

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Kendall Kienia

Docket #2010-T-005

**Department of Health and Human Services, Division for Juvenile Justice Services
Personnel Appeals Board Decision on Appellant's Motion for Reconsideration/Rehearing and
Department's Objection to Appellant's Motion for Reconsideration/Rehearing
August 10, 2011**

By letter dated April 29, 2011, SEA General Counsel Michael Reynolds submitted Appellant's Motion for Reconsideration/Rehearing of the Board's March 30, 2011, decision in Kendall Kienia's appeal of his July 28, 2009, termination of employment from his position as a Youth Counselor I at the Sununu Youth Services Center. Attorney Jonathan Gallo submitted the Department's Objection to that Motion by letter dated May 3, 2011.

In accordance with Per-A 208 .03 Rehearing, in the NH Code of Administrative Rules (Rules of the Personnel Appeals Board):

- (a) Pursuant to RSA 541 :3, within 30 days after the date of notice of any decision or order of the board, any party to the action or proceeding before the board, or any person directly affected thereby, may apply for rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order .
- (b) In order to be considered, such request shall be delivered to the executive secretary of the board within the 30 day period specified in (a) above.
- (c) Such motion for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.
- (d) The opposing party may file an objection within 5 days of the filing of the motion .
- (e) The board shall not grant a motion for rehearing for 5 days after the motion is filed in order to permit the opposing party to respond . Thereafter the board shall, within 10 days of the filing of the motion, grant or deny the motion, whether or not it has received a response from the opposing party .

(f) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful or unreasonable.

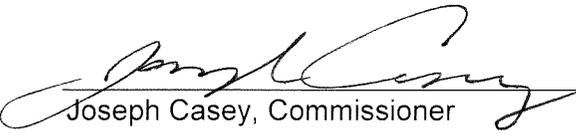
(g) Following the granting of a motion for rehearing, the board shall issue a notice as described in Per-A 206 .11 (b)

After considering the arguments set forth in the Appellant's Motion and in the State's Objection, the Board finds that the Motion fails to demonstrate that the Board's decision was unlawful or unreasonable, and voted unanimously to DENY the Appellant's Motion for Reconsideration/Rehearing.

THE PERSONNEL APPEALS BOARD


Philip Bonafide, Acting Chair


Robert Johnson, Commissioner


Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Michael Reynolds, SEA General Counsel, 207 N. Main St., Concord, NH 03301
Attorney Jonathan Gallo, Department of Health and Human Services, 29 Pleasant St.,
Concord, NH 03301

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Kendall Kienia

Docket #2010-T-005

Department of Health and Human Services, Division for Juvenile Justice Services

March 30, 2011

The New Hampshire Personnel Appeals Board (Bonafide, Johnson, and Casey) met in closed session¹ on Wednesday, June 2, 2010, and Wednesday, June 30, 2010, under the authority of RSA 21-1:58 and Chapters Per-A 100-200, to hear the appeal of Kendall Kienia, a former employee of the Sununu Youth Services Center. Mr. Kienia, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing his July 28, 2009, termination from employment as a Youth Counselor I on charges that he violated DJJS policies and procedures and endangered the health and safety of two individuals served by the State, thereby violating the provisions of Per 1002.08(b)(7) and (9). Attorney Jonathan Gallo appeared on behalf of the Division for Juvenile Justice Services, Department of Health and Human Services.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audiotape of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits:

- | | |
|-----------|---|
| State's 1 | Video of the incident involving the Appellant and Students in F Unit |
| State's 2 | SYSC Policy Receipt dated September 2, 2008 for Use of Force Policy 3-003 |
| State's 3 | DJJS Policy RS-1458, effective May 1, 2009, Incident Tracking and Review |
| State's 4 | July 2, 2009, email from Norm Larochelle to John Duffy, Subject: Account |
| State's 5 | July 1, 2009, Carol Gay interview summary |
| State's 6 | Intent to Dismiss letter issued to Kendal Kienia, dated July 17, 2009 |

