



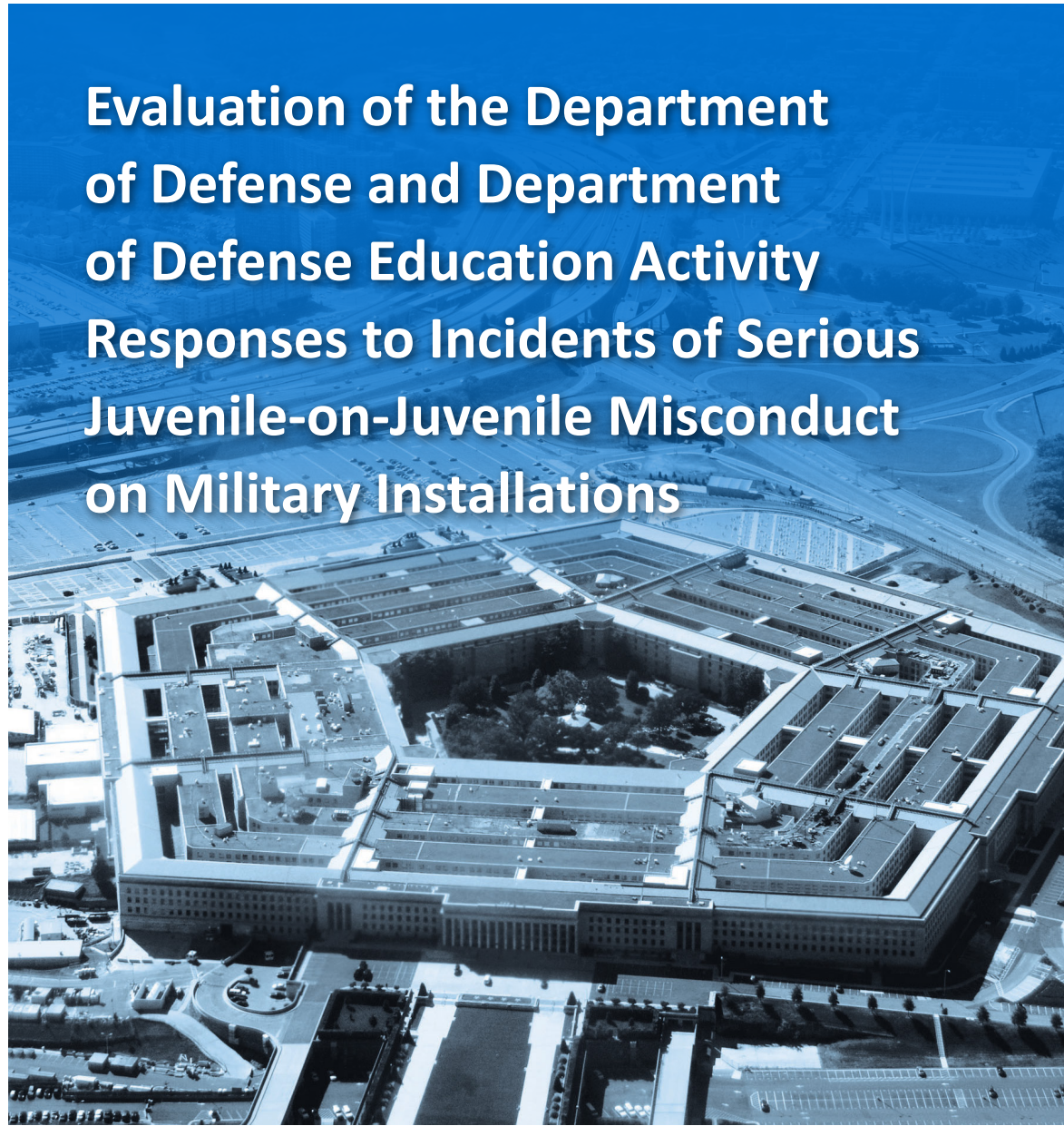
INSPECTOR GENERAL

U.S. Department of Defense

SEPTEMBER 4, 2020



Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Evaluation of the Department of Defense and DoD Education Activity Responses to Incidents of Serious Juvenile-On-Juvenile Misconduct on Military Installations

September 4, 2020

Objective

The objectives of this evaluation were to determine whether the DoD and DoD Education Activity (DoDEA):

- have adequate policies and procedures to respond to incidents of serious juvenile-on-juvenile misconduct, including sexual assault and sexual harassment; and
- referred serious juvenile-on-juvenile misconduct incidents to DoD law enforcement organizations and military and civilian child advocacy and health services.

Background

The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Senate Report 115-262), expressed concern about the ability of the DoD and DoDEA to “protect or provide justice to the children of service members when they are sexually assaulted by other children” in DoD schools and on military bases. The report directed the DoD OIG to “conduct a comprehensive assessment of DoD and DoDEA policies and procedures regarding misconduct, including sexual misconduct, to help child victims of misconduct and to rehabilitate child offenders, including whether the Department took corrective actions to hold offenders accountable when appropriate.”

DoDEA is the DoD’s school system for active duty military and DoD civilian dependent children. It operates 163 schools world-wide and provides education to more than 71,000 children. The DoDEA is responsible for planning, directing, coordinating, and managing pre-kindergarten through 12th grade educational programs on behalf of the DoD.

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Findings

DoDEA administrators did not report all misconduct incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents to DoDEA headquarters (HQ), installation commanders, or law enforcement. We determined that between January 1, 2015, and December 31, 2017, there were 600 incidents that could have been reported as serious juvenile-on-juvenile misconduct incidents that occurred at DoDEA schools. DoDEA administrators did not report:

- 522 (87 percent) incidents to DoDEA HQ,
- 593 (99 percent) incidents to the installation commander, and
- 524 (88 percent) incidents to law enforcement.

This occurred because DoDEA policy provided DoDEA administrators the discretion to determine which incidents could be reported to DoDEA HQ, installation commanders, and law enforcement.

As a result, DoDEA HQ personnel were unaware of at least 522 juvenile-on-juvenile incidents, installation commanders could not hold juvenile offenders accountable, and law enforcement could not conduct investigations of serious juvenile-on-juvenile misconduct incidents.

We also reviewed a statistical sample of 126 of the 401 Military Law Enforcement Organizations (MLEO) and Military Criminal Investigative Organizations (MCIO) investigations of serious juvenile-on-juvenile misconduct that occurred, at DoDEA schools or other locations on the installation, between January 1, 2015, and December 31, 2017.

We determined that MLEO and MCIO personnel investigated all 126 serious juvenile-on-juvenile misconduct incidents in accordance with MLEO and MCIO policies. However, MLEO and MCIO investigative case files did not specify whether juvenile offenders were referred to the appropriate officials to be held accountable. Specifically, there was no information specifying whether MLEO and MCIO personnel notified the Federal Bureau of Investigation (FBI) or Department of Justice (DoJ) in 66 of 126 (52 percent) of its serious juvenile investigations, as required by DoD Instruction 5525.07, “Implementation of the Memorandum



Results in Brief

Evaluation of the Department of Defense and DoD Education Activity Responses to Incidents of Serious Juvenile-On-Juvenile Misconduct on Military Installations

Findings (cont'd)

of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating the Investigation and Prosecution of Certain Crimes,” June 18, 2007. MLEO and MCIO personnel told us that they did not consistently report juvenile-on-juvenile incidents to the FBI or DoJ because these agencies generally did not provide them investigative or prosecutorial assistance.

Additionally, there was no information in the investigative case files specifying whether MLEO and MCIO personnel notified civilian legal authorities, such as Federal, State, County, and Host Nation legal authorities, in 48 of 126 (38 percent) serious juvenile-on-juvenile incidents. Although MLEO and MCIO personnel notified civilian legal authorities in 78 of 126 (62 percent) incidents, there was no information in investigative case files specifying whether civilian legal authorities took legal action in 66 of 78 (85 percent) incidents.

There also was no information in investigative case files specifying whether MLEO and MCIO personnel notified installation commanders in 14 of 126 (11 percent) serious juvenile-on-juvenile incidents. Although MLEO and MCIO personnel notified installation commanders in 112 of 126 (89 percent) incidents, there was no information in the investigative case files specifying whether installation commanders took administrative action in 96 of the 112 (86 percent) incidents. Additionally, we determined that the DoD did not establish policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents, including parameters for holding the offenders accountable.

Installation commanders, MLEO and MCIO personnel, DoDEA officials, Behavioral Health professionals, and Judge Advocates at the seven installations we visited told us that the Family Advocacy Program (FAP) was responsible for providing counseling support services to juvenile victims and offenders. However, DoD Instruction 6400.01 only required the FAP to provide counseling support services to victims of suspected child abuse.

The DoD defines child abuse as “[t]he physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child’s welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.” Although DoD Instruction 6400.01 was updated in May 2019 to require FAP personnel to provide support services to victims and offenders in juvenile-on-juvenile misconduct incidents that are sexual in nature, the update does not address support services for victims and offenders of serious juvenile-on-juvenile misconduct that is not sexual in nature, such as the victims or offenders of assault and battery or the possession and use of drugs.

As a result of the lack of information regarding referrals and accountability in the investigative case files, we could not determine whether civilian legal authorities and installation commanders took legal action or administrative action. Furthermore, MLEO and MCIO personnel, installation commanders, and Judge Advocates told us that civilian legal authorities and installation commanders generally did not hold juvenile offenders accountable. Finally, between January 1, 2015, and December 31, 2017, FAP personnel told us that the FAP did not provide counseling support services to the offenders and victims of juvenile-on-juvenile misconduct incidents, whether the incident was sexual or non-sexual in nature.

Recommendations

We recommend that the DoDEA Director perform a review to assess the DoDEA Administrators’ use of discretion when determining whether to report an incident as a serious juvenile-on-juvenile misconduct incident.



Results in Brief

Evaluation of the Department of Defense and DoD Education Activity Responses to Incidents of Serious Juvenile-On-Juvenile Misconduct on Military Installations

Recommendations (cont'd)

Additionally, we recommend that the Under Secretary of Defense for Personnel and Readiness develop policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents. Furthermore, the Under Secretary of Defense for Personnel and Readiness should develop policy that identifies which DoD agency will provide counseling support services to victims and offenders of serious juvenile-on-juvenile misconduct incidents.

Finally, we recommend that the Secretaries of the Army, Navy, and Air Force update MLEO and MCIO policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders and when possible, the legal and administrative actions taken.

Management Comments and Our Response

The DoDEA Director agreed with the recommendation and described specific actions the DoDEA would take to implement the recommendation. However, the DoDEA Director did not describe the specific actions he would take to limit the discretion of DoDEA administrators, therefore, we consider the recommendation for the DoDEA unresolved, and open.

The Under Secretary of Defense for Personnel and Readiness agreed with the recommendations. However, the Under Secretary did not describe the actions that the USD(P&R) would take to address the recommendations; therefore the recommendations are unresolved, and open.

The Chief of Law Enforcement Division, for the Office of the Army Provost Marshal General, responding on behalf of the Secretary of the Army, did not address the recommendation; therefore, the recommendation is unresolved, and open. Specifically, the Chief did

not state whether he agreed or disagreed with the recommendation, nor did he describe the actions the Army would take in response to the recommendation.

The Assistant Director of the NCIS and the Head, Audit Coordination and Liaison, Office of the Director, Marine Corps Staff, responding separately on behalf of the Secretary of the Navy, both agreed with the recommendation. Both Navy Officials described specific actions the NCIS and the Marine Corps would take to implement the recommendation; therefore, the recommendation for the NCIS and the Marine Corps is resolved, but open.

The Director, Policy and Oversight, Naval Audit Service, and an Audit Liaison Tracking Specialist responding separately on behalf of the Secretary of the Navy, stated in discussions with the Chief of Naval Operations staff, agreed with the report, but “did not have a stake” in the recommendation and would not be providing a response. We disagree with the Director’s comments because the recommendation was to update MCIO and MLEO policies, which includes Naval Security Forces that comes under the purview of the Chief of Naval Operations. Therefore, the recommendation for the Secretary of the Navy relating to Departmental MLEO policy is unresolved, and open.

The Deputy Inspector General of the Air Force and the Chief, Integrated Defense Policy Division, Directorate of Security Forces, Deputy Chief of Staff for Logistics, Engineering and Force Protection responding separately on behalf of the Secretary of the Air Force, agreed with the recommendation. The Air Force officials described specific actions the Air Force would take to implement the recommendation; therefore, the recommendation for the Air Force is resolved, but open.

Please see the Recommendations Table on the next page for the status of the recommendations.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Under Secretary of Defense for Personnel and Readiness	B.1.a, B.1.b	None	None
Department of Defense Education Activity Director	A.1.a	A.1.b, A.1.c	None
Secretary of the Army	B.2	None	None
Secretary of the Navy	B.2	None	None
Secretary of the Air Force	None	B.2	None

We request that the Under Secretary of Defense for Personnel and Readiness, the Director of the Department of Defense Education Activity, the Secretary of the Army, and the Secretary of the Navy provide additional comments on the unresolved recommendations by October 5, 2020.

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

September 4, 2020

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations (Report No. DODIG-2020-127)

This final report provides the results of the DoD Office of Inspector General's evaluation. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains recommendations that are considered unresolved because Agency Responding Officials did not fully address the recommendations presented in the report.

Therefore, as discussed in the Recommendations, Management Comments, and Our Response section of this report, the recommendations remain open. We will track these recommendations until an agreement is reached on the actions that you will take to address the recommendations, and you have submitted adequate documentation showing that all agreed-upon actions are completed.

DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Send your response in a PDF file to [REDACTED] if classified SECRET.

If you have any questions, please contact [REDACTED]
[REDACTED]

A handwritten signature in black ink, appearing to read "Randolph R. Stone", is located below the contact information.

Randolph R. Stone
Assistant Inspector General for Evaluations
Space, Intelligence, Engineering, and Oversight

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Introduction

Objective

The objectives of this evaluation were to determine whether the DoD and DoD Education Activity (DoDEA):

- have adequate policies and procedures to respond to incidents of serious juvenile-on-juvenile misconduct, including sexual assault and sexual harassment; and
- referred serious juvenile-on-juvenile misconduct incidents to DoD law enforcement organizations and military and civilian child advocacy and health services.¹

Background

DoDEA is the DoD's school system for active duty military and DoD civilian dependent children. The DoDEA is responsible for the planning, directing, coordinating, and managing of pre-kindergarten through 12th grade educational programs and schools located on select military installations. DoDEA employs approximately 15,000 personnel who provide education to more than 71,000 children and has its headquarters (DoDEA HQ) in Alexandria, Virginia. DoDEA operates 163 schools worldwide and is divided into three geographic regions: Europe region, which includes the countries of Germany, Italy, and the United Kingdom; Pacific region, which includes the countries of Japan and Korea; and the Americas region, where DoDEA schools are primarily located along the East coast of the United States. Schools within DoDEA are accredited by Cognia and are overseen by the Office of the U-Secretary of Defense for Personnel and Readiness (USD[P&R]).²

On March 13 and 14, 2018, the Associated Press published articles regarding juvenile-on-juvenile sexual offenses on military installations, detailing allegations of student-on-student sexual assaults occurring at Grafenwoehr Elementary School, U.S. Army Garrison (USAG) Grafenwoehr, Germany and Vilseck High School, Rose Barracks, Vilseck, Germany. Specifically, the Associated Press reported that at the Grafenwoehr Elementary School, a group of parents reported that their

¹ DoDEA Regulation 4700.04, "Serious Incident Reporting," June 20, 2016, defines serious incidents as "[a]lleged or suspected misconduct thought to violate law, rule or regulation."

