

**CHAPTER 4  
INMATE DISCIPLINE**

**Authority**

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

**Source and Effective Date**

R.1996 d.237, effective April 26, 1996.  
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

**Executive Order No. 66(1978) Expiration Date**

Chapter 4, Inmate Discipline, expires on April 26, 2001.

**Chapter Historical Note**

Chapter 4, Inmate Discipline was originally adopted as R.1986 d.283, effective July 21, 1986. See: 18 N.J.R. 27(a), 18 N.J.R. 1465(a). Sections N.J.A.C. 10A:4-9.18 through 10A:4-9.27 were recodified within Subchapter 9, Disciplinary Procedures, by R.1988 d.61, effective February 1, 1988. See: 19 N.J.R. 1717(b), 20 N.J.R. 294(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 Subchapter 13, Resident Discipline Program for the Training School for Boys at Skillman, was repealed by R.1988 d.239, effective June 6, 1988.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 Subchapter 12, Appeal to Office of Administrative Law (OAL), was repealed by R.1988 d.543, effective November 21, 1988.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).

The following correctional facilities in Chapter 4 were redesignated, pursuant to N.J.S.A. 30:7-1:

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;

Training School for Juveniles at Jamesburg to the New Jersey Training School for Boys. See: 21 N.J.R. 558(a).

Pursuant to Executive Order No. 66(1978), Chapter 4 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 was readopted as R.1996 d.237, effective April 26, 1996. See: Source and Effective Date. See, also, section annotations.

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#### SUBCHAPTER 1. INTRODUCTION

##### 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.

"Asterisk offense" shall mean a prohibited act preceded by a number and an asterisk.

"Capital Sentence Unit" means the close custody unit to which inmates sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

4. You have the right to health care which includes nutritious meals, proper bedding and clothing, a laundry schedule for cleanliness of same, an opportunity to shower regularly, sufficient warmth, proper ventilation, fresh air, a regular exercise period, toilet articles and medical and dental treatment.

5. You have the right to correspond with and receive visits from family members, friends and other persons where there is no threat to security or order in keeping with the rules and schedules of the correctional facility.

6. You have the right to unrestricted and confidential access to the courts by correspondence.

7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence. You have the right to receive help when it is available through a legal assistance program.

8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems.

9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment.

10. You have the right to participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with your interests, needs and abilities.

(b) The following responsibilities are found in the Handbook on Discipline which is provided to each inmate as a part of reception into the Department of Corrections.

1. You have the responsibility to treat others, both employees and inmates, respectfully, impartially and fairly.

2. You have the responsibility to know and abide by the rules, procedures and schedules concerning the operation of the correctional facility.

3. You have the responsibility to recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the correctional facility.

4. It is your responsibility to follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as you may need it, and not to waste food.

5. It is your responsibility to conduct yourself properly during visits, to refuse to accept or pass contraband, and to comply with Department rules and State or Federal laws through your correspondence.

6. You have the responsibility to present honestly and fairly your petitions, questions and problems to the court.

7. It is your responsibility to use the services of an attorney honestly and fairly.

8. It is your responsibility to use the law library resources in keeping with the correctional facility procedures and schedule prescribed and to respect the rights of other inmates in the use of this legal material.

9. It is your responsibility to seek and utilize reading material for your personal benefit, without depriving others of their right to use same.

10. You have the responsibility to take advantage of activities (such as counseling, education, vocational training and employment) which may help you live a successful and law abiding life within the correctional facility and in the community. You will be expected to abide by the regulations governing the use of such activities.

Administrative Correction: Responsibilities have been substantially amended.

See: 19 N.J.R. 1573(a).

