

3.1 Behavior Management

Introduction

This U.S. Immigration and Customs Enforcement (ICE) Family Residential Standard promotes a safe and secure living environment for residents by establishing a fair and equitable behavior management system, requiring residents to comply with Center rules and regulations, and imposing corrective action when necessary. Residents will be accountable for their behavior through a system designed to encourage positive behavior and interaction with others. Positive behavior will be recognized and rewarded. Negative behavior will be recognized and corrected.

Various terms used in this standard may be defined in ICE Family Residential Standard on *Definitions*.

Program Philosophy

The requirements of this standard must be implemented in accordance with the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes*.

A. Language Access and Disability Requirements

Centers will adhere to the language access and disability laws, regulations, responsibilities, requirements, and laws cited in the ICE Family Residential Standard on *Program Philosophy, Goals, and Expected Outcomes* and the ICE Family Residential Standard on *Disability Identification, Assessment, and Accommodation*. These requirements must be promulgated in all Center policies, practices, and operations and its themes must be fully incorporated into every Center activity. This is of critical importance and will directly impact resident life, health, and safety.

Expected Outcomes

The expected outcomes of this standard are as follows (specific requirements are defined in the Expected Practices section in this standard):

1. Parents/guardians will be responsible for supervising their children and providing parental support in managing their children's behavior.
2. Centers will inform residents of Center rules and regulations, prohibited acts, sanctions that may be imposed, their rights in the Center's behavior management system, and the procedure for appealing any related findings or decisions.
3. Staff will settle minor transgressions informally with and between residents through mutual consent, whenever possible.

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4. Children under 12 years of age will not be referred to an administrative review or the formal behavior management process. Children 12 years of age and older will be presented for administrative review after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.
5. Center staff who have reason to suspect that a resident has engaged in an infraction or who witness an infraction that cannot or should not be resolved informally will prepare a clear, concise, and complete Incident Report.
6. Each Incident Report will be investigated objectively and impartially by a Center investigator.
7. A serious incident that may constitute a criminal act will be referred to the proper law enforcement or investigative agency as appropriate, and the Center's administrative investigation will be suspended pending the outcome of that referral.
8. An Executive Review Panel (ERP) will investigate and adjudicate the serious incident, and may impose sanctions.
9. Residents will be allowed to appeal decisions through a formal appeals process. An Appeals Review Board (ARB) will review those issues that are not resolved by the ERP or that are appealed by the resident.
10. Residents will be afforded a staff representative, upon request, or automatically if the resident is illiterate, has limited English proficiency (LEP), or otherwise needs special assistance at any time during the behavior management process.
11. Actions of the ARB will be reviewed by the Center Administrator, who may concur with the findings and sanctions or modify them.
12. At all steps in the process, any sanctions imposed will be commensurate with the severity of the infraction committed and are intended to encourage positive behavior in the future.
13. All steps of the process will be performed within the required time limits.
14. At all steps of the process, accurate and complete records will be maintained. The resident will receive copies of all reports, exhibits, and other documents considered or generated in the process, except when disclosure of such documents may pose an imminent threat to the safety or security of the Center staff or other residents, or if the document or other evidence is otherwise protected from disclosure.
15. Records related to the incident and subsequent proceeding will be placed in the resident's residential file.
16. No staff member will harass, discipline, punish, or otherwise retaliate against any resident for filing an appeal, complaint, or grievance.
17. Centers will prohibit harsh, cruel, unusual, unnecessary, demeaning, or humiliating punishment.

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18. Centers' range of incentives and sanctions will consider the range of ages and maturity in the program and will be culturally sensitive.
19. Residents will be afforded rights including, but not limited to, the following: the right to protection from abuse; the right to freedom from discrimination; the right to pursue a grievance; the right to correspond with persons or organizations; and the right to due process.
20. At each step of the behavior management process, the resident will be advised in writing of his/her rights in a language he/she understands, and translation or interpretation services will be provided as needed. When a resident has a diagnosed mental illness or mental disability, or demonstrates symptoms of mental illness or mental disability, a mental health professional, preferably the treating clinician, will be consulted to provide input as to the resident's competence to participate in the behavior management process, any impact the resident's mental illness may have had on his or her responsibility for the problematic behavior, and information about any known mitigating factors in regard to the behavior.

