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| SUBJECT: Disciplinary Procedures for the Serious Misconduct Panel | PAGE <u> 1 </u> OF <u> 8 </u> |
| | NUMBER: 56-DSC-03 |
| RULE/CODE REFERENCE: 5120-9-06, 5120-9-07, 5120-9-08, 5120-9-8.1, 5120-9-09, 5120-9-10 | SUPERSEDES: New |
| RELATED ACA STANDARDS: 4-4226, 4-4227, 4-4230 thru 4-4248, 4-4399 | EFFECTIVE DATE: April 24, 2017 |
| | APPROVED:  |

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

This policy sets forth requirements for hearing the most serious cases in the inmate disciplinary process that may result in placement in extended restrictive housing.

III. APPLICABILITY

This policy applies to all employees and inmates who are involved in the inmate disciplinary process.

IV. DEFINITIONS

Charging Official - The employee who issued a conduct report to an inmate for an alleged rule violation.

Disciplinary Case Number - A unique identifier assigned to each disciplinary case that contains the following three elements: (1) abbreviation of the institution's name, (2) two-digit number identifying the year in which the case was generated, and (3) a sequential ordering number (e.g., OSR-00-00000).

Extended Restrictive Housing (ERH) - Housing that separates an inmate from the general population and restricts the inmate to their cell twenty-two (22) hours or more per day for a period of thirty (30) days or longer.

Hearing Officer - The person(s) designated by the managing officer to conduct an informal hearing with an inmate who received a conduct report.

Restrictive Housing (RH) - Housing that separates an inmate from the general population and restricts the inmate to their cell twenty-two (22) hours or more per day.

Rules Infraction Board (RIB) - A panel of two (2) correctional staff who have been selected by the managing officer and who have received training issued by Legal Services. The RIB has the authority to determine guilt and issue penalties for violations of the inmate rules of conduct for offenses that would not otherwise qualify for placement in ERH.

Serious Misconduct Panel (SMP) - A panel of two (2) correctional staff who have been selected by a regional director and trained by Legal Services who are authorized to conduct all misconduct hearings for offenses that would qualify for placement in ERH. The SMP makes decisions on culpability and makes recommendations for appropriate housing assignments based upon the results of the hearing. The panel must consist of two (2) individuals who are not employed in the same prison where the behavior leading to the recommendation for ERH placement occurred.

Statement of Loss/Injury - A written or oral statement that describes the effect of an inmate's rules infraction on the charging official, other institutional staff, other inmates, members of the general public, or against state property.

V. **POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) that the inmate disciplinary process will be carried out promptly and fairly, allow individuals directly affected by an inmate rule infraction to provide input into the disciplinary process, to not punish inmates for being seriously mentally ill, and to abide by the Administrative Rules.

VI. **PROCEDURES**

A. **Serious Misconduct Panel Member Certification**

1. No employee may serve as a member of the SMP unless the employee has completed certification training issued by Legal Services.
2. A staff member who issued the conduct report, witnessed or investigated the alleged violation cannot serve on the SMP in relation to that violation.
3. The SMP shall consist of two (2) employees designated by the regional director, sitting as a panel. Each panel shall consist of a chairperson who manages the hearing and a secretary who prepares a record of the proceedings. The SMP shall have the authority to determine guilt and recommend placement in ERH or other appropriate placement.
4. The SMP shall not consist of employees from the prison where the charged misconduct occurred.

B. **Time of SMP Hearing**

1. Inmates must be notified by the assigned hearing officer that they have at least twenty-four (24) hours to prepare for their SMP hearing. The inmate shall be advised of and may request from the hearing officer a seven (7) calendar day extension from the date of service of the conduct report to prepare for the hearing. The inmate may waive the seven (7) day extension. If the inmate appears before the SMP prior to seven (7) calendar days

after being advised by the hearing officer and the inmate has not waived the extension, the SMP chairperson shall postpone the hearing until the required time period is satisfied.