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

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

## SUBCHAPTER 4. INMATE PROHIBITED ACTS

### 10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee with the exception of those violations disposed of by way of an on-the-spot correction. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

- \*.001 killing
- \*.002 assaulting any person
- \*.003 assaulting any person with a weapon
- \*.004 fighting with another person
- \*.005 threatening another with bodily harm or with any offense against his or her person or his or her property
- \*.006 extortion, blackmail, protection: demanding or receiving favors, money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing
- \*.007 hostage taking
- \*.008 abuse/cruelty to animals
- \*.009 misuse of electronic equipment and/or computer(s) and/or related device(s) and peripheral(s)
- \*.010 participating in an activity(ies) related to a security threat group
- \*.011 possession or exhibition of anything related to a security threat group
- \*.050 sexual assault
- .051 engaging in sexual acts with others
- .052 making sexual proposals or threats to another
- .053 indecent exposure
- \*.054 refusal to register as a sex offender
- \*.101 escape

- \*.102 attempting or planning escape
- .103 wearing a disguise or mask
- \*.150 tampering with fire alarms, fire equipment or fire suppressant equipment
- \*.151 setting a fire
- .152 destroying, altering, or damaging government property, or the property of another person
- \*.153 stealing (theft)
- \*.154 tampering with or blocking any locking device
- \*.155 adulteration of any food or drink
- \*.201 possession or introduction of an explosive, incendiary device or any ammunition
- \*.202 possession or introduction of a gun, firearm, weapon, sharpened instrument, knife or unauthorized tool
- \*.203 possession or introduction of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical or dental staff
- \*.204 use of any narcotic paraphernalia, drugs or intoxicants not prescribed for the individual by the medical or dental staff
- \*.205 misuse of authorized medication
- .206 possession of money or currency (\$50.00 or less) unless specifically authorized
- \*.207 possession of money or currency (in excess of \$50.00) unless specifically authorized
- .208 possession of property belonging to another person
- .209 loaning of property or anything of value
- .210 possession of anything not authorized for retention or receipt by an inmate or not issued to him or her through regular correctional facility channels
- .211 possessing any staff member's clothing and/or equipment
- .212 possessing unauthorized clothing
- .213 mutilating or altering clothing issued by the government
- \*.214 possession of unauthorized keys or other security equipment
- \*.251 rioting
- \*.252 encouraging others to riot
- \*.253 engaging in, or encouraging, a group demonstration
- .254 refusing to work, or to accept a program or housing unit assignment
- \*.255 encouraging others to refuse to work or to participate in work stoppage
- .256 refusing to obey an order of any staff member
- .257 violating a condition of any community release program
- \*.258 refusing to submit to urine analysis
- \*.259 refusing to submit to breathalyzer testing
- \*.260 refusing to submit to mandatory medical testing
- \*.261 tampering with a urine specimen
- .301 unexcused absence from work or any assignment; being late for work
- .302 malingering, feigning an illness
- .303 failing to perform work as instructed by a staff member
- .304 using abusive or obscene language to a staff member
- .305 lying, providing a false statement to a staff member
- \*.306 conduct which disrupts or interferes with the security or orderly running of the correctional facility
- .351 counterfeiting, forging or unauthorized reproduction or use of any document not enumerated in prohibited act .352
- \*.352 counterfeiting, forging or unauthorized reproduction or use of any classification document, court document, psychiatric, psychological or medical report, money or any other official document
- .401 participating in an unauthorized meeting or gathering
- .402 being in an unauthorized area
- .451 failure to follow safety or sanitation regulations
- .452 using any equipment or machinery which is not specifically authorized
- .453 using any equipment or machinery contrary to instructions or posted safety standards
- .501 failing to stand count
- .502 interfering with the taking of count
- \*.551 making or possessing intoxicants or alcoholic beverages
- \*.552 being intoxicated
- .553 smoking where prohibited
- .601 gambling
- .602 preparing or conducting a gambling pool
- .603 possession of gambling paraphernalia
- .651 being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards
- .652 tattooing or self mutilation
- .701 unauthorized use of mail or telephone
- .702 unauthorized contacts with the public
- .703 correspondence or conduct with a visitor in violation of regulations
- \*.704 perpetrating frauds, deceptions, confidence games, riots or escape plots
- .705 commencing or operating a business or group for profit or commencing or operating a non-profit enterprise without the approval of the Superintendent
- .706 soliciting funds and/or noncash contributions from donors within or without the correctional facility except where permitted by the Superintendent
- .707 failure to keep a scheduled appointment with medical, dental or other professional staff
- \*.708 refusal to submit to a search
- .709 failure to comply with a written rule or regulation of the correctional facility
- \*.751 giving or offering any official or staff member a bribe or anything of value
- .752 giving money or anything of value to, or accepting money or anything of value from, another inmate
- .753 purchasing anything on credit
- .754 giving money or anything of value to, or accepting money or anything of value from, a member of another inmate's family or another inmate's friend with an intent to circumvent any correctional facility or Departmental rule, regulation or policy or with an intent to further an illegal or improper purpose
- .802 attempting to commit any of the above acts, aiding another person to commit any of the above acts or making plans to commit any of the above acts shall be considered the same as a commission of the act itself

