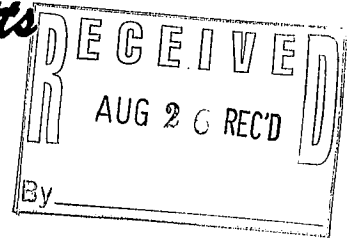


# The Commonwealth of Massachusetts

Executive Office of Health & Human Services  
Department of Developmental Services  
**FRANKLIN/HAMPSHIRE AREA OFFICE**  
**ONE ROUNDHOUSE PLAZA**  
**NORTHAMPTON, MA 01060**

TEL(413) 586-4948 • FAX(413) 584-0611 • TTY(413) 584-9762



Deval L. Patrick  
Governor

Elin M. Howe  
Commissioner

Daniel Lunden  
Regional Director

Ellen A. Parda, M.S.W.  
Acting Area Director

John W. Polanowicz  
Secretary

August 22, 2014

Nancy Mias  
150 Charlton St  
Oxford, MA 01540

Dear Ms. Mias:

Enclosed please find the concluding documentation from Complaint Number #02-CWFH-13-0574 (Addendum). This documentation addressed an incident concerning Dennis Perry. Shortly after the complaint was filed, Janet Auger, Senior Investigator for the Central/West Region Department of Developmental Services, appointed a staff investigator to conduct an investigation into this matter.

The staff investigator has now completed the investigation, and Ms. Janet Auger has submitted the Investigation Report to Daniel Lunden, Regional Director. The Regional Director assigned Ellen A. Parda, M.S.W., Acting Area Director, to develop an Action Plan based on the findings of the Investigation Report.

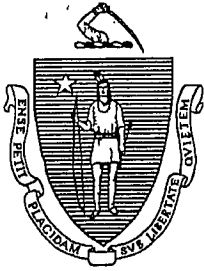
This mailing contains copies of both the Decision Letter and the Action Plan for your information. Under 115 CMR 9.11, any individual harmed or thought to have been harmed by an incident, and the guardian(s), have the right to appeal either or both of these documents.

Concluding documentation packets for individuals and guardians therefore include a Notice of Appeal Rights, a Reconsideration Form, and Appeal Forms, in addition to the Decision Letter and Action Plan. Use of these forms will facilitate the reconsideration and appeal processes.

As you review the contents of the concluding documentation packet, please feel free to call Ellen A. Parda, M.S.W., Acting Area Director, at (413) 586-4948 x 140 if she can be of assistance.

Sincerely,

Susan Banks  
Community Systems Director



# The Commonwealth of Massachusetts

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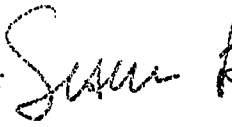
Elin M. Howe  
Commissioner

Daniel Lunden  
Regional Director

John W. Polanowicz  
Secretary

Ellen A. Parda, M.S.W.  
Acting Area Director

TO: All Parties to the Complaint

FROM: Susan Banks, Community Systems Director 

RE: ACTION PLAN FOR INVESTIGATION #02-CWFH-13-0574  
(ADDENDUM)

DATE: August 22, 2014

Pursuant to the Department of Developmental Services Regulations 115 CMR 9.10, I have reviewed the Decision Letter issued by Senior Investigator Janet Auger, as well as the DDS investigation report submitted by the Staff Investigator to Ms. Janet Auger, relative to the above matter. I have developed an Action Plan as follows:

A complaint was filed on 9/16/13 which alleged as follows: The ALV (alleged victim) and another individual (OI) were involved in an altercation which resulted in the ALV being pushed, falling to the floor and striking his head. The ALV was hospitalized and subsequently passed away at the hospital. The case was filed with the Disabled Persons Protection Commission (DPPC) on 9/16/13; however, due to the age of the ALV, the case was screened out by DPPC and forwarded to DDS Investigations. Pursuant to the Department's regulations, the Senior Investigator assigned the case for investigation. On 12/4/13, upon completion of the investigation report, the report was forwarded to the F/H Area Office. Based on the evidence gathered by the investigator in this matter there was not sufficient evidence to conclude the ALV was mistreated as a result of any act or omission by his care provider; therefore, mistreatment, as defined by 115 CMR 5.05 was not substantiated.

The ALAB (alleged abuser) in this case was a staff person present during the altercation between ALV and OI. As the OI was not a care provider, no determination could be made under DDS regulations. On 9/17/13, the DPPC State Police Detective Unit forwarded the case to the Worcester County District Attorney's Office on 10/2/13; OI was arraigned in Gardner District Court on a charge of assault and battery.

