

OPWDD DIRECTIVE TO SEARCH ABUSE/NEGLECT HISTORY RECORDS

(accompanies Form OPWDD 153)

Pursuant to Section 16.34 of the Mental Hygiene Law, OPWDD is conducting a search of records of substantiated allegations of abuse and neglect concerning a prospective employee or volunteer in the OPWDD system. This search concerns records of allegations of abuse or neglect that occurred prior to June 30, 2013.

OPWDD has obtained information that the applicant listed at the top of the accompanying Form OPWDD 153 worked or volunteered with your agency in the past. OPWDD is requesting that your agency conduct a reasonably diligent search of its records to determine if there is a substantiated allegation of abuse or neglect which involved the applicant as a target.

Pursuant to OPWDD regulations, your agency must comply with this request and must respond within 10 working days of the time this request was sent.

OPWDD appreciates your cooperation with this request. The provision of information about past abuse or neglect will help prospective employers screen out inappropriate applicants and will protect people receiving services from known abusers.

Information about the prospective employee or volunteer, the due date, etc. can be found at the top of the Form OPWDD 153 which accompanies this request.

The dates of employment or volunteer activity provided by OPWDD may be approximate. Note that the request to search records is not limited to the dates provided. If the records of your agency reveal that the applicant was associated with your agency for a different period of time your agency must search available records for that period of time. Please note the different period of time under "comments."

OPWDD regulations effective June 30, 2013 require that agencies retain incident management records for a period of seven years. Agencies may dispose of records after that time period (unless there is ongoing litigation or auditing activity related to the records). Agencies are not required to retain records indefinitely to make them available for future requests of this nature.

If there is a substantiated allegation of abuse or neglect, your agency will need to determine if it meets the criteria specified below. If it meets all of the criteria, your agency must write a summary report concerning each substantiated allegation that is found. The summary report must be in the format specified by OPWDD.

The response sent to OPWDD by the due date consists of a completed form *OPWDD 153 Agency response to the directive to search abuse/neglect history records* and, if information concerning a substantiated allegation of abuse or neglect can be disclosed, a summary report for each substantiated allegation. The documents must be emailed to OPWDD at: Incident.Management@opwdd.ny.gov

Keep a copy of your agency's completed Form OPWDD 153 and any summary reports provided.

After it receives all responses from agencies which were requested to search records, OPWDD will send a notice to the agency which requested information about the prospective employee or volunteer. The notice will state whether the reasonably diligent search located any records that could be disclosed. OPWDD will also send any summary reports provided by your agency to the requesting agency. In addition, OPWDD will send the summary reports to the prospective employee or volunteer.

Additional information about this process, including Mental Hygiene Law Section 16.34 and OPWDD regulations, can be found on the OPWDD website at www.opwdd.ny.gov.

Criteria for determining whether information concerning a substantiated allegation of abuse or neglect can be disclosed.

ALL of these criteria must be met.

1. The substantiated report must be from a program operated or certified by OPWDD.
2. The substantiated report concerns abuse or neglect that occurred and was discovered prior to June 30, 2013.
3. The substantiated report must be for one (or more) of the following:
 - Physical abuse (as defined in Part 624 prior to June 30, 2013)
 - Sexual abuse (as defined in Part 624 prior to June 30, 2013)
 - Psychological abuse (as defined in Part 624 prior to June 30, 2013)
 - Serious neglect – “Intentional acts or omissions that endanger the life or health of a person receiving services.” (Note that this is different from the definition of neglect that was in OPWDD regulations prior to June 30, 2013.)

For state-operated services, information about a substantiated allegation cannot be disclosed unless the prospective employee or volunteer either was found guilty in a disciplinary proceeding, OR that there was a settlement agreement in which the prospective employee or volunteer admitted guilt. This criterion also applies to voluntary providers who are unable to terminate an employee at will.

Certified facilities include:

Intermediate Care Facilities (ICFs), Individualized Residential Alternatives (IRAs), Community Residences, Family Care Homes, Certified Day Habilitation (note that Day Habilitation can also be non-certified), Day Treatment Facilities, Free-Standing Respite Facilities (certified as IRAs), Article 16 Clinics, Specialty Hospital, Sheltered Workshops, Day Training Facilities, Private Schools (including Integrated Residential Communities)

Non-certified services include:

Supported Employment, Day Habilitation Without Walls, Hourly Community Habilitation, Respite (except for Free-Standing Respite), Medicaid Service Coordination, Plan of Care Support Services, Prevocational Services, Family Support Services, Individual Support Services