RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Rhode Island Training School

RULE IDENTIFIER: ERLID 6346

REGULATION TITLE: Resident Grievance Procedure 1200.1206

RULEMAKING ACTION: Regular rulemaking

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:
Public Notice Date: **February 27, 2018**
Public comment will end on **March 30, 2018**

SUMMARY OF PROPOSED RULE: The Department proposes to repeal this rule in connection with the proposed adoption of 214-RICR-60-00-1, "Rules and Regulations of the Rhode Island Training School." This rule is being promulgated to replace several existing Rhode Island Training School regulations.

R.I. Gen. Laws § 14-1-36.2 provides that children and youth placed in the custody of the Department of Children, Youth and Families receive suitable treatment, rehabilitation and care in the least restrictive environment.

The mission of the Rhode Island Training School (RITS) is to provide care in a secure facility to youth who are detained or adjudicated by order of the Family Court. The Training School promotes public safety and rehabilitation of residents through a comprehensive continuum of services provided in partnership with families, the community, and the Department in the least restrictive setting compatible with youth and community safety. Supervision, security, education, behavioral health, health and transition services are provided in an individualized, culturally, and gender sensitive manner.

COMMENTS INVITED:
All interested parties are invited to submit written or oral comments concerning the proposed regulations by **March 30, 2018** to the address listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:
All written comments or objections should be sent to, Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families
Mailing Address: DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903
Email Address: Sarah.StJacques@dcyf.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: DCYF, 3rd Floor, 101 Friendship Street, Providence, RI 02903

PUBLIC HEARING INFORMATION:
If a public hearing is requested, the place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call (401) 462-6266 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

In accordance with R.I. Gen. Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

FOR FUTHER INFORMATION CONTACT:
Sarah St. Jacques, DCYF Policy Office, Rhode Island Department of Children, Youth and Families, 3rd Floor, 101 Friendship Street, Providence, RI 02903 or Sarah.StJacques@dcyf.ri.gov

SUPPLEMENTARY INFORMATION:
Regulatory Analysis Summary and Supporting Documentation:
There are no new societal costs and benefits in the adoption of this rule.

Authority for This Rulemaking: R.I. Gen. Laws § 42-72-4

Regulatory Findings:
In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:
The Department of Children, Youth and Families proposes to repeal ERLID 6346, "Resident Grievance Procedure and adopt 214-RICR-60-00-1 as follows in the concise explanatory statement of proposed non-technical amendments below.

The Department of Children, Youth and Families proposes to repeal the following Rhode Island Training School regulations and reissue as Department Operating Procedures (DOPs). All DOP's are accessible to the public and may be viewed on the Department's website at: http://www.dcyf.ri.gov/policyregs/.

The proposed regulation would repeal and supersede the following rules:

- Administrative Classification to Restrictive Status 1200.1308 ERLID: 7256
- Administrative Responsibility 1200.0003 ERLID: 6180
- Administrator on Call 1200.0004 ERLID: 6181
- Behavior Report 1200.1305 ERLID: 6184
- Case Transfers between the Rhode Island Training School and Family Service Units or Juvenile Probation 1200.1620 ERLID: 7774
- Clinical Services at the Rhode Island Training School 1200.1110 ERLID: 7955
- Court Disposition 1200.0014 ERLID: 7785
- Culinary Equipment 1200.0838 ERLID: 6337
- Daily Census Report for the RI Training School 1200.0504 ERLID: 6237
- Discipline for Academic and Vocational Classes 1200.1310 ERLID: 6028
- Education Program at the RI Training School 1200.1701 ERLID: 7993
- Escape 1200.1608 ERLID: 6339
- Facility Capacity 1200.0002 ERLID: 7786
- Facility Management and Environmental Safety 1200.0718 ERLID: 6361
- Fifteen Minute Room Checks 1200.0839 ERLID: 6019
- Food Service 1200.0900 ERLID: 7787
- General Discipline 1200.1300 ERLID: 6020
- Incentive System-Points 1200.0103 ERLID: 7781
- Juvenile and Adult Offender Interactions 1200.0011 ERLID: 6182
- Lawful Detention or Confinement of Juveniles 1200.0010 ERLID: 7789
- Legal Assistance 1200.0017 ERLID: 6185
- Legal Establishment 1200.0000 ERLID: 7788
- Lock Up 1200.1307 ERLID: 7258

