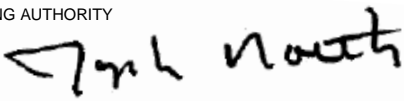
 NEW YORK STATE Corrections and Community Supervision DIRECTIVE	TITLE Standards Behavior & Allowances		NO. 4932
			DATE 11/1/2023
SUPERSEDES DIR #4932 Dtd. 10/02/18	DISTRIBUTION A B	PAGES PAGE 1 OF 33	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section XVI	APPROVING AUTHORITY 		

- I. STANDARDS OF BEHAVIOR - POLICY AND APPLICABILITY:** It is the policy of the Department of Corrections and Community Supervision (DOCCS) to eliminate, mitigate, and respond to disparities so as to ensure a fair and equitable distribution of benefits and burdens in the placement of incarcerated individuals in housing unit assignments, institutional work assignments, and programs; and the proper post release supervision of releasees to include, but not limited to, supervision level, violation processes, and early discharge/merit terminations. Moreover, it is our policy that any DOCCS administrative processes associated with any incarcerated individual or releasee who may be subject to discipline and grievances are conducted fairly, to ensure that decisions are not influenced by stereotypes or biases based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status. To do so, the Department shall provide ongoing staff training, monitoring, and auditing systems to ensure compliance with all provisions of this policy. The Department shall develop programs to help incarcerated individuals work and live together regardless of their identity and backgrounds.
- A. The rules and regulations set forth in this directive establish procedures to supplement the Department's ordinary programs for incarcerated individual indoctrination, guidance, counseling, and training. They are to be applied for the following purposes:
1. Implementation of standards of behavior where an incarcerated individual either:
 - a. Violates a rule or regulation governing behavior.
 - b. Fails or refuses to comply with an instruction given by an employee of the Department acting within the scope of their official duties in giving such instruction.
 - c. Attempts to escape, or escapes, or engages in any other unlawful conduct.
 2. Administration of procedures for granting good behavior allowances ("good time").
 3. The provisions of this directive shall apply to all correctional facilities in the Department.
- B. General Policies on Discipline of Incarcerated Individuals
1. 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 incarcerated individuals and the morale of the facility.

2. Just as the sentencing of incarcerated individuals by courts, 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:
 - a. The particular circumstances involved.
 - b. The overall behavior pattern of the incarcerated individual.
 - c. 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.
3. Disciplinary action shall be taken only in such measures and degree as is necessary to:
 - a. Regulate an incarcerated individual's behavior within acceptable limits.
 - b. Assist in achieving compliance by the entire incarcerated population with required standards of behavior.
 - c. Preserve the confidence of all concerned (i.e., the incarcerated population and the staff) in the administration's sincere belief in and determination to maintain the required standards of behavior.
 - d. All control of incarcerated individual 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).
4. Disciplinary measures should not be overly severe. A sound disciplinary program relies upon certainty and promptness of action rather than upon severity.
5. Disciplinary action must never be arbitrary or capricious, or administered for the purpose of retaliation or revenge.
6. Corporal punishment is absolutely forbidden for any purpose and under all circumstances.
7. 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 incarcerated individuals 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 incarcerated individual or to others.

II. DEFINITIONS

- A. Pre-Hearing Confinement: The time from when the charged individual is initially confined until the time the hearing is complete.
- B. Classification Level: An assessment of an incarcerated individual's threat to institutional safety and security that determines the level of supervision, circumstances of work, job, or program assignment(s), and the requirements for escort and restraints during movement inside as well as outside the institution.
- C. Housing Unit: A room, pod, cell block, or dormitory to which an incarcerated individual is assigned for sleeping and storage of personal items and clothes.

- D. Racial Disparity: Disparate treatment influenced by stereotypes or bias based on race, color, or ethnicity.
- E. Institutional Discipline: System for governing incarcerated individual conduct that specifies prohibited acts and the penalties that may be imposed, if violated.
- F. Institutional Job: Assignment of an incarcerated individual to a particular work or task for which they are compensated monetarily or otherwise; or are not compensated in any way.
- G. Program Assignment: Assignment of an incarcerated individual to a therapeutic, academic, or vocational class that affords an alternate opportunity to earn wages and shall be based on a current objective assessment of an incarcerated individual's program plan, so their needs are addressed, and they are prepared for release.
- H. Incarcerated Individual Grievance: A complaint filed with an incarcerated grievance program clerk about the substance or application of any written or unwritten policy, regulation, procedure, or rule of DOCCS or any program units; or the lack of a policy, regulation, procedure, or rule. A letter addressed to facility or Central Office staff is not a grievance.
- I. Segregated Confinement: Correction Law, Section 2, subdivision 23 – Segregated confinement is defined as the confinement of an incarcerated individual in any form of cell confinement for more than 17 hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible.
- J. Special Housing Units (SHU): SHUs in maximum security facilities, as well as in designated medium security facilities, shall consist of single or double-occupancy cells grouped so as to provide separation from the general population, and may be used to house incarcerated individuals confined to such units pursuant to Directive #4933, "Special Housing Units."
- K. Residential Rehabilitation Unit (RRU): Correction Law, Section 2, subdivision 34 - RRU is defined as a separate housing unit used for therapy, treatment, and rehabilitative programming of incarcerated people who have been determined to require more than 15 days of segregated confinement pursuant to department proceedings. Such units shall be therapeutic and trauma-informed and aim to address individual treatment and rehabilitation needs and underlying causes of problematic behaviors. RRUs will house not only incarcerated individuals from Special Housing Units (SHU) but also "special populations" who commit acts of misbehavior and have been diverted from SHU, as well as individuals placed in Protective Custody/Involuntary Protective Custody or Administrative Segregation.
- L. Residential Mental Health Unit (RMHU): Housing for incarcerated individuals with serious mental illness (SMI) that is operated jointly by the Department and the Office of Mental Health and is therapeutic in nature.

Such units shall not be operated as disciplinary units, and decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the incarcerated individual and maintenance of adequate safety and security on the unit.

- M. Serious Mental Illness (SMI): An incarcerated individual has a SMI when they have been determined by a mental health clinician to meet at least one of the following criteria:
1. They have a current diagnosis of, or have been diagnosed at the initial or any subsequent assessment conducted during the incarcerated individual's segregated confinement with, one or more of the following types of Axis I diagnoses, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, and such diagnoses shall be made based upon all relevant clinical factors, including but not limited to symptoms related to such diagnoses:
 - a. Schizophrenia (all sub-types)
 - b. Delusional Disorder
 - c. Schizophreniform Disorder
 - d. Schizoaffective Disorder
 - e. Brief Psychotic Disorder
 - f. Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal)
 - g. Psychotic disorder not otherwise specified
 - h. Major depressive disorders
 - i. Bipolar Disorder I or II
 2. They are actively suicidal or have engaged in a recent serious suicide attempt.
 3. They have been diagnosed with a mental condition that is frequently characterized by breaks with reality, or perceptions of reality, that lead the individual to experience significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health.
 4. They have been diagnosed with an organic brain syndrome that results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or mental or physical health.
 5. They have been diagnosed with a severe personality disorder that is manifested by frequent episodes of psychosis or depression, and results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health.
 6. It has been determined by a mental health clinician that an incarcerated individual has otherwise substantially deteriorated mentally or emotionally while confined in segregated confinement and is experiencing significant functional impairment indicating a diagnosis of a SMI and involving acts of self-harm or other behavior that have a serious adverse effect on life or on mental or physical health.

