

# ***Proposed DCYF Rhode Island Training School Rule and Associated Repeals***

*Released March 1, 2018*

Comments - Elizabeth Lowenhaupt, MD 3-18-18

## **My main questions have to do with the process and policy implications for this particular change**

- What does it mean if no longer a regulation (“repeal”) if NOT included in the revised regulation? It is unclear how the decision was made which things to include in detail in this proposed rule and which to remove either partially or completely (e.g. Clinical Services, Lock Up, Restrictive Status, Resident Grievance Procedure, Resident Search) – previous procedure has now been included in the “rule” which is much more detailed than previous, but many others completely removed and no mention of some key topics such as emergency procedures, suicide prevention, etc.).
- Is there a statutory difference between the two categories that is relevant to advocacy/child protection concerns?
- Does this mean there is no longer any public oversight or formal commitment to those areas removed?

*Per Sarah St. Jacques (DCYF Principal Human Services Policy & System) - “all of the repealed policies will remain, but as Department Operating Procedure instead of promulgated rule. Technically these documents do not contain regulatory language for the public and instead are staff procedure. All of the Department Operating Procedures will have the same titles (Suicide & Special Watch, Fifteen Minute Checks etc.) and will be accessible in the policy section of our DCYF website when the promulgation process is completed, so approx. in a couple of months*

## **1) These rules are NOT included in new Rules**

*\*seems like potential concern to remove based on response to question above*

*\*\*seems like potential concern AND particular area of concern for medical/psychiatric consultants*

*\*Administrative Responsibility- outlines qualifications, roles, responsibilities of Superintendent*

*\*Administrator on Call - outlines process and responsibilities for AOC*

\*Case transfers between the RITS and FSU or Juvenile Probation - reviews procedure for transfers to and from the Training School

Court disposition - vague procedure that there will be communication with courts

\*\*Culinary equipment - outlines safety procedures for kitchen staff and culinary classroom in terms of access to potentially dangerous equipment (knives, etc.)

Daily census report - outlines procedure for creating daily census report

\*Discipline for Academic & Vocational Classes - includes procedure for discipline in classroom setting AND outlines how education provided to youth on disciplinary status

\*\*Facility Management and Environmental Safety - provides an overview of requirements in terms of maintenance and environmental safety (OSHA, etc.) including power, locks, food, etc.

\*\*Fifteen Minute Room Checks - outlines procedure for monitoring youth with 15 minute checks - includes how this must be done and also documented

\*Incentive System - Points - reviews system for incentives (points, levels, etc.) at the RITS - references Resident Handbook and "subject to change" for details **(while makes sense for details to be easily adjusted through department operating procedure, if plan is to continue to use this type of system it also makes sense to include some standardized overview of the approach - otherwise I worry that this system will be even less consistent than it is given the wide variety in individual and groups of staff as well as units across multiple settings)**

\*Lawful Detention or Confinement of Juveniles - summarizes who can or can't be detained and what the procedure is for doing so - seems like a big one to remove completely - unless it's covered adequately in RI General Law (RIGL) 14-1-11 and therefore not necessary to have in formal DCYF regulation

\*Legal Assistance - outlines DCYF/RITS responsibility to ensure attorney provided - referenced throughout new rules the role of attorney in various RITS situations, but nothing specifically about role in obtaining an attorney - perhaps this responsibility instead should lie with Family Court or is outlined in RIGL somewhere instead of belonging to RITS administration?

Legal Establishment - outlines the overall role of the Training School - seems to make sense instead as covered in RIGL 42-72-17.2

\*Master Control Center – outlines the role of the MCC in terms of safety and security at the RITS

Movement of Residents on Grounds – vague overview of safety in moving residents around the campus

\*Portable radios – outlines use of these in policy, then detailed further in procedure – seems important given safety concerns to incorporate some mention of emergency communication (whether through MCC, portable radios, emergency protocol, etc.)

\*Post Assignments – summarizes overall role of Juvenile Program Workers (direct line staff at the RITS) followed by more detailed procedure – seems this could make sense in procedures but perhaps with some reference to overall structure of RITS staffing in new “rule”?