² Cognia is the accreditation organization for all DoDEA schools. Cognia is the world's largest education community, serving more than 30,000 public and private schools and districts across the United States and in more than 70 countries that educate over 16 million students. Cognia brings together the expertise of three United States-based accreditation agencies - the North Central Association Commission on Accreditation and School Improvement, Northwest Accreditation Commission, and the Southern Association of Colleges and Schools Council on Accreditation and School Improvement. <https://www.cognia.org/>.

daughters were sexually assaulted by the same boy in the girls' first-grade class in 2015, and that the assaults continued even though the principal was aware of the boy's misconduct.

The Associated Press also reported in the same article that a student at Vilseck High School was dragged from her high school campus and sexually assaulted by her former boyfriend in February 2014. Prosecutors in Germany, who share jurisdiction over crimes on U.S. military bases in Germany, told the Associated Press that they investigated the matter, but found insufficient evidence to file charges. The Associated Press reported that neither the Army nor the school offered the victim "any help," such as counseling.

On March 15, 2018, the Senate Armed Services Committee (SASC) Chairman and SASC Ranking Member sent the Secretary of Defense a letter identifying their concerns related to juvenile-on-juvenile misconduct on military installations. In the letter, the SASC Chairman and Ranking Member requested a "comprehensive assessment of DoD and DoDEA policies and procedures regarding misconduct, including sexual misconduct, to help child victims of misconduct and to rehabilitate child offenders, including taking corrective actions to hold offenders accountable when appropriate." The SASC Chairman and SASC Ranking Member also asked the DoD to "examine the authority of DoDEA officials and military commanders to hold offenders accountable for criminal acts and a review of services available to military families to address the mental health and other needs of victims of the misconduct." Finally, the SASC Chairman and Ranking Member requested that the Secretary of Defense conduct "an assessment of the adequacy of DoDEA policies to address allegations of serious misconduct occurring in areas and programs that fall within DoDEA's area of responsibility, including reporting requirements, and referrals to criminal investigators, as well as military and civilian child services."

The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Senate Report 115-262), passed on June 5, 2018, expressed concern about the ability of the DoD and DoDEA to "protect or provide justice to the children of service members when they are sexually assaulted by other children" in DoD schools and on military bases. The report directed the DoD OIG to "conduct a comprehensive assessment of DoD and DoDEA policies and procedures regarding misconduct, including sexual misconduct, to help child victims of misconduct and to rehabilitate child offenders, including whether the Department took corrective actions to hold offenders accountable when appropriate."

DoDEA Policies and Databases

DoDEA has multiple regulations which establish policy and procedures for reporting and responding to juvenile misconduct. DoDEA also maintains two databases to document and report student disciplinary incidents to DoDEA District, Region, and HQ personnel. Those databases are the Serious Incident Reporting (SIR) and ASPEN databases.³

DoDEA Policies for the Management of Juvenile Misconduct

There are multiple DoDEA regulations which establish policy and procedures for reporting and responding to juvenile misconduct. In June 2016, DoDEA established DoDEA Regulation 4700.04.⁴ DoDEA Regulation 4700.04 defines serious incidents as “[a]lleged or suspected misconduct thought to violate law, rule or regulation.” According to DoDEA Regulation 4700.04:

Serious Incident Reports shall be completed in the SIR database as soon as details are available to complete the report format but no longer than 72 hours (3 calendar days) after the occurrence or identification of the incident with all pertinent information (e.g., who, what, where, how, and when).

DoDEA Regulation 4700.04 also states that “[i]t is DoDEA policy to report [to DoDEA HQ] and document all serious events identified in Figure 1 that have a relationship to DoDEA schools or activities.”

³ The ASPEN student information management systems (ASPEN) is a DoDEA database that is used to maintain student permanent record information, including attendance, report cards and transcripts, and class schedules.

⁴ DoDEA Regulation 4700.04, “Serious Incident Reporting,” June 20, 2016.

Figure 1. Serious Incidents Identified in DoDEA Regulation 4700.04

Figure 1. SIR Incidents

Drug & Alcohol Events			
Use of Drugs (excluding Alcohol)	Possession of Drug Paraphernalia	Sale/Distribution of Alcohol	Use of Alcohol
Possession of Drugs (excluding Alcohol)	Sale/Distribution of Drugs (excluding Alcohol)	Possession of Alcohol	Found Drugs or Alcohol
Violation of the Law			
Assault & Battery	Extortion	Larceny	Threatening Statements
Homicide	Kidnapping	Robbery	Other events Against Persons
Sexual Event			
Attempts to Commit Sexual Acts	Non-Consensual Sexual Contact	Rape	
Child Pornography	Non-Contact Sexual Act		
Individual Concerns			
Suicide	Suicide Attempt	Suicide Ideation	Self – Injurious Behavior
Property Events			
Arson	Bus Accidents	Vandalism/Damage to Property	
Burglary/Breaking & Entering	Theft of Government Property	Other Property Damage	
Security Incidents			
Bomb Threat	Possession of Actual Firearm	Destructive/Explosive Devices	Suspicious Package
Possession of a Knife	Force Protection Issues	Possession of other type weapon	Trespassing

Source: DoDEA Regulation 4700.04.

Additionally, DoDEA Regulation 4700.04 states that “[a]ny incident, which the DoDEA Reporting Official feels may be considered serious or sensitive enough to warrant a detailed report for the record may be reported through SIRs, even if the incident does not fit within the events in Figure 1.” Finally, DoDEA Regulation 4700.04 requires the DoDEA Reporting Official to “[u]tilize the SIR procedural guide to complete SIRs.”

In August 2016, DoDEA published the DoDEA Procedural Guide 5760.01-01, (Procedural Guide) which states that DoDEA Reporting Officials “shall [r]eport serious incidents using this procedural guide.”⁵ The Procedural Guide also includes

⁵ DoDEA Procedural Guide 5760.01-01, “Serious Incident Reporting Procedures,” August 24, 2016.

six tables and states that the tables “provide a nonexclusive list of events and examples of events that may be reported through the SIRs database.” Finally, the Procedural Guide states that:

The lists of events/activities/paraphernalia described [in the tables] are illustrative only, and do not identify every event/activity/paraphernalia that may be inappropriate, nor require that each identified event/activity/paraphernalia result in a SIR.

Additionally, DoDEA Regulation 2051.1 establishes policy and procedures for disciplinary actions for students enrolled in DoDEA schools.⁶ It states that “the principal of the school shall notify the installation commander, or his or her designee for law enforcement or legal affairs, of any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.”

Serious Incident Reporting Database

DoDEA uses the SIR database to document serious incidents described in DoDEA Regulation 4700.04 and occurring on DoDEA property involving DoDEA students. According to DoDEA Regulation 4700.04, the DoDEA Security Management Division uses the SIR database to perform trend analysis to “[p]rovide guidance necessary to address concerns or target problems.” According to the Procedural Guide, whether an incident qualifies as serious and warrants inclusion in the SIR database is left to DoDEA administrators’ discretion. Specifically, the Procedural Guide states “... nor require that each identified event/activity/paraphernalia result in a SIR.” Furthermore, the Procedural Guide states that less serious misconduct or behavioral issues “are not” reported in the SIR database. Lastly, the Procedural Guide states that notifications to any law enforcement agency must be documented in the SIR.

ASPEN Database

The ASPEN student information management systems (ASPEN) is a DoDEA database that is used to maintain student permanent record information, including attendance, report cards and transcripts, and class schedules. ASPEN also includes a discipline section which DoD administrators can use to record disciplinary actions. DoDEA has not established policy or requirements for the information that must be recorded in ASPEN. Instead, requirements and training for using ASPEN are provided by each DoDEA region on an as-needed basis and vary across the DoDEA enterprise. We reviewed the discipline section of ASPEN to help us identify incidents that could have been reported as serious juvenile-on-juvenile misconduct incidents in the SIR database.

⁶ DoDEA Regulation 2051.1, “Disciplinary Rules and Procedures,” (Incorporating Change 2, March 23, 2012).

Military Law Enforcement Organization and Military Criminal Investigative Organization Role in Serious Juvenile-on-Juvenile Incidents

Each of the Services has a separate military law enforcement organization (MLEO) and a military criminal investigative organization (MCIO) that investigate crimes on an installation.⁷ The MLEOs consist of uniformed law enforcement who are the first responders to reports of crime on their respective military installations and who often investigate misdemeanor crimes. The MLEOs include Army Military Police (MP); Naval Security Police (SP) and Masters-At-Arms (MAA); Air Force Security Forces (SF); and Marine Corps MP and Marine Corps Criminal Investigation Division (CID). The MLEOs employ military, civilian, and contractor personnel to assist in an installation's security and law enforcement mission.

The MCIOs consist of special agents who conduct the felony-level criminal investigations for offenses such as murder, sexual assaults, robbery, aggravated assault, burglaries, and drug crimes. The MCIOs include U.S. Army Criminal Investigation Command (USACIDC), Naval Criminal Investigative Service (NCIS), and Air Force Office of Special Investigations (AFOSI). The MCIO special agents are military and civilian personnel who have the authority to investigate criminal statutes identified in the Uniform Code of Military Justice (UCMJ) and the United States Code.

DoD Policy for MLEO and MCIO Personnel to Refer Juvenile Investigations

DoD Instruction 5525.07 requires that when:

[a]crime has occurred on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will provide immediate notice of the matter to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type of class of crime.⁸

⁷ For this evaluation, the evaluation team used the title "MLEO" instead of the title "other DoD law enforcement organizations," as defined in DoD Instruction 5505.08, "Military Criminal Investigative Organizations (MCIO) and Other DoD Law Enforcement Organizations Investigations of Adult, Private, Consensual Sexual Misconduct," April 17, 2013, (Incorporating Change 1, March 23, 2017).

⁸ DoD Instruction 5525.07, "Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes," June 18, 2007. DoD Instruction 5525.07 was updated on March 5, 2020. The March 2020 version of DoD Instruction 5525.07 includes the same requirement for FBI or DoJ notification.

According to the instruction, when the Federal Bureau of Investigation (FBI) or Department of Justice (DoJ) does not accept a serious juvenile-on-juvenile misconduct incident for further investigation, the MLEOs or MCIOs are required to investigate the incident consistent with their jurisdictional authorities provided by law and regulation. The MLEOs and MCIOs have established policies for their personnel to use when investigating juvenile misconduct. These policies are discussed in further detail in Finding B of this report.

Family Advocacy Program

Family Advocacy Program (FAP) personnel assist military families and civilians serving overseas in overcoming the effects of violence by providing treatment and rehabilitation resources. Until May 1, 2019, DoD Instruction 6400.01 only required the FAP to provide counseling support services to victims of suspected child abuse.⁹ DoD Instruction 6400.06 defines child abuse as:

[t]he physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.¹⁰

On May 1, 2019, DoDI 6400.01 was updated and directs the FAP to provide services for problematic sexual behaviors in children and youth, including identification, treatment, counseling, rehabilitation, follow-up, and other services. DoD Instruction 6400.01 defines problematic sexual behavior as:

behaviors initiated by children and youth under the age of 18 that involve sexual body parts (genitals, anus, buttocks, or breasts) in a manner that deviates from normative or typical sexual behavior and are developmentally inappropriate or potentially harmful to the individual initiating the behavior, the individual(s) impacted by the behavior or others.

⁹ DoD Instruction 6400.01, "Family Advocacy Program (FAP)," May 1, 2019.

¹⁰ DoD Instruction 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," (Incorporating Change 2, July 9, 2015). The May 1, 2019, version of DoD Instruction 6400.01 includes the same definition for child abuse as DoD Instruction 6400.06.

Finding A

DoDEA Administrators Did Not Report All Incidents That Could Have Been Categorized as Serious Juvenile-on-Juvenile Misconduct Incidents to DoDEA HQ, Installation Commanders, or Law Enforcement

DoDEA administrators did not report all misconduct incidents that could have been categorized as serious juvenile-on-juvenile incidents to DoDEA HQ, installation commanders, or law enforcement. We determined that, between January 1, 2015, and December 31, 2017, there were 600 incidents that DoDEA administrators could have categorized as serious juvenile-on-juvenile misconduct incidents that occurred at DoDEA schools. Of the 600 incidents that could have been reported as serious juvenile-on-juvenile misconduct incidents, DoDEA administrators did not report:

- 522 (87 percent) incidents to DoDEA HQ,
- 593 (99 percent) incidents to the installation commander, and
- 524 (87 percent) incidents to law enforcement.

This occurred because DoDEA policy provided DoDEA administrators the discretion to determine which incidents will be reported to DoDEA HQ, installation commanders, and law enforcement.

As a result, DoDEA HQ personnel were unaware of at least 522 juvenile-on-juvenile incidents, which made DoDEA HQ unable to accurately identify trends, provide guidance, or target problems. Furthermore, installation commanders could not hold juvenile offenders accountable, and law enforcement could not conduct investigations of serious juvenile-on-juvenile misconduct incidents.

DoDEA Administrators Did Not Report All Incidents That Could Have Been Categorized as Serious Juvenile-on-Juvenile Misconduct Incidents to DoDEA HQ, Installation Commanders, and Law Enforcement

DoDEA administrators did not report all misconduct incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents to DoDEA HQ, installation commanders, or law enforcement. We reviewed multiple DoDEA policies that establish the requirements for reporting serious juvenile-on-juvenile incidents to DoDEA HQ, installation commanders, and law enforcement. During our evaluation, we determined that there is not a DoDEA policy related to the use of the ASPEN for

recording student disciplinary information. We also reviewed student disciplinary information retained in ASPEN, as well as SIR notifications made from DoDEA schools to DoDEA HQ to identify juvenile-on-juvenile misconduct incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents.¹¹ Additionally, we interviewed DoDEA leadership and school personnel to determine their understanding of DoDEA procedures for reporting serious juvenile-on-juvenile misconduct incidents to DoDEA HQ, installation commanders, or law enforcement.

DoDEA Administrators Did Not Report to DoDEA Headquarters Incidents That Could Have Been Categorized as Serious Juvenile-on-Juvenile Misconduct Incidents

DoDEA administrators did not report to DoDEA HQ 522 of 600 (87 percent) incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents. In June 2016, DoDEA established DoDEA Regulation 4700.04, which states:

Serious Incident Reports shall be completed in the SIR database as soon as details are available to complete the report format but no longer than 72 hours (3 calendar days) after the occurrence or identification of the incident with all pertinent information (e.g., who, what, where, how, and when).