2. Inmates charged with a rule violation must be scheduled for a hearing before the SMP as soon as practicable but no later than twenty-one (21) calendar days after the alleged violation is reported unless the hearing is prevented by exceptional circumstances, or unavoidable delays. The exceptional circumstances or unavoidable delays must be documented on the electronic audio recording of the SMP hearing and the disposition of the SMP.
3. If the hearing officer has indicated on the Hearing Officer Report (DRC4020) that the inmate is on the mental health caseload, the SMP chairperson shall determine from the DOTS Portal CLASI screen whether the inmate is listed as a C1, C2 or “MRDD.”
 - a. If the inmate is listed as a C2, the SMP hearing shall continue on the schedule listed in paragraphs VI.B.1 and VI.B.2 above without further action needed.
 - b. If the inmate is listed as a C1 or “MRDD,” the SMP chairperson shall determine whether a Restrictive Housing: Mental Health Assessment Report (DRC5205) or electronic equivalent has been provided by the mental health treatment team for that inmate. Pursuant to DRC policy 67-MNH-31, Mental Health Procedures for TPU and Death Row Housing Units, the mental health treatment team is required to complete this process in seven (7) calendar days or less. The SMP shall make necessary arrangements to obtain the Restrictive Housing: Mental Health Assessment Report (DRC5205) from the institution of the inmate’s current placement in short-term restrictive housing. Once the Restrictive Housing: Mental Health Assessment Report (DRC5205) or electronic equivalent has been received by the SMP, the hearing shall be scheduled. If mental health staff have requested to participate to give assistance or provide input into the proceedings, their attendance at the hearing shall be arranged by the SMP and documented on the Record of Proceedings of RIB (DRC4025). No C1 or “MRDD” identified inmate shall be heard by the SMP without the SMP being provided the Restrictive Housing: Mental Health Assessment Report (DRC5205) or electronic equivalent.
4. The SMP chairperson may postpone or continue a hearing for a reasonable period and good cause. The period of postponement or continuance and the reason must be documented on the electronic audio recording of the SMP hearing and the disposition of the SMP. Good cause includes:
 - a. Preparation of the inmate’s defense;
 - b. Illness or unavailability of the inmate, relevant witness, or charging official;
 - c. Further investigation of factual matters relevant to the charge(s);
 - d. Pending criminal prosecution;
 - e. Inmate’s unacceptable behavior during the hearing process;
 - f. Inmate’s refusal to participate in a reasonable manner; or
 - g. The inmate cannot meaningfully participate due to the inmate’s physical or mental condition.

- h. Pending completion of Restrictive Housing: Mental Health Assessment Report (DRC5205) by Mental Health staff.

C. Procedural Requirements of SMP Hearing

1. All hearings of the SMP must be recorded digitally and saved on the institution's server named by the disciplinary case number. All digital recordings of the hearings must be accessible to the managing officer and designees, the Director and designees, and the Division of Legal Services.
2. Inmates must have an opportunity to make a statement and present documentary evidence at the SMP hearing in addition to the rights set forth in rule 5120-9-08.1 of the Administrative Code regarding the discipline process. The inmate shall be asked to admit or deny the rule violation. The SMP shall proceed with the hearing in accordance with the inmate's plea.
3. An inmate charged with a rule violation must be present at the hearing before the SMP, unless the inmate refuses to appear or engages in disruptive behavior around or during the hearing that is a threat to institutional order, safety, or security.
4. If the inmate refuses to appear, the SMP must document on the disposition of the SMP and on audio that the inmate was advised of his/her right to appear at the hearing, that he/she refused to appear, and the name of the employee who advised the inmate and received his/her refusal.
5. If the inmate engages in disruptive behavior, the SMP must document how the inmate's behavior was a threat to institutional order, safety, or security on the electronic audio record and the disposition of the SMP. The regional director/designee shall review any refusal or specific disruptive behavior resulting in an inmate's absence from the RIB hearing.
6. The SMP must enter automatically a plea of not-guilty for the inmate at any hearing where the inmate is not present as a result of a refusal or specific disruptive behavior.
7. The SMP chairperson shall postpone the hearing if the chairperson believes 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 SMP hearing shall only be rescheduled in accordance with the recommendation of mental health staff.
8. The SMP panel may, at any time prior to or during an SMP hearing, change the designation of the rule or rules alleged to have been violated based on the conduct report, testimony, or evidence presented at the SMP 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 SMP panel's disposition. If the change is made during the SMP hearing, the inmate may request a reasonable continuance. If the continuance is granted, the SMP hearing may recommence from the point of the continuance.