Standards Affected

This standard replaces the ICE Family Residential Standard on *Discipline and Behavior Management* dated 12/21/2007.

Expected Practices

The unique nature of residential centers mandates an emphasis on cooperation with residential program parameters and general respect between staff and residents. Center behavior management programs (programs) should rely on communication and counseling to achieve and maintain a positive Center peer culture.

Programs will promote positive behavior.

Staff will be trained in effective behavioral modification techniques.

Programs will be implemented consistently.

Residents will receive information on the program during admission.

Behavioral management strategies will include staff-resident interactions that are proactive and not reactive in nature.

Centers will establish incentive-based reward programs that will be submitted to the Juvenile and Family Residential Management Unit (JFRMU) Chief for approval. The programs should consist of:

- Rewards that are age-specific;
- Group rewards for families; and
- Regular meetings with case managers to discuss the family's progress in meeting program objectives.

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A. Guidelines

Each Center will have an administrative resident behavior management system (referred to herein as “administrative review”) with progressive levels of investigations, reviews, appeals, procedures, and documentation requirements. Centers will develop written policy and procedures that clearly define resident rights and responsibilities. The policy, procedures, and rules will be reviewed annually at a minimum by the Center Administrator.

The resident handbook or local supplement (as appropriate) issued to each resident upon admission will provide notice of the Center’s rules of conduct and prohibited acts, the sanctions imposed for violations of the rules and related severity scale, the behavior management process, and the procedure for appealing findings or decisions of that process. Residents will have the following rights and will receive notice of them in the handbook:

- The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage and harassment;
- The right to freedom from discrimination based on race, religion, national origin, gender, sexual orientation, physical or mental ability, or political beliefs;
- The right to pursue a grievance in accordance with procedures provided in the resident handbook, without fear of retaliation;
- The right to pursue a grievance in accordance with the Family Residential Standard on Grievance System and procedures provided in the resident handbook.
- The right to correspond with persons or organizations, consistent with safe and secure Center operations; and
- The right to due process, including the prompt resolution of a disciplinary matter.

Copies of the rules of conduct, rights, and sanctions that may be imposed will be provided to all residents and posted in the living and activity areas in English, Spanish, and other languages spoken by significant segments of the population with limited English proficiency. Rules will be reviewed at least annually, and updated when necessary.

Rules must be easily understandable by residents and their children. Residents with limited English proficiency (LEP) will receive translation or interpretation services, and residents with disabilities will receive appropriate accommodations in order to meaningfully participate in the investigative, disciplinary, and appeal processes.

Centers will ensure rules are formulated with consideration of the range of resident ages and maturity, and are culturally sensitive.

At all steps in the process, any sanctions imposed will be commensurate with the severity of the infraction committed and intended to encourage the resident to conform with rules and regulations in the future.

Behavior management processes may not be capricious or retaliatory, nor based on race, religion, national origin, gender, sexual orientation, disability, or political beliefs.

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Staff may not impose or allow imposition of the following sanctions: corporal punishment; deprivation of food services, to include use of Nutraloaf or “food loaf”; deprivation of clothing, bedding or items of personal hygiene; deprivation of correspondence privileges; deprivation of legal access and legal materials; or deprivation of indoor or outdoor recreation, unless such activity would create a documented unsafe condition within the Center. Any sanction imposed will be approved by the Center administrator and reviewed by the Field Office Director and JFRMU Chief.

B. Behavior Management Principles and Techniques for Minors

Staff will discuss behavioral expectations with children and their parents/guardians.

Mechanisms will be developed to reinforce positive behaviors that include parental intervention.,

Clinicians will assist parents/guardians and staff in identifying the causes of a child’s negative behavior and in developing appropriate treatment and staff intervention plans.

Children under 12 years of age will not be referred to an administrative review. If the child remains disruptive and continues to disobey established Center rules after all other efforts, including counseling, have been conducted with the family and have proven ineffective, then the parent/guardian may be referred for administrative review.

