



State of Utah

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November 5, 2021

White River Academy, Inc.

Justin Nielson, Program Director/Board Member
Loren Pence, Employee Development Manager/Board Member
Christy Finlinson, Office Manager/Board Member
275 W 100 S
Delta, UT 84624

RE: **NOTICE OF AGENCY ACTION**
LICENSE PLACED ON CONDITIONAL STATUS
White River Academy, Inc. Residential Treatment License Number 37845.

This letter serves as notice that the Utah Department of Human Services, Office of Licensing (the "Office") is placing the White River Academy, Inc.'s ("Licensee") Residential Treatment license on Conditional Status effective immediately.

This action is taken pursuant to Title 63G, Chapter 4, the Administrative Procedures Act; Utah Code Section 62A-2-112; and Utah Administrative Rule R501-1-10(2). The Office is authorized to deny, place conditions on, suspend, or revoke a human services license if the Office finds the program has failed to comply with the licensing rules, is involved with commission of any illegal act, or fails to meet standards required to provide services and promote public trust, including by enabling the commission of abuse, neglect, exploitation, harm, mistreatment or fraud.

The following conditions are immediately in effect, and must be resolved to the satisfaction of the Office before your program will be removed from conditional status:

1. Licensee shall immediately notify clients and their legal guardians and state agencies that have clients placed in the program of this Notice of Agency Action ("NAA") and submit proof of compliance with this requirement to the Office no later than 5 business days from receipt of this letter.
2. Licensee shall post the NAA on-site, and on the homepage of each of its websites, where it can be easily reviewed by all clients, guardians of clients, and visitors within five business days, and shall remain posted until the resolution of the penalty, unless otherwise instructed by the Office.

3. Licensee shall accept no new clients while this NAA is in effect or until the Office has expressed in writing that admissions may resume.
4. Licensee shall immediately stop inducing pain to obtain compliance, hyperextending joints, and forcing clients to take an uncomfortable position.
5. Licensee shall immediately stop withholding personal interaction, emotional response, or stimulation.
6. Licensee shall facilitate weekly confidential communication between each client and the client's parents, guardian, foster parents, and siblings as described in 62A-2-123(6).
7. Licensee shall create and maintain detailed documentation of each incident in which a client is placed in time-out or seclusion and that the practices of time-out and seclusion comply with Utah Code Section 62a-2-123. The detailed documentation must include the time the client was placed in seclusion, the time the client was removed from seclusion, and the time and signature of the therapist completing an assessment.
8. Licensee shall ensure that any licensee or staff member who is aware of or suspects staff misuse of force, clients rights violations, abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the Office and applicable investigative agencies.
9. Licensee shall re-train all staff on the Incident Reporting Process using the 2020 DHS Incident Reporting Guide and provide proof of training to the Office.
10. Licensee shall create a seclusion policy that meets the requirements of 62A-2-123 and submit to the Office within 10 business days.
11. Licensee shall create a restraint policy that meets the requirements of 62A-2-123 and submit to the Office within 10 business days.
12. Licensee shall require all staff to read, review, and sign the Office Code of Conduct within 10 business days.
13. Within 10 business days of approval from the Office of each new and updated policy and procedure, including those created as a result of this NAA, the licensee shall train all staff and provide documentation of completed training to the Office.

Conditional status on this license will be removed no sooner than 90 days unless approved in writing by the Office. Failure to comply with the terms of this Notice in the specified time frames may result in a further penalty action of license suspension or revocation per R501-1-10(2)(A). The Office is taking this action because Licensee has failed to comply with licensing rules noted below.

The Office of Licensing has noted violation of the following Administrative Rules:

- **Utah Code Section 62A-2-123. Congregate care program regulation.**
 - (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
 - (c) inducing pain to obtain compliance;
 - (d) hyperextending joints;
 - (g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
 - (3) A congregate care program:

(a) may use a passive physical restraint only if the passive physical restraint is supported by a nationally or regionally recognized curriculum focused on non-violent interventions and de-escalation techniques;

(c) shall ensure that a staff member that uses a restraint on a child is:

(i) properly trained to use the restraint;

(d) shall train each staff member on how to intervene if another staff member fails to follow correct procedures when using a restraint.

- **R501-1-11. Licensing Code of Conduct and Client Rights.**

(1) Licensees and staff shall:

(c) comply with all federal, state, and local laws that govern the program;

(2) Clients have the right to:

(a) be treated with dignity;

(b) be free from potential harm or acts of violence;

- **R501-2-7. Behavior Management.**

C. No management person shall authorize or use, and no staff member shall use, any method designed to humiliate or frighten a consumer.

D. No management person shall authorize or use, and no staff member shall use nor permit the use of physical restraint with the exception of passive physical restraint. Passive physical restraint shall be used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint shall not be associated with punishment in any way.

