

safely housing that youth, while also ensuring that youth are not subject to discrimination or harassment and have fair and equal access to all available services, care, treatment and benefits.;

We provide the following draft language for consideration in section 1354:

(c) separated youth shall not be denied ~~normal privileges~~ *any provisions of this chapter* available at the facility, except when necessary to accomplish the objective of separation. *Youth who are separated for the purposes of protective custody shall not be denied any provisions of this chapter available at the facility.*

H. Section 1328: Safety Checks

Regular safety checks are critical to the safety of detained youth. Studies have shown a high prevalence of suicidal ideation, suicide attempts, and self-injurious behavior among youth in detention.²⁷ Ensuring that youth are regularly observed while in their rooms is an important tool to protect youth from this behavior and to quickly respond to medical crises; documentation of safety checks, in turn, is an important tool to ensure that safety checks are actually occurring. We are pleased to note that the Board is considering strengthening requirements for documentation of safety checks, including a provision for supervisory review. We observe that the review process should mitigate not only documentation and timeliness issues, but also any identified failure to complete required checks. Further, where video is available, supervisory review should include review of video to confirm the veracity of written documentation.

We provide the following draft language for consideration in section 1302:

(g) A documented process by which safety checks are reviewed at regular defined intervals by a supervisor or facility manager, including methods of mitigating patterns of inconsistent documentation, failure to complete, or untimely completion of, safety checks. Such supervisory review shall include review of video where available.

I. Sections 1324 and 1361: Grievances and Abuse Reporting

Title 15 requires that facilities provide a grievance procedure, including methods to report sexual abuse and harassment. (Cal. Code Regs., tit. 15, § 1361.) Where a youth is reporting allegations of physical or sexual abuse, it is critical that measures be taken to ensure the youth's safety while those allegations are fully investigated. The failure to do so could not only expose facility staff and administration to liability, but also place youth at risk of further harm and of retaliation. The requirement for interim protective measures in similar contexts has

²⁷ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Suicide in Confinement: A National Survey* (Feb. 2009) pp. 3-4 <<https://www.ojp.gov/pdffiles1/ojjdp/213691.pdf>> (as of Mar. 10, 2023).

Board of State and Community Corrections

March 14, 2023

Page 16

long been effective in protecting those who come forward with allegations of abuse.²⁸ In addition, facility policies and procedures should clearly state that staff have a duty to immediately report any suspicion or allegation of physical or sexual abuse or harassment and that all such allegations shall be thoroughly investigated and responded to, including reports by youth. Finally, it is important that youth be able to confidentially report their grievances through multiple means, to anonymously report grievances, and to report grievances to staff who are not the subject of the grievances. Providing multiple avenues will help to address youth concerns about possible retaliation for filing a grievance and help ensure that issues, including complaints of physical or sexual abuse or harassment, are brought to the attention of facility staff to be resolved.

We provide the following draft language for consideration in section 1324:

(n) establishment of a policy that prohibits all forms of sexual abuse, sexual assault, ~~and~~ sexual harassment, *and physical abuse*. The policy shall *provide for a Compliance Coordinator who is trained in identifying, investigating and responding to allegations of sexual abuse, assault, harassment, and physical abuse and include an approach to preventing, detecting and promptly responding to such conduct and any retaliation for reporting such conduct, as well as a provision for reporting, investigating, and responding to all suspicions or reports of such conduct by youth, staff or a third party, including reports of physical or sexual abuse contained in grievances filed by youth. The policy shall also state that all staff have a duty to immediately report any suspected physical or sexual abuse or harassment to the Compliance Coordinator or their designee for timely investigation and, if allegations are substantiated, a written response and remedial and corrective measures that stop the abuse or harassment, remedy harm, and prevent recurrence.*

We provide the following draft language for consideration in section 1361:

(b) *provision for multiple methods for youth shall have the option to confidentially and/or anonymously file the grievance ~~or~~ and the option for youth to deliver the form to any youth supervision staff working in the facility;*

(i) provision for the development and implementation of interim measures to protect youth reporting physical or sexual abuse;

J. Section 1370: Education

The Probation Department and facility staff bear significant responsibility for the provision of education services in juvenile detention facilities. (Cal. Code Regs., tit. 15, § 1370.) The County Board of Education is required to “provide for the administration and operation of juvenile court schools *in conjunction with the Chief Probation Officer.*” (Cal. Code Regs., tit. 15,

²⁸ See, e.g., 34 C.F.R. §§ 106.30, 106.45, subd. (b) (defining and addressing supportive measures for individuals complaining of sexual assault or harassment in institutions receiving federal funding).

Board of State and Community Corrections

March 14, 2023

Page 17

§ 1370, subd. (a) [emphasis added].) Facility administrators must “develop and implement written policy and procedures to ensure communication and coordination between educators and probation staff.” (*Ibid.*) The facility administrator is required to request an annual review of the education program, review each item in the annual review with the Superintendent of Schools, and “take whatever corrective action is necessary to address each deficiency and to fully protect the educational interests of all youth in the facility.” (*Ibid.*) The facility administrator, in conjunction with education staff, must ensure that “operational procedures do not interfere with the time afforded for the minimum instructional day,” and education must be provided to all youth in the facility, “regardless of classification, housing, security status, disciplinary or separation status, including room confinement, except when providing education poses an immediate threat to the safety of self or others.” (Cal. Code Regs., tit. 15, § 1370, subds. (b)(6), (7).)