Children 12 years of age and older will be presented for administrative review after all other efforts, including counseling, have been conducted with the family and have proven ineffective. If the child remains disruptive and continues to disobey established Center rules after Center staff have attempted to reach an informal resolution, then the child and parent/guardian together will be referred for administrative review that includes progressive levels of investigations, reviews, and appeals.

All sanctions recommended and imposed must be explained to the parent/guardian of the affected minor. When a parent is not immediately available to provide guidance to his/her child (such as when the child is in school, monitored care, or recreational activities, etc.), staff will use positive behavioral management techniques consistently to encourage self-esteem, self-control, and self-direction.

Positive behavioral management methods include, but are not limited to, the following:

- Using praise, positive reinforcement, and encouragement of good behavior instead of focusing only on unacceptable behavior;
- Using clear positive statements to remind children of daily expectations;
- Focusing on the rule to learn and the reason for the rule;
- Focusing on solutions that are respectful, reasonable, and related to the problematic behavior, rather than blaming or focusing on consequences;
- Redirecting a child’s attention or behavior using positive statements;
- Giving children acceptable choices or alternatives;
- Using a kind but firm tone when addressing the child;

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- Using brief supervised separation or time away from the group or situation, when appropriate for a child's understanding, age, and development. Best practices suggest that quiet time or time out from the group should be limited to no more than 1 minute per year of a child's chronological or developmental age. However, this timeframe may need to be adjusted for some children as needed. Time out is not appropriate for infants and is not recommended for toddlers, since they are too young to understand this intervention; and
- Giving logical consequences that are appropriate to the situation and severity of the behavior.

Staff will also advise parents of the need to use positive behavior management techniques for their child(ren) if the child(ren) continue to misbehave. Centers will offer educational programming to parents on a regular basis. Such programming will address, among other things, positive behavior management techniques; staff may encourage particular parents to attend.

C. Medical or Mental Health Concerns

When a resident has a diagnosed mental illness or mental disability, or demonstrates symptoms of mental illness or mental disability, a mental health professional, preferably the treating clinician, will be consulted to provide input as to the resident's competence to participate in the behavior management process, any impact the resident's mental illness may have had on his or her responsibility for the problematic behavior, and information about any known mitigating factors in regard to the behavior.

Centers will not hold a resident accountable for his/her conduct if the Clinical Medical Authority (CMA) finds him/her mentally incompetent. For purposes of these standards, a mentally incompetent individual is defined as an individual who is unable to appreciate the difference between appropriate and inappropriate behavior, or between "right" and "wrong." Such an individual is not capable of acting in accordance with those norms and, therefore, cannot be held responsible for his/her "wrongful" actions.

A person who cannot assist in his/her own defense because he/she lacks the ability to understand the nature of the behavior management proceedings, as determined by a medical authority, will be considered incompetent. Behavior management proceedings for such a resident will be postponed until such time as the resident is able to understand the nature of the proceedings and to assist in his/her own defense. If the resident's mental status does not improve within a reasonable amount of time, Center staff must find the resident incompetent to assist in his/her own defense and note such finding on the Incident Report. Those deemed mentally incompetent will be reviewed as specified in the ICE Family Residential Standard on *Health Care*.

If a resident has a mental disability or mental illness but is competent, then the behavior management process will consider whether the resident's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed. A mental health professional should also be consulted as to whether certain types of sanctions (e.g., loss of visitation, loss of phone calls) may be inappropriate because they would interfere with supports that are a part of the resident's treatment or recovery plan.

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D. Behavioral Interventions for Children

The parent/guardian of a child who is breaking or has broken Center rules must be included in all discussions regarding behavioral interventions for that child. In all situations in which the child's behavior does not pose an imminent risk of serious physical harm to him-/herself or others, the child's parent/guardian will be provided the opportunity to engage the child to stop the problematic behavior without staff involvement.

