

STATE OF SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
POLICY AND PROCEDURES

Title:	Disciplinary Hearing/Review Board Process	Policy No.:	E-1.14	Page(s):	1 of 9
Authority:	Classification, Division of Treatment and Intervention Services, and Division of Rehabilitative Services				
Juvenile Justice Code:	n/a				
PbS Related Standard(s):	Justice Goal				
May 09, 2016 Effective Date	SIGNED/ <i>Sylvia Murray</i> _____ Sylvia Murray Director				

POLICY: Juveniles housed in the Broad River Road Complex will be referred for a Disciplinary Hearing (DH) when it is alleged that they committed a Level 3 Rule Violation. Juveniles in the Detention Center and Evaluation Centers who are accused of committing a Level 3 Rule Violation will be referred to a Review Board. The Disciplinary Hearing/Review Board is designed to be an informal process whereby relevant documentation and testimony concerning the rule violation is evaluated by a DH Panel/Review Board. If the rule violation is found to have occurred, the process by which sanctions are imposed by the DH Panel/Review Board will be consistent with DJJ’s Juvenile Behavior Management – Incentive System and Progressive Discipline Policy (G-9.19) and the Juvenile Progressive Discipline Chart (Exhibit G-9.19A).

PROCEDURAL GUIDELINES:

A. Disciplinary Hearings:

1. Definitions:

- a. Appeal: A juvenile’s right to request that DJJ’s Legal Office review founded violations and sanctions imposed.
- b. Disciplinary Hearing/Review Board: An administrative hearing that is conducted to determine if evidence provided to the hearing officer/panel, or the evidence found to exist by the hearing officer/panel, substantiates, by a preponderance of the evidence, that a juvenile charged with a Level 3 Rule Violation has committed that rule violation. Disciplinary/Review Board hearings are to be informal in nature, where information/documents and testimony relevant to the alleged Level 3 Rule Violation are provided to the Hearings Officer/Review Board or, gathered by the Hearings Officer/Review Board. Disciplinary/Review Board hearings are conducted only for Level 3 violations, which are the rule violations deemed most serious by the Juvenile Progressive Discipline Chart (Exhibit G-9.19A). During this administrative hearing, no person, including the juvenile, is allowed (unless granted the right by the hearing officer/panel) to be present for the presentation of any testimony or information other than their own. Attendance/participation by staff is mandatory if the hearing

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 2 of 9
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officer/panel determines their testimony/information to be necessary for a fair, just and complete resolution of the hearing.

- c. Disciplinary Hearing Panel Member (DHPM): An employee that does not work in, and is not supervised by, the Division of Rehabilitative Services. DHPMs are referred by the Associate Deputy Director (ADD) for Treatment and Intervention Services and appointed by the DJJ Director. DHPMs will receive specific training on how to conduct juvenile disciplinary hearings and impose sanctions when rule violations are found to have occurred, consistent with DJJ’s Juvenile Behavior Management – Incentive System and Progressive Discipline Policy (G-9.19).
- d. Disciplinary Hearing Officer (DHO): An employee who reports to the Classification Director. The DHO is responsible for administering the DH process to include coordinating disciplinary hearings, gathering records for the Disciplinary Hearing Panel, and maintaining data on the DH process. The DHO will serve as a member of the DH panel. DHOs will receive specific training on how to conduct juvenile disciplinary hearings and impose sanctions when rule violations are found to have occurred, consistent with DJJ’s Juvenile Behavior Management – Incentive System and Progressive Discipline Policy (G-9.19).
- e. Due Process: The practice of ensuring that a juvenile has the basic rights of having notice of the rule violation, a neutral Hearing Officer/Review Board, the opportunity to be heard, having their witnesses heard as well as the opportunity to refute the evidence and testimony presented by others.
- f. Juvenile Hearing Representative (JHR): An employee of Juvenile Family Relations who has received specific training to represent juveniles at disciplinary hearings at BRRC. All juveniles will be assigned a JHR which will be documented on Form E-1.14C, Disciplinary Hearing/Review Board.
- g. Notice of Rights: Notification to a juvenile accused of a rule violation of his/her rights concerning the disciplinary hearing.
- h. Preponderance of Evidence: The greater weight of the evidence presented. Evidence that is more convincing or worthy of belief than that which is offered by the opposing side.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 3 of 9
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2. Disciplinary Hearing Process

