
 <p>STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p>DIRECTIVE</p>	TITLE		No. 4932
	<p>Chapter V, Standards Behavior & Allowances</p>		
<p>SUPERSEDES Dir. #4932 dtd. 11/24/1999</p>	<p>DISTRIBUTION A B</p>	<p>PAGE 1 OF 15 PAGES</p>	<p>DATE MAY 12 2004</p>
<p>REFERENCES (includes but are not limited to): 7NYCRR Chapter V, Subchapters A and B</p>	<p>APPROVING AUTHORITY</p> 		

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SUBCHAPTER A PROCEDURES FOR IMPLEMENTING STANDARDS OF INMATE BEHAVIOR

- Part 250 Scope and Interpretation of Rules and Regulations in this Chapter
- Part 251 Cases of Inmate Misbehavior
- Part 252 Violation Hearing
- Part 253 Disciplinary Hearing
- Part 254 Superintendent's Hearing

Part 250 Scope and Interpretation of Rules and Regulations in this Chapter

Section 250.1 Applicability

- (a) The rules and regulations set forth in this Chapter establish procedures to supplement the department's ordinary programs for inmate indoctrination, guidance, counseling and training. They are to be applied for the following purposes:
 - (1) Implementation of standards of behavior where an inmate:
 - (i) violates a rule or regulation governing behavior;
 - (ii) fails or refuses to comply with an instruction given by an employee of the department acting within the scope of official duties in giving such instruction; or
 - (iii) attempts to escape or escapes or engages in any other unlawful conduct; and
 - (2) Administration of procedures for granting good behavior allowances ("good time").
- (b) The provisions of this Chapter shall apply to all correctional facilities in the department.

250.2 General policies on discipline of inmates.

- (a) Disciplinary action is one of many essential elements in correctional treatment. When applied reasonably and with fairness it not only assists in protection of the health, safety and security of all persons within a correctional facility, but also is a positive factor in rehabilitation of inmates and the morale of the facility.
- (b) Just as the sentencing of inmates by courts, and the techniques used for correctional treatment, must be appropriately varied to fit a complex matrix of individual circumstances and individual conditions, the disciplinary techniques within a correctional facility must be appropriately varied to fit such factors as:
 - (1) the particular circumstances involved;
 - (2) the overall behavior pattern of the inmate; and
 - (3) the problems in and the present atmosphere of the facility.

Consequently, persons vested with responsibility for disciplinary measures in facilities of the department should not establish rigid structures for disciplinary sanctions, but should consider each situation individually.
- (c) Disciplinary action shall be taken only in such measures and degree as is necessary to:
 - (1) regulate an inmate's behavior within acceptable limits;
 - (2) assist in achieving compliance by the entire inmate population with required standards of behavior; and

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- (3) preserve the confidence of all concerned (i.e. the inmate population and the staff) in the administration's sincere belief in and determination to maintain the required standards of behavior.
- (4) All control of inmate activities, including disciplinary action, must be administered in a completely fair, impersonal and impartial manner and must be as consistent as possible (given the need for individualized decisions).
- (d) Disciplinary measures should not be overly severe. A sound disciplinary program relies upon certainty and promptness of action rather than upon severity.
- (e) Disciplinary action must never be arbitrary or capricious, or administered for the purpose of retaliation or revenge.
- (f) Corporal punishment is absolutely forbidden for any purpose and under all circumstances.
- (g) Mechanical means of physical restraint must never be used for disciplinary purposes. Mechanical means of physical restraint may be used only when necessary while transporting inmates within or outside of the facility, or on orders of the facility Superintendent, and/or a physician when either deems it necessary to prevent injury to the inmate or to others.

Part 251 Cases of Inmate Misbehavior

- Subpart 251-1 Initial Actions in Cases of Inmate Misbehavior
- Subpart 251-2 Review Officer
- Subpart 251-3 Misbehavior Report
- Subpart 251-4 Inmates Assistant
- Subpart 251-5 Timeliness

Subpart 251-1 Initial Actions in Cases of Inmate Misbehavior

Section 251-1.1 General Policy

All incidents of inmate violations of rules and regulations, inmate misbehavior and inmate failure or refusal to comply with an instruction given by an employee acting within the scope of his or her official duties shall be handled as quietly and routinely as possible, giving due regard to danger to life, health, security and property.

Note: Sections 251-1.2 through 251-1.4 have been repealed.

See Directive #4944, "Use of Physical Force," and Section 251-3.1, "Misbehavior Report."

251-1.5 Minor infractions.

An employee should deal with minor infractions, or other violations of rules and policies governing inmate behavior, that do not involve danger to life, health, security or property by counseling, warning, and/or reprimanding the inmate, and the employee need not report such minor incidents.

251-1.6 Confinement

- (a) Where an officer has reasonable grounds to believe that an inmate should be confined to a cell or room or housing area because he or she represents an immediate threat to the safety, security or order of the facility or is an immediate danger to other persons or to property, such officer shall take reasonable and appropriate steps to so confine the inmate.
- (b) An inmate also may be confined to a cell or room where such action appears reasonably necessary for protection of the inmate. In any such case, however, the inmate shall not be so confined for more than 72 hours, and within such time period the inmate shall either be:
 - (1) transferred to another housing unit;
 - (2) scheduled for transfer to another facility;
 - (3) released from such confinement; or
 - (4) placed in protective custody.
- (c) An inmate who is unable or who refuses to participate in an assigned activity may be confined to a cell or room and, if such inmate has not been excused for medical reasons, the officer having charge of the inmate shall report such incident to the Superintendent.