- \*.803 attempting to commit any of the above acts preceded by an asterisk, aiding another person to commit any such act or making plans to commit such acts shall be considered the same as a commission of the act itself

Notice of Correction: Asterisk was omitted for \*.306.

See: 18 N.J.R. 2138(d).

Amended by R.1987 d.154, effective April 6, 1987.

See: 19 N.J.R. 178(a), 19 N.J.R. 534(a).

Added \*.008 abuse/cruelty to animals.

Notice of Correction: .352 was omitted from the end of .351.

See: 19 N.J.R. 1658(c).

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

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

Added .150 and amended \*.151.

Administrative Corrections in (a): In .150 corrected suppressant.

See: 24 N.J.R. 2731(a).

Amended by R.1993 d.488, effective October 4, 1993.

See: 25 N.J.R. 3416(a), 25 N.J.R. 4599(a).

Administrative Correction.

See: 26 N.J.R. 1228(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).

Amended by R.1994 d.264, effective June 6, 1994.

See: 26 N.J.R. 1287(a), 26 N.J.R. 2285(b).

Amended by R.1995 d.237, effective May 1, 1995.

See: 27 N.J.R. 436(a), 27 N.J.R. 1801(c).

Amended by R.1996 d.209, effective May 6, 1996 (operative August 19, 1996).

See: 28 N.J.R. 763(a), 28 N.J.R. 2387(b).

In (a) added refusing a breathalyzer test.

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) added exception for on-the-spot corrections, in .254 added refusal of housing unit assignment, and deleted provision for transfer to the Vroom Readjustment Unit.

Petition for Rulemaking: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 813(b), 29 N.J.R. 948(a).

Amended by R.1997 d.225, effective June 2, 1997.

See: 29 N.J.R. 834(a), 29 N.J.R. 2562(b).

In (a), inserted “\*.260 refusing to submit to mandatory medical testing”.

Amended by R.1997 d.276, effective July 7, 1997.

See: 29 N.J.R. 1663(a), 29 N.J.R. 2836(a).

In Schedule of Prohibited Acts, added .261 (tampering with a urine specimen).

Amended by R.1997 d.325, effective August 4, 1997.

See: 29 N.J.R. 2542(a), 29 N.J.R. 3452(a).

In (a), upgraded .150 (tampering with fire alarms, fire equipment or fire suppressant equipment) and .154 (tampering with or blocking any locking device) into asterisk offenses.

Amended by R.1998 d.366, effective July 20, 1998.

See: 30 N.J.R. 1719(a), 30 N.J.R. 2619(a).

Inserted new prohibited acts .010 and .011.

#### Cross References

Possession of inter-office envelopes, see N.J.A.C. 10A:18-2.26, 10A:18-3.13.

#### Case Notes

Punishment of Christian Scientist inmate who refused to submit to tuberculosis test furthered compelling state interest in preventing spread of tuberculosis in prison, as would justify such test's substantial burden on inmate's right of free exercise of religion under Religious Freedom Restoration Act. *Karolis v. New Jersey Dept. of Corrections*, D.N.J. 1996, 935 F.Supp. 523.

