

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 Modification 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 may be individualized by considering such factors as the:

1. Offender’s past history of correctional facility adjustment;
2. Setting and circumstances of the prohibited behavior;
3. Involved inmate’s account;
4. Correctional goals set for the inmate; and
5. The inmate’s history of or the presence of mental illness.

(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) In accordance with N.J.A.C. 10A:9-3.14, inmates shall be reviewed and scored on the Reclassification Instrument upon a finding of guilt to a prohibited act(s) when:

1. A sanction imposed by the Disciplinary Hearing Officer includes a referral to the I.C.C., except if Administrative Segregation is part of the imposed sanction;
2. A minimum custody status inmate is found guilty of a prohibited act in the highest or high level of the Severity of Offense—Disciplinary Infractions Scale (see N.J.A.C. 10A:9-2.11); or
3. Referred by the Administrator.

(d) When a sanction for a finding of guilt to a prohibited act includes loss of commutation credits the inmate shall be rescored on the objective classification scoring instrument used at the last review (see N.J.A.C. 10A:9-3.14, Required reviews).

(e) 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.

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

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

In (a), substituted “may” for “shall” following “disciplinary action” in the introductory sentence.

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

In (a), substituted "by considering" for "in keeping with" in the introductory paragraph, and added 6.

Amended by R.2001 d.425, effective November 19, 2001.

See: 33 N.J.R. 2390(a), 33 N.J.R. 3947(a).

Added a new (c) and (d), and recodified former (c) as (e).

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 the inmate's 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) Emergency transfers shall be reviewed promptly by the Inter-Institutional Classification Committee at the next regularly scheduled meeting. (See N.J.A.C. 10A:9, Classification Process.)

(g) No transfer as described in this subchapter shall be effected unless the Administrator 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 the inmate's 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.

(f) Emergency transfers from the Youth Complex to the Prison Complex shall be reviewed by the Institutional Classification Committee and are subject to confirmation by the

Special Classification Committee. (See N.J.A.C. 10A:9, Classification Process.)

(g) No transfer as described in this section shall be effected unless the Administrator 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.

(h) Transfers of adjudicated delinquents 18 years of age or older from the Juvenile Justice Commission to the Department of Corrections shall be handled in accordance with N.J.A.C. 13:91-2.

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

Changed term "variance" to "rule exemption".
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.

10A:4-9.23 Transfer from satellite units

(a) When a minimum security inmate at a satellite unit is charged with a serious disciplinary infraction requiring transfer for reasons of security to the main correctional facility, the inmate shall be provided with a disciplinary hearing at the main correctional facility.

(b) The satellite unit shall be responsible for preparing the disciplinary charges.

(c) The investigation shall be conducted by either the main correctional facility or the satellite unit.

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) substituted "is charged with" for "commits".

10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or Adjustment Committee Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson, jeopardize correctional 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 an inmate 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 inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's records and in the inmate's classification folder unless the inmate has been adjudicated not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's classification folder.

(c) If the inmate is adjudicated guilty, the decision shall be entered on the inmate's progress notes and included in reports submitted to the New Jersey State Parole Board.

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

Added new (c).
Amended by R.1996 d.237, effective May 20, 1996.

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

10A:4-9.25 Discipline record card (Form 254-I)

For the purpose of assisting the Disciplinary Hearing Officer or Adjustment Committee in determining the appropriate sanction to impose, each correctional facility shall have available at the hearing a Discipline Record Card (Form 254-I) for each inmate. This card shall accompany the inmate should he/she be transferred to another correctional facility.

10A:4-9.26 Expungement

(a) If an inmate shall be adjudicated not guilty on a disciplinary charge, the results of the hearing shall not be entered onto the inmate'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 inmate's classification folder. Copies of the disciplinary report, investigation and adjudication sheet shall be maintained by the correctional facility and the Disciplinary Hearing Officer or Adjustment Committee in the event of judicial review and for statistical and accounting purposes only. These records shall be maintained separately from the inmate's classification folder.

(b) In the event that a finding of guilt is rescinded on appeal and no further disciplinary action is taken, the inmate'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 or Adjustment Committee for their records.

(c) The provisions of this subchapter shall be applicable to disciplinary reports prepared on or after September 1, 1980.

10A:4-9.27 Reopening a disciplinary hearing

(a) A finding of not guilty shall represent the final disposition of a disciplinary charge. Except when new information is discovered, an inmate may not be recharged with an offense for which the inmate has been found not guilty.

(b) New information shall be defined to include only information which was not available at the time of the initial hearing and which could not reasonably have been ascertained in the course of the correctional facility's investigation.

(c) Information which was overlooked as the result of a careless or incomplete investigation shall not be considered new information within the meaning of this subchapter.

10A:4-9.28 Records of disciplinary reports

(a) A disciplinary report result sheet containing the following information regarding inmates who received disci-

iplinary actions shall be prepared no less than weekly and submitted to the Administrator or designee:

1. The names of the inmates;
2. The inmate numbers;
3. The inmate housing locations;
4. The violations of the inmates;
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.1996 d.237, effective May 20, 1996.
See: 28 N.J.R. 1464(a), 28 N.J.R. 2555(b).

