

5120-9-08

Disciplinary procedures for violations of inmate rules of conduct before the rules infraction board.

- (A) Scope: This rule governs the procedures employed before the rules infraction board for determining violations of the inmate rules of conduct, as described in rule 5120-9-06 of the Administrative Code, appealing those determinations, and the documenting of those 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) RIB panel. The rules infraction board (RIB,) shall consist of two staff members, designated by the managing officer, sitting as a panel. Persons sitting on an RIB panel must have first completed RIB training issued by the department's division of legal services. The RIB panel has the authority to determine guilt and impose penalties for violations of the inmate rules of conduct. Each panel shall consist of a chairperson, who manages the hearing, and a secretary, who prepares a record of the proceedings. No staff member shall be permitted to sit as an RIB panel member who wrote the report, witnessed the alleged rule violation, or participated in the investigation of the alleged rule violation. A staff member assigned to an RIB panel shall disqualify himself or herself from the panel if such a personal interest exists.
- (C) Time of hearing, preliminary matters. The hearing of the rule infraction shall be held within seven business days of the issuance of the conduct report unless prevented by exceptional circumstances, unavoidable delays or reasonable postponements. Delays beyond seven calendar days shall be documented in the record along with the reason for the delay. Unless waived, the inmate shall be afforded twenty-four hours' notice prior to the hearing. The RIB chairperson shall determine if the twenty-four hour notice period has elapsed. If the required time has not passed, and the inmate has not waived the time period, the chairperson must postpone the hearing. Prior to the hearing, the RIB chairperson shall:
- (1) If the inmate is in ~~short-term~~ restrictive housing, determine whether the hearing officer has provided the relevant information from the inmate's restrictive housing placement mental health assessments,
 - (2) Determine whether the person who issued the conduct report has indicated a desire to appear at the hearing,
 - (3) Make preliminary rulings on any witness requests, and arrange for the presence of witnesses,
 - (4) ~~Insure~~ Ensure staff assistance as appropriate,

- (5) ~~Insure~~ Ensure all necessary forms are available and that electronic recording equipment is in working order.
- (D) Hearing to be recorded: With the exception of deliberations concerning guilt or the imposition of penalties, the proceedings shall be recorded using suitable electronic means. The recording of the proceedings shall commence upon the inmate's appearance before the RIB panel. In addition to the electronic record, the record of the proceedings shall also include any document, video, confidential information or other evidence presented to the RIB, as well as any written requests, waivers and statement summaries.
- (E) Commencing the hearing. The RIB chairperson shall first identify the panel members and then ask the inmate to identify himself or herself on the record.
- (1) The RIB chairperson shall advise the inmate of the rule violation(s) and the nature of the behavior described in the conduct report.
- (2) Plea. The RIB chairperson shall then ask the inmate to admit or deny the rule violation(s.)
- (a) If the inmate admits the rule violation, the chairperson shall question the inmate regarding the voluntariness of the plea, the factual basis for the plea, and the inmate's understanding of the plea.
- (b) The chairperson shall accept the plea of admission unless the chairperson finds that the facts do not support the plea, or that the inmate's version of the facts do not support the plea, or that the inmate does not understand the nature of the plea, the violation, or the proceedings. In this event the chairperson shall enter a plea of denial on behalf of the inmate.
- (c) If the chairperson accepts the inmate's plea of admission, the RIB panel may then make a determination of guilt and proceed with disposition of the violation.
- (d) If a violation is denied, the RIB panel shall provide the inmate an opportunity to make a statement regarding the alleged violation.
- (3) The RIB chairperson shall review the inmate's request for witnesses and advise the inmate of any preliminary determinations made regarding the requested witnesses. The RIB chairperson may deny a witness request based on relevancy, redundancy, unavailability, or security reasons. The RIB chairperson may modify a preliminary ruling after discussion with the inmate. The RIB chairperson may deny a request for a witness if a witness request form has not been completed.

- (4) The RIB chairperson shall postpone the hearing if the chairperson believes that the inmate is demonstrating behavior indicative of serious mental illness and shall refer the inmate to the institutional mental health staff for a mental health assessment. The RIB hearing shall only be rescheduled in accordance with the recommendation of mental health staff.
- (F) RIB hearing, witnesses. If a violation is denied, the RIB panel may hear testimony from witnesses in addition to any statement the charged inmate may make.
- (1) Witnesses (inmates and staff members) shall be advised that they are subject to appropriate discipline for presentation of false testimony.
 - (2) The inmate charged with the rule violation may not address or examine a witness, but may ask the RIB chairperson to pose questions to the witness.
 - (3) The inmate, or representative number of inmates who made the accusation should, if security considerations permit, appear before the RIB and be examined for the record.
 - (4) The charged inmate may, in the discretion of the RIB, be excluded from the examination when confrontation between the inmates may create a risk of disturbance or risk of harm to the witness.
 - (5) The charging official shall appear if requested by the inmate, if the RIB has questions for the official, or if the charging official requests to appear and speak at the hearing.
 - (6) The RIB panel may ask questions of the witnesses or call additional witnesses as necessary. Witnesses may appear in person, by telephone, or other electronic means. The RIB panel may take testimony or receive evidence in any form or manner it deems appropriate.
- (G) Confidential information. If the RIB panel uses information from a confidential source in its determination, the panel shall evaluate the credibility of the confidential source prior to reaching a decision on the rule violation. The RIB shall also determine whether the statement is confidential in its entirety or if any of the information can be disclosed to the inmate charged with the violation without disclosing the identity or jeopardizing the safety of the confidential source. The inmate charged with the offense shall not be present when the RIB considers and evaluates the confidential information. The panel shall record its evaluation on the appropriate form.
- (H) The RIB members shall evaluate the credibility of witnesses and the probative value of other evidence presented to the RIB, including any available video evidence. The RIB ~~shall assess~~ may consider the credibility of a witness, whether confidential

