

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Behavior Management and Youth Discipline Division: Behavior Management <b>Rule: Phoenix Program</b>  ACA: 4-JCF-3C-01, 3C-17, 5B-04 Statutes: 20 USC §1400 et al., 34 CFR §300.530	<b>Effective Date: 10/1/15</b>  Page: 1 of 8  Replaces: GAP.380.9535, 9/16/12
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**RULE**

(a) **Purpose.**

The Phoenix program is designed to protect staff and youth in Texas Juvenile Justice Department (TJJD) state-operated facilities from highly aggressive youth while providing these youth a highly structured environment to reduce their aggression and to progress in treatment. This rule sets forth eligibility criteria, standards of treatment, and services to be provided to youth in the program.

(b) **Applicability.**

This rule does not apply to:

- (1) youth on parole status, unless parole status is revoked in conjunction with the criteria for admission;
- (2) youth with determinate sentences who have been approved by the final TJJD authority for a court hearing to transfer the youth to the Institutions Division of the Texas Department of Criminal Justice;
- (3) youth currently diagnosed with a major emotional disturbance and/or psychiatric disorder that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility; or
- (4) youth with a current diagnosis of intellectual disability that contraindicates admission to the Phoenix program as determined by the manager of institutional clinical services at the youth's assigned facility.

(c) **Definitions.**

The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

- (1) **Admission, Review, and Dismissal (ARD) Committee**--a committee that makes decisions on educational matters relating to special-education-eligible youth.
- (2) **Assault Causing Moderate or Serious Bodily Injury to Another Youth**--intentionally and knowingly engaging in conduct that causes another youth to suffer moderate or serious injury as determined by medical staff.
- (3) **Assault Causing Substantial Bodily Injury to Staff**--intentionally and knowingly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury that involves more than passing discomfort or fleeting pain.
- (4) **Chunking Bodily Fluids at Staff**--intentionally and knowingly causing a person to contact the blood, seminal fluid, vaginal fluid, urine, and/or feces of another.
- (5) **Fighting Causing Moderate or Serious Bodily Injury to Another Youth**--intentionally and knowingly engaging in a mutually instigated physical altercation that causes another youth to suffer moderate or serious injury as determined by medical staff.

- (6) **Isolation**--the confinement of a youth in a locked room or cubicle as a tool to manage the behavior of a youth. Rules regarding isolation do not apply when doors are routinely locked during normal sleeping hours and isolation has not otherwise been imposed and do not apply to placement of a youth in the Security Program.
- (7) **Multi-Disciplinary Team (MDT)**--a group of staff who are responsible for partnering with the youth and his/her parent/guardian to facilitate his/her progress in the rehabilitation program.

(d) **General Provisions.**

- (1) The Phoenix program is administered in a location designated for such purpose. The location is self-contained and the youth do not leave the location except for healthcare appointments or by approval of the facility administrator for a specific programmatic purpose.
- (2) Security Program referral/admission and room isolation are used as necessary in accordance with [§380.9739](#) and [§380.9740](#) of this title. The Security Program location for youth in the Phoenix program is in the Phoenix program unit, using individual youth rooms.
- (3) Youth are demoted to the lowest stage in the agency's rehabilitation program upon admission to the Phoenix program.

(e) **Authorized Facilities.**

The Phoenix program may be administered only at TJJJ-operated high restriction facilities designated by the executive director.

(f) **Program Eligibility.**

The following youth are eligible for placement in the Phoenix program:

- (1) a youth who engages in one or more of the following rule violations as defined in subsection (c) of this section:
  - (A) assault causing moderate or serious bodily injury to another youth;
  - (B) assault causing substantial bodily injury to staff;
  - (C) fighting causing moderate or serious bodily injury to another youth; or
  - (D) chunking bodily fluids at staff; or
- (2) a youth who engages in any other major rule violation when the totality of circumstances justifies the placement in the program and the placement is directed by the executive director or designee; or
- (3) a youth who, on three separate occasions within a 90-day period, committed an assault causing bodily injury as defined in §380.9503 of this title and the second and third assaults were committed after a Level II due process hearing finding of true with no extenuating circumstances had been made for the previous assault.

