

Juvenile Corrections Monitor

Semi-Annual Report

July 1, 2009 to December 31, 2009

Public Section

Introduction:

This report covers the activities of the Juvenile Corrections Monitor (JCM) from July 1, 2009 to December 31, 2009.

The JCM position began on April 10, 2000, and is administered by the Department of Human Services (DHS), Office of the Secretary. The JCM office is located in Hillview Plaza, on East Highway 34. The mailing address is c/o 500 East Capitol, Pierre, South Dakota 57501-5070. The telephone number for the JCM at DHS is 605-773-5990. DHS has a toll free number 800-265-9684, which also provides access to the JCM free of charge to the calling party.

DHS has prepared a brochure describing the duties and responsibilities of the JCM. It has been distributed to all of the juvenile programs at the STAR Academy in Custer; it has also been distributed to the administrative offices on both the East and the West Campuses at STAR. These brochures are always available to students and visitors to each program or administrative office to juvenile residents, staff and visitors alike.

All new and all recommitted DOC students' custodial parents or guardians are sent a letter from the JCM, which explains the responsibilities of the JCM, the confidentiality of all complaints made to the JCM by parents, guardians or students, and includes a copy of the JCM brochure. Program information packets are mailed to each custodial parent or guardian of new arrivals on the STAR Academy Campus by the program staff to which the students have been assigned. These information packets contain information on the program itself, the program rules, visitation procedures, etc. A JCM brochure is also provided in these packets.

During the intake process in each program at the STAR Academy the JCM's position, responsibilities and availability is discussed with each new student. Each new student is given a copy of the JCM brochure at the time of his or her arrival on campus. This information is again brought to the attention of the students by the JCM himself during any investigation, or by the program staff during programming as the situation warrants.

The Department of Human Services internet home page has a link which the custodial parent(s) or guardian(s) or any member of the public may use to contact the JCM. Any contact to the JCM via this method will be treated confidentially, just as any telephone or personal visit would be.

The JCM discusses the monitor's duties and the confidentiality of any disclosures or information provided to the JCM and with any individual meeting with the JCM. The confidentiality of all communications with the JCM is emphasized with each STAR Academy resident to ensure that each student contacted understands that

there will be no repercussions, retaliation or harassment by staff for meeting with the JCM over any concern he/she might have.

The JCM conducts training on the JCM position with all newly-hired employees during their pre-service training at Custer. The JCM authorizing legislation and its provisions are discussed at these training sessions. Abuse and neglect, as defined in the JCM statute are discussed in detail. The confidentiality of any communications with the JCM is emphasized as it is with all juvenile residents at the STAR Academy. It is also explained to the newly hired employees that this confidentiality provision applies to all students, complainants, and/or other individuals who report violations, questionable practices or suspicions to the JCM. These pre-service classes usually occur on a monthly basis. All newly hired STAR Academy employees, as well as other selected DOC employees and all contract employees providing services on the STAR Academy campus must attend these classes as part of their conditions of employment or terms of their contract.

Padlocked boxes are placed in each program in easily accessible places for students to use to initiate contact with the JCM. Any individual, including DOC staff or visitors, may use such a box to contact the monitor. The JCM has the only key to these boxes. Any individual can put his/her name on a piece of paper in any one of these boxes, and the JCM will visit with that person about his/her concern or complaint. Anyone using the locked box may also write a summary of the complaint for the JCM to read prior to the meeting if they wish, but a name is all that is needed to initiate contact. The number of people using these boxes, what types of complaints or comments were made, and what type of information is contained in their contents, is set out in detail later in this report. (See page 8 ff.)

The JCM is available for consultation with any student, staff or other interested person while present on the STAR Academy Campus. Immediate access to the JCM, whenever possible, is afforded to the requesting individual. It is important that the students have their concerns addressed in as timely a manner as possible; therefore, there is no set procedure or requirement to be followed to initiate these meetings with the JCM. A simple request for a meeting will result in a meeting with the JCM.

During the period 7/1/09 to 12/31/09, the average daily population for the STAR Academy was 138.1 students. This includes the boys' and girls' programs. The Patrick Henry Brady Academy averaged 47.6 students on a daily basis. The Admissions Unit averaged 11.3 boys. The boys' chronic mental health/chemical dependency program, the Youth Challenge Center, is comprised of two units: YCC 1 which averaged 23.0 students and YCC 2 averaged 22.2 students.

