



OFFICE OF P-12 EDUCATION: Office of Special Education  
ASSISTANT COMMISSIONER  
Room 301M EB, 89 Washington Avenue • Albany, NY 12234  
[www.p12.nysed.gov/specialed/](http://www.p12.nysed.gov/specialed/)

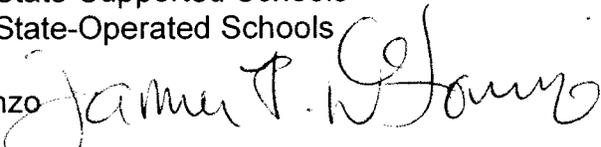
Telephone (518) 402-3353  
Fax: (518) 402-3534

May 2013

## SPECIAL EDUCATION FIELD ADVISORY

### TIMELY ACTION REQUIRED

To: Directors of Approved 4410 Preschool Special Education Programs  
Municipal Representatives  
Executive Directors of In-State Approved Private Residential Schools  
Superintendents, Special Act School Districts  
Superintendents, State-Supported Schools  
Superintendents, State-Operated Schools

From: James P. DeLorenzo 

Subject: Justice Center Staff Exclusion List

The purpose of this memorandum is to inform you of a new requirement under Chapter 501 of the Laws of 2012: "Protection of People with Special Needs Act" and request that you complete the attached form not later than May 31, 2013. The law requires the newly established Justice Center to maintain a register of subjects of reports who have been found to have a substantiated category one case of abuse or neglect, also known as the "Staff Exclusion List" (SEL), who are deemed ineligible to work in a position involving regular and substantial contact with a service recipient.

Pursuant to Chapter 501, as of June 30, 2013, all approved in-State residential schools (i.e., the New York State School for the Blind, the New York State School for the Deaf, State-supported schools which have a residential component, special act school districts, and approved private residential schools) will be required to first check the SEL before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient or before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient. The Justice Center will conduct this check upon the request of a person authorized by the provider. If an applicant is listed on the SEL, consistent with applicable collective bargaining agreements, the provider will be prohibited from hiring such person to have regular and substantial contact with a service recipient in any such facility or program. If the applicant is not on the SEL, providers must make an inquiry through the State Central Register (SCR) of Child Abuse and Maltreatment in accordance with section 424-a of the Social Services Law. The Justice Center has issued a 'Dear Colleague Letter,' which is

attached to this memorandum, to provide guidance to residential schools on the law's requirements relating to the SEL.

In addition to the above requirements relating to residential schools, all approved preschool special education programs and all municipalities that contract for related services pursuant to section 4410 of the Education Law must complete the SEL form and establish procedures, after June 30, 2013, to check both the SEL and SCR. (The requirement to check the SCR is not new). If an applicant is listed on the SEL, the provider must determine whether to hire or allow such person to have regular or substantial contact in accordance with the provisions of section 424-a(5) of the Social Services Law.

The following sets forth the entities approved by the State Education Department that are required to conduct a SEL check with the Justice Center and those required to make an inquiry of the SCR through the Office of Children and Family Services (OCFS) as well as those authorized to request a criminal background check (CBC) through the Justice Center. After obtaining the results of a check of the SEL, an inquiry of the SCR must be conducted if the applicant is **not** on the SEL.

<b>Entities that must request an SEL check</b>	<b>SEL check</b>	<b>CBC<sup>1</sup> by Justice Center</b>	<b>SCR check</b>	<b>If on SEL - mandatory no hire</b>	<b>If on SEL - discretion to hire<sup>2</sup></b>
<b>Facility/Provider Agency (defined SSL 488[4]):</b>					
<ul style="list-style-type: none"> <li>• State-Operated Schools for Deaf/Blind,</li> <li>• State-Supported Schools with a residential component</li> <li>• Special Act School Districts</li> <li>• In-State private special education schools with residential programs</li> </ul>	X		X	X	
<b>Provider or provider agencies defined in Social Services Law §424-a(3)</b>					
<ul style="list-style-type: none"> <li>• Approved 4410 Providers (Preschool Special Education)</li> <li>• Municipalities that contract for related services for preschool children with disabilities</li> </ul>	X		X		X

<sup>1</sup>The standard for conducting a CBC is regular and substantial unsupervised or unrestricted physical contact with service recipients as provided for in Mental Hygiene Law §§16.33, 19.20, 19.20-a and 31.35.

