

<b>POLICY AND ADMINISTRATIVE PROCEDURE</b>			
Indiana Department of Correction			
<b>Manual of Policies and Procedures</b>			
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<b>THE DISCIPLINARY CODE FOR ADULT OFFENDERS</b>			

- k. The decision of the Superintendent or designee shall be final. There is no appeal of the denial of the request for the restoration of deprived earned credit time; nor is there any appeal of the amount of earned credit time restored.
- l. If an offender is transferred to another facility while a petition is under review, the facility holding the offender when the petition was submitted shall complete the review and forward the result to the receiving facility. The receiving facility shall ensure that the offender is notified of the final decision and that the petition for restoration of earned credit time is filed in the offender's packet and any restoration is recorded in the offender information system.
- m. No offender shall receive a restoration of deprived credit time if the restoration results in placing the offender within forty-five (45) days of his/her EPRD, regardless of conviction.

**X. APPEAL OF DISCIPLINARY DISPOSITION:**

- A. An offender who desires to appeal a disciplinary disposition shall complete State Form 39587, "DISCIPLINARY HEARING APPEAL," within fifteen (15) days from the date of the disciplinary hearing or receipt of the REPORT OF DISCIPLINARY HEARING.
  - 1. In the appeal, the offender shall state the specific reason(s) such a review is requested.
  - 2. A disciplinary action may only be appealed for failure of the facility to follow the due process requirements in this policy and administrative procedure, where there is a question regarding the sufficiency of the evidence relied upon, or in cases where the sanctions given are outside the sanctioning guidelines in these procedures.
  - 3. An offender may not appeal minor errors in the disciplinary reports unless the offender can show that the error resulted in a due process error.

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- B. Offenders who have entered a guilty plea may appeal only the sanction(s) imposed.
  
- C. The first level of appeal shall be to the Superintendent or designee of the facility where the hearing was held who shall consider the offender's statements, review for any due process or sanctioning errors and disciplinary consistency.
  - 1. The response shall be written on State Form 39587, "DISCIPLINARY HEARING APPEAL," and provided to the offender.
  - 2. The Superintendent or designee is the final reviewing authority for appeals for Minor offenses (Class C and D offenses) and for Major offenses (Class A or B offenses) that do not involve the sanctions as indicated in X. D.
  - 3. The Superintendent or designee shall respond to the appeal within 30 days from the date of receipt. A copy of the appeal decision shall be given to the offender and a copy placed in the offender's file.
  
- D. An offender who has received sanctions involving a grievous loss, and who is not satisfied with the appeal response from the Superintendent or designee may appeal the Superintendent's response to the Appeal Review Officer.
  - 1. The appeal shall be on State Form 39587, "DISCIPLINARY HEARING APPEAL," and may be based only upon the same concerns in the first level appeal.
  - 2. Concerns that deviate from the first level appeal may not be considered.
  - 3. The appeal to the Appeal Review Officer must be submitted within fifteen (15) days from the date of receipt of the Superintendent or designee's appeal response. All available documentation relating to the appeal shall be included in the materials the offender submits to the Appeal Review Officer. If the offender wishes to maintain a copy of the documents for his/her records, the offender must make a copy before sending it to the Appeal Review Officer. Only the appeal response shall be returned to the offender. All other documentation shall be filed.

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4. The appeal shall include a copy of the Superintendent or designee's response. Appeals not including the response of the Superintendent or designee shall be denied.
5. The Appeal Review Officer shall review the appeal and make a decision within 30 days from the date the appeal is received. The response shall be sent by the Appeal Review Officer to the designated facility staff as an attachment to an e-mail.
6. After receipt of the appeal response, the designated facility staff shall personally deliver the response to the offender, and cause a copy to be filed in the offender's facility packet. (Facilities shall ensure that staff is available to fulfill this task when the designated facility staff is away from the facility.)
  - a. Appeal responses shall be treated as privileged correspondence.
  - b. The offender shall be required to sign both his/her copy of the appeal and the copy being retained in the facility packet.
  - c. The designated facility staff shall sign and date both copies and return one copy to the facility's records department for filing in the offender's facility packet.
  - d. The designated facility staff shall ensure that any modifications made to the sanctions in the appeal response are forwarded to the appropriate facility staff to make such changes in a timely manner.
- E. Disciplinary Hearing Appeals shall not be considered legal correspondence as defined in the administrative procedure for Policy 02-01-103, "Offender Correspondence"; therefore, the offender shall be responsible for all costs associated with disciplinary appeals.
- F. Appeals at either level may be granted, denied, modified, or remanded upon cause for a re-hearing. If the appeal is remanded for a re-hearing, the reason for the remand shall be stated on the appeal response and returned to the facility with a copy of the offender's appeal.
- G. An order to re-hear a case shall be sent to the offender, the Superintendent and the Disciplinary Review Officer. The re-hearing shall be scheduled and held within seven (7) working days (excluding weekends and

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holidays) from the date the Disciplinary Review Officer receives the order for a re-hearing, unless the Superintendent or designee indicates in writing that cause for a delay exists.

The re-hearing shall be heard by a different Hearing Officer. The offender shall retain all rights of the disciplinary hearing, including the right to appeal the decision of the Hearing Officer.

**XI. SUSPENSION OF RIGHTS AND/OR PROCEDURES:**

- A. Any rights enumerated in this policy and administrative procedure may be suspended upon declaration by the Superintendent that an emergency situation exists, as provided in Policy 02-03-102, "Emergency Response Operations." Upon resolution of the emergency security situation, all suspended rights and/or procedures shall be reinstated.
- B. A Departmental investigation and a Hearing Officer action may be suspended at the discretion of the Superintendent if it appears that such action may have an adverse effect on an outside criminal investigation or prosecution. The offender shall be notified expeditiously of such suspension. Such suspension shall be documented in writing and a copy forwarded to all appropriate staff.

**XII. APPLICABILITY:**

This policy and administrative procedure applies to all staff and incarcerated adult offenders committed to and/or in the custody of the Department.

signature on file  
Bruce Lemmon, Commissioner

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Date