

“Room restriction” means confining a juvenile for disciplinary or administrative reasons, either in the room in which he or she usually sleeps or in a room in a program separation unit.

“Sanction” means a prescribed penalty or remedial action that is imposed for a violation.

“Secure facility” means any Commission facility which houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

“Serious bodily injury” means bodily injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Shift supervisor” means the juvenile corrections officer of supervisory rank in those facilities employing custody personnel who is responsible for the maintenance of security during a tour of duty.

“Superintendent” means the chief executive officer of any Commission facility which houses juveniles.

“Unit manager” means the person designated by the Superintendent of a facility not employing custody personnel to be in charge of the shift in that facility.

“Weapon” means anything readily capable of lethal use or inflicting serious bodily injury.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Added definition “Disciplinary Hearing Officer”, and deleted definition “Treatment Team”.

Petition for Rulemaking.

See: 45 N.J.R. 1971(b).

13:101-1.4 Forms

(a) The following forms related to juvenile discipline shall be reproduced or obtained by each facility through the office of the Superintendent, or designee.

1. Room Restriction/Separation Form;
2. Immediate Corrective Action Form;
3. Notice of Violation;
4. Disciplinary Review Report;
5. Disciplinary Review Appeal Form; and
6. Refusal to Attend Hearing Notice.

13:101-1.5 Confidentiality of information relating to juveniles; use of confidential information in disciplinary proceedings

(a) Records and statements in the possession of the Commission that are covered by the confidentiality provisions of N.J.S.A. 2A:4A-60, 60.2 and 60.3 may be reviewed when

necessary and appropriate in the course of disciplinary proceedings under this chapter, and copies of such records and statements may be maintained in juvenile disciplinary files. However, at no time shall these permitted uses of such records and statements release or exempt them from the confidentiality provisions of this section.

(b) All facility records pertaining to juveniles charged as a delinquent, adjudicated delinquent or found to be part of a juvenile-family crisis, including records relating to the suicide or suicide attempt of a juvenile, are confidential. All such records:

1. Shall be strictly safeguarded from public access;
2. May be released only in accordance with the provisions of N.J.S.A. 2A:4A-60; and
3. Shall not be subject to public inspection or copying pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) Unless otherwise required by law, statements made by a juvenile in the course of any suicide prevention or mental health screening, and any reports or records created to report the results of such screening shall not be:

1. Disclosed to any party, including prosecutors and law enforcement personnel; or
2. Used in any investigation, or in any delinquency or criminal proceeding then pending or subsequently initiated. (See N.J.S.A. 2A:4A-60.2)

(d) No report or record relating to mental health services provided to a juvenile prior to an adjudication of delinquency, or any other finding of guilt, shall be disclosed or released to a court unless and until after such an adjudication or finding occurs. (See N.J.S.A. 2A:4A-60.3)

New Rule, R.2011 d.203, effective August 1, 2011.

See: 43 N.J.R. 168(a), 43 N.J.R. 1895(a).

SUBCHAPTER 2. PUBLICATION OF RULES

13:101-2.1 Notification to juveniles about rules and regulations

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

(b) At the time of arrival at a facility, each juvenile shall receive a copy of the facility's Juvenile Handbook which contains facility rules, procedures and information about services and programs. The facility's Juvenile Handbook shall be provided as part of the admission and orientation program. Each juvenile shall be required to sign a form acknowledging receipt of the facility's Juvenile Handbook. A refusal by the juvenile to sign shall be noted on the form by the issuing staff member.

(c) All changes in disciplinary rules shall be posted in the living and common areas of the Commission's facilities and incorporated into the next revision of the Handbook on Discipline and when appropriate, in the facility's Juvenile Handbook.

(d) When a facility has a juvenile in the population who does not speak and/or read English, the rules shall be printed and presented verbally in the juvenile's primary language.

(e) For juveniles unable to read, the rules shall be verbally communicated and assistance shall be provided to those juveniles unable to provide written acknowledgment.

13:101-2.2 Review of facility rules

The Superintendent of each facility shall be responsible for maintaining an ongoing rule review process to ensure that the rules of the facility are current and appropriate. The facility's Juvenile Handbook shall be revised accordingly.

13:101-2.3 Promulgation of rules

(a) The rules of a facility shall be approved by the facility's Superintendent and published in the facility's Juvenile Handbook.