The ExCEL program on the East Campus averaged 15.6 girls during this same period. The Intake Unit, which is located within the ExCEL program, averaged

1.6 girls during this period. The other girls' program, QUEST, averaged 16.8 students.

Legislative History:

The Juvenile Corrections Monitor (JCM) position was established by the legislature sitting in 2000; it is codified beginning at SDCL 26-11A-24.

The JCM is designated by the Governor to protect the rights of the individuals in the custody or care of juvenile corrections facilities (SDCL 26-11A-25). Any and all allegations of abuse or neglect of individuals within state-run juvenile corrections facilities will be investigated by the JCM.

“Abuse” is defined as “any act or failure to act by an employee of a juvenile corrections facility or by a contract person or entity providing services to a juvenile corrections facility, which act was performed or was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual in the custody or care of a juvenile corrections facility.” (SDCL 26-11A-24 (1)).

“Neglect” is defined as “a negligent act or omission by any individual responsible for providing custody, care, or services in a juvenile corrections facility which caused or may have caused injury or death to an individual in the care or custody of a juvenile corrections facility or which placed such individual at undue risk of injury or death.” (SDCL 26-11A-24 (5)).

The JCM, as stated in SDCL 26-11A-27, is required to:

(1) Investigate incidents of abuse or neglect of such individuals within the juvenile corrections facilities, if the incidents are reported to the monitor or if there is reasonable suspicion to believe that the incidents occurred;

(2) Access any individual in the custody or care of juvenile corrections facilities and any employee in the employ of the State of South Dakota or any of its political subdivisions;

(3) Access any records of or relating to any individual in the custody or care of juvenile facilities;

(4) “Provide a semi-annual report to the Governor, the Legislature, the Corrections Commission established by § 1-15-1.13, the secretary of the Department of Human Services, and the secretary of the Department of Corrections. The report shall contain the activities of the monitor for the six-month period immediately prior to the report. Activities shall reflect the number of referrals to the monitor, the number of investigations completed, a brief

description of any investigation that resulted in a finding of abuse or neglect, and a summary of other activities performed by the monitor;”

(5) Provide training and assistance to employees of the Department of Corrections in areas within the scope of the monitor's position;

(6) Review Department of Corrections' policies dealing with juvenile's rights to ensure compliance with federal and state laws, rules, and policy;

(7) Provide reasonable notification of the existence and role of the monitor to all individuals in the custody or care of a juvenile corrections facility and the custodial parent or guardian;

(8) Submit a confidential addendum to each semiannual report to the Government Operations and Audit committee created in § 2-6-2, the Governor, the secretary of the Department of Human Services, and the secretary of the Department of Corrections. This addendum shall contain a description of each case investigated, the specific findings and recommendations of the juvenile corrections monitor, and the Department of Corrections' response to the recommendations.

Prior to the release of the semi-annual report of the monitor as provided in subdivision 26-11A-27(4), the attorney general shall certify that that report does not disclose the identity of any juvenile or other person in violation of the provisions of § 26-11A-30 or 26-11A-33. Upon such certification, the monitor's semi-annual report is deemed an open record. 26-11A-27.1

The JCM may not offer any testimony at any “audit, report, evaluation, or public testimony” that might disclose the identity of the complainant or any personal information, description or personal characteristic which might lead to the identification of any student requesting assistance under the statute. The identity of the person or agency making a complaint or report to the JCM under this statute is kept confidential (SDCL 26-11A-30).

The JCM is required to immediately notify the Governor, the Department of Corrections Secretary, and the Government Operations and Audit Committee of the legislature in writing of any substantiated abuse or neglect, including the facts of the case and the identity of the perpetrator(s) (SDCL 26-11A-28).

Any one knowingly hindering the lawful actions of the monitor is guilty of a misdemeanor. No state agency or anyone acting on their behalf may take any adverse action against an individual in retaliation because that person cooperated with, or provided information to, the JCM. Any state agency or any individual acting for a state agency that takes any adverse action against an individual in retaliation because the individual cooperated with or provided

information to the monitor is guilty of a Class 1 misdemeanor (SDCL 26-11A-31 and 32).

