

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Substituted detention for lockup, in (d) substituted 10A:16-13 for 10A:11, in (e) added reference to Form 251-I, and provided for written fact finding after due process hearing.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), (f) and (g), inserted "calendar-"; in (g), substituted "decision of the Disciplinary Hearing Officer/Adjustment Committee" for "Disciplinary Hearing Officer's/Adjustment Committee's decision"; in (h), inserted "calendar"; and in (j), substituted "custody staff supervisor" for "shift".

10A:4-6.4 Appeal procedure

(a) At the time the inmate is adjudicated a chronic violator, the inmate shall be notified of his or her right to appeal the decision of the Disciplinary Hearing Officer to the Assistant Commissioner, Division of Operations, Department of Corrections. The appeal may be filed at any time during the inmate's continued confinement in detention, except that appellate review shall not occur more than twice per month.

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner, Division of Operations, shall confer with the Administrator in charge of the Administrative Close Supervision Unit (ACSU) concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the decision of the Assistant Commissioner, Division of Operations, and the reasons thereof within five business days.

Administrative Correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1989 d.136 effective March 20, 1989.

See: 21 N.J.R. 10(b), 21 N.J.R. 766(a).

References to Assistant Superintendents at the Administrative Close Supervision Unit (ACSU) and the Edna Mahan Correctional Facility for Women, added.

Amended by R.1990 d.34, effective January 16, 1990.

See: 21 N.J.R. 3240(a), 22 N.J.R. 232(a).

In (b): added "Division of Adult Institutions."

Replaced references to "VRU Director, the Assistant Superintendent in charge of ACSU, or the Edna Mahan ... Superintendent" with "administrator in charge of the Administrative Close Supervision Unit (ACSU)."

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), substituted "business" for "working".

SUBCHAPTER 7. ON-THE-SPOT CORRECTION

Subchapter Historical Note

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1410(a), 29 N.J.R. 2187(b).

10A:4-7.1 On-the-spot disciplinary report/adjudication

(a) When a violation of a prohibited act that is considered minor has occurred, the staff member witnessing the violation

shall prepare Part I of Form 253-I On-The-Spot Disciplinary Report/Adjudication and distribute copies as follows:

1. One copy of the report shall be served upon the inmate; and
2. Two copies shall be forwarded immediately to the custody staff supervisor.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In the introductory paragraph of (a), substituted "and distribute copies as follows:" for "in triplicate."; in (a)1, deleted comma from end; and in (a)2, substituted "custody staff" for "shift".

10A:4-7.2 Conference/appeal

(a) The custody staff supervisor shall hold a conference within 24 hours of receipt of the On-The-Spot Disciplinary Report/Adjudication. The inmate shall also be afforded the right to appear at the conference with the custody staff supervisor at which time the inmate may review and appeal the disciplinary report, discuss the violation and the inmate may present arguments regarding disciplinary action and challenge the proposed sanction.

(b) An inmate may waive the right to attend his or her conference or the inmate may forfeit that right if the inmate's behavior justifies his or her removal from the conference. In either case, the reasons for the inmate's absence shall be documented on Form 253-I.

(c) The custody staff supervisor shall indicate on Part 2 of Form 253-I On-The-Spot Disciplinary Report/Adjudication whether the conference was held and enter on the form the other data pertaining to the results of the conference.

(d) At the conclusion of the conference, the inmate shall receive a completed copy of Form 253-I On-The-Spot Disciplinary Report/Adjudication. Should the inmate be found guilty, the remaining copy of Form 253-I shall be submitted to the Director of Custody Operations who shall determine where Form 253-I shall be maintained.

(e) On-the-spot disciplinary action is considered minor in nature and as such the right afforded to the inmate to appear at the conference shall be the final appeal for a finding of guilt to an on-the-spot disciplinary adjudication.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted "on-the-spot".

Amended by R.1997 d.432, effective October 6, 1997.

See: 29 N.J.R. 3408(a), 29 N.J.R. 4311(b).