(b) The Commission's disciplinary rules shall be promulgated by the Commission's Executive Board and published in the Handbook on Discipline.

SUBCHAPTER 3. JUVENILE RIGHTS AND RESPONSIBILITIES

13:101-3.1 Notification to juveniles of their rights and responsibilities

(a) Upon reception into the Commission each juvenile shall be given a Handbook on Discipline, which shall clearly and prominently inform the juvenile of his or her rights:

1. To be treated respectfully, impartially and fairly by all personnel;
2. To be informed of the rules, procedures and schedules concerning the operation of the facility;
3. To freedom of religious affiliation and voluntary religious worship within the facility;

4. To health care which includes medical and dental treatment;

5. To nutritious meals, proper bedding and clothing, a laundry schedule for cleaning bedding and clothing, an opportunity to shower regularly, sufficient warmth, proper ventilation, fresh air, a regular exercise period and toilet articles;

6. To correspond with and receive visits from family members and other persons where there is no threat to security or order in keeping with the rules and schedules of the facility;

7. To unrestricted and confidential access to the courts by correspondence;

8. To legal counsel from an attorney of the juvenile's choice, both through meetings and through correspondence, and the right to receive help when it is available through a legal assistance program;

9. To participate in the use of law reference materials to assist in resolving legal problems;

10. To a wide range of reading material for educational purposes and for the juvenile's enjoyment;

11. To participate in counseling, education, vocational training, and employment as far as resources are available and in keeping with the juvenile's interests, needs and abilities; and

12. To use the services of the Commission's Ombudsman.

(b) Upon reception into the Commission each juvenile shall be given a Handbook on Discipline, which shall clearly and prominently inform the juvenile of his or her responsibilities:

1. To treat others, both employees and juveniles, respectfully, impartially and fairly;

2. To know and abide by the rules, procedures and schedules concerning the operation of the facility;

3. To recognize and respect the rights of others to freedom of religious affiliation and voluntary religious worship within the facility;

4. To follow the laundry and shower schedules, to maintain neat and clean living quarters, to seek medical and dental care as needed;

5. To conduct himself or herself properly during visits, to refuse to accept or pass contraband, and to comply with Commission rules and State or Federal laws through the juvenile's correspondence;

6. To use the law library resources in keeping with the facility procedures and schedule prescribed and to respect the rights of other juveniles in the use of this legal material;

7. To seek and utilize reading material for personal benefit, without depriving others of their right to use same;

1. Withdrawing a privilege or an individual or group activity, for example, recreation, television or radio privileges, for no more than five days; meals and snacks provided by the facility are not permitted to be used as a sanction;

2. Requiring a juvenile to pay for repair of damaged property; to repair the damage, or to complete a work task;

3. Room restriction not to exceed four hours;

i. Room restriction in other than a secure facility may take place only in an unlocked room; in a secure facility room restriction may take place either in an unlocked or a locked room;

ii. Staff shall visually make contact every 30 minutes with a juvenile on room restriction unless the circumstances require more frequent contact. Juveniles shall be within sight or sound at all times;

iii. Juveniles who receive room restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

iv. Room restriction not issued as a sanction under N.J.A.C. 13:101-6.16 shall be entered in the housing unit log book;

4. Facility restriction;

i. Facility restriction shall not exceed 48 hours without approval of the Superintendent;

ii. Juveniles who receive facility restrictions shall discuss their behavior and the results of their behavior with a staff member prior to rejoining the general population; and

iii. Facility restrictions shall be entered in the facility or housing unit log book;

5. Formal reprimand communicated to a juvenile by a Sergeant, or above; and

6. Up to four hours of extra work duty.

Petition for Rulemaking.
See: 45 N.J.R. 1971(b).

13:101-5.4 Imposition of immediate corrective action

If the shift supervisor or unit manager sustains the violation of a disciplinary rule, the approved sanction shall be imposed within 24 hours of the conference.

13:101-5.5 Record of immediate corrective action

(a) The Immediate Corrective Action Form shall be retained separately from the juvenile’s classification folder and in accordance with the internal management procedures of the facility.

(b) Information regarding immediate corrective actions shall not be entered onto progress notes or be included in the reports presented to the New Jersey State Parole Board.

13:101-5.6 Referral to the Disciplinary Hearing Officer for a disciplinary hearing

(a) Should the shift supervisor or unit manager conclude that a more serious sanction may be appropriate, the matter shall be referred to the Disciplinary Hearing Officer for a disciplinary hearing and disposition.

