

**TITLE 10A
CORRECTIONS**

**CHAPTER 1
ADMINISTRATION, ORGANIZATION,
AND MANAGEMENT**

Authority

N.J.S.A. 2C:39-1, 30:1B-6, 30:1B-10, 30:4-123.47(c), and 52:27EE-26; the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.; and the Federal Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. §§15601 et seq.

Source and Effective Date

R.2008 d.190, effective June 17, 2008.
See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 1, Administration, Organization and Management, expires on December 14, 2015. See: 47 N.J.R. 1863(a).

Subchapter 3, Disability Discrimination Grievance Procedure, is exempt from expiration pursuant to 28 C.F.R. Part 35.

Chapter Historical Note

Chapter 1, Administration, Organization and Management, was adopted as R.1987 d.282, effective July 6, 1987. See: 19 N.J.R. 620(a), 19 N.J.R. 1214(a).

Subchapter 2, General Provisions, was adopted as R.1988 d.240, effective June 6, 1988. See: 20 N.J.R. 493(a), 20 N.J.R. 1222(c).

Subchapters 3 through 10, (Reserved), and Subchapter 11, Personal Property of Inmates, were adopted as R.1988 d.306, effective July 5, 1988. See: 20 N.J.R. 494(a), 20 N.J.R. 1559(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, Administration, Organization and Management, was readopted as R.1992 d.269, effective June 1, 1992. See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Subchapter 3, Disability Discrimination Grievance Procedure, was adopted as R.1993 d.617, effective December 6, 1993. See: 25 N.J.R. 1326(b), 25 N.J.R. 5474(a).

Pursuant to Executive Order No. 66(1978), Subchapter 1, Operation and Procedures of the Department of Corrections; Subchapter 2, General Procedures; Subchapters 4 through 9, (Reserved); Subchapter 10, Research; and Subchapter 11, Personal Property of Inmates, expired on June 1, 1997.

Subchapter 1, Operation and Procedures of the Department of Corrections; Subchapter 2, General Procedures; Subchapters 4 through 9, (Reserved); Subchapter 10, Research; and Subchapter 11, Personal Property of Inmates, were adopted as R.1997 d.527, effective December 15, 1997. See: 29 N.J.R. 4231(a), 29 N.J.R. 5296(a).

Chapter 1, Administration, Organization and Management, was readopted as R.2003 d.176, effective April 9, 2003. See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Subchapter 4, Inmate Remedy System, was adopted as new rules by R.2008 d.171, effective June 16, 2008. See: 39 N.J.R. 2188(a), 40 N.J.R. 3718(d).

Chapter 1, Administration, Organization and Management, was readopted as R.2008 d.190, effective June 17, 2008. See: Source and Effective Date. See, also, section annotations.

Chapter 1, Administration, Organization and Management, was renamed Administration, Organization, and Management by R.2013 d.006, effective January 7, 2013. See: 44 N.J.R. 957(a), 45 N.J.R. 34(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, Administration, Organization and Management, was scheduled to expire on June 17, 2015. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. OPERATION, PROCEDURES AND RULEMAKING ACTIVITY OF THE DEPARTMENT OF CORRECTIONS

10A:1-1.1 Functions of the agency

(a) The Department of Corrections (DOC), created by statute in 1976, is a principal Department in the Executive Branch of New Jersey State Government (see N.J.S.A. 30:1B-2). The functions of the DOC are to:

1. Protect the public and provide for the custody, care, discipline, training and treatment of persons committed to State correctional facilities;
2. Supervise and assist in the treatment and training of persons in local correctional and detention facilities, so that such persons may be prepared for release and reintegration into the community;
3. Cooperate with other law enforcement agencies of the State to encourage a more unified system of criminal justice.
4. Provide maximum security confinement for offenders whose demonstrated propensity to acts of violence requires that these offenders be separated from the community;
5. Develop alternatives to conventional incarceration for offenders who can be dealt with more effectively in less restrictive community based facilities and programs;
6. Provide an environment for incarcerated persons which encourages rehabilitation and reintegration into the community; and
7. Protect the incarcerated offender from victimization within the correctional facilities of the DOC.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (a)1, deleted "or released on parole" following "committed to State correctional facilities".

Amended by R.2011 d.022, effective January 18, 2011.

See: 42 N.J.R. 2194(a), 43 N.J.R. 188(a).

In the introductory paragraph of (a) and in (a)7, substituted "DOC" for "D.O.C." throughout; and in the introductory paragraph of (a), inserted "(see N.J.S.A. 30:1B-2)".

Case Notes

Department of Corrections was authorized to discipline a prisoner, who tested positive for cocaine and opiates upon his return to a State prison after escaping from a halfway house, for violating the Department's regulation prohibiting the use of drugs; under N.J.S.A. 30:1B-3 and N.J.S.A. 30:4-91.3, the Commissioner of Corrections maintains authority over adult offenders committed to State correctional institutions, even at times when they are physically outside prison walls. *Ries v. Dep't of Corr.*, 396 N.J. Super. 235, 933 A.2d 638, 2007 N.J. Super. LEXIS 328 (App.Div. 2007).

10A:1-1.2 Procedure to petition for rulemaking

(a) Pursuant to N.J.S.A. 52:14B-4(f), an interested person may petition for the promulgation of a new rule, or amendment or repeal of any existing rule of the Department of Corrections. A petition shall:

1. Be in writing;
2. Be legible and intelligible; and
3. Be signed by the petitioner.

(b) Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. Citation of the rule for which the petition is made, using N.J.A.C. references, where applicable;
3. A clear and concise statement summarizing the substance of the rule sought or change to be suggested that may include the text of the suggested new rule or amended rule;
4. A specific statement explaining why the suggestion is being offered and summary of reasons therefor; and
5. A citation of statutory authority under which the Department of Correction is authorized to act.

(c) The petition shall be sent to the Supervisor, Administrative Rules Unit, Office of the Commissioner, Department of Corrections, Cubberly Building, PO Box 863, Trenton, New Jersey 08625-0863.

(d) A document submitted as a petition for rulemaking shall be reviewed by the Commissioner or designee. The document shall be deemed to be a petition for rulemaking based upon, but not limited to, substantial compliance with (a) through (c) above and the following guidelines, as applicable to the suggested new rule, amended rule or repealed rule (see definition of an "administrative rule" at N.J.S.A. 52:14B-2(e)):

1. The Department has the legal authority to promulgate the suggested rule;

2. Any item, article or material found within the facility or on its grounds which has not been issued by the correctional facility or authorized as permissible for retention or receipt;

3. Any item, article or material found in the possession of, or under the control of, staff or visitors within the facility or on its grounds which is not authorized for receipt, retention or importation;

4. Any item, article or material that is authorized for receipt, retention or importation by inmates, staff or visitors but that is found in an excessive amount or that has been altered from its original form. An amount shall be considered excessive if it exceeds stated correctional facility limits or exceeds reasonable safety, security, sanitary, or space considerations; or

5. Any article that may be harmful or presents a threat to the security and orderly operation of the correctional facility shall be considered contraband. Items of contraband shall include, but shall not be limited to: guns and firearms of any type; ammunition; explosives; knives, tools and other implements not provided in accordance with correctional facility regulations; hazardous or poisonous chemicals and gases; unauthorized drugs and medications; medicines dispensed or approved by the correctional facility but not consumed or utilized in the manner prescribed; intoxicants, including, but not limited to, liquor or alcoholic beverages; and where prohibited, currency, stamps and electronic communication devices.