- a. When a juvenile is alleged to have committed a Level 3 Rule Violation, the Juvenile Negative Behavior Report (G-9.19C) will be completed no later than the end of the work shift in which the incident occurred. The Shift Supervisor will attach all pertinent documents (Event Report, Witness Statements, Medical Report, Drug Screen, Statement of Charges, Use of Force Reports, etc.) to the Juvenile Negative Behavior Report form and forward them to the appropriate parties according to Policy G-9.19, to include the Chief Hearing Officer.
- b. The Shift Supervisor will obtain pertinent witness statements from victim(s), staff and/or juveniles having first-hand knowledge of (or who were witnesses to) the alleged incident. Each statement will be documented on the Witness Statement (Form E-1.14A). When completed, the Witness Statement will be forwarded to the Chief Hearing Officer with the documents referenced above.
- c. The Shift Supervisor will refer to Policy G-3.4, Isolation of Youth, to determine if the juvenile should be isolated.
- d. The DHO will notify accusers, witnesses, and victims of the date and time the juvenile's hearing is scheduled using the Hearing Notification form (E-1.14B).
- e. Disciplinary Hearing Panel
 - 1) The DH Panel will review relevant documentation and testimony concerning a Level 3 Rule Violation.
 - 2) The DH Panel members will be recommended by the Associate Deputy Director of Treatment and Intervention Services and appointed by the DJJ Director to serve a 2-year term. The DJJ Director may renew the term of any panel member. The DJJ Director will appoint up to 20 employees who are not supervised by the Rehabilitative Services Division to serve as panel members. Panel vacancies occurring for any reason will be filled at the discretion of the DJJ Director or designated official.
 - 3) A DH Panel consisting of two (2) members of the DH panel as well as a DHO will be assigned to review each referred Level 3 Rule Violation. The DHO will be designated as chair and serve as presiding officer.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 4 of 9
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4) Decisions will be based on a majority vote.

3. It is the responsibility of the Disciplinary Hearing Officer to:

- a. Designate the disciplinary hearing dates, times and locations, and notify the DH Panel members and all parties accordingly.
- b. Ensure the hearing is held within the five (5) day required time limit, and that any delays are justifiable and all parties are notified of delays through the use of Disciplinary Hearing Notification form (E-1.14B).
- c. Ensure the juvenile has been properly notified and has signed the Juvenile Negative Behavior Report form (G-9.19C) and the Disciplinary Hearing/Review Board form (E-1.14C), or waived the same, and that this waiver is properly witnessed and signed.
- d. Ensure that juveniles are represented by a JHR.
- e. Notify the Facility Administrator/employee's Deputy Director of missing documents, non-attendance of essential witness at disciplinary hearings, and compel the attendance of the witness/locate the missing documents. Notify all parties of rule violation(s) reduced or dismissed by the Unit Manager/Security Captain or designee.
- f. Conduct the hearing in an informal, yet orderly manner and in a setting that recognizes the importance of the process.
- g. Ensure that hearings are conducted fairly and impartially.
- h. Serve as the Chair of the DH Panel and determine the evidence presented is relevant and exclude testimony or evidence that is not considered relevant or unnecessarily redundant.
- i. Determine and document the findings, decisions, and sanctions of all disciplinary hearings, and distribute to the appropriate parties.