- (d) If the officer having charge of an inmate or if any superior officer has reasonable grounds to believe that an inmate's behavior in a cell or room is disruptive or will be disruptive of the order and discipline of the housing unit, or is inconsistent with the best interests of the inmate or of the facility, such fact shall be reported to the Superintendent or the officer in charge of the facility and the Superintendent or the officer in charge of the facility may order confinement in a special housing unit. Any such order shall be in accordance with Directive #4933.
- (e)
- (1) An employee who places an inmate in confinement in a cell or room or who places an inmate in a special housing unit pursuant to the provisions of this section shall report such fact, in writing, to the Superintendent as soon as possible, but in any event before going off duty.
 - (2) Reports of confinement shall be made even where confinement was authorized or directed by a superior officer, but need not be made where confinement:
 - (i) is necessitated by a medically excused inability to participate in an assigned activity; or
 - (ii) was directed by a decision in a disciplinary Superintendent's hearing.
- (f) The provisions of this section shall not be construed so as to prohibit emergency action by the Superintendent of the facility and, if necessary for the safety or security of the facility, all inmates or any segment of the inmates in a facility may, on the order of the person in charge of the facility, be confined in their cells or rooms for the duration of any period in which the safety or security of the facility is in jeopardy. In any such case the Superintendent shall immediately notify the Commissioner.

251-1.7 Admission to special housing units.

Admission of an inmate to a special housing unit shall be in accord with Directive #4933.

Subpart 251-2 Review Officer

Section 251-2.1 Establishment of review officer

There shall be at each correctional facility one or more staff members of the rank of lieutenant or above, to be known as the review officer, the number to be dependent upon the needs of the facility. The Superintendent may, if sufficient reason exists, designate some other employee to serve as the review officer.

251-2.2 Function of the review officer.

- (a) The review officer shall receive, at least once daily, all misbehavior reports issued at the facility.
- (b) Except as provided in subdivision (d) below, the review officer shall review such reports and considering the seriousness of the alleged violations of the standards of inmate behavior, refer such reports to the appropriate disciplinary body for action as follows:
 - (1) Where the violation, if substantiated, would warrant only a penalty of loss of recreation for up to and including 13 days and including the loss of privileges, for a period up to and including 13 days, other than correspondence and visitation privileges, the report shall be referred to the violation officer.
 - (2) Where the violation, if substantiated, would warrant only a penalty of loss of privileges up to and including 30 days, and including confinement to a cell or room (keeplock) for a period up to and including 30 days, the misbehavior report shall be forwarded to the disciplinary hearing officer for appropriate action.
 - (3) Where the violation, if substantiated, would warrant imposition of a penalty beyond that which may be imposed at a disciplinary hearing, the misbehavior report shall be forwarded to the Superintendent for designation of a hearing officer to conduct a Superintendent's hearing.
- (c) The review officer may dismiss any misbehavior report which fails to state a valid charge, or may return it to be rewritten.

- (d) The review officer shall refer any report that includes a charge that an inmate has engaged in an act of self-harm in violation of rule 123.10 (item 270.2(B)(23)(i) of this Title) to the deputy superintendent for security, who shall fulfill the function of the review officer and have the authority to dismiss the charge or charges if he or she believes, due to the inmate's mental state or for any other reason, that proceeding to a hearing would serve no useful purpose.
- (e) The review officer shall review the status of each inmate keeplocked pursuant to a misbehavior report under review, and may order the release of an inmate who is no longer a threat to the safety and security of the facility or to himself.
- (f) The review officer shall not act as a hearing officer in any proceeding arising from misbehavior report which he or she has reviewed.

Subpart 251-3 Misbehavior Report

Section 251-3.1 Misbehavior Report

- (a) Every incident of inmate misbehavior involving danger to life, health, security or property must be reported, in writing, as soon as practicable.
- (b) The misbehavior report shall be made by the employee who has observed the incident or who has ascertained the facts of the incident. Where more than one employee has personal knowledge of the facts, each employee shall make a separate report or, where appropriate, each employee shall endorse his or her name on a report made by one of the employees.
- (c) The misbehavior report shall include the following:
 - (1) a written specification of the particulars of the alleged incident of misbehavior involved;
 - (2) a reference to the inmate rule book number allegedly violated by the inmate, and a brief description of the rule;
 - (3) the date, time and place of the incident.
 - (4) Where more than one inmate was involved in an incident, the report should, to the extent practicable under the given circumstances, indicate the specific role played by each inmate. Where two or more incidents are involved, all of them may be incorporated into a single misbehavior report. However, each incident must be separately stated.
- (d) All misbehavior reports shall also contain the following language:
 - (1) "You are hereby advised that no statement made by you in response to the charge, or information derived therefrom may be used against you in a criminal proceeding."
 - (2) "You will be permitted to call witnesses on your behalf provided that so doing does not jeopardize institutional safety or correctional goals."
 - (3) "If restricted pending a hearing for this misbehavior report, you may write to the Deputy Superintendent of Security or his/her designee prior to the hearing to make a statement on the need for continued prehearing confinement."