or otherwise, on the basis of common sense and a realistic assessment of the circumstances. In making these assessments the RIB may consider variety of factors including, but not limited to:

- (1) The appearance and demeanor of the witness,
- (2) The witness's disciplinary or criminal history,
- (3) Whether it is against the witness's own interests to make the statement,
- (4) Whether or not the witness has any ulterior motive in making the statement,
- (5) Whether other evidence corroborates the statement,
- (6) Whether the witness could have observed what is claimed,
- (7) Whether the witness has previously provided reliable evidence,
- (8) Whether the witness has a record or reputation for lying or honesty,
- (9) Whether the witness's statements are consistent,
- (10) The amount of detail provided,
- (11) The willingness of the witness to appear and answer the questions of the rules infraction board,
- (12) The professional experience and judgment of the staff member evaluating the witness.

(I) Amendment to conform to the evidence: ~~An~~ The RIB panel may at any time prior to or during an RIB hearing, change the designation of the rule or rules alleged to have been violated based on the conduct report, or testimony or evidence presented at the RIB hearing. The inmate shall be given timely notice of such a change. Such a change shall be made part of the record of the hearing and noted in the RIB panel's disposition. If the change is made during the RIB hearing, the inmate may request a reasonable continuance. If the continuance is granted, the RIB hearing may recommence from the point of the continuance. ~~The RIB may refer the case to the SMP if the amendment indicates that the inmate may have violated a serious rule of misconduct that could result in placement in an extended restrictive housing assignment.~~

(J) After taking testimony and receiving evidence, the RIB panel shall vote and determine whether, based on the evidence presented, they believe that a rule violation occurred, that the inmate committed that violation, and if so, what disposition to impose.

The RIB panel may consider all information presented in reaching its determination including any relevant mental health information from the inmate's restrictive housing placement assessments and/or the inmate's mental health caseload status.

- (1) No inmate shall be found to have violated a rule based solely on his or her past conduct.
 - (2) Past conduct may be considered when determining issues such as credibility and intent; or in considering suitable penalties.
- (K) Both panel members must concur in a finding of guilt in order to find an inmate guilty of a rule violation and to impose a disposition. In the event there are conflicting guilty and not guilty votes, the tie shall be broken by a staff member designated by the managing officer, who shall cast the deciding third vote. The managing officer's designee shall vote only after reviewing the oral and written record of the hearing.

The managing officer's designee who casts a deciding vote in an RIB proceeding shall not be the same designee performing the administrative review and appeal review functions described in paragraphs (N) and (O) of this rule.

- (L) Determination and disposition. If a finding of guilt is made for a rule violation by the RIB panel, and subject to the administrative review of the managing officer or designee, the RIB panel may impose the following penalties:

- (1) Placement of the inmate in ~~short-term~~ restrictive housing as defined in rule 5120-9-10 of the Administrative Code for one offense with credit for time served in any pre-hearing detention. To place an inmate in ~~short-term~~ restrictive housing, the RIB shall provide a justification as to why placement in a limited privilege housing assignment under paragraph (L)(2) is insufficient to manage the safety and security requirements of the inmate.
- (2) Placement of the inmate in a limited privilege housing assignment for up to ninety days for one offense as defined in paragraph (B)(4) of rule 5120-9-09 of the Administrative Code.
- (3) Recommend that the inmate receive a security review or serious misconduct panel review, and/or transfer to another general population institution.
- (4) Order the disposition of contraband in accordance with rule 5120-9-55 of the Administrative Code.
- (5) Recommend to the managing officer that the inmate be required to make reasonable restitution, or that his earnings be reduced pursuant to rule 5120-3-08 of the Administrative Code.