The identity of the juvenile and of any person or agency making a report to the monitor is required to be kept confidential (SDCL 26-11A-33).

Summary of Complaints or Referrals

The current reporting period is from 7/1/09 to 12/31/09. In this reporting period the JCM was contacted by individual juveniles with questions or complaints, DOC staff, and one (1) custodial parent by telephone. Some of these individuals used the lock-boxes to contact the JCM, while others used the telephone or a personal contact when the JCM was on campus at the STAR Academy. The JCM would then discuss that person's particular question or issue as soon after receiving the request, or personal contact, as possible.

In addressing these inquiries the JCM does not always conduct a complete investigation. Sometimes it is not necessary; providing a contact telephone number for program staff or a correct mailing address might be all that was necessary to answer the inquiry.

If it is necessary, because the JCM is traveling to, or working at, the STAR Academy, DHS staff in Pierre will provide contact information to the JCM via telephone or email of people seeking to contact the JCM, so that he can contact the calling party as quickly as possible and begin making inquiries on the complaint or question immediately.

The JCM's locked boxes are placed in well used, easily accessible locations throughout the STAR Academy Campus. On the West Campus, where the boys' programs are located, one box is centrally located in the cafeteria which is used by most of the students on the campus when they eat their meals. That box is placed on the wall where the students line up to go through the cafeteria line, and is available for use by all students eating their meals in the cafeteria.

The Admissions Unit is the program through which all newly arrived male students process while they are being assessed and evaluated prior to assignment to either the Brady Academy or one of the Youth Challenge Center (YCC) programs. This process is scheduled to last from 10 to 14 days, with 10 days being the preferable length of stay. Occasionally an individual stay might be longer if a bed is not immediately available in the program to which that individual has been assigned. This program is supervised by an Interim Program Manager/Treatment Director. The lock-box in the Admissions program is located in the dormitory area. It is attached to the front of the large supervisor's desk which sits on a platform at the front end of the room.

YCC is comprised of two separate programs; each section is divided according to a juvenile's risk level and the intensity of services required by that juvenile. YCC 1 has the higher risk level student, as well as the student requiring a higher level of services. YCC 2 has the lower risk level student who needs a

less intense level of services, such as “outpatient chemical dependency treatment.” Each unit has a 24 bed capacity supervised by a Treatment Supervisor, with each Treatment Supervisor reporting to the Program Manager. A lock-box is located in each YCC unit in the dormitory and is attached to the desk on the platform in the center of the room; that desk is used by the youth supervisors monitoring the students in the dormitory.

The Patrick Henry Brady Academy (PHBA) is a short-term, level based program. There are two “platoons” with students assigned to them equally based on assessed needs and responsivity (barriers exhibited by the youth in responding to treatment) factors. Each “platoon” has been running at 26 students per platoon recently. There is space to accommodate that many students without violating any administrative rules or program guidelines. JCM Lock-boxes are located in each platoon’s living quarters, in an area commonly referred to as “the classroom.” It is at the far end of the living quarters opposite the Wellness Instructors’ desk which is located at the other end of the dormitory. The bed area separates the classroom from the supervisory desk area and the classroom area. This allows for more confidentiality to anyone putting a note in the lock-box.

There is also another lock-box in each of the PHBA “dayrooms” which are available to the juveniles for recreation, study and other suitable activities. Additionally, all PHBA students have access to the lock-box located in the cafeteria.

The STAR Academy East Campus, which is comprised of the two girls’ programs, QUEST and ExCEL, is located within the boundaries of Custer State Park. There are three lock-boxes within this complex. One is centrally located in the cafeteria which is used at mealtime by both of the girls’ programs. Meals are scheduled at different times for each program to minimize contact between the girls’ programs during this time.

QUEST (Quality Educational Services and Treatment) is a Department of Social Services (DSS) licensed group care facility. The program is six to nine months long and serves girls who have been physically and/or sexually abused and/or have significant chemical dependency issues requiring a higher level of treatment than is generally available within a community setting. A lock-box is also located in the “classroom” area of the dormitory in their building. This lock-box is at the other end of the dormitory from where the staff desk area is located.