NOTE: Paragraphs (2) and (3), above, shall not be included in misbehavior reports used in connection with violation hearings.
- (e) Employees of the Division of Parole and the Office of Mental Health may write misbehavior reports to the same extent as Department employees.

Subpart 251-4 Inmate Assistance

Section 251-4.1 Inmate assistant.

- (a) An inmate shall have the opportunity to pick an employee from an established list of persons who shall assist the inmate when a misbehavior report has been issued against the inmate if:
 - (1) the inmate is either illiterate or non-English speaking; or

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- (2) the inmate is sensorially disabled (in which case the inmate will be provided reasonable accommodations including, but not be limited to, the provision of a qualified sign language interpreter for a deaf and hard of hearing inmate who uses sign language to communicate); or
 - (3) the inmate is charged with drug use as a result of a urinalysis test; or
 - (4) the inmate is confined pending a Superintendent's hearing to be conducted pursuant to Part 254.
- (b) In other cases where a misbehavior report has been issued, the review officer or hearing officer, in his or her absolute discretion, may offer an inmate the opportunity to pick an inmate assistant where such assistance would enable the inmate to adequately comprehend the case in order to respond to the charges.

251-4.2 Assistant

The assistant's role is to speak with the inmate charged, to explain the charges to the inmate, interview witnesses and to report the results of those efforts to the inmate. He or she may assist the inmate in obtaining documentary evidence or written statements which may be necessary. The assistant may be required by the hearing officer to be present at the disciplinary or Superintendent's hearing.

Subpart 251-5 Timeliness

Section 251-5.1 Timeliness

- (a) Where an inmate is confined pending a disciplinary hearing or Superintendent's hearing, the hearing must be commenced as soon as is reasonably practicable following the inmate's initial confinement pending said disciplinary hearing or Superintendent's hearing, but, in no event may it be commenced beyond seven days of said confinement without authorization of the Commissioner or designee.
- (b) The disciplinary hearing or Superintendent's hearing must be completed within 14 days following the writing of the misbehavior report unless otherwise authorized by the Commissioner or designee. Where a delay is authorized, the record of the hearing should reflect the reasons for any delay or adjournment, and an inmate should ordinarily be made aware of these reasons unless to do so would jeopardize institutional safety or correctional goals.
- (c) Violation hearings must be completed within seven days of the writing of the misbehavior report.

Part 252 Violation Hearing

Section 252.1 Violation Officer

- (a) There shall be in each correctional facility one or more officers of the rank of sergeant or above who shall function as a violation officer, the number to be dependent upon the needs of the facility.
- (b) The violation officer shall be responsible for conducting the violation hearing.

252.2 Function of the violation hearing.

The purpose of the violation hearing shall be to hear and determine allegations of rule violations contained in the misbehavior reports referred for violation hearing.

252.3 Procedure

- (a) Upon receipt of a misbehavior report from the review officer, the violation officer shall:
 - (1) give a copy of the misbehavior report to the inmate at the violation hearing;
 - (2) allow the inmate to be present at the violation hearing, unless he or she refuses to attend; and
 - (3) allow the inmate to present documentary evidence, to submit a written statement on his or her behalf, and to reply to the charge. The inmate shall not have the right to call witnesses.
- (b) The violation officer may allow any evidence necessary to aid in the decision.

252.4 Non-English speaking and sensorially disabled inmates.

A non-English speaking inmate who cannot read and understand English must be given charges translated and provided with a translator who shall be present at the hearing. A deaf or hard of hearing inmate who uses sign language to communicate shall receive the assistance of a qualified sign language interpreter who

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shall be present at the hearing. A hard of hearing inmate who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.

252.5 Dispositions at violation hearing.

- (a) Upon affirming a charge, the violation officer may impose any two of the following penalties to be served within a 13-day period. Penalties may be suspended for a period of 13 days:
 - (1) loss of all or part of recreation (game room, day room, television, movies, yard, gym, special events) for up to 13 days;
 - (2) loss of maximum of two of the following privileges; one commissary buy, excluding items related to the inmate's health and sanitary needs, withholding of radio for up to 13 days, withholding of packages for up to 13 days, excluding perishables that cannot be returned;
 - (3) the imposition of one work task per day, other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit, or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than eight hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming; and
 - (4) counsel and/or reprimand.
- (b) Following the violation hearing, the inmate shall receive a written statement indicating the penalty imposed as soon as possible, but not later than 24 hours after the conclusion of the hearing.
- (c) Records of disposition of violation hearings shall not be used for any purpose, except as follows:
 - (1) a violation officer shall have available records of an inmate's suspended and uncompleted dispositions when conducting a hearing with regard to the inmate; and
 - (2) in determining the appropriate level at which an inmate's misbehavior report should be handled, a review officer may consider descriptions of an inmate's charges and dispositions of violation hearings dated within 14 days of the review.
- (d) All misbehavior reports for violation hearings are to be destroyed 14 days after the hearing is held. Dispositions for violation hearings shall not be made part of any inmate's institutional records.

252.6 Appeal Procedures.

Appeals must be submitted within 24 hours of receipt of the violation disposition to the Superintendent or designee. A decision shall be issued within seven days of receipt of the appeal.

