



## Ohio Administrative Code

### Rule 5120-9-07 Conduct report and hearing officer procedures.

Effective: January 9, 2020

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(A) Scope: This rule governs the procedures for the issuance of a conduct report and procedures to be employed by the hearing officer for determining violations of the inmate rules of conduct, as described in rule 5120-9-06 of the Administrative Code, referring conduct reports to the rules infraction board (RIB) and the documentation of actions. Nothing in this rule shall preclude department staff from referring such inmate conduct to law enforcement for prosecution as a criminal offense, or the state from prosecuting such conduct as a criminal offense.

(B) Report: Any department employee or contractor, except those performing services under a personal services contract, who has reason to believe that an inmate has violated an inmate rule (or rules) of conduct may set forth such allegation on the form designated for that purpose.

(1) The conduct report shall contain a description of the specific behavior constituting each rule violation, cite the name and number of each applicable rule of conduct, and be signed by the person making the conduct report.

(2) The person issuing the conduct report shall indicate whether he or she wishes to appear before the RIB when the conduct report is heard.

(3) If the inmate's behavior suggests serious mental illness, the person should refer the inmate to institutional mental health staff for a mental health assessment.

(C) Hearing officer designation and qualification. Each managing officer shall designate staff members as hearing officers. Persons selected to act as hearing officers must have completed training issued by the department's division of legal services. A staff member who issued the conduct report, witnessed or investigated the alleged violation cannot serve as hearing officer in relation to that violation.

(D) Initial screening and preliminary procedure. The hearing officer shall evaluate conduct reports



for form and content.

The hearing officer shall determine whether the conduct report cites the correct rule, identifies the charged inmate and cites sufficient facts to support the charged violation. The hearing officer is authorized to accept, modify, withdraw or return a conduct report to the person who wrote the conduct report for correction or revision.

(E) Hearing officer - inmate interview. The hearing officer shall meet with the inmate named on the conduct report as soon as practicable. The hearing officer shall note the date and time of the meeting on the conduct report and provide the inmate with a copy. If the inmate refuses to accept the conduct report, the hearing officer shall note that fact on the report. The hearing officer shall inform the inmate of the rule violation alleged, the behavior constituting the violation, and the right of the inmate to make a statement regarding the violation. The hearing officer may either decide and dispose of the violation or refer the violation to the RIB for hearing.

(F) Hearing officer - deciding and disposing of rule violations. The hearing officer may decide and dispose of violations where the alleged conduct is amenable to the dispositions listed in this rule. In such cases:

(1) The hearing officer shall ask the inmate to admit or deny the violation and ask for the inmate's statement regarding the violation.

(2) The hearing officer may interview staff, contractors or other inmates regarding the violation.

(3) If the person issuing the conduct report has indicated that he or she wishes to appear at the hearing of the conduct report, the hearing officer shall contact that person before making any determination in the case.

(4) If the inmate waives participation in the hearing or refuses to participate in the hearing, the hearing officer shall make a written record documenting the waiver or refusal. The hearing officer may then either proceed under this rule or refer the matter to the RIB.

(5) The hearing officer shall determine whether a violation has occurred, If the hearing officer finds



that there are some facts to support the conclusion that the inmate violated a rule, the hearing officer may impose one or more of any of the following dispositions:

- (a) The hearing officer may refer the inmate for treatment, counseling, or other programming.
- (b) The hearing officer may recommend a change in housing or job assignment.
- (c) The hearing officer may issue a warning or reprimand.
- (d) The hearing officer may recommend to the managing officer that the inmate be required to make restitution.
- (e) The hearing officer may recommend to the managing officer that contraband be disposed of in a manner consistent with rule 5120-9-55 of the Administrative Code.
- (f) The hearing officer may issue focused restrictions on privileges. Focused restrictions on privileges shall not exceed ninety days for a first offense committed during the inmate's annual security classification review period and shall not exceed one hundred and eighty days for subsequent offenses during the inmate's annual security classification review period.
- (g) The hearing officer may place the inmate in a limited privilege housing assignment subject to the time frame and referral limitations set forth in rule 5120-9-09 of the Administrative Code.
- (h) The hearing officer may assign a period of extra work duty for each rule violation.
- (G) Recording the hearing officer's decision and disposition of a rule violation. When the hearing officer disposes of a rule violation, the hearing officer shall complete and sign the hearing officer disposition form indicating the name and number of the inmate, the nature of the rule violation or violations, the date and time of the interview, the hearing officer's findings, and any sanction(s) imposed.
- (1) Such dispositions shall be recorded in the inmate's file and shall clearly note that the hearing officer made the disposition.



- (2) Such dispositions shall not be considered for purposes of classification.
- (3) These dispositions shall be submitted to the RIB chair or designee for an administrative review to determine substantial compliance with applicable policies, procedures, and to determine that the disposition was proportionate to the conduct charged.
- (4) Upon review, the RIB chair or designee may approve the disposition, modify it, or return it to the hearing officer with instructions to refer the matter to the RIB for formal disposition.
- (H) Referral to RIB. The hearing officer may refer a conduct report to the RIB for formal disposition. In such cases, the hearing officer shall ask the inmate to admit or deny the violation and ask for the inmate's statement regarding the violation. The hearing officer shall then determine whether to recommend staff assistance for the inmate. The hearing officer shall advise the inmate of his or her rights under this rule and the possible consequences of such hearing before the RIB.
- (1) Staff assistance: Each institution shall maintain a list of staff members who are eligible to provide staff assistance to inmates. The hearing officer should recommend staff assistance from that list when:
- (a) The inmate appears to be functionally illiterate, not fluent in English, or is otherwise unable to respond to the allegations before the RIB due to the inmate's limited mental or physical capacity, or;
  - (b) The complexity of the issues makes it likely that the inmate will be unable to collect and present the facts necessary to adequately respond to the allegations before the RIB.
- (2) The hearing officer shall inform the inmate of the following procedural rights, which the inmate may waive in writing:
- (a) Time of hearing. The inmate has the right to a period of time of no less than twenty-four hours after the service of the conduct report before his or her appearance at the RIB.
  - (b) Presence of charging official. The inmate has the right to have the person who wrote the conduct



report present at the RIB hearing.

(c) Witnesses. The inmate may request a reasonable number of witnesses. The inmate's request for a witness shall be in writing on an appropriate witness request form. The request shall include the name of the inmate witness requested, and shall state the nature of the information expected to be provided by the witness. The chairperson of the RIB shall approve or deny any request for inmate witnesses in writing, explaining the basis for the decision on the designated form.

(3) The hearing officer shall inform the inmate that the rule violation might result in the loss of earned credit that otherwise could have been awarded or may have been previously earned as authorized by section 2967.193 of the Revised Code and paragraph (R) of rule 5120-2-06 of the Administrative Code and obtain a written acknowledgment from the inmate that he or she has been so informed.