ExCEL (Excellence in Counseling Education and Life Skills) is also a Department of Social Services (DSS) licensed group care facility organized under the same criteria as QUEST. The length of this program is approximately four months. ExCEL also provides an “Admissions” component for both programs. The newly admitted girls go through an evaluation and assessment process which determines whether they go to QUEST or ExCEL; this period lasts from 10 to 14 days prior to final program assignment. The preferable length of stay in “the ExCEL Intake Unit” is 10 days. The third East Campus lock-box is located in the “classroom” area of their dormitory at the far end of the dormitory opposite the staff desk.

In addition to receiving complaints in the lock-box, or from interested third parties, parents or guardians, the JCM may also initiate investigations on his own authority, based on incidents he has personally observed or from information he has heard in comments or conversations with staff and/or students. The JCM may also conduct an investigation after receiving information from DOC/STAR Academy staff or program written reports, or from reviewing pass-down logs maintained in each program. These pass-down logs report the activities and other items of interest or information from the previous shift to the oncoming shift staff within that program. A review of the "Comprehensive Incident Report Forms," also provides information which the JCM may use to begin an investigation.

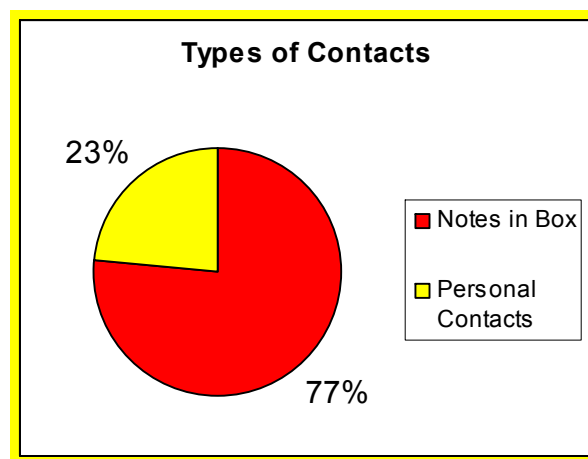
STAR Academy Lock-box Statistics for the period 7/1/09 to 12/31/09:

There were a total of 112 contacts to the JCM during this reporting period. There were 86 notes from students in the lock-boxes and 26 requests or questions which came directly from the students themselves to the JCM personally in this same time period. The 26 personal requests or questions from the students, who spoke directly with the JCM about their concerns or questions or complaints, were handled in the same manner as the written requests or questions put in the lock-boxes. The statistical information from all contacts is set forth below.

Statistical Information from Lock Boxes and Personal Contacts:

Lock-Box Notes v. Personal Contacts (Total 112)

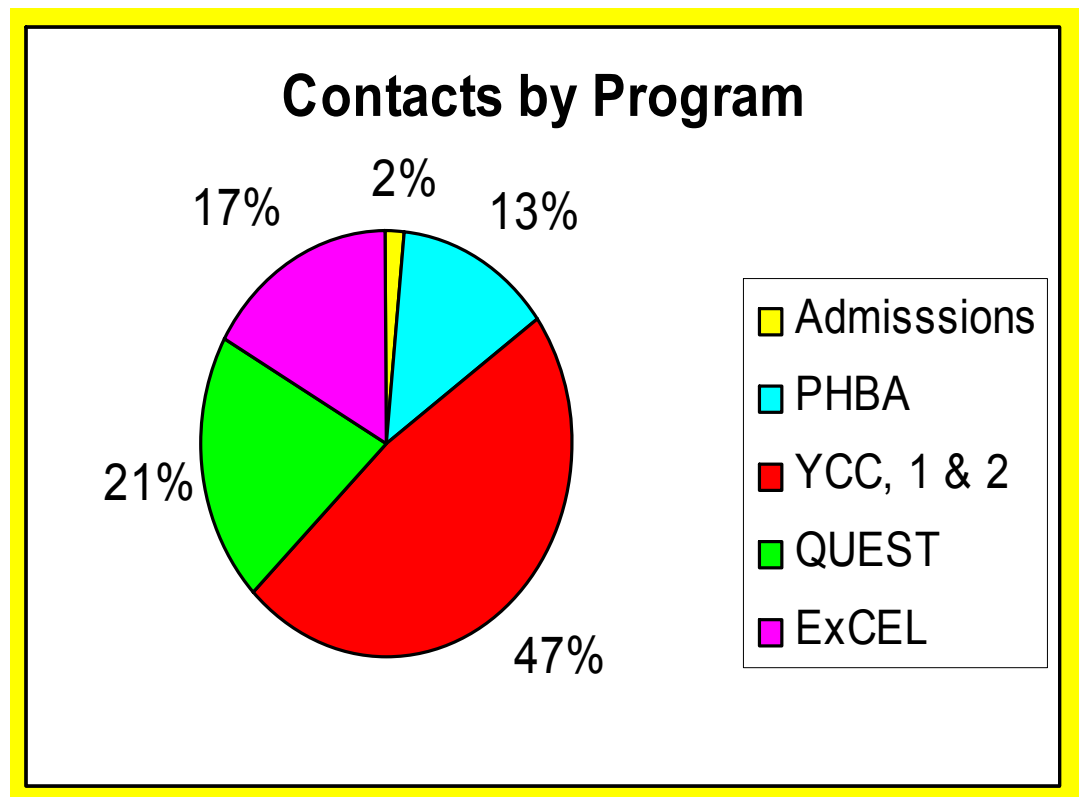
Lock-Box Notes	86
Personal Contacts by Juveniles	26