(g) **Additional Considerations for Youth Receiving Special-Education Services.**

When a youth who is receiving special-education services is recommended for placement in the Phoenix program due to a rule violation that occurred during school-related activities, the youth's ARD committee must conduct a manifestation determination review.

- (1) If the ARD committee determines that the youth's conduct was a direct result of a failure to implement the youth's individualized education program (IEP) or that the conduct was caused by or had a direct and substantial relationship to the youth's disability:

- (A) the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan or, if a behavior intervention plan already exists, modify the existing plan to address the youth's conduct; and
  - (B) the youth may be removed from his/her regular educational setting and placed in the Phoenix program only if the youth's parent or surrogate parent (as defined by 34 CFR §300.519) agrees to a change in the educational setting as part of the youth's behavior intervention plan.
- (2) If the ARD committee determines that the youth's conduct was not a result of a failure to implement the youth's IEP and was not caused by and did not have a direct and substantial relationship to the youth's disability, the youth may be removed from his/her regular educational setting and placed in the Phoenix program. The ARD committee determines the youth's IEP while the youth is in the Phoenix program.
- (3) Regardless of the results of a manifestation determination review, a youth may be admitted to the Phoenix program and may receive educational services in the Phoenix housing area for up to 45 days if the rule violation includes possession of a weapon or the infliction of serious bodily injury upon another person.
- (A) For purposes of paragraph (3) of this subsection only, weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, not including a pocket knife with a blade of less than 2 1/2 inches in length.
  - (B) For purposes of paragraph (3) of this subsection only, serious bodily injury means bodily injury that involves:
    - (i) a substantial risk of death;
    - (ii) extreme physical pain;
    - (iii) protracted and obvious disfigurement; or
    - (iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (4) Educational services in the Phoenix program must be provided so as to meet the youth's IEP goals set by the youth's ARD committee.
- (h) **Admission Decision Process.**
- (1) A Level II due process hearing must be held in accordance with [§380.9555](#) of this title. Unless there are considerations concerning special education services that would make the youth ineligible for placement in the Phoenix program as described in subsection (g) of this section, the youth may be referred to the Phoenix program if there is a finding of true with no extenuating circumstances that the youth committed a rule violation listed in subsection (f) of this section.
  - (2) A committee composed of, at a minimum, the dorm supervisor, mental health specialist, and case manager assigned to the Phoenix program reviews each youth referred to the program.
  - (3) The committee may not recommend approval of a youth's admission to the program unless:
    - (A) a current mental health assessment indicates there is no therapeutic contraindication to placement in the Phoenix program; and
    - (B) the committee determines that the Phoenix program represents the most appropriate intervention under the circumstances.
  - (4) The division director over residential facilities or his/her designee makes the final decision on whether the youth will be admitted to the Phoenix program.

- (5) If the number of referrals exceeds the number of available beds, priority for admission is given to:
- (A) youth with the most dangerous behavior;
  - (B) youth with chronic aggressive behavior;
  - (C) youth with greater frequency of weapon use; or
  - (D) a directive from the executive director or designee.

(i) **Placement in the Redirect Program Pending Admission to the Phoenix Program.**

If, after a Level II hearing, there is a disposition for referral to the Phoenix program, the youth may be placed in the Redirect program pursuant to [§380.9517](#) of this title at the youth's current placement pending admission and transfer of the youth to the Phoenix program. The facility may cancel the referral at any time.

(j) **Program Components.**

The program's structure is designed to maximize the safety and security of youth and staff.

(1) **Physical Structure and Safety Precautions.**

- (A) Youth are assigned to single housing units in accordance with [§380.8524](#) of this title.
- (B) Mechanical restraints may be used in a manner consistent with the use of such restraints in a security unit as provided by [§380.9723](#) of this title.
- (C) A structured daily schedule is maintained and posted to provide a predictable and safe environment.

