

Kansas Administrative Regulations

Department of Corrections

Article 13.—Disciplinary Procedure

44-13-404. Presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony.

(a) The inmate shall be present at all stages of the disciplinary hearing and disposition except as otherwise provided by these regulations or by law. Subject to the provisions of subsection (e), if the inmate is not present, then a staff assistant shall be assigned in accordance with K.A.R. 44-13-403 and 44-13-408.

(b)(1) In class I cases, the charging officer shall be present in person or by telephone, as determined by the hearing officer, for direct examination and cross-examination, unless excused by the hearing officer or unless the inmate has been transferred to another facility. The hearing officer may excuse the charging officer only if any of the following is determined:

(A) Facility safety or correctional goals would be jeopardized.

(B) The charging officer is absent from duty due to activation for military service.

(C) The charging officer has been separated from employment with the facility for reasons unconnected to investigation of the charges or issuance of the disciplinary report.

(D) The charging officer is otherwise unlikely to be available for testimony within a reasonable time period as determined by the hearing officer, and a continuance pursuant to K.A.R. 44-13-402 either is not applicable or is not appropriate in the judgment of the hearing officer.

Facility safety or correctional goals shall not include considerations of mere convenience. If the officer is not present, the officer's report and statement shall be made to the hearing officer in writing under oath. Copies of the report shall be provided to the inmate, and it shall be read aloud at the hearing unless confidentiality is required to protect an inmate accuser, informant, or witness. If the charging officer is excused

from appearance, the hearing officer shall document the ground for the excuse and shall likewise document the facts underlying the ground relied upon in the case record.

(2) If an inmate has been transferred to another facility after a disciplinary report was written in a class I case, the testimony of the charging officer and other witnesses regarding that report may be taken by telephone at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that can be heard by all those present at the hearing, and shall be subject to the same procedures as though the witness were personally present at the hearing.

(c)(1) In class II and III cases, the officer's attendance shall not be required unless deemed necessary by the hearing officer. The officer's report and statement shall be submitted to the hearing officer in writing under oath. It shall be read aloud at the hearing, and a copy shall be given to the inmate unless confidentiality is required to protect an inmate accuser, informant, or witness according to K.A.R. 44-13-403(m). If such confidentiality is required, but it is possible to protect the inmate accuser, informant, or witness by editing out certain portions of the report and statement, then those portions shall be edited and the inmate provided with a copy. The hearing officer may contact the officer, by telephone or radio, to ask questions or clarify the facts while the hearing is being conducted or while the matter is being considered for decision.

(2) In all class II and III cases, if the charging officer requests, the hearing officer shall allow the charging officer to be present. In such a case, the officer shall be present throughout and shall be subject to direct examination, confrontation, and cross-examination unless restricted by the hearing officer according to these regulations.

(d) (1) The officer's statement under oath shall consist of the officer's rendition of all the facts of the case resulting from the charging officer's complete fact investigation. To the best of the officer's ability, it shall show all relevant and material facts that might be used to support both the facility's case against the inmate and the inmate's defense. If the officer is uncertain of a fact, the officer shall state that with respect to the fact. The charging officer may either adopt or defer under oath to any official neutral fact investigation report that might be conducted by another person or may submit the charging officer's own statement in addition to the investigation report.

(2) Confidential inmate testimony may be deleted from the statement in lieu of testimony and reported separately. The hearing officer shall receive any confidential inmate testimony in accordance with K.A.R. 44-13-403.

(e) Hearings for inmates detained or held in administrative or disciplinary segregation status may be conducted by telephone, with the inmate remaining in the inmate's cell and outside the immediate physical presence of the hearing officer and any witnesses, including the reporting officer, at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that allows the testimony to be heard by all those present at the hearing. The testimony taken by telephone shall be subject to the procedures governing the testimony of any witness personally present at a hearing. A staff assistant shall not be required to be appointed to render assistance to the inmate unless at least one of the circumstances set forth in K.A.R. 44-13-403 or 44-13-408 is present. The inmate shall be permitted to submit written motions, exhibits, or affidavits on the inmate's behalf to the hearing officer to the extent and under the circumstances applicable to documentary presentations under these regulations.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

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