Protecting and preserving Evidence – when crimes committed on campus, evidence will be preserved

Resident Personal Property – summarizes that residents can’t have things in their rooms (overview) with more detailed procedure about what happens at time of detention to their personal property

Resident Room Inspections – states that rooms will be inspected for cleanliness on a daily basis

RITS Personnel Administration – summary that staff is trained and qualified, collective bargaining followed – seems referenced in initial “general administration” section to some extent

\*\*Safety and Emergency Procedures at the RITS – regulation requires RITS to maintain procedures and protocols, then more detailed procedures follow – perhaps this is being considered a given without needing to be in new “rule”? I don’t see anything in new “rule” about **emergency procedure/protocols** for fire, environmental concern, violence or suicidality concern, medical emergency, etc. – could obviously be quite broad but would imagine something about this should remain in formal policy

\*\*Suicide Prevention and Special Watches – old rule mentions need to monitor and respond to suicide risk, with more detailed procedure – new rule does not include this at all except as a sub-section of “Use of Restraint” section 1.22 D – may also fit in that section relating to use of “isolation, mechanical restraints, suicide gowns and or blankets, or removal of normal items of clothing and bedding” that must be ordered by mental health clinician **HOWEVER would strongly recommend something be included**

**in new regulation about how this is addressed at the RITS (including training for staff, screening for patients' risk at intake, access to psychiatry when needed, special watch for safety, etc.)**

\*\*Tool and Equipment Control at the RITS – see above, same comments as for Culinary Equipment

\*\*Unusual Incident Report – old policy outlines in detail the procedure for communication around specific incidents with residents relating to restraint or other safety concerns to “Superintendent or designee” – probably could be done with less detail in new policy but imagine this would be important to continue to include broadly in the new “rule”, perhaps with a broader process for notification (e.g. “relevant administrators” – for example, I would think the Clinical Director should be notified by policy or at least procedure regarding certain incidents)

Use of State Vehicles – summarizes that vehicles will be used appropriately, followed by more specific procedure

## **2) The following ARE included in the new proposed rule but I have comments:**

Clinical Services at the RITS – included in new proposed rule – **see comments:**

- *This section as written mostly refers to contracted medical/dental services – not much about behavioral health and almost nothing about RITS SW's and RN's – unclear why this wouldn't just be outlined/summarized in the new “rule” with a department operating procedure that includes all of the details that are instead included here.*
- 1.10A1 – would request that Nurse Practitioner included in this “final judgments regarding medical care” (with understanding that responsible physician in our setting ultimately responsible for NP practice overall per Lifespan rules – RI laws do NOT require NP's to practice under MD supervision – there is some discussion about this at the national level in terms of corrections in particular – could include something about “responsible physician” if DCYF feels strongly that a physician should be involved at some level in addition to NP's)
- 1.10A2 – with the understanding that this may be off-site during off-hours (contract does not include 24-7 on-site emergency services)
- 1.10B – how define “serious illness, injury, or death”?
- 1.10D – topic of consent has been discussed at length in discussions with current consulting team, including input from Lifespan Risk Management – this section is in direct conflict with the JDAI standards

and contract stipulations that physical and dental exam be conducted within a certain period of time as consent is often not available that quickly – would request clarification of consent process and whether routine screening/assessment/care (not emergency, which is clearly ok) requires consent

- 1.10D1 – RI state law allows patients 16+ to consent for “routine emergency” – not sure how we would define that
- 1.10D2 – with understanding that this may include off-site care during hours when contract does not cover on-site medical/dental staff
- 1.10D2b – I don’t understand what this means
- 1.10D2c – would request to include nurse practitioner and dental hygienist OR make this more general (e.g. “qualified health professional” or “appropriate health care provider”)

Education Program at the RITS – comprehensive overview of Education Program – summarized in new rules – would defer to Education colleagues to determine possible relevance of proposed change – seems reasonable to include broad outline of requirements here, with more detailed operating procedure document as needed that would require less oversight to evolve over time – specifically wonder about the following:

- 1.9A3b2 – “utilizes a resident’s response to scientific, research-based intervention process” – I do not know what this means and whether it includes school psychology consultation
- 1.9A3c – “necessary evaluations are conducted” – again, I trust Education department to make these determinations – we have sometimes helped with clinical/cognitive psychological assessment from our consulting team (beyond scope of formal contract)

Escape – comprehensive procedure for escape – seems reasonable to include summary in new rules – **would recommend including (in one or both of the two places) some kind of notification/communication around potential urgent medical/psychiatric needs of individual who has escaped**

Lock Up – brief policy followed by procedure about this now changes to include full procedure in new rule (unclear why as this limits ability to change details) – if going to be included, would consider the following (1.20.4):

- G – How can “clinical social worker or other clinical staff” see the resident at least once per day while in lock up (no clinical staff on weekends – who else counts? RN? UM? Admin?)
- I – what about safety concerns for self-harm for writing materials, “sufficient clothing”, “clean and sufficient bedding, personal hygiene supplies”
- I – does this need to be more or less specific, or reference safety concerns that might prevent someone from participating in group,

coming up to clinic, etc. (these services should be provided by can't always be done the same way as usual during lock up)

