

ISSNY Reporting and Investigations: Guidance for Participants and Families

Adapted from NYS Justice Center Reporting and Investigations: Guidance for Individuals and Families

<https://www.justicecenter.ny.gov/investigations-guidance-individuals-and-families>

<https://opwdd.ny.gov/part-624-part-625-handbook>

All ISSNY support staff receive onboarding training and annual training on Incident Identification and Reporting in the form of a PowerPoint presentation.

Support Brokers receive OPWDD PRAISE training which is primarily focused on incident identification and reporting processes.

VISION

ISSNY QA/CC department adopts the Office for People with Developmental Disabilities (OPWDD) model that people with ID/DD shall be protected from abuse, neglect, and mistreatment. This is accomplished by adopting state standards by assuring the highest standards of health, safety and dignity; and by supporting the dedicated men and women who provide services.

MISSION

To provide person-centered, self-directed & individualized supports to people with DD to assist them in making choices that will lead them to actualize their dreams. The QA/CC departments mission is to maintain participants' health, safety, and well-being by proactively reinforcing COS members of their responsibilities, strategically providing expertise and guidance towards necessary resources with a person-centered approach. This includes the prevention of mistreatment, and investigation of all allegations of abuse and neglect to ensure appropriate actions are taken.

VALUES AND GUIDING PRINCIPLES

ISSNY has adopted the OPWDD's CODE OF ETHICS for New York's "Direct Support Professionals", known as, "support staff" in self-direction. ISSNY had adopted the NYS Justice Center's guiding principles.

Integrity

ISSNY believes that all people with ID/DD deserve to be treated with respect and that people's rights should be protected.

Quality

ISSNY is committed to providing superior services and ensuring the people with ID/DD receive quality care.

Accountability

ISSNY understands that accountability to the people we serve and to the public is paramount.

Education

ISSNY believes that communication, COS and Mind Flash Training, and the promotion of best practices are critical to success and to ensure the health, safety, and well-being of ISSNY participants.

Collaboration

Safe-guarding people with ID/DD is a shared responsibility. ISSNY is successful because it works directly with the participant/service recipient, service-partners such as the participants CCO (Care Coordination Organization), the OPWDD, people who provide direct services, and other providers to prevent abuse and neglect.

JURISDICTION

ISSNY is under the jurisdiction of the OPWDD. ISSNY is not under the jurisdiction of the NYS Justice Center (JC) because our “setting” is, “non-certified” and “voluntary-operated”. ISSNY is the co-employer of support staff and therefore all support staff are required to adhere to ISSNY’s policies and procedures. ISSNY Support staff are, “custodians” under the jurisdiction of the OPWDD.

In some scenarios, ISSNY is mandated by the OPWDD 14 NYCRR Part 624 Handbook, to report incidents to the OPWDD. If an incident is not under ISSNY’s jurisdiction but occurred while the participant was at his or her IRA or in a “certified” setting, ISSNY employees, volunteers and contractors are mandated to report the information to the Justice Center. If a participant involved in an allegation of abuse/neglect resides in a certified site, ISSNY is required to report to the Mental Hygiene Legal Service (MHLS).

OUR GOAL

ISSNY’s goal is to serve our participants and their families FIRST by preventing mistreatment and ensuring that all allegations of abuse and/or neglect are fully investigated. ISSNY is required under New York State, to investigate, review, and making findings in allegations of abuse and/or neglect by staff-including employees, volunteers, consultants, and contractors - against a participant. ISSNY does not interrogate, arrest, or prosecute participants.

This document explains the reporting and investigation process, customized for the SD setting, and how to obtain additional information if you, or your family member is involved in an ISSNY reportable investigation as a victim or a witness. We understand there is an overwhelming amount of information presented at your launch meeting.

MAKING A REPORT

Who can report an incident (allegation of abuse/neglect or any other incident)?

Anyone! Including participant, parent, advocate, person in the community, guardian, support staff, contractor, care manager, support broker, or anyone who witnesses wrong-doing. The reporter can make a report to the ISSNY Quality Assurance/Corporate Compliance (QA/CC) department when they have knowledge or reason to believe that a participant has been abused, neglect, or mistreated.

Some people are required to report to the ISSNY QA/CC department. These “mandated reporters” include provider agency staff (support staff) including volunteers, contractors (clinicians, support brokers), interns, human service professionals, who by nature of their job must report allegations of abuse and/or neglect. Once the information is reported to ISSNY QA/CC, the QA/CC department will immediately report to the OPWDD “Incident Management Unit” (IMU).

Can I find out who called in a report to the ISSNY QA/CC department?

In order to maintain confidentiality, ISSNY cannot release the name(s) of the person(s) who made the report to QA/CC, or the name(s) of any person(s) who cooperated in an investigation.