Standard embodied in inmate disciplinary rule prohibiting using abusive or obscene language to staff member was not valid basis for

imposing disciplinary punishment for inmate's vulgar and offensive statement in context of psychotherapy that was not threatening or exhortative of disobedience or violence. *Pryor v. New Jersey Dept. of Corrections*, 288 N.J.Super. 355, 672 A.2d 717 (A.D.1996).

Amendment to administrative code that added refusal to register as sex offender to list of prohibited acts was not unconstitutional. *A.F. v. Fauver*, 287 N.J.Super. 354, 671 A.2d 155 (A.D.1996).

Determination whether remark constitutes threat; objective analysis whether remark conveys basis for fear. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Finding that inmate threatened guard with bodily harm was supported by evidence. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Prison officials' decision to place inmate in nonpunitive management control unit was supported by record. *Taylor v. Beyer*, 265 N.J.Super. 345, 627 A.2d 166 (A.D.1993).

State prison sanctions for infractions only applicable if county inmate notified of infractions. *Bryan v. Department of Corrections*, 258 N.J.Super. 546, 610 A.2d 889 (A.D.1992).

Procedural safeguards not properly applied in prison disciplinary proceeding involving confidential informant. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Information provided by confidential informant for use in prison disciplinary hearing must be part of confidential record. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

New prison disciplinary hearing required when procedural safeguards were absent in first hearing or in presence of newly discovered evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

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

All prohibited acts which may constitute crimes of the first, second, third or fourth degree under the Criminal Code of the State of New Jersey (N.J.S.A. 2C:1-1 et seq.) shall be referred to the prosecutor of the county in which the correctional facility is located. (See N.J.A.C. 10A:21 Reporting Violations of the Criminal Statutes.)

### SUBCHAPTER 5. SCHEDULE OF SANCTIONS FOR PROHIBITED ACTS

#### 10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex

(a) A finding of guilt for any offense preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Administrative Segregation for a specified time not to exceed one year, subject to confirmation by the Institutional Classification Committee;
4. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent;

5. Loss of furlough privileges for up to two months;
6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Confiscation;
9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or
10. Up to two weeks confinement to room or housing area.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Loss of one or more correctional facility privileges up to 30 days;
3. Up to 60 days loss of commutation time, subject to confirmation by the Superintendent;
4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee;
5. Loss of furlough privileges for up to two months;
6. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Confiscation;
9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or
10. Up to two weeks confinement to room or housing area.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1. Recommending transfer to a more appropriate correctional facility. (This shall be subject to confirmation by the Inter-Institutional Classification Committee.);
2. Increasing custody status;
3. Changing work or housing assignments;
4. Assigning to a treatment program;

5. Assessing restitution for damage, alteration or destruction of State property, the property of another person, or violation of prohibited act .707 which results in undue expenditure of State funds;

6. Recommending loss of telephone, radio, television, and contact visit privileges for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions;

7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.3(b)2, 3 and 4; and/or

8. For New Jersey State Prison only: placing in a "DRY" cell during prehearing and lockup status.

Administrative Correction, effective January 27, 1989.

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

Institutional name change.

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

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

Added sanctions of up to 14 hrs. extra duty and up to 2 weeks of confinement to room or housing area.

Amended by R.1993 d.584, effective November 15, 1993.

See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).

Amended by R.1994 d.254, effective May 16, 1994.

See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(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 reference to the Adult Diagnostic and Treatment Center and the Edna Mahan Correctional Facility for Women, in (c)5 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

Administrative correction.

See: 29 N.J.R. 2563(a).

In (c)7, changed N.J.A.C. reference.