“Counsel substitute” means an individual, such as an inmate paralegal, teacher or social worker, who represents and defends an inmate at a disciplinary hearing proceeding that is conducted within a correctional facility under the jurisdiction of the Department of Corrections.

“Custody staff” except as otherwise provided, means Custody Supervisors, Senior Correction Officers and Correction Officer Recruits who have been sworn as peace officers.

“Custody status” means the custody assignment of an inmate. There are six categories:

1. Close custody;
2. Maximum custody;
3. Medium custody;
4. Gang minimum custody;
5. Minimum custody; and
6. Community custody.

“Deadly force” means force which a custody staff member uses with the purpose of causing, or which the custody staff member knows will create a substantial risk of causing, death or serious bodily harm.

“Department” means the New Jersey Department of Corrections.

“Departmental Research Review Board (DRRB)” means the members of a board, authorized by the Commissioner or designee, responsible for the review of requests to conduct research within the Department of Corrections.

“Deputy Commissioner” means Deputy Commissioner of the New Jersey Department of Corrections.

“Detainer” means a warrant or formal authorization to hold an inmate for prosecution or detention by a Federal, state or local law enforcement agency or the U.S. Immigration and Customs Enforcement (ICE). Detainers may include, but are not limited to:

1. Adjudicated criminal charges for which sentence has been imposed;
2. Criminal charges resulting from indictment, for which there is no final disposition (open charges);
3. Warrants for violation of parole or probation; and
4. Immigration detainees.

“Director” means the executive officer next in rank to the Assistant Commissioner (Chief Executive Officer) of a Division within the Department of Corrections.

“Disciplinary detention” shall mean removal of an inmate from the general population to a short-term close custody unit because of a disciplinary infraction(s).

“Disciplinary Hearing Officer” means a staff member of the Department of Corrections designated to hear and adjudicate inmate violations of prohibited acts.

“Disciplinary report” means a form on which a violation of a prohibited act is recorded along with other pertinent information.

“Disciplinary sanction” means a prescribed penalty that is imposed for violation of a prohibited act.

“Division of Operation” means the administrative unit that is responsible for the administration of all correction facilities within the New Jersey Department of Corrections.

“Division of Programs and Community Services” means the division within the Department of Corrections that is responsible for correctional facility and community-based program opportunities for inmates, which include the offices of Community Programs, Drug Programs, Educational Services, Transitional Services, and Internal Support and Outreach Services.

“DNA” means deoxyribonucleic acid.

“DNA sample” means a blood or other biological sample provided by any person pursuant to the DNA Database and Databank Act of 1994 (N.J.S.A. 53:1-20.17 et seq.).

“Domestic partner” or “partner” means a person who is in a relationship that satisfies the definition of a domestic partnership as set forth in the New Jersey “Domestic Partnership Act,” N.J.S.A. 26:8A-1 et seq.

“Electronic communication device” means a device or related equipment or peripheral that is capable of electronically receiving, transmitting or storing a message, image or data. Examples of such electronic devices include, but are not limited to, all types and sizes of a computer, telephone, two-way radio, camera or video/audio player/recorder, fax machine, pager or beeper, personal data assistant, hand-held e-mail system, or any other device containing a means of internet access or receiving, transmitting or storing information electronically by means of audio, visual or recorded data.

“Electronic Monitoring Program (EMP)” means a program in which an inmate lives in the community and is monitored by an electronic monitoring device.

“Family member” means:

1. Spouse;
2. Domestic Partner;
3. Partner in a civil union couple;
4. Parent;
5. Stepparent;
6. Legal guardian;
7. Grandparent;
8. Child; or
9. Sibling.

“Experimentation” means the use of any healthcare intervention that has not been previously tested and approved for the community population.

“Firearm” means any hand gun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile, bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the ignition of flammable or explosive substances. Firearm shall also include, without limitation, any firearm, which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person (see N.J.S.A. 2C:39-1).

“General population” means the common body of inmates not assigned to Close Custody Units (see N.J.A.C. 10A:5).

“Handbook on Discipline” means a handbook published by the Department of Corrections that is provided to inmates which contains an inmate’s rights and responsibilities, the acts and activities which are prohibited and the disciplinary procedures and sanctions imposed.

“Housing unit” means a cell, dormitory or other type of sleeping area within a correctional facility.

“Increased custody” means assignment of an inmate to a custody level that requires more supervision.

“Indeterminate sentence” means a sentence of imprisonment which contains no fixed term of duration (see N.J.S.A. 30:4-148).

“Indigent inmate” means an inmate who has no funds in his or her account and is not able to earn inmate wages due to prolonged illness or any other uncontrollable circumstances, and who has been verified as having no outside source from which to obtain funds.

“Inmate handbook” means a booklet that is provided to inmates which contains site-specific correctional facility rules and procedures, and information about services and programs. An Inmate Handbook may also mean a unit-specific handbook when identified as such. Such unit-specific handbooks shall be provided to inmates who are assigned to certain units, such as, but not limited to, a Close Custody Unit.

“Inmate Liaison Committee” means an inmate group made up of inmate representatives, authorized by the correctional facility administration to act on behalf of the inmate population of the correctional facility. Such an inmate committee may be known as something other than an “Inmate Liaison Committee.”

“Inmate personal property” means items owned by an inmate which have been approved for retention by the inmate while incarcerated in a correctional facility. Inmate personal property may also be property held by a correctional facility on behalf of an inmate and handled in accordance with N.J.A.C. 10A:1-11.

“Inmate Remedy System” means the comprehensive system through which an inmate may initially and formally submit a “Routine Inmate Request” and/or an “Interview Request” in order to obtain information, and to present issues, concerns, complaints in writing to the correctional facility staff. The Inmate Remedy System also includes an “Administrative Appeal” through which inmates are encouraged to formally appeal to the Administrator or designee the decision or finding rendered by correctional facility staff in regard to the “Routine Inmate Request” or “Interview Request” that was previously presented by the inmate. The comprehensive Inmate Remedy System consists of:

1. A “Routine Inmate Request”;
2. An “Interview Request”; and

budsman, Department of Corrections"; and in definition "Non-permissible property" inserted "any item addressed to or received by an inmate from or someone or someplace that is not an authorized source of sale," deleted "or" following "through the mail" and substituted "an authorized" for "a".

Amended by R.2008 d.266, effective September 2, 2008.

See: 40 N.J.R. 2647(a), 40 N.J.R. 5040(a).

Added definition "Office of Community Programs".

Amended by R.2009 d.86, effective March 16, 2009.

See: 40 N.J.R. 6732(a), 41 N.J.R. 1250(a).

In paragraph 2 of definition "Constant observation", inserted "uninterrupted surveillance by one staff member of up to four inmates".

Amended by R.2009 d.272, effective September 8, 2009.

See: 41 N.J.R. 2202(a), 41 N.J.R. 3301(b).

Added definition "Responsible health authority".

In definition "Shift Commander", substituted "a supervisory rank who has been designated by the Administrator or designee as being" for "the rank of Sergeant or higher".

Amended by R.2009 d.320, effective October 19, 2009.

See: 41 N.J.R. 2607(a), 41 N.J.R. 3936(a).

Amended by R.2010 d.054, effective April 5, 2010.

See: 41 N.J.R. 4663(a), 42 N.J.R. 721(a).

Added definition "Prehearing Protective Custody".

Amended by R.2010 d.006, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In definition "Canine search", inserted ", objects".