Positive behavior management strategies in the school setting must “be integrated into the facility’s overall behavioral management plan and security system,” and school staff must “be advised of administrative decisions made by probation staff that may affect the educational programming of students.” (Cal. Code Regs., tit. 15, § 1370, subds. (c)(1), (2).) The facility administrator is responsible for developing “policies and procedures that address the rights of any student who has continuing difficulty completing a school day.” (Cal. Code Regs., tit. 15, § 1370, subd. (c)(4).) The Chief Probation Officer is also required to “develop policies and procedures to meet the transition needs of youth, including the development of an education transition plan,” and the facility administrator “should, whenever possible, collaborate with local post-secondary education providers to facilitate access to educational and vocational opportunities for youth that considers the use of technology to implement these programs.” (Cal. Code Regs., tit. 15, § 1370, subds. (g)(1), (h)(1).)

Education is a critical intervention for youth in detention. Studies demonstrate that continuing education for youth while they are detained significantly affects recidivism rates, with one study showing that participation in prison education reduced recidivism by more than 40%.²⁹ Providing quality education may also improve conditions in detention facilities by improving relationships between youth.³⁰ Ensuring that youth in detention receive a robust education program is particularly critical, as youth in juvenile detention facilities are disproportionately likely to have experienced grade retention, special education, suspensions, and expulsions, and to be functioning below grade level.³¹ When education is delivered effectively in juvenile institutions, youth’s educational outcomes improve: students’ math and reading scores, and high school completion, increase.³²

²⁹ Sullivan, *Education Systems in Juvenile Detention Centers* (2018) 2018(2) *BYU Educ. & L.J.* 71, 76.

³⁰ *Id.* at 77-78.

³¹ Leone & Fink, *Raising the Bar: Creating and Sustaining Quality Education Services in Juvenile Detention* (May 2017) National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth, p. 3 <<https://files.eric.ed.gov/fulltext/ED594445.pdf>> (as of Mar. 10, 2023).

³² Office of Juvenile Justice and Delinquency Prevention, *Model Programs Literature Review: Education for Youth Under Formal Supervision of the Juvenile Justice System* (Jan. 2019) pp. 12-13

Board of State and Community Corrections

March 14, 2023

Page 18

Youth detained in juvenile facilities are under the custody and care of probation. (See, e.g., Welf. & Inst. Code §§ 630, subd. (a), 636, subd. (d)(3)(B), 730.) Probation departments are already responsible for ensuring that youth attend school for the full school day. (See Ed. Code § 48200 [requiring that “each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday”].) However, the regulations should also explicitly delineate the probation department’s duty to ensure that youth attend school, including requirements that youth are timely transported to and/or made available for school. (See, e.g., Ed. Code § 48200 et seq. [“person having control or charge of the pupil” is responsible for on-time school attendance and delineating penalties for failures].) We propose that the Title 15 education regulations further clarify the specific duties that probation or any agency with custody and care of detained students has to send students to full-time school as required by law. In addition, we propose that the Title 15 education regulations provide additional specificity as to the steps to be taken when a youth “has continuing difficulty completing a school day.” (Cal. Code Regs., tit. 15, § 1370, subd. (c)(4).)

We provide the following draft language for consideration in section 1370:

(c) School Discipline

(4) The facility administrator, in conjunction with education staff will develop policies and procedures that address the rights of any student who has continuing difficulty completing a school day, *including provision for joint meetings between education staff, probation staff, and, where applicable, mental health staff to assess the needs of such a student and develop a plan to facilitate the student’s school attendance.*

(b) Required Elements

(6) The minimum school day shall be consistent with State Education Code Requirements for juvenile court schools. The facility administrator, in conjunction with education staff, must ensure that operational procedures do not interfere with the time afforded for the minimum instructional day. *The facility administrator is responsible for ensuring that youth are available for and transported timely to school for the full time designated for the length of the schoolday. The facility administrator shall develop policies and procedures to ensure that school attendance is a priority and youth are timely transported to and available for school for the full time designated for the length of the schoolday.* Absences, time out of class or educational instruction, both excused and unexcused, shall be documented.

<https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf> (as of Mar. 10, 2023).

Board of State and Community Corrections
March 14, 2023
Page 19

K. Sections 1480 and 1485: Clothing and Personal Care Items

We are pleased to see that the Board is considering updating section 1480 to require that youth's clothing be substantially free of stains and section 1485 to require that personal care items be culturally sensitive. We strongly support the proposed regulatory amendments to ensure that youth receive reasonably stain-free clothing and personal care items that are culturally appropriate (for example, hair care products that are appropriate for African-American youth), which is important to maintaining the dignity and self-esteem of detained youth.

The Attorney General's office appreciates the continuing efforts of the Board to update the Title 15 regulations and to ensure that youth detained in juvenile facilities are housed in safe, rehabilitative, and supportive conditions. We appreciate your consideration of these recommendations on ways to strengthen Title 15 regulatory protections.

Sincerely,



ROB BONTA
Attorney General