

## SUBCHAPTER 28B – CIVIL AND LEGAL RIGHTS

### SECTION .0100 – GENERAL RIGHTS

#### 10A NCAC 28B .0101 COMPETENCY OF ADULT CLIENTS

Each adult client has the right to be considered legally competent unless adjudicated incompetent under the provisions of Chapter 35A of the General Statutes; and each incompetent adult client has the right to be restored to legal competency as specified in Chapter 35A of the General Statutes.

*History Note:* Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

#### 10A NCAC 28B .0102 BASIC RIGHTS

(a) Each client in a state facility has the right to exercise basic human rights as specified in G.S. 122C-51, 122C-52(c), 122C-54(e), 122C-57, 122C-58, 122C-61, and 122C-62.

(b) Only those rights specified in G.S. 122C-62(b) and 122C-62(d) may be restricted by the state facility. Such restrictions shall be in accordance with G.S. 122C-62(e).

*History Note:* Authority G.S. 122C-51; 122C-52; 122C-54; 122C-57; 122C-58; 122C-61; 122C-62; 143B-147;  
Eff. October 1, 1984;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

#### 10A NCAC 28B .0103 RELIGIOUS RIGHTS

(a) Each client has the right to participate in religious worship as specified in G.S. 122C-62(b)(7) and 122C-62(d)(7).

(b) Participation shall be voluntary, but worship opportunities, services, religious education programs, pastoral counseling, or pastoral visitation shall be accessible for those who choose to participate.

(c) Clients shall be permitted to participate in religious services in the community unless otherwise limited in the treatment or habilitation plan.

(d) Suitable space for religious worship shall be made available by the state facility.

*History Note:* Authority G.S. 122C-62; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

### SECTION .0200 - LEGAL RIGHTS

#### 10A NCAC 28B .0201 ACCESS TO LEGAL SERVICES

(a) All clients have the right to contact and consult with legal counsel of their choice according to the provisions of G.S. 122C-62(a)(2) and 122C-62(c)(2).

(b) Information regarding the availability of legal services shall be given to all clients and shall be posted in areas accessible to the clients. Information provided by legal assistance programs concerning the availability of their services for indigent clients shall be posted in areas accessible to the clients. Each State Facility Director shall ensure that all state facility employees are informed of the availability of legal services for clients in a manner deemed appropriate by the State Facility Director, including the right of clients to communicate and consult with attorneys.

(c) Each State Facility Director shall designate locations where clients and attorneys may conduct their interviews in privacy.

*History Note: Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 143B-147; Eff. October 1, 1984; Amended Eff. July 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0202 NONPROFIT LEGAL SERVICES ORGANIZATIONS**

Each State Facility Director shall designate an interview room where clients may, at regularly scheduled hours, privately communicate and consult with an attorney employed by or affiliated with a nonprofit legal services organization. During these scheduled hours, any client who desires to consult with an attorney may do so without an appointment. Upon written request by a nonprofit legal services organization, such an interview room shall be made available in each building occupied by clients. The frequency of making such an interview room available and the hours it shall be available shall be at the discretion of the State Facility Director; however, such interview room shall be available at least twice per month. Information regarding the time and date when such legal services will be available and the specific location of such interview room shall be posted in areas accessible to the client in the buildings involved.

*History Note: Authority G.S. 122C-51; 122C-58; 122C-62; 122C-111; 143B-147; Eff. October 1, 1984; Amended Eff. July 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0203 STATE FACILITY GRIEVANCE PROCEDURE AND REPORTS**

(a) Each state facility shall have a written procedure to process clients' formal grievances in a fair, timely, and impartial manner. The grievance procedure shall specify that it is not intended to cover informal verbal expressions of dissatisfaction or discontent which can be resolved informally.

