consistently with one another.

Additionally, JRC's Security Consultant, Ted Condon, does not currently have a formal title and has never been formally introduced to JRC staff or the Board of Directors. While he is a positive presence in the residences during weekend shifts, it is unclear whether direct care staff understand who he is and his role. To the degree that there may be some value to his "unannounced" visits and inspections, greater benefits are possible with his presence and duties more obvious and known to all.

Finally, while JRC maintains a Safety Committee comprised of school administrators, the Board of Directors does not currently have a sub-committee dedicated to reviewing student safety.

ii) Recommendations

The process by which School Supervisors and Overnight School Supervisors find coverage for a supervisor shift should be written down. It may help to make things clearer and maintain consistency if this process was written down, and could alleviate some of the work that is done to rotate coverage among the direct care supervisors and experienced staff. For example, perhaps a written list of each supervisor and experienced staff member eligible to cover shifts could be created, on which the School Supervisor or Overnight School Supervisor can indicate the dates these staff members covered supervisor shifts in order to rotate coverage responsibilities and maintain consistency.

Additionally, in order for a staff member to be called upon to cover a supervisor shift, they must have completed the Supervisor Training. No staff member should be serving as the Supervisor at a residence if they have not gone through the additional training required for Supervisors.

Although absenteeism and commuting distances for staff may constrain JRC's ability to maintain consistency among staff in the residences, further efforts should be made to do so in order to help supervisors maintain control and safety in the residences.

Ted Condon should be formally introduced to the JRC Board of Directors and should be given a formal title. Additionally, staff should learn about him and his role in Basic Training so that they understand his function within the JRC community. This will promote transparency and trust in the relationship between administration and staff at JRC.

The Board of Directors should expand its numbers and form a sub-committee dedicated to reviewing student safety. This sub-committee should meet more often than the full Board does, and should have a dedicated place in the agenda of Board meetings to provide updates and share any concerns the sub-committee may have with the rest of the Board. The Board's safety sub-committee would maintain a relationship with the staff and the independent ombudsman as

well (should that recommendation be adopted). In addition, this sub-committee of the Board would ensure that all relevant Committees at JRC (Human Rights, Safety, and the Incident Review Committees) remain in close communication and stay in touch with one another.

G) Evaluations

i) Summary of Findings

Inconsistencies within quarterly evaluations were noted among PIO points given to staff members for the same first-time offenses. However, overall, the staff interviewed reported that the Evaluations System is understandable and that the Evaluations Department makes efforts to hear all parties when an infraction is reported. Staff at the Stoughton residence in August 2007 expressed fear of being evaluated throughout and about the event and in interviews thereafter. JRC has made genuine efforts to allay these fears and ensure that evaluations are conducted fairly and responsibly.

ii) Recommendations

Understanding that employees at any institution are not always enthusiastic about a system of evaluating staff, JRC could make additional efforts to ensure consistency among PIO points given for similar first time offenses. Additionally, JRC may want to take their open-door policy one step further and inform staff during training that not only is raising questions or concerns encouraged, but raising a concern about a situation that does not turn out to be a “real” issue will not result in disciplinary action being taken against the reporting staff member, particularly where it is done reasonably and in good faith.

H) GED and Restraints

i) Summary of Findings

The revisions JRC made to their GED policies with regards to the application process, verifications, notifications, and recording were an important step towards ensuring the safety of students on the GED.

Currently, JRC does not maintain a policy specific to the application of other level III aversives, including restraints, excluding the GED. Additionally, there is no clear policy delineating between emergency restraints and restraints utilized as an aversive according to a court approved substituted judgment plan. This distinction was difficult for the Monitor to understand, particularly where a student's program indicates he/she receives aversive restraint for aggression or posing a danger to him/herself or others.

ii) Recommendations

JRC should create a clear, written policy regarding application, verification, notification, and recording procedures for non-GED level III aversives. Understanding that applications for non-GED level III aversives will differ from GED applications, these policies should be consistent with the requirements for GED verification, notification, and recording procedures. Additionally, there should be clear written procedures with regards to safety checks for any students placed in aversive restraints.

Additionally, new staff should be trained and current staff should be retrained on the difference between emergency restraint and non-emergency restraint used as an aversive. Although there are very few JRC students whose programs are approved for aversive restraint, the possibility that restraint may be used as an aversive requires that staff clearly understand the difference between the two.

I) Recording and Emergency Notifications

i) Summary of Findings

JRC does not maintain a policy regarding how emergencies are communicated internally to staff members. All of the direct care staff interviewed who were at JRC in 2007 reported first that they heard about the August 2007 incident from other staff that were talking about it, not from an announcement made or a meeting held by JRC administration or the staff's supervisor. The Monitor recognizes that in an on-going crisis or immediately afterward, especially when all the facts are not known, there may not be much to report to staff; nevertheless, some policies and procedures about and methods to inform personnel needs to be instituted, even if an initial report

is not totally conclusive of all the facts – a “preliminary report” and guidance would reduce concern and rumors.

