

CHAPTER 4

INMATE DISCIPLINE

Authority

N.J.S.A. 30:1B-6 and 30:1B-10.

Source and Effective Date

R.2006 d.398, effective October 24, 2006.
See: 38 N.J.R. 3121(a), 38 N.J.R. 4867(a).

Chapter Expiration Date

Chapter 4, Inmate Discipline, expires on October 24, 2011.

Chapter Historical Note

Chapter 4, Inmate Discipline, was adopted as R.1986 d.283, effective July 21, 1986. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a).

Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman, was repealed by R.1988 d.239, effective June 6, 1988. See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).

Subchapter 12, Appeal to Office of Administrative Law (OAL), was repealed by R.1988 d.543, effective November 21, 1988. See: 20 N.J.R. 496(b), 20 N.J.R. 2928(a).

Pursuant to N.J.S.A. 30:7-1, the following correctional facilities in Chapter 4 were redesignated: Training School for Juveniles at Jamesburg to the New Jersey Training School for Boys; Girls Unit and The Boys Unit of the Training School for Boys at Skillman to the Lloyd McCorkle Training School for Boys and Girls; Clinton Correctional Institution to the Edna Mahan Facility for Women; Trenton State Prison to the New Jersey State Prison. See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1991 d.276, effective May 7, 1991. See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, was readopted as R.1996 d.237, effective April 26, 1996. See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b). Pursuant to Executive Order No. 66(1978), Chapter 4, Inmate Discipline, expired on April 26, 2001.

Chapter 4, Inmate Discipline, was adopted as new rules by R.2001 d.221, effective July 2, 2001. See: 33 N.J.R. 1289(a), 33 N.J.R. 2291(a).

Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as emergency new rules by R.2005 d.435, effective November 15, 2005, to expire on January 14, 2006. See: 37 N.J.R. 4575(a). Subchapter 12, Zero Tolerance Policies of the Department of Corrections, was adopted as concurrent new rules by R.2006 d.58, effective January 11, 2006. See: 37 N.J.R. 4575(a), 38 N.J.R. 993(a).

Chapter 4, Inmate Discipline, was readopted as R.2006 d.398, effective October 24, 2006. As a part of R.2006 d.398, Subchapter 1, Introduction, was renamed General Provisions, effective November 20, 2006. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10A:4-1.1 Purpose
- 10A:4-1.2 Scope
- 10A:4-1.3 Definitions
- 10A:4-1.4 Forms

SUBCHAPTER 2. PUBLICATION OF RULES

- 10A:4-2.1 Notification of inmates about rules and regulations
- 10A:4-2.2 Review of inmate rules
- 10A:4-2.3 Promulgation of rules

SUBCHAPTER 3. INMATE RIGHTS AND RESPONSIBILITIES

- 10A:4-3.1 Notification of inmates of their rights and responsibilities

SUBCHAPTER 4. INMATE PROHIBITED ACTS

- 10A:4-4.1 Prohibited acts
- 10A:4-4.2 Reports to the prosecutor on prohibited acts

SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

- 10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex
- 10A:4-5.2 (Reserved)
- 10A:4-5.3 Limitation on sanctions
- 10A:4-5.4 (Reserved)

SUBCHAPTER 6. CHRONIC VIOLATOR

- 10A:4-6.1 Scope
- 10A:4-6.2 Criteria for designating a chronic violator
- 10A:4-6.3 Procedures for designation of a chronic violator
- 10A:4-6.4 Appeal procedure

SUBCHAPTER 7. ON-THE-SPOT CORRECTION

- 10A:4-7.1 On-the-spot disciplinary report/adjudication
- 10A:4-7.2 Conference/appeal
- 10A:4-7.3 Sanctions
- 10A:4-7.4 Imposition of sanction
- 10A:4-7.5 Record of sanction
- 10A:4-7.6 Referral and/or increase of an on-the-spot correction infraction

SUBCHAPTER 8. ADJUSTMENT COMMITTEE OR DISCIPLINARY HEARING OFFICER

- 10A:4-8.1 Adjustment Committee or Disciplinary Hearing Officer
- 10A:4-8.2 Designation of an Adjustment Committee
- 10A:4-8.3 Composition of the Adjustment Committee
- 10A:4-8.4 Authority of Disciplinary Hearing Officer or Adjustment Committee
- 10A:4-8.5 Decisions of the Adjustment Committee