In (d), substituted "submitted to the Director ... be maintained" for "submitted for placement into the inmate's classification folder" and deleted provision relating to not guilty determinations. Petition for Rulemaking.

See: 36 N.J.R. 2957(a).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "custody staff" for "shift" twice and "the inmate may present arguments regarding disciplinary action and" for "argue that the inmate should not be disciplined, or"; and in (c), substituted "custody staff" for "shift".

10A:4-7.3 Sanctions

(a) The following are authorized sanctions for on-the-spot corrections:

1. Verbal reprimand;
2. Loss of recreation privileges not to exceed five calendar days;
3. Up to four hours of extra work duty;
4. Up to four hours confinement to the room or housing area;
5. Loss of radio or television privileges for a period of no more than five days; and/or
6. Confiscation.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added "confiscation" as a sanction for ON-THE-SPOT CORRECTIONS.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a)2, substituted "not to exceed" for "for a period of no more than" and inserted "calendar".

10A:4-7.4 Imposition of sanction

(a) If the custody staff supervisor concurs with the Form 253-I, On-The-Spot Disciplinary Report/Adjudication and proposed sanction, the proposed sanction shall be imposed within 24 hours of the conference. If no conference is requested, the sanction shall be imposed within 24 hours of the review by the custody staff supervisor.

(b) The custody staff supervisor shall have the authority to change the proposed sanction to another on-the-spot sanction.

(c) If the custody staff supervisor concludes that a more serious sanction is necessary, the custody staff supervisor may refer the on-the-spot correction to the Disciplinary Hearing Officer or Adjustment Committee and/or increase the on-the-spot correction in accordance with N.J.A.C. 10A:4-7.6.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (a) inserted "on-the-spot" and added (b) and (c).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "custody staff" for "shift" throughout; in (a), inserted "Form 253-I"; and in (c), inserted "the on-the-spot correction to the Disciplinary Hearing Officer or Adjustment Committee".

Petition for Rulemaking.

See: 39 N.J.R. 3566(a).

10A:4-7.5 Record of sanction

(a) Information regarding on-the-spot guilty infractions shall not be entered onto the progress notes or be included in the reports presented to the New Jersey State Parole Board.

(b) Records of the on-the-spot sanctions (Form 253-I) shall be retained separately from the inmate's classification folder and in accordance with the internal management procedures of the correctional facility.

Amended by R.1997 d.432, effective October 6, 1997.

See: 29 N.J.R. 3408(a), 29 N.J.R. 4311(b).

Substantially amended section.

10A:4-7.6 Referral and/or increase of an on-the-spot correction infraction

(a) Should the custody staff supervisor conclude that a more serious sanction may be appropriate, the infraction shall be referred to the Disciplinary Hearing Officer or Adjustment Committee for a disciplinary hearing and disposition.

(b) A report shall be filed on Form 259, Disciplinary Report containing all the required information. Copies of all relevant documents shall then be forwarded to the Disciplinary Hearing Officer or Adjustment Committee Chairperson with a statement of reasons for the referral and any recommendations.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Deleted references to major violations.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (a), substituted "custody staff" for "shift".

SUBCHAPTER 8. ADJUSTMENT COMMITTEE OR DISCIPLINARY HEARING OFFICER**10A:4-8.1 Adjustment Committee or Disciplinary Hearing Officer**

The disciplinary hearing within a correctional facility shall be conducted by either a Disciplinary Hearing Officer designated by the Commissioner or a Committee of three staff members designated by the Administrator.

10A:4-8.2 Designation of an Adjustment Committee

(a) The Administrator shall have the authority to designate an Adjustment Committee only at those correctional facilities where the Commissioner has not designated a Disciplinary Hearing Officer to perform such function, or in extraordinary circumstances when a Disciplinary Hearing Officer is not available.

(b) The Administrator may appoint persons to serve permanently, or may rotate members, or appoint one or more members to serve permanently and rotate other members.