Contacts by Program

Program Breakdown: Total 112 (7/1/09 to 12/31/09)

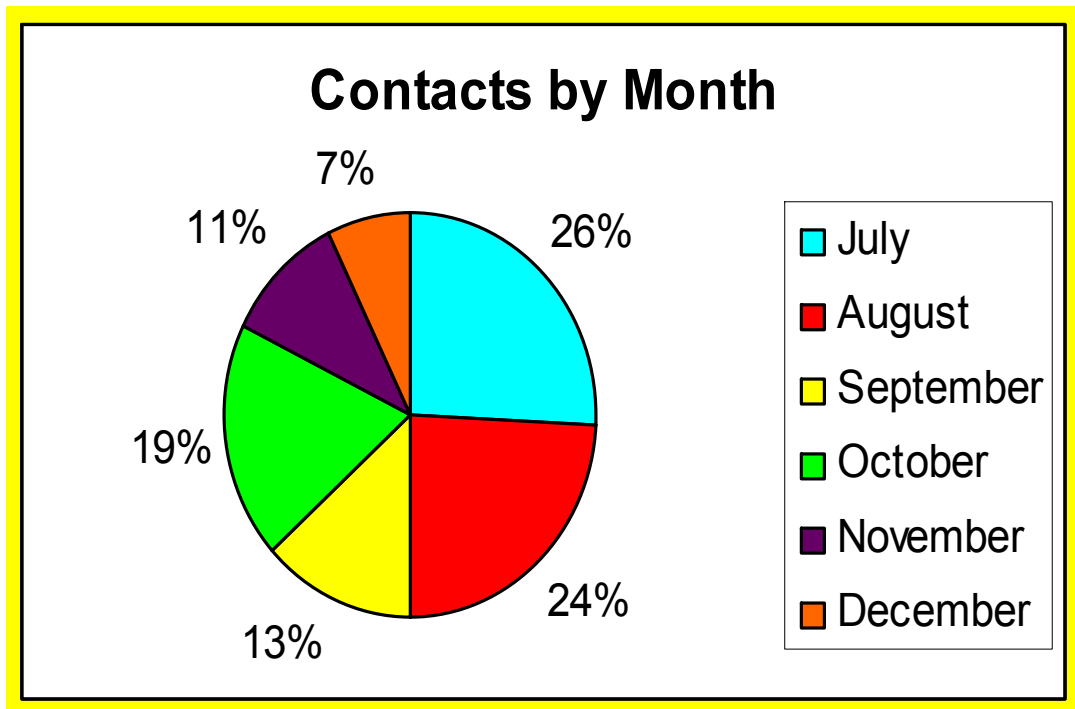
1. Admissions	2
2. PHBA	15
3. YCC, 1 & 2	53
4. QUEST	23
5. ExCEL	19



Contacts by Month

Breakdown by Month: Total 112 (7/1/09 to 12/31/09)