SUBCHAPTER 9. DISCIPLINARY PROCEDURES

- 10A:4-9.1 Disciplinary report
- 10A:4-9.2 Notification of inmate
- 10A:4-9.3 Notification of use of immunity
- 10A:4-9.4 Effect of use immunity
- 10A:4-9.5 Investigation
- 10A:4-9.6 Requiring further investigation of charges
- 10A:4-9.7 Review of postponed cases
- 10A:4-9.8 Scheduling hearing
- 10A:4-9.9 Failure to adhere to time limits
- 10A:4-9.10 Excluding the inmate from the disciplinary hearing
- 10A:4-9.11 In absentia hearings
- 10A:4-9.12 Aid in presentation of inmate's case
- 10A:4-9.13 Opportunity to call a witness(es) and present evidence
- 10A:4-9.14 Confrontation and cross examination
- 10A:4-9.15 Evidence required
- 10A:4-9.16 Modification of charge during disciplinary hearing
- 10A:4-9.17 Disciplinary sanctions
- 10A:4-9.18 Suspending sanctions
- 10A:4-9.19 Confiscation of contraband items
- 10A:4-9.20 Guidance and referrals
- 10A:4-9.21 Emergency transfer to another correctional facility or unit
- 10A:4-9.22 Emergency inter-complex transfer
- 10A:4-9.23 Transfer from satellite units
- 10A:4-9.24 Disciplinary decision
- 10A:4-9.25 Discipline record card (Form 254-I)

- 10A:4-9.26 Expungement
 10A:4-9.27 Reopening a disciplinary hearing
 10A:4-9.28 Records of disciplinary reports

SUBCHAPTER 10. DETENTION PROGRAM

- 10A:4-10.1 Confinement in Prehearing Detention
 10A:4-10.2 Placement in Disciplinary Detention
 10A:4-10.3 Separate facilities
 10A:4-10.4 Ventilation, heating, lighting and sanitation in Detention Program
 10A:4-10.5 Visual observation
 10A:4-10.6 Personal items
 10A:4-10.7 Withdrawal of personal items or special activities
 10A:4-10.8 Medical and psychiatric services
 10A:4-10.9 Emergency evacuation
 10A:4-10.10 Visits by social services and correctional supervisory staff
 10A:4-10.11 Chaplain services
 10A:4-10.12 Food
 10A:4-10.13 Correspondence, visits and telephone calls
 10A:4-10.14 Grooming, showering and shaving
 10A:4-10.15 Reading material
 10A:4-10.16 Recreation
 10A:4-10.17 Records in Disciplinary Detention
 10A:4-10.18 Correctional facility internal management procedures and post orders

SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

- 10A:4-11.1 Time limit to file an appeal
 10A:4-11.2 Processing appeal
 10A:4-11.3 Suspension of sanctions pending appeal
 10A:4-11.4 Investigation of appeal
 10A:4-11.5 Disposition of appeal
 10A:4-11.6 Policy regarding rehearings
 10A:4-11.7 Notification of inmate on appeal results
 10A:4-11.8 Expungement
 10A:4-11.9 (Reserved)

SUBCHAPTER 12. ZERO TOLERANCE POLICIES OF THE DEPARTMENT OF CORRECTIONS

- 10A:4-12.1 Purpose
 10A:4-12.2 Zero tolerance policies
 10A:4-12.3 Zero tolerance disciplinary sanctions

SUBCHAPTER 1. GENERAL PROVISIONS

10A:4-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies to assure that inmate discipline and control are consistent with the correctional objectives of the Department of Corrections and the correctional facility;
2. Establish a comprehensive code of offenses and set of permissible punishments in order that prescribed behavior may be known by both inmates and staff;
3. Establish administrative due process safeguards in the disciplinary process as required by the United States Supreme Court in *Wolff v. McDonnell*, 418 U.S. 539 (1974) and the New Jersey Supreme Court in *Avant v. Clifford*, 67 N.J. 496 (1975);
4. Enforce rules and impose appropriate sanctions for infractions;

5. Stimulate application of disciplinary procedures which encourage future voluntary acceptance of certain behavior limitations that are necessarily being imposed upon the inmate;

6. Build and maintain morale among inmates and between staff and inmates by providing impartial and fair procedures throughout the disciplinary process.