252.7 Discretionary review by Superintendent.

At any time during which a penalty imposed pursuant to a violation hearing is in effect, the Superintendent may reduce the penalty.

Part 253 Disciplinary Hearing

Section 253.1 Establishment of the disciplinary hearing officer.

- (a) There shall be at each correctional facility one or more hearing officers of the rank of lieutenant or above who shall function as a disciplinary hearing officer, the number to be dependent upon the needs of the facility. The Superintendent may, in his or her discretion, designate some other employee to conduct disciplinary hearings.
- (b) The disciplinary hearing officer shall be responsible for conducting disciplinary hearings in an impartial manner. No person who has participated in any investigation of the acts shall be a hearing officer at a hearing relating to those acts, nor shall any person who has prepared or caused to be prepared the misbehavior report on which a hearing is held, act as the hearing officer on that charge.

253.2 Non-English speaking and sensorially disabled inmates.

A non-English speaking inmate who cannot read and understand English must be given a translated notice of the charges and statements of evidence relied upon and reasons for actions taken, and provided with a translator who shall be present at the hearing. A deaf or hard of hearing inmate who uses sign language to

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communicate shall receive the assistance of a qualified sign language interpreter who shall be present at the hearing. A hard of hearing inmate who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.

253.3 Formal Charge.

The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions of section 251-3.1 of this Directive.

253.4 Assistance

The inmate shall be provided with an assistant in accordance with the provisions of Subpart 251-4 of this Directive.

253.5 Inmate witnesses.

- (a) The inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals. If permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented.
- (b) Any witness shall be allowed to testify at the hearing in the presence of the inmate unless the hearing officer determines that so doing will jeopardize institutional safety or correctional goals. Where an inmate is not permitted to have a witness present, such witness may be interviewed out of the presence of the inmate and such interview tape recorded. The recording of the witness' statement is to be made available to the inmate at the hearing unless the hearing officer determines that so doing would jeopardize institutional safety or correctional goals.
- (c) An inmate may request a witness by either:
 - (1) informing his or her assistant or the hearing officer before the hearing; or
 - (2) informing the hearing officer during the hearing.

253.6 Method of determination.

Upon receipt of a misbehavior report from the review officer, the hearing officer shall commence the disciplinary hearing as follows:

- (a) The misbehavior report shall be served on the inmate at least 24 hours before the disciplinary hearing. If the inmate is confined and requests an assistant, the hearing may not be held until 24 hours after the assistant meets with the inmate.
- (b) The inmate shall be present at the hearing unless he or she refuses to attend, or is excluded for reason of institutional safety or correctional goals. The entire hearing must be electronically recorded.
- (c) The inmate, when present, may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on his or her behalf.

253.7 Dispositions and Mandatory Surcharge

- (a) Dispositions:
 - (1) Upon affirming a charge, the hearing officer may impose one or more of the following penalties:
 - (i) counsel and/or reprimand;
 - (ii) loss of one or more specified privileges, for a period of up to 30 days. Correspondence privileges may not be withheld; however, visiting privileges may be withheld with a particular person where the inmate has been involved in improper conduct in connection with visitation with such person. Visiting-related sanctions shall be imposed only in accordance with the provisions of the penalty chart contained in Appendix A of Directive #4403, "Inmate Visitor Program;"
 - (iii) confinement to a cell or room continuously or to a special housing unit under keeplock admission or on certain days during certain hours for a period of up to 30 days (see Directive #4933, Section III-E);
 - (iv) restitution for loss or intentional damage to property up to \$100; or

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- (v) the imposition of one work task per day, other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit, or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than eight hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming.
- (2) Any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed unless the hearing officer advised the inmate that the penalty shall run concurrently.
- (3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.
- (4) The disciplinary hearing officer may suspend imposition of any penalty for a period of up to 90 days. Any such suspended penalty may be imposed by a subsequent disciplinary hearing or Superintendent's hearing officer upon substantiating a charge of misbehavior in a subsequent hearing within a specific period.
- (5) As soon as possible, but no later than 24 hours after the conclusion of the hearing, the inmate shall be given a written statement of the disposition of the hearing. This statement shall set forth the evidence relied upon by the hearing officer in reaching his or her decision and also set forth the reasons for any penalties imposed.
- (b) Mandatory disciplinary surcharge. Upon the conclusion of a disciplinary hearing wherein the inmate admits the charges, or where the hearing officer affirms one or more of the charges, a mandatory disciplinary surcharge in the amount of five dollars (\$5.00) shall be assessed automatically against the inmate.

253.8 Appeal Procedures.

The inmate shall be advised of his or her right to appeal the disposition of the disciplinary hearing to the facility Superintendent. Such appeal shall be submitted in writing to the Superintendent within 72 hours of the receipt of the disposition. The Superintendent or designee shall issue a decision within 15 days of receipt of the appeal.

253.9 Discretionary review by Superintendent.

At any time during which a penalty imposed pursuant to a disciplinary hearing is in effect, the Superintendent may reduce the penalty.

