

**LAW AND PUBLIC SAFETY
JUVENILE JUSTICE COMMISSION**

Proposed Amendments: N.J.A.C. 13:101-1.3, 4.2, 5.2, 5.6, 6, 7 and 8.1

Juvenile Discipline

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable Anne Milgram, Attorney General and Chair, Michael Shipp, Attorney General's Designee.

Authority: N.J.S.A. 52:17B-170e, 52:17B-171, 52:17B-176, 52:17B-178, and 52:17B-182 through 186.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number PRN 2008-6.

Submit written comments by March 7, 2008 to:

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The agency proposal follows:

Summary

The Juvenile Justice Commission (Commission) proposes to amend Chapter 101, its rules governing juvenile discipline, to have juvenile disciplinary hearings conducted by a single independent hearing officer, employed and trained by it, rather than a four-member supervisory Treatment Team that presently conducts the hearings held at each of four Commission secure facilities. The amendment is being proposed to enhance the safe and orderly operation of Commission facili-

ties without diminishing the Commission's efforts to address the special rehabilitative needs of the juvenile population committed to its custody and care.

The Commission is the single State agency responsible for operating State services and sanctions for juveniles involved in the juvenile justice system. The Commission was created pursuant to P.L. 1995, c. 280, codified at N.J.S.A. 52:17B-169 et seq., and is the agency responsible for implementing the comprehensive juvenile justice reform program defined in that law. The juvenile justice reform legislation transferred authority formerly divided among three Departments, the Department of Corrections, the Department of Human Services and the Department of Law and Public Safety, to the Commission. That consolidation was designed to, among other things, permit effective response to acts of delinquency by juvenile offenders, maximize efforts to meet the special needs of the juvenile justice population and promote the successful reintegration of juvenile offenders into the community. See N.J.S.A. 52:17B-169. The Juvenile Justice Commission became operational in June, 1996.

At its inception, discipline of incarcerated juvenile offenders in the custody and care of the Commission was governed by rules promulgated by the Department of Corrections at N.J.A.C. 10A:4 (N.J.S.A. 52:17B-177b(3)). Those rules expired on April 26, 2001 and were thereafter re-adopted by the Department of Corrections with amendments, effective July 2, 2001.

The Department of Corrections' primary responsibility is for adult offenders. The Commission's creation emphasized the need to focus attention and resources on the care, custody and special rehabilitative needs of a juvenile population that differs from the population served by the Department of Corrections. Thus, by proposed new rules, published on May 3, 2004 at 36 N.J.R. 2166(a), the Commission proposed comprehensive disciplinary rules tailored to meet the disciplinary and rehabilitative goals specific to juveniles committed to its facilities. After receiving comment and upon further consideration, the Commission determined to make substantive changes to the original proposal and it repropose the new rules by notice of reproposal published on July 18, 2005 at 37 N.J.R. 2612(a). The most significant change was the proposal to substantially reduce the amount of time that a juvenile could spend on "room restriction" as a disciplinary sanction (N.J.A.C. 13:101-6.16 and 6.17). The new rules were thereafter adopted by the Commission on December 21, 2005, with technical changes not requiring additional public notice and comment. The rules became effective on February 6, 2006, with the publication of the notice of adoption at 38 N.J.R. 1959(a). The rules expire on February 6, 2011.

During the time that juvenile discipline was governed by the Department of Corrections' rules, juvenile disciplinary hearings were conducted by a single Department of Corrections' disciplinary hearing officer. Upon proposing its own rules in May 2004, the Commission decided to have hear-

ings conducted by a four-member "Treatment Team" composed of supervisors housed at certain Commission secure facilities rather than a single hearing officer. The Commission was of the view that this change in the conduct of juvenile disciplinary proceedings would meet the disciplinary and rehabilitative goals specific to juvenile offenders serving a term of incarceration in a Commission facility (committed juveniles). As the Commission stated in its May 3, 2004 notice of proposal:

The advantages of this approach are: (1) discipline is imposed and sanctions are determined with input from experienced juvenile justice professionals in multiple disciplines which will better serve the Commission's rehabilitative goals for juvenile offenders; and (2) the treatment team's familiarity with the internal workings of the facility and the juveniles housed there will result in sanctions tailored to meet the needs of each juvenile while promoting safety and order in the facility. [36 N.J.R. 2166(a)]

In its notice of reproposal, published in July 2005, the Commission stated:

The focus on rehabilitation is reflected in the use of a "Treatment Team," as the body responsible for hearing charges filed against a juvenile. The Treatment Team is comprised of individuals familiar with the juvenile and his or her social, educational, vocational and rehabilitative needs. In considering the appropriate discipline, the team is empowered with options for sanctions including withdrawal of privileges, extra work duty, restitution and room confinement. The team is also empowered to make referrals to mental health services, or to other programs or treatment regimens for appropriate care or treatment. [37 N.J.R. 2612(a)]

With the adoption and publication in early 2006 of the rules defining its new disciplinary program, the Commission implemented the Treatment Team proposal. Treatment Teams have been constituted at each of the following four facilities: New Jersey Training School (NJTS), Juvenile Reception and Assessment Center (JRAC), Juvenile Medium Security Facility (JMSF) and Juvenile Female Secure Care and Intake Facility (JFSCIF) and all disciplinary hearings are conducted at one of those four facilities. The Treatment Team at each facility consists of the Superintendent, the Director of Custody Operations, the facility's Supervisor of Education and the facility's Supervisor of Social Services. Each is authorized to appoint a designee of supervisory rank to act in his or her place.

In adopting its current rules, the Commission rejected comments criticizing the Treatment Team approach as subject to bias because of Treatment Team members familiarity with the residents being disciplined. The commenters asserted that this familiarity might result in less severe sanctions than might otherwise be warranted and imposed by an impartial hearing officer. The Commission expressed the view, however, that Treatment Team members knowledge of the juvenile's social, vocational, rehabilitative, and educational needs would be beneficial in assessing be-

havior and in determining sanctions. It also stated: "It is expected that the people hearing the disciplinary charges will be fair, with the rehabilitation of the youth the ultimate goal." 38 N.J.R. 1059(a).

Recent events have caused the Commission to reconsider the Treatment Team approach. On April 8, 2007, two corrections officers at the New Training School in Jamesburg were violently assaulted by several residents. The assaults resulted in criminal charges against 11 individuals for attempted murder, conspiracy to commit aggravated assault, aggravated assault, possession of a weapon for an unlawful purpose and riot. All of the individuals are being prosecuted as adults.

The Commission took swift action to protect the safety of juvenile corrections officers with enhanced security, additional training in defensive tactics and other courses, a Behavioral Adjustment Unit for juveniles, removal to the Department of Corrections for juveniles who are over 18 and present safety issues (see N.J.A.C. 13:91), and a policy that requests prosecutors try juveniles who commit qualifying offenses in secure facilities as adults. In addition, in April 2007, the Attorney General met with representatives of the Commission's juvenile corrections officers to discuss safety issues and hear their concerns and proposals to improve conditions. The Commission notes that pursuant to the provisions of N.J.S.A. 52:17B-170 and 171, the Attorney General is Chair of the Commission's Executive Board, the body that formulates the policy and direction of the work of the Commission and that promulgates all of its rules and regulations. The union representatives asserted, among other things, that returning to a single independent hearing officer model to conduct juvenile disciplinary matters would improve safety within the Commission by eliminating the possibility that a Treatment Team's familiarity with a juvenile might lead to the imposition of less severe sanctions than are warranted.

Upon consideration of the safety concerns expressed on behalf of the juvenile corrections officers it employs, the Commission is proposing to replace the Treatment Team model and to have juvenile disciplinary hearings conducted by a single hearing officer employed and trained by it. All other aspects of juvenile disciplinary hearings will remain the same. For instance, hearings will continue to be conducted at the same four secure facilities and hearing officers will have the same sanctions available to them, as have been available to the Treatment Teams. The hearing officers, however, will not be employed or housed at any of the four secure facilities at which juvenile disciplinary hearings are conducted and they will not report to the superintendents or other staff at those facilities. Rather, the hearing officers will be housed at the Commission's administrative offices and will report directly to the Commission's Executive Director.

