

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

Alleged Victim: [REDACTED]

Investigation Agency: DPPC

DPPC Case Number: 141700

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Date of Incident: 1/9/2016

Allegation Investigated:

On 1/9/15 shortly before midnight (originally reported as 1/8/16), [REDACTED] heard ALV yelling. As ALV walked in they saw ALV being aggressive and non-compliant with staff members. ALV attempted to bite a staff member. [REDACTED] and staff attempted to restrain ALV. During the incident, [REDACTED] saw ALAB1 appear to strike ALV in the face while attempting to restrain her. [REDACTED] is uncertain if the incident they witnessed was accidental or intentional. ALV was crying and frustrated. ALV was angry and non-compliant both before and after the incident. ALAB1 didn't have to be behind the other staff members. ALAB1 could have positioned herself better.

1/27/16 - As a result of the initial civil investigation by DPPC, Sgt. Grant rescreened this case criminally and forwarded it to the Norfolk DA's office for review and assignment to law enforcement.

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

118 CMR Definition: a person between the ages of eighteen and fifty-nine, inclusive, who is mentally retarded, 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 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 disabled person for the purposes of M.G.L. c. 19C unless that person otherwise meets the definition of a disabled person. The term "person with a disability" may be used in place of the term "disabled person" without changing the meaning of either.

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.

Alab1 is [REDACTED] at Alv's group and she provides as needed assistance to Alv with activities of daily living.

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 regardless of the location within which such assistance occurs. Minor children and adults adjudicated incompetent by a court of law shall not be deemed to be caretakers.

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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?

Video footage from a restraint of Alv on 1/9/16 (not 1/8/16 as originally reported) shows Alab1 standing behind the two staff restraining Alv on the floor of Alv's bedroom. Alab1 is not physically part of the restraint and initially both of her hands are visible. Her right hand can clearly be seen moving back and towards the area where Alv is on the floor. A skin to skin noise is clearly heard after this, and Alv has an audible verbal response.

Alv said that Alab1 hit her on the face and arm and that it hurt.

Although Alab1 said that she was attempting to redirect Alv from hitting her own face, I-5 said that Alv was secure in the restraint at the point he saw Alab1's hand move toward Alv.

Based on available evidence and testimony it is more likely than not that Alab1's action was the use of a physical force to cause pain.

Alv had no physical injury, but she confirmed that she felt pain.

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► Facts pertinent to the allegation(s) investigated:

In the late evening hours of 1/9/15, Alv was reported to have had a behavioral episode in her bedroom, refusing to stay in bed.

According to I-5, who was scheduled to work in the house that evening, he responded to Alv's room after hearing from the neighboring unit that there was a commotion. Alv was reported to be noncompliant, refusing redirection back to bed. Alv was reported to be aggressive, attempting to hit staff and herself. I-5 stated that he and I-6 put Alv into a two-person seated hold on the floor of her room, as Alab1 was standing behind them.

I-5 stated that as he and I-6 had Alv securely in a restraint, he saw Alab1's hand go past his head and make contact with Alv's face. I-5 was not sure whether this was intentional or not, but it did seem out of place to him. When asked if Alv cried out when this happened, I-5 stated that she had been crying throughout the incident, so he did not notice. When asked what he thought Alab1 could possibly be doing, he said that maybe she was trying to do a head hold, because Alv was attempting to bite. I-5 said that it did not seem right to him, and he confirmed that Alv was securely held when this occurred. I-6 stated that he had not seen this incident.

The video footage of the incident was reviewed. Although the room is dark, and Alv's body is blocked by Alab1, it is clear that Alab1 is not part of the restraint. Alab1 can be seen lifting up both sleeves, and then moving her hand into the area where Alv would be. A noise that sounds like skin hitting skin is heard and Alv does seem to cry out louder. I-5 clearly stated that he saw Alab1 make contact with Alv's face, although he could not describe the nature of this contact.