Amended by R.1991 d. 276, effective June 3, 1991.
 See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).
 Corrected reference to Chapter in (a).
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

Case Notes

Correctional institution regulations held constitutional (citing former N.J.A.C. 10:35). *Avant v. Clifford*, 67 N.J. 496, 341 A.2d 629 (1975).

10A:4-1.2 Scope

(a) This chapter shall be applicable to the Division of Operations unless otherwise indicated.

(b) This chapter shall apply to State sentenced inmates incarcerated at adult county correctional facilities.

Amended by R.1987 d. 506, effective December 21, 1987.
 See: 19 N.J.R. 1531(a), 19 N.J.R. 2403(a).
 Added "the Girls Unit ... Boys at Skillman".
 Amended by R.1988 d. 239, effective June 6, 1988.
 See: 20 N.J.R. 496(a), 20 N.J.R. 1224(a).
 Added Boys Unit to the Girls Unit.
 Administrative correction, effective January 27, 1989.
 See: 21 N.J.R. 558(a).
 Institutional name change.
 Amended by R.1994 d.182, effective April 4, 1994.
 See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).
 Amended by R.1996 d.237, effective May 20, 1996.
 See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Close Supervision Unit" means a long term close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.

"Adjustment Committee" shall mean the committee within a facility that is authorized to hear and adjudicate inmate violations of prohibited acts.

"Administrative Segregation" shall mean removal of an inmate from the general population to a long term close custody unit because of one or more disciplinary infractions or other administrative considerations.

"Bodily fluid" shall mean saliva, blood, urine, feces, seminal fluid or any other bodily fluid (see N.J.S.A. 2C:12-12).

"Bodily injury" shall mean physical pain, illness or any impairment of physical condition (see N.J.S.A. 2C:11-1).

“Extra duty” shall mean a task(s) other than those related to an inmate’s work or program assignment(s) to which an inmate has been assigned as a result of a violation of a prohibited act.

“Fact witness” means a witness who provides a factual account of the incident based upon his or her being personally involved in, or having personally observed the incident or aspects thereof. For example, a Department of Corrections staff member who administers a test for prohibited substances may be considered a fact witness if a question of fact exists with regard to the taking, initial testing or custody of the specimen.

“Major violations” shall mean the violation of a prohibited act that is preceded by an asterisk.

“Minor violations” shall mean the violation of a prohibited act that is not preceded by an asterisk.

“Repetitive witness” means a witness who is expected to provide substantially the same testimony as a previous witness.

“Serious bodily injury” shall mean bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ (see N.J.S.A. 2C:11-1).

“Special Classification Committee” (S.C.C.) shall mean the body composed of representatives from the Prison and Youth Complexes within the Division of Operations, which considers the transfer of inmates between complexes.

“Unavailable witness” is a witness who is unable, for medical, leave or other valid reason, to attend the disciplinary hearing.

“Weapon” shall mean anything readily capable of lethal use or of inflicting serious bodily injury (see N.J.S.A. 2C:39-1).

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

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

Added definitions for “administrative close supervision unit”, “Capital sentence unit” and “counsel substitute”; amended definition for “superintendent”.

Amended by R.1994 d.182, effective April 4, 1994.

See: 26 N.J.R. 727(a), 26 N.J.R. 1506(a).

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

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

Deleted “Superintendent” and “Vroom Readjustment Unit”, added “Inmate handbook”, and amended “Extra duty”, “Handbook on Discipline” and “Special Classification Committee”.

Amended by R.2004 d.180, effective May 3, 2004.

See: 36 N.J.R. 6(b), 36 N.J.R. 2241(b).

Deleted “Institutional Classification Committee (I.C.C.)” and “Inter-Institutional Classification Committee (I.I.C.C.)”

Amended by R.2004 d.293, effective August 2, 2004.

