

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

Alleged Victim: [REDACTED]

Investigation Agency: DPPC

DPPC Case Number: 148133

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Date of Incident: 07/30/2016

Allegation Investigated:

On the morning of 8/1, Alv was seen with unexplained bruising near both eyes.* When an internal investigator began spot checking video footage of Alv's residence from the weekend, a questionable interaction was found. Alab was seen alone in a hallway with Alv on 7/30, and appears to be striking Alv in the face multiple times. Alv had been treated on 7/30 for a cut and swollen lip that was attributed to accidental contact with his own jagged tooth, however it was found shortly after the 7/30 incident and may also be related. Alab has been taken off schedule and will be terminated once interviewed for the investigation.

* This was later corrected to being just one eye.

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.

ALAB provided care and supervision to ALV.

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: Bruising

Second: Puncture of skin

Emotional Injuries:

First: Fear

Second: Anxiety

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

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

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

Upon arrival to school on 8/1/16, Alv was found to have an unexplained bruise on the left side of his face, under his eye. There were additional reports of a swollen/bleeding lip and chest/back bruising from earlier that weekend, also unexplained.

When staff of the school began looking at video footage from Alv's residence from the weekend prior, concerning interactions between Alv and Alab were found. This occurred on 7/30/16 in the early morning in the upstairs hallway. Alab is seen striking at Alv's chest and face area multiple times, and kicking Alv in the legs and buttocks. Although the point of contact of many of the strikes is not visible, there is audible noise of contact.

In addition, as Alv is on the floor under Alab, he puts his arm out as if to increase distance, while not taking his eyes off Alab. As described by I-2 and I-4, Alv then scurries away quickly, apparently in fear of Alab. I-4 described knowing Alv for some time, and noting this interaction as out of the ordinary. It was also inconsistent with Alv's demeanor when he met this Investigator (for the first time) on 8/3/16.

Alv is not verbal and unable to say what happened. Alab denied striking or kicking Alv; he reported he was attempting to guide or redirect Alv. No other staff working with Alv (or [REDACTED] who were also injured) could explain how he (or [REDACTED]) sustained any of these injuries. Further, I-1, I-2 and I-3 had each viewed the footage of the incident and none of them felt that Alab's actions were consistent with JRC training on student redirection.

Based on the totality of evidence, it is more likely than not that the Alab's actions of striking out towards Alv caused bruising to Alv's face and swelling/bleeding to his lip, and that these actions also caused Alv to react fearfully in "scurrying away" from Alab, as described by I-2, C-1 and I-4 (who in particular described this as not typical for Alv). Even in the unlikely event that these actions had not caused physical or emotional injury, the sound of the hits and Alv's reaction show that Alab's action was also an application of physical force that would cause a reasonable person pain.

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

Alv was seen with injuries to his face when he arrived to school on the morning of 8/1/16. Although these injuries were initially documented in the intake as bruising to both eyes, I-1 clarified with nursing staff that it was bruising to only the left eye (right eye had been noted incorrectly at first, and the later correction appears to note additional bruising, however it was meant to just change location). This investigator observed a small bruise under Alv's left eye on 8/3/16.

Alv was treated earlier in the weekend for a swollen and cut lip. At the time, this was attributed to contact with his own tooth.

Alv is not verbal and is unable to say what happened. I-2 began doing spot checks of video footage from the prior weekend, and found an incident between Alab and Alv in the upstairs hallway of the residence, from the morning of 7/30/16.

I-2 noted that in this video footage, Alab is seen striking out towards Alv in the face and chest area multiple times. I-2 noted that the exact point of contact was not clear, but the sound was. I-2 said that this was over 10 times, at some point during which Alab paused, appeared to look up for the presence of a camera, and then continued. I-2 noted that Alab also appears to be "prompting" Alv with Alab's foot, at times, when Alv is on the floor. Alv "appears fearful" in the footage, according to I-2. A review of the footage confirms what I-2 said.