Administrative change.

See: 43 N.J.R. 1344(a).

Amended by R.2011 d.277, effective November 7, 2011.

See: 43 N.J.R. 1562(a), 43 N.J.R. 3024(a).

Rewrote definition "Security threat group".

Amended by R.2013 d.006, effective January 7, 2013.

See: 44 N.J.R. 957(a), 45 N.J.R. 34(b).

Added definitions "Experimentation" and "Research".

Amended by R.2014 d.027, effective February 3, 2014.

See: 45 N.J.R. 13(a), 46 N.J.R. 297(a).

Substituted definition "Administrative segregation" for definition "Administrative Segregation"; and in definition "Administrative segregation", substituted "means" for "shall mean", inserted "of a correctional facility", and deleted "long-term" preceding "close".

Case Notes

Regulation which classifies inmates who do not have any funds in their account and who cannot work, but are able to receive funds from outside sources as "nonindigent," thus requiring them to use funds from outside sources for payment of legal photocopying and medical care, did not violate equal protection clause. *Robinson v. Fauver*, D.N.J.1996, 932 F.Supp. 639.

In an inmate's appeal of disciplinary action arising from a fight he was involved in, the appellate court rejected the Department of Correction's blanket policy of keeping confidential all security camera videotapes in order to preclude inmates from learning camera angles, locations, or blind spots, and directed the Department to develop a record on remand regarding the need for confidentiality of the particular videotape. *Robles v. New Jersey Dept. of Corrections*, 388 N.J. Super. 516, 909 A.2d 755, 2006 N.J. Super. LEXIS 295 (App.Div. 2006).

10A:1-2.3 Chief Executive Officer

Pursuant to N.J.S.A. 30:1B-1 et seq., the Chief Executive Officer of the Department of Corrections is the Commissioner of Corrections.

10A:1-2.4 Rulemaking, policy and procedure making and exemption authority

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue, promulgate, relax and exempt rules and regulations for the administration

of correctional facilities, community programs and operational units within the Department of Corrections.

(b) The Commissioner is authorized to determine all matters of policy and procedure in order to regulate the operational issues associated with the administration of correctional facilities, community programs and operational units and to formulate, modify, relax, and exempt such policies, procedures and regulations when necessary, so that same can function safely and effectively within the Department of Corrections.

(c) The Commissioner may exempt a correctional facility, community program or operational unit from adherence to a rule or may relax certain requirements of a rule for good cause shown in a particular situation or in instances when strict compliance with a rule or all of its requirements would result in:

1. An undue hardship, unfairness or injustice;
2. An inability to meet a therapeutic, rehabilitative or medical need;
3. A security risk or imminent peril to the overall management, safe or orderly operation of a correctional facility, community program or operational unit;
4. An inability to utilize existing technology or apply technological innovations in order to meet penological objectives;
5. An inability to meet an operational need to ensure management effectiveness and efficiency; or
6. An inability to reasonably meet a time period requirement.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (c).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Rewrote (c).

Amended by R.2010 d.057, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

Section was "Rulemaking and exemption authority". In (a), substituted a comma for "and" preceding "promulgate" and inserted ", relax and exempt"; rewrote (b); in the introductory paragraph of (c), inserted "may relax" and "for good cause shown in a particular situation or"; in (c)1, inserted ", unfairness or injustice"; in (c)2, deleted "or" at the end; in (c)3, inserted "or imminent peril" and substituted a semicolon for a period at the end; and added (c)4 and (c)5.

Amended by R.2011 d.022, effective January 18, 2011.

See: 42 N.J.R. 2194(a), 43 N.J.R. 188(a).

In (c)4, deleted "or" from the end; added new (c)5; and recodified former (c)5 as (c)6.

10A:1-2.5 Expiration of rule exemptions

(a) All rule exemptions shall expire two years from the date of approval by the Commissioner.

(b) A rule exemption may be terminated prior to its expiration date when:

1. The special circumstances making the rule exemption necessary no longer exist; or

2. The Commissioner no longer approves the rule exemption.

(c) A rule exemption may be extended beyond its expiration date when:

1. The Administrator or Unit Supervisor reapplies for the rule exemption; and

2. The approval of the Commissioner is given for an extension of the rule exemption.

(d) A correctional facility, community program or operational unit shall return to compliance with the New Jersey Administrative Code when rule exemptions terminate or expire.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (c)1, substituted "Administrator" for "Superintendent".

10A:1-2.6 Effective dates of adopted and exempted rules

(a) Unless otherwise noted in the New Jersey Register, an adopted rule is effective on the date of its publication in the New Jersey Register.

(b) The effective date of a rule exemption shall be the date of the Commissioner's signature on Form 911 Request for Rule Exemption.

10A:1-2.7 Procedure for requesting rule exemptions

(a) Requests for rule exemptions may be submitted by staff or committees to the Administrator for review.

(b) Requests for rule exemptions may be submitted by inmates or inmate groups to the Institutional Classification Committee (I.C.C.) for review. The I.C.C. shall review and submit inmate requests for rule exemptions to the Administrator along with recommendations for approval or disapproval. Such requests for rule exemptions must:

1. Be in writing;
2. Be legible and intelligible;
3. Contain the full name and address of the inmate or inmate group;
4. Contain the N.J.A.C. 10A citation of the rule for which the exemption is made; and
5. Include a clear and concise statement summarizing the substance of the rule exemption, why the suggestion is being requested and a summary of reasons for the exemption.

(c) Requests for rule exemptions may be submitted by staff members, individually or as a group, utilizing and sub-

mitting Form 911 to the community program supervisor or operational unit supervisor for review.

(d) The Administrator, community program supervisor or operational unit supervisor shall review and determine, based on the criteria in N.J.A.C. 10A:1-2.4(c), whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Administrator, community program supervisor or operational unit supervisor approves a request for rule exemption, the designated sections of Form 911 Request for Rule Exemption shall be completed in duplicate, signed and submitted to the appropriate Assistant Commissioner.

(f) The Assistant Commissioner shall review Form 911 Request for Rule Exemption and determine whether to approve or disapprove the request, based on the criteria in N.J.A.C. 10A:1-2.4(c). If the Assistant Commissioner approves the request, the designated section of Form 911 shall be signed, dated and submitted to the Commissioner for review. If the Assistant Commissioner disapproves the request, the designated section of Form 911 shall be signed, dated and returned to the correctional facility Administrator, the community program supervisor or operational unit supervisor.

(g) The Commissioner shall review Form 911 Request for Rule Exemption, submitted by an Assistant Commissioner and determine whether to authorize a rule exemption, based on the criteria in N.J.A.C. 10A:1-2.4(c). The Commissioner shall approve or disapprove a rule exemption by signing and dating the designated section on Form 911 and returning it to the Assistant Commissioner.

(h) The Assistant Commissioner shall be responsible for notifying the Administrator, the community program supervisor or operational unit supervisor of the Commissioner's approval or disapproval of requests for rule exemptions.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (d)-(h).

Administrative Correction in (e) and (f).

See: 24 N.J.R. 4390(a).

Administrative Change.

See: 25 N.J.R. 4105(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent" throughout.

Amended by R.2010 d.057, effective April 19, 2010.

See: 41 N.J.R. 4395(a), 42 N.J.R. 792(b).

In the introductory paragraph of (b), inserted the last sentence; added (b)1 through (b)5; and in (c), inserted "utilizing and submitting Form 911".