Part 254 Superintendent's Hearing

Section 254.1 Hearing Officer

The person appointed to conduct the Superintendent's hearing shall be either the Superintendent, a deputy superintendent, captain or Commissioner's hearing officer employed by the department's central office, but the Superintendent may, in his or her discretion, designate some other employee to conduct the proceeding. The following persons shall not be appointed to conduct the proceeding: a person who actually witnessed the incident; a person who was directly involved in the incident; the review officer who reviewed the misbehavior report; a person who has investigated the incident.

254.2 Non-English speaking and sensorially disabled inmates.

A non-English speaking inmate who cannot read and understand English must be given a translated notice of the charges and statements of evidence relied upon and reasons for actions taken, and provided with a translator who shall be present at the hearing. A deaf or hard of hearing inmate who uses sign language to communicate shall receive the assistance of a qualified sign language interpreter who shall be present at the hearing. A hard of hearing inmate who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.

254.3 Formal charge.

The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions of section 251-3.1 of Subpart 251-3 of this Subchapter.

254.4 Notice and assistance.

The inmate shall be provided with an assistant in accordance with the provisions of Subpart 251-4 of this Subchapter.

254.5 Inmate witnesses.

- (a) The inmate may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals. If permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented.
- (b) Any witness shall be allowed to testify at the hearing in the presence of the inmate unless the hearing officer determines that so doing will jeopardize institutional safety or correctional goals. Where an inmate is not permitted to have a witness present, such witness may be interviewed out of the presence of the inmate and such interview tape recorded. The recording of the witness' statement is to be made available to the inmate at the hearing unless the hearing officer determines that so doing would jeopardize institutional safety or correctional goals.
- (c) An inmate may request a witness by either:
 - (1) informing his or her assistant or the hearing officer before the hearing; or
 - (2) informing the hearing officer during the hearing.

254.6 Method of determination.

- (a) Generally. Upon receipt of a misbehavior report from the review officer, the hearing officer shall commence the Superintendent's hearing as follows:
 - (1) The misbehavior report shall be served on the inmate at least 24 hours before the Superintendent's hearing. If the inmate is confined and requests an assistant, the hearing may not start until 24 hours after the assistant's initial meeting with the inmate.
 - (2) The inmate shall be present at the hearing unless he or she refuses to attend, or is excluded for reasons of institutional safety or correctional goals. The entire hearing must be electronically recorded.
 - (3) The inmate when present may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on his or her behalf.
 - (4) When applicable, the information identified in subparagraphs (b)(1)(i)(iv)(v) and (b)(2)(i)(ii) of this section, derived from the department's electronic databases, shall automatically appear on a computer generated hearing record sheet that shall be provided to the hearing officer for use at the hearing.
- (b) Mental state or intellectual capacity. When an inmate's mental state or intellectual capacity is at issue, a hearing officer shall consider evidence regarding the inmate's mental condition or intellectual capacity at the time of the incident and at the time of the hearing in accordance with this section.
 - (1) For the purposes of this section, an inmate's mental state shall be deemed at issue when:
 - (i) the inmate is classified as level 1 by the Office of Mental Health (OMH), as indicated on the hearing record sheet;
 - (ii) the inmate is charged with engaging in an act of self-harm in violation of rule 123.10 (item 270.2(B)(23)(i) of this Title), as indicated on the misbehavior report;
 - (iii) the incident occurred while the inmate was being transported to or from the Central New York Psychiatric Center (CNYPC), as alleged in the misbehavior report;
 - (iv) the inmate was an inpatient at the CNYPC within nine months prior to the incident, as indicated on the hearing record sheet;
 - (v) the incident occurred while the inmate was assigned to an OMH satellite unit or intermediate care program, as indicated on the hearing record sheet;
 - (vi) the incident occurred while the inmate was being escorted to or from an OMH satellite unit or intermediate care program, as alleged in the misbehavior report;