While the Commission has no evidence that Treatment Team decisions are biased and result in too lenient sanctions being imposed, it is of the view that having independent hearing officers employed and trained by the Commission conduct juvenile disciplinary proceedings will be as ef-

fective in rendering fair decisions tailored to the specific needs of the juvenile offenders while promoting safety and order in Commission facilities.

A summary of the proposed amendments to Chapter 101 follows. As noted, the Commission proposes to amend Chapter 101 to provide that all of the Commission's juvenile disciplinary hearings will be conducted by a single disciplinary hearing officer rather than a four member Treatment Team. Thus, the Commission proposes to replace the term "Treatment Team" with the term "Disciplinary Hearing Officer" wherever the term "Treatment Team" occurs in Chapter 101. There are proposed minor amendments in phrasing to a few rules associated with this change (for example, N.J.A.C. 13:101-6.8 and 7.7). The Commission also proposes to amend N.J.A.C. 13:101-1.3 to delete the definition of "Treatment Team" and add a definition of "Disciplinary Hearing Officer." "Disciplinary Hearing Officer" is defined as "a staff member of the Juvenile Justice Commission designated to hear and adjudicate juvenile violations."

In addition, the Commission proposes to amend N.J.A.C. 13:101-6.1, Composition and Authority of the Treatment Team, to reflect the elimination of the Treatment Teams and their replacement by disciplinary hearing officers.

Finally, the Commission proposes to amend N.J.A.C. 13:101-7.2, Processing Appeal, to delete subsection (f), which concerns the process for deciding appeals when the superintendent of a secure facility is conflicted from deciding an appeal due to his or her participation in the decision below as a member of a Treatment Team. That subsection is made unnecessary by the elimination of Treatment Teams. The proposed amendments recodify the provisions that follow subsection (f).

With the exception of the above described changes, the rules in Chapter 101 remain intact.

The proposal is not subject to the calendar requirements of N.J.S.A. 52:14B-3(4) and N.J.A.C. 1:30-3 because the agency is providing a 60-day comment period pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

To the extent that having independent disciplinary hearing officers conduct and decide juvenile disciplinary proceedings will eliminate the possibility that Treatment Teams may in some cases be imposing less severe sanctions than are warranted because of their familiarity with the juveniles housed at their respective facilities, the proposed amendments are expected to have a positive social impact. Disciplinary hearing officers will not be associated with any of the Commission's secure or residential facilities and therefore, they will not be influenced by knowledge of juveniles obtained outside the record developed at a hearing. The proposed amendments are intended to enhance the safe and orderly operation of Commission facilities without diminishing the Commission's ef-

forts to address the special rehabilitative needs of the juvenile population committed to its custody and care. The comprehensive disciplinary program implemented by the Commission by rules, which became effective in February 2006, remains intact with the exception of the above described amendments.

Economic Impact

The Commission anticipates that it will need an increase in its budget as a result of the proposed amendments, with the amount depending on the volume of juvenile disciplinary hearings. Based on current volume, that increase is not expected to exceed \$ 85,000. The Commission anticipates hiring two part-time "special services" staff to act as disciplinary hearing officers. The current hourly rate paid to such staff is \$ 45.00 per hour to an annual maximum of 944 hours per staff member.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not being adopted under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

It is anticipated that the proposed amendments will result in the creation of two part-time positions within the Commission and thus will increase the number of jobs in New Jersey.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments will impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect employees and juveniles under the supervision of the Juvenile Justice Commission and will have no effect on small businesses. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

The proposed amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:101-1.3 Definitions

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

...

"Disciplinary Hearing Officer" means a staff member of the Juvenile Justice Commission designated to hear and adjudicate juvenile violations.

...

["Treatment Team" means the committee within a secure facility that is authorized to hear and adjudicate juvenile violations.]

...

13:101-4.2 Mechanisms for responding to violations

(a) (No change.)