<sup>2</sup> Discretion in determining whether to hire is to be made in accordance with guidelines developed by OCFS for evaluating the subject of an indicated report of child abuse or maltreatment.

The details for the process for conducting a check of the SEL with the Justice Center are being formalized, but it is expected that providers will fax a request on the form prescribed by the Justice Center's CBC Unit for a check of the SEL and the Justice Center will respond with a secure email to the provider's designated authorized person's email address.

In order to have their system operational on June 30, 2013, the Justice Center is asking each provider and program that is required to conduct a check of the SEL to designate an authorized person who will be permitted to request such check on behalf of the provider agency using the attached "Authorized Person Designation/Notarized Sworn Statement Form". Please note that out-of-State residential schools should NOT complete this information. When completed, this form should be submitted to the Justice Center by fax to 518-549-0464 or email to cbc@JusticeCenter.ny.gov as soon as possible, but not later than **May 31, 2013.**

For additional information regarding the SEL and provider responsibilities under Chapter 501, please see the attached letter from the Justice Center Project Team. Additional information about the provisions of section 424-a is available in the Department's May 2011 field memorandum *Statewide Central Register of Abuse and Maltreatment (SCR) – Online Clearance System* available at <http://www.p12.nysed.gov/specialed/publications/SCR-clearance>.

We appreciate your attention to this matter and your cooperation in providing the requested information to the Justice Center to ensure the health and safety of the students you serve. Questions regarding this should be directed to Deirdre Keating, Justice Center Project Team at (518) 549-0247 or by email to deirdre.keating@cqc.ny.gov.

Attachments

Dear Colleague:

The Justice Center for the Protection of People with Special Needs (Justice Center) was recently created in response to the recognized need to strengthen and standardize the safety net for persons who receive care from New York State's human services agencies. It becomes operational on June 30, 2013.

### Staff Exclusion List

The Act establishes in the Justice Center a Vulnerable Persons Central Register (VPCR) that will include a Staff Exclusion List (SEL) containing the names of individuals deemed ineligible to work in a position involving regular and substantial contact with a service recipient. The law requires that prior to requesting a criminal background check, the following entities shall check the SEL when considering an applicant for employment:

- 1) facilities and provider agencies, as defined in Social Services Law §488(4);
- 2) providers of services to persons in programs licensed, certified or funded by any State Oversight Agency as defined in Social Services Law §488(4-a); and
- 3) other providers or licensing agencies required to conduct an inquiry of the State Central Register of Child Abuse and Neglect (SCR).

The Justice Center will conduct this SEL check upon the request of a person authorized by the provider. The results of the SEL check shall be handled in accordance with Social Services Law §495(3). If the result of the SEL check does not prohibit an applicant from being hired, any provider required to conduct an SEL check shall also conduct an inquiry of the SCR through OCFS, and if authorized to do so, request a criminal background check through the Justice Center. While SED covered providers are not required to request the Justice Center to conduct a criminal background check on applicants, they are required to request a check of the SEL.

### Provider Responsibilities

Providers must designate a person authorized to request the Justice Center to conduct a check of the SEL. Before determining whether to hire or otherwise allow a person who will have the potential for regular and substantial contact with a service recipient, this authorized person shall request the Justice Center to check the SEL. If an applicant is listed on the SEL, the facility or provider agency and all other providers of services to vulnerable persons in program licensed or certified by SED is required to deny the application in accordance with Social Services Law §495(3). If an applicant is not on the SEL, the authorized person shall make an inquiry of the SCR through the Office of Children and Family Services.

The Justice Center is actively working on creating the structure to manage this new system. To this end, we will strive, as decisions are made, to get information out to the affected provider community in a timely fashion. We are in the process of developing the Justice Center website, upon which we will post letters to the field, regulations, training information, FAQs and other relevant information as it becomes available. We would also encourage affected providers within the state to post this information on their own websites.

A link to Chapter 501 of the Laws of 2012 is provided below for your reference. We encourage you to read through this legislation, and to contact your State Oversight Agency with any specific questions or concerns.