(2) **Case Planning.**

- (A) An individual plan must be developed for each youth. The plan must be written in a language clearly understood by the youth. The plan must:
  - (i) be based on a comprehensive assessment conducted by the MDT;
  - (ii) address the specific target behavior or cluster of behaviors that led to admission to the Phoenix program, taking into consideration the mental health specialist's recommendations to address the motivation for the behavior;
  - (iii) involve strategies for intervention and prevention of the target behavior through skills development;
  - (iv) include a component that addresses transition to the general campus population following graduation from the Phoenix program; and
  - (v) provide clearly written objectives for promotion through levels of the Phoenix program and graduation from the Phoenix program.
- (B) Staff must explain the individual plan to the youth. Youth must be provided an opportunity to sign the plan in acknowledgment.
- (C) The individual plan and youth's progress with regard to target behaviors and skills development must be reviewed and evaluated at least once every seven days by the MDT.

(3) **Academics.**

- (A) All youth are expected to participate in an educational program. The educational program must provide for at least six hours of required secondary curriculum on each school day.
- (B) All special-education services must be provided in accordance with ARD committee decisions. For youth who are eligible to participate in special-education services, an ARD meeting is held within ten days after admission to the Phoenix program to review the IEP. Subsequent ARD meetings and evaluations are completed in compliance with state and federal regulations.
- (C) Youth with limited English Proficiency must be provided with appropriate adaptations to the Educational Program as recommended by the Language Proficiency Assessment Committee (LPAC).

(4) **Individual Counseling.**

Youth are provided daily contact and weekly counseling with the assigned case manager or designee. The case manager or designee must immediately refer a youth to a mental health professional if concerns exist as to the youth's mental health status.

(5) **Skills Development Groups.**

- (A) In accordance with the daily schedule, the case manager assigned to the Phoenix program conducts groups on topics such as:
  - (i) aggression control;
  - (ii) emotional and behavior regulation;
  - (iii) skills development and demonstration;
  - (iv) identifying and modifying cognitive distortions;
  - (v) risk and protective factors; and
  - (vi) transition issues.
- (B) Scheduled behavior groups are provided to all youth and are conducted daily by the assigned juvenile correctional officer.

(6) **Medical and Mental Health Services.**

- (A) Youth receive weekly mental health status exams by the designated mental health specialist while assigned to the Phoenix program. Youth also receive weekly psychological counseling if deemed necessary by a mental health specialist.
- (B) Youth are seen by medical and/or psychiatric staff, as needed, and treatment is provided as ordered. The Phoenix program mental health specialist continually assesses the youth's mental status, provides individual counseling, and provides consultation with the MDT.

(7) **Behavior Management.**

- (A) Youth are expected to follow a prescribed schedule and commit no rule violations as defined in [§380.9503](#) of this title.
- (B) Youth earn privileges in the Phoenix program based on progress through the Phoenix program levels in accordance with [§380.9502](#) of this title.

(8) **Physical Exercise.**

Youth must be provided with at least one hour of large-muscle exercise seven days per week in an exercise yard if safety and weather permit.

(9) **Family Involvement.**

- (A) Youths' families are encouraged to be involved in the youths' treatment while considerations are made for the safety and security of the program.
- (B) Youth in the Phoenix program are allowed phone calls to approved family members and visitation with immediate family members according to program visitation procedures.

(10) **Youth Rights.**

Basic rights are recognized for each youth in TJJD pursuant to [§380.9301](#) of this title.

(k) **Progress in the Phoenix Program.**

The Phoenix program includes three levels. The MDT reviews each youth's progress weekly.

(1) **Level I.**

- (A) This level is completed when the MDT determines that the youth has:
  - (i) demonstrated basic knowledge of the level objectives as defined in the youth's individual case plan (ICP); and
  - (ii) participated with the MDT in targeting specific skills for development.
- (B) The youth:
  - (i) attends foundational skills development groups;
  - (ii) participates in individual sessions with his/her case manager; and
  - (iii) demonstrates consistent participation in other areas of programming.