4. Guidelines for Hearings

- a. Disciplinary Hearings will be held within five (5) business days (excludes weekends and holidays) from the date the Level 3 Rule Violation is alleged to have occurred.
- b. No DHO/or DH panel member, or JHR, shall have been involved in the events leading up to or involving the rule violation.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 5 of 9
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- c. If the greater weight of the evidence presented/gathered (51% or more) indicates that a rule violation has occurred, the DHO will find that the juvenile has committed the rule violation. If the greater weight of the evidence presented/gathered (50% or less) does not indicate that the rule violation has occurred, the rule violation shall be dismissed and no sanctions imposed.
- d. Any staff representative from the charging facility/school, all witnesses, and the juvenile will be provided the opportunity to make a statement, or to read to the hearing officer/panel a prepared statement. They shall then answer to the best of their ability any questions posed to them by the hearing officer/panel.
- e. Any party to the action may request that any individual (staff, volunteer, juvenile) having direct knowledge of the incident be allowed to present testimony to the DH panel on their respective behalf. The DHO will review all statements prior to the disciplinary hearing to determine if the statements are sufficient evidence, or whether the person giving the statement must attend the disciplinary hearing to testify in person and respond to questions posed to them by the hearing officer. Testimony can be received by the DHO/Panel either by individuals, staff, volunteers or juveniles who attend the hearing or, if deemed preferable by the hearing officer/panel, through written statements and/or telephone interviews of the individual who wishes to testify or from whom the DHO/Panel desires to hear.
- f. If the incident occurred in an area monitored by cameras, the camera footage may also be viewed by the DHO/Panel and used by the DHO/Panel to help determine whether a rule violation has occurred. Additionally, the camera monitor can summarize the incident on a witness statement and that summary can also be considered.
- g. Copies of non-confidential written reports and statements may be presented as evidence by either party, reviewed by any party or witness, and refuted by any party or witness. If there are confidential reports (e.g., medical assessments, statements by other juveniles/employees) that the DHO feels may cause possible threat, or harm or embarrassment to an individual, the reports will be clearly marked confidential, and if the DHO so finds, not made available to anyone during or after the hearing other than as part of the record if an appeal is requested. No party or witness will be told of confidential information or reports presented by another party or witness, and no staff member will discuss these reports out of the context of the disciplinary hearing.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 6 of 9
--	---	------------------------	--------------

- h. Any party may request that the Hearing Officer call certain witnesses, examine certain documents, including video footage of the incident, and suggest certain questions for the Hearing Officer to ask other witnesses. The Hearing Officer/Panel can ask questions of witnesses. Neither party has the right to confront (cross examine) other witnesses but can suggest to the Hearing Officer/Panel questions to ask other witnesses.
- i. The Juvenile Progressive Discipline Chart (Exhibit G-9.19A) will be utilized to determine if the evidence presented/gathered for a disciplinary hearing supports the rule violation alleged. If not, or if the evidence presented supports a lesser level rule violation, the DHO/Panel may dismiss the more serious/not proven rule violation and find that another or less serious rule violation has occurred. The DHO/Panel may dismiss the matter entirely if he or she determines that no rule violation has occurred.
- j. All parties will be allowed a reasonable opportunity to present or have presented whatever testimony/evidence they wish to present, but testimony/evidence may be limited by the DHO due to relevancy or redundancy.
- k. Either party may request, or the hearing officer/panel may do so on their own, hearings to be recessed and reconvened at a later time for unusual occurrences (e.g., juvenile absent from the facility, staff on extended leave, testimony cannot be given due to serious illness or injury of a crucial witness), to have additional statements obtained from witnesses not present and/or to have witnesses interviewed by phone. The DHO will approve/disapprove the requests. If the DHO determines that exceptional circumstances warrant leaving the case pending for up to 30 days they may do so. If this is done, the disciplinary hearing will be held when all persons and all information are available at any point during that 30 day period. If the hearing is not concluded within 30 days, the case will be dismissed.
- l. The DHO/Panel will base their final decision on the merits of information/documents provided/gathered using the preponderance of evidence standard. The final decision will be based on a majority vote. If the rule violation is founded utilizing this standard, the Hearing Officer/Panel will then determine the sanctions to be imposed. The Hearing Officer will, within two (2) business days, document in writing the reasons for the final decision and the sanctions imposed on the Disciplinary Hearing/Review Board form (E-1.14C). The form will be distributed to the appropriate personnel. The Unit Manager will ensure that sanctions are documented on the Behavior System Log (Form G-9.19D) within one (1) business day.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 7 of 9
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B. Review Board in the Evaluation Centers and Juvenile Detention Center

1. Investigation

- a. Upon receipt of a Juvenile Negative Behavior Report form (G-9.19C) and accompanying documents, the Facility Captain will review all information relating to the offense, including but not limited to: interviewing the reporting officer, offender, victim, staff, and any witnesses; reviewing any related reports, including surveillance camera footage of the incident (if available); and reviewing Event Reports (I-3.2A).
- b. Once the Facility Captain has determined the alleged offense is valid, the paperwork will be forwarded to the Review Board.
- c. If the Facility Captain determines that the validity of the alleged offense is in question, he or she will consult with the Facility Administrator to determine the next step (reduction in offense, dismissal of offense, action against officer, etc.).