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- (vii) the hearing was delayed or adjourned, after an extension of time was obtained in accordance with section 251-5.1 of this Title, because the inmate became an inpatient at the CNYPC or was assigned to the OMH satellite unit; or
- (viii) it appears to the hearing officer, based on the inmate's testimony, demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been mentally impaired at the time of the incident or may be mentally impaired at the time of the hearing.
- (2) For the purposes of this section an inmate's intellectual capacity shall be deemed at issue when:
- (i) the incident occurred while the inmate was assigned to the Special Needs Unit (SNU) at Wende, Arthurkill or Sullivan Correctional Facilities, as indicated on the hearing record sheet;
 - (ii) the inmate has not scored above a sixty-nine (69) on any intelligence testing instrument administered to the inmate by the department and has not scored above a 3.0 grade level in any reading comprehension testing instrument administered to the inmate by the department, as indicated on the hearing record sheet; or
 - (iii) it appears to the hearing officer, based on the inmate's testimony, demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the hearing.
- (c) When an inmate's mental state or intellectual capacity is at issue, pursuant to subdivision (b) above, the hearing officer shall:
- (1) ask the inmate whether he or she understands the disciplinary charge, the purpose of the hearing and the role of the participants in the hearing;
 - (2) inquire of other witnesses to the incident, as may be called in accordance with section 254.5 of this Part, concerning any observations that they may have regarding the inmate's mental condition or intellectual capacity at the time of the incident; and
 - (3) where an inmate's mental state is at issue, out of the presence of the inmate and on a confidential tape, interview an OMH clinician as may be available concerning the inmate's mental condition at the time of the incident and the time of hearing; or
 - (4) where an inmate's intellectual capacity is at issue, out of the presence of the inmate and on a confidential tape, interview a correction counselor or teacher as may be available concerning the inmate's intellectual capacity at the time of the incident and the time of the hearing.
- (d) If it is determined that the inmate is unable to participate in the hearing process because the inmate does not understand the disciplinary charge, the purpose of the hearing and the role of the participants in the hearing, the hearing shall be adjourned until such time as the inmate is able to participate in the hearing process and, if necessary, a request for a time extension shall be made in accordance with section 251-5.1 of this Title.
- (e) If it is determined that the inmate is able to participate in the hearing process but is in need of assistance, the hearing shall be adjourned and the inmate shall be offered an assistant in accordance with section 251-4.1 of this Title. Pursuant to section 251-4.2 of this Title, the assistant may be required by the hearing officer to be present at the hearing.
- (f) If it is determined that the inmate is capable of proceeding with the hearing and a finding of guilt is subsequently made with regard to one or more of the charges, the hearing officer shall consider the inmate's mental condition or intellectual capacity at the time of the incident, if at issue in accordance with paragraphs (b)(1) or (2) above, respectively, in determining the appropriate penalty to be imposed under section 254.7 of this Part. In addition, if in light of the inmate's mental condition or intellectual capacity, the hearing officer believes that a penalty with regard to one or more of the charges would serve no useful purpose, the hearing officer may dismiss the charge or charges altogether. The written statement of the disposition of the charges, if any, shall, in accordance with section 254.7(a)(5) of this Part, reflect how the inmate's mental condition or intellectual capacity was considered.

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- (g) A copy of a written statement of the disposition of the charges issued in accordance with subdivision (f) above shall, if the disposition includes confinement to SHU and the inmate is housed in a correctional facility designated by OMH as level 1 or 2, be provided to the OMH unit at the facility for use in connection with any mental health assessments. In a correctional facility designated by OMH as level 1, the inmate's status shall also be the subject of the next scheduled meeting of the facility's Special Housing Unit Case Management Committee in accordance with Part 310 of this Title.

254.7 Dispositions and Mandatory Surcharge

(a) Dispositions:

- (1) Where the inmate admits the charges, or where the hearing officer affirms the charges on the basis of the evidence, the hearing officer may impose one or more of the following penalties:
 - (i) counsel and/or reprimand;
 - (ii) loss of one or more specified privileges, for a specified period. Correspondence and/or visiting privileges may be withheld with a particular person where the inmate has been involved in improper conduct in connection with correspondence and/or visitation with such person. Visiting-related sanctions shall be imposed only in accordance with the provisions of the penalty chart contained in Appendix A of Directive #4403, "Inmate Visitor Program;"
 - (iii) confinement to a cell or room continuously or to a special housing unit continuously or on certain days during certain hours for a specified period;
 - (iv) confinement as authorized under subparagraph (iii) of this subdivision, but on a restricted diet administered in accordance with the provisions of Directive #4933, Section 304.2;
 - (v) restitution for loss or intentional damage to property to be made from an inmate's existing and future funds;
 - (vi) forfeiture of money confiscated as contraband;
 - (vii) loss of a specified period of good behavior allowance ("good time"), subject to restoration as provided in Subchapter B of this Directive;
 - (viii) the imposition of one work task per day, other than a regular work assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the inmate's housing unit, or other designated area. Inmates given such disposition who are participating in a regular work assignment shall not be required to work more than eight hours per day. The eight-hour limitation excludes such non-work assignments as educational or vocational school programming; or
 - (ix) where applicable, removal from the elected inmate grievance resolution committee (IGRC) and/or loss of the privilege of participating as a voting member of the IGRC for a specified period of time.
 - (2) Any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed unless the hearing officer advised the inmate that the penalty shall run concurrently.
 - (3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.
 - (4) The hearing officer may suspend imposition of any penalty for a period of up to 180 days. Any such suspended penalty may be imposed by a subsequent disciplinary hearing or Superintendent's hearing officer upon substantiating a charge of misbehavior or in a subsequent hearing within a specific period.
 - (5) As soon as possible, but no later than 24 hours after the conclusion of the hearing, the inmate shall be given a written statement of the disposition of the hearing. This statement shall set forth the evidence relied upon by the hearing officer in reaching his or her decision and also set forth the reasons for any penalties imposed and, if applicable, pursuant to section 254.6(b) of this Title, reflect how the inmate's mental condition or intellectual capacity was considered.
- (b) Mandatory disciplinary surcharge. Upon the conclusion of a Superintendent's hearing wherein the inmate admits the charges, or where the hearing officer affirms one or more of the charges, a mandatory

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disciplinary surcharge in the amount of five dollars (\$5.00) shall be assessed automatically against the inmate.

254.8 Appeal procedures.

Any inmate shall have the right to appeal the disposition of any Superintendent's hearing to which he or she was a party, to the Commissioner within 30 days of receipt of the disposition. The Commissioner or designee shall issue a decision within 60 days of receipt of the appeal. The Commissioner or designee may:

- (a) affirm the hearing disposition;
- (b) modify the hearing disposition by dismissing certain charge(s) and/or reducing the penalty imposed;
- (c) reverse the hearing disposition; or
- (d) reverse the hearing disposition and order a new hearing. Whenever a new hearing is ordered pursuant to this subdivision, the penalty imposed at the new hearing may not exceed the penalty imposed at the original hearing.

