

§ 115.76

6 CFR Ch. I (1–15 Edition)

DISCIPLINE

§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary or adverse action up to and including removal from their position and the Federal service for substantiated allegations of sexual abuse or for violating agency or facility sexual abuse policies.

(b) The agency shall review and approve facility policies and procedures regarding disciplinary or adverse actions for staff and shall ensure that the facility policy and procedures specify disciplinary or adverse actions for staff, up to and including removal from their position and from the Federal service, when there is a substantiated allegation of sexual abuse, or when there has been a violation of agency sexual abuse rules, policies, or standards. Removal from their position and from the Federal service is the presumptive disciplinary sanction for staff who have engaged in or attempted or threatened to engage in sexual abuse, as defined under the definition of sexual abuse of a detainee by a staff member, contractor, or volunteer, paragraphs (1)–(4) and (7)–(8) of the definition of “sexual abuse of a detainee by a staff member, contractor, or volunteer” in § 115.6.

(c) Each facility shall report all removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to appropriate law enforcement agencies, unless the activity was clearly not criminal.

(d) Each facility shall make reasonable efforts to report removals or resignations in lieu of removal for violations of agency or facility sexual abuse policies to any relevant licensing bodies, to the extent known.

§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who has engaged in sexual abuse shall be prohibited from contact with detainees. Each facility shall make reasonable efforts to report to any relevant licensing body, to the extent known, incidents of substantiated sexual abuse by a contractor or volunteer. Such incidents shall also be reported to law

enforcement agencies, unless the activity was clearly not criminal.

(b) Contractors and volunteers suspected of perpetrating sexual abuse shall be removed from all duties requiring detainee contact pending the outcome of an investigation.

(c) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in sexual abuse, but have violated other provisions within these standards.

§ 115.78 Disciplinary sanctions for detainees.

(a) Each facility shall subject a detainee to disciplinary sanctions pursuant to a formal disciplinary process following an administrative or criminal finding that the detainee engaged in sexual abuse.

(b) At all steps in the disciplinary process provided in paragraph (a), any sanctions imposed shall be commensurate with the severity of the committed prohibited act and intended to encourage the detainee to conform with rules and regulations in the future.

(c) Each facility holding detainees in custody shall have a detainee disciplinary system with progressive levels of reviews, appeals, procedures, and documentation procedure.

(d) The disciplinary process shall consider whether a detainee’s mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(e) The facility shall not discipline a detainee for sexual contact with staff unless there is a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

MEDICAL AND MENTAL CARE

§ 115.81 Medical and mental health assessments; history of sexual abuse.

(a) If the assessment pursuant to § 115.41 indicates that a detainee has experienced prior sexual victimization or perpetrated sexual abuse, staff shall, as appropriate, ensure that the detainee is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate.

(b) When a referral for medical follow-up is initiated, the detainee shall receive a health evaluation no later than two working days from the date of assessment.

(c) When a referral for mental health follow-up is initiated, the detainee shall receive a mental health evaluation no later than 72 hours after the referral.

§ 115.82 Access to emergency medical and mental health services.

(a) Detainee victims of sexual abuse shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

(b) Emergency medical treatment services provided to the victim shall be without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers.

(a) Each facility shall offer medical and mental health evaluation and, as appropriate, treatment to all detainees who have been victimized by sexual abuse while in immigration detention.

(b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

(c) The facility shall provide such victims with medical and mental

health services consistent with the community level of care.

(d) Detainee victims of sexually abusive vaginal penetration by a male abuser while incarcerated shall be offered pregnancy tests. If pregnancy results from an instance of sexual abuse, the victim shall receive timely and comprehensive information about lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services.

(e) Detainee victims of sexual abuse while detained shall be offered tests for sexually transmitted infections as medically appropriate.

(f) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(g) The facility shall attempt to conduct a mental health evaluation of all known detainee-on-detainee abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

DATA COLLECTION AND REVIEW

§ 115.86 Sexual abuse incident reviews.

(a) Each facility shall conduct a sexual abuse incident review at the conclusion of every investigation of sexual abuse and, where the allegation was not determined to be unfounded, prepare a written report within 30 days of the conclusion of the investigation recommending whether the allegation or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so in a written response. Both the report and response shall be forwarded to the agency PSA Coordinator.

(b) The review team shall consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.