(b) Pursuant to the provisions of N.J.A.C. 13:101-5 and 6, the determination made by the staff member pursuant to (a) above shall be subject to review and change by the appropriate supervisor and/or [Treatment Team] **Disciplinary Hearing Officer**.

13:101-5.2 Immediate corrective action conference

(a)-(b) (No change.)

(c) Following the conference or review, the shift supervisor or unit manager shall:

1. (No change.)

2. Conclude that a more serious sanction is necessary and refer the matter to the [Treatment Team] **Disciplinary Hearing Officer for a disciplinary hearing** in accordance with N.J.A.C. 13:101-5.6; or

3. (No change.)

(d)-(f) (No change.)

13:101-5.6 Referral to the [Treatment Team] **Disciplinary Hearing Officer for a disciplinary hearing**

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

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

13:101-6.1 [Composition, authority and decisions] **Designation and Authority** of the [Treatment Team] **Disciplinary Hearing Officer**

(a) All disciplinary hearings shall be conducted at a secure facility by a [Treatment Team, consisting of the following staff members:] **Disciplinary Hearing Officer designated by the Executive Director**.

[1. The Superintendent or designee, who shall be of supervisory rank and who shall serve as chairperson;

2. The Director of Custody Operations or designee of the rank of Captain or above; or a Lieutenant in case of a Captain's absence, designated by the Superintendent;

3. The Supervisor of Social Services or designee, who shall be of supervisory rank; and

4. The Supervisor of Education or designee who shall be of supervisory rank.

(b) A staff member shall not sit as a member of the Treatment Team if the Team is hearing an incident that the staff member has reported and/or investigated.

(c) A staff member witnessing an incident under consideration shall not sit as a member of the Treatment Team unless the incident has been so widely witnessed that virtually every staff member has witnessed it in whole or in part.]

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

[(e)] **(c)** The [Treatment Team] **Disciplinary Hearing Officer** shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence that is not necessary for an adequate understanding of the case. The [Team Chairperson] **Disciplinary Hearing Officer** shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse or repetitiveness and to insure that the hearing does not develop into an adversary proceeding.

[(f) Decisions of a Treatment Team shall be by majority vote with each member having an equal vote and an equal right to participate in the fact-finding, discussions and deliberations of the Team. In the event of a tie, the Chairperson shall cast an additional tie breaking vote.

(g) The Superintendent shall designate a tracking coordinator who shall be responsible for all administrative tasks of the Treatment Team. The tracking coordinator shall not be a member of the Treatment Team.]

13:101-6.2 Disciplinary report

(a) (No change.)

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

(c) (No change.)

13:101-6.3 Use immunity

(a) In all cases, the juvenile shall be advised of his or her right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal or delinquency proceeding. The failure to give this warning by the investigating staff member shall not be grounds for dismissing the disciplinary report. The [Treatment Team] **Disciplinary Hearing Officer** at [its] **his or her** discretion may grant a postponement if it is determined that such failure has precluded the juvenile from adequately preparing his or her defense at the hearing.

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

(c) (No change.)

13:101-6.4 Investigation

(a)-(b) (No change.)

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

1. (No change.)

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

(d)-(g) (No change.)

13:101-6.5 Requiring further investigation of charges

The [Treatment Team] **Disciplinary Hearing Officer** may direct a further investigation in any case where [it] **he or she** is of the opinion that the report is not properly made out or the facts and circumstances are not sufficient to set forth a basic understanding of the incident. The [Treatment Team] **Disciplinary Hearing Officer** shall append the supplementary information, in writing, to the original investigation report. The person who supplied the additional information shall sign that section of the report.

13:101-6.6 Scheduling disciplinary hearings

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

(b)-(c) (No change.)

(d) Juveniles held in prehearing room restriction shall be given priority in scheduling their appearance before the [Treatment Team] **Disciplinary Hearing Officer**.

(e) (No change.)