Although the complaint was not substantiated, several Protective Service Actions were taken and/or recommended as follows:

- The investigator noted the actions I-5 and R-2 used to interact with OI were inappropriate and unprofessional and recommended re-training of I-5 and other staff on the proper method of interacting with individuals who are not complying with a request.
- The investigator recommended TDC consider re-training staff on the target behavior section of individuals' behavior plans, to ensure that target behaviors are known to staff even if the behavior is infrequently seen or has never been seen in certain settings.
- A revised Social Skills Behavior Plan was implemented for OI on 9/18/13.
- TDC took actions to ensure that all individuals living off the grounds of TDC had updated medical/emergency information available in all work sites.

### **ADDENDUM:**

After careful review of the ADDENDUM to DPPC Case #120062 on 6/19/14, the Complaint Resolution Team requires the Director of the program to implement the following:

1. Submit a written response to the Area Director which describes the personnel actions taken as warranted and in accordance with agency's personnel policies and practices with regard to supervision of individuals in the care of I-5.
2. All TDC staff, who work where the incident occurred, to be trained in professional boundaries with an emphasis on recognizing the habilitation and clinical goals established in individual ISP goals and objectives.
3. Review existing communication protocols between residential and day staff to ensure an awareness of targeted behaviors and their occurrence across all environments.
4. Review existing training protocols around all targeted and potential behaviors.
5. Provide on-going training and support to all TDC staff, who work where the incident occurred, to encourage a cultural change with respect to clinical and professional roles and responsibilities.

As warranted, appropriate personnel actions will be taken in accordance with the employer's policies and procedures with regard to the additional recommendations raised by the investigator, as noted above. These actions should be completed within 30 days and confirmed in writing to the F/H Area Director.

Parties to the complaint have appeal rights. Refer to the attached form for information regarding the appeal process. All corrective actions and protective services required by the Action Plan shall be implemented pending appeal.

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND UNAUTHORIZED DISTRIBUTION OF THAT INFORMATION IS EXPRESSLY FORBIDDEN BY LAW.**

Attachments



**The Commonwealth of Massachusetts**  
**Executive Office of Health & Human Services**  
**Department Of Developmental Services**  
**Division of Investigations -- Central/West Region**

Deval L. Patrick  
Governor

324 Clark Street  
Worcester, MA 01606

Elin M. Howe  
Commissioner

John W. Polanowicz  
Secretary

Bernard J. Murphy  
Director of Investigations

Janet Auger  
Senior Investigator  
Tel (508) 845-9111  
Fax (508) 792-7432

TO: Ellen Parda, Acting Area Director  
Franklin/Hampshire

FROM: Janet Auger, Senior Investigator  
Central

RE: DECISION LETTER, 120062

DATE: 08/04/2014

PUBLIC LOG#: 02-CWFH-13-0574 - 120062 - SO

DPPC CASE#: 120062

DATE COMPLAINT FILED: 09/16/2013

INVESTIGATOR: TAMBURRO, STACEY

Investigations Office : Central

ALLEGATION(S): Today, 9-16-13 at about 2:30 pm, the o.i. and ALV were working together. Another client (A.R.) encountered the ALV and one other individual in the hall. The ALV and A.R. argued and the o.i. got physical with the ALV. The o.i. did run toward the ALV and pushed him into the boiler. The ALV struck his head and fell to the floor. The ALV was bleeding profusely. The ambulance transferred the ALV to the hospital in Gardner, MA. The ALV was combative and unresponsive at the hospital, requiring a four point restraint. CAT scan showed a brain bleed without skull fracture. The ALV was flown to U-Mass in Worcester and required intubation.

**METHODOLOGY**

The Complaint was filed on 09/16/2013. During the course of the investigation, witness(es) were interviewed and relevant documents were reviewed. The investigation report was submitted on 08/04/2014. The Report was reviewed and accepted by the Senior Investigator on 08/04/2014.

**M.G.L.c 19 C conclusions:**

Due to the ALV's age, this complaint falls outside the scope and authority of M.G.L.c. 19C and/or 118 CMR.