See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Inserted “Fact witness”, “Repetitive witness” and “Unavailable witness”.

Amended by R.2006 d.151, effective May 1, 2006.

See: 38 N.J.R. 96(a), 38 N.J.R. 1836(a).

Deleted a comma in the introductory paragraph; deleted the definitions for “Asterisk offense”, “Capital Sentence Unit”, “Close custody unit”, “Commissioner”, “Custody status”, “Department”, “Disciplinary Hearing Officer”, “Disciplinary report”, “Disciplinary Sanction”, “Handbook on Discipline”, “Inmate handbook”, “On-the-spot correction”, “Prehearing detention”, “Prison Complex”, “Prohibited acts” and “Youth Complex”.

Amended by R.2007 d.198, effective July 2, 2007.

See: 39 N.J.R. 834(b), 39 N.J.R. 2538(a).

Deleted definitions “Counsel substitute” and “Disciplinary Detention”.

10A:4-1.4 Forms

(a) The following forms related to Inmate Discipline are printed by the Bureau of State Use Industries—DEPTCOR and each correctional facility shall purchase a supply of these forms by contacting the Bureau:

1. 253-I On-The-Spot Disciplinary Report/Adjudication;
2. 254-I Discipline Record Card;
3. 259 Disciplinary Report;
4. 259A Adjudication of Disciplinary Report.

(b) The following forms related to Inmate Discipline are available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms by contacting the Administrative Rules Unit, New Jersey Department of Corrections:

1. 251-I Chronic Violator Notice;
2. 251-II Chronic Violator Adjudication Notice;
3. 252 Inmate Disciplinary Hearing Attendance Refusal Notice;
4. 255-I Authorization for Prehearing Detention;
5. 256-I Appeal of Disciplinary Decision;
6. 256-II Disposition of Disciplinary Appeal.

(c) The following form related to inmate discipline shall be reproduced by each correctional facility from an original that is available by contacting the Health Services Unit:

1. HSU-010 Request for Psychological/Psychiatric Evaluation.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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

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

Added (c).

Administrative change.

See: 35 N.J.R. 1137(a).

Amended by R.2006 d.419, effective December 4, 2006.

See: 38 N.J.R. 3226(a), 38 N.J.R. 5161(a).

Added new (a)1; recodified former (a)1 through (a)3 as (a)2 through (a)4; in the introductory paragraph of (b), deleted "shall be reproduced by each correctional facility from originals that" preceding "are available", inserted "by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain copies of forms" and ", New Jersey Department of Corrections"; deleted former (b)4; and recodified former (b)5 through (b)7 as new (b)4 through (b)6.

SUBCHAPTER 2. PUBLICATION OF RULES

10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of reception into the New Jersey Department of Corrections, each inmate shall receive a copy of the Handbook on Discipline and thereby be advised in writing of his or her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the correctional facilities of the Department of Corrections. Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(b) At the time of arrival at a correctional facility, each inmate shall receive a copy of the correctional facility Inmate Handbook which contains correctional facility rules, procedures and information about services and programs. The correctional facility Inmate Handbook shall be provided as part of the admission-orientation program in accordance with N.J.A.C. 10A:8. Each inmate shall be required to sign a form acknowledging receipt of the correctional facility Inmate

Handbook. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in housing units and other areas of the correctional facility and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the correctional facility Inmate Handbook.

(d) When a correctional facility has a large number of inmates in the population who speak a foreign language, the rules shall be printed and presented verbally in the foreign language.

(e) For illiterate inmates or inmates otherwise unable to read or write due to a physical/medical inability, the rules shall be verbally communicated and assistance shall be provided to those inmates unable to provide written acknowledgement.

Amended by R.1991 d.276, effective June 3, 1991.
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Corrected internal N.J.A.C. cite to Handbook.
Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

10A:4-2.2 Review of inmate rules

The Administrator of the correctional facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules are current and appropriate.

Amended by R.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

facility safety or goals. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports. If the request for witness testimony is granted, the inmate or counsel substitute shall provide to the Disciplinary Hearing Officer or Adjustment Committee the proposed witness questions for review.

