

Chapter 381-50 WAC

PROCEDURES FOR CONDUCTING DISCIPLINARY HEARINGS

Reviser's note: The following chapter has **not** been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was filed in the code reviser's office and was published as WSR 91-14-029 in the Washington State Register. It is published in the Washington Administrative Code exactly as filed by the agency with history notes added by the code reviser's office.

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WAC 381-50-010 Purpose. The purpose of this chapter is to specify policy and procedures relating to disciplinary hearings. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person, and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted to have sufficient flexibility so as to be consistent with law and to permit the indeterminate sentence review board to accomplish its statutory purposes.

[WSR 93-23-077, § 381-50-010, filed 11/17/93, effective 8/23/93. WSR 91-14-029, § 381-50-010, filed 6/26/91, effective 7/27/91.]

WAC 381-50-020 Authority. RCW 9.95.080 and 9.95.009(2).

[WSR 91-14-029, § 381-50-020, filed 6/26/91, effective 7/27/91.]

WAC 381-50-030 Scope. The provisions of this chapter shall apply to adult offenders sentenced under the indeterminate sentencing law and committed to a period of confinement in a Washington state correctional facility, those state officials charged with their care and supervision, and parties to the hearing.

[WSR 91-14-029, § 381-50-030, filed 6/26/91, effective 7/27/91.]

WAC 381-50-040 Petition. Whenever any convicted person sentenced under the indeterminate sentencing law serving sentence in an adult correctional institution commits any infractions of the rules and regulations of the institution, the department of corrections may request, in writing, that the

board conduct a disciplinary hearing. The written request shall include:

(1) Time, place, and a statement of the factual circumstances of the rule infraction and any disciplinary action imposed by the institution.

(2) Recommendation of the superintendent.

(3) Evidence of referral to the prosecuting attorney, if such referral is made, in the event of escape or a rule violation of a felonious nature, and current status of referral.

(4) In the event the rule infraction concerns escape, the following additional information shall be provided:

(a) Facts of the escape;

(b) Activities during the escape;

(c) Causes and motivations for escape;

(d) Dates of escape and return to custody;

(e) Evaluation.

In the event that the rule infraction occurs within fifteen days of the inmate's parole date, the board will accept and act on telephonic reports from the superintendent pending receipt of the written request.

The indeterminate sentence review board reserves the right to schedule disciplinary hearings on its own motion when a major rule infraction is brought to the attention of the board.

The decision to schedule a disciplinary hearing will be made by the vote of the full board.

Pursuant to the provisions of RCW 9.95.080, a disciplinary hearing may be characterized as an adversary hearing in that the subject of the hearing shall be present and entitled to be heard and may present evidence and witnesses in his behalf.

[WSR 92-22-008, § 381-50-040, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-50-040, filed 6/26/91, effective 7/27/91.]

WAC 381-50-050 Suspension of parole date. The board may suspend the parole date of any individual who is scheduled for a disciplinary hearing pending the outcome of the hearing.

[WSR 91-14-029, § 381-50-050, filed 6/26/91, effective 7/27/91.]

WAC 381-50-060 Inmate to be served notice. The board will provide to the institution superintendent three copies of a hearing notice for service upon the inmate at least ten working days prior to any hearing scheduled for that inmate pursuant to RCW 9.95.080. The hearing notice shall specify the type, time, and place of the hearing as well as the reason for that hearing. Possible sanctions, including a statement that no sanction shall exceed the maximum term, will also be included in that notice.

(1) Upon receipt of the hearing notice, the superintendent or his designee shall immediately serve the subject inmate with the document.

(2) The original of the hearing notice showing date of service and signed by the inmate shall be returned immediately to the board offices in Olympia. One copy may be retained in the inmate's institutional file and one copy will be provided to the inmate.

(3) In cases where the inmate refuses to sign the notice, the superintendent or his designee shall note the time and place of service and obtain the signature of a witness to such service.

[WSR 91-14-029, § 381-50-060, filed 6/26/91, effective 7/27/91.]

WAC 381-50-070 Inmate shall be advised of rights.

Each inmate who becomes the subject of a hearing conducted under the provisions of RCW 9.95.080 shall be advised of his rights orally and in writing at the time he is served with a notice of the hearing. The written notice provided by the board will advise the resident that:

- (1) He has been accused of a major rule infraction;
- (2) The minimum term may be redetermined but not until after a hearing in front of the board where he is present and given the opportunity to be heard under oath and explain the alleged violations to the board;
- (3) He will have the right to have an attorney present, but at his own expense.

[WSR 91-14-029, § 381-50-070, filed 6/26/91, effective 7/27/91.]

WAC 381-50-080 Witnesses. The subject of any hearing conducted under the provisions of this chapter may call witnesses on his behalf and at his expense. Such witnesses shall appear voluntarily and shall be limited to those persons who have knowledge of, or who have specific testimony about the allegations which caused the hearing to be convened. The superintendent or his designee shall provide assistance to the inmate in notifying witnesses of the time and place of the hearing as requested by the inmate. The presiding officer may, in certain cases, direct the superintendent to make any staff member or prisoner available for testimony.

The board may allow, accept, and consider telephonic testimony. The witness whose testimony is received telephonically shall be telephonically available for cross-examination.

