

EFFECTIVE  
05-17-2022

NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES

401 NAC 2

TITLE 401 YOUTH REHABILITATION AND TREATMENT CENTERS

CHAPTER 2 DISCIPLINARY AND GRIEVANCE PROCEDURES

001. DISCIPLINARY PROCEDURES. Each Youth Rehabilitation and Treatment Center will maintain a clearly defined disciplinary procedure which incorporates the provisions of this chapter. Youth will receive a copy of the disciplinary procedure upon arrival at the facility.

002. OFFENSES. A youth may be subject to the disciplinary procedures in this chapter if the youth commits any act which constitutes an offense established in the policies of the Youth Rehabilitation and Treatment Center. A youth will be provided with a list of offenses upon arrival at the Youth Rehabilitation and Treatment Center.

002.01 REPORT TO LAW ENFORCEMENT. If a youth commits an offense which also constitutes criminal activity, the Youth Rehabilitation and Treatment Center may make a report to the appropriate law enforcement agency.

003. NOTICE. A youth will be served a with a written notice that an offense has been committed within 24 hours form the time the offense is discovered by facility staff.

004. HEARING PROCEDURES. A youth charged with committing an offense is scheduled for a hearing no later than seven days, excluding weekends and holidays, after the alleged offense was discovered.

004.01 NOTICE OF HEARING. A youth charged with committing an offense will be notified of the time and place of the hearing on the allegations at least 24 hours prior to the hearing, unless waived by the youth.

004.02 ATTENDANCE AT HEARING. A youth charged with committing an offense will be allowed to be present at the hearing on the allegations, unless the youth waives his or her attendance or the disciplinary committee determines the youth's behavior during the hearing justifies exclusion.

004.03 DISCIPLINARY COMMITTEE. Hearings on the allegations will be conducted by a disciplinary committee comprised of an impartial person or impartial panel of persons. The disciplinary committee will be created as required by facility policy.

004.04 STANDARD OF PROOF. In order for a youth who is charged with committing an offense to be guilty, the Disciplinary Committee must determine by a preponderance of the evidence that the youth voluntarily, intentionally, recklessly or negligently engaged in conduct

which constitutes the offense charged. The Disciplinary Committee must also determine that the youth had notice that the conduct was prohibited by facility policy or state statute.

004.05 PRESUMPTION. If contraband is found in a living unit shared by more than one youth, there shall be a presumption that each of those youth has knowledge of the presence of the contraband. Each youth charged as a result of the discovery of such contraband shall have the burden of coming forward with evidence to rebut the presumption.

004.06 AIDING AND ABETTING. A youth may be charged with committing an offense if it is determined by a preponderance of the evidence that the youth knowingly commanded, induced, procured, or aided another person in the commission of the offense. The fact that the other person has been found free of guilt, has been determined guilty of a different offense, has been discharged from employment, or has been otherwise restricted from access to the facility is not a defense.

004.07 ATTEMPT. A youth may be found guilty of attempting to commit an offense if: acting with the kind of culpability required for commission of such offense, the youth engages in conduct which constitutes all of the acts necessary for the commission of the offense except its completion; or the youth willfully provides substantial and knowing assistance to a person attempting to commit an offense; or the youth agrees with one or more persons to engage in or cause the performance of such conduct. A youth found guilty of an attempt shall be subject to the same penalties which correspond to the offense attempted.

004.08 EVIDENCE. A youth charged with committing an offense will have the opportunity during the disciplinary hearing to make a statement and present evidence, including calling witnesses who may have relevant information.

004.09 ASSISTANCE AT THE HEARING. A youth may request the services of any Youth Rehabilitation and Treatment Center staff member to assist them at the disciplinary hearing. The staff member may question relevant witnesses on behalf of the youth.

004.09(A) APPOINTMENT OF ASSISTANCE. A Youth Rehabilitation and Treatment Center staff representative shall be appointed to assist the youth with the disciplinary hearing when the disciplinary committee determines the youth is not capable of effectively presenting evidence on his or her own behalf.

