

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
ARTHUR COCCODRILLI
ROBERT J. HARBISON, III
JOHN F. MIZNER, ESQ.
ROBERT E. NYCE, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 20, 1999

Honorable Martin F. Horn, Commissioner
Department of Corrections
2520 Lisburn Road
P.O. Box 598
Camp Hill, PA 17011

Re: IRRC Regulation #19-3 (#2010)
Department of Corrections
Motivational Boot Camps

Dear Commissioner Horn:

Enclosed are our Comments on your proposed regulation #19-3. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact Fiona Wilmarth at 783-5438 or James M. Smith at 783-5439.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Victoria Freimuth
Jill C. Fluck
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF CORRECTIONS REGULATION NO. 19-3

MOTIVATIONAL BOOT CAMPS

MAY 20, 1999

We have reviewed this proposed regulation from the Department of Corrections (Department) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 93.301. Selection criteria. - Clarity.

Subsection (a) contains a list of criteria the selection committee will consider when reviewing an inmate's application for placement in a motivational boot camp (boot camp). The Motivational Boot Camp Act (Act) (61 P.S. § 1126(c)) requires applicants to sign a memorandum of understanding in which they agree to be bound by the terms and conditions of the boot camp. The Department should add "Submittal of a signed memorandum of understanding as required by Section 6 of the Motivational Boot Camp Act (61 P.S. § 1126(c))" to the list of criteria reviewed by the selection committee.

Subsection (b) states that an inmate will not be guaranteed acceptance into a motivational boot camp even if the inmate is likely to successfully graduate from the boot camp. However, the proposed regulation does not contain the criteria for successful completion of a boot camp program. It is our understanding that these criteria are contained in the Inmate Handbook which is provided to all inmates who apply for boot camp participation. To improve the clarity of the regulation, the Department should add a new subsection which includes the criteria for successful completion of a boot camp program.

2. Section 93.302. Selection committee. - Clarity.

Subsection (a) contains a reference to the "Department of Corrections." The complete title of the Department is also used in Sections 93.301(a) and 93.303(a) and (b). However, the term "Department" is also used in the regulation. For consistency, the Department should add a new section to the regulation entitled "Definitions," include the definition of "Department" in the new section and use "Department" throughout the regulation.

Subsection (a) also refers to each "diagnostic and classification center." The Act (61 P.S. § 1124(c)) references this term, but does not define it. To improve the clarity of the regulation,

the Department should include a definition of “diagnostic and classification center” in a new “Definitions” section of the regulation.

3. Section 93.304. Supervision/organizational structure. – Clarity.

Subsection (b) provides that no more than 50 inmates are permitted in a platoon. The regulation does not, however, specify how many commanders or drill sergeants are required per platoon. We request the Department explain how it determines the required number of commanders or drill sergeants per platoon.

4. Section 93.305. Curriculum. – Clarity.

This section lists the curriculum for inmates in a boot camp. Paragraph (8) lists “Ventilation therapy.” This term is found in the definition of “motivational boot camp” in the Act (61 P.S. § 1123); however, it is not defined. The Department should include a definition of this term in a new “Definitions” section of the regulation.

5. Section 93.306. – Inmate discipline. – Clarity.

Subsection (b).

Subsection (b) provides the following:

(b) Serious rule infractions may result in an inmate’s expulsion from a motivational boot camp. (Emphasis added.)

It is unclear what are considered “serious rule infractions.” It is our understanding that “serious rule infractions” are Class I Category A – D misconduct charges which are listed in the Department’s Statement of Policy entitled “Inmate Disciplinary and Restricted Housing Procedures (DC-ADM 801)” (Policy Statement 801). However, a policy statement only provides guidance to an agency; it is not a binding norm. Therefore, if the Department intends to enforce the provisions in Subsection (b), “serious rule infractions” should be specified in the regulation.

Subsection (c).

Subsection (c) states the following:

(c) Minor rule infractions will be dealt with according to a **three-tiered approach**. (Emphasis added.)

It is unclear what are considered “minor rule infractions.” It is our understanding that “minor rule infractions” are Class II misconduct charges as listed in Policy Statement 801. As discussed in relation to Subsection (b), if the Department intends to enforce the provisions in Subsection (c), “minor rule infractions” should be specified in the regulation.

Also, it is unclear what the Department means by a “three-tiered approach.” We understand that the three-tiered approach is described in detail in the Inmate Handbook. To

improve the clarity of the regulation, the “three-tiered approach” should be specified in the regulation.

Subsection (d).

Subsection (d) provides the following:

(d) Inmates can be suspended or removed from a motivational boot camp for reasons other than violations of disciplinary rules.

This provision is vague because it does not specify the other reasons for suspension or removal from a boot camp. In the final regulation, the Department should include a list of reasons for potential suspension or removal from a boot camp. For example, the Department could structure Subsection (d) as follows:

(d) Inmates may be suspended or removed from a motivational boot camp for any of the following reasons:

(1) Violations of disciplinary rules.

(2) ...

(3) ...

6. Section 93.307. Staff training. – Clarity.

This section requires staff who work directly with inmates to undergo at least four weeks of intensive training. This provision is unclear for several reasons. First, the regulation should list the subjects that must be addressed during the training and specify that the training will be provided by the Department or a Department-approved provider. The regulation should specify when the training must be completed after a staff person is hired. Finally, the regulation should also specify the limitations imposed on a staff person’s duties if training does not start immediately upon hiring the staff person. The Department should clarify these issues in the final regulation.