(c) The Administrator shall designate one of the Committee members to serve as Chairperson. The Chairperson shall be the presiding officer and shall have the responsibility for the proper operation of the Committee.

10A:4-8.3 Composition of the Adjustment Committee

(a) The Adjustment Committee, other than the Adjustment Committee of the Capital Sentence Unit (C.S.U.), shall be composed of at least three persons which shall include:

1. A supervisory custody staff member of the rank of Captain or above (or a Lieutenant in case of a Captain's absence);

2. A correctional facility supervisor from the medical, administrative, social services, educational or treatment staff; and

3. A civilian line staff member.

(b) The Adjustment Committee of the C.S.U. shall consist of three members of the Unit Management Team. They are:

1. A Lieutenant in charge of the Unit;

2. A social worker; and

3. A psychologist.

(c) A staff member shall not participate as a member of the Adjustment Committee if the Committee is hearing an incident that the staff member has reported and/or investigated.

(d) A staff member witnessing an incident under consideration should not participate as a member of the Adjustment Committee unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.

Amended by R.1996 d.237, effective May 20, 1996.

See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (c) and (d), substituted "participate" for "sit".

10A:4-8.4 Authority of Disciplinary Hearing Officer or Adjustment Committee

(a) The Disciplinary Hearing Officer or Adjustment Committee shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all correctional facility records which are relevant and necessary to the adjudication of any disciplinary case.

(b) The Disciplinary Hearing Officer or Adjustment Committee shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence which is not necessary for an adequate understanding of the case. The Committee Chairperson or Disciplinary Hearing Officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness such as, but not limited to, a repetitive witness and to ensure that the hearing does not develop into an adversarial proceeding.

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

In (b), inserted "such as, but not limited to, a repetitive witness" and substituted "ensure" for "insure" and "adversarial" for "adversary".

10A:4-8.5 Decisions of the Adjustment Committee

Decisions of an Adjustment Committee at those correctional facilities utilizing such a Committee shall be by

majority vote with each member having an equal vote and an equal right to participate in the fact-finding, discussions and deliberations of the Committee.

SUBCHAPTER 9. DISCIPLINARY PROCEDURES

Subchapter Historical Note

Petition for Rulemaking. See: 35 N.J.R. 1594(b).

10A:4-9.1 Disciplinary report

(a) When a violation of a prohibited act as identified in N.J.A.C. 10A:4-4, Inmate Prohibited Acts has occurred, the staff member who witnessed it or who has probable cause to believe that a prohibited act has occurred shall prepare Form 259 Disciplinary Report and forward it to the appropriate correctional supervisor.

(b) The correctional supervisor may change the report to an On-The-Spot Disciplinary Report/Adjudication or forward it to the Disciplinary Hearing Officer or Adjustment Committee for further disposition.

10A:4-9.2 Notification of inmate

The disciplinary report shall be served upon the inmate within 48 hours after the violation unless there are exceptional circumstances. The report shall be delivered by the reporting staff member or the investigating custody staff member. The report shall be signed by the person delivering it and the date and time of delivery shall be noted. The inmate shall have 24 hours to prepare his or her defense.

Case Notes

Deviation from requirement that inmate have 24 hours to prepare defense should be permitted only in extreme circumstances. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Violation of rule requiring that inmate have 24 hours to prepare defense to disciplinary charges was harmless. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Inmate not prejudiced because he received only 24 hours notice of his disciplinary report, subsequent to the completion of the investigation of the charges against him. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.3 Notification of use of immunity

In all cases, the inmate shall be advised of the inmate's right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating custody staff member shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his or her discretion or the Adjustment Committee

at its discretion may grant a postponement if it is determined that such failure has precluded the inmate from adequately preparing his or her defense at the hearing.

Amended by R.1991 d.276, effective June 3, 1991.

See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Added reference to the Adjustment Committee.

Law Review and Journal Commentaries

Survey of Recent Developments in United States and New Jersey Law. Michael Ben-David, Stacy A. Dowling, Kristina K. Pappa, Douglas Friedman, Michael S. Rubin, Kerrie Restieri-Heslin, 25 Seton Hall L.Rev. 1332 (1995).