¹ Although Per-A 205.02 of the Board's rules states that hearing are open to the public and the Board's records are available for inspection, RSA 91-A:5, IV, specifically exempts "...confidential, commercial, or financial information..." from disclosure under the Right-To-Know Law. In this instance, evidence to be presented at the hearing and entered into the record of the hearing included information from juvenile case records, which are considered confidential and protected from disclosure under the provisions of RSA 170-G:8 A. In order to be permitted to offer that information into evidence, Attorney Gallo obtained a final order from a court of competent jurisdiction that would allow that evidence to be offered and admitted into the record, provided that the Board agreed to close the hearing to the public and seal the record of the hearing to preclude disclosure of confidential juvenile records or records from juvenile case files to any unauthorized third party.

State's 7 Dismissal From Employment letter issued to Kendal Kienia, dated July 28, 2009
State's 8 John Duffy notes dated June 29, 2009, interview of Kendal Kienia
State's 9 James Peace notes dated June 29, 2009, interview of Kendal Kienia
State's 10 SYSC Policy Receipt, Professional Conduct Policy, C-002
State's 11 Class specification for Youth Counselor I
State's 12 Youth Statement for Record dated June 18, 2009, from resident Tyler T.
State's 13 Youth Statement for Record dated June 18, 2009, from resident Paul D.
State's 14 Handwritten notes from John Duffy titled "Kendal 7/21, viewing tape"
State's 15 June 17, 2009, email from Anthony Laforge to Jim Peace
State's 16 Photocopy from SYSC Communications Log

Appellant's Exhibits

SEA A June 25, 2009 email from Steve Sage to Jim Peace re: Investigation
SEA B June 28, 2009 email from James A. Margeson to Jim Peace, re: Report on event that happened on June 9, 2009
SEA C June 29, 2009 email from Corey G. Dearborn to Jim Peace, re: Incident 6/9/09 (2 pages, including email from Peace to selected staff)
SEA D Performance Summaries dated March 2, 2008, March 9, 2007, February 16, 2006, and August 31, 2005 for Kendall Kienia
SEA E June 18, 2009 email from Kellyann K McLaughlin to Jim Peace re: Statement on F-unit 6/9/09

The following witnesses, who were sequestered at the request of the parties, gave sworn testimony:

Virgil Bossom, Training Program Specialist
James A. Margeson, Youth Counselor I (testimony taken out of order)
Norm Larochelle, Treatment Coordinator
Carol Gay, Mental Health Counselor
John Duffy, Bureau Chief of Residential Services
Corey Dearborn, Youth Counselor II (SEA Steward)
Kendall Kienia, Appellant

The Appellant, Kendall Kienia, was employed by the Division of Juvenile Justice Services as a Youth Counselor I assigned to the Sununu Youth Services Center. He had worked in that capacity for approximately four and one half years prior to the date of his termination from employment. Throughout his employment, the Appellant's performance evaluations showed him meeting expectations in all categories.

As one of the night staff, the appellant's duties at the end of each shift included waking the residents around 5:00 a.m., supervising the residents during breakfast and "hygiene," and assisting the day staff at the shift overlap in managing the movement of students between the residential area and school. Normally, the Appellant was assigned to F-100, the ground floor residential wing of F-Unit housing "intensive" residents. On the morning of June 9, 2009, however, as day staff began arriving, Assistant House Leader Anthony Laforge asked the Appellant to help other night staff working on F-200, the upper residential floor.

