

Disabled Persons Protection Commission
M.G.L. c. 19C / 118 CMR Investigation Report

Alleged Victim: [REDACTED]

Investigation Agency: DPPC

DPPC Case Number: 152292

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Date of Incident: 12/13/2016

Allegation Investigated:

On 12/13/2016 at 12:52 PM ALV was engaged in crisis behavior which required physical contact and ALAB came to assist in redirecting ALV. While the intervention was taking place, ALV hit staff members several times. ALAB reacted by lunging forward to initiate a physical restraint and in the process made contact with his forearm/elbow and ALV's throat neck area in which ALV was injured. ALV continued to hit ALAB and ALAB continued to attempt to physically restrain ALV. ALV stated that the ALAB inappropriately restrained her by choking her and [REDACTED] also stated ALAB inappropriately restrained ALV. [REDACTED] examined ALV. ALAB is currently on suspension and is under investigation. The ALV is under 24 hour supervision and observation.

The Alleged Victim (Alv) is a "Person with a Disability" as defined by M.G.L. Chapter 19C &/or 118 CMR? If not, please explain:

118 CMR Definition: a person 18 through 59 years of age, who is a Person with an Intellectual Disability or a Person with a Developmental Disability, as used in M.G.L. c. 123B, § 1, or who is otherwise mentally or physically disabled, and, such mental or physical disability prevents or restricts the individual's ability to provide for his or her own Daily Living Needs; provided, however, that a person who is temporarily dependent upon a medically prescribed device or procedure to solely treat a transitory physical ailment or injury shall not be considered a Person with a Disability for the purposes of M.G.L. c. 19C unless that person otherwise meets the definition of a Person with a Disability.

Alleged Victim's Primary Disability:

► The Alleged Abuser (Alab) does meet the definition of a "caretaker" as defined by M.G.L. Chapter 19C &/or 118 CMR?

If Alab does meet the definition, provide at least one example of care provided. If Alab does not meet the definition, list facts that support this determination.

118 CMR Definition: Any State Agency or any individual responsible for the health and welfare of a Person with a Disability by providing for or directly providing assistance in meeting a Daily Living Need, which cannot otherwise be performed by the Person with a Disability without assistance, regardless of the location at which such assistance occurs. Minor children and adults adjudicated incapacitated by a court of law shall not be deemed to be Caretakers. Caregiver and Caretaker may be used interchangeably without changing the meaning of either.

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Category of abuse committed by the Alleged Abuser: Act

Injury sustained by the Alleged Victim:

Physical Injuries:

First: None

Second: None

Emotional Injuries:

First: None

Second: None

Abuse Per Se: Application of physical force in a manner that inflicts pain

If "Other" or more than two types of injury explain:

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Description of the act and/or omission of the Alleged Abuser that caused the injury sustained by the Alleged victim?

Alv was in a classroom with cubicles and a few other students, but wished to be placed in a conference room. There was no conference room available in the building she was in, so she was told this was not possible (safety concerns reportedly prevented her from being moved to the other building). Alv was upset and asking to talk to someone, and she became self injurious, hitting walls with her arms, head and legs, and aggressive, hitting staff. Alab and other staff were attempting to calm Alv, but she continued to aggress.

Alv hit Alab and he went towards her with his arm up, making contact across her neck. Alv cried out, and said "he's hurting me," then asked I-4 to replace Alab because he choked her. I-4 and I-5 stated that Alab was rough. I-4 said he saw Alv "scrinch" her face in response to Alab's action.

I-4 said that had Alab done to him what I-4 saw him do to Alv, that he thinks it would have caused him (I-4) pain. Alv said that she felt pain in response to Alab's actions.

Based on the totality of testimony and evidence, it is more likely than not that the actions of Alab caused Alv pain.

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► **Facts pertinent to the allegation(s) investigated:**

I-4 stated that he saw I-5 from Classroom C poke her head into the hallway to ask for assistance, and he responded. He stated that Alv was trying to leave her cubicle area and was voicing threats to I-2. I-4 stated that staff were attempting to calm Alv, and he assisted. I-4 stated that Alv wanted to go to an even more restrictive classroom (conference room), but that they were full. Alv continued to say she wanted to talk to someone and wanted to go elsewhere.

I-4 assisted staff in trying to calm Alv and prompt her to go to her cubicle. Alab arrived to the room and joined in this effort. Alv continued to resist. Alab directed Alv to sit on a mat in the main area of the room, but Alv continued to fight and resist prompts to do this. Alab and I-5 attempted to "supportive guide" Alv back to her cubicle, and Alv continued to resist. Alab initiated a "supportive guide" again and brought Alv forward to her cubicle, but she began slapping Alab and hitting him.