As discussed in the background section of this report, DoDEA Regulation 4700.04 also states that “[i]t is DoDEA policy to report and document all serious events identified in Figure 1 that have a relationship to DoDEA schools or activities.” Figure 1 identifies serious incidents, such as assault and battery, non-consensual sexual contact, use of drugs, and burglary, and other serious misconduct. Additionally, DoDEA Regulation 4700.04 states that “[a]ny incident, which the DoDEA Reporting Official feels may be considered serious or sensitive enough to warrant a detailed report for the record may be reported through SIRs, even if the incident does not fit within the events in Figure 1.” Finally, DoDEA Regulation 4700.04 requires the DoDEA Reporting Official to “[u]tilize the SIR procedural guide to complete SIRs.”

In August 2016, DoDEA published the Procedural Guide,¹² which states that DoDEA Reporting Officials “shall [r]eport serious incidents using this procedural guide.” The Procedural Guide also includes six tables which “provide a nonexclusive list of events and examples of events that may be reported through the SIRs database.”

¹¹ Without DoDEA policy related to the use of ASPEN, the information DoDEA administrators included in ASPEN varied from region to region, and perhaps from school to school. It is outside the scope of this evaluation to determine the accuracy of the ASPEN.

¹² DoDEA Procedural Guide 5760.01-01, “Serious Incident Reporting Procedures,” August 24, 2016.

However, unlike DoDEA Regulation 4700.04, the Procedural Guide provides DoDEA administrators the discretion to determine which misconduct incidents they report to DoDEA HQ. Specifically, the Procedural Guide states that:

[t]he lists of events/activities/paraphernalia described [in the tables] are illustrative only, and do not identify every event/activity/paraphernalia that may be inappropriate, nor require that each identified event/activity/paraphernalia result in a SIR.

Total Number of Serious Juvenile-on-Juvenile Incidents

To identify the total number of serious juvenile-on-juvenile incidents, we reviewed 13,500 ASPEN disciplinary records and 894 SIRs that were recorded between January 1, 2015, and December 31, 2017. We used the serious incident and event criteria from DoDEA Regulation 4700.04 and the Procedural Guide to identify the total number of incidents and events that could have been reported to DoDEA HQ as serious juvenile-on-juvenile misconduct incidents using the SIR database. We determined that between January 1, 2015, and December 31, 2017, there were 619 total records:

- 541 incidents recorded in ASPEN that DoDEA administrators could have reported as serious juvenile-on-juvenile misconduct incidents, and
- 78 serious juvenile-on-juvenile misconduct incidents recorded in the SIR database.¹³

¹³ We determined the remaining serious incidents that the DoDEA schools reported through an SIR did not involve both a juvenile offender and juvenile victim.

Table 1 shows the total number of serious juvenile-on-juvenile incidents in the ASPEN and SIR databases.

Table 1. Serious Juvenile-on-Juvenile Misconduct Incidents by Type of School

TYPE OF SCHOOL	ASPEN	SERIOUS INCIDENT REPORT (SIR)	TOTAL
Elementary School	247	9	257
Elementary/Middle School	17	4	21
Elementary/High School	6	1	7
Intermediate School	20	0	20
Middle School	136	24	160
Middle/High School	20	5	25
High School	95	35	132
Total Reports	541	78	619*

Note: There were 19 incidents reported in both the ASPEN and the SIR databases. Therefore, the total number of incidents was 600.

Source: The DoD OIG.

Serious Juvenile-on-Juvenile Incidents Reported to DoDEA Headquarters

We compared ASPEN and SIR database records to determine whether DoDEA administrators reported the 541 serious juvenile-on-juvenile incidents and events in ASPEN to DoDEA HQ. We determined that 19 of 541 incidents and events recorded in ASPEN were reported in the SIR database to DoDEA HQ. However, we determined that 522 of the 541 incidents recorded in ASPEN that met the serious incident and event criteria in DoDEA Regulation 4700.04 and the Procedural Guide did not have a corresponding SIR in the SIR database and therefore were not reported to DoDEA HQ.

For example, one of the incidents that was recorded in ASPEN involved a student who threatened another student, “I’ll bring a knife to school tomorrow and cut off your head.” According to the DoDEA Regulation 4700.04, DoDEA administrators “shall” report this threatening statement in the SIR database. Additionally, according to the Procedural Guide, DoDEA administrators “may” have reported the incident in the SIR database because the threat involved “serious bodily injury, death, or substantial property damage, with intent to place a person in fear of imminent serious bodily injury or death.” Although DoDEA Regulation 4700.04 identifies serious incidents and events that “shall be” reported in an SIR, the Procedural Guide provides DoDEA administrators the discretion to determine which misconduct incidents “may be” reported to DoDEA HQ. When we reviewed the SIR database, we did not identify a SIR for this incident.

In another example, one of the incidents that was recorded in ASPEN involved one student who “grabbed a female’s breast from behind – cupping her breasts.” According to DoDEA Regulation 4700.04, DoDEA administrators “shall” report this non-consensual sexual contact in the SIR database. Additionally, according to the Procedural Guide, DoDEA administrators “may” have reported the incident in the SIR database because the incident was an “intentional touching or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person without his or her consent, with the intent to abuse, humiliate, degrade, or gratify the sexual desire of any person.” Although DoDEA Regulation 4700.04 identifies serious incidents and events that “shall be” reported in an SIR, the Procedural Guide provides DoDEA administrators the discretion to determine which misconduct incidents “may be” reported to DoDEA HQ. When we reviewed the SIR database, we did not identify a SIR for this incident.

We interviewed DoDEA personnel at the region, district, and school levels to determine why they did not report potential serious juvenile-on-juvenile misconduct incidents that were recorded in ASPEN to DoDEA HQ.¹⁴ DoDEA personnel generally told us that the policies for DoDEA SIRs did not contain sufficient detail for them to identify specifically when to notify DoDEA HQ through an SIR. Some DoDEA personnel told us that they were not aware of DoDEA policies for reporting or documenting serious juvenile-on-juvenile misconduct. DoDEA personnel also told us that the policies allow them to take the juvenile offender’s developmental level into account when determining whether to report the incident.

Furthermore, the DoDEA HQ Chief of Staff (CoS) told us that DoDEA principals have the discretion to determine what incidents were serious and reported to DoDEA HQ and that DoDEA regulations were written to provide school administrators “professional discretion” in deciding if an incident should be reported.

Although DoDEA Regulation 4700.04 identifies serious incidents and events that “shall” be reported in an SIR, however, the Procedural Guide provides DoDEA administrators the discretion to determine which misconduct incidents “may be” reported to DoDEA HQ. Based on our review of the details of the incidents recorded in ASPEN, the 522 incidents could have been reported as serious juvenile-on-juvenile incidents. *The DoDEA Director should perform a review to assess the use of discretion employed by DoDEA administrators when determining whether to report an incident as an SIR and update the DoDEA policies to address the conflicting “shall” and “may” reporting requirements. (Recommendation A.1.a)*

¹⁴ At each of the schools that we visited, we interviewed the principal, assistant principal, school counselor, nurse, teachers and, when available, the military family life consultant. At each district we visited, we interviewed the district superintendent and the district chief of staff.

DoDEA Did Not Report to Installation Commanders Incidents That May Have Violated Local Laws

DoDEA administrators did not report to the installation commander 593 of 600 (99 percent) incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents and may have violated local laws, including 73 of the 78 juvenile-on-juvenile misconduct incidents that were included in the SIR database. DoDEA Regulation 2051.1 states that “the principal of the school shall notify the installation commander, or his or her designee for law enforcement or legal affairs, of any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.”¹⁵

For example, one juvenile student allegedly sexually assaulted another juvenile student during a Culinary Arts class. Specifically, one student told DoDEA administrators that the other student approached her from behind, groped her, and put his hands down her pants. There was no information in the ASPEN database that this incident was reported to the installation commander, as required by DoDEA Regulation 2051.1.

In another example, two students engaged in inappropriate physical contact with a female peer. According to the ASPEN report, “the subsequent investigation [conducted by DoDEA administrators] revealed that for the past week, there has been an ongoing pattern of unwanted, aggressive behaviors by [the two students] toward this same female classmate.” There was no information in the ASPEN database that this incident was reported to the installation commander, as required by DoDEA Regulation 2051.1.

As discussed earlier in this report, we reviewed 13,500 ASPEN disciplinary records and 894 SIRs that were recorded between January 1, 2015, and December 31, 2017. From this, we identified the total number of incidents that could have been categorized as serious juvenile-on-juvenile incidents. We used the serious incident and event criteria from DoDEA Regulation 4700.04 and the Procedural Guide to identify serious juvenile-on-juvenile incidents that may have violated laws or may have been situations that pose a threat to the safety and security of the installation. We determined that there were 600 incidents that could have been reported to the installation commanders. Finally, we reviewed the ASPEN disciplinary records and SIRs to determine whether DoDEA administrators documented notification to the installation commander. We determined that DoDEA administrators did not report to the installation commander 593 of 600 (99 percent) incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents and may have violated local laws.

¹⁵ DoDEA Regulation 2051.1, “Disciplinary Rules and Procedures,” (Incorporating Change 2, March 23, 2012).

We interviewed DoDEA personnel at the region, district, and school levels to determine why incidents that could have been categorized as serious juvenile-on-juvenile incidents in ASPEN were not reported to the installation commander. The DoDEA Europe Region CoS said that DoDEA regulations do not clearly identify who school officials need to notify.

The DoDEA HQ CoS told us that he knew that there was inconsistency across DoDEA in reporting serious juvenile-on-juvenile misconduct incidents to installation commanders at all DoDEA schools. The DoDEA HQ CoS told us there was a lack of clear DoDEA guidance specifically directing what must be reported. Additionally, the DoDEA HQ CoS told us that DoDEA administrators were not necessarily required to notify installation commanders of serious juvenile-on-juvenile misconduct directly, but do so through their representatives, such as law enforcement.

The explanations provided by DoDEA personnel were consistent with DoDEA Regulation 2051.1, which allows DoDEA principals to report what “may have violated local laws.” Specifically, the regulation requires DoDEA principals to report:

“to the Installation Commander, or his or her designee for law enforcement or legal affairs...any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.”

DoDEA Administrators Did Not Report to Law Enforcement Incidents That May Have Violated Local Laws

DoDEA Administrators did not report to law enforcement 524 of 600 (87 percent) incidents that could have been categorized as serious juvenile-on-juvenile misconduct and may have violated local laws. DoDEA Regulation 2051.1 requires that “the principal of the school shall notify the installation commander, or his or her designee for law enforcement or legal affairs, of any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.”

As discussed earlier in this report, we reviewed 13,500 ASPEN disciplinary records and 894 SIRs reported during the period of January 1, 2015, to December 31, 2017. From this, we identified the total number of incidents that could have been categorized as serious juvenile-on-juvenile incidents. We used the serious incident and event criteria from DoDEA Regulation 4700.04 and the Procedural Guide to identify serious juvenile-on-juvenile incidents that may have violated laws or may have been situations that pose a threat to the safety and security of the installation. We determined that there were 600 incidents that could have been reported to law enforcement. Finally, we reviewed the ASPEN disciplinary

records and SIRs to determine whether DoDEA administrators documented that DoDEA school principals notified law enforcement. We determined that DoDEA Administrators did not report to law enforcement 524 of 600 (87 percent) incidents that could have been categorized as serious juvenile-on-juvenile misconduct and may have violated local laws.¹⁶

For example, one student allegedly “had her hands around another student’s neck and hit her in the face.” There was no information in the ASPEN database that this incident was reported to law enforcement, as required by DoDEA Regulation 2051.1.

In another example, there was “fighting in the football locker room which resulted in an injury.” Specifically, a student “punched/knocked out another student.” There was no information in the ASPEN database that this incident was reported to law enforcement, as required by DoDEA Regulation 2051.1.

We interviewed DoDEA personnel at the region, district, and school levels to determine why incidents that could have been categorized as serious juvenile-on-juvenile incidents were not reported to the law enforcement. The DoDEA Europe Region CoS said that DoDEA regulations do not clearly identify who school officials need to notify. Additionally, the DoDEA HQ CoS told us there was a lack of clear DoDEA guidance specifically directing what must be reported.

The explanations provided by DoDEA personnel were consistent with DoDEA Regulation 2051.1, which allows DoDEA principals to determine what “may have violated local laws.” Specifically, the regulation requires DoDEA principals to report:

“to the Installation Commander, or his or her designee for law enforcement or legal affairs...any acts that may violate local laws or any situations that may pose a threat to the safety or security of the installation.”

Descriptions of the Juvenile-on-Juvenile Misconduct Incidents Were Not Consistent in the ASPEN and SIR Databases

While reviewing ASPEN and the SIR database to identify serious juvenile-on-juvenile misconduct incidents, we found that the information within both the ASPEN and SIR databases was not consistent. We compared the serious juvenile-on-juvenile SIRs with the ASPEN disciplinary records to determine if there was a corresponding ASPEN disciplinary record. We determined that 59 of the 78 (76 percent) SIRs were not documented in ASPEN.

¹⁶ We interviewed DoDEA personnel at the region, district, and school levels to determine how school administrators would know if a serious juvenile incident may violate a local law. The DoDEA HQ CoS responded that DoDEA principals “would have their school staff and professional judgment to rely upon.” Additionally, the DoDEA HQ CoS told us that “if [DoDEA personnel] had a question, they could ask their supervisor.”

We also compared the incident description within the ASPEN disciplinary record and the SIR to validate the consistency of DoDEA's reporting of the serious juvenile-on-juvenile incident. We determined that 9 of the 19 (47 percent) ASPEN disciplinary records that had a corresponding SIR did not have consistent descriptions. For example, a DoDEA Europe school administrator reported in an SIR that a juvenile video recorded several juveniles taking showers in a school locker room and then posted the video on a social networking service.¹⁷ Although the SIR titled the incident as "Sex Crimes & Offenses-Child Pornography," the corresponding offending juvenile's ASPEN record titled the incident as "Bullying."

In another example, a DoDEA Pacific school administrator reported in a SIR that a juvenile was a victim of a non-consensual sexual contact committed by another juvenile. The DoDEA school administrator conducted multiple interviews of the victim, offender, and witnesses; however, the ASPEN entry failed to include the details of the non-consensual sexual contact. Instead, the offender's ASPEN disciplinary record reflected an "unauthorized presence" on a DoDEA school bus.

Differences between the ASPEN and the SIR database occurred because DoDEA has not established requirements for the information that must be recorded in the ASPEN database. Furthermore, DoDEA does not have a policy that requires DoDEA administrators to document consistent incident and event descriptions including serious juvenile-on-juvenile incidents within both the ASPEN and SIR databases. *The DoDEA Director should develop an ASPEN regulation that details what information should be included in an ASPEN report. (Recommendation A.1.b)*

We interviewed DoDEA personnel at the region, district, and school levels and asked them why serious juvenile-on-juvenile misconduct incidents which were reported through an SIR to DoDEA HQ were not documented in the ASPEN disciplinary records. DoDEA personnel told us they often did not want the incident to be in the juvenile offender's permanent school records because they believed the juvenile offender should not carry a negative label into the next school or school year.