According to the Appellant, residents throughout the unit had been acting up all morning, showing increasing levels of aggression and lack of respect toward staff and one another. Because of that, residents had been required to return to their rooms after breakfast rather than being allowed to socialize with one another. The Appellant testified that the situation in F-unit seemed to deteriorate that morning as the day staff began to arrive around 6:00 a.m. He testified that as he entered F-200, he could hear the staff giving directives, and the residents responding by swearing, challenging staff and refusing to comply. The Appellant said that there was a substantial commotion at about 7:50 a.m. as residents were beginning to line up on the stairs to be escorted to school. He said that two of the F-200 residents, Tyler T. and Paul D., were "very much involved," and he was concerned that when one or two of the residents get out of control, "...the rest of the kids feed off that." He testified that he was alarmed to see that the day staff were doing nothing to assist or bring the situation under control, creating the potential of danger to both staff and residents.

The Appellant testified that resident Tyler T. refused the Appellant's directives to stop talking and stand quietly in line with his hands behind his back, and in spite of repeated instructions to be quiet and stand still, the resident continued to verbally assault and threaten the Appellant. The Appellant indicated that another resident near the bottom of the staircase engaged in the exchange, making disrespectful, threatening remarks. When the Appellant told that resident to be quiet, a third resident, Paul D., said that he was actually the one who had made the comment. The Appellant testified that, because the situation was escalating and these particular residents were so unpredictable, he decided that Paul D. needed to be "removed from the community" in order to regain order, so he moved quickly down the stairs toward him. The Appellant testified that at that point, Assistant House Leader Anthony Laforge "intervened," taking that resident by the arm and directing him away from the staircase. The Appellant described himself as physically "disengaging," saying that he then followed Mr. Laforge and the resident to the hallway so he could speak to the resident.

The Appellant said that when he returned to the common area, resident Tyler T. continued to make threatening remarks, so he moved rapidly up the stairs to escort the resident out of line and away from the rest of the residents. The Appellant testified that the resident resisted by holding on to the handrail, and that the Appellant used an appropriate "hands on" technique to remove the resident from line and move him to the bottom of the stairs before releasing him and "disengaging." The Appellant testified that his intervention was effective in de-escalating the situation.

The Appellant testified that tensions on the unit had increased when three of the residents had transferred in several weeks earlier. The Appellant also described House Leader Bob Kukla as at least partly responsible for increasingly difficult behavior on the unit and the lack of respect the residents demonstrated toward night staff, testifying that Mr. Kukla disparaged night staff in front of the residents by referring to them as "night watchmen," leading the residents to believe that night staff had no real authority to give the residents directives or establish consequences if they failed to comply. The Appellant testified that on the morning of June 9, 2009, House Leader Kukla should have stepped in immediately when the residents began swearing and threatening the staff, but that he did nothing at all and just "...stood there with his coffee in his hand."

Mr. Kienia testified that even without the benefit of an audio recording of the June 9, 2009, incident, someone viewing the video that was taken that morning [State's Exhibit 1] would be able to recognize how aggressive and threatening the residents were, and would realize that the Appellant's use of force was both reasonable and appropriate under the circumstances. The Board does not agree.

The video clearly shows, and the Board found the evidence supported a finding, that the Appellant becoming agitated and increasingly aggressive, ultimately resulted in unnecessarily forceful physical contact with two of the residents. The video supports Carol Gay's description of the Appellant's behavior toward the residents as hostile and threatening, as he can be seen yelling and pointing at one of the residents, "leaning into his space," and escalating the level of tension by yelling at the residents and increasing rather than decreasing his physical proximity to the residents. By the Appellant's own admission, he made no request for assistance. Instead he shouted at House Leader Kukla, "This is bullshit," and demanded that Mr. Kukla impose consequences on the residents by taking away some privilege that would mean something to them.

James Margeson, Corey Dearborn and Kendall Kienia all testified that the residents had been acting up throughout the morning on June 9, 2009. Written summaries provided by Steven Sage, Corey Dearborn, KellyAnn McLaughlin, and Anthony Laforge also support that description of behavior on the unit. As the evidence reflects, however, none of those staff had to resort to physical force, and only one staff member, Mr. Laforge, had to engage in any physical contact at all to

maintain control. The video shows at least three of the other staff members, including Mr. Laforge, Mr. Larochelle and Mr. Kukla, interacting with the residents and gaining their cooperation and compliance without any use of force. If the Appellant felt physically threatened by one or more of the residents, there were as many as seven or eight other staff members present at the shift overlap who could have been called to assist.

