RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Children, Youth and Families

DIVISION: Rhode Island Training School

RULE IDENTIFIER: ERLID 7256

REGULATION TITLE: Administrative Classification to Restrictive Status 1200.1308

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 7256, "Administrative Classification to Restrictive Status" 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 (This rulemaking action)**
- 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 Equipment1200.0838 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 Checks1200.0839 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 Juveniles1200.0010 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 Radios1200.0708 ERLID: 6343

- Post Assignments1200.0847 ERLID: 6614
- Protecting and Preserving Evidence1200.0835 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
- 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.

1.16.1 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.

Administrative Classification to Restrictive Status

Rhode Island Department of Children, Youth and Families
Division of Juvenile Correctional Services: RI Training School
Policy: 1200.1308
Effective Date: May 17, 2010 Revised Date: July 10, 2013 Version: 2

Restrictive status is a status of limited duration reserved for residents who cannot control their assaultive behavior or who present a danger to themselves or others. No resident is administratively classified to restrictive status unless he/she has been found guilty of an institutional infraction involving contraband, assaultive behavior or unauthorized absence from the Training School. For other serious infractions, such as destruction of property or larceny, other discipline procedures must have been tried and failed prior to classification to restrictive status. Classification to Restrictive Status is approved by the Superintendent or designee.

Related Procedure

Administrative Classification to Restrictive Status

Related Policy

Incentive System - Points and Levels
General Discipline
Discipline for Academic and Vocational
Classes Behavior Report
Major Discipline Review
Lock Up
Resident Handbook

Administrative Classification to Restrictive Status

Procedure from Policy 1200.1308: Administrative Classification to Restrictive Status

A. Administrative Classification to Restrictive Status is approved by the Superintendent or designee.

B. In the event that the Major Discipline Reviewer makes a recommendation to place a resident on Restrictive Status, he/she contacts the Superintendent or designee for approval.

C. Decisions to place a resident on Restrictive Status are documented on forms designed for this purpose, are kept in the resident's permanent file, and include:
1. Name of the resident;
2. Date of placement on Restrictive Status;
3. Name of staff recommending Restrictive Status;
4. Reason(s) for placement on Restrictive Status, including a description of behavior
5. Signed authorization of the Superintendent or designee; and
6. Staff authorizing release from Restrictive Status as well as time and date of release.

D. Residents maintain all rights conferred under the Federal Consent Decree during the period they are placed on Restrictive Status:
1. Residents may attend school in a designated area.
2. Residents are provided with meals within their housing unit.
3. Residents may participate in alternative gym and recreational activities as long as such activities comply with the physical education and daily exercise requirements in the Federal Consent Decree.
4. While on Restrictive Status, the clinical social worker from the sending unit will continue to serve as the resident's primary clinical social worker.

E. Weekly review is required while a resident is on Restrictive Status:
1. The Major Disciplinary Reviewer, the Unit Manager, the resident's clinical social worker, the educational social worker and any other appropriate personnel meet as a team at least weekly to assess the resident's conduct, discuss necessary clinical interventions, and any changes to the resident's Service Plan (Individual Treatment Plan) necessary to address his/her behavioral issues.
2. In the event one team member is unavailable to meet, the Major Discipline Reviewer consults with that team members prior to conducting the review meeting.
3. The Team considers the resident's progress while on Restrictive Status and evaluates whether there is justification for keeping the resident on Restrictive Status.
4. This evaluation includes whether the resident continues to be a risk to self or others.
5. The Team considers the number of points earned by the resident as well as the resident's ability to take responsibility for his/her actions. A resident's attainment of a score of seventy (70) points as a part of the

Incentive System - Points and Levels is considered a positive factor in the decision to release the resident from Restrictive Status.

6. The team makes a written summary of its weekly review. If the team decides that continued Restrictive Status is necessary, the written summary clearly states the rationale for the decision. The written report is placed in the resident's permanent file. A copy of the report is forwarded to the Superintendent for immediate review.

7. If the team determines that continued placement on restrictive status is no longer necessary, the resident is discharged from Restrictive Status at a time and date designated by the team.

8. The resident shall be placed in a residential unit as deemed appropriate by the resident's treatment team.

F. If a resident's placement on Restrictive Status exceeds fourteen (14) days, a full review of the treatment needs of the resident shall be promptly commenced, including a review of the clinical interventions proposed for the resident by the Clinical Director. The Superintendent's written approval shall be required for any placement on restrictive status that exceeds fourteen (14) days.

G. Paragraphs A - F are consistent with American Correctional Association Standards 3-JDF-3C-02; 3-JTS-3C-02; 3-JDF-3C-06; 3-JTS-3C-06; 3-JDF-3C-07; 3-JTS-3C-07; 3-JDF-3C-08; 3-JTS-3C-08;3-JDF-3C-10; 3-JTS-3C-10; 3-JDF-3C-11; 3-JTS-3C-11; 3-JDF-3C-12; 3-JTS-3C-12; 3-JDF-3C-13; 3-JTS-3C-13; 3-JDF-3C-14; 3-JTS-3C-14; 3-JDF-3C-15; 3-JTS-3C-15; 3-JDF-3C-16; 3-JTS-3C-16; 3-JDF-3C-17; 3-JTS-3C-17; 3-JDF-3C-18; 3-JTS-3C-18; 3-JDF-3C-19; 3-JTS-3C-19; 3-JDF-3C-20; 3-JTS-3C-20; 3-JDF-3C-21; 3-JTS-3C-21; 3-JTS-3C-22; 3-JTS-3C-23; 3-JTS-3C-24; 3-JDF-3E-01; 3-JTS-3E-01; 3-JDF-3E-02; 3-JTS-3E-02; 3-JDF-3E-03; 3-JTS-3E-03; 3-JDF-3E-04; 3-JTS-3E-04; 3-JDF-3E-05 and 3-JTS-3E-05.