When the child's parent/guardian is not immediately available to intervene to stop the child's problematic behavior (such as when the child is in school, monitored care, or recreational activities, etc.), staff must explain to the child the reason for any behavioral intervention, and inform the parent/guardian as soon as possible of any and all intervention(s) undertaken by staff in the parent/guardian's absence.

Prior to imposing a longer-term behavioral intervention (such as a reduction in privileges) on a child as a consequence for a violation of Center rules, staff will meet with the child's parent/guardian to explain the reason for the proposed intervention and to solicit the parent/guardian's input and cooperation. The parent/guardian will thereafter be expected, with the assistance of staff if needed or desired, to explain to the child the reason for the intervention.

Where the child's behavior poses an imminent risk of serious physical harm to him-/herself or others, and when the child's parent/guardian either is not immediately available to intervene to stop the dangerous behavior or is unable or unwilling to intervene, staff will intervene to ensure the safety of the child and others nearby. Staff will also inform the parent/guardian as soon as possible—simultaneously with the intervention wherever possible—of any and all intervention(s) undertaken by staff in the parent/guardian's absence.

Each intervention must be:

- Appropriate to the child's level of understanding, age, and developmental level;
- Appropriate to the incident and severity of the behavior demonstrated; and
- Taken to teach the child acceptable behavior and self-control.

E. Incident Reports

Minor rule violations will be settled informally and by mutual consent between staff and the affected resident whenever possible.

Centers will develop an Incident Report template that will be approved by the FOD and JFRMU Chief prior to implementation.

If a staff member witnesses a serious infraction or has reason to suspect one has been committed and informal resolution is inappropriate or unattainable, then the staff member will prepare and submit a clear, concise, and complete Incident Report. Centers will notify and provide copies of the Incident Reports to the Field Office Director (FOD) and JFRMU Chief. All incidents will be entered in the Center's Incident Report Log.

If the staff member observes anything unusual in the resident's behavior or demeanor, then he/she will note the same in the report. The reporting staff member also will list all staff, contractors,

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volunteers, and/or resident witnesses to the incident, and the disposition of any physical evidence relating to the incident. The reporting staff member will sign the report and include title, date, and time the report was signed. The report will be submitted to the Shift Supervisor before the end of the staff member's shift. The Shift Supervisor will review all Incident Reports before going off duty.

F. Investigations

Centers will have procedures in place to ensure that all Incident Reports are investigated within 24 hours of the incident.

The investigating staff member must be a supervisor or a full-time, trained, designated investigator and will have had no prior involvement in the incident, as either witness or staff member at the scene.

Children may not be questioned outside the presence of their parents/guardians unless the incident occurred between the parent/guardian and child and the incident involved abuse or neglect.

Allegations involving a criminal offense will be reported to the FOD and JFRMU Chief and immediately referred to the appropriate law enforcement agency with criminal investigative authority. In these cases, no interviews will be conducted by Center staff.

The investigating staff member will:

- Commence the investigation within 24 hours of receipt of the Incident Report;
- Preserve, inventory, control, and store any contraband that may be evidence in connection with the violation of a criminal statute so as to maintain and document the chain of custody. Contraband will be reported to the appropriate law enforcement authority for action and possible seizure and prosecution as appropriate. See the Preserving Evidence section in the ICE Family Residential Standard on *Searches and Inspections*;
- Advise the resident of his/her rights, including the right to remain silent at every stage of the process and that silence may not be used to support a finding against him/her, as well as the resident's due process rights before the ERP and ARB, as provided in this standard;
- Complete the investigation within 72 hours of receipt of the Incident Report, barring exceptional circumstances;
- Provide the resident a copy of the Incident Report and Notice of Charges immediately upon the completion of the investigation, and at least 24 hours before the start of any proceedings;
- Terminate the administrative investigation if the incident is under investigation on different grounds (e.g., incident is under criminal investigation) unless and until the agency with primary jurisdiction concludes its investigation or indicates it will not pursue the matter, or unless directed otherwise by ICE;
- Record personal observances and other potentially material information;
- Prepare a factual report of the investigation, including the location or disposition of any physical evidence including contraband;

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- Prepare a Notice of Charges document; and
- Forward all reports relevant to the incident and investigation to the ERP, but do not provide a copy to the resident at this stage of the process, except for a copy of the Incident Report as instructed above.