What happens after a report is made?

ISSNY receives incidents in a multitude of ways. Once an incident is received, the QA/CC department will determine a few factors.

1. Is the participant safe, were immediate protections taken (did the family terminate the staff, does ISSNY People Services (HR) Dept. need to suspend staff). If no immediate protections were taken, the QA/CC department will guide and instruct the COS through immediate protections.
2. Is the incident “reportable” to the OPWDD?
3. Is the incident under ISSNY or the CCO’s jurisdiction for investigation and/or follow up purposes?

If there is an emergency, ISSNY QA/CC will instruct reporter to hang up and dial 9-1-1. The reporter will then call ISSNY back to complete the report once emergency has been addressed.

The QA/CC department will advise the reporter that he or she will receive an email including a “Preliminary Witness Statement” form for completion. The reporter will also be advised that he or she will be contacted by the assigned ISSNY investigator to schedule a face-to-face interview, if the incident is determined to be reportable and under ISSNY auspices.

There are several ways to report to ISSNY QA/CC. It is BEST to report via phone. If you’d like to remain anonymous, call the ISSNY Confidential Hotline. Calls can be made to QA/CC at any time. If there is no answer, always leave a message including incident description, date, details, participant name, your name and any protections in place. If you do not receive an immediate response, you can also report via email.

Contact Information for reporting:
Confidential hotline: 833-477-7287

QA/CC department email: qualityassurance@issny.org

Phone: 631-864-2536 extensions: 452, 453, 410, 417, 459; or 845-794-5218 ext. 334

INTAKE OF REPORT

QA/CC collects the information from the reporter and identifies if it is a reportable or a non-reportable situation. QA/CC also identifies if the situation is under ISSNY or another agency's jurisdiction. If the investigation is under ISSNY's auspices, an ISSNY Incident Number is assigned. If not under ISSNY auspices, ISSNY triages the incident to the appropriate agency's QA department. If an allegation of abuse/neglect is reported against a family member, the incident will immediately be triaged to the Care Coordination Organization (CCO). Confidentiality laws under New York State protect all reporters.

PROCEDURE

If the incident is under ISSNY auspices and is reportable, the following procedure will take place (Please note this is summarized).

Action by:	Action:
Receiver of incident report; QA/CC team	Ensure immediate protections are in place
Receiver of incident report	Report incident to Assistant Director of Compliance & QA, Corporate Compliance Officer & QA/CC team
Corporate Compliance Officer, Designee, or Assigned QA/CC Investigator	Notify ISSNY Senior Management & People Services (HR) Director, via email; noting if staff suspension is required, as per incident classification/OPWDD – IMU directive
People Services (HR) Department	Notify the staff of their suspension, as well as notify the affected families/COS teams, via phone & email (Note: suspensions are only made if deemed necessary; however, staff suspension is required for all allegations of physical and sexual abuse)
Assigned QA/CC Investigator	Notify OPWDD – IMU Incident Compliance Officer (ICO) & the Participant, or their primary contact/legal guardian, via phone
Assigned QA/CC Investigator	Notify the Participant's Circle of Support (COS), via email
Assigned QA/CC Investigator	Send OPWDD 148 form to the Participant, or their primary contact/legal guardian, via email & certified mail
Corporate Compliance Officer or Designee	Send introduction to investigator letter to staff, via email & certified mail
Assigned QA/CC Investigator	Conduct unbiased incident investigation
Corporate Compliance Officer, Designee, or Assigned QA/CC Investigator	Review, revise, and finalize the investigatory report
Senior Management & People Services (HR) Director	Review/approve the investigatory report
Assigned QA/CC Investigator	Upload final report to the OPWDD – IRMA database (within 30-days of incident discovery, barring any extenuating circumstances)

Action by:	Action:
Assigned QA/CC Investigator	Notify the Participant's Circle of Support (COS) of the investigatory findings, via email
Corporate Compliance Officer, Designee, or Assigned QA/CC Investigator	Send letter of determination (LOD) to target staff, for allegations of abuse/neglect ONLY, via email & certified mail
Corporate Compliance Officer, Designee, or Assigned QA/CC Investigator	Review investigatory findings at incident review committee (IRC) meeting & formally close the incident, with approval from IRC

What are the different types of classifications that ISSNY is mandated to investigate?