**115 CMR 5.05 regulatory conclusions:**

Based on the evidence gathered by the Investigator during this Investigation of DDS Case #02-CWFH-13-0574, there is not sufficient evidence to conclude that ALV was mistreated as the result of an act and/or omission by his care provider I-5. Therefore, mistreatment as defined by 115 CMR 5.05 is not substantiated. The complaint was filed with the DPPC on 09/16/2013, screened out by DPPC on 09/17/2013, and received by DDS on the same day. Although the allegation summary describes the acts of OI-1 only, the ALAB was listed as "Unidentified Staff." OI-1 does not meet the definition of a care provider; thus, there cannot be a finding of mistreatment against him. During the course of the investigation TDC staff were examined as alleged abusers and it was determined there was no omission by them at the time of the incident. This is based on:

-On 9/26/2013, having not heard from them, this Investigator sent an e-mail to the Worcester County District Attorney's Office informing them that the complaint was assigned for investigation and if the DA or Law Enforcement needed anything they should contact this Investigator. On 11/06/2013, ADA Joe Quinlan contacted this investigator via telephone regarding the status of my investigation and requested a copy of the investigation report and available documents. ADA Quinlan was informed that the civil investigation was being conducted with regards to TDC staff and that DDS does not have jurisdiction to investigate OI-1 as he is not a care provider. ADA Quinlan was provided with the name and address of the DDS General Counsel so he could submit a request for documents.

-The ALV and OI-1 never lived at TDC at the same time. OI-1 and ALV attended the same day program in the Valley Barn after OI-1 moved to TDC on 8/21/2012.

-I-5 was OI-1's 1:1 on 9/16/13 and indicated that OI-1 had no behavioral incidents prior to 2:30 PM and his demeanor up to and immediately prior to the incident was calm. At that time, OI-1 was finishing up with his 1/2 hour break during which he took a nap. When I-5 tried to wake him he refused to get up. As a result R-2 gently/lightly sat on OI-1 and told him that he would lose his grinder, as it was grinder night at the residence. I-5 reported that she put a small amount of water on her fingers and flicked it on OI-1 in a joking manner. She then told him that she would have to write him up for non-compliance if he didn't get up. I-5 stated that OI-1 began to laugh and got up without any further problems. OI-1 then went to the bathroom, changed his shoes and proceeded towards the exit door with I-5, at which point they passed by ALV and R-2 who were standing near each other by the boiler room. I-5 reported that just prior to she and OI-1 getting to the front door OI-1 unexpectedly said, 'Oh yah, I'm going to punch you in your fucking face', spun around and went full force towards ALV. OI-1 then pushed ALV on the chest with his palms open and ALV hit his head on the boiler and landed on the cement floor. I-5 stated that she did not hear any comments from either ALV or R-2 as she and OI-1 walked by them, nor was she able to stop OI-1 from suddenly spinning around and pushing ALV.

-OI-1's written Data Sheet about the incident, completed by I-5 documented, "[OI-1] went into the bathroom to change his shoes. I was bringing him back to Oak for N/C with staff request and we were walking down the hall, [R-2] and [ALV] were there and some comments were made but they all kid each other." I-5 clarified that she had written on OI-1's Data Sheet incorrectly. She said that R-2's comment about losing his grinder that night were made prior to OI-1 going to the bathroom and not as OI-1 was walking past the ALV and R-2. I-5's statement dated the same day as the incident, and her verbal statement given during her interview with this Investigator, were consistent on this point.

-ALV was taken to a Gardner Hospital with severe head trauma and later transported to UMass University Campus Hospital via med flight. ALV passed away on 9/27/13.

-I-4 stated that she was in the office with the door open and had a clear view of the incident, approximately 27 feet. I-4 corroborated I-5's statement that ALV and R-2 were in the hallway by the boiler room and OI-1 was in the hallway by the exit door. I-4 reported that she saw OI-1 suddenly turn around and aggressively push ALV into the boiler room where ALV hit his head. I-4 denied hearing any comments by ALV and/or R-2 prior to the incident. According to I-4, she did not hear OI-1 say anything. I-4 indicated that from her perspective there wasn't anything I-5 could have done differently to prevent the incident, as everything happened so quickly.

-I-6 stated that she met with I-5 on the day of the incident and that it was her understanding that ALV and R-2 had been teasing OI-1 about losing his grinder just as OI-1 was getting ready to leave the building. I-6 also reported that I-5 said she didn't hear anything specific from ALV and/or R-2. I-5 stated that the ALV did not say anything to OI-1. It was R-2 who was fooling around with OI-1 regarding losing his grinder. She stated that she did not go in to any specific details with I-6. She spoke with I-6 to inform I-6 about the incident. I-6 was not a witness to the incident and has no firsthand knowledge about the incident. Her statement to this Investigator reflects her recollection of her meeting with I-5.