G. Executive Review Panel (ERP)

All Centers will establish an ERP to investigate and adjudicate infractions that are not informally resolved. It also will ensure that the resident is afforded all rights listed below.

Children under 12 years old will not be referred to the administrative review process. Children 12 years of age and older will be presented for administrative review—including to the ERP—only after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.

The ERP will comprise at least four members: an ICE staff member, a Center management-level staff member, the JFRMU Onsite Coordinator, and a Center direct care staff member who is familiar with the resident involved. The ERP will not include the reporting staff member, the investigating staff member, or a staff member who witnessed or was involved directly in the incident, except in the unlikely event that every available staff member witnessed or was involved directly in the incident. In such cases, the selection will be documented in the ERP record.

The ERP will conduct hearings and, to the best extent possible, will resolve allegations of infractions in accordance with the list of offenses in Appendix 3.1.A: Offense Categories. Unresolved cases and appealed issues are forwarded to the ARB.

The ERP is authorized to:

- Conduct hearings and resolve incidents;
- Call witnesses to testify;
- Consider written reports, statements, physical evidence, and oral testimony;
- Hear pleadings by a resident and/or his/her staff representative;
- Make findings that a resident did or did not commit the infraction as charged, based on the preponderance of the evidence; and
- Impose sanctions as listed and authorized in the Acceptable Corrective Sanctions for Minors and Acceptable Corrective Sanctions for Adults sections in this standard.

The ERP will:

- Verify that the affected resident has been advised of and afforded his/her due process rights, as provided below in this standard, as well as been advised of the administrative review procedures;
- Remind the resident of his/her right to a staff representative, provide one if requested, and verify that a staff representative has been assigned when a representative is requested;

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- Advise the affected resident of his/her right to waive the hearing and admit having committed the offense;
- Conduct the hearing on the first business day after receiving the documentation from the investigator , unless the resident requests more time to gather evidence or otherwise prepare for the hearing. In cases where a hearing is delayed, the reason(s) must be documented (e.g., a continuing investigation of facts, unavailability of one or more essential witnesses, etc.) and, unless the resident has requested the delay, approved by the Center Administrator;
- Consider the reliability of information provided by a confidential source before considering it in the hearing; disclose as much of this information as possible without jeopardizing the safety and security of residents and Center staff; and include in the hearing record the factual basis for finding the information reliable;
- Prepare a written record of its proceedings within 2 business days of the conclusion of the hearing. This record must show that the resident was advised of his/her rights. It also must document the evidence considered and subsequent findings, decisions, and recommended sanctions, along with a brief explanation, as well as whether an interpreter was used;
- Forward the entire record to the Center Administrator, who may concur, terminate the proceedings, or impose a lesser sanction;
- Refer to the ARB any incident requiring higher-level review or appeal; and
- Serve the resident with:
 - A copy of the ERP's decision, which must contain the reason for the disposition and sanctions imposed;
 - A copy of the Center Administrator's decision; and
 - Where relevant, written notification that the case will be referred to the ARB.

The resident in ERP proceedings has the right to due process, which includes the rights to:

- An ERP hearing on the first business day after receiving the Incident Report, unless the resident requests more time to gather evidence or otherwise prepare for the hearing;
- Remain silent at any stage of the process;
 - Attend the hearing (excluding panel deliberations) or waive the right to appear. If security considerations prevent the resident's attendance, the panel must document the security considerations and, to the extent possible, facilitate the resident's participation in the process by telephonic testimony, the submission of documents, written statements, or written questions to be asked of witnesses;
- Have staff representation to assist in preparing his/her defense and advise during the process;

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- Have an interpreter present if the hearing is conducted in a language other than the resident's preferred language;
- Receive auxiliary aids or services to ensure effective communication if the resident has limited hearing or sight or another disability;
- Present statements and evidence, including witness testimony, on his/her own behalf;
- Appeal the panel's determination to the ARB and/or through the resident grievance process; and
- Receive all notifications and decisions in writing and either orally or in writing in the resident's preferred language.

