



Services for the Developmentally Challenged, Inc.

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SDC Policy to Support Sexuality Education and Behavior for Service Recipients

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Table of Contents

| | | |
|---|-------|---------------|
| Philosophy | | Page 3 |
| Social/Sexual Topics of Consideration | | Pages 3 - 9 |
| A. Choices & Consent | | Pages 3 - 6 |
| B. Friendships & Relationships | | Page 6 |
| C. Education & Information | | Pages 6 - 7 |
| D. Sexual Expression | | Page 7 |
| E. Reproduction & Contraception | | Page 8 |
| F. Sexual Behaviors | | Pages 8 – 9 |
| Sexuality Education & Evaluation Committee (SEXEE Committee) | | Pages 9 – 10 |
| Staff Considerations & Responsibilities | | Page 10 |
| Attachment Excerpts from Article 130 of New York Penal Code Definitions | | Pages 11 - 12 |

Philosophy

SDC recognizes the importance that relationships have on the well-being of all individuals. The expression of sexuality is a physiological need which impacts a person's overall functioning. Sexual expression encompasses more than sexual activity, it also includes the total experience a person has with relating to oneself and others as a social being. Sexual expression influences one's self-esteem, gender identification, gender expression, sexual orientation, and decisions one makes when socializing with others. Without appropriate means of sexual expression, individuals can be prevented from realizing their full potential to live a healthy life as a social being, and their quality of life can suffer.

Adult individuals with intellectual and/or developmental disabilities share the need to love and be loved and to establish relationships with person(s) of their choice. Adult individuals with ID/DD who are sexually consenting further have the right to express their sexuality through sexual acts, so long as they are not injuring themselves or others.

SDC supports adult individuals with ID/DD who wish to express their sexuality in accordance with state and federal laws. SDC promotes expression of individuality, which includes self-expression through culture, ethnic tradition, spirituality, and sexuality (gender identity, gender expression, sexual orientation, and relationship preferences). SDC ensures support of the individual's rights and healthy self-expression by training staff on rights, safeguards, and supports for all service recipients and by offering education to individuals with ID/DD in our programs regarding their rights to practice and exercise self-expression.

Social/Sexual Topics of Consideration

A. Choices and Consent

When considering sexual behavior in the ID/DD population, understanding consent is of the utmost importance. Adults with ID/DD have the right to make their own decisions about relationships. In addition, adults with ID/DD have the right to engage in sexual activity with another person provided he/she is capable of providing informed sexual consent.

However, for individuals with ID/DD, consent must be evaluated by a clinician with sexuality consent training, that evaluation must be reviewed by a committee with sexuality consent training, and both the clinician and committee must agree based on evidence collected and reviewed that the adult person with ID/DD is capable of providing sexual consent. Therefore, for individuals with ID/DD, the determination of ability to provide

sexual consent is based on their fund of knowledge and ability to understand the ramifications of their actions.

Under New York State Law, some adult individuals with ID/DD would fall under the definition as presented in Article 130 of New York Penal Law as “Mentally Disabled”. However, a person can be mentally disabled, but have, through evaluation and review by a qualified clinician, been determined capable of providing consent. However, even a consenting person, whether ID/DD or not, may experience other circumstances which would render him unable to provide sexual consent. This includes being “mentally incapacitated” or “physically helpless”. For reference, an excerpt from Article 130 - New York Penal Code Definitions, is attached at the end of this policy.

In regard to the individual’s right to choose a relationship partner, SDC supports consenting individuals to choose who they wish to have a relationship with so long as they are not harming themselves or others.

SDC does not condone sexual relationships between service recipient(s) and employee(s) of SDC. Nor does it condone sexual relationships between consenting individual(s) and nonconsenting individual(s). Sexual relationships between two or more nonconsenting individuals are prohibited from SDC. If any of these three stated sexual acts are witnessed by an employee of SDC, the sexual act will be stopped immediately and reported in accordance with OPWDD and NY State Justice Center incident reporting regulations. However, it must be noted that the individuals receiving services from SDC have varying degrees of independence in the community, and all individuals have a right to privacy which means there is no realistic way to monitor an individual’s behavior at all times. Therefore, SDC cannot guarantee the halting of inappropriate behavior which takes place outside of the scope of our services and supervision.