(b) A Notice of Violation shall be filed containing all the required information, including a statement of reasons for the referral and any recommendations. The Notice and copies of all relevant documents shall be forwarded to the Disciplinary Hearing Officer.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Section was “Referral to the Treatment Team”. In (a), substituted “the Disciplinary Hearing Officer” for “a Treatment Team”; and in (b), inserted a comma following “information” and substituted “Disciplinary Hearing Officer” for “Treatment Team tracking coordinator”.

SUBCHAPTER 6. DISCIPLINARY PROCEEDINGS

13:101-6.1 Designation and Authority of the Disciplinary Hearing Officer

(a) All disciplinary hearings shall be conducted at a secure facility by a Disciplinary Hearing Officer designated by the Executive Director.

(b) The Disciplinary Hearing Officer shall have the authority to summon witnesses, take testimony, receive documentary evidence and shall have access to all facility records, which are relevant and necessary to the adjudication of any disciplinary case.

(c) The Disciplinary Hearing Officer shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence that is not necessary for an adequate understanding of the case. The 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.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Section was “Composition, authority and decisions of the Treatment Team”. In (a), substituted “Disciplinary Hearing Officer designated by the Executive Director.” for “Treatment Team, consisting of the following staff members:”; deleted (a)1 through (a)4, (b) and (c); recodified former (d) and (e) as (b) and (c); in (b), substituted “Disciplinary Hearing Officer” for “Treatment Team” and inserted a comma following “records”; in (c), substituted “Disciplinary Hearing Officer” for “Treatment Team” and “Team Chairperson”; and deleted (f) and (g).

13:101-6.2 Disciplinary report

(a) Except for those matters handled by immediate corrective action (N.J.A.C. 13:101-5), when a violation as identified in N.J.A.C. 13:101-4.1 has occurred, the staff member who witnessed it or who has probable cause to believe that a violation has occurred shall prepare a Notice of Violation and forward it to the appropriate supervisor.

(b) The supervisor may handle the matter as an immediate corrective action or forward it to the Disciplinary Hearing Officer for further disposition.

(c) The Notice of Violation shall be served upon the juvenile within 24 hours after the violation unless there are exceptional circumstances. The notice shall be delivered by the reporting staff member or the investigating staff member. The notice shall be signed by the person delivering it and the date and time of delivery shall be noted. The juvenile shall have at least 24 hours to prepare his or her defense.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (b), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.3 Use immunity

(a) In all cases, the juvenile shall be advised of his or her 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 or delinquency proceeding. The failure to give this warning by the investigating staff member shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his or her discretion may grant a postponement if it is determined that such failure has precluded the juvenile from adequately preparing his or her defense at the hearing.

(b) A juvenile's failure to invoke use immunity and make a statement in his or her defense may be considered by the Disciplinary Hearing Officer together with the other evidence in decision making.

(c) Charges shall not be sustained at a disciplinary hearing, however, solely upon a juvenile's silence.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted "Disciplinary Hearing Officer" for "Treatment Team"; and in (a), substituted "his or her" for "its".

13:101-6.4 Investigation

(a) An investigation of the violation shall be conducted by the facility at which the hearing will be held within 24 hours of the time the Notice of Violation is served upon the juvenile.

(b) The Superintendent shall appoint a custody staff member of supervisory level who shall conduct investigations of all violations.

(c) Whenever a juvenile is under special observation status, the investigator shall advise the facility's Superintendent who shall refer the juvenile for a psychiatric and/or psychological evaluation. In all other cases, the investigator may request that the facility's Superintendent refer the juvenile for a psychiatric and/or psychological evaluation. The Superintendent shall determine the need to obtain a psychological and/or psychiatric evaluation based upon the nature of the violation and all other relevant information.

1. In those cases where a psychological and/or psychiatric evaluation is necessary, the Superintendent shall forward a written request for evaluation to the facility's lead psychologist.

2. Upon completion and receipt of the evaluation report, the Disciplinary Hearing Officer shall consider the information provided in the evaluation report along with any other information gathered during the investigation.

(d) The investigator shall thoroughly investigate the incident. As part of this investigation, the investigator shall verify that the juvenile has received the Notice of Violation. The investigator shall also read the charge to the juvenile, inform the juvenile of the juvenile's use immunity rights, take the juvenile's plea, and ask if the juvenile wishes to make a statement concerning the incident. The investigator shall take the juvenile'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 juvenile's attitude may be included in the investigatory report.