10A:1-2.8 Forms

(a) The following form related to Administration, Organization and Management is available by accessing the Department of Corrections computer network (DOCNet). Interested individuals who do not have access to DOCNet may obtain

Amended by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

In the introductory paragraph of (a), substituted “form” for “forms” two times, substituted “is” for “are” and inserted “this”; in (a)1, substituted a period for the semicolon at the end; and deleted (a)2 and (a)3.

SUBCHAPTER 3. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

10A:1-3.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“ADA” means the Americans with Disabilities Act, 42 U.S.C.A. § 12101 et seq.

“Agency” means the New Jersey Department of Corrections.

“Designated decision maker” means the Commissioner of the Department of Corrections or designee.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In “Designated decision maker”, substituted “of the Department of Corrections or designee” for “of Corrections or his or her designee” following “Commission”.

10A:1-3.2 Purpose

(a) These rules are adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under

the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 10A:1-3.5 through 3.8.

10A:1-3.3 Required ADA notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency’s compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination” in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code, N.J.A.C. 10A:1-3. As those rules indicate, grievances should be addressed to the agency’s designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the Department of Personnel, N.J.A.C. 4A:7-1.1 et seq. will be followed where applicable.

2. A grievance should be filed promptly within 30 calendar days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In paragraph 2, inserted "calendar".

Case Notes

Inmates' ability to challenge statutory imposition of co-payments for medical care, via disability discrimination grievance procedures, adequately protected inmates' due process rights. *Mourning v. Correctional Medical Services, (CMS) of St. Louis, Missouri*, 300 N.J.Super. 213, 692 A.2d 529 (A.D.1997).

10A:1-3.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 10A:1-3.5 through 3.8.

10A:1-3.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 10A:1-3.4 within 30 calendar days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the Department of Personnel, N.J.A.C. 4A:7-1.1 through 3.4, if those rules are applicable.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Inserted "calendar".

10A:1-3.6 Grievance contents

(a) A grievance submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 10A:1-3.7.

(b) A grievance submitted pursuant to this subchapter shall include the following information:

1. The name of the grievant, and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;

2. The address and telephone number of the grievant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

10A:1-3.7 Americans with Disabilities Act Grievance Form 100

The following Americans with Disabilities Act Grievance Form 100 may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form 100

Date: _____

Name of grievant: _____

Address of grievant: _____

Telephone number of grievant: _____

Name, address and telephone number

of alternate contact person: _____

Agency alleged to have denied access:

Department: _____

Division: _____

Bureau or office: _____

Location: _____

Incident or barrier: _____

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attach additional pages if necessary.

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

A copy of the above Form 100 may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 10A:1-3.4.

Administrative change.
See: 27 N.J.R. 4717(a).

10A:1-3.8 Investigation

(a) Upon receipt of a grievance submitted pursuant to this subchapter, the designated ADA coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 calendar days from the date of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant.

ance, if practicable or unless a later date is agreed to by the grievant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the designated decision maker for the agency. The designated decision maker shall render a written decision within 45 calendar days of receipt of the grievance, if practicable or unless a later date is agreed to by the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a) and (b), inserted "calendar".

SUBCHAPTER 4. INMATE REMEDY SYSTEM

Subchapter Historical Note

Petition for Rulemaking. See: 46 N.J.R. 648(c), 886(c).

10A:1-4.1 Purpose

(a) The purpose of this subchapter is to establish:

1. The comprehensive Inmate Remedy System in which inmates may formally communicate with correctional facility staff to request information from, and present issues, concerns, complaints or problems to the correctional facility staff. The Inmate Remedy System also includes an "Administrative Appeal" through which inmates are encouraged to formally appeal to the Administrator or designee the decision or finding rendered by correctional facility staff in regard to the "Routine Inmate Request" or "Interview Request" that was previously presented by the inmate. The Inmate Remedy System consists of:

- i. A "Routine Inmate Request";
- ii. An "Interview Request"; and
- iii. An "Administrative Appeal"; and

2. Provisions for the designation of correctional facility staff to manage and coordinate the Inmate Remedy System.

10A:1-4.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Coordinator of the Inmate Remedy System" or "Coordinator" means the staff member(s) designated by the Administrator to manage and coordinate the process and to oversee the handling of related forms and proceedings.

"Further deliberation" means additional time needed by correctional facility staff in order to further research, investigate or refer the issue presented by the inmate to a

committee or another entity in order to provide a decision or finding to the inmate.

“Urgent request” means a request presented by the inmate on IRSF—101 Inmate Remedy System Form in which the inmate expresses in writing a need for prompt action or response based upon a compelling, emergent or serious circumstance, state, condition or fact associated with the request.

10A:1-4.3 Forms

(a) The following forms related to this subchapter are printed by the Bureau of State Use Industries—DEPTCOR. Each correctional facility shall purchase a supply of these forms by contacting DEPTCOR:

1. IRSF—101 Inmate Remedy System Form; and
2. IRSF—102 Staff Response Form.

(b) The following forms related to this subchapter are available by accessing the Department of Corrections computer network (DOCnet). Interested individuals who do not have access to DOCnet may obtain copies of forms by contacting the Institutional Remedy Coordinator:

1. IRSF—103 Staff Corrective Action Form; and
2. IRSF—104 Assessment and Evaluation Form.

10A:1-4.4 General provisions regarding the Inmate Remedy System

(a) Correctional facility staff and inmates shall be responsible for compliance with the provisions established in this subchapter and any internal management procedures relative to the Inmate Remedy System.

(b) The submission of a “Routine Inmate Request,” “Interview Request” and/or “Administrative Appeal” shall not result in cause for coercion, punishment, retaliation, reprisal, or retribution against any individual.

(c) The Inmate Remedy System is a comprehensive system that includes the opportunity for an inmate to submit a “Routine Inmate Request” or “Interview Request” and, in response to the resulting decision or finding, to submit an “Administrative Appeal.” Therefore, when a “Routine Inmate Request” or “Interview Request” decision or finding is rendered by correctional facility staff to the inmate, and the inmate wishes to appeal the resulting decision or finding to the Administrator or designee, the inmate is encouraged to submit an “Administrative Appeal.” The submission of an “Administrative Appeal” enables the inmate to fully utilize each available option by completing the comprehensive Inmate Remedy System in regard to the inmate’s request for information, issue, concern, complaint or problem.

(d) The comprehensive Inmate Remedy System to include a “Routine Inmate Request” and/or “Interview Request,” and an “Administrative Appeal” must be utilized and fully exhausted prior to an inmate filing any legal action regarding information requests, issues, concerns, complaints, or problems.

(e) The IRSF—101 Inmate Remedy System Form must be complete, legible and include a clear and concise statement summarizing the request. The IRSF—101 shall contain the full name, SBI number and, when required, signature of the inmate submitting the form. An IRSF—101 submitted anonymously or without a legible, clear indication of the name and number of the inmate shall not be processed through the Inmate Remedy System.

(f) The IRSF—101 may be obtained from designated correctional facility units/departments such as, but not limited to, housing units, the Social Services Department and the law library. Completed forms shall be deposited in designated collection boxes that are located in specified areas of the correctional facility.

(g) The IRSF—103 Staff Corrective Action Form shall be used by correctional facility staff to advise an inmate who has submitted an inappropriate, incomplete, illegible, or unclear IRSF—101 Inmate Remedy System Form of the appropriate steps the inmate needs to take in order to address the issue or to process and fully complete the request.