1. Sexual Consent Assessment

For adult individuals who:

- a) *Reside in our residential programs; or*
- b) *Attend our Day Program; or*
- c) *Attend our Respite Program; or*
- d) *Receive community-based services*

And show an interest in being sexually active, a request for a sexual consent assessment will be made by an employee, parent, guardian, advocate, or self-advocate to a member of the treatment team. This treatment team member will notify the treatment team, which includes the Program Coordinator, Assistant Program Coordinator, Director of Services, Special Project & Clinical Coordinator, Registered Nurse, and Medicaid Service Coordinator/Care Coordinator. In addition, the current members of Sexuality Evaluation and Education Committee (SEXEEC) will be notified. The committee will take the following steps:

- (1) If the individual resides in our residence, a SEXEE Committee member will refer the individual to a qualified clinician for a sexuality consent evaluation. In the event that SDC has a qualified clinician on staff, this clinician may complete the evaluation. In these cases, the SDC SEXEE Committee will review the evaluation.
- (2) If the individual attends our Day or Respite Programs or receives Community-Based supports, a treatment team member will notify the guardian or person responsible for residential care of the individual, and will make a request to attain a sexuality evaluation for the individual. The treatment team member can also provide the guardian with a recommendation to a qualified clinician who can perform the evaluation, however, the guardian, advocate, or next of kin can choose a clinician of their choice. If SDC's on staff clinician is asked to complete the assessment, then SDC's SEXEE Committee will review the completed evaluation.

Once an evaluation is obtained and has been reviewed/approved by the SEXEE Committee, all members of the treatment team will review

the evaluation and, depending on the determination, either put a protocol in place for supporting the individual in consenting to desired sexual activity or to safeguard the individual from harmful situations. In either case, a member of the treatment team will review the results of the evaluation with the individual and provide support and education to the individual.

2. It is important to note that in the state of New York, a sexual consent determination supersedes a determination of legal guardianship because the person is competent in that specific area.
3. As a general rule, SDC does not support overturning a prior approved consent determination absent extraordinary circumstances. Once an individual is deemed consenting, SDC will not seek a reevaluation of consent.
4. SDC honors consent determinations which were approved prior to an individual receiving services at SDC.
5. There is no maximum limit for how many times a person may be assessed for capacity to consent. SDC does support overturning a prior determination of inability to consent, however, only after the individual being evaluated has received sexuality education from a qualified instructor or clinician and is able to demonstrate the competency in all areas required on the social/sexual consent assessment tool.
6. SDC supports individuals retaking sexuality education classes if recommended by a consent assessor or if the individual requests more instruction.

B. Friendships and Relationships

SDC supports individuals' choices in regard to who they wish to be friends with and who they wish to date. SDC recognizes that having friendships and relationships is inherent to healthy development and the overall wellbeing of all human beings. Regardless of an individual's consenting status, individuals have the right and freedom to associate with whomever they choose, so long as their behavioral expression does not infringe on the rights of others. SDC recognizes that not all romantic relationships are sexual relationships.

C. Education and Information

SDC believes that every individual should have the opportunity to access clinically-supported instruction and education on the topic of sexuality, which matches the biological age of the individual. In addition, SDC believes that every individual should receive positive messages about sexuality. Sexual Education at SDC includes lessons on the following topics: healthy friendships and relationships, public/private behavior and environments, communication skills, decision-making, courtship, diversity in gender identity, gender expression and sexual orientation, consent and the laws that dictate consent, anatomy, sexual feelings, attraction, affection and sexual acts, what constitutes abuse and how to report it, reproduction and family planning, pregnancy prevention, and protecting oneself from sexually transmitted diseases. Sexuality education at SDC covers the full range of topics needed for an individual with an intellectual or developmental disability to become an informed sexual self-advocate. Our agency believes that providing this education to the individuals we serve supports our recipients in becoming effective and informed self-advocates who can protect themselves from harmful situations, while recognizing healthy, positive relationships that can enhance their overall well-being throughout the course of their lives. A full copy of our sexuality education curriculum is kept in the administrative office at 5475 Fieldston Road, Bronx, NY 10471. Self-Advocates, parents, guardians, advocates, or next of kin are welcome to review the full curriculum upon request with a member of our SEXEE Committee.

D. Sexual Expression

1. Sexual Orientation

SDC supports individuals' choices in regard to their sexual orientation. SDC recognizes that sexual orientation includes affectional attraction, romantic attraction, and erotic attraction and can be expressed through sexual identity as heterosexual (other – male/female), homosexual (same - male/male, female/female), bisexual (both male and female attraction), asexual (nonsexual feelings or desire), pansexual (person-oriented desire, rather than gender oriented), and intersexual (person with indistinct sexual parts desiring either male, female, transgender, etc.).

2. Gender Identity

SDC recognizes gender identity as a person's sense of self as male or female. This is an innate, deeply psychological sense of being male or female, which may or may not match a person's biological sex. A person's biological sex is determined at birth based on the presence of sex chromosomes (XX, XY), hormones (estrogen,

androgens), gonads (ovaries, testes), external genitals (vulva/clitoris | penis/scrotum), assigned sex (girl/boy). When a person's gender identity and biological sex do not match, a person may identify as transgender, gender-nonconforming, or gender expansive.