When asked if anyone hurt her during a recent restraint at her house, Alv said that "██████" had. I-1 stated that this was likely the name students used for Alab1, and Alab1 confirmed this. Alv said that she was hit by Alab1's hand on each side of her face (cheek area) and on her arm. Alv denied injury from this, but she did say that it hurt.

I-3 and I-4 both viewed the video footage. They each said that they were concerned by it. They mentioned concern that there appears to be a verbal response to the clear movement of Alab1's hand toward the area where Alv is, and concern with staff "positioning," in part Alab1's blocking of the camera and standing behind the restraint.

There is a clear verbal response from Alv to Alab1's action. There are other times that Alv cries out, as well. At one point she says to I-6, "██████" "why you step on my feet?" and she cried out just before this as well.

I-6 described this same interaction, including what Alv said, but he noted that Alv had in fact been stepping on his feet when she said this to him about his stepping on her feet. I-6 also said that Alv was pressing on her nose and saying, "No, No," when he was doing nothing. After watching the video, I-6 stated that he could see that "it looked bad," but he stated he had done nothing to hurt Alv and had seen no one else hurt her. After she disclosed what Alab1 had done, Alv was asked if anyone else had hurt or hit her and she said they had not.

At one point, just prior to the restraint, the lights go out and nothing is visible. I-2 said that this was because the lights in the hall had been turned out, and that there should have been a light on in the room. I-5 was asked if anyone struck Alv during this time, when she is also crying, he again stated that she cried throughout and he did not notice any cries in particular. I-5 stated if he had seen other hits, he would have reported them.

Just before the lights come on, I-6 says, "bedtime" and he appears to be pushing Alv to the bed when the lights do come on. I-6 denied pushing Alv. At one point, I-6 says to Alv, "Congratulations," which he says was in response to Alv's saying she was going to hit him. The tone I-6 uses with Alv throughout the incident is not calming, as directed by her program description.

When the room became dark, those involved testified that the hall light was switched off. Neither Alab1, nor I-5 reported noticing this as it occurred. I-6 stated that he was most focused on Alv and her behavior. He stated he was still able to see clearly enough in the room, and although in hindsight he wishes he'd turned the light on so that video was available, he did not do this as he did not want to further disturb Alv's roommate, who was trying to sleep in the other bed in the room. I-6 denied seeing or hearing a hit to Alv.

Alab1 denied that she had hit Alv. She had previously watched the video footage and agreed that it appeared as if she did, but she stated that the whole time she was trying to redirect Alv from hitting her own face. (Although Alab1, I-6 and I-5

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described that Alv was hitting herself and others, evidence of this was not clear in the video footage.) Alab1 said she did not make contact with Alv's face, and that she was unaware of making contact at all. Alab1 said that so much was going on at the time.

I-7 said that she had been in and out of the room that night, as video shows. I-7 said she was unaware of any restraint occurring and had not seen or heard of any hitting of Alv. I-7 said she did see Alab1 push Alv's arm off of Alab1's clothing, which Alv had hold of. I-7 did demonstration of how this occurred, and it appeared to this Investigator as a motion that could be described (by Alv) as being hit. Also, in the video, Alv loudly says, "ow," right after Alab1 says, "let go of my shirt."

Based on the totality of evidence, most particularly the video evidence, it appears more likely than not that the Alab1's action of moving her hand toward Alv was an application of physical force to cause pain. Alv said she was hurt by it, and she has a clear verbal response to the action, which appears to make a clear skin to skin noise. Also, I-5 said he clearly saw Alab1 make contact with Alv's face.

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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) **141700**

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, 1/11/16*,
1/15/16, 1/21/16
I-2, [REDACTED]
JRC, 1/15/16 (with I-1 present)
I-3, [REDACTED] JRC, 1/15/16 (with I
-1 and I-4 present)
I-4, [REDACTED] JRC, 1/15/16 (with I-1
and I-3 present)
I-5, [REDACTED] JRC, 1/15/16 (with I-1
present)
Alv, [REDACTED] 1/15/16 (with I-1 present)
I-6, [REDACTED] JRC, 1/21/16
(with I-1 present)
Alab1, [REDACTED] JRC,
1/21/16 (with I-1 present)
I-7, [REDACTED] JRC, 1/21/16 (with
I-1 present)

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: False Report - 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 involving a person with a disability. The term 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):**

In all substantiated cases, the agency providing protective services to the Alv should ensure that the Alv is provided with access to therapeutic supports that are appropriate to Alv's individual situation and needs.