9. The SMP may refer the case to the RIB if the amendment indicates that the referring institution can address the charge locally and the charged misconduct does not appear to qualify for placement in ERH.

D. SMP Hearing Witnesses

1. The SMP shall review the inmate's requests for witnesses and advise the inmate of any preliminary determinations made. The SMP may deny a requested witness for relevancy, redundancy, unavailability or security reasons.
2. Witnesses shall testify and be examined in the manner set forth in paragraph (G) of rule 5120-9-08.1 of the Administrative Code.
3. The inmate charged with a rule violation must not be present during the testimony or consideration of information from a confidential source, or the evaluation of the credibility of a confidential source.
4. The SMP shall evaluate the credibility of each confidential source using the factors set forth in paragraph (I) of rule 5120-9-08.1 of the Administrative Code. The SMP shall also determine whether the entire statement from the confidential source is confidential or whether any of it may be disclosed to the inmate charged with the violation without disclosing the identity or jeopardizing the safety of the confidential source. The SMP shall record its evaluation on the Confidential Information/Credibility of Witness (DRC4176).
5. During the SMP hearing with the inmate, the victim shall be permitted to either orally testify (institutional staff or another inmate) or provide a written statement (institutional staff, another inmate or a member of the general public) to the SMP as to the effects the inmate's action had on him/her.
6. The charging official shall appear if requested by the inmate, if the SMP has questions for the charging official or if the charging official requests to appear and speak at the hearing.
7. The SMP 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 SMP panel may take testimony or receive evidence in any form or manner it deems appropriate.

E. SMP Deliberations

1. The charging official, the victim or other witnesses shall not be permitted to participate in the deliberations of the SMP.
2. The inmate charged with the rule violation shall not be present during deliberations.
3. The SMP shall consider the effect of any relevant information obtained from available mental health assessments, input provided by the mental health treatment team if a member participated in the hearing and/or the inmate's mental health caseload status.

4. The SMP shall review video evidence if video evidence is available.
5. The SMP shall gather evidence from staff, video, documents and statements from the charged inmate that pertain to the inmate's guilt or innocence and shall gather the same forms of available evidence that pertain to the proper placement for the inmate if found guilty.
6. The decision of the SMP must be based solely on information obtained in the hearing process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents.

F. SMP Dispositions

1. The SMP shall make an audio and written record of its determination of guilt. The SMP shall also make an audio and written record of its recommended housing placement for the inmate.
2. No inmate shall be found to have violated a rule based solely on his or her past conduct.
3. Past conduct may be considered when determining issues such as credibility and intent; or in considering suitable penalties.
4. 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 regional director, who shall cast the deciding third vote. The regional director shall vote only after reviewing the oral and written record of the hearing.
5. If the inmate is found guilty by the SMP, then the SMP must notify the inmate that the decision may be appealed to the Division of Legal Services within fifteen (15) calendar days of receipt of the SMP's disposition. The inmate may use a disciplinary appeal form or direct a letter to the Division of Legal Services outlining his/her appeal.
6. At any hearing where the inmate is not present as a result of a refusal or specific disruptive behavior, and where the inmate is found guilty by SMP, then the inmate must be served with the SMP's disposition and notified that it may be appealed to the Division of Legal Services within fifteen (15) calendar days of receipt of the SMP's disposition. The inmate may use a disciplinary appeal form or direct a letter to the Division of Legal Services outlining his/her appeal.
7. Once a disposition is issued, the SMP chair shall notify the Division of Legal Services of a completed SMP hearing by sending an email to DRC.SMPappeals@odrc.state.oh.us indicating the case number, date of the hearing and the date the disposition was issued to the inmate.
8. Documents containing information from confidential sources that are generated in the disciplinary process must be kept separately from the inmates' files in a properly secured

locked container that is in a location precluding inmate access. Access must be limited to approved employees.