13:101-6.7 Review of postponed cases

Hearings which have been postponed for further investigation shall be reviewed by the [Treatment Team] **Disciplinary Hearing Officer** within 24 hours of the postponement if the juvenile is in pre-hearing room restriction or within seven days in all other cases to determine if a further postponement is warranted. Further postponements shall be granted only in exceptional circumstances.

13:101-6.8 Failure to adhere to time limits

(a) The failure to adhere to any of the time limits prescribed by this subchapter shall not mandate the dismissal of a disciplinary charge. However, the [Treatment Team] **Disciplinary Hearing Officer** may, in [its] **his or her** discretion, dismiss a disciplinary charge because of a violation of time limits. Such discretion shall be guided by the following factors:

1.-4. (No change.)

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

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

(b) (No change.)

13:101-6.10 In absentia hearings

(a) (No change.)

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

1. The escorting staff member shall report the juvenile's refusal to appear before the [Treatment Team] **Disciplinary Hearing Officer**.

2. (No change.)

3. The staff member shall advise the juvenile that refusal to appear at the disciplinary hearing may result in an incomplete understanding by the [Treatment Team] **Disciplinary Hearing Officer** of the circumstances surrounding the charges lodged against the juvenile. If the juvenile still refuses to appear at the disciplinary hearing, the juvenile shall be requested to sign Refusal to Attend Hearing Notice immediately after the statement noted above in (b)2 above.

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

"Juvenile refuses to sign _____."

Signature of Staff Member, Date

5. The [Treatment Team] **Disciplinary Hearing Officer** shall ensure that the following statement shall be included in the juvenile statement section of the Disciplinary Review Report: "No statement taken as the juvenile refused to appear at the hearing."

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

(a) (No change.)

(b) When the [Treatment Team] **Disciplinary Hearing Officer** determines that a juvenile cannot adequately collect and present the evidence in his or her own behalf, the juvenile may elect to re-

ceive the services of a counsel substitute or the juvenile may request representation by a staff member.

(c)-(e) (No change.)

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

(a) Juveniles shall be allowed to call witnesses and present documentary evidence in their defense when permitting them to do so will not be unduly hazardous to facility safety. The [Treatment Team] **Disciplinary Hearing Officer** shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the charge. The [Treatment Team] **Disciplinary Hearing Officer** has the discretion to keep the hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness(es). "Repetitive witnesses" are not intended to refer to the calling of a witness(es) who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the [Treatment Team] **Disciplinary Hearing Officer** shall refuse to call one or more witnesses, the reasons for each such refusal shall be separately specified on the Disciplinary Review Report.

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

13:101-6.13 Confrontation and cross examination

(a) The opportunity for confrontation and cross examination, if requested, shall be provided to the juvenile in such instances where the [Treatment Team] **Disciplinary Hearing Officer** deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved.

(b) The [Treatment Team] **Disciplinary Hearing Officer** may refuse confrontation and cross examination when said would be unduly hazardous to facility safety.

13:101-6.14 Evidence required for sustaining charges

(a) (No change.)

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

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

i. A concise summary of the facts on which the [Treatment Team] **Disciplinary Hearing Officer** concluded that the informant was credible or his or her information reliable; and

ii. (No change.)

2. The [Treatment Team] **Disciplinary Hearing Officer** shall not disclose the identity of the informant.

13:101-6.15 Modification of charge during disciplinary hearing

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

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

13:101-6.16 Disciplinary sanctions

(a)-(b) (No change.)

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

1.-4. (No change.)

13:101-6.18 Suspending sanctions

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

(b) (No change.)

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

13:101-6.19 Guidance

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

13:101-6.20 Transfers

(a) A juvenile in either a non-secure facility or in any other facility without an assigned [Treatment Team] **Disciplinary Hearing Officer**, who is charged with a violation, other than one handled by

immediate corrective action, shall be transferred to a secure facility with an assigned [Treatment Team] **Disciplinary Hearing Officer** for adjudication of his or her disciplinary charges.

(b)-(d) (No change.)

(e) The [Treatment Team] **Disciplinary Hearing Officer** assigned to the receiving facility shall conduct the hearing.

(f)-(g) (No change.)

