RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Rhode Island Training School

RULE IDENTIFIER: ERLID 6977

REGULATION TITLE: Search of a Resident of the RI Training School 1200.0819

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 6977, "Search of a Resident of the RI Training School" 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
- 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 (This rulemaking action)**
- 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.

Search of a Resident of the RI Training School

Rhode Island Department of Children, Youth and Families
Division of Juvenile Correctional Services: RI Training School
Policy: 1200.0819
Effective Date: October 2, 2012 ***Version: 1***

Each resident detained or committed to the RI Training School receives humane treatment at all times with full respect for his/her personal dignity and right to privacy consistent with the need for safety and security within the facility. No resident detained at the Training School is subject to a strip search without a reasonable suspicion to believe that he/she is attempting to conceal a weapon or in the possession of contraband.

Related Procedure

Search of a Resident of the RI Training School

Related Policy

Administrator on Call
Unusual Incident Report

Use of Physical Force or Corporal Punishment
Preserving and Protecting Evidence

Searches for Contraband

Search of a Resident of the RI Training School

Procedure from Policy 1200.0819: Search of a Resident of the RI Training School

A. When any resident is searched, his/her dignity and rights must be maintained.
   1. In conformance with DCYF Policy 1200.1207, Use of Physical Force or Corporal Punishment, staff avoid unnecessary physical contact or unnecessary force with residents at all times.
   2. Searches are conducted in a manner that guarantees the preservation of evidence in conformance with DCYF Policy 1200.0835, Preserving and Protecting Evidence.
   3. If the resident is not compliant with a search, staff contact supervisory personnel including the Unit Manager or the late duty Unit Manager. If neither Unit Manager is available, staff contact the Master Control Center (MCC). The MCC contacts the Administrator on call in conformance with DCYF Policy 1200.0004, Administrator on Call.

B. Searches of residents are always conducted in strict conformance to departmental training and may include:
   1. Pat Down Search
   2. Search utilizing electronic means included hand held or stationary metal detectors
   3. Search upon detainment
   4. Strip Search

C. Staff routinely conduct Pat Down Searches to prevent the flow of any contraband in the facility.

D. Staff utilize electronic hand held or stationary metal detectors to search residents whenever residents may have access to metal objects.

E. Upon detainment, the resident surrenders personal clothing and personal effects to staff.
   1. Staff ensure that the new resident is not on camera when disrobing. Staff stand in clear view of the camera while the resident disrobes.
   2. Staff thoroughly examine the resident's clothing, including shoes, paying special attention to linings and hems.

F. Strip Search:
   1. No resident is subject to a strip search as harassment or for the purpose of punishment or discipline.
   2. No resident is subject to a strip search upon detainment without an individualized determination that there is a reasonable suspicion based on specific and articulated facts to believe that he/she is concealing a weapon or possesses contraband. Reasonable suspicion may be based upon, but is not limited to the following:
      a. Nature of the offense: violent delinquent offenses and drug possession offenses which provoke suspicion that the resident is

concealing a weapon or contraband.

b. Appearance and demeanor: a resident presents an unusual and inordinately nervous demeanor, conducts himself/herself in a manner that suggests he/she is attempting to conceal something or appears to be under the influence of any narcotic drug or alcohol or otherwise acts in a suspicious manner.

c. Circumstances surrounding the arrest and apprehension: including the nature of any charges brought against the individuals with whom the resident was associating and degree of resistance offered at the time of this arrest.

d. The resident's prior record: a lengthy juvenile record, particularly for crimes of violence and narcotic offense, possession and/or use of firearms or other deadly weapons; and prior involvement in illegal drugs.

e. The resident's history at the Training School: a resident has been the subject of prior institutional discipline for the possession of weapons or other contraband or repeated, violent acts against staff and/or other residents.

f. The discovery of evidence of contraband or a weapon in plain view or in the course of a Pat Down or Electronic Search or Search upon Detainment.

g. When staff believe that there is reasonable suspicion, the resident is separated from other residents while approval of the Unit Manager or the late duty Unit Manager is sought.

i. If neither Unit Manager is available, staff contact the MCC. The MCC contacts the Administrator on Call in conformance with DCYF Policy 1200.0004, Administrator on Call.

ii. In conformance with DCYF Policy 1200.0827, Unusual Incident Report, Staff completes an unusual incident report to clearly define the basis for the suspicion.

3. An adjudicated or detained resident may be subject to a strip search following visitation or return from an off ground transport only if an individualized, reasonable suspicion based on specific and articulated facts exists that he/she is concealing a weapon or possesses contraband.

i. When staff believe that there is reasonable suspicion, the resident is separated from other residents while approval of the Unit Manager or the late duty Unit Manager is sought.

ii. If neither Unit Manager is available, staff contact the MCC. The MCC contacts the Administrator on Call in conformance with DCYF Policy 1200.0004, Administrator on Call.

iii. In conformance with DCYF Policy 1200.0827, Unusual Incident Report, Staff completes an unusual incident report to clearly define the basis for the reasonable suspicion.

G. Any strip search authorized in accordance with paragraph F is conducted as follows:

1. A thorough pat down search and metal detection precedes the strip search.
2. A strip search is always conducted by staff of the same gender as the resident.
3. Staff always conduct the search in a private place (one resident at a time) and in a professional manner that recognizes the human dignity of the resident.
4. Because strip searches are humiliating experiences and may trigger severe reactions, especially from youth with histories of abuse or disabilities, all strip searches are conducted in a manner that minimizes unnecessary distress to the resident.
    a. If a resident to be strip searched demonstrates signs of significant distress or trauma, Staff seek guidance from the Unit Manager or the late duty Unit Manager before proceeding.
    b. If a resident is known to have a history of physical or sexual abuse or other trauma, every effort is made to have the strip search conducted by RITS medical personnel.
    c. If neither Unit Manager is available, staff contact the MCC. The MCC contacts the Administrator on Call in conformance with DCYF Policy 1200.0004, Administrator on Call.
5. Staff ensure that the resident is not on camera during the search. Staff stand in clear view of the camera during the search.
6. If it is not possible to position staff or the resident as described in paragraph G 3, staff search the resident in the presence of another staff. Both staff are of the same gender as the resident.
7. The resident is asked to:
    a. Place personal items in a separate pile.
    b. Remove all clothing.
    c. Raise his/her arms and slowly make a complete turn.
    d. Present soles of his/her feet to be examined.
    e. Run his/her hands through his/her hair, shaking out any loose items
    f. Open his/her mouth and rotate his/her tongue.
    g. Spread his/her buttocks
    h. Lift his/her private parts.
    i. Dress immediately after the search is ended.

H. If contraband is discovered in any search, staff conducting the search complete an Unusual Incident Report in conformance with DCYF Policy 1200.0827, Unusual Incident Report, and notify his/her supervisor or MCC immediately. Staff conduct all activities in conformance with DCYF Policy 1200.0821, Searches for Contraband.

I.A. Any manual or instrument inspection of a resident's body cavities is conducted only by medical personnel with prior approval of the Superintendent. Staff notify parents or guardians if a resident is subject to a physical body cavity search.