- J - what about off-site scheduled medical appointments?
- What about relationship of lock up to 1:1 constant for suicide/safety/self-injury? (recent practice has been that lock up starts AFTER 1:1 situation resolved)
- What about any reference to combined lock up/restrictive AND suicidal/self-injury (new procedure we came up with last year for safety)

Major discipline review - brief policy with overview followed by multiple procedures to cover different aspects of this (past) now all included in new rule - same as above, unclear why as now more difficult to make changes to details - the following comments apply to new rule (1.20.1):

- B8 - "failure to obey an lawful staff command (including refusal to continue participation in any court mandated treatment rehabilitation, or training programs that are established in the resident's Service Plan)" - who and how is this determined and at what point does treatment resistance/non-compliance become a major discipline (subjective like this - often treatment team discusses at length for "treatment" component to this - if disagreement, who decides?)
- F - "If the Superintendent determines the resident is at risk for imminent harm to him/herself or others" - is there a clinical assessment component to this? How is safety maintained while resident "pending board"? Does the process get delayed if he/she is still on 1:1 constant observation as per new protocol we've implemented this past year?

Notice to Superintendent - (new structure for past year+ has not included a superintendent - does this refer then to Executive Director of corrections or AOC or Deputy superintendent?) **what definition is being used for "suicide attempt"** - this is a broad term that could range from very minor to very significant safety concerns - who determines if something is a "suicide attempt"? is that a clinical or staff decision?

Resident Grievance Procedure - overview of grievance process as policy followed by more detailed procedure - now entire detailed procedure included in new "rule" - would wonder about K2 - "any resident grievance related to health care is deemed a potential emergency" - imagine it's better to err on the side of caution and then the Superintendent determines whether or not this constitutes an emergency, would include mental health

Search of a Resident of the RITS - previous broad policy plus more detailed procedures now written with full details into new "rule" (with updates to incorporate PREA language)

Searches for Contraband – summarizes when and how searches may be done, also references resident manual for updated list of what counts as contraband, more detailed procedure to review how searches take place (new “rule” DOES include details about how searches for contraband are conducted through searches of the residents after visits, etc. – I think the old rule was referencing searches of room and property only – probably not necessary to include)

Transportation of Residents Off Grounds – old rule summarizes importance of planning for residents going off grounds, with more detailed procedures to follow – new rule includes some detail about this under “use of restraint” with respect to mechanical restraints used to transport residents off grounds, including a VERY detailed overview of pregnant females that seems odd to include in regulation with this degree of detail (I’m not really sure the way this **section 1.22 B 2 is written makes sense for pregnant/postpartum girls** and not sure if/how staff would always know this information)

Use of Physical Force/Corporal Punishment – old policy was broad statement that this would not be used, followed by more detailed procedure – seems details from procedure now included in new “rule” – would wonder about 1.23 C4 “Residents involved in an incident receive immediate physical examination and treatment” – this language might be something more broad like “immediate medical care” or “immediate nursing assessment and treatment” because a “physical examination” typically refers to a more formal intervention typically done by an MD/NP in a specific setting

Use of Restraint at the RITS – old policy was broad statement, followed by more detailed procedure – seems details from procedure now included in new “rule” – see above for comments relating to pregnant/postpartum transport (1.22 B2), also suicide prevention(1.22 D) – also have the following comments:

- 1.22 C 9 – missing
- 1.22 C 8 & 10 – how is staff trained to recognize physical condition and how manage this? (presumably included in “Safe Crisis Management” restraint training)
- 1.22 C 11 – what if no nurse on-site (3<sup>rd</sup> shift)?
- 1.22 C13 – what degree of resident/staff injury requires medical notification? Who is notified? (nurse? On-call MD/NP?)
- 1.22 C14 – how define “monitored continuously by staff”? using medical equipment (e.g. pulse ox) – assume not – constant/1:1 staff supervision until released? In the room?
- 1.22 C16 – how serious an injury? Who notifies the parents? Who else notified? (other guardians, child advocate, child abuse hotline, etc.)

- 1.22 D - see above - this is probably ok here too, but should NOT replace overall "Suicide Prevention and Special Watch" policy

**3) The following ARE included in the new proposed rule and seem reasonable as summarized in new rule with department operating procedure (less structured than formal regs) as back-up for details:**

Facility capacity  
Food service  
General discipline  
Juvenile and Adult Offender Interactions  
Mission, Philosophy, Goals, and Purpose  
Resident Grievance Procedure  
Resident Handbook  
Resident Telephone Calls  
Tours of the RITS

**4) Associated/mentioned RI General Laws:**

**§ 14-1-11. Authorizing and filing petition.**

(a) The filing of the petition constitutes assumption of jurisdiction over the child. Filing shall take place upon authorization by the intake department upon completion of its procedures pursuant to Rule 3 of the Rules of Juvenile Proceedings, upon authorization by a justice of the family court pursuant to Rule 4 of the Rules of Juvenile Proceedings, or immediately upon appearance of the child before the court following emergency detention, unless the court otherwise orders.