Additionally, there is currently no written policy stating that all evidence obtained through internal investigations should be maintained for state agency review. There is also no policy stating what types of documents [REDACTED] should be collected or created during an internal investigation of a report of abuse or neglect. JRC also does not seem to have a uniform drafting procedure with regards to changes made to written policies and procedures.

Direct care staff also failed to follow the proper notification and recording requirements during the August 2007 incident. When asked about this, one staff member stated that “you do not think” in an emergency as an explanation for why the recording and notification procedures were not followed.

ii) Recommendations

JRC should have a written policy and procedure regarding how emergencies that occur at the school or residences will be communicated to staff members. While there are certainly situations, such as a student behavior crisis or a trip to the emergency room, that direct care staff does not need to be made aware of – at least immediately – significant events should be communicated to staff by JRC administration in order to learn from mistakes and foster a transparent relationship between staff and administration.

While new staff is trained on GED recording and notification procedures, and all direct care staff interviewed for this report knew these procedures well, staff should be retrained on the importance of following these procedures regardless of whether an emergency exists. In particular, In-House Monitors and Shift Supervisors should be trained on responding to emergencies, including how to maintain proper protocol in times of high stress. DVR and Monitoring staff should be instructed to remind residential staff of this as well.

A written policy and procedure should be maintained related to internal investigations of reports of abuse or neglect. While the Director of Student Services maintains his own notes and supplies these to state agencies upon request, JRC should have a policy in writing regarding how and what documents and other evidence should be preserved or created for state agencies to

review when a report of abuse or neglect is made. All administrative staff should also be reminded to maintain all internal records related to reports of abuse or neglect. Any “error” should be made on the side of maintaining more rather than less records and information.

Further, JRC should utilize a consistent method of drafting and re-drafting policy and procedure documents. All changes should be clearly identified and dated, possibly through the use of a log, so that reviewing agencies and individuals can clearly ascertain what changes were made, when they were made, and by whom.

J) Student Health/ Nursing

i) Summary of Findings

The addition of the Overnight Nurse and DVR multiplex in the Nursing Office greatly increased the level of safety at the JRC residences. However, JRC policies regarding when a student should be taken to the hospital are somewhat unclear. The students involved in the August 2007 incident were not taken to the hospital until a few days after the event. The position of this Monitor is that any incident that involves for a potentially serious injury – physical or emotional – should be dealt with medically and immediately.

ii) Recommendations

JRC should rewrite policies regarding when students should be taken to the emergency room or if immediately available, to their physician. While certainly the Nursing Department should be notified and should initially assess the situation, staff should be trained on when circumstances necessitate a trip to an emergency room or a physician. Further, it should be JRC policy that all students who suffer moderate or potentially serious injuries, be checked at a hospital or doctor’s office as soon as possible after the injury occurs.

K) Human Rights

i) Summary of Findings

The revised training for students and staff on human rights complaints seems to have empowered JRC students to report issues sooner and more often. While a particular student may

make an unsubstantiated complaint, the fact that they feel empowered to make complaints is an improvement from August 2007. During the incident, none of the three students involved mentioned wanting to make a human rights complaint, even though this system was in place at the time.

In reviewing the minutes from the Human Rights Committee meetings, it does not appear that the Committee reviews human rights complaints made by the students. Rather, the Committee only reviews the number of restraints for the prior month, and reviews and approves amended treatment plans. Students are informed of their right to go to the Human Rights Committee with a complaint; however it does not appear that any complaints actually make it this far.

The Monitor also has some concern with regards to the membership of the Human Rights Committee, specifically in so far as it relates to the Committee's approval of student treatment plans. There is currently only one Clinician on the Committee and one licensed psychologist, and there are four parent members with children who attend JRC. While certainly the make-up of the Committee may be appropriate for reviewing human rights complaints and restraints, the approval of student treatment plans may requires more expertise and neutrality than currently exists on the Committee.

ii) Recommendations

The Human Rights Committee should be reviewing human rights complaints filed by students regardless of whether students have requested their complaint be heard by the Committee. This could be done anonymously if students do not wish their identities be revealed. It is important that the Committee review these complaints in order to understand the efficacy of the Human Rights program, whether Human Rights policies need to be changed, and properly assess student safety.

In order to ensure the Committee does not review complaints that are found to be unsubstantiated, Human Rights Officers could recommend complaints that they feel should be reviewed to the Human Rights Coordinator (the Director of Student Services). The Human

Rights Coordinator could then pick an appropriate number of complaints for review by the Committee.

JRC should reevaluate the membership of the Human Rights Committee to include more qualified clinicians and more individuals with no ties to JRC. The Monitor understands that the voice of JRC parents who must consent to treatment plans is critical to have on the Committee; however this should be balanced with more clinical expertise and independent judgment.