I-4 said that he saw frustration in Alab's face after Alv hit him. I-4 said that Alab then raised his forearm and elbow and went directly towards Alv making contact with her throat area, high on her neck. I-4 said that he was attempting to relieve Alab and as he spoke to him, Alab adjusted his arm placement and Alv bit him. I-4 stated that he saw Alv "scrinch" her face when Alab first made contact with her neck, and I-4 heard her verbally respond to Alab's action. I-4 stated that had Alab done the same action to I-4, he would likely have experienced pain. (I-4 is taller and larger than Alv.) Alv also immediately spoke to I-4, asking if he had seen what Alab had done, saying that Alab had choked her.

Alv had no marks on her neck, but she reported that Alab was too rough. Alv described that her bite of Alab preceded his putting her arm on his neck. Alv reported that her mouth hurt, but that she had no other injuries. Nursing notes reflect that Alv had a red lump to her head, where she had hit it on a pole. [REDACTED]

I-5 stated that Alv had an open cut to her elbow and a red bump on her head, both from Alv's own actions. I-5 stated that she looked up when Alv had said she was being choked and she saw Alab's forearm on Alv's throat. I-5 stated that she heard Alv say, "he's hurting me." I-5 stated that I-4 was trying to get Alab to switch out, but that Alab was not switching. I-5 stated that Alab was a "little rough." I-5 also stated that she did not think that Alv had spoken falsely about Alab, noting that Alv can speak for herself and is usually accurate, as Alv has no fear of others, regardless of their size or strength.

I-6 said that he "don't think [he] seen (sic)" Alab at Alv's throat, but he was aware that Alv had said that Alab had choked her. I-6 was unaware of injury to anyone.

Alab said that he had never put his hand on Alv's neck. When shown footage of the incident, Alab said that he had a large jacket on, and that this may have looked like he made contact when he did not. Alab did say that Alv had caused injury to his thumb, where he had a prior injury. Alab was wearing a splint at interview. Alab denied causing harm to Alv.

I-2 and I-3 both stated that Alv had been having a hard time lately. I-2 stated that Alv had some dangerous behaviors lately, including attempting to run from staff, so she had decided that moving her to a conference room in the other main building was not safe. I-2 and I-3 stated that Alv was upset by this and that is why she was voicing threats to I-2; they said that earlier in the week, Alv had been saying the same about I-3. They said that Alv does this in an attempt to exert control, but that she always later apologizes. I-2 stated that Alv has a counselor at the school whom she meets with weekly and to whom she can speak openly about her concerns. I-8 confirmed that this was true, noting that she does not see Alv in the moment of her crises, but that she is available should Alv want to talk later when the crisis has calmed, or at their regular sessions.

Although Alab denied injuring Alv or attempting to harm her, the totality of testimony and evidence supports that he placed his arm across her neck in response to her having hit him. Alv reported pain from this, and others reported seeing Alab's arm there at the moment Alv complained. Video footage even appears to show Alv lifting slightly off the floor as Alab had his arm on her neck.

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M.G.L. c. 19C / 118 CMR Conclusion

► Based on information gathered by the Investigator there is sufficient evidence to conclude that Alv is a victim of abuse, as it is defined by M.G.L. c. 19C and/or 118 CMR, by Alab(s) 1

Therefore, the investigation(s) is/are **substantiated** for DPPC case number(s) **152292**

When there are multiple Alabs and allegations are substantiated on some of them, but not on others, explain:

► **Individuals Interviewed or Contacted by Investigator (Provide redaction code, name, title or relationship to Alleged Victim, method of contact and date for each person interviewed):**

I-1, [REDACTED], JRC, 12/16/16 I-2, [REDACTED], JRC, 12/16/16 (with I-1) I-3, [REDACTED], JRC, 12/16/16 (with I-1) I-4, [REDACTED], JRC (with I-1) Alv, [REDACTED], 12/16/16 (with I-1 and I-3) Alab, [REDACTED], JRC, 12/21/16 (with I-1) I-5, [REDACTED], JRC, 12/21/16* (with I-1) I-6, [REDACTED], 12/21/16* (with I-1), JRC, I-7, [REDACTED], JRC, 12/21/16* (with I-1) I-8, [REDACTED], JRC, 12/22/16*	
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Redaction Code Key
Alv – Alleged Victim or Victim
Alab – Alleged Abuser or Abuser
OI - Other Individual
PC – Person Considered (someone, not an Alab, whose actions or inactions were examined)
I - Denotes person interviewed during this investigation
C - Denotes person contacted for collateral or expert/professional opinion
R - Denotes person referred to in the report that was not questioned
► Required by 118 CMR
* - Telephone interview or contact
** - Email contact