H. Appeals Review Board (ARB)

All Centers will have an ARB to adjudicate unresolved ERP issues and hear appeals. The board will comprise at least two members: an ICE management-level staff member, and a Center management-level staff member.

Children under 12 years old will not be referred to the administrative review process. Children 12 years of age and older will be presented for administrative review—including to the ARB—only after all other efforts, including counseling, have been undertaken with the family and have proven ineffective.

The board may not include the reporting staff member, the investigating staff member, any member of the referring panel, or anyone who witnessed or was directly involved in the incident. Exceptions may occur only if the number of staff members required for the board cannot be filled due their direct involvement in the incident. In such cases, all reasons must be documented.

The ARB will conduct hearings on cases referred by the ERP or raised in resident appeals. The ARB can make findings, or overturn previous findings, that the resident did or did not commit the infraction(s) as charged, based on the preponderance of the evidence.

The ARB is authorized to perform the same activities as the ERP. In addition, the ARB will:

- Verify that the resident was advised of and afforded his/her rights per this standard;
- Remind the resident of his/her right to a staff representative, provide one if requested, and verify that a staff representative has been assigned when a representative is requested;
- Conduct the hearing on the first business day (but at least 24 hours after the resident has received notice) after receiving the ERP referral;
- Prepare a written record of the proceeding. This record must show that the resident was advised of his/her rights. It also must document the evidence considered by the panel, any changes to the ERP decision and evidence supporting the changes, and sanctions imposed, as well as a brief explanation and whether an interpreter was used;
- Forward the entire record to the Center Administrator, who may (a) concur, (b) terminate the proceedings, or (c) impose more severe or more lenient sanctions; and

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- Serve the resident with written notification of the decision on the appeal, which must contain the reason for the decision, in the resident's preferred language.

In addition to the rights afforded during the ERP process, the resident in ARB proceedings has the right to a hearing on the first business day after referral from the ERP (if so desired), and to waive the 24-hour notification provision and request an immediate hearing.

If security or safety considerations prevent the resident's attendance at any ARB hearing, then the ARB must document the security considerations and, to the extent possible, facilitate the resident's participation in the process by telephonic testimony. Regardless of their attendance, residents will be able to submit and receive documents, written statements, and questions to be asked of witnesses.

I. ERP and ARB Hearing Forms

Both ERP and ARB proceedings will be documented on a form that will include:

- The affected resident's acknowledgment of rights;
- Names, titles, and signatures of the panel and/or board members;
- The date and time of the hearing;
- The finding(s) and sanction recommendation(s);
- The Center Administrator's approval or modification of the decision and sanction;
- The date, time, and signature of the staff serving the resident with the decision and sanction; and
- The affected resident's signature acknowledging the sanction.

J. Staff Representation for Residents during an ERP

Upon the resident's request, the Center Administrator will assign a staff representative to help prepare a defense prior to the commencement of the ERP. This assistance will be provided automatically for residents who are illiterate, have LEP, or who are without means of collecting and presenting essential evidence. Residents also will have the option of receiving assistance from another resident of their selection rather than a staff representative, subject to approval from the Center Administrator.

1. A staff representative must be a full-time Center employee.
2. Because of the potential conflict of interest, the Center Administrator, staff members initially involved in the case, eyewitnesses, the reporting and investigating officers, and anyone else with a stake in the outcome will not act as staff representative.
3. The resident may select his/her staff representative, barring those identified in paragraph 2 above.
4. The ERP will arrange for the presence of the staff representative selected by the resident. If that staff member declines or is unavailable, the resident may:

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- a. select a different representative;
 - b. wait for the unavailable staff member to become available (within a reasonable period); or
 - c. proceed without a staff representative.
5. A staff member who declines to serve must state the reason on the staff representative form.
 6. If several staff decline, the Center administrator will assign one.
 7. The staff representative will be free to speak to witnesses and to present evidence on the resident's behalf, including evidence of any mitigating circumstances. The staff representative must act in good faith on behalf of the resident, and interview witnesses and obtain documentary evidence as requested by the resident or as otherwise reasonably seen as relevant to the defense of the charges or in mitigation of the charges.
 8. The ERP will allow the staff representative enough time to speak with the resident and interview witnesses prior to commencement of the proceeding. The ERP may grant a request for extension of time if required for an adequate defense.
 9. In the event that a resident cannot effectively present his/her own case, the Center Administrator will appoint a staff representative, even if not requested by the resident.