- N. Special Populations: Correction Law, Section 2, subdivision 33 – Special populations is defined as any incarcerated individual:
1. Twenty-one years of age or younger.
 2. Fifty-five years of age or older.
 3. With a disability as defined in paragraph (a) of subdivision 21 of section 292 of the Executive Law. This includes developmentally disabled and physically disabled.
 4. Who is pregnant or in the first eight weeks of the post-partum recovery period regardless of the pregnancy outcome or caring for a child in a correctional institution pursuant to subdivisions 2 or 3 of Section 611 of the Correction Law.

III. INITIAL ACTIONS IN CASES OF MISBEHAVIOR

- A. General Policy: All incidents involving incarcerated individuals related to violations of rules and regulations, misbehavior, and failure or refusal to comply with an instruction given by an employee acting within the scope of their official duties, shall be handled as quietly and routinely as possible, giving due regard to danger to life, health, security, and property. See Section V and Directive #4944, "Use of Physical Force."
- B. Minor Infractions: An employee should deal with minor infractions, or other violations of rules and policies governing incarcerated individual behavior, that do not involve danger to life, health, security, or property by counseling, warning, and/or reprimanding the incarcerated individual, and the employee need not report such minor incidents.
- C. Confinement
1. Incarcerated individuals who are in a special population (see subsection II-N) shall not be placed in segregated confinement (Special Housing Unit [SHU]) for any length of time.
 2. An incarcerated individual may be placed in a SHU where such action appears reasonably necessary for investigative purposes related to discipline. In any such case, approval must be granted by the Superintendent and the Deputy Commissioner for Correctional Facilities, and such confinement may not extend beyond 48 hours. An incarcerated individual shall be offered four hours of out-of-cell programming during this time. Notwithstanding, within such time period the incarcerated individual shall either be:
 - a. Released from such confinement.
 - b. Served a Tier III Misbehavior Report.
 3. Where a Security Supervisor has reasonable grounds to believe that an incarcerated individual's behavior represents an immediate threat to the safety, security, or order of the facility, or is an immediate danger to other persons or to property, and such behavior fits the specified criteria of offenses eligible for SHU confinement, this information shall be reported to the Superintendent or designee and the Superintendent or designee may order confinement in a SHU, RRU, or Diversion Unit.

Any such order shall be in accordance with Directive #4933, or Directive #4933D, "Residential Rehabilitation Units," as applicable. Only offenses eligible for 15 days SHU sanction are acceptable for pre-hearing confinement.

- a. Confinement may **only** be ordered when the incarcerated individual's presence in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated individuals and creates an unreasonable risk to the security of the facility. The following acts are qualifying offenses:
- (1) Causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the Commissioner and, when appropriate, the Commissioner of the Office of Mental Health (OMH) or their designees reasonably determine that there is a strong likelihood that the person will carry out such threat. The Commissioner of OMH or their designee shall be involved in such determination if the person is or has been on the mental health caseload or appears to require psychiatric attention. The Department and OMH shall promulgate rules and regulations pertaining to this clause.
NOTE: This determination will be made in consultation with the Hearing Officer (Commissioner's designee) and the OMH Commissioner's designee, see the OMH Unit Chief for designee designation. Such determination shall be made during the disciplinary hearing process.
 - (2) Compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act.
 - (3) Extorting another, by force or threat of force, for property or money.
 - (4) Coercing another, by force or threat of force, to violate any rule.
 - (5) Leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person.
 - (6) Procuring deadly weapons or other dangerous contraband that poses a serious threat to the security of the institution.
 - (7) Escaping, attempting to escape, or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

For purposes of this subsection, attempting to cause a serious disturbance or to escape shall only be determined to have occurred if there is a clear finding that the incarcerated individual had the intent to cause a serious disturbance or the intent to escape and had completed significant acts in the advancement of the attempt to create a serious disturbance or escape. Evidence of withdrawal or abandonment of a plan to cause a serious disturbance or to escape shall negate a finding of intent.

- b. A Security Supervisor who requests authorization to place an incarcerated individual in a SHU, RRU, or Diversion Unit pursuant to the provisions of this section, shall submit such request in writing to the Superintendent as soon as possible, but in any event before going off duty.
- c. Reports of confinement shall be made where confinement was requested by a Security Supervisor, but need not be made where confinement either:
 - (1) Is necessitated by a medically excused inability to participate in an assigned activity.
 - (2) Was directed by a decision in a Disciplinary Superintendent's Hearing.
- 4. 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 incarcerated individuals or any segment of the incarcerated population 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.
- D. Admission to SHUs: Admission of an incarcerated individual to a SHU shall be in accordance with Directive #4933.

IV. REVIEW OFFICER

- A. Establishment of Review Officer: There shall be at each correctional facility, 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.
- B. Function of the Review Officer
 - 1. The Review Officer shall review, at least once every tour, all misbehavior reports which have not yet been reviewed. Except as provided in subsection IV-B-3, the Review Officer shall review such reports and, considering the seriousness of the alleged violations of the standards of incarcerated individual behavior, refer such reports to the lowest appropriate disciplinary body (tier level) for action as indicated below. The Review Officer must document reasons for any decision to assign a disciplinary violation other than to the lowest possible tier.
 - a. 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.
 - b. Where the violation, if substantiated, would warrant only a penalty of loss of privileges up to and including 60 days, the misbehavior report shall be forwarded to the Disciplinary Hearing Officer for appropriate action.
 - c. 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.

2. **Confinement Review:** In conjunction with the initial review of the misbehavior report, the Review Officer must complete [Form #4932C](#), "Confinement Justification Record Form," for all misbehavior reports which have been referred for a Superintendent's Hearing.

The Review Officer will use this form to document whether pre-hearing confinement was warranted, the justification for pre-hearing confinement and reason for Tier III (Superintendent's Hearing) determination. This form will be made part of the hearing packet and utilized for further reviews as noted below.

- a. Upon completion of the hearing, the Hearing Officer will indicate on [Form #4932C](#) whether they agreed with the Review Officer's decision, and if continued confinement is justified.
 - b. During, the Superintendent's final review, the Superintendent will also specify on [Form #4932C](#) if they agree with the prior determinations of justification for confinement.
 - c. If, at any point in the review process it is determined that the misbehavior report does not meet the requirements of Correction Law 137, the individual shall be released from confinement.
 - d. The completed [Form #4932C](#) shall be attached to the hearing packet.
3. The Review Officer may dismiss any misbehavior report which fails to state a valid charge or may return it to be rewritten. All misbehavior reports, including those returned for revisions, must be written and tiered within 17 hours of the incarcerated individual being placed in segregated confinement.
 4. The Review Officer shall refer any report that includes a description that an incarcerated individual has engaged in an act of self-harm 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 they believe, due to the incarcerated individual's mental state or for any other reason, that proceeding to a hearing would serve no useful purpose.
 5. The Review Officer shall review the status of each incarcerated individual confined pursuant to a misbehavior report under review and may order the release of an incarcerated individual who is no longer a threat to the safety and security of the facility or to themselves or confined for an act of misbehavior which is ineligible for confinement time.
 6. The Review Officer shall not act as a Hearing Officer in any proceeding arising from a misbehavior report which they have reviewed.