-As documented in OI-1's September 2013 Status Assessment and as reported by I-6, OI-1 has a history of aggression and threats, prior to entering TDC. While OI-1 was a minor, some of these behaviors were against family members and included assault with a dangerous weapon. These actions led to an out of home placement. There were additional assault and battery charges and threatening with a knife, threats to bring a gun to school, threats to blow up a school, kicking a hole in the wall, and disturbing an assembly. All charges were later dropped. Just prior to entering TDC, OI-1 was charged with arson and breaking and entering. The charges are currently active in the court system.

-As documented in OI-1's September 2013 Status Assessment and in OI-1's Social Skills Behavior Plan (Revised 12/12/12), OI-1 was working on decreasing a number of targeted behaviors. Behaviors included refusal to participate in scheduled activities, inappropriate behavior in the community, improper use of the phone, assault, property abuse, verbal abuse/threats, peer harassment, SIB/suicide threats, fire setting, and elopement. Documentation indicates that while at TDC, OI-1 exhibited

behaviors such as leaving the building without staff permission, threats to turn staff in, a threat to kill himself, threats to hurt staff, name calling towards staff, an attempt to elbow staff, burns to his arm with a cigarette, knocking a chair over, slamming a door on the arm of a staff, slamming his bedroom door, one instance of shoving of a staff, and upsetting other individuals while being verbally abusive towards staff (i.e. peer harassment). There were no documented behaviors against any of his peers.

- According to I-1, I-4, I-5, and I-6, OI-1 was staffed 1:1 at the time of the alleged incident due to a history of fire setting/arson and/or elopement. I-4 and I-5 were not aware of any previous acts of aggression by OI-1 while at the TDC.
- Although the 1:1 was not in place for aggression, his Social Skills Behavior Plan included behaviors other than fire setting and elopement and provided direction to staff on dealing with those behaviors. According to I-5, she did not sign off on OI-1's Plan but read over it.
- OI-1 was not interviewed during this investigation as he is the subject of pending criminal investigation charges. OI was observed at TDC on 10/01/2013 but has been held on bail at the House of Correction since his arraignment.
- I-4 and I-5 were consistent in their statements that the ALV and R-2 did not make any comments to OI-1 just prior to the incident.
- OI-1 had not exhibited aggressive behaviors towards any other individuals since moving to TDC in 8/2012.
- OI-1 was staffed at a 1:1 ratio specifically due to fire setting and elopement behaviors and not aggression.
- I-5 did not have time to react to OI-1 suddenly spinning around and going after ALV.

#### ADDENDUM

The following information was collected as the result of additional investigation conducted pursuant to the remand of this matter:

- I-4 was re-interviewed and her statement was consistent with her previous statement.
- I-9\* reported that he teased OI-1 at some point (exact time could not be recalled) during the day by sitting on OI-1, as OI-1 was lying on a bench and would not get up. I-9 stated that he sat on OI-1 lightly and that he got up quickly. I-9 further indicated that it was his choice to sit on OI-1 and was not directed to do so by staff. I-9 could not provide any information as to OI-1's reaction when he sat on him. I-9 said that he couldn't remember if OI-1 was upset but he didn't think so.
- I-9 stated that a woman was with OI-1 at the time of the incident and denied that anything was said to OI-1 by ALV and/or I-9 before OI-1 pushed ALV into the boiler.
- Both I-10 and I-11 were in different areas of the Valley Barn at the time of the incident; however, both staff denied that they heard and/or observed the incident between ALV and OI-1 and further stated that there didn't appear to be any indication that OI-1 was in a bad mood and/or upset at ALV on the day of the incident.

- Nothing in this additional evidence points to the ALAB being responsible for OI-1's spontaneous and unpredictable assault on the ALV. The allegations remain: Unsubstantiated.

\* Note that the person identified as R-2 in the original report was changed to I-9 for purposes of the addendum as he was interviewed on 7/9/14.

### RECONSIDERATION FORM

Form to be used for Request for Reconsideration of Action Plan or Decision Letter

02-CWFH-13-0574

Note: This form is to be used by a "Party to the Complaint" if the objection is solely with regard to the Action Plan or the Decision Letter. If a Party is aggrieved by the Investigation Report, this process is not applicable.

(Use back of this form or attach a supplement to provide additional information if there is not enough room below)

Name(s) of person(s) requesting reconsideration:	Address (Street, City/Town, State, Zip Code) and Telephone Number:

Reason for Request: (You must carefully outline all the information you want to be considered, as specifically as possible. Use back of form and additional sheet if necessary.)

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This form should be sent to:

Mr. Daniel Lunden, Regional Director  
DDS, Central/West  
140 High St  
Springfield, MA 01105  
(413)205-0800

Inv\_reconsideration\_03022007

02-CWFH-13-0574

Name(s) of person(s) appealing:	Address (Street, City/Town, State, Zip Code) and Telephone Number:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or printed text on the paper.