(h) When deemed necessary by the inmate, an “urgent request” (as these terms are defined within this subchapter) may be indicated on the IRSF—101; however, a written explanation of the urgency must be provided by the inmate which includes the compelling, emergent or serious circumstance, state, condition, or fact associated with the request.

(i) Further deliberation may be deemed necessary in those instances in which an issue requires further research or investigation, or is referred to a committee or to another entity. The staff member shall consult with the Coordinator and any other appropriate correctional facility staff when making the determination that the request requires further deliberation. The IRSF—102 Staff Response Form shall be used to provide the inmate a response within 30 calendar days of receipt of a “Routine Inmate Request” or “Interview Request” by the Coordinator and within ten business days of receipt of an “Administrative Appeal” by the Administrator or designee. Utilizing the IRSF—102, the initial response to the inmate shall include, but not be limited to, statements that indicate:

1. Further deliberation is necessary;
2. The nature of the deliberation; and
3. The timeframe within which the final response shall be provided to the inmate.

(j) For illiterate inmates or inmates otherwise unable to read or write due to a language/physical/medical inability, assistance shall be provided by appropriate correctional facility staff as needed in regard to each step of the Inmate Remedy System.

10A:1-4.5 Submitting and handling a “Routine Inmate Request” or an “Interview Request”

(a) Form IRSF—101 Inmate Remedy System Form shall be used by an inmate who wishes to formally communicate with correctional facility staff by submitting a “Routine Inmate Request” or an “Interview Request” in writing in order to:

1. Obtain information, present an issue, concern, complaint, or problem to correctional facility staff; and/or
2. Request an interview with a correctional facility staff member regarding an issue, concern, complaint, or problem.

(b) When initially submitting the IRSF—101, the inmate shall check only one box in PART 1 on the form to indicate

that the request is a "Routine Inmate Request" or an "Interview Request."

(c) An "Interview Request" signifies that an inmate has requested to meet with a correctional facility staff member. Such an interview request does not mandate that an interview with a particular staff member will be granted, or that an interview will be granted when the staff member determines the issue can sufficiently be handled in writing.

(d) The inmate shall choose either a "Routine Inmate Request" or an "Interview Request" to fully exhaust the initial step of the Inmate Remedy System prior to submitting an "Administrative Appeal." Submitting an "Interview Request" after submitting a "Routine Inmate Request" in order to communicate with correctional facility staff is permitted; however, utilizing both requests shall not be required in order to exhaust this initial step of the Inmate Remedy System.

(e) Correctional facility staff shall review and respond to a request for information, issue, concern, complaint or problem presented by the inmate in a "Routine Inmate Request" or "Interview Request" within 30 calendar days unless the request is determined to be an urgent request or a request is determined to require further deliberation.

10A:1-4.6 Submitting and handling an "Administrative Appeal"

(a) An inmate may appeal a response or finding received after exhausting the initial step of the Inmate Remedy System as indicated in N.J.A.C. 10A:1-4.5 above. Utilizing the canary-colored copy of the IRSF—101 Inmate Remedy System Form that was originally used to submit the "Routine Inmate Request" or the "Interview Request," the inmate shall check the "Administrative Appeal" box in PART 1 on the IRSF—101 Inmate Remedy System Form.

(b) An "Administrative Appeal" must be submitted by the inmate, utilizing the canary-colored IRSF—101, within 10 calendar days from the issuance of the decision or finding of the correctional facility staff member to the "Routine Inmate Request" or "Interview Request."

(c) The Administrator or designee shall review the "Administrative Appeal" and provide a decision or finding to the inmate within ten business days of receipt of the "Administrative Appeal."

(d) The decision or finding of the Administrator or designee to the "Administrative Appeal" is the final level of review and decision or finding of the New Jersey Department of Corrections.

10A:1-4.7 Responsibilities of the Administrator

(a) The Administrator or designee shall be responsible for:

1. Designating a correctional facility staff member(s) to coordinate and to be responsible for matters pertaining to the Inmate Remedy System;

2. Ensuring that "Routine Inmate Requests" and "Interview Requests" submitted by inmates through the Inmate Remedy System are responded to by appropriate correctional facility staff in a timely manner;

3. Reviewing all "Administrative Appeals," making the final Department of Corrections decision relative to the "Administrative Appeal" and ensuring the decision or finding is provided to the inmate within the designated time frame; and

4. Ensuring the development and maintenance of written internal management procedures governing the Inmate Remedy System that are consistent with the requirements of this subchapter.

10A:1-4.8 Responsibilities of the Coordinator of the Inmate Remedy System

(a) The Coordinator or designee(s) shall be responsible for consulting with other staff when deemed necessary and for:

1. Ensuring the IRSF—101 Inmate Remedy System Form is available in designated areas of the correctional facility;

2. Ensuring forms are collected on a regular basis from the designated collection boxes excluding weekends and holidays, or when prevented by an emergency situation, or when an exceptional circumstance exists that can be documented by the Coordinator;

3. Reviewing each form submitted to determine if the form is properly completed, legible, signed, and includes clear and concise statements, and ensuring that the IRSF—103 Staff Corrective Action Form is completed and forwarded to the inmate when deemed necessary. The Coordinator may consult with appropriate correctional facility staff to determine that an inappropriate, incomplete, illegible, or unclear IRSF—101 should be returned to the inmate along with the IRSF—103 Staff Corrective Action Form;

4. Maintaining an inmate data base and/or log, to include a numbering system for purposes of tracking "Routine Inmate Requests," "Interview Requests" and "Administrative Appeals" and to ensure a timely response and retaining all related forms and records in accordance with the record retention schedule approved by the Department of Corrections;

5. Reviewing all inmate "Interview Requests" to ascertain if an interview is reasonably practicable, warranted, appropriate, and necessary to address the issue, or whether the issue can be sufficiently addressed through a written response from the appropriate correctional facility staff member;

6. Determining whether the “Routine Inmate Request” or “Interview Request” is to be handled as a routine request, an urgent request, or whether further deliberation is necessary. Such determinations shall be made after consultation with correctional facility staff;

7. Ensuring all “Routine Inmate Requests,” “Interview Requests” and “Administrative Appeals” are handled and processed within the designated time frames;

8. Ensuring appropriate correctional staff notify the inmate in writing when further deliberation is necessary; and

9. Distributing the “Routine Inmate Request,” “Interview Request” and “Administrative Appeal” to appropriate correctional facility staff for research, investigation, referral, handling, and the rendering of a written decision or finding.

(b) The Coordinator shall provide a monthly report to the Administrator or designee containing statistical data compiled regarding the receipt, interview, written response, decision or finding and any other related information regarding the Inmate Remedy System.

10A:1-4.9 Responsibilities of correctional facility staff

(a) Certain correctional facility staff shall be assigned to conduct the research, investigation or referral of an issue presented by an inmate through the Inmate Remedy System. The staff may be responsible for:

1. Preparing a written response to the inmate request on IRSF—101 Inmate Remedy System Form, IRSF—102 Staff Response Form or IRSF—104 Assessment and Evaluation Form;

2. Ensuring all “Routine Inmate Requests” and “Interview Requests” are processed, the written response prepared, reviewed and forwarded to appropriate individuals within the designated time frames;

3. Reporting to the Coordinator when a “Routine Inmate Request” or “Interview Request” appears to be urgent or in need of further deliberation, the nature of which shall be specified; and

4. Providing Inmate Remedy System statistical data regarding receipt, interview and written responses, and related information to the Coordinator as needed.