K. Confidential Information

The ERP and ARB will establish the reliability of information provided by a confidential source before considering it in the proceedings. The ERP and ARB may withhold the confidential source's identity from the resident or staff representative. While the staff representative may challenge the substance of any confidential information the ERP discloses, he/she may not question its reliability (which is pre-established by the ERP). When a decision relies on information from a confidential source, the ERP or ARB will disclose as much confidential information as may be disclosed without jeopardizing the safety and security of Center staff, residents, and other persons, and will include in the hearing record the factual basis for finding the information reliable.

L. Postponement of Proceedings

All Centers will permit hearing postponements or continuances under certain circumstances.

Circumstances justifying the postponement or continuance of a hearing might include, but are not limited to: defense preparation, physical or mental illness, security, transfer, or pending criminal prosecution.

An uncooperative resident also may cause a delay in the proceedings, either because of inappropriate behavior during the hearing process or a refusal to participate in a productive manner.

M. Sanctions for Residents

Sanctions will be designed to correct poor behavior and to encourage appropriate behavior. Their use will be limited to those instances where other intervention has been tried and been proven

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unsuccessful. All sanctions will be commensurate with the severity of the infraction and intended to encourage the resident to conform to rules and regulations in the future.

The duration of sanctions will be within established limits and will not be imposed arbitrarily.

Corrective sanctions may not be capricious, retaliatory, or based on race, religion, national origin, gender, sexual orientation, disability, or political beliefs.

Staff may not impose or allow imposition of any service deprivation.

The Center will not take administrative or disciplinary action against a resident for sexual contact with staff members unless there is a finding that the staff member did not consent to such contact.

A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

1. Prohibited Sanctions

- Corporal punishment or the threat of corporal punishment. Corporal punishment is defined as the infliction of harm or punishment on any part of a resident's body as a means of controlling or managing the resident's behavior;
- Performing any form of physical exercise;
- Doing any form of "unproductive work." "Unproductive work" is defined as work that serves no purpose except to demean a resident. "Unproductive work" does not include work that corrects damage caused by a resident's behavior;
- Performing any harsh, cruel, unusual, unnecessary, demeaning, or humiliating physical discipline or other punishment;
- Placing residents in a dark room, closet, or confined/locked space. A locked space includes a room with any type of door-locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut;
- Requiring residents to remain silent or inactive for inappropriately long periods of time;
- Deviating from normal food services;
- Depriving residents of clothing, bedding, or personal hygiene items;
- Depriving residents of access to any service provided such as correspondence, telephone, visitation, exercise, recreation, education, medical, legal access, or attorney visits;
- Separating parents/guardians from their children;
- Imposing psychological intimidation, including prohibiting sleep or humiliating, shaming, ridiculing, rejecting, or yelling at a resident; and
- Restricting resident movement or removing them from the general population pending disposition unless needed for the protection of self, other residents, or staff.

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2. Acceptable Corrective Sanctions for Minors

Either the ERP or ARB may impose the sanctions listed below for children 12 years old and older:

- Referral to counseling;
- Loss of extracurricular activities, such as movie night;
- Loss of field trip privileges for up to 30 days; and
- Suspension of free movement privileges. Children 12 years of age and older may have their free movement privileges suspended for up to 14 days. Such a suspension will require that the child's parent/guardian supervises all activities for that time period.

Minors will not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Sanctions may not adversely impact a minor's health, physical, or psychological well-being, or deny a minor regular meals, snacks, sufficient sleep, exercise, medical and mental health care, the right to correspondence, or legal assistance. Sanctions will not restrict a minor's access to medical or mental health appointments or education. Staff will not separate or threaten to separate parents/guardians from children as a form of punishment (see the Prohibited Sanctions section in this standard).