Video footage from 6:20 a.m. to 6:34 a.m. shows Alv running from his bedroom into the hallway of the residence, with Alab chasing after him and attempting to grab. Alv is then on the floor, looking up at Alab. Alab tells Alv to get up, which Alv does, running toward the bedroom door. Alab blocks the door and points down the hall, saying, "Go," to Alv. Alv is again on the floor and Alab pushes or kicks Alv with his foot. Alv gets up and touches his lip. Alab chases Alv a bit down a small hallway, and slaps at him. Alab keeps pointing, motioning for Alv to go to the bathroom. Alab grabs Alv by the shirt and pulls him to the floor. Alv appears to have a look of fear on his face at this point (quite different from how Alv looked when meeting this Investigator on 8/3/16, and according to I-4, different from Alv's normal behavior-- I-4 viewed the footage and stated it was clear that Alv wanted to get away as he was "scurrying on the floor"). C-1's report note, "from the speed with which [Alv] endeavored to escape [Alab], it was evident [Alv] was fearful."

Alab then advances to Alv and kicks Alv's legs, swats at Alv and kicks Alv in the buttocks. Alab shuts the bedroom door. Alv remains on the floor, focused on Alab and keeping his hand outstretched between himself and Alab. Alv gets to his feet, but remains close to the floor, as Alab motions to Alv with clothing in his hand. Alab opens the bedroom door and motions for Alv to go in. As Alv then tries to move, Alab lunges at Alv and pushes him to the floor in a small hallway, hitting him multiple times and using both hands (although Alab blocks camera view of contact, there are at least 9 audible contact noises, which are consistent with Alab's arm motions). Alab then does look up briefly and Alv tries to get by Alab. Alab again hits Alv (with 8 audible noises) and pushes Alv's head to the wall. Alv crawls past Alab and Alab prevents Alv from entering his room. Alab is still pointing down the hall and saying, "Go." Alab kicks Alv's legs again. Alv rubs his face. Alab appears to push clothing into Alv's face, and leans over as if to grab Alv. At this point another staff walks up the stairs and begins talking to Alab. Alv rubs his face more, and puts on his pants. Alab says to Alv, "you wanna go back to bed, go" and points to Alv's bedroom. Alv gets up and enters the bedroom. Alab closes the door and walks away.

Alab said that he was attempting to redirect Alv in the hall, or to "guide him." Alab said that Alv had "peed his pants" and he was trying to get him to go the bathroom and change into clean clothes. Alab said that Alv had touched him with a wet hand and that he was frustrated. Alab denied hitting, smacking or kicking Alv. He described that he was told by JRC not to do those things to residents. He said that his actions were not 100% of the techniques he was taught, but that there is a lot of gray area. Alab said that he had "shoved Alv's hands to his chest" because he was "playing a game with him." Alab stated he had seen the footage of the incident and acknowledged that he understood why there was concern. He said, "It did, honestly, look like I did hit him." Alab said he was however attempting to guide Alv, and or attempting to redirect Alv's wet fingers and hands from him. He also mentioned concern that Alv might bite him. Alab was asked if he could have accidentally used more force than necessary and he stated he had not.

I-1, I-2 and I-3 had each viewed the footage of the incident. None of them felt that Alab's actions were consistent with JRC training on student redirection. I-10 described that Alv was usually easy to redirect, if you rub him on his head, which he likes (this is described within Alv's behavior plan as well).

Alab was one of 6 staff working in the house on that particular shift; the others were I-5, I-6, I-8, I-10 and R-1. Alab said he had not asked others for help at any point. According to I-3, who had watched footage of the rest of the house during the same time frame, the other staff were mainly in the den area just down the stairs from the hallway where the incident took

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place, and the staff who were not there, were working as 1:1 aides with other residents in different parts of the house.