(e) The juvenile may submit to the investigator a written request for juvenile witnesses. Written requests shall be attached to the record in the case.

(f) The investigator may include comments and conclusions on the juvenile'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 juvenile shall not receive a copy of the investigation.

(g) The juvenile may obtain a copy of juvenile witness statements, provided that the Commission finds that such a disclosure would not compromise facility safety and security.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (c)2, substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.5 Requiring further investigation of charges

The Disciplinary Hearing Officer may direct a further investigation in any case where he or 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 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.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team" two times, and substituted "he or she" for "it".

13:101-6.6 Scheduling disciplinary hearings

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

(b) The juvenile shall be entitled to a hearing within three days of the alleged violation, including weekends and holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Should the third 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) Juveniles held in prehearing room restriction, as provided for in N.J.A.C. 13:101-8, shall receive a hearing within three days, 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) Juveniles held in prehearing room restriction shall be given priority in scheduling their appearance before the Disciplinary Hearing Officer.

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

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team" throughout.

Petition for Rulemaking.
See: 45 N.J.R. 1971(b).

13:101-6.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the Disciplinary Hearing Officer within 24 hours of the postponement if the juvenile is in prehearing room restriction 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.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.8 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 may, in his or her 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. Prejudice to the juvenile in preparing his or her defense; and
4. The seriousness of the alleged infraction.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In the introductory paragraph of (a), substituted "Disciplinary Hearing Officer" for "Treatment Team" and "his or her" for "its".

13:101-6.9 Right of juvenile to appear at disciplinary hearing

(a) A juvenile shall be permitted to be present throughout the disciplinary hearing except during the necessary deliberations of the Disciplinary Hearing Officer and except in instances where facility security would be jeopardized by the juvenile's presence.

(b) The reasons for excluding a juvenile from the hearing must be well documented in the record.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.10 In absentia hearings

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

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

1. The escorting staff member shall report the juvenile's refusal to appear before the Disciplinary Hearing Officer.
2. A staff member shall deliver to the juvenile who refuses to appear a Refusal to Attend Hearing 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 staff member shall advise the juvenile that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the Disciplinary Hearing Officer of the circumstances surrounding the charges

lodged against the juvenile. If the juvenile still refuses to appear at the disciplinary hearing, the juvenile shall be requested to sign Refusal to Attend Hearing Notice immediately after the statement noted above in (b)2 above.

4. In the event the juvenile refuses to sign his or her name where designated on the Refusal to Attend Hearing Notice and still refuses to appear, the notice shall be returned to the Disciplinary Hearing Officer and the following statement on the notice shall be acknowledged by the signature of the investigating staff member:

“Juvenile refuses to sign _____.”
Signature of Staff Member, Date

5. The Disciplinary Hearing Officer shall ensure that the following statement shall be included in the juvenile statement section of the Disciplinary Review Report: “No statement taken as the juvenile refused to appear at the hearing.”

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In the introductory paragraph of (b) and in (b)1, (b)3 and (b)5, substituted “Disciplinary Hearing Officer” for “Treatment Team”; and in (b)4, substituted “Disciplinary Hearing Officer” for “Treatment Team Chairperson”.

13:101-6.11 Aid in presentation of juvenile’s case

(a) When a juvenile has been charged with a violation, the juvenile shall be afforded the right to request representation by a counsel substitute.

(b) When the Disciplinary Hearing Officer determines that a juvenile cannot adequately collect and present the evidence in his or her own behalf, the juvenile shall receive the services of a counsel substitute or the juvenile may request representation by a staff member.

(c) Where the juvenile requests the services of a staff member, the Superintendent or his or her designee may appoint a staff member to provide representation.

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

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

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (b), substituted “Disciplinary Hearing Officer” for “Treatment Team”.

Amended by R.2011 d.203, effective August 1, 2011.

See: 43 N.J.R. 168(a), 43 N.J.R. 1895(a).

In (b), substituted “shall” for “may elect to”.

13:101-6.12 Opportunity to call witnesses and present evidence

(a) Juveniles 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 facility safety. The 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 has the discretion to keep the 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 shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Disciplinary Review Report.