9. If the inmate is found not guilty of an alleged rule violation, this fact will not appear on the inmate's disciplinary record.

G. Administrative Review and Appeals

1. An inmate may appeal the decision of the SMP by submitting the form designated for that purpose to DRC's Division of Legal Services within fifteen (15) calendar days from the inmate's receipt of the SMP's disposition. The decision and the inmate's appeal shall initially be reviewed by an attorney assigned to the regional director for this purpose.
 - a. The appeal shall state the inmate's allegations of procedural error and/or objections to the SMP's determination of guilt or recommended disposition.
 - b. The Division of Legal Services shall ensure that the decision of the SMP is supported by sufficient evidence, that there was substantial compliance with applicable procedures, and that the recommended disposition meets the minimum requirements of the recommended placement.
2. In the event the inmate does not submit an appeal, the Division of Legal Services shall conduct a standard review of all SMP guilty findings to ensure that the SMP followed the procedures, rights and obligations set forth in this policy and AR 5120-9-08.1.
3. The Division of Legal Services shall take action on the appeal or review the SMP's decision within thirty (30) calendar days of the receipt of the appeal or the expiration of the appeal deadline. The Division of Legal Services shall take one of the following actions:
 - a. If the decision recommends placement in an ERH assignment or an appropriate mental health unit, forward the decision and recommendation of the SMP with the inmate's appeal or the standard review to the Bureau of Classification and Reception (BOCR) advising whether the decision is supported by sufficient evidence, whether all applicable procedures were followed and whether the recommended disposition meets the minimum requirements for the recommended placement; or,
 - b. If the decision recommends referral to an institutional classification committee for consideration of a general population security increase and/or transfer, forward the decision and recommendation of the SMP with the inmate's appeal or the standard review to the managing officer of the institution advising whether the decision is supported by sufficient evidence, whether all applicable procedures were followed and whether the recommended disposition meets the minimum requirements for the recommended placement; or,
 - c. Return the case to the SMP for rehearing due to a violation of applicable procedures.

4. The Division of Legal Services shall notify the inmate of the action taken and the next steps in the process.
 - a. If the decision recommends placement in an ERH assignment or an appropriate mental health unit, the final decision shall be made in accordance with the procedures set forth in this policy and AR 5120-9-08.1.
 - b. If the decision recommends referral to an institutional classification committee, the final decision shall be made in accordance with the procedures set for in rule [5120-9-53](#) of the Administrative Code.
5. A designee of the BOCR shall review the decision of the SMP, any appeal submitted by the inmate and the recommendation of the Division of Legal Services before making a final decision as to the inmate's housing assignment.
 - a. A final decision shall be made within thirty (30) calendar days of the referral from the Division of Legal Services.
 - b. The inmate shall be notified of the decision within three (3) business days of the date of the decision and shall be advised of the option to appeal the final decision on housing placement to the chief of BOCR. An appeal shall be submitted within fifteen (15) calendar days of the inmate's receipt of the final decision.
6. The chief of BOCR shall consider all appeals of final decisions on housing placements. In making the decision, the chief of BOCR shall consider the recommendation of the SMP, the information presented by the inmate, the recommendation of the Division of Legal Services and the final decision on the housing assignment made by a BOCR designee.
7. An appeal to the chief of BOCR shall be decided within fifteen (15) calendar days of the receipt of the inmate's appeal. The inmate shall be issued a written decision within three (3) business days of the final decision.

Related Department Forms:

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| Incident Report | DRC1000 |
| Statement of Loss/Injury | DRC1652 |
| Conduct Report | DRC4018 |
| Hearing Officer Report | DRC4020 |
| Confidential Information/Credibility of Witness | DRC4176 |