SUBCHAPTERS 5 THROUGH 9. (RESERVED)

SUBCHAPTER 10. RESEARCH

10A:1-10.1 General research and experimentation provisions

(a) No experimentation shall be conducted involving the use of inmates or employees of the New Jersey Department of Corrections except as provided by court order, consent decree, or other legal processes.

(b) The New Jersey Department of Corrections may authorize research projects that are conducted in accordance with this subchapter.

(c) Inmates shall not be permitted to receive compensation of any kind for their research participation from any agency or entity conducting a research project.

Amended by R.2003 d.176, effective May 5, 2003.
See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (a), deleted “or parolees” following “use of inmates”.

Amended by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Section was “Medical research or experimentation”. In (b), inserted “academic,” and inserted a comma following “nonpharmaceutical”; and added (c).

Amended by R.2013 d.006, effective January 7, 2013.

See: 44 N.J.R. 957(a), 45 N.J.R. 34(b).

Section was “General research provisions”. In (a), substituted “experimentation” for “medical, pharmaceutical or cosmetic experiments or research” and inserted “or employees”; and in (b), deleted “academic, nonmedical, nonpharmaceutical, and noncosmetic” following “authorize”.

10A:1-10.2 Departmental Research Review Board (DRRB)

The Commissioner or designee authorizes the use of a Departmental Research Review Board (DRRB) to be responsible for the review of research requests and to provide recommendations for approval or disapproval of such research requests.

New Rule, R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Former 10A:1-10.2, Procedure for submitting a request to conduct nonmedical, nonpharmaceutical and noncosmetic research projects, recodified to 10A:1-10.3.

10A:1-10.3 Procedure for submitting and handling requests to conduct research projects to the Departmental Research Review Board (DRRB)

(a) Any person(s) or agency(ies) who wishes to conduct research projects shall complete and submit to the Department of Corrections, the research request application package which is available by contacting:

Departmental Research Review Board
Office of Policy and Planning
New Jersey Department of Corrections
PO Box 863
Trenton, New Jersey 08625-0863

(b) The research request application package includes the following:

1. The Application Form to Request Review of a Research Protocol. This form requires:

- i. The title of the project;
- ii. The name and title of, and contact information for, the principal researcher and any other researchers;
- iii. A description of the research project to include the purpose;
- iv. The name of the agency or organization with which the researcher(s) is affiliated;
- v. Funding information;
- vi. Whether human subjects will be involved in the research and related information such as, but not limited to, age, gender, race and projected number of participants;
- vii. The Departmental sites and units involved;
- viii. Whether questionnaires, surveys, tests, or interviews will be used;
- ix. The use of documents, files or records;
- x. How data will be stored and secured when necessary;
- xi. Data disposition;
- xii. Projected research start and end dates;
- xiii. The conditions under which participation by the subject may be terminated by the researcher or subject, if relevant;
- xiv. A summary of the potential social impact, benefits and risks associated with the research project; and
- xv. Signatures of the principal researcher, any other researcher, supervisor or advisor as appropriate;

2. A Researcher Checklist. This checklist is designed to assist the researcher in the gathering of information necessary to complete the Application Form to Request Review of a Research Protocol and includes the information listed in (b) above, in addition to a list of items that must be provided by the researcher and appended to the completed application form, which includes but is not limited to:

- i. The informed consent that will be used;
- ii. Copies of instruments to be used, such as, questionnaires, surveys or tests; and

iii. Copies of any letters, waivers or disclaimers related to the research project from the agency or organization with which the researcher is affiliated; and

3. Any additional information as may be required by the Department concerning a particular research project.

(c) The DRRB shall review the research request application package. This review shall consider whether or not the research will:

1. Adversely affect the maintenance of security and/or the orderly operation of the correctional facility or unit;
2. Create any risks to subjects of the research;
3. Involve the review of inmate records and adequately protect the confidentiality of certain data; and/or
4. Require inmate participation, such as an interview or to respond to questionnaires.

(d) In addition to the considerations set forth in (c) above, the DRRB shall review considerations that may arise pertaining to a specific research project.

(e) The DRRB shall make a recommendation for approval or disapproval to the Commissioner of the Department of Corrections. The Commissioner shall make the final approval or disapproval determination.

(f) The DRRB shall be responsible for providing notification of the final determination to the agency or entity requesting the research.

Administrative Correction.

See: 26 N.J.R. 2581(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent, Parole District Supervisor" and deleted references to parolees following references to inmates throughout.

Recodified from N.J.A.C. 10A:1-10.2 and amended by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Section was "Procedure for submitting a request to conduct non-medical, nonpharmaceutical and noncosmetic research projects". Rewrote the section. Former N.J.A.C. 10A:1-10.3, Express written inmate consent requirement, recodified to N.J.A.C. 10A:1-10.4.

Amended by R.2013 d.006, effective January 7, 2013.

See: 44 N.J.R. 957(a), 45 N.J.R. 34(b).

Section was "Procedure for submitting and handling requests to conduct academic, nonmedical, nonpharmaceutical, and noncosmetic research projects to the Departmental Research Review Board (DRRB)". In (a), deleted "academic, nonmedical, nonpharmaceutical, or noncosmetic" following "conduct".

10A:1-10.4 Express written inmate informed consent requirement

(a) The express written informed consent of the inmate shall be required:

1. To ensure that direct inmate participation in any research project is on a voluntary basis; and

2. To authorize inspection of release of records pursuant to N.J.A.C. 10A:22.

(b) A written informed consent of an inmate to directly participate in a research activity shall be required and signed by:

1. The inmate;
2. A witness and/or legal representative when deemed necessary; and
3. The principal researcher.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (a)2, amended the N.J.A.C. reference; in (b)3, substituted "Administrator" for "Superintendent, Parole District Supervisor"; deleted references to parolees following references to inmates throughout.

Recodified from N.J.A.C. 10A:1-10.3 and amended by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Section was "Express written inmate consent requirement". In the introductory paragraph of (a), inserted "informed"; rewrote the introductory paragraph of (b); in (b)2, inserted "and/or legal representative when deemed necessary"; and in (b)3, substituted "principal researcher" for "correctional facility Administrator, community program supervisor, or operational unit supervisor". Former N.J.A.C. 10A:1-10.4, Refusal to participate in research, recodified to N.J.A.C. 10A:1-10.5.

10A:1-10.5 Refusal to participate in research

(a) An inmate shall not be required or coerced to participate in research activities.

(b) Refusal by an inmate to participate in research shall not constitute a reason for imposing penalties upon the inmate.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Deleted "or parolee" following "inmate" throughout.

Recodified from N.J.A.C. 10A:1-10.4 by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Former N.J.A.C. 10A:1-10.5, Inmate/parolee records, recodified to N.J.A.C. 10A:1-10.6.

10A:1-10.6 Inmate records

Confidentiality of inmate records and procedures for release or examination of records by authorized individuals or agencies shall be in accordance with N.J.A.C. 10A:22-2, Government records.

Recodified from N.J.A.C. 10A:1-10.5 by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Former N.J.A.C. 10A:1-10.6, Research findings, recodified to N.J.A.C. 10A:1-10.7.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Section was "Inmate/parolee records". Deleted "/parolee" following "inmate" and substituted "Government records" for "Records".

10A:1-10.7 Research findings

The persons(s) or agency(s) who completes a research project must, prior to publication or any dissemination, make available the research findings or the results to the correc-

tional facility Administrator, community program supervisor, or operational unit supervisor and the Commissioner, New Jersey Department of Corrections, for review and comments.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "Administrator" for "Superintendent, Parole District Supervisor".