(c) Based upon the review as established in (b) above, the Disciplinary Hearing Officer or Adjustment Committee may take the testimony in a manner or form which is determined to be necessary to protect correctional facility/unit safety, security, orderly operation, or goals. The Disciplinary Hearing Officer or Adjustment Committee may disallow any questions that may:

1. Be unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Be irrelevant;
3. Be repetitive;
4. Be meant to harass or retaliate;
5. Be for some malicious purpose; or
6. Reveal confidential information.

(d) The Disciplinary Hearing Officer or Adjustment Committee shall direct all remaining questions to the witness. The inmate or counsel substitute may request additional follow-up questions as set forth in this section.

(e) If the Disciplinary Hearing Officer or Adjustment Committee denies the request of the inmate or counsel substitute to call a witness(es), have access to certain information, or to ask certain questions, the reasons for the denial shall be specifically set forth on form 259A Adjudication of Disciplinary Report.

(f) The New Jersey Department of Corrections has a penological interest to ensure correctional facilities are operated in a safe, secure and orderly fashion; therefore, the Department prohibits all forms of violence among inmates. The Disciplinary Hearing Officer or Adjustment Committee will allow an inmate to raise self-defense to a prohibited act involving the use of force among inmates; however, the inmate claiming self-defense shall be responsible for presenting supporting evidence that shall include each of the following conditions:

1. The inmate was not the initial aggressor;
2. The inmate did not provoke the attacker;
3. The use of force was not by mutual agreement;
4. The use of force was used to defend against personal harm, not to defend property or honor;
5. The inmate had no reasonable opportunity or alternative to avoid the use of force, such as, by retreat or alerting correctional facility staff; and

6. Whether the force used by the inmate to respond to the attacker was reasonably necessary for self-defense and did not exceed the amount of force used against the inmate.

(g) When self-defense is raised by an inmate, the Disciplinary Hearing Officer or Adjustment Committee may consider any other condition or evidence that would cause the force that was used by the inmate to be deemed unreasonable, such as, but not limited to, any use of force that would interfere with or otherwise undermine the safe, secure or orderly operation of the correctional facility.

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 disciplinary preceding hearing.
Amended by R.2004 d.293, effective August 2, 2004.
See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Rewrote the section.
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), inserted "(as this term is defined at N.J.A.C. 10A:4-1.3)".

Amended by R.2007 d.198, effective July 2, 2007.
See: 39 N.J.R. 834(b), 39 N.J.R. 2538(a).

In (e), inserted ", have access to certain information," substituted "form 259A" for "the" following "on" and deleted "form" from the end; and added (f) and (g).

Case Notes

Denying prisoner accused of threatening corrections officer access to the testimony of an alleged eyewitness violated his statutory right to call witnesses at disciplinary hearing, and thus, to the extent eyewitness's written statement informed the findings and conclusion reached by the hearing examiner, those determinations were flawed. *Jones v. Department of Corrections*, 359 N.J. Super. 70, 819 A.2d 1.

Hearing officers must record their reasons for refusing to call witness. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Disciplinary proceeding would be remanded to Department of Correction to clarify and amplify record. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

10A:4-9.14 Confrontation and cross-examination

(a) The opportunity for confrontation and cross-examination of the accuser(s) and/or the State's witness(es), if requested, shall be provided to the inmate or counsel substitute in such instances where the Disciplinary Hearing Officer or Adjustment Committee deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The Disciplinary Hearing Officer or Adjustment Committee may refuse confrontation and cross-examination when confrontation and cross-examination is determined by the Disciplinary Hearing Officer or Adjustment Committee to be:

1. Unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Irrelevant;
3. Likely to produce repetitive testimony;
4. Harassing or retaliatory against another;

5. For some malicious purpose;
6. A request to call a witness who is a confidential informant;
7. A request to call a witness who is not employed or no longer employed by the Department of Corrections;
8. A request to call a witness who is not in the custody of the New Jersey Department of Corrections; or
9. A request to call an unavailable witness, as defined in this chapter. An unavailable witness may be asked to submit a written statement answering cross-examination questions in lieu of an in-person appearance.