(b) In the event that a petition is filed, any appropriate person having knowledge, information, or belief of the material facts that appear to warrant a petition may be a petitioner under this chapter and is not required to give recognizance or surety for costs. The petition shall be directed to the family court of the state of Rhode Island, setting forth, that in the opinion of the petitioner the child is a delinquent, wayward, dependent, or neglected child, or otherwise comes within the provisions of this chapter, and requires the care and protection of the state, and all petitions, with the exception of those requesting the arrest and/or detention of any person, shall be sworn

to before a licensed notary public. Those exceptions, as stated above, shall be sworn to by either a justice or clerk of the family court.

(c) No child shall be ordered detained at the training school unless there is pending against the child a petition setting forth facts that would constitute a felony or misdemeanor if committed by an adult or that alleges a violation of a valid court order, or unless the child is adjudged in contempt of court. Provided, the family court shall not detain a juvenile at the training school for the violation of a valid court order, until a hearing is conducted and it is determined that the child intentionally violated the order, and the violation involves the failure of the child to engage in services or activities intended to protect or promote the child's health or safety, or the health or safety of any other person or persons.

In the event a child is ordered to be detained at the training school, the family court shall conduct a probable cause hearing within five (5) calendar days of the child's detention (exclusive of weekends and/or holidays). At the conclusion of the probable cause hearing, the court shall order the release of the child from the training school unless the court finds that the child poses a substantial risk of harm to self or to others.

Nothing in this section prohibits the temporary commitment by the family court to the department of children, youth and families for placement of a child in a specific facility or program other than the training school for youth.

(d) The department of children, youth and families, in consultation with law enforcement agencies, the attorney general, the office of the public defender, and the family court, shall develop and implement a detention risk assessment instrument by no later than July 1, 2009.

(e) No child shall be placed in detention at the training school unless a determination is made by the family court that the child poses a substantial risk of harm to self or to others.

(f) No petition alleging that a child is wayward by virtue of disobedient behavior may be filed except upon proof offered in the petition that the child has been subjected to a needs assessment conducted at a facility approved by the director of the department of children, youth and families and that a treatment plan resulting from that assessment has been unsuccessful.

(g) The director of the department of children, youth and families is authorized and directed to promulgate any rules and regulations that it deems necessary to implement the provisions and purposes of this section.

**§ 42-72-17.2. Limits to population at the youth development center and the youth assessment center.**

(a) The Rhode Island training school shall consist of a youth development center, a youth assessment center and a female correctional treatment facility. The youth development center and the youth assessment center shall not exceed a maximum daily capacity of one hundred forty-eight (148) detained and/or adjudicated males. The female correctional treatment facility shall not exceed a maximum daily capacity of twelve (12) detained and/or adjudicated females.

(b) The director of the department of children, youth and families shall notify the chief judge of the family court whenever the census of the detained and/or adjudicated male youth or of the detained and/or adjudicated female youth approaches ninety-five percent (95%) of maximum population capacity. The training school superintendent or his or her designee shall thereupon refer to the family court, for consideration for release from the training school, those youth who do not pose a credible risk of harm to self or others or for whom there is no substantial risk that the youth may leave the jurisdiction of the state.

(c) Following a hearing, the family court shall authorize the release of such youth from the training school, unless the court finds that the child:

- (1) Poses a substantial risk of harm to self; or
- (2) Poses a substantial risk of harm to others; or
- (3) Has demonstrated that he or she may leave the jurisdiction of the court.

Provided, however, any child who has been certified and adjudicated pursuant to §§ 14-1-7.2 and 14-1-7.3, may not be released prior to the end of his or her sentence, except as authorized under § 14-1-42 of this chapter.

**RI GL § 14-1-36.2. Assignment of custody to the director of the department of children, youth and families.**

In the event the court assigns custody of a child to the director of the department of

children, youth and families pursuant to §§ 14-1-11, 14-1-11.1, 14-1-27, 14-1-32, 14-1-34, 14-1-36, 14-1-36.1, 40-11-7.1, or 40-11-12, the court shall authorize the provision of suitable treatment, rehabilitation and care for each child in the least restrictive and community-based setting.