As the Appellant testified, and as the video reflects, Assistant House Leader Tony Laforge was actually the first person to put his hands on one of the residents. The Board found, however, that Mr. Laforge's "hands-on" intervention was a reaction to the Appellant's movements as the Appellant rushed down the stairs toward Paul D., just before the Appellant reached out to grab or push the resident. Mr. Laforge took the resident by the arm, began directing the resident away from the staircase, and continued to place himself between the resident and the Appellant until the resident was removed from the area. Contrary to the Appellant's claim that he "disengaged" the resident at the bottom of the stairs, the video clearly shows, and the Board found, that the Appellant fully engaged, confronting the resident in what appears to be an increasingly angry, verbal exchange as he followed the resident toward the F-100 hallway.

The video next shows the Appellant returning to the rest of the group of residents, pacing back and forth, gesturing, talking, and repeatedly pointing at the resident who was near the top of the staircase and with whom the Appellant was originally involved at the beginning of the incident. Again, while there is no audio recording, the video shows, and the Board found, that the Appellant and that resident engaged in what appears to be a heated verbal exchange. According to the Appellant's testimony, he was simply telling that resident to step out of line because he felt it was necessary to "remove him from the community" so as not to allow the situation to escalate. When the resident failed to comply, the Appellant could have asked another staff person to assist him, or he could have warned the resident that there would be specific consequences for failing to comply. If the resident then continued to refuse staff directives, there were other staff present who were available to assist in an appropriate "directional intervention," or restraint if necessary. Instead, as the video shows, the Appellant went up the stairs, grabbed the student, and pulled him out of line, pushing him toward the bottom of the stairs, eventually shoving him from the first or second step. While the Appellant testified that the student was holding onto the railing as a means of "resisting," the Board finds that it is more likely that the student was holding onto the railing to avoid being forcefully pulled or pushed down the stairs. What the Appellant described as "disengaging" at the bottom of the stairs to put distance between himself and the resident looks to the Board to be an angry shove.

On October 7, 2008, the Appellant acknowledged receiving, reading and understanding SYSC Policy C-003 [State's Exhibit 2] which provides the following:

"Staff may use force only in the following circumstances:

- Justifiable self-defense

- Protection of a third party
- Protection of client from self-harm
- Protection of property
- Prevention of a crime
- Prevention of escapes
- Prevention of resident disturbances and to maintain order with the SYSC"

After reviewing the video and observing the demeanor of the other staff members shown in the video, and after having carefully considering the written witness statements and sworn witness testimony given at the hearing on the merits of this appeal, the Board found that none of the above circumstances listed above occurred on the morning of June 9, 2009, that would have warranted the degree of force that the Appellant applied in removing Paul D. and Tyler T. from the staircase. Even if the Board were to accept the Appellant's assessment of the incident on the morning of June 9, 2009, as a "resident disturbance," or if the Board were to agree that some use of force was necessary as a means of maintaining order, the Board found the Appellant's use of force to be excessive and unwarranted.

SYSC Policy C-003 states that, "...staff must respond appropriately along the [use of force] continuum and adjust their response based on client behavior. Every situation is different and staff members must remember that there will be times when it is more prudent to disengage, gain safe distance and wait for assistance, if possible, before attempting to gain compliance." The Appellant acknowledges that sufficient numbers of staff were present who could have assisted, but he made no such request. The Board found that the appellant did not "disengage, gain safe distance and wait for assistance... before attempting to gain compliance."

SYSC Policy C-003 describes "Presence" as the lowest tier in the use of force continuum, stating that physical presence and nonverbal communication may be sufficient to gain compliance. The next tier in the continuum is "Verbal Intervention," in which the staff member is expected to ask "defusing questions" that are designed to "provoke thought." According to the policy, "This will give staff members an opportunity to recognize what is going on, to intervene as soon as possible and to keep the client in a thinking area of the brain. Asking: What are you doing? What do you want? Is this helping."