[WSR 91-14-029, § 381-50-080, filed 6/26/91, effective 7/27/91.]

WAC 381-50-090 Conducting a hearing. All hearings conducted under the provisions of this chapter shall be conducted by a panel of at least two members of the board. One of the members will serve as the presiding officer.

The panel may question witnesses called to testify at the hearing to develop any facts deemed necessary to render a fair and impartial decision.

Observers may be present at the hearing if prior approval has been granted by the facility superintendent and the inmate who is the subject of the hearing does not object. However, no family members, friends, relatives, or interested parties may be present. The board will accept and consider written statements submitted by individuals expressly excluded from hearings. Exclusion of observers other than

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those expressly excluded herein shall be by cause articulated on the record by the presiding officer of the board panel conducting the hearing.

[WSR 91-14-029, § 381-50-090, filed 6/26/91, effective 7/27/91.]

WAC 381-50-100 Continuances. Continuances may be granted by the board prior to and during hearings conducted under provisions of this chapter, either on its own motion or on petition of the subject of the hearing, provided that such petition is sent to the board in writing immediately upon receipt of the hearing notice and that it specifies the reasons for continuance. Continuances requested during the hearing may be granted by the board panel if it appears in the public interest or in the interest of justice that further testimony or argument should be received.

[WSR 91-14-029, § 381-50-100, filed 6/26/91, effective 7/27/91.]

WAC 381-50-110 Prehearing conferences. The presiding officer conducting a hearing under the provisions of this chapter may require the parties to appear at a specified time and place for a conference immediately prior to the hearing to discuss and define procedural matters pertaining to the hearing.

[WSR 91-14-029, § 381-50-110, filed 6/26/91, effective 7/27/91.]

WAC 381-50-120 Inmate to be present. The subject of any hearing conducted under the provisions of this chapter shall be present during the conduct of the hearing. However, in the event the subject refuses to appear, the board will continue the hearing until the next scheduled visit by the board to that particular institution. In the event that the subject of the hearing again refuses to appear, then the hearing will be conducted in absentia.

[WSR 91-14-029, § 381-50-120, filed 6/26/91, effective 7/27/91.]

WAC 381-50-130 Oaths and affirmations. The presiding officer conducting hearings under the provisions of this chapter shall have the authority to administer oaths and affirmations.

[WSR 91-14-029, § 381-50-130, filed 6/26/91, effective 7/27/91.]

WAC 381-50-140 Opportunity to waive. At the time of the disciplinary hearing, it shall be the duty of the presiding officer conducting the hearing to query the inmate and to review the file to determine whether the inmate was given proper notice of the hearing, and was advised of the reason for the hearing, and was properly advised of his or her rights to witnesses. If it is determined that the inmate was not properly served or advised of his or her rights, the inmate shall have the opportunity to:

- (1) Waive such rights, orally or in writing, to the board, at which time the hearing would proceed; or
- (2) Request a continuance of the hearing until proper services of notice and rights can be perfected.

[WSR 91-14-029, § 381-50-140, filed 6/26/91, effective 7/27/91.]

WAC 381-50-150 Rules of evidence—Admissibility. All relevant evidence shall be admissible which, in the opinion of the presiding officer, is the best evidence obtainable,

having due regard for its necessity, availability, and trustworthiness. "Relevant evidence" means evidence having a tendency to make the existence of any fact that is of more consequence to the determination of the action more or less probable than it would be without evidence. In passing upon admissibility of evidence, the presiding officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington.

The presiding officer may, either with or without objection, exclude inadmissible evidence, or order accumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time evidence is offered. If the sole evidence is hearsay that would be inadmissible in a superior court proceeding and is not substantiated or corroborated, or is the result solely of a polygraph examination, a finding of guilty shall not be made.

[WSR 92-22-008, § 381-50-150, filed 10/21/92, effective 10/19/92. WSR 91-14-029, § 381-50-150, filed 6/26/91, effective 7/27/91.]

WAC 381-50-160 Disposition. The board panel shall render a decision on each case heard under the provisions of this chapter.

In disciplinary hearings, sanctions may range from no change in the length of sentence to redetermination of the original sentence and imposition of an extension of the term not to exceed the maximum term. Denial of any good time credits, past and future, is optional with the board panel.

[WSR 91-14-029, § 381-50-160, filed 6/26/91, effective 7/27/91.]

WAC 381-50-170 Statement of findings and conclusions. The board will make a concise written statement of findings and conclusions in each case heard under the provisions of this chapter.

[WSR 91-14-029, § 381-50-170, filed 6/26/91, effective 7/27/91.]

WAC 381-50-180 Hearing record preservation. There will be a recording made of all hearings conducted under the provisions of this chapter. Such recordings shall be preserved at the offices of the board in Olympia for not less than six months subsequent to the hearing. Parties requesting partial or total duplication of any hearing must request such recordings pursuant to the Public Disclosure Act and reimburse the board for the costs involved in such a procedure.

[WSR 99-07-081, § 381-50-180, filed 3/18/99, effective 3/15/99; WSR 92-22-008 § 381-50-180, filed 10/21/92, effective 10/19/92; WSR 91-14-029, § 381-50-180, filed 6/26/91, effective 7/27/91.]