V. MISBEHAVIOR REPORT

- A. Every incident of incarcerated individual 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 their 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 incarcerated individual rule book number allegedly violated by the incarcerated individual and a brief description of the rule.
 3. The date, time, and place of the incident.
 4. Where more than one incarcerated individual was involved in an incident, the report should, to the extent practicable under the given circumstances, indicate the specific role played by each individual. 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 for Security or designee prior to the hearing to make a statement on the need for continued prehearing confinement."
- NOTE: Subsections V-D-2 and 3 shall not be included in misbehavior reports used in connection with Violation Hearings.
- E. Employees of OMH may write misbehavior reports to the same extent as Department employees.

VI. STAFF ASSISTANCE

- A. Staff Assistant
1. An incarcerated individual shall be afforded the opportunity for assistance under specific circumstances by filing [Form #4932B](#), "Tier Assistance (Side A)," and an assistant will be appointed for the incarcerated individual. This applies when a misbehavior report has been issued and at least one of the following circumstances are present:
 - a. The incarcerated individual is either illiterate or Limited English Proficient (LEP). Only a qualified interpreter will be appointed to assist an LEP incarcerated individual.
 - b. The incarcerated individual is sensorially disabled, in which case they will be provided reasonable accommodations including, but not be limited to:
 - (1) The provision of a qualified sign language interpreter for a deaf and/or hard of hearing incarcerated individual who uses sign language to communicate.

- (2) Provided all documentation in at least 18 font size for incarcerated individuals who are Legally Blind (LB) or Severely Visually Impaired (SVI), including the use of adaptive equipment (i.e., magnifier, portable CCTV, and/or scribe/reader, etc.).
- c. The incarcerated individual is confined pending a Superintendent's Hearing. Postponement requests for staff assistance must be submitted to the Hearing Officer at the commencement of the hearing, in person, by the incarcerated individual using [Form #4932B](#) (Side A).
2. In other cases where a misbehavior report has been issued, the Review Officer or Hearing Officer, in their absolute discretion, may appoint a staff assistant where such assistance would enable the incarcerated individual to adequately comprehend the case in order to respond to the charges.
- B. Assistant's Responsibility: The assistant may speak with the incarcerated individual charged to explain the charges to them if necessary. The assistant's role is to interview witnesses and report the results of those efforts to the incarcerated individual. They may assist the incarcerated individual in obtaining documentary evidence or written statements which may be necessary and preserving video evidence as requested by the incarcerated individual. The assistant may be required by the Hearing Officer to be present at the Disciplinary or Superintendent's Hearing. An initial meeting with the charged individual is not required if doing so is not necessary to fulfill their written requests and/or they do not meet the criteria in subsections VI-A-1-a and b.

VII. REPRESENTATION: Where an incarcerated individual is subject to a Superintendent's Hearing, they shall be permitted to be represented by an attorney, law student, paralegal, or an incarcerated individual; contingent upon the representative satisfying the requirements established by the Department's objective criteria (refer to [Form #4932B](#) (Side B)). Postponement requests for representation must be made to the Hearing Officer, in person, by the incarcerated individual at the commencement of the hearing.

- A. Outside Representation: The Hearing Officer may grant a request to the incarcerated individual for postponement for up to seven calendar days to allow the charged individual to seek outside representation, and a scheduling notice will be issued to the incarcerated individual, on the hearing's commencement date, indicating the scheduled hearing date and time.
 1. It is the incarcerated individual's responsibility to secure outside representation. They are to inform their representative of the scheduled date and time of the hearing and all Departmental requirements for such representation. To ensure incarcerated individuals have the ability to contact their representative, the following must be adhered to:
 - a. Those individuals who are confined and either on a static content deprivation order or serving a loss of static content tablet disposition must be provided with telephone access in order to secure outside representation. Telephone access will be made available as soon as practicable, but no later than 24 hours after the request for outside representation has been made to the Hearing Officer.

- b. Those individuals who are not confined but are serving a loss of phone sanction must be provided with telephone access as soon as practicable, but no later than 24 hours after the request for outside representation has been made to the Hearing Officer.
2. At least two business days before the scheduled hearing date and time, the outside representative must contact the facility disciplinary office by email (e.g., [FacilityName]Disciplinary@doccs.ny.gov) providing notice of representation and a publicly listed business phone number where they can be reached by the Hearing Officer to participate in the hearing.

The referenced disciplinary mailbox shall be monitored by staff as designated by the Superintendent. Such notice must provide sufficient information for the Departmental verification that all requirements for outside representation have been met. A copy of the emailed notice of representation must be printed and placed in the hearing packet.

- a. Such postponement requests must be submitted via email with their notice of representation.
 - b. Reasonable postponement requests to reschedule the hearing or postpone for additional employee assistance requests may be granted dependent upon the scheduling needs of the facility.
 - c. Postponements may not exceed 14 calendar days from the charged individual's placement in segregated confinement.
3. Outside representatives may make one postponement request for rescheduling and/or any additional employee assistance requests.
4. Outside representatives are permitted to attend the hearing via phone or in-person in accordance with Department policy.
5. Video and/or photograph evidence, requested by an outside representative must be processed as follows:
 - a. When video evidence is deemed relevant and viewed by the charged individual at the hearing, a copy of such evidence, if requested by the outside representative, will be provided to them with the below exceptions and/or stipulations.
 - (1) Video recordings must be reviewed by the Superintendent or the Deputy Superintendent for Security to ensure that the release of such video does not pose a risk to the safety and security of the facility. If a video would not be appropriate for release under FOIL, then it would not be permissible to share with an outside representative for a disciplinary proceeding.
 - (2) If the video is approved for release, a notice with the following language must be included:

Please note that incarcerated individuals are not permitted to possess a copy of the enclosed video. Pursuant to the Standards of Incarcerated Individual Behavior, Rule 113.23, an incarcerated individual “shall not possess any item unless it has been specifically authorized by the Superintendent or designee, the rules of the Department, or the local rules of the facility.”

Thus, the enclosed video may not be provided to any incarcerated individual, as the possession of such is contrary to Departmental policy, could endanger institutional security, and may result in disciplinary action. DOCCS is providing this video in good faith that it will not be disclosed beyond what is necessary to defend this hearing.

Additionally, a non-disclosure agreement must be signed by the outside representative to prevent this sensitive information from being shared with others.

- b. When contraband photographs are requested by the outside representative, a copy of such documentary evidence may be provided to them, with the below exceptions and/or stipulations.
 - (1) Photographs of the charged incarcerated individual may only be provided with a signed release from the subject. Photographs of other incarcerated individuals or staff shall not be provided.
 - (2) Permissible photographs shall be released with the following language included:

Please note that incarcerated individuals are not permitted to possess photos of contraband pursuant to the Standards of Incarcerated Individual Behavior, Rule 113.23, which states that an incarcerated individual “shall not possess any item unless it has been specifically authorized by the Superintendent or designee, the rules of the Department, or the local rules of the facility.” Thus, the enclosed photos should not be provided to incarcerated individuals, as possession of such photos by an incarcerated individual is contrary to Departmental policy, could endanger institutional security, and may result in disciplinary action. DOCCS is providing these photos in good faith that they will not be disclosed beyond what is necessary to defend the disciplinary hearing.