#### **10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex**

(a) A finding of guilt for prohibited acts preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;
2. Up to two weeks confinement to room or housing area;
3. Up to 30 days loss of one or more correctional facility privileges;
4. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
5. Loss of furlough privileges for up to two months;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);
8. Administrative Segregation for a specific term not to exceed one year subject to confirmation by the Institutional Classification Committee (for transfer to prison complex, confirmation by Central Office Special Classification Committee is required);

9. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent (Inmates serving indeterminate sentences are not subject to this sanction, but inmates housed in the youth complex who are serving prison terms are subject to this sanction); and/or

10. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days Disciplinary Detention;

2. Loss of one or more correctional facility privileges up to 30 days;

3. Up to 60 days loss of commutation time subject to confirmation by the Superintendent (inmates serving prison terms);

4. Administrative Segregation for a specified time not to exceed 90 days subject to confirmation by the Institutional Classification Committee (does not include transfer to the Prison Complex);

5. Up to two weeks confinement to room or housing area;

6. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
7. Loss of furlough privileges for up to two months;
8. Confiscation;
9. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
10. Suspension of one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1. Changing work, time, housing or program;
2. Assigning to a treatment program;
3. Assessing restitution for damage, alteration or destruction of State property, the property of another person, or a violation of prohibited act .707 which results in undue expenditure of State funds;
4. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Special Classification Committee or the Reception Classification Committee);
5. Increasing custody status;
6. Recommending loss of telephone, radio, television, and contact visit privileges for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions; and/or
7. Disposal of an item(s) in accordance with the provisions of N.J.A.C. 10A:3-6.4(b)2, 3 and 4.

Amended by R.1987 d.155, effective April 6, 1987.  
See: 19 N.J.R. 178(b), 19 N.J.R. 534(b).

Added new (b)3; recodified old (b)3.-8. to (b)4.-9.  
Amended by R.1991 d.276, effective June 3, 1991.  
See: 23 N.J.R. 658(a), 23 N.J.R. 1797(b).

Language added to clarify to whom the loss of commutation time applies; added recommending loss of privileges at (c)5.  
Amended by R.1993 d.584, effective November 15, 1993.  
See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).  
Amended by R.1994 d.254, effective May 16, 1994.  
See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(a).  
Amended by R.1996 d.237, effective May 20, 1996.  
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

In (c)3 added damage to property of another person, and in (c)6 added loss of telephone, radio and television privileges.

**10A:4-5.3 Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys and the Juvenile Medium Security Facility**

(a) A finding of guilt for prohibited acts preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

1. Up to 15 days in Disciplinary Detention;
2. Up to two weeks confinement to room or housing unit;
3. Loss of furlough privileges for up to two months;
4. Loss of one or more correctional facility privileges up to 30 days;
5. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions;

1. Up to five days Disciplinary Detention;
2. Up to two weeks confinement to room or boarding unit;
3. Loss of furlough privileges up to two months;
4. Up to 14 hours extra duty, to be performed within a maximum of two weeks;
5. Loss of one or more correctional facility privileges up to 30 days;
6. Confiscation;
7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7); and/or,
8. Suspension of any one or more of the above sanctions at the discretion of the Disciplinary Hearing Officer or Adjustment Committee for 60 days.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1. Changing work assignment, housing, program or time goal review;
2. Assigning to a treatment program;
3. Referring to the Special Classification Committee for placement in the Guidance Unit Residential Program;
4. Assessing restitution for damage, alteration or destruction of State Property, the property of another person, or a violation of prohibited act .707 which results in undue expenditure of State funds;

5. Increasing custody status;
6. Recommending loss of telephone, radio, television and contact visit privileges for up to one year. Loss of these privileges shall be imposed only for disciplinary infractions related to these privileges;
7. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Classification Committee or the Juvenile Reception Classification Committee); and/or
8. Disposal of an item(s) in accordance with the options set forth in N.J.A.C. 10A:3-6.4(b)2, 3 and 4.

Administrative Correction, effective January 27, 1989.  
See: 21 N.J.R. 558(a).

Institutional name change.  
Amended by R.1993 d.584, effective November 15, 1993.  
See: 25 N.J.R. 4435(a), 25 N.J.R. 5169(a).  
Amended by R.1994 d.254, effective May 16, 1994.  
See: 26 N.J.R. 1286(a), 26 N.J.R. 2129(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 reference to the Lloyd McCorkle Training School for Boys and Girls, in (c)4 added damage to property of another person, and added loss of telephone, radio, television and contact visit privileges.

