

10A:4-9.9 Failure to adhere to time limits

(a) The failure to adhere to any of the time limits prescribed by this subchapter shall not mandate the dismissal of a disciplinary charge. However, the Disciplinary Hearing Officer or Adjustment Committee may, in its discretion, dismiss a disciplinary charge because of a violation of time limits. Such discretion shall be guided by the following factors:

1. The length of the delay;
2. The reason for the delay;
3. Prejudices to the inmate in preparing his/her defense; and,
4. The seriousness of the alleged infraction.

Case Notes

“Residuum evidence rule” inapplicable to Parole Board decisions (citing N.J.A.C. 10A:71-2.1, 10A:71-3.7, 10A:71-3.46); delay in scheduling parole hearing did not violate appellant’s due process rights warranting reversal on that ground; when parole rescission decision is based on expert opinion concerning wiretapped conversations said to show criminal activity not presented through tapes or transcripts or both, testifying officer should accurately recount them. *Gerardo v. N.J. State Parole Bd.*, 221 N.J.Super. 442, 534 A.2d 1037 (App.Div.1987).

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:4-9.10 Excluding the inmate from the disciplinary hearing

(a) An inmate shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Disciplinary Hearing Officer or Adjustment Committee and except in instances where correctional facility security would be jeopardized by the inmate’s presence.

(b) The reasons for excluding an inmate from the disciplinary hearing must be well documented in the record.

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

10A:4-9.11 In absentia hearings

(a) A full in absentia hearing shall be conducted if the inmate refuses to appear at the hearing.

(b) The following procedural process shall apply at all disciplinary hearings conducted in absentia which will enable the Disciplinary Hearing Officer or Adjustment Committee to ensure that the inmate has been given every opportunity to be present for his or her disciplinary hearing.

1. The escorting custody staff member shall report the inmate’s refusal to appear before the Disciplinary Hearing Officer or Adjustment Committee.

2. A custody staff member shall deliver to the inmate who refuses to appear Form 252 Inmate Disciplinary Hearing Attendance Refusal Notice that includes the following statement:

“I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence.”

3. The custody staff member shall advise the inmate that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer or Adjustment Committee of the circumstances surrounding the charges lodged against the inmate. If the inmate still refuses to appear at the disciplinary hearing, the inmate shall be requested to sign Form 252 immediately after the statement noted above in (b)2.

4. In the event the inmate refuses to sign his or her name where designated on Form 252 and still refuses to appear, Form 252 shall be returned to the Disciplinary Hearing Officer or Adjustment Committee Chairperson and the following statement on Form 252 shall be acknowledged by signature of the investigating custody staff member:

“Inmate refuses to sign _____”
Signature of
Custody Staff Member

5. The Disciplinary Hearing Officer or Adjustment Committee shall ensure that the following statement shall be included in the inmate statement section of the Adjudication of Disciplinary Report form: “No statement taken as the inmate refused to appear at the hearing.”

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

10A:4-9.12 Aid in presentation of inmate’s case

(a) When an inmate has been charged with an asterisk offense, the inmate shall be afforded the right to request representation by a counsel substitute.

(b) When the Disciplinary Hearing Officer or Adjustment Committee determines that an inmate is illiterate or cannot adequately collect and present the evidence in his or her own behalf, the inmate may elect to receive the services of a counsel substitute or the inmate may request representation by a staff member.

(c) Where the inmate requests the services of a staff member, the Administrator or designee may appoint a staff member to provide representation.

(d) The counsel substitute shall be permitted reasonable time to speak to the inmate and shall be given at least 24 hours to prepare the inmate’s defense.

(e) If necessary, the inmate shall be allowed to present a defense through an interpreter.

Amended by R.1987 d.383, effective September 21, 1987.

See: 19 N.J.R. 913(b), 19 N.J.R. 1738(c).

(c): "may" was "shall".

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

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

10A:4-9.13 Opportunity to call witnesses and present evidence

(a) Inmates shall be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so will not be unduly hazardous to correctional facility safety or goals. The Adjustment Committee or Disciplinary Hearing Officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The Disciplinary Hearing Officer or Adjustment Committee has the discretion to keep the disciplinary hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness(es). "Repetitive witnesses" are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the Disciplinary Hearing Officer or Adjustment Committee shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Adjudication of Disciplinary Report form.

(b) Witnesses requested by the inmate who are called may be questioned by members of the Adjustment Committee or the Disciplinary Hearing Officer and the inmate or the inmate's counsel substitute. Inmates or their representatives may request that certain questions be directed by the Adjustment Committee members or the Disciplinary Hearing Officer to any witnesses. 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 safety or goals. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

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.

Case Notes

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, if requested, shall be provided to the inmate in such instances where the Adjustment Committee or Disciplinary Hearing Officer 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 said would be unduly hazardous to correctional facility safety or goals.

Case Notes

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.

2. The Disciplinary Hearing Officer or Adjustment Committee is not permitted to disclose the identity of the informant.

Petitions for Rulemaking.