B. Incarcerated Representative

1. It is the charged individual’s responsibility to specifically identify their chosen representative at the commencement of the hearing. If the incarcerated representative does not meet the Department’s established criteria as outlined on [Form #4932B](#) (Side B), the charged individual must proceed with the hearing unrepresented.
2. Facility management shall determine whether the participation of the incarcerated representative, during the hearing process, will take place in-person or by phone.

This includes contact with the charged individual prior to the scheduled hearing and/or attendance at the hearing.

- C. Representative Role: To speak on behalf of the charged individual by entering a plea to the charges, presenting relevant evidence, and requesting relevant witness testimony.
1. If represented, the charged individual will **not** be permitted to participate in the hearing as co-counsel.
 2. The charged individual may testify as a witness and be asked questions directly by the Hearing Officer.
- D. Exclusion From Hearing: If there is improper conduct by a representative or charged individual during the hearing, the Hearing Officer shall issue a warning to cease the conduct prior to exclusion, unless the conduct constitutes an immediate threat to safety or security. In this circumstance, immediate exclusion would be warranted.

VIII. TIMELINESS

- A. Where an incarcerated individual is confined pending a Superintendent's Hearing, the hearing must be completed within five calendar days of such placement in segregated confinement, unless the incarcerated individual requests a postponement from the Hearing Officer for staff assistance and/or representation or as otherwise authorized by the Commissioner or designee. When calculating the latest date that the hearing can be held, there are two things to take into consideration:
1. The date of the individual's initial placement in segregated confinement is excluded from the calculation of the five days.
 2. If the fifth day falls on a Saturday, Sunday, or a public holiday, the last day a hearing can be held is moved to the next business day.

If the incarcerated individual requests a postponement at the commencement of the hearing, the hearing must be completed within 14 days of the individual's initial placement into confinement. If the hearing completion date falls on a Saturday, Sunday, or a public holiday, the last day of the hearing will be completed on the following business day.

Incarcerated individuals who receive a subsequent Tier III misbehavior report and are under prior confinement (not confined as a result of this misbehavior report) must have their hearings completed within 14 days of the writing of the new report. The calculation of the completion date will be the same as above.

- B. The Disciplinary Hearing or Superintendent's Hearing must be completed within 14 days following the writing of the misbehavior report or as outlined in subsection VIII-A if the incarcerated individual is pre-hearing confined pending a Superintendent's Hearing, 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, postponement, or adjournment and an incarcerated individual should ordinarily be made aware of these reasons unless to do so would jeopardize institutional safety or correctional goals. Hearing extensions for any Superintendent's Hearing (confinement/non-confinement) are only allowed under the following circumstances:
1. If the incarcerated individual is admitted to a Mental Health Unit or facility hospital before or after committing the offense.

2. If the incarcerated individual is placed on a contraband watch before or after committing the offense.
 3. If the incarcerated individual is transported to an outside hospital or court trip before or after committing the offense.
 4. In cases where the facility is placed on a lockdown, a blanket extension will be issued.
 5. With the consent of the charged individual and/or representative, when numerous attempts to contact a relevant witness (either direct knowledge of the incident or report writer) have been unsuccessful.
- C. Violation Hearings must be completed within seven days of the writing of the misbehavior report.
- D. Administrative Segregation: This section applies to the involuntary removal of an incarcerated individual from general confinement and placement in a RRU or Step-Down Unit based upon a determination that the individual's continued presence in the general population would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape. Such determination should be made by the facility Superintendent, the Deputy Commissioner for Correctional Facilities, or their designee. Within seven days after the initial determination and placement within administrative segregation housing, a hearing shall be conducted pursuant to Section XI to consider the specific reasons for administrative segregation, leading to a final determination either to retain or release the incarcerated individual from administrative segregation. An initial written determination of the findings shall be reviewed by the Deputy Commissioner for Correctional Facilities or their designee, who shall issue a final written determination to the incarcerated individual within seven days of receipt of the initial determination.
- An incarcerated individual in administrative segregation status shall have such status reviewed every seven days for the first two months, and at least every 30 days thereafter, to determine whether such individual's release to general population would pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, or the facility, or present an unreasonable risk of escape. [Form #2170](#), "Administrative Segregation Review," shall be used to record the report(s), any recommendations, and the decision. The review shall be performed in accordance with the following procedure:
1. A three-member committee consisting of a representative of the facility Executive staff, a Security Supervisor, and a member of the Guidance and Counseling staff shall examine the incarcerated individual's institutional record and prepare and submit to the Deputy Commissioner for Correctional Facilities or their designee a report setting forth the following:
 - a. Reasons why the individual was initially determined to be appropriate for administrative segregation.
 - b. Information on the individual's subsequent behavior and attitude.

- c. Any other factors that they believe may favor retaining the individual in or releasing the individual from administrative segregation.
2. Upon receipt of the report and any written statement received from the incarcerated individual, the Deputy Commissioner for Correctional Facilities or their designee shall forward these documents to a three-member Central Office committee consisting of a representative from the Office of Facility Operations, a member of the Department's Office of Special Investigations, and an attorney from the Office of Counsel.

The Central Office committee shall then complete its review and forward the paperwork along with its recommendation to the Deputy Commissioner for Correctional Facilities.

Upon receipt of the materials from the Central Office committee, including any written statement received from the incarcerated individual, the Deputy Commissioner for Correctional Facilities or their designee shall document in writing whether such determination shall continue, or such individual shall be released from administrative segregation and shall state the specific facts and reasons underlying the continuance or release.

3. As part of every review, whenever a determination is made to continue the incarcerated individual in administrative segregation, the Deputy Commissioner for Correctional Facilities or their designee shall provide a notice to the individual that states the reason(s) for the determination and includes the following statement:

“A determination has been made to continue your administrative segregation status for the reason(s) stated in this notice. Prior to your next review, you may write to the Deputy Commissioner for Correctional Facilities or designee to make a statement regarding the need for continued administrative segregation. The reason(s) stated in this notice, any written statement that you submit, as well as your overall custodial adjustment will be considered during the next scheduled review.”
4. At any time, an incarcerated individual may be evaluated and recommended for return to general population at the current facility or transferred to another facility where it is determined the incarcerated individual may be programmed into general population. Nothing in this subsection shall be construed to terminate the administrative segregation status of an incarcerated individual upon the individual's transfer to another facility, absent written authorization from the Deputy Commissioner for Correctional Facilities or their designee.

Incarcerated individuals in administrative segregation shall maintain normal property and privileges unless the specific item or privilege would cause a threat to the safety and security of the incarcerated individual, other incarcerated individuals, staff, or the facility.

IX. VIOLATION HEARING

A. Violation Officer

1. 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.

