**Section 2602.170 Discipline**

a) All facilities shall have a developmentally appropriate, research informed behavioral management program that supports the development of pro-social skills and provides positive reinforcement for good behavior. The program shall provide opportunities for immediate recognition of pro-social behavior as well as meaningful incentives and rewards for improvement and maintenance of desired behavior. The program shall also include potential sanctions for negative behavior that are developmentally appropriate, research informed, proportionate and fair.

b) Written Rules

As part of the orientation process, prior to joining the programming, each youth shall receive a thorough verbal explanation of the rules and behavioral expectations as well as written copy of the rules and program. The verbal and written explanation shall include:

1) The rules and regulations governing, and rewards for, behavior.

2) A description of incentives and rewards.

3) A description of behaviors that may incur sanction.

4) Potential sanctions for negative behavior.

5) Authorized methods of seeking information and making complaints, including time frame for resolution of complaints and appeal procedures and access to an advocate.

6) All other matters necessary to enable youth to understand both their rights and obligations.

c) Written Rules for Youth with limited English Proficiency or Youth with disabilities

1) If a youth has limited English proficiency or a disability, the facility shall provide a translator or interpreter to explain the rules in the youth's primary language or a manner to ensure the youth will understand. Written rules should be available in multiple languages common among youth in the community.

2) Written Rules Preventing Sex Abuse – PREA

A) The agency shall take appropriate steps to ensure that youth with disabilities (e.g., youth who are deaf or hard of hearing, who are blind or have low vision, who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect and respond to sexual abuse and sexual harassment. Steps shall include, when necessary to ensure effective communication with youth who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall ensure that written materials are provided in formats or through methods that ensure effective communication with youth with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

B) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect and respond to sexual abuse and sexual harassment to youth who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.

C) The agency shall not rely on youth interpreters, readers, or other types of youth assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the youth safety, the performance of first-response duties under Section 364 of PREA, or the investigation of the youth's allegations. (See Section 316 of PREA.).

d) Grievances – PREA

Each youth shall be permitted to make requests or complaints to the detention administration, without censorship as to substance. Established protocols shall allow for multiple avenues to submit complaints to facility or department administrators.

1) The agency shall provide multiple internal ways for youth to privately report sexual abuse and sexual harassment, retaliation by other residents or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

2) The agency shall also provide at least one way for youth to report abuse or harassment to a public or private entity or office that is not part of the agency and that is able to receive and immediately forward youth reports of sexual abuse and sexual harassment to agency officials, allowing the resident to remain anonymous upon request. Youth detained pursuant to a judicial immigration warrant shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

3) Staff shall accept reports made verbally, in writing, anonymously and from third parties and shall promptly document any verbal reports.

4) The facility shall provide youth with access to tools necessary to make a written report.

5) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of residents. (See Section 351 of PREA.)

6) Exhaustion of Administrative Remedies

A) Time Limits

i) The agency shall not impose a time limit on when a youth may submit a grievance regarding an allegation of sexual abuse.

ii) The agency may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse.

iii) The agency shall not require a youth to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

iv) Nothing in this Section shall restrict the agency's ability to defend against a lawsuit filed by a youth on the ground that the applicable statute of limitations has expired.

B) The agency shall ensure that:

i) A youth who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

ii) The grievance is not referred to a staff member who is the subject of the complaint.

C) Final Decisions

i) The agency shall issue its final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

ii) Computation of the 90-day time period shall not include time consumed by youth in preparing any administrative appeal.

iii) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the youth in writing of any extension and provide a date by which a decision will be made.

iv) At any level of the administrative process, including the final level, if the youth does not receive a response within the time allotted for reply, including any properly noticed extension, the youth may consider the absence of a response to be a denial at that level.

D) Third Parties

i) Third parties, including fellow youth, staff members, family members, attorneys and outside advocates, shall be permitted to assist youth in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file requests on behalf of youth.

ii) If a third party, other than a parent or legal guardian, files a request on behalf of a youth, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on their behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

iii) If the youth declines to have the request processed on their behalf, the agency shall document the youth's decision.

iv) A parent or legal guardian of a youth shall be allowed to file a grievance regarding allegations of sexual abuse, including appeals, on behalf of a youth. A grievance shall not be conditioned upon the youth agreeing to have the request filed on their behalf.