(b) Witnesses requested by the juvenile who are called may be questioned by the Disciplinary Hearing Officer and the juvenile, the staff member or counsel substitute. Juveniles or their representatives may request that certain questions be directed by the Disciplinary Hearing Officer to any witness. The Disciplinary Hearing Officer may take testimony in a manner or form, which is determined to be necessary to protect facility safety. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted “Disciplinary Hearing Officer” for “Treatment Team” throughout; and in (b), substituted “the Disciplinary Hearing Officer” for “members of the Treatment Team”, “Disciplinary Hearing Officer” for “Treatment Team members” and inserted a comma following “form”.

13:101-6.13 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination shall be provided to the juvenile in such instances where the 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 may refuse confrontation and cross examination when said would be unduly hazardous to facility safety.

Amended by R.2008 d.354, effective December 1, 2008.

See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted “Disciplinary Hearing Officer” for “Treatment Team”.

Amended by R.2011 d.203, effective August 1, 2011.

See: 43 N.J.R. 168(a), 43 N.J.R. 1895(a).

In (a), deleted “, if requested,” following “examination”.

13:101-6.14 Evidence required for sustaining charges

(a) Charges may be sustained at a disciplinary hearing only upon substantial evidence that the juvenile has committed a violation.

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

1. In any case in which the Disciplinary Hearing Officer's decision to sustain charges is based on evidence that includes confidential information, the report shall contain:

- i. A concise summary of the facts on which the Disciplinary Hearing Officer concluded that the informant was credible 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 shall not disclose the identity of the informant.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (b)1, substituted "Disciplinary Hearing Officer's" for "Treatment Team's" and "that" for "which" following "evidence"; and in (b)1i and (b)2, substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.15 Modification of charge during disciplinary hearing

(a) Whenever it becomes apparent at a disciplinary hearing that an incorrect violation is cited in the Notice of Violation but that the juvenile may have committed another violation, the Disciplinary Hearing Officer shall modify the charge and give the juvenile the option of a 24-hour postponement to prepare his or her defense against the new charge or to adjudicate the new charge at that time.

(b) After reviewing the charge and all available information, the Disciplinary Hearing Officer may conclude that the infraction is of a minor nature and handle it as an immediate corrective action.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.16 Disciplinary sanctions

(a) The sanction may be individualized by considering such factors as the:

- 1. Juvenile's history of adjustment in the Commission;
- 2. Setting and circumstances of the prohibited behavior;
- 3. Involved juvenile's account;
- 4. Rehabilitative goals set for the juvenile; and
- 5. Juvenile's history of or the presence of special needs.

(b) Sustaining charges for any violation, other than a violation handled by immediate corrective action, shall render the offender subject to one or more of the following sanctions:

- 1. Any sanction prescribed for an immediate corrective action (see N.J.A.C. 13:101-5.3);
- 2. Up to five days room restriction, subject to the provisions of N.J.A.C. 13:101-6.17;
- 3. Loss of telephone, radio, television, and contact visit privileges for up to 30 days;
- 4. Loss of one or more additional facility privileges up to 15 days;
- 5. Confiscation;
- 6. Up to 14 hours extra work duty, to be performed within a maximum of two weeks;
- 7. Restitution for damage, alteration or destruction of State property or the property of another person which results in undue expenditure of State funds; or
- 8. Referral to Mental Health Services or to another program or treatment regimen for appropriate care and/or treatment.

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

- 1. Recommending transfer to a more appropriate facility or unit;
- 2. Increasing custody status;
- 3. Changing work or housing assignments; and/or
- 4. Assigning to a treatment program.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In the introductory paragraph of (c), substituted "Disciplinary Hearing Officer" for "Treatment Team".
Petition for Rulemaking.
See: 45 N.J.R. 1971(b).

13:101-6.17 Limitations on room restriction as a disciplinary sanction

(a) A juvenile may receive up to five days in room restriction as a sanction for each violation charged, whether arising out of a single or separate incidents. However, no juvenile may spend more than five consecutive days in room restriction, whether because of separate sanctions imposed for distinct charges or for any other reason, except as set forth in (e) below.

(b) At least two consecutive days out of room restriction must follow a period of five consecutive days served in room restriction before any succeeding term of room restriction may be imposed.

(c) A juvenile shall not serve an aggregate time in room restriction in excess of 10 days in any 30-day period.

(d) Time spent by a juvenile in prehearing room restriction, as provided for in N.J.A.C. 13:101-8.1, shall be counted as days spent in room restriction for purposes of determining compliance with the time limitations set forth in this section.