The Board fully understands and appreciates how quickly a situation can deteriorate, and that there may be no real opportunity to use questions or conversations to keep a resident from becoming verbally assaultive or threatening. However, the Board also understands that hostile, aggressive, confrontational conduct on the part of staff, such as that in which the Appellant engaged, can only serve to exacerbate the problem.

The Appellant described his hands-on contact with Paul D. and Tyler T. as "Directional Intervention." That level of force is described in SYSC Policy C-003 as "...a physical cue to follow staff direction. Touching the client and moving with them in an escort position is intended to move them away from the situation and engage the client in defusing questions." Based on the video, the Board concluded that Mr. Laforge engaged in directional intervention when he led Paul D. away from the staircase, and continued to place himself between Paul D. and the Appellant as they moved toward the hallway to F-100. The Appellant, on the other hand, did not engage in directional intervention when he shoved Paul D., and continued to moved toward Paul D., keeping pace with him and Mr. Laforge while continuing to engage the resident verbally in an apparently heated exchange, as Mr. Laforge tried to put distance between the resident and the Appellant.

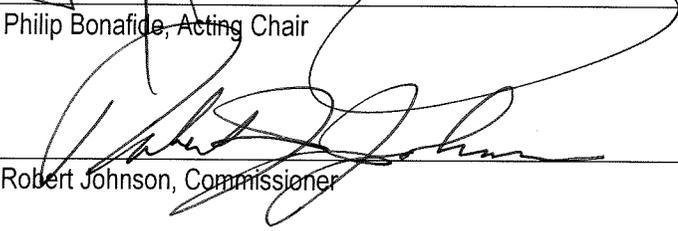
Reviewing that evidence in conjunction with the provisions of Per-A 207.12 (b), the Board determined that the Appellant failed to prove that the disciplinary action was unlawful; that the appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal, that the disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or that the disciplinary action was unjust in light of the facts in evidence. Given the seriousness of the offenses, the Board found that the agency acted appropriately in dismissing the Appellant. For all the reasons stated above, the Board found that the Appellant used excessive, unauthorized force, and that by doing so, the Appellant violated SYSC Policy C-003 regarding the use of force, and Per 1002.08 (b)(9) of the Personnel Rules for "endangering the life, health or safety of another employee or individual served by the agency." As such, he was subject to immediate dismissal without prior warning.

Therefore, the Board voted unanimously to DENY his appeal.

THE PERSONNEL APPEALS BOARD



Philip Bonafide, Acting Chair



Robert Johnson, Commissioner

Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel
Michael Reynolds, SEA General Counsel
Attorney Jonathan Gallo, Department of Health and Human Services

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301

Telephone (603) 271-3261

Board's Decision on Appellee's Motion to Close Hearing and Seal Records

In the Appeals of:

Timothy Alexander (2009-T-020), William Harris (2009-T-022), William Woodson (2010-T-002), and

Kendall Kienia (2010-T-005)

March 2, 2010

On February 2, 2010, Attorney Jonathan Gallo filed with the Board Appellee's Motion to Close Hearing and Seal Records in the appeals of Timothy Alexander, William Harris, William Woodson and Kendall Kienia, former employees of the Sununu Youth Services Center.