The DoDEA HQ CoS told us that there was not clear DoDEA policy or direction on documentation within ASPEN; therefore, when administrators documented disciplinary incidents it was "very inconsistent." The DoDEA HQ CoS told us that while there was no clear guidance mandating that this information be documented within the ASPEN database, DoDEA HQ personnel "had hoped" it would be documented in both the ASPEN and SIR.

¹⁷ The social networking site used was Twitter, Inc.

DoDEA Headquarters Personnel Were Not Aware of Incidents That Could Have Been Reported as Serious Juvenile-on-Juvenile Misconduct Incidents, Installation Commanders Could Not Hold Offenders Accountable, and Law Enforcement Could Not Conduct Investigations

Failing to submit SIRs for all incidents that could have been categorized as serious juvenile-on-juvenile misconduct incidents left DoDEA HQ personnel unaware of at least 522 incidents, which made DoDEA HQ unable to accurately identify trends, provide guidance, or target problems. We asked the DoDEA HQ CoS whether DoDEA HQ personnel performed any analysis to identify trends, provide guidance, or target problems. The DoDEA HQ CoS told us that DoDEA HQ personnel perform analysis to identify the quantity and frequency of serious juvenile-on-juvenile misconduct incidents. Although the DoDEA HQ CoS told us that the trend analysis is performed, the DoDEA HQs CoS said that DoDEA does not use the results to provide guidance or target problems. Since DoDEA administrators did not report 522 of the 600 incidents that could have been reported as serious juvenile-on-juvenile misconduct incidents, any trend analysis would not accurately capture systematic concerns or categories of serious juvenile-on-juvenile misconduct incidents. *The DoDEA Director should perform trend analysis and use the results to provide guidance and target problems, as required by Department of Defense Education Activity Regulation 4700.02. (Recommendation A.1.c)*

DoD Instruction 5200.08 states that installation commanders have authority to take reasonably necessary and lawful measures to protect installation property and personnel.¹⁸ Therefore, failing to notify installation commanders could prevent offenders of serious juvenile-on-juvenile misconduct incidents from being held accountable. (Refer to Finding B)

Failing to report serious juvenile-on-juvenile misconduct incidents to law enforcement prevents law enforcement from conducting investigations of the incidents. Lastly, MLEO and MCIO policies require that respective MLEO and MCIO notify the FBI or DoJ of juvenile misconduct incidents, who may conduct their own investigation.

¹⁸ DoD Instruction 5525.08, "Security Of DoD Installations And Resources And The DoD Physical Security Review Board (PSRB)," December 10, 2005, (Incorporating Change 3, Effective November 20, 2015).

Recommendation, Management Comments, and Our Response

Recommendation A.1

We recommend that the Department of Defense Education Activity Director:

- a. **Perform a review to assess the use of discretion employed by Department of Defense Education Activity administrators when determining whether to report an incident as an SIR and update the DoDEA policies to address the conflicting “shall” and “may” reporting requirements.**

Department of Defense Education Activity Director Comments

The DoDEA Director agreed with the recommendation. The DoDEA Director stated that to specifically address serious juvenile-on-juvenile misconduct, the DoDEA implemented changes to several policies. For example, the Director stated that on February 21, 2019, the DoDEA published DoDEA Administrative Instruction (AI) 1443.02, which established requirements for reporting and tracking juvenile-on-juvenile sexual misconduct incidents.¹⁹ The Director stated this instruction also requires all reports of juvenile-on-juvenile sexual misconduct to be documented and reported in an SIR. The Director stated these SIRs will also prompt a notification to FAP. He said that if the alleged action is criminal in nature, the School Administrators will also notify law enforcement and any other applicable child welfare service.

The Director also stated that in May 2019, the DoDEA published DoDEA Regulation 3030.01, which requires School Administrators to act as the primary reporting official and appoint, in writing, an alternate reporting official to document and submit incident reports that are complete and timely.²⁰ Additionally, he stated that DoDEA AI 1443.02 requires school officials to notify military installation commanders of reports of sexual assault incidents and stated that DoDEA AI 1347.01 and DoDEA AI 1353.01 are currently in final coordination for approval and those instructions will require school principals to record incident disposition in ASPEN.²¹ Finally, the Director stated that in August 2019, the DoDEA completed a review of serious incident reporting. DoDEA personnel (or administrators) found their system for reporting process for serious incidents was accurate and consistent.

¹⁹ DoDEA AI 1443.02, “Prohibited Sexual, Sex-Based, and Other Abusive Misconduct Reporting and Response,” February 21, 2019.

²⁰ DoDEA Regulation 3030.01, “DoDEA Incident Reporting Program,” May 21, 2019.

²¹ DoDEA AI 1347.01, “Student Disciplinary Rules and Procedures,” pending publication; DoDEA AI 1353.01, “Student Rights and Responsibilities,” pending publication.

Our Response

Comments from the DoDEA Director partially addressed the recommendation; therefore, the recommendation is unresolved, and will remain open. DoDEA AI 1443.02 was published in February 2019, which requires School Administrators to notify FAP, installation commanders, and law enforcement when handling juvenile-on-juvenile misconduct issues. DoDEA AI 1443.02, Section 6, paragraph 6.1.b directs School Administrators to refer incidents to law enforcement when “any potential criminal activity” including serious juvenile-on-juvenile incidents. However, the instruction does not provide guidance or define potential criminal activity, including serious juvenile-on-juvenile incidents. DoDEA AI 1443.02 should define criminal activity, including serious juvenile-on-juvenile incidents to ensure School Administrators have clear guidance for reporting all criminal incidents to law enforcement. We request that the Director provide comments in response to the final report on what actions the DoDEA will take to ensure that DoDEA AI 1443.02 defines criminal incidents and the DoDEA Director provide a copy of the DoDEA review completed in August 2019, so we can verify if the review meets the intent of our recommendation.

- b. Develop an ASPEN regulation that details what information should be included in an ASPEN report.**

Department of Defense Education Activity Director Comments

The DoDEA Director agreed with the recommendation. The Director stated that DoDEA AI 1347.01, when published, will require the School Administrator to complete the disciplinary proceedings and record the final disposition of the disciplinary action in the conduct module in the DoDEA Student Information System (ASPEN). The Director also stated that disciplinary classifications within ASPEN have been reduced to align with the newly created misconduct definitions described in DoDEA AI 1353.01. Further, he stated that the respective action to be taken on the incident type, such as notification to FAP or law enforcement, are also part of the reporting system. Additionally, the Director stated that the DoDEA is creating another policy to address students’ records management, such as record composition, disposition and transfer procedures which will be addressed in a single policy that is expected to be published in 2021.

Our Response

Comments from the DoDEA Director addressed the recommendation, therefore, the recommendation is resolved, but will remain open. While the Director did not state that an independent ASPEN instruction would be developed, his statement that other DoDEA instructions will incorporate information that is required to

be recorded in ASPEN will satisfy the intent of the recommendation. The actions identified by the Director to update and revise the DoDEA reporting system were all completed either during or after the completion of our fieldwork. We will close this recommendation after we verify that DoDEA AI 1347.01 contains the requirement to record the information in ASPEN that would be included in an SIR.

- c. Perform trend analysis and use the results to provide guidance and target problems, as required by Department of Defense Education Activity Regulation 4700.02.**

Department of Defense Education Activity Director Comments

The DoDEA Director agreed with the recommendation stating that in February 2019, the DoDEA published DoDEA AI 1443.02, which requires an annual analysis that is designed to highlight any identifiable trends, strengths, and deficiencies regarding reported (juvenile-on-juvenile) incidents, while also identifying recommendations for improvement. He stated that following publication of this policy guidance, the DoDEA completed its first trend analysis in March 2020. The Director also stated that in May 2019, the DoDEA published DoDEA Regulation 3030.01 requires trend analysis reviews of SIRs and Director's Critical Information Requirements.²² Additionally, the Director stated that DoDEA AI 1347.01, once published, will require a school-based annual disciplinary report to determine whether disproportionate discipline practice based on race, ethnicity, gender or disability exists within DoDEA schools. This policy will also direct School Administrators to develop and implement an improvement plan to address discipline procedures. The Director also stated that these plans and data will be consolidated in an annual report to the Director.

Our Response

Comments from the DoDEA Director addressed the recommendation to perform trend analysis, therefore, the recommendation is resolved, but will remain open. However, the Director did not state which office at the DoDEA will be responsible for compiling the trend reports from the individual DoDEA locations. DoDEA officials are drafting several DoDEA Administrative Instructions, including DoDEA AI 1347.01, governing trend analysis and the use of its results. We will close this recommendation after we verify that DoDEA officials published the policies stated above and that the policies include a process for conducting trend analysis.

²² DoDEA Procedural Guide 5760.01-01 "Serious Incident Reporting Procedures," defines a Director's Critical Information Requirements report as "Incidents of a critical nature, that may discredit, bring embarrassment to DoDEA, or may be of significance to the Director" and "Reportable incidents include death of an employee or student, unscheduled school delays, closures or evacuations, pandemics, emergency services response due to injury or property damage, employee misconduct, and missing staff and students."

Finding B

MLEO and MCIO Investigative Case Files Did Not Consistently Specify Whether Juvenile Offenders Were Held Accountable

Between January 1, 2015, and December 31, 2017, MLEOs and MCIOs conducted 401 serious juvenile-on-juvenile misconduct incident investigations, at DoDEA schools or other locations on the installation, on military installations world-wide. We reviewed a statistical sample of 126 of the 401 serious juvenile-on-juvenile misconduct incident investigations and determined that MLEO and MCIO personnel investigated all 126 (100 percent) serious juvenile-on-juvenile misconduct incidents, in accordance with respective MLEO and MCIO law enforcement policies. However, MLEO and MCIO investigative case files did not consistently specify whether juvenile offenders were referred to the appropriate officials, identified below, to be held accountable. Additionally, as identified below, the FAP did not provide victims and offenders of juvenile-on-juvenile misconduct counseling services.

FBI or DoJ Notification. There was no information in the investigative case files specifying whether MLEO and MCIO personnel notified the FBI or DoJ in 66 of 126 (52 percent) of its serious juvenile investigations, as required by DoD Instruction 5525.07. MLEO and MCIO personnel told us that they did not consistently report juvenile-on-juvenile incidents to the FBI or DoJ because the FBI or DoJ generally did not provide them investigative or prosecutorial assistance for juvenile incidents.

Legal Action. There was no information in the investigative case files specifying whether MLEO and MCIO personnel notified civilian legal authorities, such as Federal, State, County, and Host Nation legal authorities, in 48 of 126 (38 percent) serious juvenile-on-juvenile incidents. Although MLEO and MCIO personnel notified civilian legal authorities in 78 of 126 (62 percent) incidents, there was no information in the investigative case files specifying whether civilian legal authorities took legal action in 66 of 78 (85 percent) incidents.

Administrative Action. There was no information in investigative case files specifying whether MLEO and MCIO personnel notified installation commanders in 14 of 126 (11 percent) serious juvenile-on-juvenile incidents. Although MLEO and MCIO personnel notified installation commanders in 112 of 126 (89 percent) incidents, there was no information in the investigative case files specifying whether installation commanders took administrative action in 96 of the 112 (86 percent)

incidents. Additionally, we determined that the DoD did not establish policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents including parameters for holding the offenders accountable.

Counseling Support Services. Installation commanders, MLEO and MCIO personnel, DoDEA officials, Behavioral Health professionals, and Judge Advocates (JAs) at the seven installations we visited told us that the FAP was responsible for providing counseling support services to juvenile victims and offenders. However, DoD Instruction 6400.01 only required the FAP to provide counseling support services to victims of suspected child abuse. Although DoD Instruction 6400.01 was updated in May 2019 to require FAP personnel to provide support services to victims and offenders in juvenile-on-juvenile misconduct incidents that are sexual in nature, the update does not address support services for victims and offenders of serious juvenile-on-juvenile misconduct that is not sexual in nature, such as the victims and offenders of assault and battery or the possession and use of drugs.

As a result of the lack of information regarding referrals and accountability in the investigative case files, we could not determine whether civilian legal authorities and installation commanders took legal action or administrative action. Furthermore, MLEO and MCIO personnel, installation commanders, and JAs told us that civilian legal authorities and installation commanders generally did not hold juvenile offenders accountable. Finally, FAP personnel told us that between January 1, 2015, and December 31, 2017, the FAP did not provide counseling support services to the offenders and victims of juvenile-on-juvenile misconduct incidents, whether the incident was sexual or non-sexual in nature.

MLEO and MCIO Investigative Case Files Did Not Consistently Specify Whether Juvenile Offenders Were Held Accountable

We determined that MLEO and MCIO personnel investigated juvenile incidents in accordance with respective MLEO and MCIO policies. However, the information in the investigative case files did not consistently specify whether MLEO and MCIO personnel notified the FBI or DoJ, as required by DoD Instruction 5525.07.²³ Additionally, the information in the investigative case files did not consistently specify whether MLEO and MCIO personnel notified civilian legal authorities and installation commanders. Finally, installation commanders, MLEO and MCIO

²³ DoD Instruction 5525.07, "Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes," June 18, 2007. DoD Instruction 5525.07 was reissued in March 2020. The March 2020 version of DoD Instruction 5525.07 includes the same requirement for FBI or DoJ notification.

personnel, DoDEA officials, Behavioral Health professionals, and JAs relied on the FAP to provide counseling services, but DoD Instruction 6400.01 only required the FAP to provide counseling support services to victims of suspected child abuse.²⁴

MLEO and MCIO Personnel Investigated Juvenile Incidents, but the Information in the Investigative Case Files Did Not Consistently Specify that its Personnel Notified the FBI or DoJ

MLEO and MCIO personnel investigated juvenile incidents in accordance with the respective MLEO and MCIO policies. However, the information in the investigative case file did not consistently specify whether MLEO and MCIO personnel notified the FBI or DoJ, as required by DoD Instruction 5525.07. DoD Instruction 5525.07 requires that when:

a crime has occurred on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the Uniform Code of Military Justice, the Department of Defense investigative agency will provide immediate notice of the matter to the appropriate Department of Justice investigative agency unless the Department of Justice has relieved the Department of Defense of the reporting requirement for that type of class of crime.