(e) Nothing in this section shall prevent the placement of a juvenile in room restriction for the minimum time necessary to eliminate an immediate threat to the safety of either the juvenile, staff or other juveniles, or to the orderly operation of the facility.

Amended by R.2010 d.002, effective January 4, 2010.
See: 41 N.J.R. 2772(a), 42 N.J.R. 74(a).

Rewrote (b).
Petition for Rulemaking.
See: 45 N.J.R. 1971(b).

13:101-6.18 Suspending sanctions

(a) The Disciplinary Hearing Officer may, in his or her discretion, suspend a sanction(s) for 30 days, when such action is warranted by the particular circumstances of the case.

(b) When a sanction(s) is suspended and the juvenile's behavior conforms to the required code of behavior throughout the period of suspension, the juvenile shall be relieved of the sanction(s).

(c) If the juvenile commits further violations of the facility's rules or regulations during the period of the suspension, the Disciplinary Hearing Officer shall enforce the sanction(s) that was suspended and impose an additional sanction(s) for the new violation(s).

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a), substituted "Disciplinary Hearing Officer" for "Treatment Team" and "his or her" for "its"; and in (c), substituted "Disciplinary Hearing Officer" for "Treatment Team" and "that" for "which".

13:101-6.19 Guidance

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

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.20 Transfers

(a) A juvenile in either a non-secure facility or in any other facility without an assigned Disciplinary Hearing Officer, who is charged with a violation, other than one handled by immediate corrective action, shall be transferred to a secure facility with an assigned Disciplinary Hearing Officer for adjudication of his or her disciplinary charges.

(b) In those instances in (a) above, and in all others involving the transfer of a juvenile to another facility as a

result of a disciplinary charge, the Notice of Violation shall be served and the disciplinary hearing shall be granted after the transfer.

(c) The sending facility shall be responsible for preparing the disciplinary charges and forwarding them to the facility receiving the juvenile.

(d) The receiving facility shall be responsible for conducting the investigation of the charges.

(e) The Disciplinary Hearing Officer assigned to the receiving facility shall conduct the hearing.

(f) 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.

(g) Except as set forth in (a) above, no juvenile in a Commission secure facility shall be transferred to a more secure facility as a result of a disciplinary charge unless the Superintendent and the Director of Operations have determined that there are conditions justifying the transfer.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (e), substituted "Disciplinary Hearing Officer" for "Treatment Team" throughout.

13:101-6.21 Disciplinary decision

(a) After the hearing has been completed, written fact-findings shall be given to the juvenile by the Disciplinary Hearing Officer. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretion of the Disciplinary Hearing Officer, jeopardize facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or other special circumstances presented in individual cases. When a juvenile has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the juvenile.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's records and in the juvenile's classification folder unless the charge(s) against the juvenile has not been sustained in which case, the records of the charge(s) shall be expunged from the juvenile's classification folder.

(c) If the charges against the juvenile are sustained, the decision shall be entered on the juvenile's progress notes and included in reports submitted to the New Jersey State Parole Board.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a), substituted "Disciplinary Hearing Officer" for "Treatment Team" twice; and in (b), substituted "Disciplinary Hearing Officer's" for "Treatment Team's".

13:101-6.22 Discipline record card

For the purpose of assisting the Disciplinary Hearing Officer in determining the appropriate sanction to impose, each facility shall have available at the hearing a Disciplinary Record Card for each juvenile. This card shall accompany the juvenile should he or she be transferred to another Commission facility.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-6.23 Expungement

(a) If a charge against a juvenile is not sustained, the results of the hearing shall not be entered onto the juvenile's progress sheet. In addition, all references to the disciplinary charges (including any entry onto the progress sheet, the disciplinary report, the investigation report and the adjudication sheet) shall be removed from the juvenile's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the facility and the Disciplinary Hearing Officer in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the juvenile's classification folder.

(b) In the event that a charge that was sustained is rescinded on appeal and no further disciplinary action is taken, the juvenile's records shall be expunged in accordance with the above procedure. Copies of the appeal and the disposition on appeal shall be forwarded to the Disciplinary Hearing Officer for his or her records.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a) and (b), substituted "Disciplinary Hearing Officer" for "Treatment Team"; and in (b), substituted "his or her" for "their".