2. The Violation Officer shall be responsible for conducting the Violation Hearing.
- B. 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.
- C. Procedure
1. Upon receipt of a misbehavior report from the Review Officer, the Violation Officer shall:
 - a. Give a copy of the misbehavior report to the incarcerated individual at the Violation Hearing.
 - b. Allow the incarcerated individual to be present at the Violation Hearing, unless they refuse to attend.
 - c. Allow the incarcerated individual to present documentary evidence, to submit a written statement on their behalf, and to reply to the charge. The incarcerated individual shall not have the right to call witnesses.
 2. The Violation Officer may allow any evidence necessary to aid in the decision.
- D. Incarcerated Individuals with LEP and Sensorially Disabled Incarcerated Individuals
1. An incarcerated individual with LEP who cannot read and understand English must be given a translated notice of the charges; an individual with LEP who cannot speak and understand English must be provided with qualified interpretation services for the hearing.
 2. A deaf or hard of hearing incarcerated individual 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 individual who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.
 3. A LB/SVI incarcerated individual must be given all relevant documentation (at minimum of 18 font size) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, and/or scribe/reader, etc.), or other reasonable accommodations during the hearing.
- E. Dispositions at Violation Hearing
1. 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:
 - a. Loss of all or part of recreation (game room, day room, television, movies, yard, gym, special events) for up to 13 days.
 - b. Loss of a maximum of two of the following privileges:
 - (1) One commissary buy, excluding items related to the incarcerated individual's health and sanitary needs.
 - (2) Withholding of radio for up to 13 days.

- (3) Withholding of packages for up to 13 days, excluding perishables that cannot be returned.
- c. 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 incarcerated individual's housing unit, or other designated area. Incarcerated individuals 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.
- d. Counsel and/or reprimand.
2. Following the Violation Hearing, the incarcerated individual 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.
3. Records of disposition of Violation Hearings shall not be used for any purpose, except as follows:
 - a. A Violation Officer shall have available records of an incarcerated individual's suspended and uncompleted dispositions when conducting a hearing with regard to the incarcerated individual.
 - b. In determining the appropriate level at which an incarcerated individual's misbehavior report should be handled, a Review Officer may consider descriptions of an incarcerated individual's charges and dispositions of Violation Hearings dated within 14 days of the review.

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 incarcerated individual's institutional records.

- F. 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.
- G. 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.

X. DISCIPLINARY HEARING

- A. Establishment of the Disciplinary Hearing Officer
 1. 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 their discretion, designate some other employee to conduct Disciplinary Hearings.
 2. 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.

- B. Incarcerated Individuals with LEP and Sensorially Disabled Incarcerated Individuals
1. An incarcerated individual with LEP 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; an individual with LEP who cannot speak and understand English must be provided with qualified interpretation services for the hearing.
 2. A deaf or hard of hearing incarcerated individual 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 individual who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.
 3. A LB/SVI incarcerated individual must be given all relevant documentation (at a minimum of 18 font size) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, and/or scribe reader, etc.) or other reasonable accommodations during the hearing.
- C. Formal Charge: The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions in Section V.
- D. Assistance: The incarcerated individual shall be provided with an assistant in accordance with the provisions in Section VI.
- E. Witnesses: Incarcerated individuals may call witnesses on their behalf provided the 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 incarcerated individual a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented.
1. Any witness shall be allowed to testify at the hearing in the presence of the incarcerated individual unless the Hearing Officer determines that so doing will jeopardize institutional safety or correctional goals. Where an incarcerated individual is not permitted to have a witness present, such witness may be interviewed out of the presence of the incarcerated individual and such interview tape recorded. The recording of the witness' statement is to be made available to the incarcerated individual at the hearing unless the Hearing Officer determines that so doing would jeopardize institutional safety or correctional goals.
 2. An incarcerated individual may request a witness by either:
 - a. Informing their assistant or the Hearing Officer before the hearing.
 - b. Informing the Hearing Officer during the hearing.
 3. Charged individuals are not permitted to question witness(es) directly.
 - a. Charged individuals shall propose questions for the witness(es) to the Hearing Officer.
 - b. Questions which are deemed appropriate will be posed to the witness(es) by the Hearing Officer.

- F. Method of Determination: Upon receipt of a misbehavior report from the Review Officer, the Hearing Officer shall commence the Disciplinary Hearing as follows:
1. The misbehavior report shall be served on the incarcerated individual at least 24 hours before the Disciplinary Hearing.
 2. The incarcerated individual shall be present at the hearing unless they refuse to attend or are excluded for reason of institutional safety or correctional goals. The entire hearing must be electronically recorded.
 3. The incarcerated individual, when present, may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on their behalf.
- G. Dispositions and Mandatory Surcharge
1. Dispositions: Upon affirming a charge, the Hearing Officer may impose one or more of the following penalties:
 - a. Counsel and/or reprimand.
 - b. Loss of one or more specified privileges, for a period of up to 60 days; however, correspondence and visiting privileges may not be withheld.
 - c. Restitution for loss or intentional damage to property to be made from an incarcerated individual's existing and future funds.
 - d. Forfeiture of money confiscated as contraband.
 - e. 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 incarcerated individual's housing unit, or other designated area. Incarcerated individuals 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.
 3. The Disciplinary Hearing Officer may suspend imposition of any penalty for a period of up to 90 days. Any such suspended penalty, from a Disciplinary Hearing, 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.
 4. As soon as possible, but no later than one business day after the conclusion of the hearing, the incarcerated individual 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 their decision and also set forth the reasons for any penalties imposed.

5. **Mandatory disciplinary surcharge:** Upon the conclusion of a Disciplinary Hearing wherein the incarcerated individual admits the charges, or where the Hearing Officer affirms one or more of the charges, a mandatory disciplinary surcharge in the amount of \$5.00 shall be assessed automatically against the incarcerated individual.
- H. **Appeal Procedures:** The incarcerated individual shall be advised of their 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.
- I. **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.

XI. SUPERINTENDENT'S HEARING

- A. **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 their discretion, designate some other employee to conduct the proceeding.
 1. All staff who may be appointed to conduct a Superintendent's Hearing shall undergo a minimum of 37 hours of training with one additional day annually thereafter, prior to presiding over such hearing.
 2. The following persons shall not be appointed to conduct the proceeding:
 - a. A person who actually witnessed the incident.
 - b. A person who was directly involved in the incident.
 - c. The Review Officer who reviewed the misbehavior report.
 - d. A person who has investigated the incident.
- B. **Incarcerated Individuals with LEP and Sensorially Disabled Incarcerated Individuals**
 1. An incarcerated individual with LEP 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; an incarcerated individual with LEP who cannot speak and understand English must be provided with qualified interpretation services for the hearing.
 2. A deaf or hard of hearing incarcerated individual 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 incarcerated individual who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the hearing.
 3. A LB/SVI incarcerated individual must be given all relevant documentation (at a minimum of 18 font size) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, and/or scribe/reader, etc.) or other reasonable accommodations during the hearing.

