

Disability Rights IOWA

Law Center for Protection and Advocacy™

TO: Charles Palmer, Director, Iowa Department of Human Services (DHS)
Richard Schultz, Division Administrator of Mental Health and Disability Services, DHS
Gretchen Kraemer, J.D., Assistant Attorney General

FROM: Nathan Kirstein, J.D., and Jane Hudson, J.D., Disability Rights Iowa

DATE: July 18, 2016

RE: Follow-up – Regulations Governing Restraint and Seclusion for the BSTS

This memo is written in preparation for tomorrow's meeting with DHS regarding regulations governing restraint and seclusion for the Boys State Training School (BSTS):

1) **There is a lack of State Law that governs the use of restraint and seclusion at the Boys State Training School.**

Iowa Code Chapter 218 does not provide any requirements for regulations on the use of restraint or seclusion. Section 281, Chapter 103 of the Iowa Administrative Code does not provide any regulations for the use of restraint or seclusion. Neither of these sources of Iowa law require the BSTS to be accredited or licensed. The BSTS is the only facility in the State of Iowa that houses youth adjudicated delinquent that does not have any state laws governing the use of restraint or seclusion or any licensure or accreditation requirements.

2) **The ACA standards on Restraint and Seclusion are not enforceable.**

The BSTS is voluntarily accredited by the American Correctional Associations (ACA). The Performance-Based Standards for Juvenile Correctional Facilities only have mandatory standards for "four/five point restraints", "involuntary administration of medicine", and "medical restraints" in regards to the use of restraint and seclusion. The remainder of the standards governing the use of restraint and seclusion (including room confinement and special programming) are non-mandatory. Therefore, there is no threat of revocation of accreditation if the BSTS fails to follow the non-mandatory standards.

3) **The BSTS policy on the use of room confinement for minor rule violations is in conflict with the ACA standards.**

According to the BSTS Policy on Disciplinary Segregation (5B-04), a student can be placed in segregation for minor rule violations such as wasting food, inappropriate language, and insubordination for two hours and a student can be placed in segregation for four hours for minor rule violations such as lying, failure to comply, and interference with staff. This is in conflict with the ACA standards that do not allow room restriction to be used for more than 60 minutes for minor rule violations. (4-JCF-38-06). Major rule violations are defined by the ACA as those that impact the safety of the student, the peers, or the security of the environment. (4-JCF-3B-10). According to the ACA, all other rule violations are considered minor. (4-JCF-38-04).

4) **The BSTS policy on the use of room confinement for major rule violations is in conflict with the ACA standards.**

According to the BSTS Policy on Disciplinary Segregation (5B-04), a student can be placed in segregation for up to 2 days for rule violations such as threat of assault (minor) and up to 4 days for threat of assault major. This is an example of many other listed rule infractions in the State

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Training School policy that are attached to an automatic multi-day stay in segregation. Although some of these rule violations may fit the ACA definition of a major rule violations, the ACA only allows segregation for up to 24 hours without further review by an administrator not involved in the incident. (4-JCF-3B-10). Therefore, this policy is in conflict with the ACA standards.

5) **The BSTS policy on the use of multiple day room confinement as special management is in conflict with the ACA standards.**

According to the ACA, a student may be removed from the general population if he threatens the secure and orderly management of the facility, however an individual program plan must be designed for that student, there must be a log kept regarding the 15-minute staff checks, and the confinement cannot exceed 5 days. The BSTS Policy on Disciplinary Segregation (5B-04) and the Policy on Specialized Programs (5A-07) does not provide for this type of a procedure which causes the policies to be in conflict with the ACA standards.

6) **BSTS violates the ACA standards in regards to the use of room confinement in practice.**

According to DRI's review of the BSTS Disciplinary Segregation Unit (DSU) records for September 2014 to March 2015, the DSU was used 62% of the time for minor rule violations. Therefore, both in policy and practice, the State Training School violates the ACA standards cited above. However, since the ACA standards cited above are non-mandatory, there is no issue that arises with accreditation and therefore there is no enforcement of these standards.

7) **BSTS overuses seclusion and this disproportionately impacts students with disabilities.**

According to DRI's review of the BSTS DSU records for September 2014 to March 2014, it was common for a student to spend more than a day in the DSU and it was common for students with high mental health needs to spend multiple days in the DSU on multiple occasions.

8) **The JDAI Juvenile Detention Standards limit the use of seclusion based on the safety of the student and staff.**

According to the JDAI Juvenile Detention Facility Standards, room confinement should only be used as a temporary response to behavior that threatens immediate harm to a youth or others. (See standards VII(B)(1)(a)-(b)). Facility policy should require staff to release a youth from room confinement as soon as his behavior no longer poses imminent threat of harm to the youth or others. (See standards VII(B)(1)(c)-(f)). The maximum time allowed for room confinement is 4 hours. (See standards VII(B)(1)).

9) **The JDAI Juvenile Detention Standards prohibit the use of outdated mechanical restraint that have been proven to be harmful to youth.**

According to the JDAI Juvenile Detention Facility Standards, four/five point restraints are prohibited. (See standards VII(A)(3)(g)).

10) **Iowa has already recognized the usefulness of JDAI techniques to reduce the use of detention and increase the options for detention alternatives and other states have used the JDAI Juvenile Detention Standards as basis for their facility regulations.**

JDAI has been used, in conjunction with Annie E. Casey Foundation, to reduce the use of detention and increase alternatives to detention in Black Hawk County, Polk County, and Woodbury County. Also, states such as Missouri, Louisiana, and Mississippi have used the JDAI Juvenile Detention Standards to improve the conditions of confinement for their youth by promulgating regulations based on the JDAI standards.