VII) CONCLUSION

In conclusion, it should be noted that JRC has made genuine and significant strides in amending its policies, procedures, and training to ensure the safety of the JRC students. It appears to this Monitor that dedicated efforts have been made to learn from the August 2007 incident and to ensure it is never repeated. JRC and its staff are to be commended for this. There are additional steps that JRC should take to further protect its students. Nothing in this report is meant to indicate a belief that all potential safety issues are foreseeable or preventable, particularly given the unpredictable nature of the issues that students at JRC face; however, the Monitor believes that the additional recommendations can assist JRC in maintaining the safest environment possible. Furthermore, nothing in this report is intended to suggest an opinion on the part of the Monitor on the use of GED aversive treatments – for or against – and nothing in this report should be taken as a recommendation on the appropriateness of the use of GEDs at JRC. The Monitor looks forward to working with JRC and the appropriate authorities to conduct future quarterly reviews, observe and report on JRC's continued progress.



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VIII) ADDENDUM TO THE FINAL REPORT

A) Meeting with Agency Representatives

On May 13, 2012, the Monitor and an associate from his law firm met with representatives from several state agencies at the Office of the Attorney General in Boston to discuss their views on JRC and the incident in 2007. In attendance were the following representatives: Marianne Meacham, General Counsel for the Department of Developmental Services; Maureen McGee, General Counsel for the Executive Office of Health and Human Services; Carmel Sullivan, Acting General Counsel for the Department of Early Education and Care; Lester Blumberg, General Counsel for the Department of Mental Health; Carrie Wicker from the Office of the Governor's Legal Counsel; Jennifer Grace Miller, Chief of the Government Bureau for the Office of the Attorney General; and Dianne Curran, Associate General Counsel for the Department of Elementary and Secondary Education.

DDS is responsible for licensing JRC's adult residences, for certifying (ensuring compliance with regulations) JRC's Level III (aversive) program; it also participates in JRC's Human Rights and Peer Review Committees. Another agency, the Department of Early Education and Care, relies upon the DDS certification of the Level III program in their licensing of JRC's children's residential programs. Roughly 38% of the approximately 213 individuals at JRC have a court-approved Level III behavior treatment plan.

DDS acknowledges that JRC has taken steps in the aftermath of the August 2007 incident to improve the safety of individuals who receive aversive interventions; however, DDS continues to work with JRC through the Level III certification process on issues pertinent to the incident, including the use by JRC of Level III interventions to treat non-dangerous behaviors such as "noncompliance" or "swearing" or "out of seat without permission." DDS also noted that in the August incident, individuals received GED while in mechanical restraint, a practice which JRC has agreed to eliminate.

At the time of the meeting, DDS clinicians were in an ongoing mediation process with JRC regarding the Level III certification to resolve outstanding issues related to the Level III program.

Carmel Sullivan appeared on behalf of the Department of Early Education and Care, which licenses the children's group homes. DEEC conducted an investigation following the August 2007 incident. Attorney Sullivan's ongoing concerns include the training and supervision of staff and the ability of staff to question directions from supervisors. Also, she is concerned about the lack of unstructured time for the residences and commented on the large amount of time that JRC students spend in the classroom.

Lester Blumberg, General Counsel for the Department of Mental Health attended the meeting and expressed agreement with the statements of the other agency attendees. Currently, DMH does not have any clients at JRC, but they have had placements in the past.

Dianne Curran, Associate General Counsel for the Department of Elementary and Secondary Education, explained that her agency is involved with GED treatment at JRC to the extent that it occurs during the school day. EES is scheduled to conduct its six year review of JRC in July 2012.

Maureen McGee, General Counsel for the Executive Office of Health and Human Services, explained that her agency has worked to coordinate the efforts of the numerous agencies involved. Attorney McGee commented that all of the agencies involved have made a serious effort to work *with* JRC on the GED and related issues.

B) Review of Agency Materials

Following the meeting on May 13, 2012, the Monitor had the opportunity to review additional documents provided by agency representatives. The Department of Elementary and Secondary Education provided the Monitor with a summary description of the department's interaction with JRC, from approval education programs, to regular monitoring reviews, complaints, annual re-approval, and incident reporting for students from Massachusetts and other states.

The Department of Developmental Services provided the following documents which were also reviewed by the Monitor: "Report of the Certification Team on the Application of the Judge Rotenberg Educational Center for Level III Behavior Modification Certification" dated July 8, 2010; "Department of Developmental Services Response to Testimony and Written Comments to Proposed Amendments to Behavior Modification Regulations" dated October 14,

2011; and 116 CMR 5.00 – 5.16, Standards to Promote Dignity of the Department of Developmental Services dated October 14, 2011. These documents reveal that DDS and the recertification team conducted a comprehensive analysis of the current Level III program and made clear its clinical concerns relative to JRC's program. The October revisions to the DDS regulations provides that Level III Aversives cannot be included in any new treatment programs created after September 1, 2011.