13:101-6.24 Records of disciplinary reports

(a) A disciplinary report result sheet containing the following information regarding juveniles who received disciplinary actions shall be prepared by the Disciplinary Hearing

Officer no less than weekly and submitted to the Superintendent or his or her designee:

1. The names of the juveniles;
2. The juveniles' numbers;
3. The juveniles' housing locations;
4. The violations of the juveniles;
5. The names of staff members who wrote the reports;
6. The disposition of the charges; and
7. The names of staff members who adjudicated the cases.

(b) The result sheet shall be kept on file for two years.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In the introductory paragraph of (a), substituted "Disciplinary Hearing Officer" for "Treatment Team Tracking Coordinator".

SUBCHAPTER 7. APPEALS OF DISCIPLINARY DECISIONS

13:101-7.1 Time limit to file an appeal

(a) The juvenile shall be advised in writing by the Disciplinary Hearing Officer of the opportunity to appeal to the Superintendent or his or her designee, who shall be an Assistant Superintendent, at the time the juvenile is provided with the disciplinary decision. Juveniles shall have 48 hours from receipt of the disciplinary decision to make such appeal.

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

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

In (a), substituted "Disciplinary Hearing Officer" for "Treatment Team".

13:101-7.2 Processing appeal

(a) The juvenile shall use the Disciplinary Review Appeal Form to request an appeal of a disciplinary decision. The

(b) A juvenile in either a non-secure facility, or in any other facility without an assigned Disciplinary Hearing Officer, shall be transferred to a secure facility with an assigned Disciplinary Hearing Officer when assigned to prehearing room restriction.

(c) Factors that may be considered by the Superintendent or designee in determining whether confinement in prehearing room restriction is warranted include whether:

1. The juvenile has been charged with an assault upon another person and, in the opinion of the staff, there is a substantial possibility that the juvenile may assault another juvenile or staff member;
2. The juvenile has been charged with threatening another person and, in the opinion of the staff, there is a substantial possibility that the juvenile will act on his or her threat;
3. The juvenile has been charged with being under the influence of drugs or intoxicants and, in the opinion of the staff, the juvenile's behavioral controls appear to be impaired;
4. The juvenile has been charged with inciting others to engage in an assault upon another person, causing serious destruction of property or participating in a group demonstration or work stoppage and, in the opinion of the staff, there is a substantial possibility the juvenile will continue such incitement;
5. The juvenile has been charged with arson or serious destruction of property and, in the opinion of the staff, there is a substantial likelihood that the juvenile may engage in additional arson or destruction of property;
6. The juvenile has received a disciplinary charge and, in the opinion of the staff, there is a substantial possibility that the juvenile will attempt to harm, threaten or intimidate potential witnesses or will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;
7. The juvenile has been charged with participating in an unauthorized gathering or group demonstration and the juvenile refuses to abandon his or her participation; and
8. The juvenile has been charged with escape or attempted escape and evidence has been produced which indicates that the juvenile presents a serious escape risk if permitted to remain in the general population.

(d) Time spent in prehearing room restriction shall be credited against any sanction of room restriction imposed by the Disciplinary Hearing Officer.

Amended by R.2008 d.354, effective December 1, 2008.
See: 40 N.J.R. 98(a), 40 N.J.R. 6817(a).

Section was "Confinement in room restriction pending Treatment Team hearing". Substituted "Disciplinary Hearing Officer" for "Treatment Team" throughout.
Petition for Rulemaking.
See: 45 N.J.R. 1971(b).

13:101-8.2 Ventilation, heating, lighting and sanitation in room restriction

(a) Ventilation and reasonable temperature shall be maintained on a 24-hour basis. Light of sufficient intensity shall be maintained to allow visual observations of juveniles at all times.

(b) Juveniles shall not be placed in housing units that lack cleanliness or have malfunctioning sanitary fixtures or lights.

(c) Daily inspections shall be made to ensure the rooms are kept secure, clean and sanitary.

(d) Toilets that are flush controlled from outside the rooms shall be flushed as often as is necessary to maintain good sanitary standards.

13:101-8.3 Visual observation

(a) A juvenile in room restriction shall be observed directly by custody staff on a regular basis, and in no event less frequently than hourly.

1. There shall be no physical obstruction to visual observation at any time; full or partial curtains and other items shall not be permitted over the room door or room door window.