SUBCHAPTER 10. DETENTION PROGRAM

10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate may be placed in Prehearing Detention in those instances where it appears necessary to remove or isolate the inmate from the general population until an investigation into the inmate's alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his or her existing housing unit, the inmate would constitute a threat to other inmates, staff members, the inmate or to the orderly operations of the correctional facility.

(b) Confinement in Prehearing Detention may consist of placement in the Detention Unit or confinement to the inmate's room or housing unit.

(c) Factors which may be considered in determining whether confinement in Prehearing Detention is warranted include:

1. The inmate has been charged with an assault upon another person and, in the opinion of the correctional staff, there is a substantial possibility that the inmate may assault another inmate or staff member;
2. The inmate has been charged with threatening another person and, in the opinion of the correctional staff, there is a substantial possibility that the inmate will act on his or her threat;
3. The inmate has been charged with being under the influence of drugs or intoxicants and, in the opinion of the correctional staff, the inmate's behavioral controls appear to be impaired;

4. The inmate 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 correctional staff, there is a substantial possibility the inmate will continue such incitement;

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that the inmate may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—New Jersey State Prison only);

6. The inmate has received a disciplinary charge and, in the opinion of the correctional staff, there is a substantial possibility that the inmate will attempt to harm, threaten or intimidate potential witnesses or that the inmate will attempt to organize or encourage others to harm, threaten or intimidate potential witnesses;

7. The inmate has been charged with participating in an unauthorized gathering or group demonstration and the inmate refuses to abandon his or her participation; and

8. The inmate has been charged with escape or attempted escape and evidence has been produced which indicates that the inmate presents a serious escape risk if permitted to remain in general population.

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the shift supervisor. Form 255-I Authorization for Prehearing Detention shall be utilized when placing an inmate in Prehearing Detention. A separate Form 255-I must be completed for each inmate and, wherever possible, Form 255-I should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of Form 255-I prior to placement, Form 255-I shall be completed immediately following placement. After all appropriate parties have signed Form 255-I, it shall be placed in the inmate's folder. Additional copies of the completed Form 255-I may be kept on file, for recordkeeping purposes, in areas designated by the Administrator and the Director of Custody Operations.

(e) Where possible, an Administrator, Assistant Superintendent or Director of Custody Operations shall review and approve or disapprove a request to place an inmate in Prehearing Detention.

(f) Any time spent in Prehearing Detention shall be credited against any subsequent sentence imposed.

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

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

10A:4-10.12 Food

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

(b) Disposable utensils shall be used when necessary.

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

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

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

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

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

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

10A:4-10.14 Grooming, showering and shaving

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

10A:4-10.15 Reading material

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

10A:4-10.16 Recreation

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

10A:4-10.17 Records in Disciplinary Detention

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

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

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

10A:4-10.18 Correctional facility procedures

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

(b) The written procedures and post orders for the Detention Program shall be submitted to the Office of the 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).

SUBCHAPTER 11. APPEALS OF DISCIPLINARY DECISIONS

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

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

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

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

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

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

Institutional name change.

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

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

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

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

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

Case Notes

Inmate's federal court claim that disciplinary proceedings violated his constitutional rights was barred under doctrine of claim preclusion. *Rodziewicz v. 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 to request an appeal of a disciplinary decision.

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

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

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

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

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

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

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

Case Notes

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

10A:4-11.3 Suspension of sanctions pending appeal

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

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

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

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

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

10A:4-11.4 Investigation of appeal

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

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

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

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

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

1. Compliance with the subchapters on inmate discipline which prescribe procedural safeguards;

2. Whether the decision of the Disciplinary Hearing Officer or Adjustment Committee was based upon substantial evidence;

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

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

5. Whether extenuating circumstances were considered.

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

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

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

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

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

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

Amended by R.1999 d.187, effective June 7, 1999 (operative July 1, 1999).

See: 31 N.J.R. 831(a), 31 N.J.R. 1487(b).

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

Law Review and Journal Commentaries

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

Case Notes

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

10A:4-11.5 Disposition of appeal

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

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

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

3. The Administrator or designee shall downgrade the sanctions if the review and/or investigation indicates that the sanction is disproportionate to the offense in accordance with factors enumerated in N.J.A.C. 10A:4-9, Dis-

ciplinary Procedures, except in the case of a termination of contact visits sanction as established in N.J.A.C. 10A:4-5.1(c) or 5.2(c).

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

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

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

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

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

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

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

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

Case Notes

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

10A:4-11.6 Policy regarding rehearings

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

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

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

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

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

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

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

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

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

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

(c) Only for reasons of significant importance may an Administrator or designee extend the time limit to act on an appeal. In such case, the inmate shall be notified in writing within the prescribed time period that action on the in-

mate's appeal has been extended. Where possible, the reason for the extension shall be explained in general terms to the inmate.

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

In (a)2 substituted Form 245-II for Form 256-II.
Petition for Rulemaking.
See: 31 N.J.R. 1823(a).

10A:4-11.8 Expungement

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

10A:4-11.9 (Reserved)

SUBCHAPTERS 12 THROUGH 13. (RESERVED)