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- C. Formal Charge: The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions in Section V.
- D. Notice and Assistance: The incarcerated individual shall be provided with an assistant in accordance with the provisions in Section VI.
- E. Representation: The incarcerated individual shall be permitted representation in accordance with Section VII.
- F. Witnesses
1. The incarcerated individual may call witnesses on their behalf provided the 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 incarcerated individual a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented.
 2. Any witness shall be allowed to testify at the hearing in the presence of the incarcerated individual unless the Hearing Officer determines that so doing will jeopardize institutional safety or correctional goals.
 3. Where an incarcerated individual is not permitted to have a witness present, such witness may be interviewed out of the presence of the incarcerated individual and such interview tape recorded.
 4. The recording of the witness' statement is to be made available to the incarcerated individual at the hearing unless the Hearing Officer determines that so doing would jeopardize institutional safety or correctional goals.
 5. An incarcerated individual may request a witness by either:
 - a. Informing their assistant or the Hearing Officer before the hearing.
 - b. Informing the Hearing Officer during the hearing.
 6. Representatives and charged individuals are not permitted to question witness(es) directly.
 - a. If an incarcerated individual is represented, only the representative may propose questions for the witness(es) to the Hearing Officer.
 - b. Charged individuals may only propose questions for the witness(es) to the Hearing Officer if not represented.
 - c. Questions which are deemed appropriate will be posed to the witness(es) by the Hearing Officer.
- G. Method of Determination
1. Generally, upon receipt of a misbehavior report from the Review Officer, the Hearing Officer shall commence the Superintendent's Hearing as follows:
 - a. The misbehavior report shall be served on the incarcerated individual at least 24 hours before the Superintendent's Hearing.
 - b. The incarcerated individual shall be present at the hearing unless they refuse to attend or are excluded for reasons of institutional safety or correctional goals. The entire hearing must be electronically recorded.

- c. The incarcerated individual, when present, may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on their behalf.
 - d. When applicable, the information identified in subsections XI-G-2-a-(1), (2), (5), and (6); b-(1) and (2); and c-(2) 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.
 2. Mental state, intellectual capacity, or receiving Special Education Services (21 and younger) under the Individuals with Disabilities Education Act (IDEA): When an incarcerated individual's mental state or intellectual capacity is at issue, a Hearing Officer shall consider evidence regarding the incarcerated individual's mental condition, intellectual capacity, or disability at the time of the incident and at the time of the hearing in accordance with this section.
 - a. For the purposes of this section, an incarcerated individual's mental state shall be deemed at issue when:
 - (1) The incarcerated individual is classified as level 1 by the OMH, as indicated on the hearing record sheet.
 - (2) The incarcerated individual is designated as an "S" by OMH, as indicated on the hearing record sheet.
 - (3) The incarcerated individual is described as engaging in an act of self-harm, as indicated on the misbehavior report.
 - (4) The incident occurred while the incarcerated individual was being transported to or from the Central New York Psychiatric Center (CNYPC), as alleged in the misbehavior report.
 - (5) The incarcerated individual was an inpatient at the CNYPC within nine months prior to the incident, as indicated on the hearing record sheet.
 - (6) The incident occurred while the incarcerated individual was assigned to an OMH satellite unit or intermediate care program, as indicated on the hearing record sheet.
 - (7) The incident occurred while the incarcerated individual was being escorted to or from an OMH satellite unit or intermediate care program, as alleged in the misbehavior report.
 - (8) The hearing was delayed or adjourned, after an extension of time was obtained in accordance with Section VIII, because the incarcerated individual became an inpatient at the CNYPC or was assigned to the OMH satellite unit.
 - (9) It appears to the Hearing Officer, based on the incarcerated individual's testimony, demeanor, the circumstances of the alleged offense, or any other reason, that the incarcerated individual may have been mentally impaired at the time of the incident or may be mentally impaired at the time of the hearing.

- b. For the purposes of this section, an incarcerated individual's intellectual capacity shall be deemed at issue when:
 - (1) The incident occurred while the incarcerated individual was assigned to the Special Needs Unit (SNU) at Bedford Hills, Clinton, Wende, Woodbourne, or Sullivan Correctional Facilities, as indicated on the hearing record sheet.
 - (2) The incarcerated individual has not scored above a 70 on any intelligence testing instrument administered to the incarcerated individual by the Department and has not scored above a 3.0 grade level in any reading comprehension testing instrument administered to the incarcerated individual by the Department, as indicated on the hearing record sheet.
 - (3) It appears to the Hearing Officer, based on the incarcerated individual's testimony, demeanor, the circumstances of the alleged offense, or any other reason, that the incarcerated individual may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the hearing.
- c. For the purposes of this section, an incarcerated individual's classified disability shall be deemed at issue when the incarcerated individual is 21 years old or younger and either:
 - (1) Designated as an extended classification code in DOCCS mainframe.
 - (2) Enrolled in a Special Education Program according to the coding of their program assignment in the mainframe as indicated on the hearing record sheet.
 - (3) Enrolled in general education; but has a specific title code which indicates they are a student with a disability, receiving supportive or related services.
- d. When an incarcerated individual's mental state, intellectual capacity, or classified disability is at issue, the Hearing Officer shall:
 - (1) Ask the incarcerated individual whether they understand 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 subsection XI-F, concerning any observations that they may have regarding the incarcerated individual's mental condition or intellectual capacity at the time of the incident.
 - (3) Where an incarcerated individual's mental state is at issue, out of the presence of the incarcerated individual and on a confidential tape, interview an OMH clinician, as may be available, concerning the incarcerated individual's mental condition at the time of the incident and the time of the hearing.

- (4) Where an incarcerated individual's intellectual capacity is at issue, out of the presence of the incarcerated individual and on a confidential tape, interview an Offender Rehabilitation Coordinator or Teacher, as may be available, concerning the incarcerated individual's intellectual capacity at the time of the incident and the time of the hearing.
 - (5) Where an incarcerated individual's classified disability (21 years old and younger only) is at issue, out of the presence of the incarcerated individual and on a confidential tape, interview an Education Psychologist concerning the incarcerated individual's disability at the time of the incident and the time of the hearing. The Hearing Officer shall utilize the testimony script as provided in DOCCS training resources.
- e. If it is determined that the incarcerated individual is unable to participate in the hearing process because they do 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 incarcerated individual is able to participate in the hearing process and, if necessary, a request for a time extension shall be made in accordance with Section VIII.
 - f. If it is determined that the incarcerated individual is able to participate in the hearing process, but needs assistance, the hearing shall be adjourned, and the incarcerated individual shall be offered an assistant in accordance with Section VI. Pursuant to Section VI, the assistant may be required by the Hearing Officer to be present at the hearing.
 - g. If it is determined that the incarcerated individual 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 incarcerated individual's mental condition or intellectual capacity at the time of the incident, if at issue in accordance with subsections XI-G-2-a through c, respectively, in determining the appropriate penalty to be imposed.

In addition, if in light of the incarcerated individual'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, as outlined above, reflect how the incarcerated individual's mental condition or intellectual capacity was considered.

- h. A copy of a written statement of the disposition of the charges issued in accordance with subsection XI-G-2-g shall, if the disposition includes confinement to SHU/RRU and the incarcerated individual 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.