- Major Discipline Review 1200.1306 ERLID: 7259
- Master Control Center 1200.0857 ERLID: 6341
- Mission, Philosophy, Goals and Purpose 1200.0001 ERLID: 7508
- Movement of Residents on Grounds 1200.0809 ERLID: 6342
- Notice to Superintendent 1200.0702 ERLID: 6387
- Portable Radios 1200.0708 ERLID: 6343
- Post Assignments1200.0847 ERLID: 6614
- Protecting and Preserving Evidence 1200.0835 ERLID: 6344
- **Resident Grievance Procedure 1200.1206 ERLID: 6346 (This rulemaking action)**
- Resident Handbook 1200.1301 ERLID: 6031
- Resident Personal Property 1200.1203 ERLID: 6241
- Resident Room Inspections 1200.1003 ERLID: 6347
- Resident Telephone Calls 1200.1402 ERLID: 7959
- RITS Personnel Administration 1200.0222 ERLID: 6396
- Safety and Emergency Procedures at the RI Training School 1200.0714 ERLID: 6357
- Search of a Resident of the RI Training School 1200.0819 ERLID: 6977
- Searches for Contraband 1200.0821 ERLID: 6348
- Suicide Prevention and Special Watches 1200.0709 ERLID: 6349
- Tool and Equipment Control at the RI Training School 1200.0855 ERLID: 6350
- Tours of the RI Training School 1200.0007 ERLID: 6115
- Transportation of Residents Off Grounds 1200.0240 ERLID: 6244
- Unusual Incident Report 1200.0827 ERLID: 6351
- Use of Physical Force/Corporal Punishment 1200.1207 ERLID: 6117
- Use of Restraint at the RI Training School 1200.0832 ERLID: 6978
- Use of State Vehicles 1200.0724 ERLID: 6352

SUMMARY OF NON-TECHNICAL CHANGES

PROPOSED REGULATIONS FOR ADOPTION

214-RICR-60-00-01

Title 214 – DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES
Chapter 60 – Rhode Island Training School

Subchapter 00 – N/A

Part 1 – Rules and Regulations of the Rhode Island Training School

Justification for regulatory changes:

Language added to comply with federal provisions of the Prison Rape Elimination Act P.L. 108-79.

Section 1.1 Purpose

No new provisions, language is from existing state statutes and Department policy.

1.2 Authority

No new provisions, existing state statutes.

1.3 Application

Section Added

1.4 Severability

Section Added

1.5 Definitions

New Definitions:

From Federal Law (Prison Rape Elimination Act): "Sexual Harassment means any verbal comment of gesture (welcome or not) of a sexual nature including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures.

"Sick Call" means a scheduled time at which residents may report as sick to the RITS nurse.

From Federal Law (Prison Rape Elimination Act: "Voyeurism" means an invasion of privacy of a resident by staff for reasons unrelated to official duties, such as peering at a resident who is using a toilet to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

1.6 General Administration

New language added to comply with the federal Prison Rape Elimination Act

C. All Training School employees, and all contractors and consultants who do business at or in any of the components of the Training School, must undergo criminal background checks and must submit to the following criminal background checks every fifth (5^{th}) year of their employment or contractual/consultant relationship with the Training School.

1. Such background checks are conducted during the anniversary month of the employee's date of hire or assignment to the Training School. In the case of contractors/consultants, such background checks are conducted during the anniversary month of the start of that individuals work with the Training School.

2. Five-year criminal background checks include are done using State Bureau of Criminal Investigation (BCI) checks.

3. For employees covered by this policy, failure to submit to these checks may be used as cause for disciplinary action, up to and including dismissal from employment with cause.

4. For consultants and contractors covered by this policy, failure to submit to these checks may be used as cause for termination with cause of any and all agreements for consulting or contracting with the

Department, with the consultant/contractor forfeiting any and all future payments within their contract for services with the Department.

5. Any criminal information found in these checks are subject to administrative review and appropriate disposition.

1.6.1 Resident Handbook

New language added to comply with the federal Prison Rape Elimination Act

1. The Resident Handbook includes information for youth on their rights and PREA safeguards and includes information on how to report sexual harassment and/or sexual abuse, and a place for the youth to sign acknowledging that the youth has received such information.