ABUSE

Abuse can be physical, sexual, or psychological. If *physical or sexual*, ISSNY is *mandated to suspend staff* and work with the COS to complete an immediate law enforcement notification. There are several additional abuse categories: *deliberate inappropriate use of restraints, aversive conditioning, obstruction of reports of a reportable incident, and unlawful use or administration of a controlled substance.*

NEGLECT

Neglect is the failure to provide supervision, adequate food, clothing, shelter, health care, or access to education. In our Self-Directed setting, neglect means a variety of things. If a support staff, "runs errands" and leaves the participant home, leaves the participant unsupervised for any duration of time when the plan states otherwise, if support staff orders a drink containing alcohol during his or her shift, etc. an allegation of neglect will be filed.

SIGNIFICANT INCIDENTS

A significant incident has the potential to result in harm to the health, safety, or welfare of a participant/service recipient. Categories of significant incidents are as follows: *conduct between service recipients, seclusion, unauthorized use of time out, medication error with adverse effect, inappropriate use of restraints, mistreatment, missing person, unauthorized absence, choking with known risk, choking with no known risk, self-abusive behavior with injury, injury with hospital admission, theft or financial exploitation, other significant incident.*

** Please note that some classifications do not "fit" our self-directed model. The OPWDD regulations were originally written to reflect a certified setting.*

Senior Notable Occurrences

Death, sensitive situation.

Minor Notable Occurrences:

Injury (beyond first-aid), theft or financial exploitation.

DURING THE INVESTIGATION

Who can be interviewed during an investigation?

Investigators will interview participants who may be victims or witnesses, and other people who witnessed or may otherwise have information about an incident. Investigators interview “subject” or “target” (e.g., employee, volunteer, intern, consultant, contractor) who are alleged to have committed the act of abuse and/or neglect, or mistreatment.

What can I expect if I am interviewed as a victim or a witness?

The purpose of the interview is to learn what you know about what happened. You will be notified of the location, date, and time of the interview. Your interview is voluntary and you may take breaks during the interview. You should let the investigator know if you need an accessibility accommodation during the interview or if you need clarification during the interview.

As part of the investigative process, investigators collect materials and documents. Investigators may ask to see personal items if they are needed to complete the investigation. This includes but is not limited to, emails, text messages, call logs, social media accounts, medical documentation etc.

How will I know if I am identified as a victim?

If you are identified as a victim in an allegation of abuse and/or neglect, or involved in any reportable incident, ISSNY will notify you within 24 hours of discovery. You will be provided with a phone notification and an introductory email. You will also receive an “OPWDD 148 Letter” via mail, completed by the assigned investigator. If you have additional information or questions, please contact the assigned investigator. Their contact information will be in the email and on the 148 letter.



A “**subject/target**” refers to the individual named in the allegation as committing the act of abuse and/or neglect. Only staff may be considered subjects.

Do parents, guardians, or personal representatives of alleged victim receive notification when a report has been made?

Yes. ISSNY notifies the legal guardian, or personal representative after they learn of an incident. This might be a parent, spouse, adult child or adult sibling. If the participant is his or her own legal guardian, the notification will go directly to him or her. The investigator may ask the representative/guardian the best means of communication for the participant to be interviewed, if he or she can be interviewed. The legal guardian or personal representative has the right to opt out of receiving the notice. If the representative is alleged abuser, he or she will not be provided this notice. If a representative opts out of receiving the notification, the notification will be provided to another party from the list above. If participant denies all parties to receive such notification, and is his or her own legal guardian, the notice must be provided to the participant.

The notice will include: a description of the event or situation and a description of initial actions taken to address the incident or occurrence, if any; an offer to meet with the executive director or designee. The designees at ISSNY are the Assistant Director of Compliance & QA or the Corporate Compliance Officer, to further discuss the incident or occurrence; and for reports of abuse and neglect, an offer to provide information on the status and/or finding of the report. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. ISSNY must protect the privacy of all involved.

What happens during an investigation?

The assigned investigator will complete an entry into the OPWDD's Incident Reporting and Management Application (IRMA), and complete several required notifications. The investigator will gather preliminary written statements for all persons who will be interviewed in person or via phone, conduct interviews, identify any potential physical evidence or demonstrative evidence (i.e. pictures), collect and review documentary evidence, and write an investigatory report in an unbiased manner. Conclusions will be based on a preponderance of evidence. Recommendations will be made based on conclusions. The investigation will be submitted to ISSNY Senior Management and the OWPDD IMU IRMA data base.

How can a parent, guardian, or other person legally responsible for a participant, find out the results of an investigation?

The circle of support is provided with an, "investigatory completion email" from the investigator. This includes **redacted** conclusions and pertinent recommendations. A participant's parent, guardian, or other person legally responsible for the participant can request in writing a "redacted" investigatory (149) report. The redaction protects personally identifying and confidential information due to the sensitive and confidential nature of the information.

What is Jonathan's Law?