#### 10A:4-5.4 Limitation on sanctions

(a) All disciplinary charges pending when the inmate begins his or her time in Disciplinary Detention must be adjudicated prior to the completion of his or her Disciplinary Detention time. No inmate may receive more than 15 days in Disciplinary Detention as a result of a single disciplinary charge except as established in N.J.A.C. 10A:4-6, Chronic Violator.

1. If an inmate is found guilty of more than one disciplinary charge arising out of one incident, he/she may receive up to 15 days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 days.

2. If an inmate is found guilty of more than one disciplinary charge arising out of separate incidents and occurring before the inmate begins serving time in Disciplinary Detention, the inmate may receive up to 15 days for each disciplinary charge provided that the total time to be served in Disciplinary Detention does not exceed 30 days.

3. If an inmate receives one or more disciplinary charges while serving in Disciplinary Detention, he/she may receive up to 15 additional days in Disciplinary Detention per charge provided that the total time in Disciplinary Detention does not exceed a total of 30 days.

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) added exception as established in 10A:4-6.

## SUBCHAPTER 6. CHRONIC VIOLATOR

### 10A:4-6.1 Scope

The rules in this subchapter apply to all inmates serving prison sentences within the Division of Operations.

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).

Rewrote section.

### 10A:4-6.2 Criteria for designating a chronic violator

An inmate may be designated a chronic violator if, while currently serving the maximum time in detention (30 days), the inmate continues to exhibit seriously assaultive or destructive behavior such as to constitute a continuing danger to other persons, and where alternative disciplinary sanctions or housing assignments would be inappropriate or ineffective.

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).

Substituted detention for lockup.

### 10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time he or she is currently serving a 30 day term for other disciplinary violations shall be given directly to the administrator in charge of the Administrative Close Supervision Unit (ACSU). A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The administrator in charge of the Administrative Close Supervision Unit (ACSU) shall be responsible for ordering that each charge be investigated and the administrator shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the administrator in charge of the Administrative Close Supervision Unit (ACSU) concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from detention, the administrator shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d) Prior to the hearing, the inmate shall be examined by a psychiatrist or psychologist to ascertain the inmate's mental condition, need for treatment or indication of need for transfer to a psychiatric facility (See N.J.A.C. 10A:16-13, Commitment for Psychiatric Treatment). The psychiatrist or psychologist shall visit the inmate at least once per month during the inmate's continued confinement in detention, and shall file a written report after each visit as to the inmate's mental condition and adjustment.

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.

See: 25 N.J.R. 4517(b), 25 N.J.R. 4675(b), 25 N.J.R. 4796(a), 25 N.J.R. 5365(b), 25 N.J.R. 5706(a), 26 N.J.R. 1162(c).

#### Law Review and Journal Commentaries

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

#### Case Notes

Action to restore good-time credits remanded to District Court for dismissal as an action seeking federal habeas corpus relief prior to exhaustion of State remedies; "substantial evidence" in disciplinary proceeding held ambiguous, as more frequently taken as a standard of review rather than a burden of proof; exhaustion of State remedies required in light of their ambiguity; (a) disciplinary hearing is substantial evidence of guilt; *Brown v. Fauver*, 819 F.2d 395 (3c 1987).

Inmate, in civil rights action against prison officials, deprived of due process by use of confidential information in increase of his custody status; deprivation not harmless. *Muhammed v. Butler*, 655 F.Supp. 1470 (D.N.J.1987) appeal dismissed 802 F.2d 447.

Disciplinary proceeding violated prisoner's due process rights. *Engel v. New Jersey Dept. of Corrections*, 270 N.J.Super. 176, 636 A.2d 1058 (A.D.1994).

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).

Procedural safeguards not used in prison disciplinary proceeding. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Information provided by confidential informant for use in prison disciplinary hearing must be part of confidential record. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

New prison disciplinary hearing required when procedural safeguards were absent in initial hearing or in presence of newly discovered evidence. *Fisher v. Hundley*, 240 N.J.Super. 156, 572 A.2d 1174 (A.D.1990).