We reviewed MLEO and MCIO policies for the investigation of serious juvenile-on-juvenile incidents. We also reviewed reports from the MLEO and MCIO databases.²⁵ We determined that between January 1, 2015, and December 31, 2017, there were 401 juvenile-on-juvenile incident investigations on military installations world-wide. We statistically sampled 126 juvenile incidents and evaluated the MLEO or MCIO response to the serious juvenile-on-juvenile misconduct incident.²⁶

MLEO and MCIO Personnel Investigated All Serious Juvenile-on-Juvenile Misconduct Incidents in Our Sample in Accordance With Law Enforcement Policies

MLEO and MCIO personnel investigated all 126 (100 percent) sampled serious juvenile-on-juvenile incidents in accordance with respective MLEO and MCIO law enforcement policy. DoD Instruction 5525.07 requires MLEO and MCIO personnel to provide immediate notice to the DoJ of crimes committed by civilians on military

²⁴ The Assistant Secretary of Defense for Health Affairs and all the military behavioral health entities are part of the Military Health System. One of the Military Health Systems' missions is "[t]o provide a medical benefit commensurate with the service and sacrifice of more than 9.4 million active duty personnel, military retirees, and their families.

²⁵ The Army Law Enforcement and Tracking System (ALERTS) is used by Army MP and USACIDC to track and retain criminal investigative information. The Navy Consolidated Law Enforcement Operations Centers Database (CLEOC) is the primary case management system for all Navy and Marine Corps law enforcement activities and investigations. The Security Force Management Information System (SFMIS) and the Investigations Information Management System (I2MS) are the primary case management systems for the Air Force Security Forces and the AFOSI, respectively.

²⁶ The sample of 126 juvenile incidents included 49 MLEO investigations and 78 MCIO investigations.

installations. However, when the FBI, DoJ, or local law enforcement decline to investigate a serious juvenile-on-juvenile misconduct incident, the MLEO or MCIO may conduct an investigation of the incident. For example, Army Regulation 195-2, OPNAV Instruction 5530.14E, and AFOSI Manual 71-118 require MLEO or MCIO personnel to:

- interview persons involved in the incidents, such as the victim, subject, and witnesses; and
- collect evidence, as appropriate.²⁷

Additionally, the MLEOs and MCIOs established policies for respective MLEO and MCIO personnel to use when investigating juvenile misconduct. For example:

- USACIDC Regulation 195-1 requires that, before special agents conduct an interview of a juvenile offender, the parents must be notified;²⁸
- NCIS N3 requires that NCIS special agents, at a minimum, “interview the offender to determine whether the offender is the victim of child sexual abuse or acting on learned behavior;²⁹
- Air Force Instruction 31-118 directs how USAF SF personnel search, detain, and interview juveniles, such as requiring USAF SF personnel to advise the offender’s parent or guardian of the offender’s rights before an interview of the offender is conducted;³⁰ and
- MCO 5580.2B requires that MLEOs, prior to taking fingerprints and photographs of a juvenile offender, obtain the legal guardian’s permission or a written order of a Federal judge or magistrate, or the judge of a state juvenile court.³¹

We reviewed the 126 statistically sampled serious juvenile-on-juvenile incidents to determine whether MLEO and MCIO personnel investigated the incidents in accordance with respective MLEO and MCIO law enforcement policies. We determined that, for all 126 statistically sampled juvenile incidents, MLEO and MCIO personnel performed the required investigative steps, such as interviewing the juvenile, seizing evidence, and conducting notifications, in accordance with their respective policies.

²⁷ Army Regulation 195-2, “Criminal Investigation Activities,” June 9, 2014. OPNAV Instruction 5530.14E, Chapter 2, “Navy Physical Security and Law Enforcement Program,” September 23, 2014. AFOSI Manual 71-118, “General Investigative Methods,” April 30, 2009, (Incorporating Change 8, July 7, 2016).

²⁸ USACIDC Regulation 195-1, “Criminal Investigation Operational Procedures,” July 2, 2018.

²⁹ NCIS N3, Chapter 34, “Sex Offenses,” October 2014.

³⁰ Air Force Instruction 31-118, “Security Forces Standards and Procedures,” March 4, 2014, (Incorporating Change 1, December 2, 2015)

³¹ MCO 5580.2B, “Law Enforcement Manual,” August 27, 2008 (Incorporating Change 2, December 30, 2015).

The Information in the Investigative Case Files Did Not Consistently Specify Whether MLEO and MCIO Personnel Notified the FBI or DoJ of Serious Juvenile-On-Juvenile Investigations

There was no information in the investigative case files specifying whether MLEO and MCIO personnel notified the FBI or DoJ in 66 of 126 (52 percent) of its serious juvenile investigations, as required by DoD Instruction 5525.07. We reviewed the 126 statistically sampled juvenile incidents to determine whether MLEO and MCIO personnel notified the FBI or DoJ, as required.

We asked MLEO and MCIO personnel why they may not have consistently notified FBI or DoJ of the juvenile misconduct. MLEO and MCIO personnel told us that when they did not report juvenile-on-juvenile incidents to the FBI or DoJ, it was because these agencies generally did not provide investigative or prosecutorial assistance for juvenile incidents. For example, the Army USACIDC Assistant Operations Officer told us that for cases involving juveniles under 12 years of age, there would be “no interest” on the part of the United States Attorney’s Office or civilian law enforcement agencies. Additionally, the Army USACIDC Assistant Operations Officer stated that for cases involving children 12 years of age to 15 years of age, activity by outside agencies depended “on the circumstances.” As another example, an NCIS special agent told us that investigators often view referring juvenile-on-juvenile misconduct incidents to the FBI or DoJ as “pointless.”³²

Information on Whether MLEO and MCIO Personnel Notified Civilian Legal Authorities, Were Not Consistently Maintained in Investigative Case Files

We reviewed MLEO and MCIO investigative files to determine if MLEO and MCIO personnel recorded whether civilian legal authorities took legal action against offenders of serious juvenile-on-juvenile misconduct. There was no information in the investigative case files specifying whether MLEO and MCIO personnel notified civilian legal authorities in 48 of 126 (38 percent) serious juvenile-on-juvenile incidents.³³ Although MLEO and MCIO personnel notified civilian legal authorities in 78 of 126 (62 percent) incidents, there was no information in the investigative case files specifying whether civilian legal authorities took legal action in

³² Based on our review of investigative case files, the FBI or DoJ only assumed investigative jurisdiction in 6 of 60 (10 percent) of the juvenile incidents when the MLEO and MCIO personnel notified the FBI or DoJ.

³³ The Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93-415, 88 Stat. 1109, recognizes the lack of a Federal juvenile justice system within the continental United States and recommends the transfer of juvenile misconduct incidents to the State and County justice system to resolve the juvenile incidents. Additionally, outside the United States, civilian authorities have several means to prosecute U.S. citizens who commit crimes on U.S. military installations, including the Military Extraterritorial Jurisdiction Act of 2008 (MEJA), 18 U.S.C. §3261-67, which permits the criminal prosecution of U.S. Government civilians, contractors, and military family dependents overseas for acts that constitute a felony-level Federal crime committed while assigned or stationed outside of the United States, and Host Nation law.

66 of 78 (85 percent) incidents.³⁴ MLEO and MCIO policies do not require personnel to document whether they notified civilian legal authorities. Table 2 below identifies the number of incidents for which MLEO and MCIO personnel notified civilian legal authorities. *The Secretaries of the Army, Navy, and Air Force should update MLEO and MCIO policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and, when possible, the legal actions taken. (Recommendation B.2)*

Table 2. MLEO and MCIO Serious Juvenile-On-Juvenile Misconduct Incident Notifications to Civilian Legal Authorities and Civilian Legal Action

LAW ENFORCEMENT AGENCY	DOCUMENTED NOTIFICATION	DID NOT DOCUMENT NOTIFICATION	TOTAL
USACIDC	32	9	41
NCIS	14	1	15
AFOSI	11	11	22
ARMY MP	10	5	15
NAVY MA	0	3	3
USAF SF	2	6	8
USMC CID	9	0	9
USMC MP	0	13	13
TOTAL NOTIFICATIONS	78	48	126

Source: The DoD OIG.

Information on Whether MLEO and MCIO Personnel Notified Installation Commanders, Were Not Consistently Maintained in Investigative Case Files

We reviewed MLEO and MCIO investigative files to determine whether the MLEO and MCIO's recorded any administrative action taken by the installation commanders against offenders of serious juvenile-on-juvenile misconduct.³⁵ DoD Instruction 5200.08 states that installation commanders have authority to take reasonably necessary and lawful measures to protect installation property and personnel. The following MLEO and MCIO policies require respective MLEO and MCIO personnel to notify installation commanders of juvenile misconduct.

- USACIDC Regulation 195-1 requires USACIDC special agents to refer juvenile offenders under the age of 13 who cannot be held legally responsible for committing a crime to the installation commander for evaluation and disciplinary action.

³⁴ In the 12 incidents when the MLEOs and MCIOs documented whether civilian legal authorities took action, we determined that the civilian legal authorities took actions such as probation, requiring counseling, and confinement.

³⁵ Administrative action may include, requiring the offender to prepare a written apology, perform community service, or barment from the installation against offenders of serious juvenile-on-juvenile misconduct.

- NCIS N3 requires that when a complaint involving a juvenile offender is received at a location outside of the United States, the NCIS agent will apprise the base commander.
- AFOSI Manual 71-121 requires that AFOSI agents distribute the report of investigation to the installation commander.

There was no information in investigative case files specifying whether MLEO and MCIO personnel notified installation commanders in 14 of 126 (11 percent) serious juvenile-on-juvenile incidents. Although MLEO and MCIO personnel notified installation commanders in 112 of 126 (89 percent) incidents, there was no information in the investigative case files specifying whether installation commanders took administrative action in 96 of the 112 (86 percent) incidents.³⁶ MLEO and MCIO policies do not require personnel to document whether they notified installation commanders. Table 3 identifies the number of incidents in which MLEO and MCIO personnel notified the installation commander, by law enforcement agency. *The Secretaries of the Army, Navy, and Air Force should update MLEO and MCIO policies to require personnel to document in all investigative case files all notifications to installation commanders and, when possible, the administrative actions taken. (Recommendation B.2)*

Table 3. MLEO and MCIO Serious Juvenile-on-Juvenile Misconduct Incident Notifications to the Installation Commander

LAW ENFORCEMENT AGENCY	NOTIFIED THE INSTALLATION COMMANDER	DID NOT NOTIFY THE INSTALLATION COMMANDER	TOTAL
USACIDC	40	1	41
NCIS	11	4	15
AFOSI	13	9	22
ARMY MP	15	0	15
NAVY MA	3	0	3
USAF SF	8	0	8
USMC CID	9	0	9
USMC MP	13	0	13
TOTAL NOTIFICATIONS	112	14	126

Source: The DoD OIG.

³⁶ Installation commanders required the juvenile offenders in the 16 incidents to prepare written letters of apology and perform community service. In addition, in 3 of the 16 (19 percent) incidents, the installation commander barred the juvenile offenders from the installation.

We determined that the DoD has not established policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents including parameters for holding juvenile offenders accountable. We interviewed seven installation commanders who told us that they coordinate with a JA to determine whether and how to hold juvenile offenders accountable. The JAs that we interviewed stated that, while installation commanders could take administrative actions, there was no DoD-wide policy for how to take administrative action. For example:

- an Army JA stated that Army JAs and installation commanders at each installation must determine how to respond to serious juvenile-on-juvenile misconduct incidents and that there were no DoD or Service policies to assist JAs and installation commanders when processing juvenile incidents;
- a Navy JA said he uses Navy OPNAVINST 5530.14E for general law enforcement guidance pertaining to juveniles; however, the OPNAVINST does not specifically address the adjudication of juvenile offenders;
- a second Navy JA stated that, because the Navy does not have policy for how the cases and decisions are documented and tracked, there is little consistency; and
- a Marine Corps JA told us that juvenile offenses are not processed uniformly at every USMC base.

The Under Secretary of Defense for Personnel and Readiness should develop policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents. (Recommendation B.1.a)

DoD Policy Only Requires FAP to Provide Counseling Support Services to Victims and Offenders of Child Abuse

Installation commanders, MLEO and MCIO personnel, DoDEA officials, Behavioral Health professionals, and JAs at the seven installations we visited told us that the FAP was responsible for providing counseling support services to juvenile victims and offenders. For example:

- an overseas installation commander told us the FAP would normally track all juvenile-on-juvenile misconduct incidents;
- a DoDEA Region CoS told us that DoDEA personnel report serious juvenile incidents to the FAP and rely on FAP personnel to handle all reporting of serious juvenile incidents to installation commanders; and
- a Behavioral Health professional told us that the military community believes the FAP is the one office responsible for deciding how and to whom a specific incident is referred.

Until May 1, 2019, DoD Instruction 6400.01 only required the FAP to provide counseling support services to victims of suspected child abuse. DoD Instruction 6400.06 defines child abuse as,

[t]he physical or sexual abuse, emotional abuse, or neglect of a child by a parent, guardian, foster parent, or by a caregiver, whether the caregiver is intrafamilial or extrafamilial, under circumstances indicating the child's welfare is harmed or threatened. Such acts by a sibling, other family member, or other person shall be deemed to be child abuse only when the individual is providing care under express or implied agreement with the parent, guardian, or foster parent.³⁷

On May 1, 2019, DoD Instruction 6400.01 was updated and directs the FAP to provide services for problematic sexual behaviors in children and youth, including identification, treatment, counseling, rehabilitation, follow-up, and other services. DoD Instruction 6400.01 defines problematic sexual behavior as:

behaviors initiated by children and youth under the age of 18 that involve sexual body parts (genitals, anus, buttocks, or breasts) in a manner that deviates from normative or typical sexual behavior and are developmentally inappropriate or potentially harmful to the individual initiating the behavior, the individual(s) impacted by the behavior or others.

Although the update to DoD Instruction 6400.01 provides support services to victims and offenders in juvenile-on-juvenile misconduct incidents that are sexual in nature, this update does not address support services for victims and offenders of juvenile-on-juvenile misconduct that is not sexual in nature. *The Under Secretary of Defense for Personnel and Readiness should develop policy that identifies which support agency will provide counseling support services to victims and offenders of serious juvenile-on-juvenile misconduct incidents. (Recommendation B.1.b)*

We Could Not Determine Whether Civilian Legal Authorities and Installation Commanders Took Legal or Administrative Action

As a result of the lack of information regarding referrals and accountability in the investigative case files, we could not determine whether civilian legal authorities and installation commanders took legal action or administrative action through

³⁷ DoD Instruction 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel," August 21, 2007, (Incorporating Change 4, May 26, 2017).

our review of the case files. Furthermore, MLEO and MCIO personnel, installation commanders, and JAs, told us that juvenile offenders were not generally held legally or administratively accountable. For example:

- a Deputy Staff Judge Advocate (SJA) and a Special Assistant United States Attorney located at Joint Base Andrews, Maryland told us that when a serious juvenile incident is referred to the local Assistant United States Attorney (AUSA), the AUSA considers factors such as the severity of the incident and ages of offender and victim, to determine whether to prosecute the case; however, the Deputy SJA and Special Assistant United States Attorney said “it was rare for an AUSA to follow through and prosecute such cases;”
- JA personnel also told us that incidents rarely met the minimum prosecutorial threshold, such as the offender’s age or mental capacity, set by civilian legal authorities;
- a JA stated that the local county or state court typically declines to assume jurisdiction or prosecution of the juvenile offense unless the incident is egregious;
- an AUSA told us that the prosecution of a juvenile under the age of 15 would be unlikely; and
- an Air Force installation commander told us that serious juvenile-on-juvenile misconduct incidents are a “gray area” with “very few options or legal authorities available to deal with them.”