(b) The grievance procedure shall include the following:

- (1) a provision stating that grievances may be filed on behalf of a client by:
  - (A) the client;
  - (B) the legally responsible person of a minor client or incompetent adult client;
  - (C) the internal client advocate; or
  - (D) any other competent adult, including a state facility employee, who has been designated by the client and given written consent to bring a grievance on his behalf;
- (2) a provision requiring grievances to be filed in writing and a copy sent to the internal client advocate;
- (3) a provision specifying the progressive steps of the grievance process and state facility employees by position responsible for hearing the grievance at each step. Such provision shall state whether the State Facility's Human Rights Committee shall be included in the progression. (The absence of such a provision shall in no way prevent clients from presenting their concerns to the Human Rights Committee at any time. Such a provision would simply include it in the routine progression.) The progression should begin at a level closest to the client such as the client's responsible professional and, if unresolved, progress through the organizational structure of the state facility. The treatment team and the State Facility Director shall be included in the progression;
- (4) a provision specifying the number of days for action to be taken at each level;
- (5) a provision specifying required written documentation for the grievance including, at a minimum, a description of the grievance, all parties involved, dates and actions taken at each step and specifying state facility employees responsible for such documentation and where in administrative files the record of documentation shall be filed; and
- (6) a provision stating that the State Facility Director shall make a final decision regarding the grievance before the client may request review of the decision by the Division according to Rule .0204 of this Section.

(c) All final decisions relative to grievances filed on behalf of clients shall be reviewed by the Human Rights Committee whenever such review is in accordance with 10A NCAC 28A .0209.

(d) The State Facility Director shall submit a written report at least annually to the Human Rights Committee and internal client advocates which documents the number, nature, and resolution of grievances at the state facility for the previous year.

*History Note: Authority G.S. 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0204 DIVISION DIRECTOR'S REVIEW OF GRIEVANCES**

(a) If a client or client's representative as specified in Rule .0203(b)(1)(D) of this Section is dissatisfied with the State Facility Director's decision in a grievance, the client or client's representative may request a review of the State Facility Director's decision by the Division.

(b) The client or client's representative shall submit a written request for review of the decision to the appropriate deputy director of the Division (as indicated by the State Facility Director). The request shall indicate:

- (1) a description of the grievance;
- (2) action taken by the State Facility Director; and
- (3) preferred action of the client.

(c) The Deputy Director receiving the request for review of the decision shall notify the Division Director, Division's Assistant Director for quality assurance and any other deputy or assistant director whose responsibilities overlap in the area of the grievance.

(d) The Deputy Director receiving the request shall collect information on the issue and make a determination in consultation with any other deputy or assistant director involved.

(e) The Deputy Director shall make a recommendation to the Division Director within 10 working days from the date of the receipt of the request.

(f) The Division Director, after appropriate consultation, shall issue a written decision to the requesting party within 20 working days from the original date of the receipt of the request by the Deputy Director.

(g) The client or his legally responsible person may appeal the Division Director's decision by petitioning for a contested case hearing pursuant to Article 3 of G.S. 150B.

*History Note: Authority G.S. 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0205 DEPARTMENT REVIEW OF GRIEVANCE**

(a) The client or client's representative as specified in Rule .0203(b)(1)(D) of this Section may pursue further review by the Department by submitting a written request to the Secretary. Such written request shall indicate:

- (1) a description of the grievance;
- (2) action taken by the State Facility Director and Division Director; and
- (3) preferred action of the client.

(b) The Secretary shall conduct a review of the grievance and submit his decision in writing to the client or client's representative at least 30 days following receipt of the request. The client or his legally responsible person may appeal the Secretary's decision by petitioning for a contested case hearing pursuant to Article 3 of G.S. 150B.

*History Note: Authority G.S. 131E-67; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0206 ACCESS TO INTERNAL CLIENT ADVOCATE**

The State Facility Director shall assure each client access to an internal client advocate in accordance with G.S. 122C-62(a)(3) and 122C-62(c)(3).

*History Note: Authority G.S. 122C-62; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0207 CLIENT ADVOCATE ACCESS TO CONFIDENTIAL INFORMATION**

- (a) Client advocate access to confidential information shall be in accordance with G.S. 122C-53(e), (f) and (g).
- (b) Whenever a minor client is admitted to a regional psychiatric hospital which provides educational services, the client advocate may have access to the educational records in accordance with G.S. 122C-53(a). The State Facility Director shall establish policies and procedures for obtaining consent upon admission of the minor client to the state facility, which allows the client advocate access to the educational records.