2. Review Board

- a. Once the offense is determined to be valid, a Review Board will convene to decide the sanctions and re-evaluate the validity of the offense.
- b. The Review Board will be comprised of the Facility Administrator, or his/her designee, the assigned Social Worker and/or Psychologist. Others may be invited to attend as needed. The Facility Administrator is the acting Chair of the Board.
- c. The Review Board will meet with the accused juvenile and reporting officer within three (3) business days. If the reporting officer is not available, a written statement, phone call, or reporting officer's supervisor/designee may be substituted.
- d. The Review Board will ask questions of the participants as needed. The participants will be allowed to make statements and suggest questions for the Review Board to ask to other participants.
- e. Once the Board has completed their discussion, the juvenile and reporting officer, if attending, will leave the room while the board discusses their decision.
- f. Once a decision is reached, the juvenile and reporting officer will return and the Board will inform the participants of their decision.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 8 of 9
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- g. The Review Board Chair will ensure that a Disciplinary Hearing/Review Board form (E-1.14C) is completed and distributed as necessary.
- h. The Captain of Security or designee will ensure that sanctions are documented on the Behavior System Log (Form G-9.19D) within one (1) business day and that the sanction(s) issued is/are completed by the juvenile.
- i. If the juvenile fails to comply with agreed-upon sanction(s), this will be reflected in the facility's response via their existing behavioral system and the Review Board will determine the length of time and number of items and activities involved in any suspension.

C. Juvenile Appeal Process for Disciplinary Hearing/Review Board decisions in all DJJ Facilities

- 1. If a juvenile chooses to appeal the Disciplinary Hearing/Review Board decision, the assigned Clinician will provide the juvenile any needed assistance with the appeals process. The Juvenile Appeal of Disciplinary Decision (Form E-1.14D) will be submitted to the Legal Office within 5 days of the juvenile's disciplinary process. The Legal Office will review the facts and determine whether to grant or deny the juvenile's appeal.
- 2. The Legal Office will have 10 business days from the date that the appeal was received to respond to the juvenile's appeal.
- 3. In responding to appeals, the following criteria will be used to grant or deny an appeal:
 - a. Whether there was substantial compliance with facility guidelines and rules in handling juvenile discipline.
 - b. Whether the decision was based on the greater weight/or most credible information.
 - c. Whether the sanction imposed was proportionate to the rule violated.
 - d. Other factors that were not originally known/considered that may have merit to the juvenile's case and/or benefit the juvenile's case.
- 4. If the appeal is granted, the Legal Office will inform the Facility Administrator of the decision and he/she will impose final outcome consistent with that decision.

Title: Disciplinary Hearing/Review Board Process	Authority: Divisions of Treatment and Intervention Services and Rehabilitative Services	DJJ Policy No.: E-1.14	Page: 9 of 9
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5. The disposition will be forwarded to the juvenile with copies to the Unit Manager, Program Manager, Classification, assigned Clinician, and PbS.

RELATED FORMS AND ATTACHMENTS:

Form E-1.14A, Witness Statement
Form E-1.14B, Disciplinary Hearing Notification
Form E-1.14C, Disciplinary Hearing/Review Board
Form E-1.14D, Juvenile Appeal of Disciplinary Decision
Exhibit G-9.19A, Juvenile Progressive Discipline Chart
Form G-9.19C, Juvenile Negative Behavior Report
Form G-9.19D, Behavior System Log
Form I-3.2A, DJJ Event Report

REFERENCED POLICIES:

G-9.19, Juvenile Behavior Management – Incentive system and Progressive Discipline
G-3.4, Isolation of Youth

RELATED PERFORMANCE-BASED STANDARDS (PbS)

Justice Goal: To operate the facility in a manner consistent with principles of fairness and that provide the means of ensuring and protecting each youth’s legal rights.

SCOPE:

This policy applies to all staff working in the Detention Center, Evaluation Centers, and long-term juvenile residential facilities.

LOCAL PROCEDURAL GUIDE:

Not required.

TRAINING REQUIREMENT:

Employees in the Detention Center, Evaluation Centers, and long-term residential facilities are required to review this policy within 30 calendar days of its publication.