(2) **Level II.**

- (A) This level is completed when the MDT determines that the youth has:
  - (i) identified patterns in his/her thoughts, feelings, attitudes, values, and beliefs that relate to ongoing behaviors;
  - (ii) demonstrated sufficient competency in the targeted skills to address those behaviors; and
  - (iii) completed the level objectives as defined in the youth's ICP.
- (B) The youth:
  - (i) attends intermediate skills development groups;
  - (ii) participates in individual sessions with his/her case manager; and
  - (iii) demonstrates consistent participation in other areas of programming.

(3) **Level III.**

- (A) This level is completed when the MDT determines that the youth demonstrates and practices skills learned in skills development groups through daily application in situations that present increased risk for the youth. Youth are expected to engage in responsible behaviors and provide leadership in the program. Additional skills are learned as assigned and the plan for reintegration to general campus programming is completed.

- (B) The youth:
  - (i) attends advanced skills development groups;
  - (ii) participates in individual sessions with his/her case manager; and
  - (iii) demonstrates consistent participation in other areas of programming.

(l) **Progress Reviews.**

(1) **Multi-Disciplinary Team Reviews.**

- (A) The MDT reviews the youth's ICP, evaluates progress through program requirements, and reviews the effectiveness of treatment strategies on a weekly basis. The MDT may not promote youth in the stages of the agency's rehabilitation program while the youth is in the Phoenix program.
- (B) The MDT makes decisions regarding promotion within Phoenix program levels based on achievement of established criteria.
  - (i) Level Promotion.  
  
Youth meeting the established criteria must be promoted to the next level.
  - (ii) Level Demotion.  
  
The MDT may assign the youth to a lower level when the youth's behavior demonstrates low use of pro-social skills. The MDT may demote one or two levels depending upon the severity of the behavior and/or lack of consistency in the use of pro-social skills.

(2) **Individual Case Plan Review.**

Case plan reviews and updates are conducted in accordance with [§380.8701](#) of this title.

(3) **Mental Health Review.**

- (A) Youth must be evaluated on a regular basis by the Phoenix program mental health specialist for the presence of a mental health disorder that contraindicates continued placement in the Phoenix program.
- (B) Youth must be released from the Phoenix program at any time for mental health reasons based on the recommendation of the mental health specialist or psychiatrist and the approval of the TJJD director of treatment.
- (C) Youth with neurological and/or mental health disorders may be temporarily admitted to a TJJD-operated crisis stabilization unit pursuant to [§380.8767](#) of this title for diagnostic purposes to determine the most appropriate placement.

(m) **Graduation from the Phoenix Program.**

- (1) Youth graduate from the Phoenix program upon completion of Level III as described in [subsection \(k\)](#) of this section.
- (2) Youth released from the Phoenix program are assigned to the Redirect program at the receiving facility and are provided support to reintegrate into the general campus population at the receiving facility.

(n) **Program Monitoring and Youth Rights.**

- (1) To ensure the Phoenix program is being implemented according to provisions of this rule, staff from facility administration must visit the program daily and staff from psychology administration must visit the program weekly.
- (2) Youth rights staff or a designee must visit the Phoenix program daily to ensure that the youth have access to the youth grievance system.

(o) **Appeal of Level Assessment in the Phoenix Program.**

A youth in the Phoenix program may appeal the results of a level assessment or of the lack of opportunity to demonstrate completion of requirements by filing a grievance in accordance with [§380.9331](#) of this title. The person assigned to respond to the youth's grievance must not be a member of the youth's MDT or a staff member who has been involved in the youth's current assessment.

(p) **Independent Review Team Oversight.**

- (1) A managerial staff member designated by the facility administrator who is not assigned to the Phoenix program monitors the Phoenix MDT monthly.
- (2) The director of facility operations reviews compliance with Phoenix program policy and procedure requirements as part of routine facility assessment processes.
- (3) A cross-divisional team based in the TJJD Austin Office reviews youth who remain on Level I or Level II after 120 days in the program until the youth progresses to the next level. The team conducts quarterly reviews thereafter until the youth graduates from the program.
- (4) The TJJD division responsible for monitoring and inspections conducts random reviews of Phoenix program files and coordinates with other departments as appropriate for reviews of certain components of Phoenix program files such as mental health assessments, ICPs, and education service delivery.

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For implementation procedures, see [CMS.03.75](#).