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding; documents in support of hearing officer's determination were admissible as exceptions to hearsay rule. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

#### 10A:4-9.16 Alteration of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect prohibited act is cited in the disciplinary report but that the inmate may have committed another prohibited act, the Adjustment Committee or Disciplinary Hearing Officer shall modify the charge and give the inmate

the option of a 24 hour postponement to prepare his/her defense against the new charge or adjudicate the new charge at that time.

(b) If, after reviewing the charge, the inmate's past disciplinary record and any special reports, the Disciplinary Hearing Officer or Adjustment Committee concludes that the infraction is of a minor nature suitable for handling as an On-The-Spot Correction, the charge may be referred back to the appropriate Shift Supervisor for handling under N.J.A.C. 10A:4-7, On-The-Spot Correction.

#### Case Notes

Inmates charged with disciplinary violations should be informed of constitutional rights. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Inmate will be deemed informed of rights to confront and cross-examine witnesses in prison disciplinary hearing. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

Failure to inform inmate of constitutional rights did not prejudice inmate. *Jacobs v. Stephens*, 139 N.J. 212, 652 A.2d 712 (1995).

#### 10A:4-9.17 Disciplinary sanctions

(a) The disciplinary action shall be individualized in keeping with such factors as the:

1. Offender's past history of correctional facility adjustment;
2. Setting and circumstances for the adverse behavior;
3. Involved inmate's accountability;
4. Underlying reasons for noncompliance with regulations; and
5. Correctional goals set for the inmate.

(b) The sanction shall be one or more of those enumerated in N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts.

(c) Whenever an inmate damages or destroys plumbing fixtures, or floods his cell at New Jersey State Prison, he may be placed in Prehearing Detention or Disciplinary Detention in a "DRY" cell to serve the sanction imposed.

Administrative Correction, effective January 27, 1989.  
See: 21 N.J.R. 558(a).

Institutional name change.

#### 10A:4-9.18 Suspending sanctions

(a) The Adjustment Committee or Disciplinary Hearing Officer may suspend a sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case.

(b) When a sanction(s) is suspended, the inmate's behavior shall be watched closely for a period of time to see if his

or her intentions to conform to the required code of behavior are sincere.

(c) If the inmate whose sanction(s) has been suspended commits further violations of the correctional facility's rules or regulations, the Adjustment Committee or Disciplinary Hearing Officer shall enforce the sanction(s) which was suspended and impose an additional sanction(s) for the new violation(s).

New Rule, R.1988 d.61, effective February 1, 1988.  
See: 19 N.J.R. 1717(b), 20 N.J.R. 294(a).  
Old section 18 recodified to section 19.

#### 10A:4-9.19 Confiscation of contraband items

All items determined to be contraband found in the inmate's possession shall be confiscated and disposed of in accordance with N.J.A.C. 10A:3-6, Contraband and Disposition of Contraband.

Amended by R.1996 d.237, effective May 20, 1996.  
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).  
Substituted 10A:3-6 for 10A:3.

#### 10A:4-9.20 Guidance and referrals

The Adjustment Committee or Disciplinary Hearing Officer shall give guidance to the inmate with respect to the reason for the rules and policies of the correctional facility. The elements of the inmate's behavior or attitude that are deemed to be unsatisfactory shall be pointed out.

#### 10A:4-9.21 Emergency intra-complex transfer

(a) When it shall appear that an inmate has committed a disciplinary infraction which requires his/her immediate transfer to the general population of another correctional facility or unit within the complex or the Prehearing Detention Unit of another correctional facility or unit within the complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred shall conduct the hearing.

(c) The sending correctional facility shall be responsible for preparing the disciplinary charges, conducting the investigation and delivering this material to the receiving correctional facility.

(d) The transfer of inmates in keep-separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

(f) Inmates who are transferred from one prison to another prison shall be entitled to a prompt review of the transfer by the Inter-Institutional Classification Committee. (See N.J.A.C. 10A:9, Classification Process.)

(g) Inmates who are transferred from one youth correctional facility to another youth correctional facility shall be entitled to a prompt review of the transfer by the Youth Reception Classification Committee. (See N.J.A.C. 10A:9, Classification Process.)

