

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".

Amended by R.2008 d.97, effective April 21, 2008.

See: 40 N.J.R. 85(a), 40 N.J.R. 2111(b).

In the introductory paragraph of (a), deleted ", other than the Adjustment Committee of the Capital Sentence Unit (C.S.U.)" preceding "shall be composed".

#### 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 inves-

tigating 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."