10A:4-9.4 Effect of use immunity

(a) An inmate's failure to invoke use immunity and make a statement in his/her defense may be considered by the Disciplinary Hearing Officer or Adjustment Committee together with the other evidence in decision making.

(b) A finding of guilt at a disciplinary hearing, however, shall not be predicated solely upon an inmate's silence.

10A:4-9.5 Investigation

(a) An investigation of the infraction shall be conducted by designated staff of the correctional facility within 48 hours of the time the disciplinary report is served upon the inmate.

(b) The Administrator shall appoint a coordinator of investigations who shall be an employee of supervisory level. The Administrator may also appoint one or more investigating officers. For the purpose of this section, "investigating officer" means an employee of supervisory level who has not been involved in the particular incident to be investigated.

(c) The coordinator of investigations shall be responsible for:

1. All investigations of disciplinary charges. The coordinator may assign individual investigations to an investigating officer who shall be responsible to the coordinator for completing the assignments;

2. Forwarding a list of all inmates who have a pending disciplinary infraction to the Mental Health Unit for a determination as to which inmates should be considered special needs inmates; and

3. Ensuring that Mental Health Unit staff provide said determination to the investigating officer and Disciplinary Hearing Officer/Adjustment Committee.

(d) The Disciplinary Hearing Officer/Adjustment Committee shall determine the need to obtain a psychological/psychiatric evaluation based upon the nature of the infraction, the determination from the Mental Health Unit **regarding whether the inmate is a special needs inmate and/or any other relevant information.**

1. In those cases where a psychological/psychiatric evaluation is necessary, the Disciplinary Hearing Officer/Adjustment Committee shall forward Form HSU-010, Request for Psychological/Psychiatric Evaluation to the Lead Psychologist.

2. Upon completion and receipt of the evaluation report from the Lead Psychologist, the Disciplinary Hearing Officer/Adjustment Committee shall consider the information provided in the evaluation report along with any other information gathered during the investigation.

(e) The investigating officer shall thoroughly investigate the incident. As part of this investigation, the investigating officer shall verify that the inmate has received the written charge. The investigating officer shall also read the charge to the inmate, inform the inmate of the inmate's use immunity rights, take the inmate's plea, and ask if the inmate wishes to make a statement concerning the incident or infraction. The investigating officer shall take the inmate's statement concerning the incident. The investigating officer may talk to witnesses and the reporting staff member and summarize their statements as may be necessary. Comments about the inmate's attitude may be included in the investigatory report. The investigating officer shall attach to the investigatory report, evidence such as, but not limited to, staff reports, photographs of physical evidence, analysis of specimens collected, continuity of evidence forms and confiscation forms.

(f) The inmate may submit to the investigating officer a written request for inmate witnesses. Written requests will be attached to the record of the case.

(g) The investigating officer may include comments and conclusions regarding the inmate's prior record and behavior, the investigating officer's analysis of any conflicts between witnesses, and the conclusions of the investigating officer regarding the incident. The inmate shall not receive a copy of the investigative record.

(h) The inmate may obtain a copy of inmate witness statements, provided that the Department of Corrections finds that such a disclosure would not compromise correctional facility safety, security, orderly operation, and goals.

Amended by R.1995 d.542, effective October 16, 1995.

See: 27 N.J.R. 2853(a), 27 N.J.R. 3957(a).

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

In (b), substituted a reference to the Administrator for a reference to the Superintendent; rewrote (c); inserted a new (d); and recodified former (d) through (g) as (e) through (h).

Amended by R.2006 d.398, effective November 20, 2006.

See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Substituted "investigating officer" for "investigator" throughout; in (a), inserted "designated staff of"; rewrote (b); in the introductory paragraph of (c), inserted "of investigations"; rewrote (c)3; in (e), inserted the final sentence; rewrote (g); and in (h), inserted "orderly operation."