H. Dispositions and Mandatory Surcharge

1. Dispositions: Where the incarcerated individual 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:
 - a. Counsel and/or reprimand.
 - b. Loss of one or more specified privileges, for a specified period. Correspondence and/or visiting privileges may be withheld with a particular person (or persons) only where the incarcerated individual has been involved in improper conduct in connection with correspondence with such person(s).
 - c. Loss of visiting privileges for a specified period where the affirmed charges involve improper conduct as a result of the incarcerated individual's presence or conduct in connection with a visiting, family reunion or special events program, or processing before or after participation in such program.
 - (1) A loss of visiting privileges may be imposed under this subsection only where the affirmed charges involve the violation of any rule under rule series 100 assault and fighting; 101 sex offenses; 108 escape and abscondence; 113 contraband where such contraband consists of any weapon, narcotic, controlled substance or marijuana and/or paraphernalia, alcoholic beverage or intoxicant, electronic device, or money; 114 smuggling; or any attempt or conspiracy to violate any such rule; or a disposition under rule 1.00 for a criminal conviction relating to such conduct.
 - (2) A loss of visiting privileges with a specified visitor or visitors may be imposed where the misconduct involved only the incarcerated individual and the specified visitor or visitors. Where the misconduct was not limited to the specified visitor or visitors a loss of visiting privileges with all visitors may be imposed.

Misconduct involving unacceptable physical conduct during which other visitors were subjected to exposure is misconduct which is not limited to only the incarcerated individual and the specified visitor or visitors.

Misconduct involving an attempt to introduce money, alcohol, marijuana, narcotics and other dangerous drugs, any item which is readily capable of being used to cause death or serious injury, or any item which may be used to aid in escape is misconduct which is not limited to only the incarcerated individual and the specified visitor or visitors.
 - (3) A loss of visiting privileges may be imposed under this subsection only for the length of time specified in accordance with the provisions of the penalty chart contained in Directive #4403, "Incarcerated Individual Visitor Program." Where the disposition imposes a loss of visiting privileges with all visitors for two years or more, a copy of the disposition shall be forwarded to the superintendent for a discretionary review.

- (4) Where the disposition includes an indefinite suspension of visiting privileges and the incarcerated individual does not appeal the disposition, the visiting sanction shall nevertheless be reviewed by the Director of Special Housing and Incarcerated Individual Disciplinary Program within six months of the hearing date. An incarcerated individual subject to a disciplinary sanction imposing a suspension of visiting privileges for a term over two years or indefinite suspension of visiting privileges may request reconsideration of the suspension of visiting privileges for a term over two years in accordance with Directive #4403.
 - (5) The Hearing Officer may, within their discretion, limit an incarcerated individual to noncontact visiting in lieu of suspending all visiting privileges.
 - (6) Loss of visiting privileges for a specified period not to exceed six months for a first offense and one year for any repeat offense where the affirmed charges involve the violation of one of the following rules, regardless of the location of the rule violation: 113.33 Drug Possession (prohibiting the making, possessing, selling, or exchanging any narcotic, narcotic paraphernalia, controlled substance, or marijuana) or 113.34 Drug Distribution (prohibiting conspiracy with any person to introduce any narcotic, narcotic paraphernalia, controlled substance, or marijuana into the facility).
 - (7) Where an incident occurs in the visiting room and the disposition includes a loss of visiting privileges, this shall not be the sole basis for imposing a confinement sanction. A confinement sanction may only be imposed when the act of misbehavior fits the specified criteria of eligible SHU offenses, as outlined in subsection III-C-3-a.
- d. Confinement to a SHU or RRU for a specified period, as outlined below:
- (1) No incarcerated individual may be placed in a SHU for longer than necessary and under no circumstances for more than 15 consecutive days.
 - (2) Except where a specific act constitutes a felony act, if occurring more than once in a 60-day period, may serve an additional 15 consecutive days in segregated confinement (SHU), but must spend at least 15 days in RRU between each placement in segregated confinement.
 - (3) Incarcerated individuals will be transferred or moved to a RRU if they have additional confinement time after completing 15 days in a SHU.
- NOTE: Not all Tier III offenses are eligible for a confinement penalty. When imposing a confinement penalty, hearing officers must ensure that the act of misbehavior fits the specified criteria of eligible SHU offenses, as outlined in subsection III-C-3-a.
- e. Restitution for loss or intentional damage to property to be made from an incarcerated individual's existing and future funds.
 - f. Forfeiture of money confiscated as contraband.

- g. Loss of a specified period of good behavior allowance ("good time"), subject to restoration as provided in this directive.
 - h. 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 incarcerated individual's housing unit, or other designated area. Incarcerated individuals 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.
 - i. Where applicable, removal from the elected Incarcerated 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. Pre-hearing confinement shall count towards the imposed confinement sanction.
 3. The Hearing Officer may suspend imposition of a non-confinement penalty for a period of up to 180 days. Such suspended penalty may only be imposed by a subsequent Superintendent's Hearing Officer upon substantiating a charge of misbehavior or in a subsequent hearing within a specific period.

The Hearing Officer may suspend imposition of a confinement penalty for a period of up to 180 days; however, the Hearing Officer may not impose both, a confinement sanction, and a suspended confinement sanction. Partial suspensions are not permitted. Such suspended penalty may only be imposed by a subsequent Superintendent's Hearing within a specific period.
 4. As soon as possible, but no later than one business day after the conclusion of the hearing, the incarcerated individual 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 their decision and also set forth the reasons for any penalties imposed and, if applicable, reflect how the incarcerated individual's mental condition or intellectual capacity was considered; and, if applicable, how age affected the disposition.
 5. Mandatory disciplinary surcharge: Upon the conclusion of a Superintendent's Hearing wherein the incarcerated individual admits the charges, or where the Hearing Officer affirms one or more of the charges, a mandatory disciplinary surcharge in the amount of \$5.00 shall be assessed automatically against the incarcerated individual.
- I. Appeal Procedures: Any incarcerated individual shall have the right to appeal the disposition of any Superintendent's Hearing to which they were 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 either:
 1. Affirm the hearing disposition.
 2. Modify the hearing disposition by dismissing certain charge(s) and/or reducing the penalty imposed.

3. Reverse the hearing disposition and order a new hearing. Whenever a new hearing is ordered pursuant to this subsection, a new Hearing Officer shall preside over the hearing, and the penalty imposed at the new hearing, if any, may not exceed the penalty imposed at the original hearing inclusive of subsequent reductions.

4. Reverse the hearing disposition.

J. Reviews by Superintendent

1. Superintendent's Review of Disposition – Within seven days of completion of any Superintendent's Hearings, disposition forms must be reviewed for appropriateness by the Superintendent. If applicable, this review shall be documented on [Form #4932A](#), "Superintendent's Review of Disciplinary Disposition Form."

2. Discretionary Review – At any time during which a penalty imposed pursuant to a Superintendent's Hearing is in effect, the Superintendent may reduce the penalty.

XII. PROCEDURES FOR GRANTING GOOD BEHAVIOR ALLOWANCES – GENERAL PROVISIONS

A. Application of Good Behavior Allowances

1. The opportunity to earn good behavior allowances offers incarcerated individuals a tangible reward for positive efforts made during incarceration.

2. For those incarcerated individuals 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.

3. For all incarcerated individuals serving determinate or indeterminate sentences (other than life sentences) who are not granted parole or a re-parole, 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.

B. Nature of Allowances: Good behavior allowances are in the nature of a privilege to be earned by the incarcerated individual and no incarcerated individual has the right to demand or to require that any good behavior allowance be granted.

C. Criteria for Allowances

1. All recommendations and decisions must be made through completely impersonal, impartial, fair, and reasonable evaluations.