ISSNY operates under the auspices of the Office for People with Developmental Disabilities (OPWDD). This means ISSNY must notify and inform parents, siblings, and legal guardians of children and adults receiving services by telephone of accidents or injuries. In our self-directed model, it is typical that the COS/family know of this information, and share it with ISSNY, resulting in the mandatory reporting processes. The law also allows qualified persons to access certain documents pertaining to incidents.

A qualified person is defined in Jonathan's law as a: parent or other legal guardian of minors. Parent, legal guardian, spouse, sibling, adult children of adult service recipients who are legally authorized to make health care decisions on behalf of the participant; or the participant who is his or her own legal guardian.

Criminal Cases

There are times that situations/incidents reported by ISSNY result in a criminal investigation. For example, an allegation of physical or sexual abuse, or theft/financial exploitation. Law enforcement will take ISSNY and/or the COS's mandatory law enforcement notification and detect if there is a criminal offense. If law enforcement investigates, they will work to gather evidence to support an arrest, file formal criminal charges, and obtain a conviction or plea to ensure justice is served. If law enforcement accepts a case, ISSNY's investigation will be under "forbearance". This means ISSNY pauses the investigation until law enforcement completed their investigation.

AFTER THE INVESTIGATION

What are the potential determinations of the investigation?

Allegations of abuse and/or neglect are determined to be substantiated or unsubstantiated.

Allegations may be substantiated if an abuse and/or neglect investigation determines there is a preponderance of evidence to support the allegation. This means that a review of the evidence shows whether the abuse and/or neglect was more likely than not to have occurred. An unsubstantiated finding does not preclude other consequences, including disciplinary action.

Why would an allegation of abuse and/or neglect be determined to be, “unsubstantiated”?

There might not be enough evidence to confirm the incident occurred, or to hold a person responsible for the incident. In the self-directed setting, it is also difficult to gather additional evidence because many things occur in the community where there are no cameras, no other ISSNY staff present, or no documentation such as a clinician to conduct a psychological exam to confirm psychological abuse. An unsubstantiated finding does not prevent other consequences such as employee discipline, additional supervision, training or other corrective measures.

Who makes the determination of the investigative findings?

ISSNY QA/CC department makes a final determination about whether the allegation of abuse and/or neglect is substantiated, or if a significant incident is “founded” or “unfounded”. The investigator submits the report to be reviewed by the Assistant Director of Compliance & QA as well as the Corporate Compliance Officer. The report is then submitted for review by ISSNY Senior Management. Subjects received an, “Introduction to Investigator Letter” at the introduction of investigation. At the close, the subject will receive a, “Letter of Determination/Investigatory Findings” from the QA/CC department. If the person was suspended, their continuing employment and or suspension release will be determined and communicated by the ISSNY People Services (HR) department. The ISSNY’s Incident Review Committee will review the incidents until the committee agrees there is no further follow up. Once the Incident Review Committee agrees, the investigator formally closes the incident.

APPEALS

In a certified setting, subjects of investigations under the New York State Justice Center are notified of their right to pursue the Administrative Appeals Process through court.

In ISSNY’s non-certified, voluntary operated setting, there are no appeals processes outlined in OPWDD regulation for abuse/neglect investigations because they are not under the Justice Center’s jurisdiction.

WHAT HAPPENS TO STAFF IF THEY ARE RESPONSIBLE FOR AN ALLEGATION OF ABUSE/NEGLECT OR MISTREATMENT?

It is the discretion of ISSNY Senior Management to determine if suspension is warranted for each incident with the exception of physical and sexual abuse. If your staff are suspended, People Services (HR) will call to notify you and other families the subject works with. People Services (HR) will then notify the subject of his or her suspension and inform him or her not to make contact with any participants/families, pending outcome of investigation.

At the outcome of the investigation, People Services (HR) will determine if the staff can continue employment with ISSNY. It might be that your COS already terminated the staff from your SD plan, and that is okay too. ISSNY People Services (HR) and Senior Management’s employment decision will determine if the person can continue working with ISSNY in any capacity, if they are eligible for rehire, or if remaining employed, what disciplinary action is necessary. Staff who remain employed can expect re-training in a multitude of areas depending on the incident and its findings.

Although ISSNY is non-certified and does not operate under the NYS JC, ISSNY is required to check with the NYS JC's Staff Exclusion List (SEL) before hiring staff. The SEL is not a public list. Only authorized individuals at agencies have access as a part of pre-employment screening.

FOR MORE INFORMATION/REFERENCES

Please see the Part 624 and Part 625 Handbook: <https://opwdd.ny.gov/part-624-part-625-handbook>

How can I report an incident?

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- QA/CC department email: qualityassurance@issny.org
- Phone: 631-864-2536 extensions: 452, 453, 410, 417, 459 or 845-794-5218 ext. 334

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