FAP Did Not Provide Counseling Support Services to Victims and Offenders of Serious Juvenile-on-Juvenile Misconduct Incidents

Finally, FAP personnel told us that, between January 1, 2015, and December 31, 2017, the FAP did not provide counseling support services to the offenders and victims of juvenile-on-juvenile misconduct incidents, whether sexual or non-sexual in nature. Specifically:

- the Army Community Services Specialist told us that there is no gray area regarding what the FAP will provide to the offenders and victims of juvenile-on-juvenile misconduct and stated that the FAP does not provide services to these victims and offenders because DoD policy does not require it;
- a FAP Family Advocacy Officer told us that there are no FAP resources or services available to the offenders and victims of juvenile-on-juvenile misconduct incidents; and
- a FAP Program Manager stated that the FAP does not take cases with a juvenile subject that is not a caregiver.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend that the Under Secretary of Defense for Personnel and Readiness:

- a. Develop policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents.**
- b. Develop policy that identifies which support agency will provide counseling support services to victims and offenders of serious juvenile-on-juvenile misconduct incidents.**

Under Secretary of Defense for Personnel and Readiness Comments

The Under Secretary of Defense for Personnel and Readiness agreed with the recommendation. The Under Secretary stated that his organization recognizes that serious juvenile-on-juvenile misconduct requires a centralized office of primary responsibility from which a coordinated community and multidisciplinary approach can be established to ensure that children, youth, and families receive appropriate support, advocacy, and effective intervention.

Our Response

Comments from the Under Secretary of Defense for Personnel and Readiness partially addressed the recommendation, therefore, the recommendation is unresolved, and will remain open. Specifically, the Under Secretary's response did not describe the actions the USD(P&R) will take in response to the recommendation. We request that the Under Secretary provide comments to the final report on what actions the USD(P&R) will take to address the recommendation.

Recommendation B.2

We recommend that the Secretaries of the Army, Navy, and Air Force update Military Law Enforcement Organization and Military Criminal Investigative Organization policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken.

Secretary of the Army Comments

The Chief, Law Enforcement Division, Office of the Provost Marshal General, responding on behalf of the Secretary of the Army, stated that the confidential nature of juvenile records may preclude the Army from obtaining records from civilian courts.

Our Response

Comments from the Chief, Law Enforcement Division, Office of the Provost Marshal General, did not address the recommendation, therefore, the recommendation is unresolved, and will remain open. The Chief's response did not state whether the Army agreed or disagreed with the recommendation, nor did he describe the actions the Army would take in response to the recommendation. We request that the Secretary provide comments in response to the final report that provide agreement or disagreement with the recommendation, the specific actions the Army will take to address the recommendation, and estimated completion dates for those actions.

Secretary of the Navy Comments

The Assistant Director, NCIS, and the Head, Audit Coordination and Liaison, Office of the Director, Marine Corps Staff, responding separately for the Secretary of the Navy, agreed with the recommendation. The Assistant Director stated that NCIS has updated its policy, which is currently pending final approval, in NCIS 3 – Chapter 34, "Sex Offenses." The Assistant Director stated that the policy directs the notification of serious juvenile-on-juvenile misconduct to installation commanders, Staff Judge Advocates, and when appropriate, other law enforcement agencies. The Assistant Director stated that there are also revisions in the updated chapter which require, in juvenile offenses, NCIS reports to document the legal actions taken and any administrative actions taken within the investigation.

Additionally, the Head, Audit Coordination and Liaison, stated that Marine Corps Order 5580.2B is currently under review and a Marine Corps Criminal Investigation Division order has been developed, which is under leadership review, which will address the recommendation. Furthermore, the Head, Audit Coordination and Liaison, stated that both orders will be reviewed to ensure appropriate law enforcement response and procedures pertaining to serious juvenile-on-juvenile misconduct incidents are documented as described in the recommendation.

The Director, Policy and Oversight, Naval Audit Service, and an Audit Liaison Tracking Specialist, responding on behalf of the Secretary of the Navy, stated that the Chief of Naval Operations agreed with the report, but "did not have a stake in the recommendation" and would not be providing a response.

Our Response

Comments from the Assistant Director, Naval Criminal Investigative Service and the Head, Audit Coordination and Liaison, Office of the Director, Marine Corps Staff addressed the recommendation, therefore, the recommendation is resolved for NCIS and the Marine Corps, but will remain open. We will close the recommendation for NCIS and Marine Corps when the NCIS 3 – Chapter 34 and

the two draft Marine Corps orders are published and we have reviewed them to verify that appropriate law enforcement response and procedures pertaining to serious juvenile-on-juvenile misconduct incidents are documented as described in the recommendation.

Comments from the Director, Policy and Oversight, Naval Audit Service, and an Audit Liaison Tracking Specialist, partially addressed the recommendation; therefore, the recommendation is unresolved, and will remain open. We disagree that the Chief of Naval Operations does not have a stake in the recommendation because the recommendation was to update MLEO and MCIO policies. Without updated Navy MLEO policies by the Chief of Naval Operations, Naval Security Forces will not have guidance that requires Naval Security Forces personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken. We request that the Secretary provide comments in response to the final report on what actions the Navy will take to update Navy MLEO policies.

Secretary of the Air Force Comments

The Deputy Inspector General of the Air Force and the Chief, Integrated Defense Policy Division, Directorate of Security Forces, Deputy Chief of Staff for Logistics, Engineering and Force Protection, responding separately on behalf of the Secretary of the Air Force, agreed with the recommendation. The Deputy Inspector General stated that policy impacting the Air Force Office of Special Investigations would be updated. The Chief stated that the draft policy impacting Air Force Security Forces was updated in AFI 31-115.³⁸ The Chief also stated that the policy directs “Security Forces will document in all investigative case files, all notifications to civilian legal authorities and installation commanders and when possible, the legal and administrative actions taken.” The Chief further stated that the draft Air Force instruction is in the final phase of legal coordination and should be published no later than August 31, 2020.

Our Response

Comments from the Deputy Inspector General of the Air Force, and the Chief, Integrated Defense Policy Division, Directorate of Security Forces, Deputy Chief of Staff for Logistics, Engineering and Force Protection addressed the recommendation, therefore, the recommendation is resolved, but will remain open. We will close the recommendation when the Deputy Inspector General and the Chief, Integrated Defense Policy Division, Directorate of Security Forces, Deputy Chief of Staff for Logistics, Engineering and Force Protection that requires

³⁸ Air Force Instruction 31-115, “Law and Order Operations,” pending publication.

the Air Force Office of Special Investigations and Air Force Security Forces to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken.

Appendix

Scope and Methodology

We conducted this evaluation from June 2018 through July 2020 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that objectives are met and that we perform the evaluation to obtain sufficient, competent, and relevant evidence to support the findings, conclusions, and recommendations. We believe that the evidence obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings, conclusions, and recommendations.

To accomplish our objectives, we obtained and evaluated DoDEA, Military Service, installation, MCIO, and MLEO policies related to the response of serious juvenile-on-juvenile misconduct incidents. We selected the following installations for site visits of DoDEA educational facilities, installation support activities, and law enforcement agencies responsible for responding to serious juvenile-on-juvenile misconduct incidents: Fort Bragg, North Carolina; Fort Belvoir, Virginia; Joint Base Andrews, Maryland; Ramstein Air Base, Germany; Kaiserslautern Military Community, Germany; Marine Corps Base Camp Foster, Okinawa, Japan; and Kadena Air Base, Okinawa, Japan.

We obtained all 13,500 ASPEN and 894 SIRs disciplinary records prepared between January 1, 2015, and December 31, 2017. We reviewed all 13,500 ASPEN disciplinary records and identified 544 records which were serious juvenile-on-juvenile misconduct incidents. We also reviewed the 894 SIRs and identified 78 reports which were serious juvenile-on-juvenile misconduct incidents. We then evaluated the 544 DoDEA ASPEN disciplinary records and 78 DoDEA SIRs and to determine whether DoDEA personnel:

- reported serious juvenile-on-juvenile misconduct incidents to DoDEA HQ,
- notified the installation commander, and
- notified law enforcement.

We interviewed DoDEA personnel; Headquarters MLEO and MCIO personnel; installation level MLEO and MCIO personnel; JA personnel; FAP personnel; installation commanders; and an Assistant U.S. Attorney (AUSA) that supports Fort Bragg, North Carolina. We interviewed these personnel regarding their policies and processes for reporting, documenting, and responding to serious juvenile-on-juvenile misconduct incidents.

We obtained a detailed list from the MLEOs and MCIOs identifying all serious juvenile-on-juvenile misconduct incidents that MLEO and MCIO personnel responded to between January 1, 2015, and December 31, 2017. We then coordinated with the DoD OIG Quantitative Methods Division (QMD) to determine the number of law enforcement incidents to evaluate that would provide a statistically valid representative sample of the law enforcement investigations. QMD identified a statistical sample of incidents based on a desired level of reliability. The sample size was selected from the population using a 95-percent confidence level, 50-percent probability of occurrence, and a 7.5-percent precision level.

MLEOs and MCIO identified 401 serious juvenile-on-juvenile misconduct incidents between January 1, 2015, and December 31, 2017. QMD selected a statistical sample of 126 of the 401 MLEO and MCIO serious juvenile-on-juvenile misconduct investigations for our review.³⁹ We evaluated the law enforcement records, including notes, journals, statements, incident reports, and investigative reports for each of the 126 sampled serious juvenile misconduct incidents.⁴⁰ We evaluated the 126 MLEO and MCIO serious juvenile-on-juvenile incidents to determine if the MLEOs and MCIOs conducted an investigation of the incident in accordance with their respective policies, including:

- conducting an investigation interviewing the victim, subject, and witnesses and collecting evidence, if needed; and
- notifying the FBI or DoJ, civilian legal authorities, and installation commander.

Use of Computer-Processed Data

We used computer-processed data to perform this evaluation. Each of the MLEOs and MCIOs used its respective reporting systems to retrieve information on serious juvenile misconduct incidents. Specifically, we relied on data from the following systems.

- Army Law Enforcement Reporting and Tracking System (ALERTS)
- Navy Consolidated Law Enforcement Operations Center (CLEOC)

³⁹ The DoD OIG QMD indicated that a review of 120 case files out of the 401 case files would achieve the 95-percent confidence level, 50-percent probability of occurrence, and a 7.5-percent precision level. However, some MLEOs had less than 10 case files. Therefore, we reviewed all of their case files, which resulted in the team reviewing 126 case files instead of the required 120 case files.

⁴⁰ Law enforcement blotters and journals are logs of incident responses that occur throughout the day and are usually maintained by the installation law enforcement dispatch office. The incident responses are briefly summarized in chronological order.

- AFOSI Investigative Information Management System (I2MS)
- Security Forces Management Information System (SFMIS)

We obtained investigative case files that support the data in these law enforcement databases. Additionally, DoDEA provided listings from their databases regarding serious juvenile-on-juvenile misconduct incidents. We relied on data from the ASPEN and DoDEA Serious Incident Report Databases. We compared data from these systems and we determined that the information in the law enforcement and DoDEA databases were sufficiently reliable for our purposes.

Prior Coverage

No DoD OIG reports have been issued on the DoD's or DoDEA's response to serious juvenile-on-juvenile misconduct during the last 5 years. The U.S. Government Accountability Office issued one report discussing the DoD's response to child abuse.

Unrestricted GAO reports can be accessed at <http://www.gao.gov>.

GAO

Report No. GAO-20-110, "Child Welfare: Increased Guidance and Collaboration Needed to Improve DOD's Tracking and Response to Child Abuse,"
February 12, 2020

The GAO Report found that, while the DoD has expanded its child abuse policies and procedures to include child-on-child sexual abuse, gaps still exist. The GAO also found that the availability of certified pediatric sexual assault forensic examiners across the DoD is limited. According to DoD officials, there are only 11 pediatric sexual assault forensic examiners to work with 1,448 incidents of child sexual abuse that met DoD's criteria for abuse from FY 2014 through FY 2018.

Management Comments

DoD Education Activity Director



DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
HEADQUARTERS
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AUG 05 2020

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: DoDEA Management Comments for DoDIG Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations" (Project No. D2019-DEV0SV-0173.000).

The Department of Defense Education Activity (DoDEA) submits the attached response to the subject draft report (TAB A). DoDEA response addresses the recommendations contained in the draft report and provides appropriate information about steps already taken and progress updates.

DoDEA has no significant disagreements with the recommendations and the response should be incorporated into the final DODIG report.

DoDEA has done a thorough public release review of all information in the draft report and the management response and has concluded there is no objection to public release of the final report.

A handwritten signature in black ink, reading "Thomas M. Brady", is positioned above the printed name and title.

Thomas M. Brady
Director

Attachments:
As stated

DoD Education Activity Director (cont'd)

Executive Summary

The Department of Defense Education Activity (DoDEA) appreciates the Department of Defense Inspector General's (DoDIG) independent oversight role and the opportunity to provide comments and Statements of Action related to the recommendations provided in the Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations" (Project No. D2019-DEV0SV-0173.000).

The Draft Report covers the period from January 1, 2015 to December 31, 2017 and was issued on July 8, 2020. In the two-and-a-half-year period prior to the release of the report, DoDEA has published three new Administrative Instructions and will soon publish four more; worked with counterparts across the response spectrum on the Office of the Secretary of Defense (OSD)-level Tiger Team outlined below; implemented a new, automated case management system; provided training to current employees on various aspects of response and reporting; and begun analyzing the available data from improved procedures.

It is also important to note that Juvenile-on-Juvenile Misconduct includes a wide and diverse range of behaviors that can be influenced by personal demographics (e.g., exposure to violence, behavioral or emotional disabilities, etc.), familial factors, trauma, and mental health status. DoDEA School Administrators have always responded to incidents of misconduct in ways that go well beyond reporting an incident to the appropriate authority and while consistent identification and reporting have improved, DoDEA schools have consistently provided comprehensive systems of care, as defined below, to children and families.

Clarification above notwithstanding, the DoDEA Director has no significant disagreements with the three recommendations in the draft report and this response details the significant steps already taken by DoDEA to address each recommendation as well as actions taken that go even further. For each recommendation, there are comments that seek to clarify any information from the report and findings (where warranted) followed by those corresponding Statements of Action.

This response offers context to the broad range of behavior encompassed in "Juvenile on Juvenile Misconduct" as referenced within the Draft Report. Recognizing that prevention, intervention, and response to juvenile-on-juvenile misconduct of a sexual nature extends beyond the school building, DoD established an OSD-level "Tiger Team" which is led by the Family Advocacy Program (FAP), and includes DoDEA, Child and Youth Programs, Law Enforcement, Military Criminal Investigative Organizations, Military Community Support Programs, and Health Affairs.