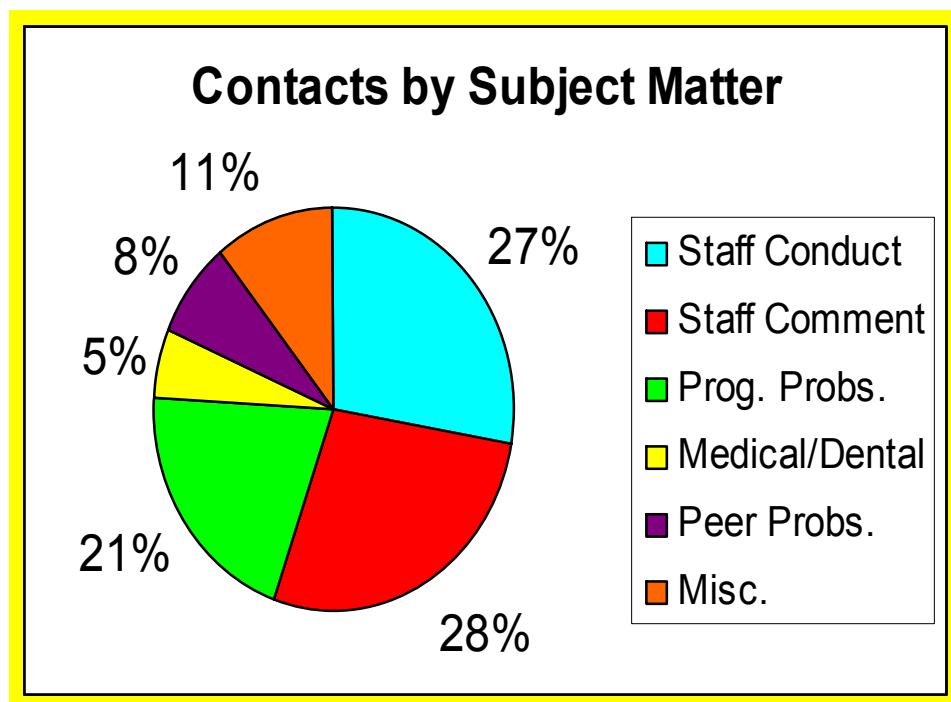
1. July	29
2. August	27
3. September	15
4. October	21
5. November	12
6. December	8



Contacts by Subject Matter

Breakdown by Subject Matter: Total 112 (7/1/09 to 12/31/09)

1.	Staff Conduct	31
2.	Staff Comment	31
3.	Program Problems	23
4.	Medical/Dental	6
5.	Peer Problems	9
6.	Misc.	12

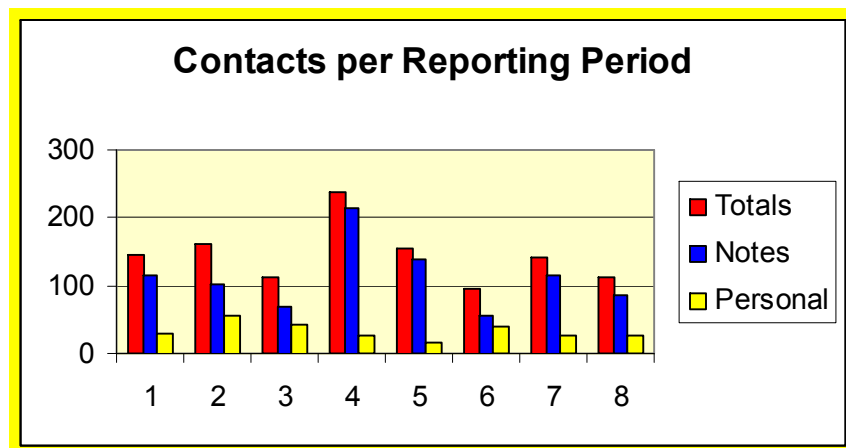


The "Miscellaneous" category, listed above, consists of 12 contacts in total: one (1) is a complaint about not being able to use the bathroom at a time other than that scheduled; one (1) was a complaint that there was not enough time to eat; one (1) was a request for new wellness instructors for the PHBA; one (1) was a "thank you" for help provided; two (2) were complaints about their counselor; two (2) are requests for a Russian dictionary and translation assistance; one (1) was

a request for information about mandatory reports of abuse, and two (2) were reports of a snack (oranges) being stolen by a peer; and the last one (1) was a note asking to withdraw a previous complaint.