Alab1 and I-6 were removed from the schedule during the course of the investigation. Both should receive appropriate disciplinary action from the agency.

► **Additional Findings of Risk:**

At times during the incident, staff stand in the doorway and prohibit Alv from leaving (Alv's Program Description directs to do this). They also put hands on her, overcoming her resistance, and escort her to her bed. Staff call this action a "Supportive Guide.". All described these actions as appropriate.

Alv is clearly emotionally upset throughout this incident and the actions of most staff do not appear in any way calming or supportive. They move quickly to restraint and "supportive guide," when Alv's Program Description describes that least restrictive measures should always be used first, and that staff should remain calm and not show frustration when working with her. In addition, the Program directs that when Alv drops to the floor or refuses to leave a location, she should be given verbal redirection every 10 minutes. Further, it was unclear from viewing the video the exact ways in which Alv became aggressive and was hitting staff or herself.

The agency depends on video surveillance to support direct care staff in their application of complex behavioral treatment programs. This video program works even at night, so long as there is ambient light. Although no one suggested that lights were intentionally turned off during this behavioral episode, it remains a possibility.

At times, Alv is alone in her darkened bedroom with two male staff, even though female staff are on duty.

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

The agency should review the actions of these staff to ensure that they are in keeping with the Safety Care program that they utilize. The agency and DDS should also review whether these staff actions and expectations are in keeping with state and federal guidelines/laws governing restraint and seclusion.

Treatment staff should review this incident and ensure that involved staff are trained or retrained, as appropriate.

The agency should review the issue of lights going out during behavioral incident, and retrain or discipline staff as necessary.

The agency should review policies on which staff work with students in their bedrooms, keeping gender appropriate staff whenever possible.

Alleged Victim (Alv) Information:

Address:

Telephone Number:

Date of Birth:

Social Security Number:

Pertinent information regarding the Alleged Victim:

Alleged Victim Guardian Information:

Guardian? Yes No Unknown

Guardian:

Name:

Address:

Telephone:

Type:

Co-Guardian:

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► Was the Alleged Victim interviewed? Yes No

If no, explain why not:

Alv was interviewed at the main JRC building, not her residence.

Other Individual (OI) Information:

Name: N/A

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:

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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:

▶ Were all Reporters interviewed? Yes No

If no, explain why not:

▶ Was an agency representative interviewed? Yes No

If no, explain why not.

▶ Site of Abuse (Address or Other Description): [REDACTED]

RANDOLPH

MA 02368

▶ Name of Vendor if Site of Abuse is a Vendor: JUDGE ROTENBERG EDUCATIONAL CENTER

▶ Pertinent Information regarding the Site of Abuse: RESIDENTIAL

The residence is a 2-sided residential home, each housing four students. The incident took place in Alv's bedroom, which she shares with another student. The site was not visited, as the incident was captured on video and no site-specific concerns were reported about the site.

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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 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 type="checkbox"/> Previous Abuse Investigation Report
<input type="checkbox"/> Facility Security Log	<input type="checkbox"/> Previous Hotline Report
<input type="checkbox"/> Hospital Record	<input 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 type="checkbox"/> Individual Residential Agency Record	<input checked="" 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: Alv's Face/Facts Sheet, Alv's Student Profile, Alv's Program Description, Alv's Treatment Summary.

► **Photographs /Physical / Other Evidence:**

-CD containing video footage of Alv and Alab1 from 1/9/16

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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

1/27/16
Date Report Submitted to Supervisor

Emil DeRiggi
Supervisor Name

1/27/2016
Date Report Approved by Supervisor

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