As it relates to Problematic Sexual Behavior in Children and Youth (PSB-CY) this response will illuminate the significant progress made by DoDEA to maintain the safety and well-being of DoDEA students by establishing comprehensive systems of prevention, intervention, and response for all types of misconduct. The complex nature of the types of behavior, the research-based reasons for appropriate school-level discretion, and the accompanying practices for response and intervention are all important additions to the final report.

DoD Education Activity Director (cont'd)

Recommendation A.1a.

Perform a review to assess the use of discretion employed by DODEA administrators when determining whether to report an incident as a SIR and update the DoDEA policies to address the conflicting “shall” and “may” reporting requirements.

Comments

The report cites examples of School Administrator discretion and characterizes a large percentage of (emphasis added) “incidents that *could* have been categorized as serious juvenile-on-juvenile misconduct and *may* have violated local laws.” It is worth noting that while DoDEA has undergone significant work to update policies, definitions and procedures for incidents of all kinds of behavior which are highlighted in detail below, research shows that School Administrator discretion is critical in mitigating “the effects of school exclusion and criminalization of youth misbehavior,” by supporting “practices focused on prevention and restorative justice.”¹ While the statement of action below highlights the steps taken to clarify how School Administrators should report and steps that must be taken, it is essential that School Administrators maintain the discretion to implement, manage, and oversee Systems of Care within their schools.

Systems of care can be found in a multitude of child-serving agencies (e.g., child protection services, mental health juvenile justice, and health care.) across the nation whose missions are dedicated to child welfare. A philosophy adopted by the Child and Adolescent Service System Program, Systems of Care was born from a Federal initiative established by the National Institute of Mental Health in 1986 and was defined as “...a comprehensive spectrum of mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of children and adolescents with severe emotional disturbances and their families.”² The goal is to provide students and their families with the support services they need to mitigate risky behaviors leading to school dropout, school expulsion, drug or alcohol abuse, unplanned teen pregnancy and conviction of crimes. When a youth or adolescent experiences such events, the entire family unit is impacted. Systems of Care are not a “program” or “model,” rather, they are a framework that guides processes and protocols. Schools rely upon the nimbleness and flexibility of such service frameworks, as they allow them to respond efficiently to the evolving needs and conditions of children and families. While these frameworks have existed within our schools since our inception, DoDEA has made concerted efforts to strengthen the documentation of the corrective/support actions or interim protection measures implemented in response to maladaptive student behaviors by codifying the requirement in a number of policies, reinforcing the expectation in professional development, and providing student curriculum on high risks topics (e.g., problematic sexual behavior in children and youth, suicide prevention, etc.)

¹ Wilson, M. G. (2013). Disrupting the Pipeline: The Role of School Leadership in Mitigating Exclusion and Criminalization of Students. *Journal of Special Education Leadership*, 26(2), 61–70.

² Stroul, B. A., & Friedman, R. M. (1994). A system of care for children and youth with severe emotional disturbances. Washington, DC: CASSP Technical Assistance Center, Center for Child Health and Mental Health Policy, Georgetown University Child Development Center.

DoD Education Activity Director (cont'd)

DoDEA has completed an exhaustive review of reporting serious incidents via a Case Management System implemented in August, 2019. The results of this review inform DoDEA reporting procedures designed to ensure the criteria and identification of serious incidents as well as the process for keeping DoDEA leadership informed is streamlined for accurate and consistent reporting. This review will also inform regulatory guidance to be published in 2020.

Statements of Action

DoDEA has initiated and completed a number of actions to define the types of incidents that must be reported as “serious incidents” to ensure that all serious incidents are accurately and consistently reported by School Administrators.

Policy Guidance

As incidents involving juvenile-on-juvenile misconduct vary widely, the corresponding list of policy updates is equally broad. In November of 2018, DoDEA published [DoDEA Administrative Instruction \(AI\) 1356.01, DoDEA Family Advocacy Program Process for Reporting Incidents of Suspected Child Abuse and Neglect](#). This policy aligns the definition of child abuse to the DoD policy definition: Physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or combinations for a child by an individual responsible for the child's welfare under circumstances indicating that the child's welfare is harmed or threatened. The AI clarifies reporting requirements for DoDEA personnel making reports of alleged child abuse and neglect occurring both within and outside of DoDEA schools.

In May of 2019 DoDEA published [DoDEA Regulation 3030.01, DoDEA Incident Reporting Program](#). This regulation requires School Administrators to:

- Act as the primary reporting official for incidents occurring in their respective school.
- Appoint in writing their respective Assistant Principal and, if authorized, a DoDEA Administrative Officer to document and submit incident reports in the incident reporting and management system, and
- Ensure each incident report submitted is complete and within the reporting timelines stipulated in this Issuance.

The DoDEA Director required all principals to record the final disposition of any exclusionary disciplinary action in ASPEN beginning in SY 2019-2020. DoDEA is codifying this requirement in DoDEA AI 1347.01, Student Disciplinary Rules and Procedures and DoDEA AI 1353.01 Student Rights and Responsibilities, which are in the final stage of coordination for approval and release. These policies also update, align, and memorialize student misconduct definitions.

Perhaps the most significant policy action related to PSB-CY, is the issuance of [DoDEA AI 1443.02, Prohibited Sexual, Sex-Based, and Other Abusive Misconduct Reporting and Response](#) which was released on February 21, 2019. This policy establishes requirements for reporting and tracking of juvenile on juvenile sexual misconduct, and clearly defines prohibited acts, standardizes terminology, and creates uniform reporting and response procedures. Under AI 1443.02, all reports of juvenile-on-juvenile sexual misconduct are reported in a Serious Incident

DoD Education Activity Director (cont'd)

Report (SIR) for alert notification up to HQ and promptly referred to FAP, law enforcement, and any other applicable child welfare services. Per the policy, school officials are also required to notify military installation command of reports of sexual assault and incidents that raise concerns for, or present potential threat to, the safety and welfare of the military community. DoDEA AI 1443.02 also mandates more direct involvement with parents and documentation of aftercare for students. Parents are given prompt notification when their child is involved in an alleged offense and opportunity to participate and be heard on their child's behalf prior to any findings being made.

Professional Learning and Training

In conjunction with the release of DoDEA AI 1443.02, DoDEA delivered in-person training to all School Administrators on appropriate reporting and response of sexual offenses including the process for implementing the new SIR requirements. This action was completed in August of 2019. For sustainability, DoDEA transferred the learning content into asynchronous learning modules designed for new School Administrators, and created online refresher learning modules for School Administrators to revisit year-to-year.

PSB-CY is a new concept wherein greater long term success is achieved with adolescents and youth via corrective/support action or interim protection measures, rather than an immediate punitive response. As such, DoDEA entered into a partnership with Penn State University to provide a research-based training for all Student Services personnel. During the 2019-2020 school year, all school counselors, school nurses, and school psychologists in DoDEA schools were provided training quarterly on topics surrounding Problematic Sexual Behaviors in Children and Youth. These four-quarterly topics included:

- Awareness of Problematic Sexual Behavior in Children and Youth (PSB-CY) and Awareness of Self
- Consultation with Teachers and Parents on Problematic Sexual Behavior in Children and Youth
- Assessment and Progress Monitoring for Problematic Sexual Behavior in Children and Youth
- Intervention Plans and Progress Monitoring for Problematic Sexual Behaviors in Children and Youth

Penn State provides completion tracking as well as quarterly technical evaluations on knowledge gained and overall satisfaction of the training.

The Family Advocacy Program is field-testing the recently developed non-clinical referral tool at select pilot sites. Eight of the pilot sites are locations where there are DoDEA schools. The non-clinical tool is designed to assist DoDEA personnel in accurately and consistently identifying PSB-CY student behaviors for referral to FAP. Joint training between the FAP and DoDEA is incorporated into the field-testing rollout.

DoD Education Activity Director (cont'd)

Data Management

Simultaneously, DoDEA has implemented a new online SIR worksheet with automated contextual prompts which ensure all established reporting requirements are met, and embedded definitions of all terms. For example, all incidents involving student sexual misconduct prompt a School Administrator to report the incident to FAP before the report can be submitted.

Each SIR record now includes thorough documentation of the nature of the alleged incident, external entities alerted, interim protections that were offered to students during investigation, whether or not the offense was substantiated, and any corrective and/or remedial actions that were taken in response involving the student who was alleged to engage in the behavior, students impacted by the behavior, and any witnesses. Ongoing quality assurance is a key component of our data compilation process for SIRs involving PSB-CY. In addition to the automated features initiated in the case management system during data entry, SIRs for PSB-CY are also individually reviewed by a Student Services Instructional Systems Specialist (ISS) and the respective HQ process owner on a daily basis. These manual quality checks ensure policy compliance with reporting standards and are purposed for continuously improving overall reporting quality. It is important to note that the manual checks for accuracy began during the 2018-2019 school year with adjustments for the 2019-2020 school year based on receipt of existing data.

The issue of adjudication of juvenile criminal cases is being worked through the OSD-level “Tiger Team” whose membership is addressed above. In April of 2020, the Office of the Under Secretary of Defense for Personnel and Readiness met the reporting requirement (page 66) of House Report 116-84 accompanying H.R. 2968, Department of Defense Appropriations Bill for Fiscal Year 2020, “Sexual Assault and Juvenile Justice”, in which the Committee encourages the Secretary of Defense, in coordination with the Department of Justice (DoJ) to explore opportunities to establish memorandums of understanding with state and local prosecutors to adjudicate juvenile criminal cases when the alleged offenses occur within the boundaries of a military installation.

Recommendation A.1b.

Develop an ASPEN regulation that details what information should be included in an ASPEN report.

Comments

ASPEN is DoDEA’s current Student Information System (SIS) and houses digital records that are part of the Student Scholastic Record. The Discipline Module of ASPEN houses the digital disciplinary records for students. Previous to SY 2019, while principals have always been required to keep disciplinary records, there was not a written mandate for exactly what must be captured in ASPEN; that has been remedied. The Draft DoD IG report refers to incidents in ASPEN as not reported to DoDEA HQ. While policy guidance has been updated to ensure

DoD Education Activity Director (cont'd)

alignment and consistency of incidents recorded in ASPEN, DoDEA has always been able to pull reports from ASPEN centrally.

Statements of Action

As highlighted above, DoDEA has updated the Student Disciplinary Rules and Procedures Policy which requires the School Administrator to complete disciplinary proceedings and record the final disposition of the disciplinary action in the DoDEA student record using the conduct module in the DoDEA SIS for any exclusionary discipline (to include suspension, in or out of DoDEA school, expulsion, or disciplinary removal to an alternate educational setting), as well as any student-on-student infraction of a sexual nature (to include sexual harassment and sexual assault). DoDEA has updated the Student Rights and Responsibilities Policy to include common definitions of incidents. Options have been limited within ASPEN for types of disciplinary offenses from 99 incident options to 59, which align with DoDEA policy definitions. Respective actions associated with each incident now align with required reporting and referral. Those actions include referral to FAP and referral to Law Enforcement.

Additionally, DoDEA has begun the writing of a succinct student records policy which brings the records requirements for records composition, records disposition, and transfer procedures into one place. While DoD Instruction 5400.11 governs DoDEA records, this new DoDEA-level policy will provide clearer guidance and consistency for the make-up and procedures for the transfer of records. That policy is scheduled for release in 2021.

Recommendation A.1c.

Perform trend analysis and use the results to provide guidance and target problems as required by Department of Defense Education Activity Regulation 4700.02

Statements of Action

DoDEA now has the data collection procedures in place to produce multiple trend analyses across the types and categories of incidents. The following policies contain updated trend report requirements for action:

- **DoDEA Administrative Instruction 1347.01, Student Disciplinary Rules and Procedures** (to be published in 2020) requires a school-based annual disciplinary report to determine whether disproportionate discipline practices based on race, ethnicity, gender, or disability exist within a DoDEA school. School Administrators are to develop and implement an improvement plan to address discipline procedures to ensure equity and to protect the civil rights of students. These plans and data pass up the chain of command in a consolidated annual report to the Director for any appropriate policy adjustments or training needs system-wide.
- **DoDEA Regulation 3030.01, Student Disciplinary Rules and Procedures** (published May 2019) requires trend analysis reviews of SIRs and Director's Critical Information Requirements to include strategies to mitigate negative trending incidents.
- **DoDEA Administrative Instruction 1443.02, Prohibited Sexual, Sex-Based, and Other Abusive Misconduct Reporting and Response** (published February 2019) requires an

DoD Education Activity Director (cont'd)

annual trend analysis which highlights any identifiable trends, strengths, and deficiencies regarding reported incidents, together with recommendations for improvement.

The DoDEA Civil Rights Program completed a First Year Tracking and Trend Analysis in March 2020 in accordance with DoDEA AI 1443.02. SIR records involving alleged DoDEA student-on-student sexual misconduct offenses in violation of AI 1443.02 within DoDEA jurisdiction from January 2019 - January 2020 were reviewed. This initial analysis has revealed the following:

- Unacceptable student-on-student behaviors are now being recognized more readily, labeled more accurately, and responded to more uniformly Activity-wide, with real time supervision by HQ leadership and subject matter experts.
- School officials are now able to identify inappropriate behaviors at an earlier developmental stage, allowing for timelier intervention to address contributing factors that may be at the root of such behaviors and the opportunity to work collaboratively with the student and parents in an effort to prevent such behaviors from escalating as the student grows older.
- Cautionary and problematic sexual behaviors (PSB) that in the past may not have been reported in SIR are now reported and referred for FAP coordination with a multi-disciplinary team that includes law enforcement and, when appropriate, military installation command.
- There were 110 students who reportedly engaged in PSB and 115 students impacted by the behavior.
- Overall ratio of male to female reportedly engaging in PSB was 4:1.
- Overall ratio of male to female student impacted by PSB was approximately 2:5.
- The greatest number of reported incidents were for “Non-Consensual Sexual Contact.”
 - The majority of children reportedly exhibiting PSB were in the 5-8 year old range with 24 students (roughly twice as high as any other age range). There was 1 student under 5 years old.
 - The number of children reportedly engaging in PSB dropped to 4 students among 9-11 year olds, rose slightly to 6 students among 12-13 year olds, and then spiked slightly to 14 students among 14-18 year olds.
- The relatively high number of children reportedly engaging in PSB in the 5-8 year old range is most likely a reflection of the now mandatory reporting with a SIR of what is considered developmentally normative and cautionary behaviors that are transient acts not unusual for the age and developmental level, but inappropriate in the school environment.
- The male students reported for “Non-Consensual Sexual Contact” across all age ranges outnumber reported female students by a ratio of 6:1, which is 50% higher than the ratio of male to female students reported for all types of behavior requiring an SIR, collectively.
- All student participants were cisgender, with no indication of transgender or other gender classifications being involved in the incident.

DoD Education Activity Director (cont'd)

- The ratio of total General Education students alleged to have committed prohibited behavior versus total number of Students with Disabilities was 15:1.