1.7 Prison Rape Elimination Act

New language added to comply with the federal Prison Rape Elimination Act

A. The RITS complies with the federal Prison Rape Elimination Act (PREA) to provide a safe and therapeutic environment for all youth. Department Operation Procedures outline and implement a comprehensive approach to preventing, detecting and responding to sexual abuse, including voyeurism, and sexual harassment.

B. Any physical contact of a sexual or sexualized nature between any RITS provider, vendor, contractor, volunteer, or staff toward a youth detained or adjudicated at the RITS is deemed abusive; such contact is reported to the CPS Hotline and is investigated.

1. The Department has zero tolerance for voyeurism or sexual harassment by any Department provider, contractor, volunteer or staff toward a youth detained or adjudicated at the RITS and includes voyeurism and/or sexual harassment as a form of sexual abuse.

C. Any Department staff engaging in sexual abuse or harassment toward a child/youth in care or detained or adjudicated at the RITS is subject to discipline up to and including dismissal without warning and referred to law enforcement agencies unless the activity was clearly not criminal, and to relevant licensing bodies, as appropriate.

D. Any contractor, provider, intern or volunteer who violates Department sexual abuse or harassment policies is prohibited from contact with residents and

reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies, as appropriate.

1.13 Visitation

Language amended to comply with the Prison Rape Elimination Act

E. All visitors are subject to a criminal record background check and a clearance of agency activity check prior to being approved for visitation.

F. All visitors are subjected to a search upon entry to the facility.

G. Visitors are prohibited from bringing contraband in to the facility at any time. The contraband and search policy for visitors is posted at the entrance to the facility.

K. ~~There are regular family forums at which families of detained youth may voice issues of concern, offer suggestion for improvement, and obtain needed information about institutional policies and practices.~~

1.15 Resident Searches

Updated to comply with the federal Prison Rape Elimination Act

4. Clothed Body Search;

5. Except in exigent circumstances, any search of a resident is conducted by a staff member of the same gender as the youth or, in the case of a transgender or intersex identified youth, by a staff member of the gender that the youth has identified as the preferred gender for this purpose. Any search of a resident complies in all respects with the requirements of the Prison Rape Elimination Act as detailed in Department Operating Procedure as well as in Department training.

Resident Grievance Procedure

Rhode Island Department of Children, Youth and Families
Division of Juvenile Correctional Services: Training School
Policy: 1200.1206
Effective Date: March 1, 2011 ***Version: 1***

The RI Training School provides residents with a means to express dissatisfaction with individual actions or policy issues. Grievances may relate to the substance or application of any policy or practice of the Division or Staff. Specific findings of the Disciplinary Board may not be submitted to the grievance procedure.

Grievances are submitted through a formal procedure designed to provide timely and equitable responses. Every effort is made to settle grievances at the lowest of the four levels. Staff never discourage or inhibit a resident or his/her family's attempt to pursue the grievance procedure. Staff never retaliate against residents who utilize the procedure or family members who assist residents in filing grievances. Unit Managers inform residents and their families that no retaliatory action will be taken against them for use of the grievance procedure.

Related Procedure

Resident Grievance Procedure

Related Policy

Resident Handbook

Procedure from Policy 1200.1206: Resident Grievance Procedure

A. Staff ensure that residents are informed of the grievance procedure.
   1. Social Workers and Unit Managers inform each newly admitted resident of the existence of the grievance procedure, including the:
      a. emergency grievance process,
      b. steps that must be taken to use it, and
      c. names of the persons or positions designated to resolve grievances.
   2. Staff provide the resident with the written grievance procedures and ask the residents whether they understand the grievance process.
   3. Residents with limited cognitive or communication skills are provided assistance and/or translation services necessary to participate meaningfully in the process.
   4. Staff are familiar with the grievance procedure in order to answer resident questions and assist them in the process when necessary.
   5. A copy of the grievance policy is posted conspicuously in each housing unit.
   6. The Resident Handbook describes the grievance procedure in clear, simple language and is distributed in conformance with DCYF Policy 1200.1301, Resident Handbook.

B. The Unit Manager holds elections for a Resident Unit Representative in each unit. This Resident Unit Representative serves as the Resident Grievance Liaison in all units except the detention unit.
   1. The Resident Grievance Liaisons are thoroughly familiar with the resident grievance procedure.
   2. The Resident Grievance Liaisons maintain a Level 3 or are replaced through an election process.
   3. The Resident Unit Representatives/Resident Grievance Liaisons are elected by a majority vote of their peers for a term of no longer than one (1) year.

