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September 8, 2010

Emmanuel Argiros
Executive Director
The Family Foundation School
431 Chapel Hill Road
Hancock, NY 13783

Dear Mr. Argiros:

On June 10 and 11, 2010, the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities (the Commission), New York State Education Department (SED), New York State Office of Mental Health (OMH), and New York State Office of Alcoholism and Substance Abuse Services (OASAS) conducted an unannounced visit to your school. The reason for this visit was to investigate a number of complaints brought to the Commission's attention involving students between 14-19 years of age.

While on site, State agency staff interviewed approximately 60 students, staff and administrators, toured the entire campus and reviewed relevant policies and procedures. We also reviewed a number of clinical records. The Commission and other State agencies appreciated the reception and the full access to the facility, students and staff afforded us during our visit.

This letter serves to notify you of the Commission and our State partners' findings and recommendations resulting from the June visit. The SED will be responding under separate cover.

Allegations of Abuse and Neglect

Although allegations were brought to our attention that students were being physically abused and neglected, interviews we conducted did not suggest students were being physically abused or neglected at the time of the visit. Many of the students interviewed reported positive experiences with the school and were appreciative of staff's efforts. There was acknowledgement by Family Foundation administrators that there had been a previous culture of harsh treatment at the facility. The Family Foundation School has been working to change this culture and has instituted a number of policy, practice, and staffing changes to remove all vestiges of this previous culture. The administrators reported that these efforts increased rapidly following the Joint Commission visit of one year ago.

Notwithstanding the above-noted findings, the Commission and State partners found concerns in a number of areas which will be discussed below.

Environment

While on site, we toured the entire campus and appreciated the well-maintained grounds and educational center. Most other program areas on the campus appeared to be in good repair and adequate to meet the needs of the students. However, our tour of dorms and trailers revealed a number of concerns which are listed below, along with recommendations for remediation.

- There were as many as 14 students assigned to sleep in each of several trailers on the campus at the time of our visit. The Commission and State partners have concerns regarding overcrowding in the trailers, the lack of space between furniture and partially blocked emergency evacuation routes. There were similar concerns identified in the dormitories. The school was unable to provide a current certificate of occupancy specific to the dormitory or the trailers, and as State building code compliance is not an area of expertise of the Commission or our State partners, we have asked the New York State Department of State to assess the adequacy of these accommodations in light of any applicable State building code or other requirement. It is our understanding that a number of issues are currently being addressed by State and local building codes officials. We commend your staff for moving several bunk beds that were in front of emergency exits. The furniture was rearranged to provide a safer evacuation route in case of emergency. You confirmed in a June 18 conference call that only two trailers remain in use as housing units as of this time. We would appreciate notification if other trailers for housing students are opened.
- The Commission and State partners have concerns related to the practice of “landlocking” students, as this creates a health and safety risk. As we understand the practice, students who may be at risk of running away or at other behavioral risk are placed nearest to the wall of the trailer or dormitory. Bunk beds used by other students are moved closer to the at risk student to serve as a barrier or disincentive for the students to leave the trailer or dormitory. This could create a safety risk in case of an emergency evacuation, such as in a fire. We also question who is making the assessment that “landlocking” is appropriate, as well as the criteria applied. It is not appropriate for students to be assigned to carry out and enforce the “landlocking” practice.
- Upper bunk beds throughout the dorms lacked ladders. We recommend that ladders be utilized for the upper bunk beds to assist students when entering and leaving their bunk. The absence of such may cause an unnecessary risk in case of emergency.
- Several towels were not labeled; students were sharing towels, which could cause possible hygiene issues.
- Electrical extension cords were observed hanging from bunks and draped on top of bedding. This presents fire and other safety hazards and must be addressed.