2. 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:

a. The attitude of the incarcerated individual.

b. The capacity of the incarcerated individual.

c. The efforts made by the incarcerated individual within the limits of their capacity.

D. Forfeitures and Disallowances

1. An incarcerated individual shall not automatically forfeit or automatically be disallowed any good behavior allowance by reason of the fact that they have been confined to a SHU or RRU for a period of time.
2. A disposition involving loss of a specified period of good behavior allowance made in a Superintendent's Hearing 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.

XIII. TIME ALLOWANCE COMMITTEES**A. Establishment of Time Allowance Committees**

1. There shall be in each correctional facility a committee to be known as the Time Allowance Committee.
2. Such Committee shall consist of at least three members designated by the Superintendent. The Superintendent shall appoint one of the members as Chairperson. The members shall be selected from a list of eight employees preselected by the Superintendent and filed with the Deputy Commissioner for Correctional Facilities. The list of names filed by the Superintendent shall be deemed approved by the Deputy Commissioner for Correctional Facilities unless and until the Deputy Commissioner removes an individual from the list in writing.
3. Each such Committee shall have a Chairperson designated by the Superintendent from among the members and the Chairperson shall be responsible for the proper operation of the Committee.

B. 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 incarcerated individuals who are eligible to be considered for such allowance.**C. Procedure of Time Allowance Committees**

1. For incarcerated individuals entitled to be considered for good behavior allowances, the file of each such incarcerated individual shall be considered in the fourth month preceding the month of the earliest possible date they would be entitled to consideration for release if that date depends on the amount of good behavior allowance to be granted.
2. The Committee shall consider the entire file of the incarcerated individual, and then shall decide upon a recommendation as to the amount of good behavior allowance to be granted, applying the principles set forth above. At such meetings, any incarcerated individual 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 incarcerated individual's subsequent behavior merits restoration of all or part of the lost allowance and its reasons therefor.
3. 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 incarcerated individual and make its own determination.

4. 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.
5. All recommendations of the Committee shall be pursuant to a decision of a majority of the members, but any member who disagrees shall note their 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 Chairperson shall report such fact and each member shall report their recommendation and reasons in the report made by the Chairperson.
6. 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 incarcerated individual may be scheduled to reappear before another Time Allowance Committee in accordance with the direction of the Commissioner, Superintendent, or Committee Chairperson.

D. Time Allowance Hearing

1. 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 subsection XV-B-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.
2. At least 48 hours prior to the Time Allowance Hearing and for the purposes stated in subsection XIII-D-1, the Chairperson shall designate an employee to file and deliver to the incarcerated individual 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.
3. The Chairperson of the Time Allowance Committee shall designate an employee to furnish assistance to the incarcerated individual. Such employee shall be of the incarcerated individual's choice selected from a list established by the Superintendent or any other employee upon approval of the Superintendent.
4. Such employee shall explain the nature of the hearing and the particulars specified in the formal notice. The employee also shall ask the incarcerated individual whether there is any factual matter that can be presented on their behalf and shall investigate any reasonable factual claim that the incarcerated individual may make. 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 Chairperson of the Time Allowance Committee prior to the commencement of the special meeting.

- The Time Allowance Committee shall reconsider the entire file of the incarcerated individual, shall interview the incarcerated individual, shall consider any factual matter brought to its attention by the incarcerated individual or the person designated to provide assistance to the incarcerated individual, and may in the Committee's discretion interview any person who may have information relevant to the hearing.
5. The Time Allowance Committee shall advise the incarcerated individual 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 incarcerated individual the opportunity to comment thereon and to make any statement they may care to submit in respect to their time allowance.
 6. Where the Time Allowance Committee is satisfied, after hearing the incarcerated individual, 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 subsection XIII-C-4.

NOTE: When discharged from a RRU, and the incarcerated individual has substantially completed their rehabilitation plan, they shall have any associated loss of good time restored.
 7. In any case where the Time Allowance 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 above.
 8. A written report, including a statement of the reasons for the recommendation, shall be provided to the incarcerated individual following review by the Superintendent and by the Commissioner or designee.

XIV. GRANTING OF TIME ALLOWANCES: 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 section, the Committee shall make a recommendation to the Superintendent as to the amount of good behavior allowance to be accorded to the incarcerated individual.
- B. The Superintendent shall promptly review the report of the Committee and shall endorse any comments they may deem appropriate thereon and immediately forward the report of the Committee and comments, if any, to the Commissioner or designee.
- 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 the committee for re-evaluation and a hearing in accordance with subsection XIII-D.
- 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 incarcerated individual. The grant of the good behavior allowance shall be contingent on the incarcerated individual's continued good behavior, efficient and willing performance of duties assigned, and progress and achievement in an assigned treatment program. The incarcerated individual shall be given a copy of this determination promptly.

XV. STAY OF GOOD BEHAVIOR

- A. Stay of Good Behavior Allowance: Between the time a decision has been made with respect to good behavior allowance and the time that an incarcerated individual 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 in subsection XV-B.
- B. Procedure for Stay of Good Behavior Allowance
1. Superintendent's Hearing
 - a. The decision directing that a misbehavior report be heard in a Superintendent's Hearing against an incarcerated individual shall stay the award of any good behavior allowance that has been granted such incarcerated individual, and such allowance shall be suspended and of no force and effect until a final decision has been made in the Superintendent's Hearing.
 - b. At the conclusion of the hearing, if the disposition does not involve loss of good behavior allowance, the allowance previously granted shall be reinstated.
 - c. Where the disposition does involve loss of good behavior allowance, and the incarcerated individual has an approved conditional release date earlier than their maximum expiration date, the disposition shall automatically be reviewed by the Commissioner or designee.
 - d. If the hearing decision is affirmed, the recommended loss of good behavior allowance shall be applied to the incarcerated individual's conditional release date. Any modification or other decision rendered by the Commissioner or designee shall be applied as specified in such decision. The incarcerated individual shall be given a copy of this determination promptly.
 2. Disregard for statutory criteria
 - a. If an incarcerated individual 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 subsection XIII-D to reconsider the amount of good time to be granted.
 - b. The provisions in Sections XIV and XV shall apply after any hearing conducted pursuant to this subsection.

XVI. REFERENCES

- Executive Law Section 292
- Corrections Law Section 611
- 7NYCRR Chapter V, Subchapters A and B
- Directives #4403, #4933, #4933D, #4944
- ACA Expected Practices
 - 5-ACI-3A-16, 5-ACI-3A-35, 5-ACI-3C-02, 5-ACI-3C-03, 5-ACI-3C-05, 5-ACI-3C-07, 5-ACI-3C-08, 5-ACI-3C-09, 5-ACI-3C-10, 5-ACI-3C-11, 5-ACI-3C-12, 5-ACI-3C-13, 5-ACI-3C-14, 5-ACI-3C-15, 5-ACI-3C-16, 5-ACI-3C-17, 5-ACI-3C-18, 5-ACI-3C-19, 5-ACI-3C-20, 5-ACI-3C-22, 5-ACI-3D-08, 5-ACI-4A-05, 5-ACI-4A-06, 5-ACI-4A-09, 5-ACI-4B-01, 5-ACI-4B-02, 5-ACI-4B-07, 5-ACI-4B-34, 5-ACI-6C-13
 - 2-CO-3A-01, 2-CO-3C-01