

Kansas Administrative Regulations

Department of Corrections

Article 13.—Disciplinary Procedure

44-13-403. Conducting the disciplinary hearing.

(a) The disciplinary hearing shall consist of the following procedures:

(1) The hearing officer shall initially inform the inmate of the charges and take the inmate's plea.

(2) Secondly, the hearing officer shall determine guilt or innocence.

(3) Finally, if guilt has been established, the hearing officer shall make a disposition, including the determination and imposition of sentence.

(b) Initially, the hearing officer shall read the disciplinary report to the inmate, including the date, nature of the offense, the reporting officer's name, and a synopsis of the observation. The officer shall ensure that the inmate understands the charges and that a copy of the disciplinary report was received by the inmate. The officer shall also explain the possible penalties. If the hearing officer finds that the inmate is incapable of self-representation, the hearing officer shall continue the hearing as provided in K.A.R. 44-13-402(b)(1), until the inmate regains the ability for self-representation. For purposes of this subsection, "incapable of self-representation" shall mean that the inmate, due to physical or mental disability, whether temporary or permanent, lacks the present ability to assist in the inmate's representation in the case. This term shall not include mere illiteracy.

(c) A staff assistant shall be permitted to be with the inmate at all stages of the disciplinary hearing only as provided in K.A.R. 44-13-408. The hearing officer shall ensure that the inmate has staff assistance when required by K.A.R. 44-13-408.

(d) If the inmate is disruptive or refuses to be present, the hearing may proceed in absentia, and the record shall indicate the reason or reasons for the inmate's absence. A staff assistant shall then be assigned and may ask questions of witnesses, present the argument, or otherwise aid the defendant inmate, at the discretion of the staff

assistant and subject to rulings of the hearing officer as otherwise provided in this regulation.

(e) The hearing officer shall entertain and determine any motion for dismissal or objections to holding the hearing, as well as any motions for additional witnesses beyond those identified already in the witness list previously submitted. Additionally, the hearing officer shall advise the inmate of the inmate's rights to proceed to a determination of guilt or innocence, and if necessary, the application of penalties, and to receive staff assistance in certain cases, according to K.A.R. 44-13-408, and of other procedural due process rights.

(f) The hearing officer shall then ask the inmate to plead guilty, not guilty, or no contest. The plea shall be entered if the presiding officer is assured that the plea is made knowledgeably and without threat or promise of reward to the inmate. If the inmate refuses to plead, the hearing officer shall enter a plea of not guilty. A plea of no contest shall be treated in the same manner as that for a plea of guilty. If the inmate pleads guilty or no contest, the inmate shall waive the right to a determination of guilt or innocence, but shall reserve the right to participate in the penalty phase of the hearing to the extent of offering a brief argument in mitigation of the penalty to be imposed. If the inmate pleads guilty or no contest, the inmate shall not be allowed to introduce evidence regarding the inmate's guilt or innocence of the charge or charges.

(g) The hearing officer shall, upon a plea of guilty or no contest, make a finding of guilt and conduct a sentencing hearing, and may impose a sentence.

(h) If the hearing officer finds that the case shall be dismissed, the officer may dismiss the charge on the officer's own motion or on motion of either party. The hearing officer shall give a brief explanation on the record and provide a copy of the explanation to the reporting officer.

(i) Only the relevant facts shall be employed in any determination of guilt or innocence. In the penalty phase, the inmate's entire facility record and other relevant facts, observations, and opinions may be considered.

(j) The hearing officer shall rule on all matters of evidence. Strict rules of evidence, as used in a court of law, shall not be required, but the hearing officer shall exercise

diligence to admit reliable and relevant evidence and to refuse to admit irrelevant or unreliable evidence.

(k) The hearing officer shall rule on all matters of assistance for the accused inmate in accordance with these regulations. If the accused inmate is furnished with staff assistance according to K.A.R. 44-13-408, the staff assistant shall be permitted to fully assist the accused and shall be permitted to question witnesses and present arguments on behalf of the accused inmate, except as otherwise provided by these regulations.

(l)(1) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate. For this purpose, the hearing officer shall be authorized to call and to interrogate any witness, and each inmate, staff member, volunteer, or contract employee called as a witness by the hearing officer shall be compelled to appear. The hearing officer may bring out the facts by direct or cross-examination but shall not act as prosecutor on behalf of the facility or charging officer against the accused inmate, or on behalf of the inmate. Testimony and evidence shall not be received by the hearing officer or introduced outside the presence of the accused inmate, except that the accused inmate shall not be present when the hearing officer reviews any facility security videotape evidence. An inmate shall not be required to be present at the disciplinary hearing as provided in subsections (d), (e), and (m) and K.A.R. 44-13-402(b)(5), and as otherwise provided in these regulations.