None of the other staff interviewed recalled hearing anything of concern on the shift, or seeing anything that could have caused injury to Alv. I-5 said he was with another student in a different part of the house. I-6 said he had seen a red scratch on Alv's right jaw at his shower time on the morning of 7/30. He said that he told I-8 () about it and was told to document it (I-6 noted this on Alv's health sheet as "A new mark on face and A new visible marks (sic) on the lower left side of Alv's back and chest.") I-8 said that he believed Alv had woken up with the marks, and that he had not asked Alab about them, as Alab was already gone when I-8 became aware of the marks. I-8 said he would not have been able to hear the upper hallway from where he was in the den area. I-8 said he had informed DVR (monitoring staff) of the injury. I-11 said that she was alerted to the injury by I-8 on 7/30 but not until she was there to give evening medications. I-11 said that she believed staff told her that Alv caught his lip on his own tooth, and she noted slight swelling to his right lip. I-11 said she was told they were outside playing basketball, and when she asked which staff saw this happen, none had.

I-10 said that he had given Alv a shower one day that weekend (records show it was 7/31) and that he had noticed blood in Alv's mouth. I-10 said that Alab was with Alv before I-10 was and that he asked why there was blood, but Alab did not know and told I-10 to report it. I-10 also documented it on the health form.

I-10 appears to be the staff who enters the upstairs hallway as the incident is ending. I-10 did not recall seeing anything of concern or having any discussion with Alab at that time. I-10 said he had seen nothing of concern, or he would have reported it.

(R-2 and R-3) were also seen with unexplained bruising on their faces on 8/1/16. Concerning video footage involving Alab and both () was found later and reported on 8/8/16. ()

Video footage shows Alab take R-2 into a closet in his bedroom, just before the incident with Alv. R-2 is naked at the time this occurs. The closet door is partially closed and noises of a scuffle are heard. R-2 leaves and clearly runs past Alab to get away from him. (), the full details of this are in DPPC case 148305. In brief, shortly after the incident with Alv, Alab takes R-3 to a downstairs bathroom, puts him into the far end of a large shower stall, pulls the curtain partially and Alab strikes R-3 several times in the face. R-3 exits and is crying, touching his face. Alab guides him to the shower again, and does this again. R-3 exits crying again.

When interviewed by C-1 about the original allegation with Alv, Alab had denied that he had worked with R-2 or R-3 that morning (he was unaware that additional footage had already been found). When asked how it would look if additional footage showed him interacting with these other clients in a similar manner, Alab said that it would look bad. Alab also stated that no such footage would be found.

When interviewed by this Investigator the day following that first interview with C-1, Alab was shown footage with R-3. Alab said that he was trying to put the shower hose in R-3's hand in the first interaction (I-3 confirmed that the shower hose was to the other end of shower stall), and that he was trying to push Alv to towards the hose in the second interaction. Neither instance shows contact with the shower hose. Alab said that he brought Alv to the shower clothed to cue him to take a shower. Contrary to this, I-10 said that in his experience R-3 always goes willingly to the shower and takes his own clothes off. I-10 said that R-3 complies very quickly and knows to put his own dirty clothes in the basket. I-10 said he had never had such a hard time with R-3.

Based on the totality of evidence, it is more likely than not that the Alab's actions of striking out towards Alv caused bruising to Alv's face and swelling/bleeding to his lip, and that these actions also caused Alv to react fearfully in "scurrying away" from Alab, as described by I-2, C-1 and I-4 (who in particular described this as not typical for Alv) No other staff working with Alv could explain these injuries. Even in the unlikely event that these actions had not caused physical or emotional injury, the sound of the hits and Alv's reaction show that Alab's action was also an application of physical force that would cause a reasonable person pain. Further, I-1, I-2 and I-3 had each viewed the footage of the incident and none of them felt that Alab's actions were consistent with JRC training on student redirection.

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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) **148133**