Sincerely,

The Justice Center Project Team

<http://www.governor.ny.gov/assets/justice4specialneeds/LBDCinfo.htm>

<b>NYS Justice Center for the Protection of People with Special Needs Criminal Background Check Unit 161 Delaware Avenue Delmar, NY 12054 Fax: 518-549-0464 Email: <a href="mailto:cbc@JusticeCenter.ny.gov">cbc@JusticeCenter.ny.gov</a></b>	<b>Authorized Person Designation/Notarized Sworn Statement Form  Justice Center Staff Exclusion List (SEL) Check</b>	<b>Provider Agency Name:</b> Agency Code: Address:  City _____, NY Zip _____ Telephone Number: Fax: <b>State Oversight Agency: DOH SED OCFS (circle all that apply)</b>
---	--	--

The purpose of this form is to designate the Authorized Person for your agency who will be permitted to request, on behalf of the Provider Agency, a check of the Staff Exclusion List (SEL) pursuant to relevant statutory authority. By signing this form, each signatory attests that all requests made by the Authorized Person for a check of the SEL by the Justice Center on each prospective employee, volunteer, consultant or natural person operator ("subject individual") will be made in conformance with the law.

- INSTRUCTIONS:**
1. Please complete all Parts of this form including upper right corner (one form for each Authorized Person).
  2. The Authorized Person and the Director of the Provider Agency must sign and date this form where indicated.
  3. The Authorized Person must sign Part 3 in the presence of a Notary Public.
  4. Please return the completed form to the Justice Center. The form may be mailed, scanned and emailed, or faxed to the Justice Center's CBC Unit at the contact information above. If the original form is not mailed to the Justice Center, it must be maintained by the Provider Agency.

**Part 1. Authorized Person (Please Print)**

Last Name:	First Name:	M. I.:
Business Email Address:	Business Phone #	
Title:		
Business Address (Street):		
City:	State:	Zip:

I understand that my designation as an Authorized Person is granted for the sole purpose of performing responsibilities related to a request for a check of the SEL pursuant to relevant statutory authority. I agree that such requests will be made solely to carry out those specific responsibilities. I further understand that the results of a SEL check will only be used and disseminated for purposes authorized by law, and I agree to abide by the confidentiality requirements set forth in Social Services Law §496, Labor Law §203-d and Article 6-A of the Public Officers Law.

Signature of Authorized Person:	Date:
---------------------------------	-------

**Part 2. Provider Approval (DIRECTOR OF THE PROVIDER AGENCY MUST APPROVE DESIGNATION OF AUTHORIZED PERSON BY SIGNING BELOW)**

I hereby designate the person identified in Part 1 of this form to serve as the Authorized Person for the Provider as noted on this form. I also request access and appropriate permission for this person to request a check of the SEL in support of this responsibility.

Name (Please Print):	Title:
Signature:	Date:

**Part 3. Authorized Person Signature and Notary Acknowledgement**

- By submitting a request for a SEL check through the Justice Center on behalf of the above-named Provider Agency, I hereby attest to the following:
1. I am a duly Authorized Person for the Provider Agency. As such, I am authorized to request a check of the SEL pursuant to Social Services Law §495(2).
  2. Each request for a check of the SEL of a subject individual has been made in the Justice Center VPCR by a person authorized to make such request. Each such request entry shall identify the subject individual by his or her name, and will identify the subject individual as either a prospective operator, employee, volunteer or consultant of the Provider Agency who will have regular and substantial physical contact with the Provider Agency's clients.
  3. Each subject individual will be informed that the Provider Agency is authorized to request a check of the SEL and that if the SEL check results in a determination that the subject individual should not be hired or retained, a criminal background check will NOT be performed.
  4. Each subject individual will be informed that he or she may, pursuant to Social Services Law §494, challenge the determination that resulted in placement on the SEL.
  5. The results of each check of the SEL will be used by the Provider Agency solely for the purposes authorized by law.
  6. Upon information and belief, the Provider Agency, its agents, and employees are aware of and will abide by the confidentiality requirements of Social Services Law §496, Labor Law §203-d and Article 6-A of the Public Officers Law.

Authorized Person Signature:	Date :
------------------------------	--------

Acknowledgment to be completed by a Notary Public

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_

To me known and known to me to be the same person described in and who executed the foregoing instrument, and \_\_\_he duly acknowledged to me that \_\_\_he executed same.

\_\_\_\_\_  
Notary Public  
(Please sign, affix stamp and include expiration date.)