13:101-6.21 Disciplinary decision

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

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

(c) (No change.)

13:101-6.22 Discipline record card

For the purpose of assisting the [Treatment Team] **Disciplinary Hearing Officer** in determining the appropriate sanction to impose, each facility shall have available at the hearing a Disciplinary

Record Card for each juvenile. This card shall accompany the juvenile should he or she be transferred to another Commission facility.

13:101-6.23 Expungement

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

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

13:101-6.24 Records of disciplinary reports

(a) A disciplinary report result sheet containing the following information regarding juveniles who received disciplinary actions shall be prepared by the [Treatment Team Tracking Coordinator] **Disciplinary Hearing Officer** no less than weekly and submitted to the Superintendent or his or her designee:

1.-7. (No change.)

(b) (No change.)

13:101-7.1 Time limit to file an appeal

(a) The juvenile shall be advised in writing by the [Treatment Team] **Disciplinary Hearing Officer** of the opportunity to appeal to the Superintendent or his or her designee, who shall be an Assistant

Superintendent, at the time the juvenile is provided with the disciplinary decision. Juveniles shall have 48 hours from receipt of the disciplinary decision to make such appeal.

(b) (No change.)

13:101-7.2 Processing appeal

(a)-(e) (No change.)

[(f) In the event that the Superintendent or his or her designee was a member of the Treatment Team whose decision is being appealed, the Superintendent shall designate a staff member of supervisory rank to decide the appeal who:

1. Was not a member of the Treatment Team;
2. Did not report or investigate the incident; and
3. Did not witness the incident under consideration, unless the incident was so widely witnessed that virtually every staff member of supervisory rank has witnessed it in whole or in part.]

Recodify existing (g) and (h) as **(f) and (g)** (No change in text.)

13:101-7.4 Investigation of appeal

(a)-(d) (No change.)

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

1. (No change.)
2. Whether the decision of the [Treatment Team] **Disciplinary Hearing Officer** was based upon substantial evidence;
- 3.-5. (No change.)

13:101-7.5 Disposition of appeal

(a) At the conclusion of the review of an appeal, the Superintendent or his or her designee shall take one of the following actions:

1. Rescind the decision of the [Treatment Team] **Disciplinary Hearing Officer** if the review and/or investigation indicates that the evidence fails to demonstrate that any violation was committed, or the Superintendent determines that there was such a failure to adhere to proper procedures at the initial hearing that the juvenile 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 juvenile's records;

2.-3. (No change.)

4. [order] **Order** a new hearing if the review and/or investigation indicates that the evidence does not support the findings of the [Treatment Team] **Disciplinary Hearing Officer** but would support some form of disciplinary action for a lesser offense than that with which the juvenile was charged; or

5. Uphold the decision of the [Treatment Team] **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 [Treatment Team] **Disciplinary Hearing Officer** solely as a result of the review of the appeal.

13:101-7.6 Notification to juvenile of appeal results

(a) (No change.)

(b) Copies of the decision shall also be distributed to the [Treatment Team] **Disciplinary Hearing Officer** and the juvenile's file. Other copies may be distributed as determined to be necessary by the Superintendent or his or her designee.

(c) (No change.)

13:101-7.7 Appeals resulting in rehearings

(a) (No change.)

(b) The [hearing body] **Disciplinary Hearing Officer** shall not be the same as [that which] **the hearing officer who** heard the original charge.

1.-2. (No change.)

(c) (No change.)

13:101-8.1 Confinement in room restriction pending [Treatment Team] **disciplinary** hearing

(a) A juvenile may be placed in room restriction pending the hearing of disciplinary charges by a [Treatment Team] **Disciplinary Hearing Officer**, provided, however, that such prehearing room restriction shall be served only in a secure facility with an assigned [Treatment Team] **Disciplinary Hearing Officer**, and, shall be limited to, instances where the Superintendent or designee determines that prehearing room restriction is necessary for the safety of the juvenile, staff or other juveniles, or for the orderly operation of the facility.

1. (No change.)

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

(c) (No change.)

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