005. CONSEQUENCES. When the disciplinary committee finds a youth has committed an offense, the disciplinary committee will determine the appropriate consequences for the offense. The consequences must comply with the provisions of this section.

005.01 GENERAL RULE. Consequences shall not be capricious, retaliatory or revengeful.

005.02 SUSPENSION OF PRIVILEGES. Consequences may include suspension of privileges. Privilege suspension shall not include loss of regular meals, clothing, sleep, health care services, exercise, correspondence privileges, and contact with relatives or legal assistance.

005.03 CORPORAL PUNISHMENT. Consequences may not include corporal punishment, humiliation, mental abuse or punitive interference with the daily functions, such as eating or sleeping, is strictly prohibited. "Corporal Punishment" as used in this section shall mean any act of inflicting physical punishment directly on the body, causing pain or injury.

005.04 RESTITUTION. Consequences may include payment of restitution by the youth. The amount of restitution will be determined pursuant to facility policy. The facility may use any funds that would be paid by the Youth Rehabilitation and Treatment Center to the youth's account to offset restitution. Offsets will be calculated and applied in accordance with the facility's established restitution policy.

005.04(A) RESTITUTION TO ANOTHER YOUTH. In the event restitution is to be paid to another youth committed to a Youth Rehabilitation and Treatment Center, no funds will be transferred from one youth to another unless a written request for the transaction is submitted by the youth. Any transfers of funds from one youth to another must be approved by the Facility Administrator.

006. APPEALS. A youth may appeal a decision of the disciplinary committee, including the determined consequences, to the facility administrator or his designee. Appeals are subject to the provisions of this section.

006.01 TIME FRAME. A youth has the right to appeal decisions of the disciplinary committee within 15 days of receiving notice of the decision.

006.02 APPEAL PROCEDURE. A Youth Rehabilitation and Treatment Center will have written procedures governing the appeal process. All appeals must be submitted in accordance with the facility's procedures.

006.03 APPEAL DETERMINATION. Appeal decisions will be made by the facility administrator or designee. The factors that may be considered during the appeal process are as follows:

- (A) Whether there was substantial compliance with the facility's policy and procedures in determining the consequences for the youth;
- (B) Whether the decision of the committee was based on substantial evidence, including the introduction of new evidence; and
- (C) Whether, under the circumstances, the consequence imposed was proportionate to the offense.

007. GRIEVANCES. Youth committed to a Youth Rehabilitation and Treatment Center will be permitted to report a grievance.

007.01 GRIEVANCE TOPICS. Any topic may be the subject of a grievance, if a youth believes the circumstances are unjust and grounds for a complaint related to his or her basic rights.

007.01(A) EXCEPTIONS. The following topics may not be the subject of a grievance:

- (i) Matters over which the Youth Rehabilitation and Treatment Center has no control; and

(ii) Youth disciplinary actions.

007.02 GRIEVANCE PROCEDURES. Each Youth Rehabilitation and Treatment Center will have written grievance procedures that will be provided to each youth upon arrival at the facility. Any grievance submitted by a youth must be in compliance with the established procedures.

007.03 GRIEVANCE TIME FRAME. Grievances must be submitted within 20 calendar days of the incident giving rise to the complaint.

007.04 PROMPT RESPONSE. Each grievance will be reviewed and may be investigated by facility staff. A written response will be provided to the grievant.

007.05 APPEAL OF GRIEVANCE DECISIONS. A grievant who is dissatisfied with the written response to his or her grievance, may appeal the response to the Office of Juvenile Services Administrator within ten calendar days from the receipt of the response.

007.06 NO ADVERSE ACTION. No youth who utilizes the grievance procedure will be subject to any type of disciplinary sanction or other adverse action for exercising the right to report a grievance.

007.07 CONFIDENTIALITY. Youth grievances shall be treated in a confidential manner. Only those individuals whose involvement is needed to complete the investigation of the grievance or the judge and legal parties in the committing court case shall be made aware of its existence. Individuals contacted during an investigation shall only be made aware of the information needed to allow them to contribute meaningfully to the investigation.