C. A resident's family includes parents, immediate family members responsible for the resident's welfare, guardians, or other custodians of the resident.
   1. A family member may assist the resident in submitting a grievance.
   2. If a resident's family member assists in initiating a grievance, the family member must be given an opportunity to participate in any formal meetings relevant to the grievance.

D. Residents or family members acting on behalf of residents:
   1. Initiate the grievance process by submitting the first level grievance forms, which are available and accessible to residents in their housing units, school, gym, health clinic, visiting areas, and upon request.
   2. Obtain and submit the Resident Grievance Form confidentially.
   3. Indicate on the Resident Grievance Form whether or not he or she wishes to have the assistance of a Resident Grievance Liaison, a staff member not involved in the incident being grieved, or a family member to help him/her in the process.
   4. Submit written grievances by placing them in a locked grievance

box or by delivering them to the Unit Manager.
   a. Each housing unit has one locked grievance box in an area of the unit accessible to residents.
   b. The Unit Manager checks every grievance box in his/her unit at least one time during his or her regularly assigned work day.
5. Residents receive responses to their grievances that are respectful, legible and address the issues raised.
6. If a grievance is found valid, the Superintendent or designee ensures immediate and appropriate action to remedy the issue.

E. Grievances and the results of grievance investigations are fully documented. The Superintendent or designee regularly analyzes Resident Grievance Forms (whether granted or denied) for patterns or trends.

F. This grievance procedure does not apply to any allegations of criminal activity or abuse by staff or residents, whether physical, sexual or verbal.
   a. These allegations are handled through the Office of the Child Advocate (OCA) and/or the Department's Child Protective Services and/or the RI State Police.
   b. Residents and families are informed of this limitation.

G. If the Unit Manager determines that a Level I grievance challenges the interpretation or application of promulgated policy, he/she refers the grievance to a Deputy Superintendent and informs the resident, family member assisting the resident, the Grievance Liaison or designated staff of this decision.
   a. The grievance commences as a Level II grievance.
   b. The grievance is subject to the procedures set forth for each level of review, except that each decision maker is allowed thirty (30) days to provide a written response regarding a grievance or appeal to the resident and any individuals, including family members, who are assisting him/her.

H. Level I – Unit Level
1. The resident completes the Resident Grievance Form and places it in the locked grievance box or informs staff or a Resident Grievance Liaison, who assists him/her in completing the Resident Grievance Form.
2. This same process is utilized by a family member assisting the resident. When a family member files a grievance on behalf of a resident, he/she files the Resident Grievance Form with the Unit Manager or designee.
3. Upon receipt of the grievance, the Unit Manager or designee assigns a complaint number utilizing a sequential numbering system which includes the unit and the year (i.e., No. I-D-87).
4. If the resident requests assistance from the Resident Grievance Liaison or designated staff, the Unit Manager refers the resident and/or family member in assisting the resident to the pertinent individual within one (1) business day of receipt of the grievance.
5. Residents in detention have the right to request and receive the assistance of staff not involved in the matter being grieved.
6. The Unit Manager investigates the grievance and meets with the Resident

Grievance Liaison or staff assisting the resident and the aggrieved resident within five (5) business days following the date the grievance was received.

a. No staff alleged to be involved in the grievance investigates the grievance.

b. Any family member who is assisting the resident in the grievance process is informed of and may attend the meeting.

7. Within seven (7) business days following the date received, the Unit Manager or designee or grants or denies the grievance.

a. The Unit Manager informs the resident and any family member who is assisting the resident, the Resident Grievance Liaison or staff assisting the resident of the decision in writing.

b. The resident, any family member who is assisting the resident, the Resident Grievance Liaison or staff assisting the resident may file an appeal either by placing the Resident Grievance Form in the Unit's grievance lock box or informing the Unit Manager.

c. The Unit Manager records the outcome of each grievance and notes on the grievance form whether the grievance was satisfactorily resolved or whether the resident appealed the grievance decision.

d. If the decision is appealed, the grievance is forwarded to the Deputy Superintendent for Level II review.

e. The resident, family member assisting the resident, the Resident Grievance Liaison or staff assisting the resident receives a copy of the completed form.

l. Level II – Administrative Level

1. The Deputy Superintendent meets with the Resident Grievance Liaison or staff assisting the resident, the Unit Manager, and the aggrieved resident within seven (7) business days of the receipt of the appeal. Any family member assisting the resident is informed of and may attend this meeting.