Recodified from N.J.A.C. 10A:1-10.6 by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

Former N.J.A.C. 10A:1-10.7, Written internal management procedures, recodified to N.J.A.C. 10A:1-10.8.

10A:1-10.8 Written internal management procedures

(a) Each correctional facility Administrator, community program supervisor, operational unit supervisor, and the appropriate Assistant Commissioner shall ensure the development of written internal management procedures governing research projects and activities consistent with the requirements of this subchapter.

(b) These written internal management procedures shall be reviewed at least annually and updated as necessary and signed and dated by the Administrator, community program supervisor, or operational unit supervisor.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (a), substituted "Administrator" for "Superintendent" following "Each correctional facility"; inserted "appropriate" following "operational unit supervisor, and the" and deleted "Division of Parole and Community programs," following "Commissioner"; in (b), substituted "written internal management procedures" for "written procedures" and "Administrator" for "Superintendent, Parole District Supervisor".

Recodified from N.J.A.C. 10A:1-10.7 by R.2007 d.226, effective August 6, 2007.

See: 39 N.J.R. 836(a), 39 N.J.R. 3383(a).

SUBCHAPTER 11. PERSONAL PROPERTY OF INMATES

10A:1-11.1 Inmate's responsibility for personal property

While incarcerated within a correctional facility, the inmate shall be responsible for his or her own personal property and shall keep personal property at his or her own risk.

10A:1-11.2 Permissible personal property

(a) Designated staff at each correctional facility shall develop a written list of permissible personal property items and the number of permissible personal property items that may be retained in the possession of the inmate.

(b) The listing and any regulations concerning inmate personal property shall be published in each correctional facility Inmate Handbook (see N.J.A.C. 10A:8-3).

(c) New or revised lists or regulations not included in the current correctional facility Inmate Handbook shall be posted

in inmate housing units and incorporated into the next revision of the Handbook.

(d) The listing of permissible personal property shall be reviewed, signed and dated annually by the Administrator or designee and forwarded to the appropriate Assistant Commissioner for review and approval.

(e) The Assistant Commissioner may approve or disapprove the possession of any item and/or limit the number of items that may be possessed by inmates in correctional facilities.

(f) The Assistant Commissioner shall be notified, in writing, during the course of the year of any additions to or deletions from the list of permissible personal property.

(g) The Assistant Commissioner or designee shall disseminate lists of county jail permissible property as needed, to each correctional facility.

Amended by R.1996 d.469, effective October 7, 1996.

See: 28 N.J.R. 3701(a), 28 N.J.R. 4481(a).

Petition for Rulemaking.

See: 30 N.J.R. 1099(a), 30 N.J.R. 1327(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (d), substituted "Administrator" for "Superintendent"; in (g), substituted "Assistant Commissioner or designee" for "Chief, Bureau of Community and Professional Services,".

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a), substituted "Designated staff at each" for "Each" and "that" for "which".

10A:1-11.3 Non-permissible personal property

(a) Designated staff at the correctional facility shall notify an inmate, in writing, whenever the inmate possesses any property that is non-permissible personal property.

(b) Designated staff at the correctional facility shall inventory and package the nonpermissible personal property and the inmate shall indicate, in writing, which of the following means of disposal should be used with respect to the non-permissible personal property. The non-permissible personal property shall either be:

1. Mailed to the inmate's home at the inmate's expense;
2. Given to a visitor designated by the inmate;
3. Donated by the inmate to a charitable organization at the inmate's expense; or
4. Destroyed.

(c) If the non-permissible property is to be removed by a family member or friend(s), the inmate shall arrange for the removal of the non-permissible personal property within 30 calendar days after receiving the written notification from the correctional facility.

(d) If the inmate's non-permissible personal property is not removed from the correctional facility within 30 calendar days after the written notification, the inmate shall receive a second written notification stating that:

1. The property will be held for a maximum of 30 additional calendar days;
2. The property will be disposed of if it is not removed by a specified date; and
3. The correctional facility shall not be liable for personal property that is held longer than 60 calendar days.

(e) If the inmate or designee fails to respond to a second written notification within 30 calendar days, designated staff at the correctional facility may dispose of the non-permissible personal property by:

1. Donating the non-permissible personal property to any recognized public charitable organization;
2. Retaining the non-permissible personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or
3. Destroying the non-permissible personal property.

(f) Copies of written notices to the inmate about non-permissible personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

Amended by R.1989 d.45, effective January 17, 1989.

See: 20 N.J.R. 2746(a), 21 N.J.R. 163(a).

Added new (e) and recodified old (e) to (f).

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (b) and (f).

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a) and the introductory paragraph of (b), substituted "Designated staff at the" for "The"; in (a), substituted "that" for "which"; and in the introductory paragraph of (e), inserted "designated staff at the".

10A:1-11.4 Storage of non-permissible personal property

(a) Designated staff at the correctional facilities shall not store inmate non-permissible personal property for more than 60 calendar days except in instances as stated in (b) below.

(b) When an inmate does not have visitors, family members or a home address, the inmate may request written approval of the Administrator to store non-permissible personal property for a period longer than 60 calendar days.

(c) If the Administrator approves the inmate's request, made pursuant to (b) above, the personal property shall be stored at the inmate's risk, until an alternate plan can be made for storage.

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (b) and (c), substituted "Administrator" for "Superintendent".

Amended by R.2007 d.17, effective January 16, 2007.

See: 38 N.J.R. 4159(a), 39 N.J.R. 216(a).

In (b), deleted "immediate" preceding "family members".

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a), substituted "Designated staff at the correctional" for "Correctional".

10A:1-11.5 Marking inmate personal property

Designated staff at each correctional facility shall establish a means of marking inmate personal property for identification purposes.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Substituted "Designated staff at each" for "Each".

10A:1-11.6 Inventory of inmate personal property

(a) Designated staff at each correctional facility shall use and maintain the IIS-1M Inmate Inventory Sheet. This inventory sheet shall be used to itemize all personal property in the inmate's possession upon admission, while incarcerated and upon transfer.

(b) If possible, personal property shall be inventoried in the presence of the inmate.

(c) The completed IIS-1M Inmate Inventory Sheet and any subsequent updates to this inventory sheet shall be signed by both the inventory officer and the inmate.

(d) In the event the inmate refuses to sign the IIS-1M Inmate Inventory Sheet, the inventory officer shall note the inmate's refusal on the inventory sheet.

(e) The signed IIS-1M Inmate Inventory Sheet shall be maintained on file (see N.J.A.C. 10A:1-11.10) and a copy shall be given to the inmate.

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Added new (d); redesignated existing (d) as (e).

Amended by R.1996 d.469, effective October 7, 1996.

See: 28 N.J.R. 3701(a), 28 N.J.R. 4481(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Rewrote (b).

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a), substituted "Designated staff at each" for "Each".

Case Notes

Matter was remanded to the New Jersey Department of Corrections (DOC) for further investigation of an inmate's property claim pursuant to N.J.A.C. 10A:2-6.1, where it did not appear that DOC had complied with the applicable regulations; the investigation was anticipated to include: (1) a full evaluation of the inmate's evidence substantiating his possession of the allegedly lost items; (2) an investigation of the alleged transfer of the property to a correctional officer and his disposition of it; and (3) if the inmate's prior ownership was substantiated, an investigation of the cause of the loss of the property. *Barnes v. Sherrer*, 401 N.J. Super. 172, 949 A.2d 324, 2008 N.J. Super. LEXIS 137 (App.Div. 2008).