As stated in that Motion, the State intends to introduce at hearing records that would identify "certain individuals who are or were at the time of the appellants' employment, juveniles committed to the Department's Sununu Youth Services Center (SYSC). The SYSC is an architecturally secure facility, which houses juveniles either accused of or adjudicated on charges of delinquency (RSA 169-B). This evidence will consist of videos, documents, and witness testimony." After reviewing the Motion, the relevant statutes, and consulting with counsel, the Board found the following:

1. RSA 170-G:8-a, I defines juvenile case records as consisting of all "official records, regardless of the media upon which they are retained, created by the department of health and human services in connection with a report received pursuant to RSA 169-C:29, or cases brought under RSA 169-B, 169-C, 169-D, or 463, or services provided to the child or family without a court order pursuant to RSA 170-G:4, including intake and assessment reports, service or case plans, case logs, termination reports and a list of persons or entities providing reports to the department or services to the child or family."
2. DHHS "case records" are confidential with limited exceptions. RSA 170-G:8-a. If one of the exceptions does not apply, "[a]dditional access to case records and all other records of the

department shall be granted pursuant to the terms of a final order issued by a court of competent jurisdiction." RSA 170-G:8-a, IV.

3. As set forth in RSA 170-G:8-a, V, It is "unlawful for anyone entrusted with the information in case records to disclose the records of information contained in them."

The Board determined that if the evidence DHHS counsel seeks to introduce falls within the definition of "case records" and does not fall within any of the exceptions listed in RSA 170-G:8-a, in the absence of a final order issued by a court of competent jurisdiction, it is unlawful for anyone entrusted with the case records to disclose the records of information contained in the case records. As such, the Board would be unable to receive that evidence without the appropriate court order.

For the reasons set forth above, the Board voted to deny the motion to close the hearing and seal records without prejudice. If DHHS obtains a final order issued by a court of competent jurisdiction which would permit DHHS to offer those records into evidence, DHHS counsel can then refile its motion.

FOR THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301
Michael Reynolds, SEA General Counsel, 207 N. Main St., Concord, NH 03302-3303
Jonathan V. Gallo, Legal Counsel, Department of Health and Human Services, 129 Pleasant St.,
Concord, NH 03301

169-B:35 Juvenile Case and Court Records. –

I. All case records, as defined in RSA 170-G:8-a, relative to delinquency, shall be confidential and access shall be provided pursuant to RSA 170-G:8-a.

II. Court records of proceedings under this chapter, except for those court records under RSA 169-B:36, II, shall be kept in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by officers of the institution where the minor is committed, juvenile probation and parole officers, a parent, a guardian, a custodian, the minor's attorney, the relevant county, and others entrusted with the corrective treatment of the minor. Additional access to court records may be granted by court order or upon the written consent of the minor. Once a delinquent reaches 21 years of age, all court records and individual institutional records, including police records, shall be closed and placed in an inactive file.

170-G:8-a Record Content; Confidentiality; Rulemaking. –

I. The case records of the department consist of all official records, regardless of the media upon which they are retained, created by the department of health and human services in connection with a report received pursuant to RSA 169-C:29, or cases brought under RSA 169-B, 169-C, 169-D, or 463, or services provided to the child or family without a court order pursuant to RSA 170-G:4, including intake and assessment reports, service or case plans, case logs, termination reports and a list of persons or entities providing reports to the department or services to the child or family. Such records do not include:

(a) Records created as part of an action brought pursuant to RSA 170-B or 170-C.

(b) Records submitted to or maintained by the courts, or records created by third parties, such as psychologists, physicians, and police officers, even if such records are prepared or furnished at the request of the department. Requests for access to court records and records created by third parties may be made directly to the court or to the third party who created the record. Nothing in this section shall restrict or limit access to records filed pursuant to RSA 169-C:12-b.

(c) Reports contained in the central registry of abuse and neglect reports maintained pursuant to RSA 169-C:35.

(d) The name of a person who makes a report of suspected abuse or neglect of a child pursuant to RSA 169-C:29, or any information which would identify the reporter.

II. The case records of the department shall be confidential.

(a) The department shall provide access to the case records to the following persons unless the commissioner or designee determines that the harm to the child named in the case record resulting from the disclosure outweighs the need for the disclosure presented by the person requesting access:

(1) The child named in the case record.

(2) The parent of the child named in the case record, as defined in RSA 169-C:3, XXI.

(3) The guardian or custodian of the child named in the case record.