Violation(s) associated with Utah Code Section 62A-2-123, R501-1-11, and R501-2-7:

- 1) Review of video footage from three incidents, from 9-3-21, 10-4-21, and 10-17-21 revealed that staff members are using unapproved physical restraints that induce pain to obtain compliance, hyperextend joints, and force the child to take an uncomfortable position.
- 2) During the 9-3-21 incident listed in Violation 1, a staff member raised his voice and postured in a manner that demonstrated an intent to frighten a client.
- 3) Incident reports and client interviews from the incidents mentioned in Violation 1 indicate that staff members who witnessed unapproved restraints did not intervene when correct procedures were not followed.

- **Utah Code Section 62A-2-123. Congregate care program regulation.**

(2) Before a congregate care program may use a restraint or seclusion, the congregate care program shall:

(a) develop and implement written policies and procedures that:

(iv) describe time limitations on the use of a restraint or seclusion;

(v) require immediate and continuous review of the decision to use a restraint or seclusion;

(vi) require documenting the use of a restraint or seclusion;

- (4)(a) A congregate care program:
- (i) may use seclusion¹ if:
 - (A) the purpose for the seclusion is to ensure the immediate safety of the child or others; and
 - (B) no less restrictive intervention is likely to ensure the safety of the child or others; and

- **R501-2-7. Behavior Management.**

F. Programs using time out or seclusion methods shall comply with the following:

1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include:
 - a. Time-out or seclusion is only used when a child's behavior is disruptive to the child's ability to learn to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management.
 - b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time-out or seclusion.
 - c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program.
 - d. Any one time-out or seclusion shall not exceed 4 hours in duration.

Violation(s) associated with Utah Code Section 62A-2-123 and R501-2-7:

- 4) Critical incident reports from the incidents described in Violation 1 indicate that the clients from the incidents were placed on "safety observation," which meets the statutory definition of seclusion. The critical incident reports included descriptions that did not constitute an immediate health and safety need for the use of seclusion.
 - 5) The critical incident reports from the incidents described in Violation 1 are not sufficiently detailed because they do not document the length of time the clients were in seclusion, steps taken prior to using seclusion, and how often the client's behavior was re-evaluated for removal from seclusion.
- **Utah Code Section 62A-2-123. Congregate care program regulation.**
 - (6) A congregate care program:
 - (a) when not otherwise prohibited by law, shall facilitate weekly confidential communication between a child and the child's parents, guardian, foster parents, and siblings, as applicable;

Violations associated with Utah Code Section 62A-2-123:

- 6) Client and staff interviews consistently reveal that, despite instructions from the Office over several months that clients are not allowed to communicate with parents or

¹ Seclusion is defined in 62A-2-101(42) as "the involuntary confinement of an individual in a room or an area: (a) away from the individual's peers; and (b) in a manner that physically prevents the individual from leaving the room or area."

guardians by email or phone, clients are not being offered an opportunity for confidential communication as described in 62A-2-123(6).

- **Utah Code Section 62A-2-123. Congregate care program regulation.**
 - (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
 - (m) withholding personal interaction, emotional response, or stimulation.

Violation(s) associated with Utah Code Section 62A-2-123:

- 7) Client and staff interviews reveal that while a client is on “landing” level they are not allowed to speak to their peers. Clients are placed on landing level for at least their first two weeks in the program. Clients may also be placed on landing level for non-compliance.
- 8) Client interviews indicate that Licensee utilizes a practice called “safety observation” in which a client placed on safety observation is not allowed to speak to other clients. One client reports being placed on safety observation for several weeks.

The Office reserves the right to amend this Notice of Agency Action. In accordance with the Department of Human Services Administrative Hearing Procedures (Title 487), you may request an administrative hearing if there is a disputed issue of fact. There is no issue of fact if you present facts that on their face establish the right of the Office to take the action, or if the facts do not conflict with the facts relied upon by the Office in taking its action.

Pursuant to Rule 497-100, if you choose to request an administrative hearing to appeal a disputed issue of fact, you must submit your request of appeal to the Office, in writing, within 10 business days of receipt of this letter. This adjudicative proceeding, if requested and granted, shall be conducted informally. Pursuant to Rule 501-1-10 (1) “Pending an appeal of a revocation, suspension or conditional license that restricts admissions, licensee shall not accept any new clients as outlined on the Notice of Agency Action, or while an appeal of a Notice of Agency Action penalty is pending without prior written authorization from the Office”.

You can access the “Request for an Administrative Hearing” form in the Facility Forms section of our website: www.hslic.utah.gov.

All correspondence concerning this action should be addressed to:

Gayle Luciano
Utah Department of Human Services
Office of Licensing
195 North 1950 West
Salt Lake City, Utah 84116

Please reference the program and site name on all correspondence.

Sincerely,



Amanda Slater
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Cc: Blaine Thomas
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