Only the ERP may restrict minors to the living and activity area, and only for durations not to exceed 24 hours:

- When a minor's movement is restricted, they must be afforded a minimum of 1 hour of outdoor activity time daily; and
- The minor may be restricted to the living and activity area but will not be forced to remain in his/her room.

3. Acceptable Corrective Sanctions for Adults

Either the ERP or ARB may impose the sanctions listed below:

- Referral to counseling;
- Required attendance in appropriate classes (parenting, anger management, etc.);
- Additional work details, such as general housekeeping;
- Loss of field trip privileges for up to 30 days;
- Restriction to the living and activity area, for a duration not to exceed 72 hours:
 - When a resident's movement is restricted, they must be afforded a minimum of 1 hour of outdoor activity time daily;
 - A resident may be restricted to the living and activity area but will not be forced to remain in his/her room; and
 - Prior to imposing this sanction, the ERP must take into account the ages of the affected resident's children and the negative impact this sanction would have on the children who were not involved in the charged offense.

3.1 Behavior Management

When the ERP believes a resident presents an immediate or continuing threat to Center safety or welfare, it may recommend to the respective FOD and JFRMU Chief that the resident be removed from the Center.

N. Documents

All documents relevant to the incident, subsequent investigation, and hearing(s) will be completed and distributed in accordance with Center procedures.

The report and accompanying documents will be maintained in the resident's file. The Center may also retain the material in its own files for Center statistical or historical purposes.

1. Incident Report/Notice of Charges

The staff member will prepare an Incident Report and submit it to the supervisor immediately after the incident takes place. If the incident is resolved informally, then the staff member will note so on the original report, which then will be forwarded to the Center Administrator.

If the ERP is to be involved, then staff will serve the resident with a copy of the Notice of Charges upon completion of the investigation, no fewer than 24 hours before the ERP hearing.

The ERP receives the original copy.

If the ERP hears the matter, then the ranking member of that panel will serve the resident with a copy of the Incident Report/Notice of Charges indicating their decision. The ERP, upon conclusion of its proceedings, will forward the entire record to either the Center Administrator or the ARB, as appropriate.

2. Investigation Report

The original will be submitted to the ERP. The resident does not receive a copy.

3. ERP Report of Findings and Action

The original will be served on the resident after the ERP issues its findings. A copy will be included in the resident file.

4. Notice of ARB Hearing

The original will be served on the resident after the ARB issues its findings. A copy will be included in the resident file.

5. Resident Rights at ARB Hearings

The original will be served on the resident after the ARB issues its findings. A copy will be included in the resident file.

6. ARB Report

The original will be included in the resident file. A copy will be provided to the resident.

References

- ICE Family Residential Standard on Definitions

3.1 Behavior Management

- ICE Family Residential Standard on Health Care
- ICE Family Residential Standard on Program Philosophy, Goals, and Expected Outcomes
- ICE Family Residential Standard on Resident Handbook
- ICE Family Residential Standard on Searches and Inspections

Appendix 3.1.A: Offense Categories

I. Federal, State, or Local Criminal Offenses

Any resident who commits a Federal, State, or local criminal offense to include child abuse and neglect, will be referred to the appropriate law enforcement agency.

II. Conduct that Disrupts or Interferes with Safe and Secure Center Operations

- Physically punishing children;
- Willful failure of parent/legal guardian to appropriately manage child(ren)'s behavior after receiving counselling and guidance to remedy identified issues;
- Jeopardizing the health, safety, or welfare of residents or staff;
- Interfering with a staff member in the performance of duties;
- Possession of soft contraband;
- Refusing to comply with rules, regulations, or Center instructions;
- Being in an unauthorized area;
- Failing to participate in or interfering with census and emergency counts;
- Verbal harassment of a resident, which means acting in such a manner as to create a hostile residential environment for other residents regardless of age or gender;
- Using abusive or obscene language;
- Wagering any item of value or service; and
- Being unsanitary or untidy; failing to keep self, children, and living area in accordance with posted instructions.