

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) 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.

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.