Youth Contacts with the Juvenile Corrections Monitor
for the past 8 Reporting Periods

<u>Reporting Period</u>	<u>Total</u>	<u>Notes</u>	<u>Personal</u>
1. Jan. to June '06	144	115	29
2. July to Dec. '06	160	103	57
3. Jan. to June '07	112	68	44
4. July to Dec. '07	239	214	25
5. Jan. to June '08	156	140	16
6. July to Dec. '08	97	57	40
7. Jan. to June '09	142	114	28
8. July to Dec. '09	112	86	26



There was only one (1) telephone call to the JCM during this reporting period from a custodial parent or guardian. It was from a custodial mother questioning the validity of the medical complaints her son was making and what efforts the Medical Department was making to substantiate them and treat them. It should be noted that the custodial parent was questioning the medical complaints because they were about a "long-term condition" (asthma) of which she said she was unaware.

Summary of Reports

Five (5) investigative reports were submitted during this reporting period. Three (3) of the reports were self-generated. One (1) of the reports originated with information provided by the Department of Corrections; and one (1) report was generated by an employee of the Department of Human Services.

There were no investigations in which abuse or neglect was substantiated.

“Summary of Reports” Table

<u>Program</u>	<u>Allegation(s)</u>	<u>Investigative Outcome</u>	<u>Other Information</u>
QUEST	Inappropriate Staff Conduct	Substantiated	Retraining Accomplished Personnel Action taken
YCC	Erroneous statement in Report (CIRF)	Substantiated	Retraining Accomplished
PHBA	Inappropriate Physical Contact by staff - Horseplay	Substantiated	Retraining Accomplished Personnel Action taken
PHBA	Inappropriate Language - staff	Substantiated	Personnel Action Taken
PHBA	Inappropriate physical contact by staff	Not substantiated	DOC handled at program level

Other activities of the JCM

The JCM randomly reviews the administrative remedy requests, commonly referred to as grievances by the students, at all of the programs at the STAR Academy. The JCM may discuss the complaints and remedies or answers with program supervisors or staff and/or the complaining student to seek further explanations and determine if the matters were resolved in a manner satisfactory to the students. The JCM may also facilitate meetings with program staff to answer other student's questions.

The majority of the grievances filed concern the administration of the program or the rules under which the program operates, which do not fall within the scope of the JCM's jurisdiction under the statutory definitions of abuse or neglect or violations of the student's "legal rights" as stated in the JCM statute (SDCL 26-11A-24-(2)).

Some times these same questions may also be brought to the attention of the JCM by the students themselves through the lock-boxes, or during a personal conversation with the JCM before the formal program response is made. In these instances, with the permission of the student, the JCM will contact the program manager or senior staff to personally convey the student's concerns. The JCM has found that this approach leads to a mutually satisfactory resolution of the problem for both staff and the students, with a minimum of misunderstandings by the student. On other occasions the students may simply want to "rehash" the issue so that they completely understand the answer(s) given to them. The JCM has also found that some students want to "vent" in a safe environment about what they perceive as an unsatisfactory resolution or answer to their questions.

Several of these students have told the JCM that they have decided "to live with the decision even though they do not like it" when they met the JCM at a later date. Other students have told the JCM they appreciate him listening to them and letting them complain.

The JCM reviews all major disciplinary reports from all programs.

The JCM reviews all of the Use of Force reports generated within the STAR facility. While on site, the JCM also observes anyone in confinement and reviews the supporting documentation to ensure compliance with DOC policy and STAR Operational Memoranda.

The JCM continues to regularly observe all programs in person. The JCM is on campus each week. The visits are not pre-scheduled or pre-arranged. No advance notice of the JCM's schedule is provided to STAR Academy personnel.

Many students are interviewed on a random basis by the JCM during these visits. These contacts are usually informal visits about conditions at the Star Academy, or other items of interest to the students or the JCM. At other times the students bring up issues concerning them to discuss with the JCM. These random,

unfettered contacts are crucial for the JCM to emphasize his availability and accessibility, as well as the freedom each student has to talk with the JCM at any time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Ellis", is positioned to the left of a thin vertical yellow line.

John J. Ellis
Juvenile Corrections Monitor