- (6) Order that the inmate lose 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.
 - (7) Order restrictions on personal privileges following an inmate's abuse of such privileges or facilities or when such action is deemed necessary by the managing officer for the safety and security of the institution, or the well-being of the inmate. Such restrictions shall continue only as long as it is reasonably necessary.
 - (8) Order such actions as deemed appropriate, including assignment of extra work, and any dispositions available to the hearing officer.
 - (9) The RIB may conditionally suspend the imposition of any penalty cited in this rule, on the condition that the inmate have no further rule violations for a period of six months from the date of the RIB disposition. If the inmate has no further violations during the six-month period, the penalty shall be treated as a reprimand. If the inmate violates the condition and is found guilty of a rule violation, the suspended penalty shall be imposed in addition to any penalty for the new violation.
- (M) Documentation of disposition: Upon completing its deliberations, the RIB shall orally inform the inmate of its decision and disposition, as part of the electronic record. The RIB secretary shall complete a disposition form, which shall contain the determination made by the panel regarding each rule violation, the factual basis of the determination, names of witnesses, and any disposition imposed.
- (1) The form shall also include whether the panel relied on confidential information in reaching its determination and the panel's evaluation of the informant's credibility. The form shall not contain the name of any confidential informant or the nature of the confidential information.
 - (2) The form shall also include notice that the inmate may appeal the RIB panel's decision to the managing officer and the procedure for such an appeal.
 - (3) ~~The completed disposition form shall be furnished to the inmate no later than three business days after the RIB panel reaches its decision.~~ The form shall notify the inmate that, if they are serving a sentence pursuant to Ohio Revised Code Section 2967.271, a finding of guilt may be used by the Department to rebut the presumption that the inmate will be released from service of their sentence on the expiration of the minimum prison term or presumptive earned early release date.

- (4) The completed disposition form shall be furnished to the inmate no later than three business days after the RIB panel reaches its decision.
- ~~(4)~~(5) The imposition of any penalty imposed by the RIB panel shall not be stayed pending an appeal.
- ~~(5)~~(6) The person issuing the conduct report shall be permitted to review the completed RIB disposition but shall not be involved in the deliberations of the RIB.
- ~~(6)~~(7) For informational purposes a ~~bound~~ summary or log of the RIB dispositions and activity for the week shall be available for review by staff members and maintained in a location convenient for that purpose.
- (N) Administrative review. The managing officer or designee shall review RIB panel decisions to assure compliance with the procedures, rights and obligations set forth in this rule. The managing officer or designee may approve, modify or reject a panel's determination of guilt. The managing officer or designee may not reject a determination of not guilty, but may refer such a case back to the RIB panel for reconsideration if relevant information was overlooked or new information becomes available. The managing officer or designee may approve the penalty, or modify the penalty imposed from among the penalties available to the RIB panel. The managing officer or designee may also refer a case back to the RIB panel for reconsideration when procedural errors have occurred within the case. The managing officer or designee shall provide the inmate with written notification of the review findings.
- (O) Appeal of RIB decision to the managing officer. An inmate may appeal the decision of the RIB panel by submitting the form designated for that purpose to the managing officer or designee within ~~fifteen~~ seven calendar days from the inmate's receipt of the RIB panel's disposition. The managing officer or designee shall review the RIB determination within fourteen calendar days to determine whether it was supported by sufficient evidence, ~~that~~ whether there was substantial compliance with applicable procedures, and ~~that~~ whether the disposition and any sanction imposed was proportionate to the rule violation.
- ~~(1) The appeal shall state the inmate's allegations of procedural error and/or objections to the RIB panel's determination of guilt or penalty imposed.~~
- ~~(2)~~(1) The managing officer or designee may affirm or reverse the RIB panel's determination of guilt; and, may approve, or modify the penalty imposed from among the penalties available to the RIB panel. The managing officer or designee may also return the matter to the RIB panel for reconsideration or

rehearing to address procedural errors that may have occurred within the case or to consider additional evidence.

~~(3) The managing officer or designee shall decide the appeal within thirty calendar days of its receipt, and shall promptly notify the inmate of the appeal decision on a form designed for that purpose.~~

(P) Appeal of RIB decision to Chief Legal Counsel. An inmate may appeal the decision of the managing officer or designee by submitting the form designated for that purpose to the Chief Legal Counsel within fourteen calendar days from the inmate's receipt of the managing officer or designee's appeal decision. Chief Legal Counsel or designee shall review the RIB determination within fourteen calendar days of receipt of the appeal to determine whether it was supported by sufficient evidence, whether there was substantial compliance with applicable procedures, and whether the disposition and any sanction imposed were proportionate to the rule violation.

(1) The Chief Legal Counsel or designee may affirm or reverse the RIB panel's determination of guilt; and, may approve, or modify the penalty imposed from among the penalties available to the RIB panel. The Chief Legal Counsel or designee may also return the matter to the RIB panel for reconsideration or rehearing to address procedural errors that may have occurred within the case or to consider additional evidence.

~~(P)~~(Q) Discretionary review: The director or the director's designee may review any RIB decision that, in the view of the director or designee, presents issues that may have significant impact on the operation of the department. This paragraph does not provide an additional appeal for the inmate above the appeal to the Chief Legal Counsel ~~managing officer~~.

Effective:

Five Year Review (FYR) Dates: 10/3/2019

Certification

Date

Promulgated Under: 111.15
Statutory Authority: 5120.01
Rule Amplifies: 5120.05
Prior Effective Dates: 04/05/1976, 10/30/1978, 03/24/1980, 01/16/1984,
07/18/1997, 07/19/2004, 04/26/2009, 11/11/2013,
02/11/2017