(4) Another member of the family of the child named in the case record, if disclosure is necessary for the provision of services to the child or other family member.

(5) Employees of the department and legal counsel representing employees of the department for the purpose of carrying out their official functions.

(6) Persons made parties to judicial proceedings in New Hampshire relative to the child or family, whether civil or criminal, including the court with jurisdiction over the proceeding, any

attorney for any party, and any guardian ad litem appointed in the proceeding.

(7) A grand jury, upon its determination that access to such records is necessary in the conduct of its official business.

(8) The relevant county.

(9) Another state's child welfare agency, law enforcement agency, or other government entity that requires the information in order to carry out its responsibility under law to protect children from abuse or neglect.

(b) The department shall disclose information from case records or provide access to case records to the following persons or entities, if such information or access is not harmful to the child and is necessary in order to enable the person or entity requesting information or access to evaluate or provide services, treatment or supervision to the child named in the case record or to the family:

(1) A person or entity requested by the department or ordered by the court to perform an evaluation or assessment on or to create a service plan for the child named in the case record, the child's family, or an individual member of the child's family.

(2) A person or entity requested by the department or ordered by the court to provide services to the child named in the case record or the child's family.

(3) The superintendent of schools for the school district in which the child named in the case record is then, or will, according to the child's case plan, be attending school.

(4) The person or entity with whom the child resides, if that person is not the child's parent, guardian, or custodian.

III. The commissioner shall adopt rules, pursuant to RSA 541-A, governing the procedures regulating access to all of the records of the department. Such rules shall contain provisions relative to:

(a) Access to case records by persons named in paragraph II of this section.

(b) Access to case records by a physician who has examined a child who the physician reasonably suspects may be abused or neglected.

(c) Access to case records by a law enforcement official who reasonably suspects that a child may be abused or neglected, and who is participating with the department in a joint investigation.

(d) Access to case records by a state official who is responsible for the provision of services to children and families, or a legislative official who has been statutorily granted specific responsibility for oversight of enabling or appropriating legislation related to the provision of services to children and families, for the purposes of carrying out their official functions, provided that no information identifying the subject of the record shall be disclosed unless such information is essential to the performance of the official function, and each person identified in the record or the person's authorized representative has authorized such disclosure in writing.

(e) Access to case records by a person conducting a bona fide research or evaluation project, provided that no information identifying the subject of the record shall be disclosed unless such information is essential to the purpose of the research, each person identified in the record or an authorized representative has authorized such disclosure in writing, and the department has granted its approval in writing.

(f) Access to case records by any person making a report of suspected child abuse or neglect pursuant to RSA 169-C:29, provided that such disclosure is limited to information about the status of the report under investigation, or information reasonably required to protect the safety of such person.

(g) Access to all other records of the department which are not case records as defined in

paragraph II.

IV. Additional access to case records and all other records of the department shall be granted pursuant to the terms of a final order issued by a court of competent jurisdiction.

V. It shall be unlawful for any person entrusted with information from case records to disclose such records or information contained in them. Notwithstanding the previous sentence, it shall not be unlawful for a parent or child to disclose case records or the information contained in them to persons providing counsel to the child or family. It shall be unlawful for any person who receives case records or the information contained in them from a parent or a child to disclose such records or information. Any person who knowingly discloses case records or information contained in them in violation of this paragraph shall be guilty of a misdemeanor.

VI. Notwithstanding the foregoing:

(a) Any person who is entitled to access a case record pursuant to this section may share such information with any other person entitled to access pursuant to this section, unless the commissioner or a designee shall specifically prohibit such additional disclosure in order to prevent harm to a child.

(b) Nothing in this section shall be construed to require access to any records in violation of the order of a court of competent jurisdiction.

Source. 1985, 367:10. 1993, 355:8. 1994, 212:2. 1995, 310:143, 175, 181, 183, eff. Nov. 1, 1995. 2009, 47:1, eff. July 21, 2009.