*History Note: Authority G.S. 122C-53; 122C-62; 143B-10; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0208 DEATHS AND AUTOPSIES**

- (a) The State Facility Director shall adopt a written policy, available to the client upon request, specifying procedures to be taken upon the death of a client which shall provide for:
  - (1) a physician's certification of the death as soon as possible;
  - (2) making reasonable efforts to locate the client's next of kin;
  - (3) notification of the State Facility Director and the internal client advocate;
  - (4) notification of the County Medical Examiner when the attending physician or State Facility Director (at the time of the client's death) determines that the death falls under the jurisdiction of the County Medical Examiner as specified in G.S. 130A-383 and 130A-389; and documentation of the Medical Examiner's report in the client record; and
  - (5) disposition of the body when no next of kin or interested individuals can be located and no funeral arrangements have been made, including notification of the Commission of Anatomy as specified in G.S. 130A-415.
- (b) A competent client, or incompetent adult client or minor client through his legally responsible person, has the right to prearrange his funeral at no expense to the state.
- (c) No autopsy shall be performed on the body of a deceased client unless permission has been given for the autopsy by the appropriate person as specified in G.S. 130A-398 or unless such autopsy is otherwise required or permitted by law as specified in G.S. 130A-389, 130A-399 or 130A-400.

*History Note: Authority G.S. 130A-383; 130A-389; 130A-398 through 130A-400; 130A-415; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

### **SECTION .0300 - LABOR RIGHTS**

#### **10A NCAC 28B .0301 EMPLOYMENT CONDITIONS**

- (a) Each client who performs work which is of economic value to the state facility shall receive compensation for such work.
- (b) A state facility may allow the client to work for the facility only under the following conditions:
  - (1) if the work is part of the client's individual treatment or habilitation plan;
  - (2) if the work is performed voluntarily;
  - (3) if the client is paid wages commensurate with the economic value of the work on the open market (except as specifically explained in Rule .0302 of this Section); and
  - (4) if the work project complies with local, state and federal laws and regulations.

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0302 VOLUNTARY NON-COMPENSATED WORK**

The state facility may establish a policy allowing clients, upon their request, to do voluntary non-compensated work. The policy shall:

- (1) provide for protecting the client from abuse or exploitation;
- (2) provide for the work to be time limited and part of the client's treatment or habilitation plan;
- (3) provide that voluntary work performed by clients consists of tasks appropriate to the age or developmental level of the client;
- (4) provide for review by the legally responsible person of an incompetent adult or minor client or internal client advocate in all other cases of client volunteer work before the work is begun; and
- (5) prohibit substitution of voluntary non-compensated work for other more appropriate treatment or habilitation opportunities.

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0303 PERSONAL HOUSEKEEPING**

Limited housekeeping tasks in the client's personal living space may be required of each client without compensation.

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

### **SECTION .0400 - NONDISCRIMINATION**

#### **10A NCAC 28B .0401 TITLE VI CIVIL RIGHTS ACT 1964**

The State Facility Director shall assure that the services of the state facility are provided in compliance with the requirements specified in Title VI of the Civil Rights Act of 1964 and 45 C.F.R. 80 and other applicable laws regarding the prohibition of discrimination based on race, color, national origin, sex, or handicap.

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. July 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

#### **10A NCAC 28B .0402 DHHS DIRECTIVE - INTERPRETER SERVICES**

The State Facility Director shall assure that the services of the state facility are provided in compliance with the requirements specified in the Department of Health and Human Services Directive, Subject: Provision of Interpreter Services for the Deaf, Number 37, Effective Date: June 1, 1987, adopted pursuant to G.S. 150B-14(c), establishing the provision of interpreter services for the deaf and hearing impaired.

*History Note: Authority G.S. 122C-51; 143B-10; 143B-147;  
Eff. October 1, 1984;  
Amended Eff. April 1, 1990; July 1, 1989;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*

**10A NCAC 28B .0403 STATE AND FEDERAL REGULATIONS**

The State Facility Director shall assure that the services of the state facility are provided in compliance with all applicable state and federal statutes and regulations regarding non-discrimination, including but not limited to discrimination against a handicapped person as specified in G.S. 168-1 through 168-23, G.S. 168A and Section 504 of the Rehabilitation Act (29 U.S.C.).

*History Note: Authority G.S. 122C-51; 143B-147;  
Eff. October 1, 1984;  
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