Summary

While trends will not be identified with statistical significance until multiple years of reporting are collected, DoDEA already has actionable data that can help make meaningful changes in the way the Agency responds to incidents. For instance, related to Prohibited Sexual, Sex-Based, and Other Abusive Misconduct, it is clear that the majority of incidents happen with the youngest students, are not problematic developmentally, and do not reappear in large numbers until the 14-18 age range. This allows DoDEA to focus on early intervention and to be proactive, which may cut down on the requirements later to be reactive and punitive in nature when incidents may become more serious. DoDEA is confident that school staff and School Administrators have clearer processes for reporting and intervening consistently from incident occurrence to resolution; are well-versed in the nature and intricacies of student misconduct; and are more engaged with DoD and community partners to ensure all families are supported throughout the process. DoDEA appreciates the opportunity to provide this comprehensive list of accomplishments and hard work that has gone into ensuring schools continue to be safe places for students. DoDEA remains committed to continuing to use data to drive continued improvement efforts.

Under Secretary of Defense for Personnel and Readiness



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

AUG - 6 2020

MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Department of Defense Education Activity Management Comments for Department of Defense Inspector General Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations" (Project No. D2019-DEV0SV-0173.000).

Thank you for the opportunity to respond to the subject draft report. I am submitting the following response for the recommendation directed to the Under Secretary of Defense for Personnel and Readiness (USD&R):

Recommendation B.1

We recommend that the Under Secretary of Defense for Personnel and Readiness:

- a. Develop policy that specifies how installation commanders should address serious juvenile-on-juvenile misconduct incidents.
- b. Develop policy that identifies which support agency will provide counseling support services to victims and offenders of serious juvenile-on-juvenile misconduct incidents.

RESPONSE: Concur. USD(P&R) recognizes that serious juvenile-on-juvenile misconduct requires a centralized, identified office of primary responsibility from which a coordinated community/multidisciplinary approach can be established to ensure that children, youth, and families receive appropriate support, advocacy, and effective intervention. Child and youth initiated behaviors are distinctly different from similar behaviors exhibited by adults. Infusing family engagement and developmental context into any approach is critical to guard against undue long-term psychological harm and stigmatization to children and youth engaging in or impacted by harmful behaviors.

My point of contact for this issue is [REDACTED]

Matthew P. Donovan

Army



DEPARTMENT OF THE ARMY
Office of the Provost Marshal General
2800 Army Pentagon
Washington, DC 20310-2800

DAPM-LE

6 August 2020

MEMORANDUM FOR Inspector General, Department of Defense (Attention: Mr. Theodore Born), 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Army Response to DoD OIG Evaluation of Serious Juvenile-on-Juvenile Misconduct (DRAFT REPORT)

1. Reference. DoD OIG Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations (DRAFT REPORT), 8 July 2020.

2. The Army provides the following response to the DoD OIG's Evaluation of Serious Juvenile-on-Juvenile Misconduct (DRAFT REPORT). The Army's response has been coordinated between the following: Office of the Provost Marshal General; United States Criminal Investigation Command; the Office of The Judge Advocate General's Criminal Law Division; and, the Office of the Deputy Chief of Staff, G-9 Soldier and Family Readiness Division.

a. Regarding DODIG's recommendation that Service Secretaries update MLEO and MCIO policies to require personnel, "when possible," to document in all investigative case files the legal actions taken by "civilian legal authorities," the confidential nature of juvenile records may preclude the Army from obtaining such records from a civilian courts.

b. The Army also makes the following comments to the draft report:

(1) On page 21 (footnote 20), the draft report refers to Rule for Court-Martial 306 as authority for commanders taking administrative action against juveniles. The Rules for Court-Martial provisions apply to courts-martial and military personnel subject to the UCMJ jurisdiction. The UCMJ does not apply to juveniles.

(2) The heading on page 24 ("There Was No Information in the Investigative Case Files Specifying Whether MLEO and MCIO Personnel Notified Civilian Legal Authorities") appears to be inaccurate. Based on DODIG's report, the heading should read, "In 38% of the Cases, There was No Information in the Investigative Case Files Specifying Whether MLEO and MCIO Personnel Notified Civilian Legal Authorities."

(3) The heading on page 25 ("There Was No Information in the Investigative Case Files Specifying Whether MLEO and MCIO Personnel Notified Installation Commanders") appears to be inaccurate. Based on DODIG's report, the heading should read, "In 11% of the Cases, There was No Information in the Investigative Case Files Specifying Whether MLEO and MCIO Personnel Notified Installation Commanders."

Army (cont'd)

DAPM-LE

SUBJECT: Army Response to DoD OIG Evaluation of Serious Juvenile-on-Juvenile Misconduct (DRAFT REPORT)

(4) On page 27, the draft report uses the term "SJA" (Staff Judge Advocate) to refer to the military attorneys interviewed by DoD IG. In the Army an SJA is generally the principal legal advisor to a General Court-Martial Convening Authority, senior attorney within the command, and usually in the grade of O-6/O-5. In contrast, a "judge advocate" refers to a uniformed military attorney and can be an officer of the rank of a First Lieutenant (O-2) through a general officer. DODIG should use the term "judge advocate" rather than "SJA."

(5) On page 27, DODIG makes a determination that DOD has not established a policy addressing juvenile misconduct and recommends that DOD develop such a policy. The DODIG report did not reference the Army's Juvenile Misconduct Policy, published in March 2019, and previously provided to DODIG.

(6) On page 28, the draft report references limitations on counseling services provided to victims and offenders for juvenile misconduct that are not sexual in nature. ID card holders (specifically, children involved in non-sexual violent behavior) are already eligible for medical and mental health services. These services are available and provided by the Military Treatment Facility or Behavioral Health or Tricare (either through direct care support of Tricare networker support). Without the context that ID card holders are already eligible for services, DODIG's conclusion may be misleading. The report should consider a recommendation for the Office of the Assistant Secretary of Defense for Health Affairs to develop policies and procedures to provide counseling support services to eligible beneficiaries involved in serious juvenile misconduct. The services can be delivered direct face-to-face or through virtual synchronous means.

(7) The DODIG's review addresses how juveniles are "held accountable" by the Services, referencing legal action (prosecution) by civilian authorities and command action. DoD does not have the authority to hold juveniles criminally liable. Moreover, the Army is mindful that the purpose of juvenile justice is the rehabilitation of juvenile offenders rather than to simply punish. The use of the term "accountable" may improperly contribute to an understanding within DOD or the public that DOD's goal is to increase juvenile prosecutions, which is not the case.

3. The point of contact for this memorandum is [REDACTED]

BLAIR, THOMAS S. C. Digitally signed by
OTT: [REDACTED] to: JCH/THOMAS.SCOTT [REDACTED]
Date: 2020.08.07 16:30:16 -0400

THOMAS S. BLAIR
GS-15
Chief, Law Enforcement Division

Navy



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253

August 10, 2020

FOR: OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE

FROM: Daniel W. Simpson, Assistant Director

SUBJECT: Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations

NCIS has reviewed and is providing a response to the recommendation in section B.2 of the draft report Project No. D2019-DEV0SV-0173.000, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations."

- Recommendation B.2 states, *"We recommend that the Secretaries of the Army, Navy, and Air Force update Military Law Enforcement Organization and Military Criminal Investigative Organization policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken."*
- NCIS Response: NCIS concurs with the recommendation in section B.2. NCIS has updated policy in the most recent iteration of NCIS 3- Chapter 34, Sexual Assault. The chapter is currently in draft pending final approval by executive leadership and it is anticipated the chapter will be signed within the next thirty days. The revised chapter states that NCIS requires both notification and documentation of any incidents of serious juvenile on juvenile misconduct to the installation commanders, Staff Judge Advocates, and when appropriate, other law enforcement agencies.
- The revised chapter also requires that in juvenile offenses NCIS reports out the legal actions taken and any administrative actions within our investigation. However, if legal action does not result in criminal prosecution, we close the case, per NCIS policy. If any follow-on administrative actions are taken after the criminal prosecution declination, those administrative actions most likely will not be documented in the NCIS investigation.

Daniel W. Simpson, AIA

DANIEL W. SIMPSON

Navy (cont'd)



DEPARTMENT OF THE NAVY
 HEADQUARTERS, UNITED STATES MARINE CORPS
 3000 MARINE CORPS PENTAGON
 WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
 7500
 DMCS-A
 7 Aug 20

From: Head, Audit Coordination and Liaison, Office of the
 Director, Marine Corps Staff

To: Office of Inspector General, U.S. Department of Defense

Subj: EVALUATION OF THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF
 DEFENSE EDUCATION ACTIVITY RESPONSES TO INCIDENTS OF
 SERIOUS JUVENILE-ON-JUVENILE MISCONDUCT ON MILITARY
 INSTALLATIONS (DODIG OFFICIAL DRAFT EVALUATION REPORT
 PROJECT NO. D2019-DEV0SV-0173.000 DATED JULY 8, 2020)

Ref: (a) DODIG Memorandum on subject dated July 8, 2020

Encl: (1) Marine Corps Responses

1. Reference (a) provided the subject evaluation report for review and comment.
2. Enclosure (1) provides official responses approved by the Headquarters, U.S. Marine Corps Assistant Deputy Commandant for Plans, Policies, and Operations (Security).
3. We appreciate the opportunity to respond to the report.
4. For questions regarding the enclosure, I can be reached at




 CHARLES K. DOVE

Copy to:
 NAVAUDSVC (P&O)
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 DC P&R (MCMICP)
 DC PP&O
 DC M&RA
 SJA
 HS

Navy (cont'd)

**DODIG DRAFT REPORT DATED JULY 8, 2020
PROJECT NO. D2019-DEV0SV-0173.000**

**“EVALUATION OF THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF
DEFENSE EDUCATION ACTIVITY RESPONSES TO INCIDENTS OF SERIOUS
JUVENILE-ON-JUVENILE MISCONDUCT ON MILITARY INSTALLATIONS”**

**UNITED STATES MARINE CORPS COMMENTS
TO THE DOD RECOMMENDATION**

RECOMMENDATION B.2: DODIG recommends that the Secretaries of the Army, Navy, and Air Force update Military Law Enforcement Organization and Military Criminal Investigative Organization policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken.

USMC RESPONSE: Concur with comments. Currently, Marine Corps Order (MCO) 5580.2B W/CH 2, the “Marine Corps Law Enforcement Manual” addresses criminal activity involving juveniles, specifically; Section 9004, Paragraph b: “Incidents not under NCIS jurisdiction involving juvenile dependents may be referred to the installation commander for administrative action.” As well as; Section 9004, Paragraph c: “Within areas under United States jurisdiction, juvenile offenders may be referred to local police juvenile authorities. PMs/CPs should establish a liaison with local police to develop working agreements for the referral of juveniles.”

Concur with the recommendation to update Marine Corps policies pertaining to processing serious juvenile on juvenile misconduct incidents by adding the requirement to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken.

The Marine Corps Law Enforcement Manual is currently under review. Additionally, a draft Marine Corps Criminal Investigation Division (CID) order has been developed, separate from the Marine Corps Law Enforcement Manual, which is currently in GO/SES level review for staffing. Both orders will be reviewed to ensure appropriate Law Enforcement response and procedures pertaining to serious juvenile on juvenile misconduct incidents are captured per the DODIG recommendation. Of note, the above-mentioned draft CID order that is currently under review is a multi-volume order and the procedures will be captured within the volume that discusses investigative procedures, which is in the final phase of development.

Concur, the draft is non sensitive and does not require a “For Official Use Only”.

Encl (1)

Air Force



Office of the Secretary

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

29 Jul 20

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

FROM: SAF/IG
1140 Air Force Pentagon
Washington, DC 20330-1140

SUBJECT: Secretary of the Air Force Inspector General Response to Department of Defense
Inspector General Draft Report Project No. D2019-DEV0SV-0173.000

This is the Department of the Air Force Inspector General (DAF/IG) response to the DoDIG Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations (Project No. D2019-DEV0SV-0173.000). DAF/IG agrees with Recommendation B.2 for the Office of Special Investigations (OSI): "The DoDIG recommends that the Secretar[y] of the...Air Force update...Military Criminal Investigative Organization policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken."

DAF/IG, in coordination with OSI, agrees with the recommendation as it pertains to OSI. OSI will update organizational policy to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken. The OSI policy update will be completed no later than 30 Nov 2020.

The SAF/IGX point of contact is Steven Torres, (703) 697-0464, DSN 697-0464, or via email at steven.c.torres.mil@mail.mil.


JEFF H. HURLBERT
Brigadier General, USAF
Deputy Inspector General

Air Force (cont'd)



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

29 July 2020

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: AF/A4S
1030 Air Force Pentagon, Rm 5E1040
Washington, DC 20330-1030

SUBJECT: Air Force Response to DoDIG Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations (Project No. D2019-DEV0SV-0173.000)

1. This is the AF/A4S Directorate of Security Forces response to the DoDIG Draft Report, "Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations (Project No. D2019-DEV0SV-0173.000). AF/A4S concurs with the report as written and offers the following comment.
2. **Recommendation B.2:** The DoDIG recommends that the Secretaries of the Army, Navy, and Air Force update Military Law Enforcement Organization and Military Criminal Investigative Organization policies to require personnel to document in all investigative case files all notifications to civilian legal authorities and installation commanders, and, when possible, the legal and administrative actions taken."
3. **AF/A4 Response:** AF/A4 agrees with the recommendation as it pertains to Air Force Security Forces (as the Air Force Military Law Enforcement Organization). AF/A4S updated Air Force Instruction 31-115, *Law and Order Operations*, as follows: "Security Forces will document in all investigative case files, all notifications to civilian legal authorities and installation commanders and when possible, the legal and administrative actions taken." Draft AFI 31-115 is in the final phase of legal coordination and should publish NLT 31 August 2020.
4. If you have any additional questions, please contact my POC, [REDACTED]

FORD.ROBERT.
M.JR. [REDACTED]
[REDACTED]
ROBERT M. FORD, Colonel, USAF
Chief, Integrated Defense Policy Division
Directorate of Security Forces
DCS/Logistics, Engineering & Force Protection

Digitally signed by
FORD.ROBERT.M.JR. [REDACTED]
Date: 2020.07.29 07:27:56
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Acronyms and Abbreviations

AFOSI	Air Force Office of Special Investigations
AI	Administrative Instruction
ALERTS	Army Law Enforcement Reporting and Tracking System
AUSA	Assistant United States Attorney
CID	Criminal Investigation Division
DoD IG	Department of Defense Inspector General
DoDEA	Department of Defense Education Activity
DoJ	Department of Justice
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
JA	Judge Advocate
MCIO	Military Criminal Investigative Organization
MCO	Marine Corps Order
MEJA	Military Extraterritorial Jurisdiction Act
MLEO	Military Law Enforcement Organization
MP	Military Police
NCIS	Naval Criminal Investigative Service
SF	Security Forces
SIR	Serious Incident Report
SJA	Staff Judge Advocate
USACIDC	United States Army Criminal Investigation Command
USD P&R	Under Secretary of Defense Personnel and Readiness



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