13:101-8.4 Personal items

(a) A juvenile shall be admitted to room restriction dressed in standard clothing, or other clothing deemed appropriate for the custody level of the juvenile, after a thorough search for contraband, except that belts and shoestrings shall not be permitted.

(b) Each juvenile shall be provided with the following items for use in the room to the same extent as such items are provided for juveniles in the general population:

1. Clothing required for use in the room;
2. Bedding and mattresses;
3. Personal hygiene supplies (including soap, deodorant, toothbrush and toothpaste or powder, towel, toilet paper, and female sanitation supplies for women);
4. Utensils and supplies for adequately cleaning the room;
5. Eyeglasses;
6. Reading material;
7. Writing materials; and
8. Legal materials.

13:101-8.5 Withdrawal of personal items or special activities

(a) Whenever in the judgment of the supervisor of the unit where the juvenile is being held in room restriction there is imminent danger that a juvenile will destroy any item or will injure himself or herself, another person, or damage property with any item, the supervisor may direct that the juvenile be deprived of the item, if practicable. In such a case, however, every effort shall be made to supply a substitute for the item or to permit the juvenile to use the item under supervision of a custody staff member.

(b) Whenever a juvenile is deprived of any usually authorized item or activity, a written report shall be immediately forwarded to the Superintendent or his or her designee, identifying the juvenile, the item or activity of which the juvenile has been deprived and the reason thereof.

(c) Whenever the circumstances are such that all the juvenile's clothing is removed, the Superintendent or his or her designee shall be contacted immediately for approval of this action.

(d) Arrangements shall be made for a physician or other appropriate staff to visit the juvenile as soon as possible after the withdrawal of personal item(s) or activities.

(e) In all cases, the item or activity shall be restored to the juvenile as soon as restoration appears to be consistent with safety.

(f) No juvenile shall ever, under any circumstances, be deprived of any of these items or activities for the purposes of punishment or discipline.

13:101-8.6 Medical and psychiatric services

(a) Juveniles in room restriction shall receive a daily visit by a member of the health care staff, which can be a nurse, paramedic, doctor or other authorized health care personnel.

(b) Medical and psychiatric emergencies shall be attended to immediately. Requests for medical attention for juveniles in non-emergency situations shall be responded to by the physician, or a health care staff member designated by the physician, within 24 hours.

(c) Whenever it appears that a juvenile is suffering from an emotional or psychiatric disturbance, health care staff shall immediately provide appropriate intervention services and shall make arrangements for a psychiatric or psychological evaluation. Documentation of the evaluation findings shall be forwarded to the Superintendent or his or her designee by the health care staff member who conducted the evaluation prior to completion of the shift of the health care staff member on the day the evaluation is conducted. A copy of the findings of the evaluation shall be placed in the juvenile's medical record.

13:101-8.7 Visits by social services and supervisory custody staff

(a) A member of the facility's social services staff shall visit juveniles in room restriction daily to determine any emergencies or unusual needs of the juveniles.

(b) Juveniles shall receive at least daily visits from the custody staff supervisor in charge of the unit where the juvenile is being held in room restriction.

13:101-8.8 Chaplain services

(a) Juveniles held in room restriction shall be provided with access to pastoral services.

(b) The secure facility chaplain, or an outside religious leader approved by the chaplain and Superintendent, shall visit a juveniles in response to a written request for religious counseling or other pastoral services.

13:101-8.9 Food

(a) Juveniles in room restriction shall be served the regular secure facility meals from the "Menu of the Day" unless a special diet is prescribed by a physician or mental health professional, or a religious vegetarian diet has been approved by the secure facility chaplain.

(b) Disposable utensils shall be used when appropriate.

13:101-8.10 Correspondence, visits and telephone calls

(a) Juveniles held in room restriction shall have the same opportunities to send and receive written correspondence that are available to juveniles in the general population.

(b) Juveniles held in room restriction shall not be provided with visit or telephone opportunities while in room restriction with the exception of legal telephone calls.

1. The Superintendent or his or her designee may authorize a special visit or telephone call for a juvenile when there are compelling reasons to do so.

2. Every effort shall be made to notify expected social visitors prior to the next regularly scheduled visiting period of the restriction on ordinary visiting procedures for juveniles held in room restriction.

13:101-8.11 Grooming, showering and shaving

(a) Barbering and hair care services shall be provided as needed.

(b) Each juvenile shall be given the opportunity to shave and shower daily, unless permitting these activities would present an undue security hazard.