E) Emergency Grievance

i) The agency shall establish procedures for the filing of an emergency grievance alleging that a youth is subject to a substantial risk of imminent sexual abuse.

ii) After receiving an emergency grievance alleging a youth is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours of receipt, and shall issue a final agency decision within 5 calendar days of receipt. The initial response and final agency decision shall document the agency's determination whether the youth is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

F) The agency may discipline a youth for filing a grievance related to alleged sexual abuse only when the agency demonstrates that the youth filed the grievance in bad faith. (See Section 352 of PREA.)

7) The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of a youth. (See Section 354 of PREA.)

8) Youth Access to Outside Support Services and Legal Representation

A) The facility shall provide youth with access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers when available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between youth and these organizations and agencies, in as confidential a manner as possible.

B) The facility shall inform youth, prior to giving them access, of the extent to which communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

C) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide youth with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

D) The facility shall also provide youth with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians. (See Section 353 of PREA.)

e) Prohibited Punishment

1) Youth shall not be deprived of the following basic rights as part of a disciplinary response:

A) Mattress, pillow, blanket, sheets;

B) Meals including evening snacks;

C) Clean clothes;

D) Personal hygiene items;

E) Daily exercise;

F) Approved phone calls;

G) Ability to send and receive mail;

H) Education;

I) Medical and mental health services:

J) Access to shower;

K) Visits with family or attorney;

L) Access to reading materials; and

M) Access to religious services/counseling.

2) Group punishment for the misbehavior of one or more youth is prohibited. Punishment must be meted out on an individual basis.

3) Corporal punishment or any punishment designed to humiliate or degrade youth is prohibited.

f) Use of Force by a Staff Member

When the use of force is authorized, only the least force necessary under the circumstances shall be employed. When force is used, a complete written report shall be made. The facility shall have written policy and procedures that clearly define the parameters for use of force. Use of force must be used as a last resort after de-escalation and other strategies have failed. Staff must be trained in acceptable methods of physical intervention.

1) Use of force must be limited to those situations where a youth's behavior is an immediate threat to themselves or to others.

2) Staff must use the least restrictive response necessary and only for the period of time necessary for the youth to gain control.

3) Pressure point control and pain compliance techniques are prohibited.

4) Restraining youth in a manner that restricts the airway is prohibited.

5) Supervisory staff shall debrief youth and staff involved in any use of force and develop strategies that might preclude future incidents.

g) Use of Restraints

Mechanical restraints may only be used when other methods of control are not effective and only for the time necessary for the youth to regain control.

1) Restraints may not be used for disciplinary reasons.

2) Handcuffed youth must never be left alone.

3) Youth may not be handcuffed to stationary objects.

4) Placing youth in stress positions or hog-tying youth is prohibited.

5) Use of straitjackets, restraint chairs and four or five point restraints are prohibited.

6) Other instruments of restraint such as belly chains shall not be used except as a precaution against escape during transportation.

7) Youth who are transported to court must have shackles or chains removed prior to entering the courtroom unless otherwise ordered by the judge.

8) When restraints are used, a full written report shall be made.

9) Restraints are prohibited on pregnant youth when in active labor.

h) Chemical Agents

The use of chemical agents, including pepper spray, tear gas, and mace is generally prohibited. Chemical agents may be utilized when the youth's current behavior indicates that a physical hold or mechanical restraint would be impossible or insufficient to effectively diminish the imminent risk of serious harm. An unusual incident report shall be made pursuant to Section 2206.40(d) after any use of chemical agents.

i) Room Confinement

The agency shall have written policies and procedures that limit the use of room confinement as punishment for rule violations. Voluntary requests for brief time outs by youth should be allowed and are not considered room confinement. Room confinement may be used only as a temporary response to behavior that threatens the safety of the youth or others.

1) Prior to use of room confinement, staff shall have employed de-escalation techniques.

2) Room confinement shall not be used for a fixed period of time, but only until the youth is calm enough to rejoin programming without being a risk to the safety of others.

3) Supervisory staff shall be notified immediately when room confinement is used.

4) Staff shall employ de-escalation techniques and engage the youth while the youth is confined.

5) Youth confined to their rooms shall be directly supervised or minimally checked every 30 minutes. Youth on crisis status shall be minimally checked every 10 minutes.

6) At no time should room confinement exceed 4 hours without administrators and/or mental health staff developing an individualized plan to address the behavior.

7) A full written report shall be made whenever room confinement is used.