254.9 Discretionary review by Superintendent.

At any time during which a penalty imposed pursuant to a Superintendent's hearing is in effect, the Superintendent may reduce the penalty.

SUBCHAPTER B PROCEDURES FOR GRANTING GOOD BEHAVIOR ALLOWANCES

Part 260 General Provisions

Part 261 Time Allowance Committees

Part 262 Granting of Time Allowances

Part 263 Stay of Good Behavior Allowance

Part 260 General Provisions

Section 260.1 Application of good behavior allowances.

- (a) The opportunity to earn good behavior allowances offers inmates a tangible reward for positive efforts made during incarceration.
- (b) For those inmates serving indeterminate sentences imposed for crimes committed prior to September 1, 1967, good behavior allowances shorten the amount of time to be served prior to parole consideration.
- (c) For all inmates serving determinate or indeterminate sentences (other than life sentences) who are not granted parole or a reparole, but who nevertheless have performed well within the correctional facilities, good behavior allowances can be used to obtain release under supervision and to demonstrate prior to expiration of the term of the sentence that they can follow acceptable behavior patterns in the community as well as in a correctional facility.

260.2 Nature of allowances.

Good behavior allowances are in the nature of a privilege to be earned by the inmate and no inmate has the right to demand or to require that any good behavior allowance be granted.

260.3 Criteria for allowances.

- (a) All recommendations and decisions must be made through completely impersonal, impartial and fair and reasonable evaluations.
- (b) In evaluating the amount of allowance to be granted, the statutory criteria (i.e., good behavior, efficient and willing performance of duties assigned, progress and achievement in an assigned treatment program) shall be viewed in the light of the following factors:
 - (1) the attitude of the inmate;
 - (2) the capacity of the inmate; and
 - (3) the efforts made by the inmate within the limits of his or her capacity.

260.4 Forfeitures and disallowances.

- (a) An inmate shall not automatically forfeit or automatically be disallowed any good behavior allowance by reason of the fact that he or she has been confined to a cell or room or in a special housing unit for a period of time.
- (b) A disposition involving loss of a specified period of good behavior allowance made in a Superintendent's hearing under Part 254 of this Directive shall be deemed to be tentative until such time as it actually affects consideration for parole or for conditional or other release, and shall then either be confirmed or be modified by the Commissioner or designee.

Part 261 Time Allowance Committees**Section 261.1 Establishment of time allowance committees.**

- (a) There shall be in each correctional facility a committee to be known as the time allowance committee.
- (b) Such committee shall consist of at least three members designated by the Superintendent. The Superintendent shall appoint one of the members as chairman. The members shall be selected from a list of eight employees preselected by the Superintendent and filed with the Commissioner. The list of names filed by the Superintendent shall be deemed approved by the Commissioner unless and until the Commissioner removes an individual from the list in writing.
- (c) Each such committee shall have a chairman designated by the Superintendent from among the members and the chairman shall be responsible for the proper operation of the committee.

261.2 Role of time allowance committees.

The purpose of the time allowance committee shall be to make recommendations as to the amount of good behavior allowance to be granted to inmates who are eligible to be considered for such allowance.

261.3 Procedure of time allowance committees.

- (a) For inmates entitled to be considered for good behavior allowances, the file of each such inmate shall be considered in the fourth month preceding the month of the earliest possible date he or she would be entitled to consideration for release if that date depends on the amount of good behavior allowance to be granted.
- (b) The committee shall consider the entire file of the inmate, and then shall decide upon a recommendation as to the amount of good behavior allowance to be granted, applying the principles set forth in sections 260.3 and 260.4 of this Directive. At such meetings, conducted in accordance with subdivision (a) of this section, any inmate who has had a recommended loss of good behavior allowance from a Superintendent's hearing shall appear before the committee. The committee shall consider whether, and set forth its recommendation as to whether, the inmate's subsequent behavior merits restoration of all or part of the lost allowance and its reasons therefor.
- (c) The committee shall not recommend the granting of the total allowance authorized by law or the withholding of any part of the allowance in accordance with any automatic rule, but shall appraise the entire institutional experience of the inmate and make its own determination.
- (d) The committee shall promptly report the results of its deliberations in writing to the Superintendent. Such report shall set forth its recommendation for the time to be allowed for the period under consideration and the reasons for the recommendation.
- (e) All recommendations of the committee shall be pursuant to a decision of a majority of the members, but any member who disagrees shall note his or her recommendations and the reasons therefor on the report of the committee. Where a majority of the members are unable to agree upon a recommendation, the chairman shall report such fact and each member shall report his or her recommendation and reasons in the report made by the chairman.
- (f) Where the time allowance committee has recommended an allowance which will extend the period of incarceration beyond the earliest or any previously established release date, the inmate may be scheduled to reappear before another time allowance committee in accordance with the direction of the Commissioner, Superintendent or committee chairperson.

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261.4 Time allowance hearing.