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

N/A

► **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, 8/3/16, 8/8/16, 8/9/16, 8/10/16 | I-11, [REDACTED], JRC, 8/22/16 (with I-1 and C-3) |
| I-2, [REDACTED], JRC, 8/3/16* (with I-1) | C-3, Christine Lowe, Investigator, EEC |
| I-3, [REDACTED], JRC, 8/8/16, 8/9/16, 8/10/16 (with I-1), 8/11/16 (with I-1 and C-2) | I-12, [REDACTED], JRC, 8/22/16 (with I-1 and C-3) |
| Alv, [REDACTED], 8/3/16 (with I-1) | R-1, [REDACTED], JRC |
| C-1, Detective Charles Turcotte, Detective, Norton Police Department, 8/8/16*, 8/9/16 | R-2, [REDACTED] |
| Alab, [REDACTED], 8/9/10 (with C-1), 8/10/16 (with I-1 and I-3), 8/11/16 (with I-1 and C-2) | R-3, [REDACTED] |
| I-4, [REDACTED], JRC, 8/9/16 (with I-1) | |
| I-5, [REDACTED], JRC, 8/10/16 (with I-1) | |
| I-6, [REDACTED], JRC, 8/10/16 (with I-1) | |
| C-2, Jim Nolan, Investigator, DCF | |
| I-7, [REDACTED], JRC, 8/11/16 (with I-1 and C-2) | |
| I-8, [REDACTED], JRC, 8/11/16 (with I-1 and C-2) | |
| I-9, [REDACTED], JRC, 8/11/16 (with I-1 and C-2) | |
| I-10, [REDACTED], JRC, 8/11/16 (with I-1 and C-2) | |

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 terminated. A criminal investigation into his treatment of Alv, R-2 and R-3 was also conducted.

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► **Additional Findings of Risk:**

Even though there is no footage showing staff witness Alab's actions, it is concerning that Alab appears to have assaulted and injured Alv and two of his house mates during a one hour period, yet these actions were not witnessed by his five coworkers or by the staff assigned to remotely monitor the video footage of the residences. Even acknowledging that the remote staff do not have live views of all cameras at all times, these incidents were severe and spanned a considerable amount of time.

Staff appeared to have no consistent understanding of how and to whom to report new injuries to clients. Had these injuries all been reported accurately and quickly the incidents might have been found out sooner.

A review of Alab's personnel file shows [REDACTED]

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

Even though it appears Alab was undetected in his actions, JRC should review this incident and make changes to direct care and monitoring staffing and/or provide discipline and retraining to staff, as needed, to ensure greater oversight of residences where the clients are mainly nonverbal.

JRC should develop clear injury reporting guidelines to ensure that nursing and clinical staff are immediately notified when an injury of unknown origin is found.

JRC should ensure that all staff involved in overly aggressive physical interactions are, at the very least, retrained and watched closely.

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]

[Redacted]

[Redacted]

[Redacted]

Alleged Victim Guardian Information: Guardian? Yes No Unknown

| | |
|------------------------------|---------------------|
| Guardian: | Co-Guardian: |
| Name: [Redacted] | [Redacted] |
| Address: [Redacted] | [Redacted] |
| Telephone: [Redacted] | [Redacted] |
| Type: [Redacted] | [Redacted] |

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► Was the Alleged Victim interviewed? Yes No

If no, explain why not:

Alv was visited on 8/3/16, but he was unable to speak to the allegations of this report.

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]

► Was the Alab 1 interviewed? Yes No

ALAB 1 Information:

[REDACTED]

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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:** _____

NORTON MA 02766

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

Type of Setting: RESIDENTIAL SCHOOL

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

The incident occurred in an upstairs hallway of the residence _____

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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 checked="" type="checkbox"/> Personnel File |
| <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Policies and Procedures |
| <input type="checkbox"/> Doctor's Orders/ Note | <input type="checkbox"/> Previous Abuse Investigation Report |
| <input type="checkbox"/> Facility Security Log | <input type="checkbox"/> Previous Hotline Report |
| <input type="checkbox"/> Hospital Record | <input checked="" type="checkbox"/> Progress Notes |
| <input type="checkbox"/> Human Rights Complaint | <input checked="" 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 type="checkbox"/> Restraint/ Seclusion Form |
| <input type="checkbox"/> Individual Service Agency Record | <input checked="" 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:

JRC email and therapy notes

► Photographs /Physical / Other Evidence:

CD's containing video footage of Alab with Alv and of Alab with R-3. Photo of Alv's face, taken by this Investigator on 8/3/16

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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

3/15/2017
Date Report Submitted to Supervisor

Emil DeRiggi
Supervisor Name

3/16/2017
Date Report Approved by Supervisor

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