(c) If the request for confrontation/cross-examination is granted, the inmate or counsel substitute shall provide proposed questions to the Disciplinary Hearing Officer or Adjustment Committee for review.

(d) Based upon the review as established in (c) above, the Disciplinary Hearing Officer or Adjustment Committee may take testimony in a manner or form which is determined to be necessary to protect correctional facility/unit safety, security, orderly operation, or goals. The Disciplinary Hearing Officer or Adjustment Committee may disallow any questions that may:

1. Be unduly hazardous to the correctional facility/unit safety, security, orderly operation, or goals;
2. Be irrelevant;
3. Be repetitive;
4. Be meant to harass or retaliate;
5. Be for some malicious purpose; or
6. Reveal confidential information.

(e) The Disciplinary Hearing Officer or Adjustment Committee shall direct all remaining questions to the accuser and/or the State's witness. The inmate or counsel substitute may request additional follow-up confrontation/cross-examination questions, based on the testimony given by the accuser and/or the State's witness, following the procedure as set forth in this section.

(f) If the Disciplinary Hearing Officer denies the request of the inmate or counsel substitute to call a witness(es) or ask certain cross-examination questions, the reasons for the denial shall be specifically set forth on Form 259A, Adjudication of Disciplinary Report.

Amended by R.2004 d.293, effective August 2, 2004.

See: 36 N.J.R. 1867(a), 36 N.J.R. 3551(a).

Rewrote the section.

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

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

Section was "Confrontation and cross examination". In (a), substituted "cross-examination" for "cross examination"; in the introductory paragraph of (b), substituted "confrontation and cross-examination" for "said"; and in (f), substituted "Form 259A" for "the" and deleted "form" following "Report".

Case Notes

At disciplinary hearing, prisoner was entitled to confront and cross-examine corrections officer who accused prisoner of threatening him with bodily harm, and Department of Correction's violation of that right deprived prisoner of the fundamental opportunity to develop his defense by revealing weaknesses in accusation against him either on basis of accuser's credibility or otherwise; hearing officer's decision was based on a credibility finding favorable to corrections officer, which was a determination that could not be fairly reached without affording prisoner opportunity to address the credibility issue effectively. *Jones v. Department of Corrections*, 359 N.J.Super. 70, 819 A.2d 1.

Due process violated in disciplinary proceeding; information developed from confidential informants. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

Where inmate was charged with a disciplinary infraction by virtue of conduct directed to or at a corrections officer and the matter turned on the credibility of the officer or inmate, the inmate, upon request, was entitled to confrontation and cross-examination of the officer, at least in the absence of any reasons that justify an exception as a matter of prison security. *Decker v. New Jersey Department of Corrections*, 331 N.J.Super. 353, 751 A.2d 1094 (N.J.Super. 2000).

In prison disciplinary hearing to address charges that inmate forged another inmate's signature on court documents, inmate was provided insufficient access to proofs against him, which included report of administrative investigation, handwriting samples of both inmates and handwriting and typeface analyses conducted by internal affairs unit, to satisfy requirements of due process. *Wakefield v. Pinchak*, 289 N.J.Super. 566, 674 A.2d 621 (A.D.1996).

Regulation provides more protection than Fourteenth Amendment. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Supreme Court would remand prison disciplinary proceeding. *McDonald v. Pinchak*, 139 N.J. 188, 652 A.2d 700 (1995).

Hearing officer in prison disciplinary proceeding has broad discretion to refuse a request for cross-examination and confrontation; denial of request for cross-examination of various individuals involved in drug-trafficking investigation was proper. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

10A:4-9.15 Evidence required

(a) A finding of guilt at a disciplinary hearing shall be based upon substantial evidence that the inmate has committed a prohibited act.

(b) Evidence relied upon in making a determination shall be specified on the Adjudication of Disciplinary Report form.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision of guilt is based on evidence which includes confidential information, adjudication shall contain:

i. A concise summary of the facts on which the Disciplinary Hearing Officer or Adjustment Committee concluded that the informant was creditable or his or her information reliable; and

ii. The informant's statement (either in writing or as reported) in language that is factual rather than a conclusion, and based on the informant's personal knowledge of the matters contained in such statement.