(h) Juvenile offenders who are transferred from one juvenile facility to another shall be reviewed by the Juvenile Inter-Institution Classification Committee at its next scheduled meeting. (See N.J.A.C. 10A:9, Classification Process.)

(i) No transfer as described in this subchapter shall be effected unless the Superintendent and either the Assistant Commissioner or Director, Division of Operations (or the Chief of Staff if both the Assistant Commissioner and the Director are unavailable) shall have determined that there are emergency conditions in the sending correctional facility justifying the transfer.

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

Editorial changes only.  
Amended by R.1996 d.237, effective May 20, 1996.  
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).  
Inserted provision for transfer in keep-separate status.  
Administrative correction.  
See: 29 N.J.R. 777(a).  
Rewrote (e).

#### 10A:4-9.22 Emergency inter-complex transfer

(a) When it shall appear that an inmate from the Youth Complex has committed a disciplinary infraction which requires his or her immediate transfer to the Prison Complex, the notice and disciplinary hearing shall be granted after the transfer.

(b) The disciplinary hearing shall be conducted by the Disciplinary Hearing Officer or Adjustment Committee assigned to the correctional facility to which the inmate has been transferred.

(c) The sending correctional facility shall be responsible for preparing the disciplinary charges, for conducting the investigation and for delivering the material to the receiving correctional facility.

(d) The transfer of inmates in keep-separate status shall be conducted in accordance with N.J.A.C. 10A:3-2.

(e) All due process safeguards shall be provided as soon after the transfer as practicable and shall be in compliance with this subchapter except that written statements of unavailable witnesses shall be liberally accepted instead of live testimony.

**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 Superintendent or his/her 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 restriction on ordinary visiting procedures prior to the next regularly scheduled visiting period. If ample time for correspondence shall exist, 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 on inmates confined in Disciplinary Detention status shall be available in the Unit for the use of the custodial staff:

1. Inmate's 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 work or correctional supervisory staff and all unusual behavior shall be noted in the Unit log book together with the time and date.

**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 Chief of Staff 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).

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## 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 Superintendent or his or her 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 the New Jersey Training School for Boys and Juvenile Medium Security Facility shall have 72 hours from receipt of the disciplinary decision to make such an appeal.

3. 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 Superintendent.

(b) In all cases, the Superintendent or his/her 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).

**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:4-11.2 Processing appeal**

(a) The inmate shall use the Appeal of Disciplinary Decision Form 256-I.

(b) Upon submission of the 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 shall be given to the inmate.

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

(d) All appeals shall be considered by the Superintendent 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 Superintendent 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 in preparing the Form 256-I from another inmate. When the 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 Superintendent or his/her designee for this consideration. If this request is not made, then no action shall be taken to suspend any sanctions received in the disciplinary hearing.

(b) If requested, a disciplinary sanction shall not be suspended pending appeal unless the inmate establishes by clear and convincing evidence that his or her 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 Superintendent 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 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 Superintendent or his or her 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 Superintendent 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 Superintendent; 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 officers, reevaluating reports and reexamining evidence.

(d) If on the basis of new evidence, the Superintendent finds serious issues of credibility, the Superintendent 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 Examination.

(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; and/or,
4. 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.

**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 Superintendent's review of an appeal, one of the following actions shall be taken:

1. The Superintendent or his or her 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 Superintendent 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 Superintendent or his/her 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 Superintendent or his/her 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.

4. The Superintendent or his or her 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 Superintendent or his/her 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).

## 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 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 Superintendent's decision to have the matter reheard, excluding weekends and holidays, in the absence of exceptional circumstances.

(c) Rehearings may be appealed and the Superintendent 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 his or her 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 Superintendent or his or her designee shall respond in writing to the inmate within seven working 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 Superintendent.

(c) Only for reasons of significant importance may a Superintendent or his/her 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 his/her 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.

**10A:4-11.9 (Reserved)**

**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.

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SUBCHAPTERS 12 THROUGH 13. (RESERVED)