3. Gender Expression

SDC recognizes gender expression as how a person expresses their gender identity. This includes expressing oneself through clothing, hairstyle, voice, mannerisms, and body characteristics. SDC supports individuals to express their gender in whatever way makes them feel comfortable and positive about themselves.

E. Reproduction and Contraception

SDC supports education to individuals with intellectual and developmental disabilities to make informed decisions in regard to family planning, pregnancy, pregnancy prevention, medication and devices which regulate fertility and conception. However, SDC currently does not provide residential services to individuals who have conceived and wish to reside with their child after their birth. A family residence is outside the scope of the type of residential services SDC currently provides (supervised IRAs), but, when possible, SDC would help find an appropriate residence for such a family. Some of the clients we serve are parents and we do support individuals who wish to become parents to do so, so long as they are informed of their options and understand the limits of SDC's ability to provide them with housing post-partum.

F. Sexual Behaviors

SDC recognizes a distinction between neurotypical affectionate behavior and neurotypical sexual behavior. Affectionate behavior, such as hugging, holding hands, and kissing on the cheek/mouth are acceptable behaviors among individuals who agree to this level of intimacy. These behaviors do not require a sexual consent assessment prior to participation in behavior. In public spaces at SDC, affectionate behavior should be limited to appropriate, casual affection.

Sexual behavior such as touching of the genitals (penis, vulva, clitoris, testicles, breasts, and anus) includes mutual masturbation, oral sex, vaginal sex, and anal sex. These sexual behaviors, which are neurotypical behaviors commonly associated with sexual activity and sexual expression, require consent from two or more capable parties. Sexual behavior between two or more consenting parties is

prohibited at SDC in public spaces. SDC supports sexual behavior between two consenting individuals in private spaces.

SDC recognizes self-masturbation as neurotypical sexual behavior. SDC supports individual who wish to engage in self-masturbation to do so in private. SDC does not condone masturbation in public spaces. Self-masturbation does not require a consent assessment prior to engaging in this behavior.

Sexual behavior between SDC staff and individuals receiving services from SDC is strictly prohibited.

Sexuality Education & Evaluation Committee (SEXEE)

The SEXEE Committee will consist of at least one licensed clinical professional (psychologist, psychiatrist, clinical social worker, behaviorist, nurse or medical professional - ABA, BCBA, RN, NP, MD, PHD, LCSW, LMSW, LMHC, LPC, etc.), and four additional members. All members of the committee will be trained at least annually on topics specifically related to sexuality in individuals with ID/DD. Training may be provided internally or attained externally. One or more self-advocates and/or family member(s) may also join the committee if an individual shows interest in joining and has completed the full SDC Sexuality Education training.

The role of the SEXEE Committee plus Self Advocate(s) is to:

- Review and approve the SDC Sexuality Education Curriculum
- Modify the curriculum to meet the needs of SDC individuals
- Advocate for individuals receiving services to receive sexuality education
- Promote & safeguard rights of individuals who receive services
- Review & Approve SDC policy annually and modify policy as needed
- Stay current on sexuality topics, appropriate lingo, medical procedures, medication, and technology advancements which aid the field of sexuality
- Schedule group training and education for new classes of individuals
- Model sex positive advocacy for individuals with ID/DD

The role of the SEXEE Committee continued:

(Self-Advocate(s) & Family Member(s) cannot participate in these activities due to confidentiality concerns):

- Review referrals and determine appropriateness in regard to assessments and education classes
- Review sexuality consent assessments completed by qualified clinician

- Approve/Disapprove sexuality consent assessment
- Develop implementation plans to address the sexuality needs of individuals following approval/disapproval of consent evaluations. This may include developing staff training, reviewing an IPOP and/or recommending modification of an IPOP, recommending a revision of a behavior plan, etc.
- Select member of committee to review consent assessment results with individual following an assessment
- Monitor and evaluate sexuality concerns across SDC
- Schedule meetings to address concerns with parents, guardians, self-advocates, advocates, MSC/care coordinators, managers, coordinators, staff, etc.

Staff Considerations/Responsibilities

SDC staff are expected to adhere to our policy, and are offered training to support healthy self-expression that is in compliance with state and federal law and which promotes the rights of individual service recipients.

Attachment

Excerpts from Article 130 of New York Penal Code Definitions which pertain to Adult Individuals with ID/DD:

S 130.00 Sex offenses; definitions of terms.

5. "Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.

6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.

7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

S 130.05 Sex offenses; lack of consent.

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

2. Lack of consent results from:

(a) Forcible compulsion; or

(b) Incapacity to consent; or

(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office

of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, "employee" means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact.