

(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 and to insure that the hearing does not develop into an adversary proceeding.

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

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 Resticri-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 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 who shall ordinarily be employees of supervisory level who have not been involved in the particular incident to be investigated.

(c) The coordinator 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 the Mental Health Unit provides said determination and providing this information to the investigator 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 investigator shall thoroughly investigate the incident. As part of this investigation, the investigator shall verify that the inmate has received the written charge. The investigator 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 investigator shall take the inmate's statement concerning the incident. The investigator 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.

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

(g) The investigator may include comments and conclusions on the inmate's prior record and behavior, the investigator's analysis of any conflicts between witnesses, and the investigator's conclusions of what in fact happened. The inmate shall not receive a copy of the investigation.

(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, 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).

Case Notes

Inmate not entitled to inmate witness statements gathered during investigation. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

10A:4-9.6 Requiring further investigation of charges

The Disciplinary Hearing Officer or the Chairperson of the Adjustment Committee may direct a further investigation in any case where he/she is of the opinion that the report is not properly made out or the facts and circumstances are not sufficient to set forth a basic understanding of the incident. The Disciplinary Hearing Officer or Chairperson shall append the supplementary information, in writing, to the original investigation report. The person who supplied the additional information shall sign that section of the report.

10A:4-9.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the Disciplinary Hearing Officer or Adjustment Committee within 48 hours of the postponement if the inmate is in Prehearing Detention or within seven days in all other cases to determine if a further postponement is warranted. Further postponements shall be granted only in exceptional circumstances.

10A:4-9.8 Scheduling hearing

(a) Meetings with the Disciplinary Hearing Officer or the Adjustment Committee shall be convened at such times as are appropriate to carry out the work of the Disciplinary Hearing Officer or Adjustment Committee.

(b) The inmate shall be entitled to a hearing within seven days of the alleged violation, including weekends and holidays, unless such hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the seventh day fall on a Saturday, Sunday or holiday, the last day for the hearing shall be the weekday immediately following the weekend or holiday.

(c) Inmates confined in Prehearing Detention shall receive a hearing within three days of their placement in Prehearing Detention, including weekends and holidays, unless there are exceptional circumstances, unavoidable delays or reasonable postponements. Should the third day fall on a Saturday, Sunday or holiday, the hearing shall be held on the weekday immediately following the weekend or holiday.

(d) Inmates confined in Prehearing Detention shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer or Adjustment Committee.

(e) No delays in hearing a case shall be permitted for the purpose of punishment or discipline.

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

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

Deleted inmate handbook requirement.

10A:4-10.12 Food

(a) Disciplinary Detention or Prehearing Detention inmates shall be served the normal correctional facility meals on the menu of the day or such special diet as shall be prescribed.

(b) Disposable utensils shall be used when necessary.

10A:4-10.13 Correspondence, visits and telephone calls

(a) Inmates in Disciplinary Detention shall have the same opportunities to send and receive written correspondence that are available to inmates in the general population (see N.J.A.C. 10A:18, Mail, Visits and Telephone).

(b) Inmates in Disciplinary Detention shall not be provided with visit or telephone opportunities while in Disciplinary Detention with the exception of legal telephone calls.

1. The Administrator or designee may authorize a special visit or telephone call for an inmate when there are compelling reasons to do so.

2. Every effort shall be made to notify expected social visitors of the Disciplinary Detention restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If ample time for correspondence exists, the burden of this notification shall be placed on the inmate.

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

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

10A:4-10.14 Grooming, showering and shaving

Barbering and hair care services shall be provided in the Disciplinary Detention area, as needed. Each inmate shall be given the opportunity to shave and shower not less than two times a week, unless permitting these activities would present an undue security hazard. Correctional facilities capable of providing for more frequent shaving and showering shall do so not less than three times per week.

10A:4-10.15 Reading material

Inmates in Disciplinary Detention shall be permitted to retain in their possession an amount of reading material that is consistent with the maintenance of security and the orderly operation of the Unit. Reading material not permitted in Disciplinary Detention is outlined in N.J.A.C. 10A:18, Mail, Visits and Telephone.

10A:4-10.16 Recreation

Where conditions permit, correctional facilities shall provide recreation outside the cells at least five hours per week.

10A:4-10.17 Records in Disciplinary Detention

(a) The following information regarding inmates confined in Disciplinary Detention status shall be available in the Unit for the use of the custody staff:

1. Inmate name;
2. Number;
3. Housing location;
4. Unit;
5. Cell or room assignment;
6. Date admitted;
7. Disciplinary charge leading to Disciplinary Detention;
8. Expiration date of Disciplinary Detention; and
9. Special medical or psychiatric problems.

(b) Visits by medical, psychiatric, social services or custody supervisory staff and all unusual behavior shall be noted in the Unit log book together with the time and date of occurrence.

10A:4-10.18 Correctional facility procedures

(a) Each correctional facility shall develop written procedures and post orders consistent with this subchapter.

(b) The written procedures and post orders for the Detention Program shall be submitted to the Office of the Commissioner or designee for review and approval on or before January 31 of each year.

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.2002 d.65, effective March 4, 2002.

See: 33 N.J.R. 3857(a), 34 N.J.R. 1027(a).

In (b), substituted "Commissioner or designee" for "Chief of Staff" preceding "for review".

SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

10A:4-11.1 Time limit to file an appeal

(a) The inmate shall be advised in writing by the Disciplinary Hearing Officer or Adjustment Committee of the opportunity to appeal to the Administrator or designee at the time the inmate is provided with the disciplinary decision.

1. Inmates within the main correctional facilities of the Prison or Youth Complex shall have 48 hours from receipt of the disciplinary decision to make such appeal.

2. Inmates in satellite units shall have 48 hours to present the appeal form to a designated individual at the unit who shall deliver it to the Administrator.

(b) In all cases, the Administrator or designee may, for good cause shown, accept appeals submitted after the prescribed deadline.

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.1998 d.526, effective November 2, 1998.
See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a), deleted "his or her" preceding "designee" in the introductory paragraph, deleted former 2 and recodified former 3 as 2; and in (b), deleted "his/her" preceding "designee".

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyers*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.2 Processing appeal

(a) The inmate shall use the Appeal of Disciplinary Decision Form 256-I to request an appeal of a disciplinary decision.

(b) Upon submission of Form 256-I, the person accepting the appeal form shall sign, date and note the time on the original and copies in the inmate's presence. A copy of the form shall be given to the inmate.

(c) The appeal form shall be brought to the office of the Administrator during the same shift on which it is received from the inmate.

(d) All appeals shall be considered by the Administrator of the correctional facility in which the charge was received.

(e) If the inmate has been transferred before the appeal is heard, the appeal form shall be delivered to the Administrator of the correctional facility from which the charges were issued within 48 hours of its receipt from the inmate.

(f) Inmates unable to complete Form 256-I Appeal of Disciplinary Decision may request assistance from another inmate in preparing the form. When Form 256-I has been completed by an inmate other than the inmate who received the charge, the name of the preparer should appear on the form.

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

Due process requires only that disciplinary proceedings and administrative appeals viewed as whole not lead to constitutionally tainted result. *Hyson v. Neubert*, D.N.J.1993, 820 F.Supp. 184.

10A:4-11.3 Suspension of sanctions pending appeal

(a) Inmates who wish to have their sanctions suspended pending a decision on their appeal, must make a request to the Administrator or designee for this consideration. If this request is not made, no action shall be taken to suspend any sanctions received in the disciplinary hearing.

(b) A disciplinary sanction shall not be suspended pending appeal unless the inmate establishes by clear and convincing evidence that the inmate's release from Disciplinary Detention will not jeopardize correctional facility security and order, that witnesses or victims will not be intimidated and that the inmate will not engage in any action which could otherwise interfere with the administration of justice.

(c) In those cases where the Administrator grants the inmate's request for release from Disciplinary Detention pending appeal, the release shall not preclude the correctional facility from denying outside privileges; such as, but not limited to, furloughs for the inmate even though other disciplinary sanctions are suspended pending the outcome of the appeal.

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

10A:4-11.4 Investigation of appeal

(a) The Administrator or designee may order an independent investigation of the charge and proceedings of the disciplinary hearing in those instances in which the inmate's appeal and information furnished after the initial disciplinary hearing appear to warrant such action.

(b) The Administrator shall have the option to request a total or partial reinvestigation of the charge or proceedings of the hearing. The reinvestigation may be conducted by any person or unit designated by the Administrator, provided, however, that the individual shall have had no contact with the issuance of the first investigation of the charge.

(c) The reinvestigation may include any of the components of the original investigation such as reinterviewing witnesses, inmates and custody staff, reevaluating reports and reexamining evidence.

(d) If on the basis of new evidence, the Administrator may also request a polygraph examination as part of the reinvestigation. Such requests shall be in accordance with N.J.A.C. 10A:3-7, Polygraph Examinations.

(e) In reviewing an appeal the following factors shall be considered:

1. Compliance with the subchapters on inmate discipline which prescribe procedural safeguards;
2. Whether the decision of the Disciplinary Hearing Officer or Adjustment Committee was based upon substantial evidence;

3. Whether the sanction imposed was proportionate to the offense in view of the inmate's recent disciplinary history and present custody status except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) or 5.2(c);

4. Whether the inmate has a history or presence of mental illness; and/or

5. Whether extenuating circumstances were considered.

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

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

In (d) substituted 10A:3-7 for 10A:3.

Amended by R.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (e), added an exception at the end of 3.

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).

Substituted references to the Administrator for references to the Superintendent throughout; and in (e), inserted a new 4, and reclassified former 4 as 5.

Law Review and Journal Commentaries

Prisoners—Discipline—Due Process—Polygraphs. P.R. Chenoweth, 136 N.J.L.J. No. 9, 61 (1994).

Case Notes

Prisoner should have been allowed to take polygraph test. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

10A:4-11.5 Disposition of appeal

(a) At the conclusion of the Administrator's review of an appeal, one of the following actions shall be taken:

1. The Administrator or designee shall rescind the decision of the Disciplinary Hearing Officer or Adjustment Committee if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or the Administrator determines that there was such a failure to adhere to proper procedures at the initial hearing that the inmate had been irreparably prejudiced and would be unable to present a defense at a rehearing. No further disciplinary action shall be taken. The copies of the infraction and all notations concerning the infraction shall be promptly expunged from the inmate's records.

2. The Administrator or designee shall rescind the original decision and order a new hearing if the review and/or investigation indicates that procedural safeguards prescribed for inmate disciplinary hearings were not followed, or if new evidence not available at the original hearing is revealed. If a new hearing is ordered, there shall be no increase in the severity of the sanctions unless new evidence warrants such action.

3. The Administrator or designee shall downgrade the sanctions if the review and/or investigation indicates that the sanction is disproportionate to the offense in accordance with factors enumerated in N.J.A.C. 10A:4-9, Disciplinary Procedures, except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) or 5.2(c).

4. The Administrator or designee shall order a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the Adjustment Committee or Disciplinary Hearing Officer but would support some form of disciplinary action for a lesser offense than that with which the inmate was charged.

5. The Administrator or designee, in all other cases, shall uphold the decision of the Adjustment Committee or Disciplinary Hearing Officer and make no change in the penalty.

(b) In no event shall there be an increase in severity of sanctions issued by the Adjustment Committee or Disciplinary Hearing Officer solely as a result of the review of the appeal.

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.1998 d.526, effective November 2, 1998.

See: 30 N.J.R. 2810(a), 30 N.J.R. 3965(a).

In (a)3, deleted "his/her" preceding "designee" at the beginning and added an exception at the end.

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. Beyer*, D.N.J.1992, 809 F.Supp. 1164.

10A:4-11.6 Policy regarding rehearings

(a) If a rehearing is required, the inmate shall be accorded all procedural rights applicable to a disciplinary hearing.

(b) The hearing body may be the same as that which heard the original charge unless the composition of that body was the procedural defect requiring the rehearing or unless there is a substantial likelihood of prejudice.

1. In the absence of exceptional circumstances, a rehearing shall be scheduled no more than 14 calendar days from the date of the original hearing.

2. When a disciplinary sanction has not been suspended pending the outcome of the appeal, a rehearing shall be scheduled within 24 hours of the decision of the Administrator to have the matter reheard, excluding weekends and holidays, in the absence of exceptional circumstances.

(c) Rehearings may be appealed and the Administrator may exercise the same options as provided for in N.J.A.C. 10A:4-11.5.

10A:4-11.7 Notification of inmate on appeal results

(a) In all cases, the inmate shall be notified in writing of the results of the review of the inmate's appeal and the reasons therefor.

1. If an inmate is being held in Disciplinary Detention which resulted from disciplinary action, the written decision on the appeal shall be given to the inmate within 72 hours of receipt of the appeal, excluding weekends and holidays.

2. In all other cases, or if the sanctions have been suspended, the Administrator or designee shall respond in writing to the inmate within seven business days of receipt of the appeal. Form 256-II, Disposition of Disciplinary Appeal shall be used for this purpose.

(b) Copies of the decision shall also be distributed to the Adjustment Committee or the Disciplinary Hearing Officer and the inmate's file. Other copies may be distributed as determined to be necessary by the Administrator.

(c) Only for reasons of significant importance may an Administrator or designee extend the time limit to act on an appeal. In such case, the inmate shall be notified in writing within the prescribed time period that action on the inmate's appeal has been extended. Where possible, the reason for the extension shall be explained in general terms to the inmate.

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)2 substituted Form 245-II for Form 256-II.
Petition for Rulemaking.

See: 31 N.J.R. 1823(a).

10A:4-11.8 Expungement

Expungement of a disciplinary charge when an inmate has been found not guilty, shall be done in accordance with N.J.A.C. 10A:4-9, Disciplinary Procedures.

10A:4-11.9 (Reserved)

SUBCHAPTERS 12 THROUGH 13. (RESERVED)