Taskforce on Allegations of Sexual Misconduct: items 4, 5, 6, 7, 8 to be Discussed at BAC Meeting on February 10, 2022.

Recommendation 4:

If the ISP program is retained, DOR should develop specific standards for any contracted party entering the home or domicile of a consumer, or at any location where a contractor/service provider meets with a consumer. Such standards to become part of the triennial certification of both for-profit vendors and CRP’s. “Contractor” is defined as described in number three above.

DOR’s Response: While DOR does not agree with developing specific standards for any contracted party entering the home or domicile of a consumer, or at any location where a contractor or service provider meets with a consumer, DOR is revising its policies, terms and conditions, handbooks, and other materials consistent with Title IX requirements. Further, DOR’s OCR will conduct Title IX investigations in relation to allegations of abuse against ISP’s.

Discussion:

* Bryan Bashin objects that DOR is unwilling to construct standards for contracted parties entering the home or domicile of a consumer, or at any location where a contractor or service provider meets with a consumer.
* Mitch Pomerantz stated that it is a mistake for DOR to not construct specific standards for contracted parties who provide services to consumers, regardless of the location.
* Sarah Harris expressed her agreement with Mitch and Bryan and stated that common sense should be a guide for service providers, but it is often not enough and requires explicit boundaries.
* Peter Dawson expressed a need to revisit some of the recommendations when more time is allotted.

Recommendation 5:

The Department should consider, based on any restrictions by the State of California, requiring LIVE Scan (digital fingerprinting) for both CRP staff who work closely with consumers and contractors who visit consumers’ places of residence, domicile, or at any location where a contractor/vendor meets with a consumer to provide services.

DOR’s Response: DOR disagrees with this recommendation. DOR does not agree that requiring vendors to be fingerprinted is necessary to ensure the safety of individuals receiving services. DOR is also concerned that requiring this would add an additional cost and effort for CRPs and vendors in an environment where it is already difficult to obtain and retain vendors.

Discussion:

* Chris Fendrick would like an explanation from the DOR on why the Department is not in favor of providing LIVE Scan.
* Mitch Pomerantz: this is penny-wise and pound foolish.
* Bryan Bashin added, LIVE Scan is part of due diligence.
* Sarah Harris added that this item needs further discussion.

Recommendation 6:

The Department should contract with an independent trainer certified and specializing in matters of sexual misconduct to train on an annual basis staff of all CRP’s and for-profit contractors and their executives. Participation in such training – or proof that similar training has been provided annually during the previous three years – to be part of the triennial certification process.

DOR Response: DOR disagrees with this recommendation. CRPs already conduct internal sexual harassment and misconduct training as mandated by California law. This law requires all employers of five or more employees to provide one hour of sexual harassment and abusive conduct prevention training to nonsupervisory employees and two hours of sexual harassment and abusive conduct prevention training to supervisors and managers once every two years. As noted in prior responses, by December 31, 2021, DOR will also be adding Title IX Terms and Conditions into all CRP certifications, guides, and authorizations from DOR to all service providers serving DOR consumers.

Discussion:

Mitch Pomerantz expressed concerns that the providers of the sexual harassment and abusive conduct prevention training is not monitored and suggested that Trainers who specialize in this type of training need to be utilized.

Recommendation 7:

On an annual basis, the Department should obtain from all out-of-state residential rehabilitation training centers their written policies and procedures regarding the handling of documented allegations (formal charges) of sexual misconduct. Failure of any out-of-state center to provide such written policies and procedures annually may result in DOR’s denying a consumer’s request to attend such center. DOR will determine, to its satisfaction, that each out-of-state center’s written policies meet DOR’s own sexual misconduct standards prior to the processing of any consumer’s request to attend that center.

DOR Response: DOR disagrees with this recommendation. As DOR revises its policies in relation to Title IX, DOR will determine whether these training centers have Title IX Coordinators and a process in place to handle allegations in accordance with Title IX by December 31, 2021. As noted in prior responses, the DOR will add a DOR Term and Condition in all authorizations that will state that if the service provider does not have a Title IX Coordinator in place, the service provider must provide the DOR OCR with access to residents, staff, and records relevant to the Title IX investigation that the DOR OCR will conduct.

Discussion:

* Mitch Pomerantz disagrees with the DOR’s response. There is not enough time between now and December 31, 2021, to put a process in place to ensure that a Title IX coordinator is in place at every residential service provider in the country.
* Mitch added that out-of-state service providers will not grant DOR the needed access to conduct such an investigation and it is necessary for DOR to have access to the written policies on this issue to ensure they are in compliance with DOR’s requirements.
* Bryan Bashin completely disagrees with DOR’s response and supports the BAC’s recommendation as it is written.
* Michael Thomas added, if an out-of-state residential rehabilitation training center does not have a Title IX coordinator, the DOR cannot stop the consumer from choosing that facility.
* Michael Thomas agreed with Mitch Pomerantz that there may be a liability issue.
* Peter Dawson said that the Department and the BAC may be able to find common ground on recommendation seven.

Recommendation 8:

The Department should immediately suspend future authorizations for any out-of-state training center for which a documented pattern or practice of unsafe conditions, including sexual or other misconduct has been determined by the Department. DOR will develop a hearing process, with input from the BAC and in consultation with the Rehabilitation Services Administration, for its determination of such documented unsafe pattern or practice related to consumer safety. Any hearing must be conducted within 30 days of the Department becoming aware of circumstances which threaten current residential student safety, including documented allegations of sexual misconduct and must include processes for all interested parties to provide policy and statistical information as well as any other accounts related to student safety. Out-of-state residential centers will have the right to appeal any adverse finding by the Department in a timely manner. Similar documented allegations made by a consumer attending the Orientation Center for the Blind (OCB) will be handled in accordance with the policies and procedures established by DOR as described above. Such documented allegation made by a consumer attending another in-state residential rehabilitation training program – not classified as a state entity – will be handled pursuant to their internal policies and procedures, but subject to appeal to the Department’s Office of Civil Rights if the consumer is dissatisfied with the outcome of either entity’s internal review process.

DOR’s Response: DOR disagrees with this recommendation, which proposes the development of an administrative hearing process for service providers. This type of hearing process for providers is not required by Title IX, and DOR currently has the ability to suspend or terminate services with a provider pending the outcome of an investigation or review into allegations of misconduct. As noted in DOR’s prior answers, when residential rehabilitation training centers or other service providers do not have Title IX Coordinators to provide the process required to address Title IX allegations, that process will be provided by DOR’s OCR. OCB already follows appropriate procedures for any Title IX allegations by immediately working with DOR’s OCR. OCB will be part of any additional process required under new Title IX regulations and policy developed by DOR.

Discussion:

* Bryan Bashin stated that it seems that the Department plans to be passive on this issue.
* Peter Dawson stated if there is a pattern of questionable conduct, the

DOR will not be passive, but DOR cannot investigate hearsay or rumors.

* Peter would like to revisit recommendation eight prior to the next BAC meeting.
* Mitch pointed out that the recommendation is for documented pattern or practice. The BAC is not talking about rumors or hearsay.