



New York State
Public Employees Federation

The NYS JUSTICE CENTER: "DOS & DON'TS" for Employees

PRESENTER



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JUSTICE CENTER OVERVIEW

- Since June 2012, the Justice Center For the Protection of People with Special needs (“JC”) has had primary responsibility for tracking, investigating and pursuing abuse and neglect complaints for facilities and provider agencies that are operated, certified or licensed by the following six (6) NYS agencies:
 - **Department of Health**
 - **Office of Mental Health**
 - **Office of People with Developmental Disabilities**
 - **Office of Children and Family Services**
 - **Office of Alcoholism and Substance Abuse Services**
 - **State Education Department**

JUSTICE CENTER OVERVIEW

The Justice Center has continued to operate the following programs formerly run by its predecessor the NYS Commission on Quality of Care

- **Forensic Unit (oversight of the Special Housing Units in DOCCS)**
- **Surrogate Decision-Making Committee (assists with making medical decisions for those who do not have an appointed guardian or for whom a guardian is denying necessary medical care)**
- **TRAID (grant program for adaptive equipment)**
- **Death Unit (tracks and gathers data on all deaths that occur in "O" Agency programs up to 30 days post discharge)**

The Justice Center also added a victim advocate program (IFSU) and a Prevention and Quality Improvement unit (PQI) to address systemic concerns and ensure compliance with Plans of Corrective Action.

JUSTICE CENTER OVERVIEW

- The Three (3) Tracks a Case can take:
 1. **Administrative (“Category cases”)**
 2. Disciplinary (“Stepping into the shoes of the employer”)
 3. Criminal (“Special prosecutor”)

Types of Administrative Findings:

-Category 1 (Serious physical or sexual abuse, other serious acts of abuse or neglect)

- SEL: Permanently barred from working with vulnerable persons

-Category 2 (Abuse or neglect which seriously endangers health, safety or welfare)

- VPCR 5 years; OPWDD background check; Two Cat. 2s in 3 years results in SEL

-Category 3 (Abuse or neglect not covered above)

-VPCR 5 years; Not viewable in background check; Multiple Cat. 3s can never be upgraded to Cat. 1 or 2

The JC has the Authority to:

- Designate custodians and human service professionals “mandated reporters” who are:
 - Required by law to report reportable incidents involving vulnerable persons to the JC immediately upon discovery if there is reasonable cause to suspect a reportable incident.
 - Required by their employer to sign a code of conduct
- Investigate all reports of abuse and neglect
- Bring criminal, administrative and/or disciplinary charges against an employee for substantiated cases of abuse and neglect

JUSTICE CENTER OVERVIEW

- **Employees have the right to:**
 - Protections contained in the PEF contract
 - Representation by PEF in some instances where the JC questions you
 - Use immunity for any compelled statement made to the JC
 - Representation by an attorney if you receive an administrative charge from the JC
 - Request for Amendment
 - Pre-hearing and final status conferences
 - Administrative hearing



JC

Questioning:
**Interviews and
Interrogations**

What is an INTERROGATION?

- “The questioning of an employee who, at the time of the questioning, has been determined to be a likely subject for disciplinary action.” (Article 33.3(b))
- AKA the questioning of a “target” or “subject” of an investigation
- An employee shall be required to submit to an interrogation by a department or agency (1) if the information sought is for use against such employee in a disciplinary proceeding pursuant to Article 33, or (2) after a notice of discipline has been served on such employee, only if the employee has been notified, in advance of the interrogation, their rights to representation.
- An interrogation is NOT:
 - Routine questioning by a supervisor/ management to obtain factual information about an occurrence; the requirement that an employee submit an oral or written report describing an occurrence.

What is an INTERVIEW?

- The Justice Center defines “interview” as the questioning of anyone who may have information about a reported incident; NOT the individual named in the report as having committed an act of abuse or neglect
- AKA the questioning of a “non-target,” “non-subject” or “witness”

**What should I do
if I am contacted for a
Justice Center
interview/
interrogation?**

BEFORE THE INTERVIEW

The MOST IMPORTANT question
you NEED to ask is:

“Is this voluntary?”

If the answer is “Yes”:

Politely decline to participate. If the investigator insists on speaking to you, then state that you need representation and must reschedule this interview so you may obtain representation.

Why? Because this is likely a criminal investigation and your statement can be used against you in a criminal proceeding. You are NEVER under any obligation to speak to law enforcement.

If the answer is “No”:

- You are compelled to answer their questions under penalty of insubordination, and you should request union representation.
- Why? Because “use immunity” applies, meaning your compelled statement can’t be used against you in a criminal prosecution (but it can be used against you in a disciplinary or administrative matter).

Compelled Interviews/ Interrogations: Am I entitled to Union representation?

- If you are the **target** of the investigation, or at the time of the questioning it's been determined that **you are a likely subject for disciplinary action**, you have the right to union representation. (Article 33; Bill of Rights (3)). The JC must afford you a reasonable amount of time to secure representation. Your request for union representation should be stated on the record or documented.
- If they tell you that you are a **witness** and not entitled to representation, then ask for that in writing and call your local Steward or Field Rep for further advice. You have the right to request union representation, and your request should be stated on the record or documented. If your request is denied, you are still compelled to answer the JC's questions under penalty of insubordination.