2. The Deputy Superintendent discusses the grievance with the parties enumerated in paragraph (I)(1) to resolve the matter.

3. If the grievance cannot be resolved, the Deputy Superintendent makes and documents a decision on the Resident Grievance Form within five business (5) days of the meeting.

4. A copy of the Deputy Superintendent's decision is forwarded to the resident, any family member assisting the resident and the Resident Grievance Liaison or staff assisting the resident.

5. If the aggrieved resident is not satisfied with the decision of the Deputy Superintendent, the resident, a family member who is assisting the resident in the grievance procedure, the Resident Grievance Liaison, or the staff assisting the resident files an appeal in the Unit's grievance lock box.

a. The Unit Manager forwards the appeal to the Deputy Superintendent within one (1) business day of receipt.

b. The Deputy Superintendent forwards the appeal to the Office of

the Child Advocate for review within five (5) business days of receiving notice that the resident requests a Level III review.

J. Level III – Third Party Review

1. The Office of the Child Advocate (OCA) meets with the Unit Manager, the Deputy Superintendent, the aggrieved resident, the Resident Grievance Liaison or staff assisting the resident within ten (10) days of receiving the Level III review request.
2. Any family member assisting the resident in the process is informed of and may attend this meeting.
3. The OCA submits a written decision, which includes a recommendation for disposition of the grievance, to the Superintendent on the Resident Grievance Form no later than ten (10) days after his/her review.
4. Within seven (7) days of receipt of the OCA recommendation, the Superintendent issues a decision on the back of the Resident Grievance Form.

K. Level IV – Superintendent Review

1. If the Superintendent does not adopt the recommendation of the Advocate, he/she includes a statement explaining his or her decision to reject said recommendation.
2. The Superintendent considers whether the implementation of the recommendation would:
   a. constitute a violation of law or promulgated policy;
   b. create a security breach;
   c. result in physical danger to any person;
   d. require expenditure of funds not reasonably available; or,
   e. be detrimental to the public or the proper and effective accomplishment of the duties of the Division in the judgment of the Superintendent.
3. The Superintendent forwards a copy of his or her decision to the OCA, the Deputy Superintendent, the Unit Manager, the aggrieved resident, any family member who assisted the resident, and the Resident Grievance Liaison or staff assisting the resident.
4. If the Superintendent sustains the recommendations of the OCA, the Unit Manager implements the recommendation in accordance with the directions of the Superintendent.

L. Emergency Grievance Process

1. A resident may file an emergency grievance in the event of risk of serious bodily injury, possible breach of security, or the immediacy of an issue that cannot be addressed in a timely manner through the normal grievance process.
2. Any resident grievance related to health care is deemed a potential emergency; determination of emergency status is made in conformance with paragraph 3 b, below.
3. A resident may file a Resident Grievance Form with any staff.
   a. An oral request by a resident to use the emergency grievance procedure is sufficient to initiate the process.

b. Staff receiving a Resident Grievance Form or oral request immediately notifies the Master Control Center (MCC). The MCC notifies the Superintendent or designee who determines whether the grievance constitutes an emergency.

c. If the emergency grievance process is commenced orally, the staff assists the resident in completing the Resident Grievance Form.

4. If the grievance constitutes an emergency, the Superintendent or designee immediately takes any corrective measures necessary to resolve the grievance, including preventing a risk of serious bodily injury or breach of security.

a. The Superintendent or designee immediately notifies the Unit Manager of the incident and any actions taken to resolve the grievance.

b. The Unit Manager meets with the resident as soon as possible to discuss the incident and ensure satisfactory resolution of the grievance.

5. If the grievance is determined not to constitute an emergency, it is handled through the grievance process beginning at the first level of review. A copy of the Resident Grievance Form is forwarded to the Unit Manager and the aggrieved resident to initiate the process.

6. The parent(s) or guardian(s) of a resident who files an emergency grievance receives a copy of the Resident Grievance Form and is informed of any action
taken as a result of the grievance.

M.A. Paragraphs A – L are consistent with American Correctional Association (ACA) Standards 3-JDF-3D-08 and 3-JTS-3D-09.