- Several upper bunk beds were not properly secured, placing students on the bottom bunk at risk of injury, e.g., from the upper bunk bed falling on them.
- There are no phones or other communication devices located in the dormitories, which could delay communication for students and staff during the overnight hours. Communication with the sole overnight staff is limited to students running for help, yelling for assistance, or setting off an alarm. This is insufficient given the complexity of some students' clinical presentations.
- Commission staff members located a bottle of unlabeled solution in the dormitory; while we were assured it was not a toxic substance, any potentially hazardous material should be labeled appropriately as a matter of course. Your staff immediately addressed the situation at the time of the visit.

Staffing Concerns

- The staffing chart that was provided and interviews conducted confirmed that there is only one staff member awake and on duty during the overnight hours. Although several staff members reside on or near the campus, we found this to be wholly insufficient. Your sole scheduled overnight staff person has numerous responsibilities, which include monitoring all residential buildings, observing the infirmary when students are assigned there for overnight monitoring, and observation of students placed in the time-out room via a television monitor located in the school office.
- While the Commission and State partners are supportive of encouraging students to develop leadership skills and using the dynamic group process to shape behavior, there are times when, in our view, this is taken to inappropriate extremes. For example, students have been called on to stay up during the overnight hours to monitor/interact with peers in the time-out/quiet room or accompany staff to monitor another student who was taken for an emergency psychiatric assessment. In both scenarios, students were being placed in situations where they needed to exercise significant judgment and were acting in the capacity of staff members. Students should not be placed in situations where they are responsible for safety of other students.
- The licensed practical nurses (LPNs) on staff appear to be working without appropriate medical supervision. In our discussion with administrative staff, they indicated that Dr. Berg "supervises" the LPNs. In a July 8, 2010 phone interview, Dr. Berg stated that he does not supervise the LPNs, but is available to consult with Family Foundation nurses, via phone or email, on medical concerns or emergencies. Dr. Berg stated that he is not involved in the ongoing supervision or performance evaluations of the LPNs, nor is he involved in the oversight or review of medication practices or errors. The school's current practice appears to be inconsistent with SED standards and we are referring this matter to them for review.

Restraint/Seclusion

- At the time of our visit, the Family Foundation utilized two rooms that were used for both time-out and seclusion purposes. They are located off the gymnasium in a small hallway. Several inconsistent descriptions of the uses of the rooms were elicited from administrators, staff members and students. Administrative staff described the time out/quiet room as a space used on a “voluntary basis.” Other staff members and students described the use much differently and indicated that staff does, in fact, direct students to the time out/quiet room. Several students perceived the use of the time out/quiet room as a directive with which they were required to comply, and not an option that they could choose to exercise when upset. The Commission and State partners appreciate your decision to limit the approval for the use of time out to administrative staff as a step toward revising your policy on the use of the rooms and encourage further consideration of modifying your existing facility to include a comfort room as an option for students.

Despite the policy decision noted above, students reported being in the time-out/quiet room for hours at a time with an occasional report of overnight and multiple day use. Interviews with staff confirmed these practices. The Family Foundation’s use of time out exceeds acceptable New York State and Federal guidelines and arguably constitutes aversive intervention practices in some instances. We are requesting that Family Foundation’s practices be revised to comply with State and Federal guidelines.

- The Commission and State partners remain concerned about the broad latitude which Family Foundation has given to non-credentialed and unlicensed personnel to make decisions regarding the use of time out/quiet rooms, particularly given the profiles of the students with serious emotional and psychiatric conditions at the school. While you have advised that recent changes have been made to restrict the ability to direct the use of the rooms to certain professional staff, we believe that, as a best practice, a more formalized protocol would be appropriate. Accordingly, we recommend that a behavioral intervention plan be developed for any student identified as having a serious behavioral problem, that qualified mental health professionals be consulted in the development of the plan, and that any utilization of the time out/quiet room for that student be consistent with the behavioral intervention plan. We refer you to relevant SED regulations which address behavioral intervention plans and the use of time out at 8 NYCRR §200.22 (b) and (c) for guidance as to the critical components of such a behavioral intervention plan, as well as the policies and procedures which should be applied to the use of a time out/quiet room.
- Our investigation revealed that there are few records kept in regard to use of the time out/quiet room. We recommend that records be kept indicating who ordered the time-out/quiet room, why, what student was involved, how long it lasted, who monitored the student and how the situation was resolved, to reflect a minimum standard for tracking this intervention.
- As a best practice, where there is any indication that a student may have sustained a physical injury resulting from an intervention, that student should have a physical examination

conducted by a school nurse or other qualified medical personnel which is documented by the individual conducting the examination.

- We also encourage The Family Foundation School to review the appropriateness of utilizing face down or prone restraints in your facility. The utilization of prone restraints presents a greater risk for the youth of positional asphyxia, a potentially deadly outcome to physically intervening with youth.
- The Family Foundation should ensure that all personnel who may need to be involved in a restraint are appropriately trained and up to date in their refreshers. Please provide an updated roster of staff and their training status again. We strongly encourage discontinuing prone restraints and favor training and implementation of supine restraints.
- Students interviewed indicated that some had taken part in providing emergency assistance, including restraining other students. They described taking down peers in distress as well as holding another student's legs until staff arrived. This exceeds the appropriate role for students in the school. Staff members who have been properly trained should be the only personnel authorized to intervene.

Clinical Services

The Commission and State partners learned that non-credentialed staff members are providing psychotherapy and other clinical services legally reserved and restricted to SED-licensed practitioners in New York State. Non-qualified staff members are sometimes in the position of making lethality assessments for students in a crisis. Only licensed and credentialed staff should be making these assessments. We will be referring these issues to the SED Office of the Professions for review.

According to Dr. Mark Vogel's estimate, 90% of the students experienced histories of mental health and/or substance abuse disorders. Many students require multiple forms of supportive care in addition to the modified 12-step program you provide. Students in crisis were provided services, but we could not identify a consistent individual treatment approach, from a mental health or substance abuse perspective, documented in most student records reviewed. We are requesting a complete mental health profile of the students in your school, including their names, ages, and current diagnoses. We would also appreciate any previous mental health and/or substance histories of students placed at The Family Foundation School in order to better understand the clinical challenges presented by your student population.

It appears that there is no protocol to ensure that comprehensive psychiatric screenings are conducted prior to admission. This would permit the school to ensure that adequate clinical services and supports are in place at admission. If the school admits students with serious mental health and/or substance abuse issues a thorough assessment and appropriate treatment plan should be developed.

The Commission and State partners recommends a review of your program literature and website to remove references to services you are not currently providing. For example, we saw no

evidence that Dialectical Behavior Therapy (DBT) or Cognitive Behavioral Therapy (CBT) were being provided, although these services are referenced on the website for The Family Foundation School. We believe that these interventions could be very helpful, provided they are implemented by appropriately trained and credentialed staff. Dr. Vogel informed us that the clinical department was being reconfigured as of July 1, 2010. We would like to have a copy of the policy changes that were implemented.

We also recommend a review and revision of your program literature and website to ensure compliance with Mental Hygiene Law §32.05, which prohibits facilities from advertising to the public the availability of chemical dependence treatment services unless an operating certificate has been obtained from OASAS.

Psychiatric Services

Psychiatric care provided to the children with formal diagnoses was similar to that provided on an outpatient basis. We noted that children are typically seen monthly, but may be seen more frequently if they are having any difficulties or are undergoing medication adjustments. Psychopharmacological management appeared appropriate and the medication regimes were consistent with the students' diagnoses. Progress notes written by the school's psychiatrist, Dr. Myrl Manley, reflect his sensitivity to the students' and/or their parents' concerns, and we found evidence that he is usually willing to consider adjustments to prescribed medications when the student or parent makes a reasonable request (e.g., as long as it is not contraindicated, or not in the students' best interest). Dr. Manley's notes were thorough, but he did not consistently document an assessment of side effects. There were often references to the students' response to medication changes, including the absence of any of adverse effects, but the documentation was inconsistent.

Dr. Manley allowed his registration with the SED to lapse for the period January 1, 2010 until he re-registered on April 29, 2010. The Commission would appreciate an explanation as to why he was invited to practice at the school without holding a current registration during this time period.

Medication Practices

We noted numerous documentation errors on the sample of Medication Administration Records (MAR) reviewed. For example, there were circles (usually used to denote a missed dose) without an explanation. The usual procedure is to note what happened on the back of the MAR – e.g., "refused." There were also blanks without explanation.

Our review found that there is a notebook with forms for documenting medication errors. The forms are to be completed when an error is discovered. However, follow-up is inconsistently documented. In addition, it appears that there is no mechanism or procedure in place to address medication errors in a systematic manner (e.g., identifying patterns of errors, identifying systems issues, identifying any need for staff training and/or discipline). These tasks are typically the responsibility of a registered nurse. Please provide us a copy of the school's policy on medication errors.

Sanctions

We received numerous complaints around the length, duration, and assignment of some work sanctions during our interviews with students. While it appears that The Family Foundation has significantly modified this aspect of its programming, we are concerned that this intervention is sometimes excessive. Please share your written policy and staff guidance materials that help determine how work sanctions are implemented and reviewed.

In addition, The Family Foundation employs a number of sanctions that are utilized for overt and perceived violations of the rules which would not be allowed and could be considered harmful in licensed mental hygiene programs for individuals with significant histories of trauma and mental illness. We would appreciate a copy of your policy on this practice, including how it is monitored to ensure that emotionally fragile students are not harmed by this intervention.

Further, in our discussions with students we became concerned that “table topics” can sometimes be utilized in a manner that may compromise the mental health problems of some of your students. We would appreciate a current copy of your policy on this procedure, including safeguards designed to ensure these interventions are not emotionally damaging.

Education

Through interviews with staff and students, we learned that students who are otherwise eligible to take New York State Regents exams but who do not score a 75% on a pre-test are not permitted to take the Regents. This practice does not appear to be readily discernible or transparent for those prospective students who apply to the school. We suggest that a better and more progressive and affirming practice would provide that, without precondition, all students who have taken the course and are eligible to take the examination be allowed to take the test.

Reports of Abuse or Neglect

It is the Commission’s understanding that the school does not have a system that reviews complaints of abuse and neglect. We recommend that a system be put into place which incorporates timely, competent, independent reviews of any such allegations, together with administrative oversight or that review process. We also believe that students should have the right to make a phone call to report allegations of abuse or neglect to anyone of their choosing if they believe that they, or another student, are at imminent risk of harm or if the situation cannot be resolved to their satisfaction.

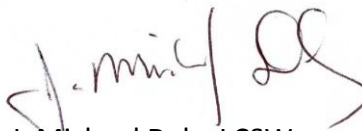
The Commission and State partners are requesting that you review the content of this letter and consider policy, practice and staffing changes that will address our shared concerns. We would appreciate a written response to the concerns identified by October 8, 2010. In the meantime, if you have questions, concerns, or require assistance, please call Michael Daly at 518-388-2874 or email him at michael.daly@cqc.ny.gov.

Under Article 6 of the Public Officers Law, final agency determinations are required to be available for public inspection. This letter will be deemed a final agency determination 30 days after the date of this letter, which affords you an opportunity to respond to our findings prior to any disclosure pursuant to the Public Officers Law. Material which is required to be kept confidential or which is protected from disclosure under the Public Officers Law or other laws will be redacted prior to any such disclosure.

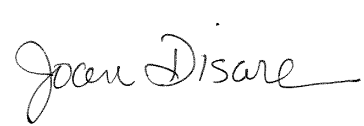
Sincerely,



Jayne Van Bramer
Director
Office of Quality Management
NYS OMH



J. Michael Daly, LCSW
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Joan Disare
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cc: Jane Lynch, Chief Operating Officer, NYS Commission on Quality of Care
Michael Hogan, Ph.D, Commissioner, NYS Office of Mental Health
Karen Carpenter-Palumbo, Commissioner, NYS Office of Alcoholism & Substance Abuse Services
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