- (a) Where the committee has determined that there may be sufficient reason present after a review of the file not to recommend the granting of the total allowance authorized, other than time lost as the result of a Superintendent's hearing, or upon direction of the superintendent pursuant to subdivision (b) of section 263.2, the committee shall schedule a time allowance committee hearing to be held for the purpose of determining if sufficient reason is present not to recommend the granting of the total allowance authorized and to determine the amount of time to be recommended for allowance and the reasons for the recommendation.
- (b) At least 48 hours prior to the time allowance hearing and for the purposes stated in subdivision (a) of this section, the chairman shall designate an employee to file and deliver to the inmate a formal notice of such hearing. The formal notice shall contain a written specification of the particulars that caused the time allowance committee to believe that there may be sufficient reason not to grant the total allowance authorized.
- (c) The chairman of the time allowance committee shall designate an employee to furnish assistance to the inmate. Such employee shall be of the inmate's choice selected from a list established by the Superintendent or any other employee upon approval of the Superintendent.
- (d) Such employee shall explain the nature of the hearing and the particulars specified in the formal notice. The employee also shall ask the inmate whether there is any factual matter that can be presented in his or her behalf and shall investigate any reasonable factual claim that the inmate may make.
- (e) A written report of the action taken and the results of the investigation, if any, including documentary evidence and witness statements shall be delivered to the chairman of the time allowance committee prior to the commencement of the special meeting.
- (f) The time allowance committee shall reconsider the entire file of the inmate, shall interview the inmate, shall consider any factual matter brought to its attention by the inmate or the person designated to provide assistance to the inmate, and may in the committee's discretion interview any person who may have information relevant to the hearing.
- (g) The time allowance committee shall advise the inmate of any factual circumstances that appear to support a determination not to recommend the granting of the total time allowance authorized, and shall afford the inmate the opportunity to comment thereon and to make any statement he or she may care to submit in respect to his or her time allowance.
- (h) Where the time allowance committee is satisfied, after hearing the inmate, that the record of the proceeding contains substantial evidence in support of a determination not to grant the total allowance authorized, they shall set the amount of time they will recommend to be withheld and shall so advise the Superintendent as provided for in section 261.3(d) of this Part.
- (i) In any case where the time committee is not satisfied, after considering all available evidence, that the record of the proceeding contained substantial evidence to support the determination not to grant the total allowance authorized, they shall recommend the granting of a total allowance authorized and shall so advise the Superintendent as provided for in section 261.3(d) of this Part.
- (j) A written report, including a statement of the reasons for the recommendation, shall be provided to the inmate following review by the Superintendent and by the Commissioner or designee.

Part 262 Granting of Time Allowances

Section 262.1 Procedure for granting good behavior allowances.

- (a) After consideration of the file by the committee, and after fulfilling any other requirements set forth in this Subchapter, the committee shall make a recommendation to the Superintendent as to the amount of good behavior allowance to be accorded to the inmate.
- (b) The Superintendent shall promptly review the report of the committee and shall endorse any comments he or she may deem appropriate thereon and immediately forward the report of the committee and comments, if any, to the Commissioner or designee.

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- (c) The Commissioner or designee will then transmit to the Superintendent an order either confirming or modifying the amount of time to be granted, or remand the matter back to committee for re-evaluation and a hearing in accordance with Section 261.4
- (d) The time allowance specified in the final order of the Commissioner or designee shall be the good behavior allowance to be granted to the inmate. The grant of the good behavior allowance shall be contingent on the inmate's continued good behavior, efficient and willing performance of duties assigned, and progress and achievement in an assigned treatment program. The inmate shall be given a copy of this determination promptly.

Part 263 Stay of Good Behavior

Section 263.1 Stay of good behavior allowance.

Between the time a decision has been made with respect to good behavior allowance and the time that an inmate would be eligible for parole consideration or for conditional or other release, the award of any good behavior allowance that has been granted shall be stayed and such allowance shall be suspended as provided by section 263.2 of this Part.

263.2 Procedure for stay of good behavior allowance.

(a) Superintendent's Hearing.

- (1) The decision directing that a misbehavior report be heard in a Superintendent's hearing against an inmate shall stay the award of any good behavior allowance that has been granted such inmate, and such allowance shall be suspended and of no force and effect until a final decision has been made in the Superintendent's hearing.
- (2) At the conclusion of the hearing, if the disposition does not involve loss of good behavior allowance, the allowance previously granted shall be reinstated.
- (3) Where the disposition does involve loss of good behavior allowance, the disposition shall automatically be reviewed by the Commissioner or designee.
- (4) If the hearing decision is affirmed, the recommended loss of good behavior allowance shall be applied to the inmate's conditional release date. Any modification or other decision rendered by the Commissioner or designee shall be applied as specified in such decision. The inmate shall be given a copy of this determination promptly.

(b) Disregard for statutory criteria.

- (1) If an inmate who has been granted a good behavior allowance subsequently acts in disregard of the statutory criteria for good behavior allowances (i.e. good behavior, efficient and willing performance of duties assigned, and progress and achievement in an assigned treatment program), the superintendent may direct the time allowance committee to conduct a hearing in accordance with section 261.4 of this Title to reconsider the amount of good time to be granted.
- (2) The provisions of Part 262 and 263 shall apply after any hearing conducted pursuant to this subdivision.