When an Interview Becomes an Interrogation

- An interview doesn't necessarily mean that you are a non-target!
- “If during the course of such routine questioning or the review of such oral or written report, the questioner or reviewer determines that the employee is a likely subject for disciplinary action, the employee shall so be advised.” (Article 33.3(b))
- Remain vigilant and be prepared to assert your rights if you believe the questions and answers are headed in the wrong direction

Setting the Stage

- Location and environment
- Individuals present
- Audio recording – All interactions with the JC investigator should be on the audio recording
- Interrogations: Article 33 rights; sign use immunity statement
- Introductory questions
- Incident questions
- Use of “evidence” during interrogation
- Caucuses
- “Would you like to add anything?”

DURING A COMPELLED INTERVIEW/ INTERROGATION: THE DO'S

- **DO** Meet with your PEF field representative or local steward, if they are permitted, beforehand.
 - Review “use immunity” and walk through your recollection of the event you’re being questioned about
- **DO** Be truthful: You can be disciplined for making a false or misleading statement.
- **DO** Keep your answers brief and on-topic: “Yes,” “No,” *I don’t know,* and *I don’t remember* are acceptable answers if appropriate to the question
- **DO** Take it slowly: Wait until the investigator has asked their entire question before starting to answer.
- **DO** Clarify questions you don’t understand.
- **DO** Caucus with your PEF field representative or local steward, if they are permitted, outside of the room during the interview/ interrogation.
- **DO** Ask for union representation on the recording if you are not permitted union representation but during the questioning you believe that you are a likely subject for disciplinary action.

DURING A COMPELLED INTERVIEW/ INTERROGATION: **THE DON'TS**

- **DON'T** Bring any documents with you to an interview or interrogation, unless ordered to do so.
- **DON'T** Refuse to answer questions if the interview/ interrogation is compelled; refusing to answer will result in discipline.
- **DON'T** Guess or speculate. You should not guess what another person was thinking or why they did or did not do something.
 - Testify to the best of your recollection!
 - Testify to first-hand knowledge only!
- **DON'T** Claim that you have not read the employee manual/ facility policies and procedures. Your employer likely has a signed document from you that says you have read it.
- **DON'T** Claim that you are not a mandated reporter. You have signed a code of conduct that acknowledges you are.

AFTER THE INTERVIEW/ INTERROGATION: DO'S & DON'TS

- **DO:**

- Ask for a copy of your audio-recorded statement.
- If directed, assist the JC in obtaining documents: If the JC directs you to provide work-related documents for its investigation, you have to do so, or face administrative/ disciplinary charges.
- Save copies of any *non-confidential* policy, procedure or document that supports your actions.
- Save copies of any notifications from your employer regarding changed policies or procedures following the reported incident.

- **DON'T:**

- Discuss the investigation further with anyone except your PEF representatives; this could be viewed as obstruction
- Ignore a JC Report of Investigation Determination if you receive one! Act quickly by getting a copy to your PEF Field Representative.
 - The Report must be appealed within 30 days or your right to contest the report is **WAIVED**.
- Copy confidential patient information or records or remove them from the facility.

OTHER JC TIPS

- Where there is an unsafe condition in your work area, REPORT IT in writing and/or grieve it!
 - Example: If there is a faulty door on a hospital/ facility unit that is supposed to automatically lock when it closes but it doesn't always lock, report this and it could give you some cover if something goes wrong in the future, for example, a patient elopement
- The JC often reaches out to employees by E-MAIL and asks questions—this is the same thing as an interview/ interrogation! Contact your PEF representative before responding and undertake the same process as if you've been called for questioning, i.e. “Is this voluntary?”

JC Criminal Investigations

- A criminal investigation is conducted into all cases alleging a potentially criminal offense
- Investigations may be conducted with JC criminal investigators and/or State/ local law enforcement agencies
- “Is this voluntary?” – In a criminal investigation, questioning is voluntary
 - You have the Constitutional right to remain silent, and/or have an attorney present
- Can result in criminal charges with approval of the local District Attorney (DA). The DA may assign the JC special prosecution status or prosecute the case through the county.

Do's and Don'ts when an incident occurs:

- Many licensed staff are mandated reporters as defined by Social Services Law – failure to report incidents can result in both administrative charges (obstruction) and criminal charges. You are protected from retaliation when filing a report.
- Document exactly what happened, when you became involved, what you saw, what you heard, and do not opine or embellish.

Do's and Don'ts when an incident occurs:

- Be precise in your documentation. If you are asked to assess a recipient for physical or emotional injury, how did you do it and what specifically was reported to you during that assessment - "Victim stated" or "Staff (name) stated".
- If fellow staff members are observed in violation of agency policy (sleeping, failing to administer or record medications properly, failing to follow up on medical treatment, etc.) make sure that you have a record in writing that you notified your chain of command.
- Always err on the side of caution when making decisions about further medical assessment.

QUESTIONS?