(2) The hearing shall proceed as follows:

(A) The prosecution shall present its evidence, and the defense shall be permitted to cross-examine, except as otherwise provided by these regulations.

(B) The defense shall present its evidence, and the prosecution shall be permitted to cross-examine.

(C) The prosecution may make a closing argument. The defense may make a closing argument, and then the prosecution may make a short rebuttal.

(m)(1) If the hearing officer determines that the testimony of any inmate will subject that inmate to possible retaliation for having testified, the hearing officer may perform either of the following:

(A) Receive the testimony in confidence without confrontation or cross-examination by the accused inmate, and the witness may be sequestered; or

(B) receive testimony from an investigator who interviewed an inmate informant and relied on the confidential information provided.

(2) The testimony of the inmate witness given under oath shall be examined and tested by the hearing officer. The hearing officer shall closely question the testifying inmate to determine the veracity and weight of the testimony offered. The hearing officer shall complete a credibility assessment form, which shall be available for confidential review by the warden and secretary of corrections.

(3) If the informant inmate does not testify, the hearing officer may establish the reliability of the information provided to the testifying investigators by any of the following:

(A) The testimony of the investigator regarding the reliability of the informant in the past, which shall include specific examples of past instances of reliability;

(B) the testimony of the investigator regarding the truthfulness of details that the investigator has been able to verify through investigation;

(C) corroborating testimony;

(D) a statement on the record by the hearing officer that the hearing officer has firsthand knowledge of the informant and considers the informant to be reliable due to the informant's past record of reliability, which shall include specific examples of past instances of reliability; or

(E) in camera review of material documenting the investigator's assessment of the credibility of the informant.

(4) The accused shall be apprised of the general nature of the confidential testimony, omitting those details that would tend to identify the inmate who gave the confidential testimony or provided confidential information to the testifying investigator. The identity of any confidential witness or of any inmate informant shall not be disclosed to the accused, to any other inmate, or to any staff not required to complete the process. The staff assistant shall be permitted to be present when the board receives testimony from the confidential witness, or investigator, and the staff assistant may ask questions. The inmate's staff assistant shall not disclose the identity of the confidential witness or inmate informant to the accused, to any other inmate, or to any staff not

required to complete the hearing process. The testimony shall be recorded for confidential review by the warden and, on appeal, by the secretary of corrections.

(n) The hearing officer may require the accused to explain briefly what the purpose and nature of the testimony of a witness will be. The request to call the witness may be denied or the testimony reasonably and fairly restricted if the testimony meets any of the following criteria:

- (1) Relates to something already disposed of;
- (2) is clearly irrelevant or immaterial;
- (3) is repetitious of other testimony; or
- (4) is properly excluded for reasons specified in K.A.R. 44-13-405a.

The truth of the testimony shall be presumed in making this decision.

(o) A witness request made at the hearing and not previously submitted shall not be permitted unless exceptional circumstances outside the control of the inmate exist and the testimony would most likely affect the outcome of the hearing. The hearing officer shall inform the inmate of any witness deemed waived by the failure to make a timely request.

(p) The hearing officer, in deciding whether or not the inmate is guilty, shall consider only the relevant testimony and report. The accused inmate's correctional and supervision record shall not be considered in determining guilt or innocence. The decision in the hearing shall be based solely on evidence presented as part of the hearing.

(q) Confrontation and cross-examination may be denied by the hearing officer if deemed necessary in any case except class I cases. In class I cases, confrontation and cross-examination may be limited or denied if necessary to protect the safety of an accuser, informant, or witness or if necessary to maintain facility safety, security, and control. Unless there is a security risk endangering some person, the explanation shall be in the record. If there is such a security risk, a written explanation of the reason shall be sent to the warden with a copy to the secretary for confidential review. However, an inmate held in administrative or disciplinary segregation whose hearing is conducted by telephone, as provided by K.A.R. 44-13-404(e), shall not be permitted to confront any witnesses against the inmate, including the reporting officer.

(r) After the conclusion of the presentation of evidence regarding guilt or innocence or disposition, if the hearing officer needs the charging officer, the accused inmate, or both present to provide further information to clarify facts, both parties shall be present to hear what the other is saying unless exempt under subsection (m) or (p) above.

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***** Authenticated Kansas Administrative Regulation *****