10A:1-11.7 Disposition of personal property when an inmate is transferred

(a) Designated staff at the Central Medical/Transportation Unit shall be responsible for transporting inmate personal property within the State. If designated staff at the Central Medical/Transportation Unit are unable to transport the property at the time of the transfer, designated staff will be responsible for transporting the inmate's personal property to the receiving correctional facility within seven business days from the date of transfer.

(b) Except for inmate transfers to a hospital, all transfers shall be considered permanent for the purpose of inmate personal property disposition.

(c) When an inmate is transferred from one correctional facility to another within the State, the sending correctional facility shall be responsible for sending all of the inmate's personal property.

(d) When an inmate is transferred from one correctional facility to another within the State, the receiving correctional facility shall be responsible for inventorying, packaging and mailing any non-permissible personal property to the inmate's home, or the non-permissible personal property shall be made available for removal by designated family members or friends of the inmate.

(e) An inmate being transferred to another correctional facility within the State who does not have visitors, family members or a home address, may request written approval of the receiving correctional facility Administrator to store the inmate's non-permissible personal property.

(f) If the Administrator of the correctional facility within the State approves the inmate's request, the Administrator shall give the inmate a written notification stating that:

1. The personal property will be stored at the inmate's risk;
2. The personal property will be held for a maximum of 60 additional calendar days;
3. The personal property will be disposed of if it is not removed by a specified date; and
4. The correctional facility shall not be liable for personal property that is held longer than 60 calendar days.

(g) When an inmate is transferred to another state, personal property shall be handled as follows:

1. The shipment of personal property for non-consensual transfers shall be at the expense of the sending correctional facility; or
2. The shipment of personal property in consensual transfers that are requested by the inmate for personal reasons, such as, but not limited to, programmatic opportunities or family reasons, shall be at the expense of the inmate.

(h) Inmates approved for international transfer shall be responsible for the shipping expenses and disposition of their personal property prior to transfer.

(i) Disposition of personal property shipped shall be in accordance with the rules of the receiving state or country.

(j) In every case that personal property is mailed to the inmate's home, a receipt for said mailing shall be obtained from the mailing source, such as a post office, mail or parcel

service center or railway office, and filed in the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (f).

Amended by R.1996 d.469, effective October 7, 1996.

See: 28 N.J.R. 3701(a), 28 N.J.R. 4481(a).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

In (e) and (f), substituted "Administrator" for "Superintendent"; in (g), inserted "mail or parcel service center" following "post office".

Amended by R.2007 d.17, effective January 16, 2007.

See: 38 N.J.R. 4159(a), 39 N.J.R. 216(a).

In (e), deleted "immediate" preceding "family members".

Amended by R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

In (a), substituted "inmate personal property within the State" for "personal property of inmates"; rewrote (c) and (d); in (e), inserted "within the State"; rewrote the introductory paragraph of (f); added new (g), (h), and (i); and recodified former (g) as (j).

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In (a), inserted "Designated staff at the", "Unit" and "designated staff at the", and substituted "Unit are" for "is" following the second occurrence of "Transportation", "designated staff" for the third occurrence of "Central Medical/Transportation" and "business" for "working".

10A:1-11.8 Responsibility for personal property when an inmate is released from custody of the Department of Corrections

(a) When an inmate is released on parole or at the expiration of maximum sentence, the inmate shall:

1. Take the personal property when leaving the correctional facility; or
2. Arrange for the personal property to be sent, at the expense of the inmate, to the inmate's home; or
3. Arrange for a family member(s) or friend(s) to remove the personal property from the correctional facility within 30 calendar days after the inmate's release.

(b) When the inmate's personal property is to remain at the correctional facility, a mailing address shall be obtained from the inmate before release. If the inmate's personal property is not picked up within 30 calendar days, the correctional facility shall forward written notification to the ex-inmate stating that:

1. The property will be held for a maximum of 30 additional calendar days;
2. The property will be disposed of if it is not removed by a specified date; and
3. The correctional facility shall not be liable for personal property that is held longer than 60 calendar days.

(c) If the inmate or designee fails to respond to the written notification within 30 calendar days, correctional facility may dispose of the personal property by:

1. Donating the personal property to any recognized public charitable organization;

2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or

3. Destroying the personal property.

(d) Copies of written notices to the inmate about personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

Amended by R.1989 d.45, effective January 17, 1989.

See: 20 N.J.R. 2746(a), 21 N.J.R. 163(a).

Added new (c) and recodified old (c) to (d).

Amended by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Revised (d).

Amended by R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

Section was "Responsibility for personal property when an inmate is released".

10A:1-11.9 Responsibility for personal property when inmate escapes

(a) When an inmate escapes, the inmate's personal property shall be held at the correctional facility for 30 calendar days.

(b) If the escaped inmate does not return within 30 calendar days to the correctional facility or any other correctional facility within the jurisdiction of the New Jersey Department of Corrections, the inmate's property shall be deemed abandoned property.

(c) Designated staff at the correctional facility may dispose of abandoned personal property by:

1. Donating the personal property to any recognized public charitable organization;
2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or
3. Destroying the personal property.

(d) A written notice of final disposition of the escaped inmate's abandoned personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.10).

New Rule, R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Old section 11.9 "Records", recodified to 11.10.

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

In the introductory paragraph of (c), substituted "Designated staff at the" for "The".

10A:1-11.10 Responsibility for personal property when an inmate dies

When an inmate dies, personal property shall be distributed in accordance with the provisions set forth in N.J.A.C. 10A:16-7.6, Distribution of money and personal belongings of deceased inmates.

New Rule, R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

Former N.J.A.C. 10A:1-11.10, Records, recodified to N.J.A.C. 10A:1-11.11.

10A:1-11.11 Records

(a) Copies or originals of the following shall become a permanent part of the inmate's classification folder.

1. Any written notices to the inmate about personal property;
2. Any receipts received or obtained for mailing personal property; and
3. Signed IIS-1M Inmate Inventory Sheet(s).

Recodified from 10A:1-11.9 by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Old section 10A:1-11.10 was "Written procedures".

Amended by R.1996 d.469, effective October 7, 1996.

See: 28 N.J.R. 3701(a), 28 N.J.R. 4481(a).

Recodified from N.J.A.C. 10A:1-11.10 by R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

Former N.J.A.C. 10A:1-11.11, Written internal management procedures, recodified to N.J.A.C. 10A:1-11.12.

10A:1-11.12 Written internal management procedures

Designated staff at each correctional facility shall develop written internal management procedures consistent with this subchapter.

Recodified from 10A:1-11.10 by R.1992 d.269, effective July 6, 1992.

See: 24 N.J.R. 1465(a), 24 N.J.R. 2451(c).

Amended by R.2003 d.176, effective May 5, 2003.

See: 35 N.J.R. 331(a), 35 N.J.R. 1898(a).

Substituted "written internal management procedures" for "written policy and procedures".

Recodified from N.J.A.C. 10A:1-11.11 by R.2007 d.127, effective May 7, 2007.

See: 39 N.J.R. 155(a), 39 N.J.R. 1730(a).

Amended by R.2008 d.190, effective July 21, 2008.

See: 40 N.J.R. 1736(b), 40 N.J.R. 4323(a).

Substituted "Designated staff at each" for "Each".