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► **It does not appear that the abuse report constitutes a malicious “False Report.”**

118 CMR Definition: A report of Abuse which at the time it is made is known by the reporter not to be true and is maliciously made for: the purpose of harassing, embarrassing or harming another person; the personal financial gain of the reporter; acquiring custody of the Person with a Disability; or the personal benefit of the reporter in any other private dispute. A False Report does not include a report of Abuse of a Person with a Disability that is made in good faith to the Commission and subsequently is unsubstantiated or screened out for lack of jurisdiction under M.G.L. c. 19C.

► **Protective Service Actions Taken and/or Recommended (required when abuse is substantiated):**

>The agency providing protective services to the Alv should ensure that the Alv is provided with access to trauma informed therapeutic supports that are appropriate to Alv’s individual situation and needs.

Alab was taken off shift pending the investigation. JRC should take appropriate disciplinary action with him (and should keep him restricted from Alv and other individuals with disabilities).

► **Additional Findings of Risk:**

Alv was having behaviors and was further upset at being contained in a cubicle in her alternate classroom. Staff do attempt to calm her, but also are preventing her from leaving the area by blocking the doorway of her assigned area. Although restraint forms document time that Alv is held that day, they do not capture any seclusion or other restriction of her movement. Other restraint forms from December 2016 were reviewed (13); most were short, often beginning with Alv’s resistance to “supportive guiding,” then progressing to her being physical with staff or others. Of note, however, are the five restraints on 12/8/16 between 9:15 a.m. and 2:16 p.m., total restraint time that day is just under 4 hours (before accounting for minor release times in restraints).

Concerns were mentioned that Alab might have made threats to other staff involved, as Alab was noted to have called the classroom back before leaving for the day. I-7 confirmed that he had heard Alab speaking loudly on the staff lounge phone to someone before he left the building that day.

The acuity of behavioral challenges exhibited by students at JRC places staff in situations where they are required to immediately react and address complex behaviors to protect themselves and students. Without in-depth clinical training and continual strong and consistent supervision and direction, staff appear to sometimes develop informal patterns of response that are neither consistent with JRC program guidelines or safe for the students and staff involved. This creates a potentially unsafe environment for students and staff, where dangerous incidents may occur and/or may lead to abuse.

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► Additional Recommendations and/or Actions Already Completed (required when additional risk is identified):

JRC should ensure that seclusions/restraints of Alv, such as were done on 12/16/16 and on 12/8/16, are in keeping with the expectations of the Department of Early Education and Care, the Department of Elementary and Secondary Education and the school department that has placed Alv at JRC.

JRC should ensure that staff are free from threats while working and should report any retaliation to DPPC.

JRC should utilize internal (and identify external resources, necessary) to evaluate the current state of the educational and clinical components of the program and then develop plans that address any challenges identified.

Alleged Victim (Alv) Information: [REDACTED]

Address: [REDACTED]

Telephone Number: [REDACTED]

Date of Birth: [REDACTED]

Social Security Number: [REDACTED]

Pertinent information regarding the Alleged Victim:

[REDACTED]

Alleged Victim Guardian Information: Guardian? Yes No Unknown

Guardian:

Name: [REDACTED]

Address: [REDACTED]

Telephone: [REDACTED]

Type: [REDACTED]

Co-Guardian:

[REDACTED]

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► Was the Alleged Victim interviewed? Yes No

If no, explain why not:

Other Individual (OI) Information:

Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Is the OI a person with a disability as defined by M.G.L. c. 19C? Yes No

OI Disability: _____

Pertinent information regarding the OI:

OI Guardian Information:

Does Other Client have a guardian? Yes No Unknown

Name: _____

Address: _____

Telephone Number: _____

► **Alleged Abuser Information:**

Alleged Abuser 1 (Alab 1) Name: [REDACTED] [REDACTED]

► Was the Alab 1 interviewed? Yes No

ALAB 1 Information:

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Alleged Abuser 2 (Alab 2) Name: _____

▶ Was the Alab 2 interviewed? Yes No _____

ALAB 2 Information:

Alleged Abuser 3 (Alab 3) Name: _____

▶ Was the Alab 3 interviewed? Yes No _____

ALAB 3 Information:

Alleged Abuser 4 (Alab 4) Name: _____

▶ Was the Alab 4 interviewed? Yes No _____

ALAB 4 Information:

Alleged Abuser 5 (Alab 5) Name: _____

▶ Was the Alab 5 interviewed? Yes No _____

ALAB 5 Information:

Alleged Abuser 6 (Alab 6) Name: _____

▶ Was the Alab 6 interviewed? Yes No _____

ALAB 6 Information:

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Alleged Abuser 7 (Alab 7) Name: _____

▶ Was the Alab 7 interviewed? Yes No

ALAB 7 Information:

Alleged Abuser 8 (Alab 8) Name: _____

▶ Was the Alab 8 interviewed? Yes No

ALAB 8 Information:

Did ALAB(s) Receive a Copy of the DPPC Notice of Alleged Abuser's Rights Form? Yes No

If no, explain why not:

▶ Were all Reporters interviewed? Yes No

If no, explain why not:

▶ Were all available witnesses interviewed? Yes No

If no, explain why not.

▶ Site of Alleged or Actual Abuse: _____

CANTON

MA 02021

▶ Name of Vendor if Site is a Vendor: JUDGE ROTENBERG EDUCATIONAL CENTER (THE) / JRC

Type of Setting: EDUCATIONAL SETTING

▶ Date of Visit and Pertinent Information Regarding Risk at the Site:

_____ The incident was reviewed on video footage.

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► Documents Reviewed:

<input type="checkbox"/> Accident Report	<input type="checkbox"/> Injury Report
<input type="checkbox"/> Activity Report	<input type="checkbox"/> Level of Supervision Form
<input type="checkbox"/> Admission Report	<input type="checkbox"/> Medical Examiner's Report
<input type="checkbox"/> Ambulance Log/ Trip Sheet	<input checked="" type="checkbox"/> Medical Record
<input type="checkbox"/> Audio Recording	<input type="checkbox"/> Medication Error Report/ Form
<input type="checkbox"/> Communication Book	<input type="checkbox"/> On-Call Record/ Schedule
<input type="checkbox"/> Death Report	<input type="checkbox"/> Personnel File
<input type="checkbox"/> Discharge Summary	<input type="checkbox"/> Policies and Procedures
<input type="checkbox"/> Doctor's Orders/ Note	<input checked="" type="checkbox"/> Previous Abuse Investigation Report
<input type="checkbox"/> Facility Security Log	<input checked="" type="checkbox"/> Previous Hotline Report
<input type="checkbox"/> Hospital Record	<input checked="" type="checkbox"/> Progress Notes
<input type="checkbox"/> Human Rights Complaint	<input type="checkbox"/> Police Report
<input type="checkbox"/> Human Rights Report	<input type="checkbox"/> Psychiatric Evaluation/ Report
<input type="checkbox"/> Incident Report	<input type="checkbox"/> Psychological Evaluation/ Report
<input type="checkbox"/> Individual Day Program Agency Record	<input type="checkbox"/> Psychosocial Evaluation/ Report
<input type="checkbox"/> Individual Educational Plan	<input type="checkbox"/> Quality Assurance Report/ Evaluation
<input checked="" type="checkbox"/> Individual Residential Agency Record	<input checked="" type="checkbox"/> Restraint/ Seclusion Form
<input type="checkbox"/> Individual Service Agency Record	<input type="checkbox"/> Staff Assignment Schedule
<input type="checkbox"/> Individual Service / Support Plan	<input type="checkbox"/> Staff Communication Log
<input type="checkbox"/> Individual Treatment Plan	<input checked="" type="checkbox"/> Video Recording

Additional Documents Reviewed:

n/a

► Photographs /Physical / Other Evidence:

CD containing video footage of 12/13/16 incident

Criminal Investigation and Prosecution Status:

Referred to District Attorney: YES NO

Was a criminal investigation conducted? Yes No

Were criminal charges filed? Yes No

Type of charge filed: _____

If other explain: _____

Prosecution result: _____

If other explain: _____

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The assigned investigator and their supervisor certify that to the best of their knowledge the information contained in this M.G.L. c. 19C investigation report is accurate.

Seana Miller
Investigator Name

1/4/2017
Date Report Submitted to Supervisor

Emil DeRiggi
Supervisor Name

1/9/2017
Date Report Approved by Supervisor

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