Elin M. Howe, Commissioner  
Department of Developmental Services  
500 Harrison Ave.,  
Boston, MA 02118



**NOTICE OF APPEAL RIGHTS**  
For DDS Conducted Investigations

**INTRODUCTION**

**INTRODUCTION:** This Notice of Appeal applies to Investigations Complaints filed against a caretaker who is a DDS provider that has been investigated by the Department of Developmental Services (DDS). Only persons identified as Parties to the Investigations Complaint have the right to appeal. Parties to an Investigations Complaint as defined in Department Regulation, 115 CMR 9.02(11), are as follows:

- a. the complainant;
- b. the person complained of or thought or found to be responsible for an incident or condition;
- c. any individual served by the Department harmed or thought to be harmed by an incident if other than the complainant;
- d. the legal guardian of the complainant, or person complained of, or individual harmed or thought to be harmed by the incident; and
- e. the human rights committee of the provider.

With this Notice of Appeal, you have also been sent the Decision Letter and Action Plan. If you are aggrieved by any investigations finding or conclusion in the Decision Letter, or the Action Plan, you may file a Request for Reconsideration to the DDS Regional Director and/or an Appeal to the DDS Commissioner.

**Investigations Report**

As a Party to this Investigations Complaint, you may obtain a copy of the investigations report by sending a written request to:

Janet Auger, Senior Investigator  
DDS, Central/West Region  
214 Lake Street  
Shrewsbury, MA 01545

**Request for Reconsideration**

As a Party to the Investigations Complaint, you have five (5) days from receipt of this Notice of Appeal Rights to file a Request for Reconsideration with Daniel Lunden, Regional Director, specifying how the Decision Letter or Action Plan is deficient. A Reconsideration Request is optional and may be requested prior to filing an appeal. However, you have the option to proceed directly to an appeal. If you choose to request reconsideration, you should explain your basis and submit a written document fully detailing any information you want to be considered. The Request for Reconsideration must be postmarked no later than September 15, 2014.

Note: If you had requested a copy of the investigation report during the time period allowed for filing a Request for Reconsideration, you will have five (5) days from the receipt of the Investigations Report to file for reconsideration. Receipt of the investigations report will be presumed to have occurred within 7 days of the mailing of the report.

## **1. Where to send Your Request for Reconsideration**

Your reconsideration must be sent to:

Daniel Lunden, Regional Director  
DDS, Central/West Region  
140 High St  
Springfield, MA 01105

### **Appeal**

## **1. Appeal to Commissioner of the Department of Developmental Services**

### **a. When to Appeal**

You may file an appeal, if you are aggrieved by the Decision Letter or by the Action Plan, or if after receiving a response to your Request for Reconsideration you are still dissatisfied. To appeal, the enclosed Appeal Form must be mailed and postmarked no later than September 22, 2014.

Note: The deadline for filing an appeal will change if you have requested reconsideration or if you had requested a copy of the investigation report during the time period allowed for filing an Appeal. The deadline for filing an appeal will be ten (10) days after receipt of the response to the Request for Reconsideration or ten (10) days after receipt of the investigations report, whichever is later.

### **b. How to Appeal**

You must complete the enclosed "Appeal Form." Be as specific as possible in stating the reasons for your appeal. Use the back of the form and additional sheets, if necessary.

### **c. Where to send your Appeal**

Your appeal must be sent to:

Elin M. Howe, Commissioner  
Department of Developmental Services  
500 Harrison Ave., Boston, MA 02118

## **2. Appeal to the Disabled Persons Protection Commission**

If the Decision Letter states that a 19C Investigation was conducted, you have the option to appeal the findings and conclusions in the Decision Letter to the Disabled Persons Protection Commission (DPPC) instead of appealing to the DDS Commissioner. You may not appeal to both. To appeal to DPPC, you must file the appeal with DPPC and include pertinent information specifying the reasons for your appeal of the Decision Letter. DPPC will inform you of their procedure and any further steps that will be necessary to process your appeal. The appeal to DPPC must be sent to:

Executive Director  
Disabled Persons Protection Commission  
300 Granite Street, Suite 404  
Braintree, MA 02184  
Phone: (617) 727-6465  
Hotline: (800) 426-9009 V/TTY 7 Days A Week

## **3. Alternative Appeal for DDS Employee**

If you are a Department employee with collective bargaining rights, you may elect to appeal through the collective bargaining grievance process. If so, that will be the exclusive process for resolving the issues.