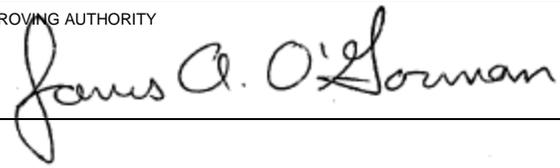


 NEW YORK STATE Corrections and Community Supervision DIRECTIVE	TITLE Standards of Adolescent Offender Behavior & Allowances		NO. 4932A
			DATE 10/03/2018
SUPERSEDES	DISTRIBUTION A B	PAGES PAGE 1 OF 22	DATE LAST REVISED
REFERENCES (Include but are not limited to) Directive #4944; 7NYCRR 251-3.1, ACA Expected Practices: See Section II		APPROVING AUTHORITY 	

I. POLICY

- A. Adolescent Offenders (AO) are required to follow the rules of conduct that have been designed to support the rehabilitation process. AOs require special attention when attempting to modify negative behavior to within Department standards. Several methods of response are available to staff to curtail negative behavior. Not all negative behavior should rise to the level of a misbehavior report. If a staff member feels it necessary to issue a misbehavior report and in the course of the hearing the Hearing Officer affirms the charge(s) the Hearing Officer must carefully consider the age of the AO when determining the penalty. Whenever possible, penalties should be graduated according to the AO's previous behavior.
- B. It is the policy of the Department of Corrections and Community Supervision (DOCCS) to ensure that any administrative processes associated with any AO who may be subject to discipline and grievances are conducted fairly and that decisions are not influenced by stereotypes or bias based on race, color, ethnicity, or national origin. Moreover, it is our policy to eliminate, mitigate, and respond to racial disparities so as to ensure a fair and equitable distribution of benefits and burdens in the placement of AOs in housing unit assignments, institutional work assignments, and programs and the proper post release supervision of parolees to include, but not limited to, supervision level, violation processes, and early discharge/merit terminations. 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 AOs work and live together regardless of their identity and backgrounds.
- C. The Department prohibits the placement of AOs into a Special Housing Unit and/or the confinement of an AO in a security room for a period exceeding five days.
- D. The Department provides, at all AO facilities, an Adolescent Offender Separation Unit (AOSU) for the confinement of AOs admitted in accordance with the guidelines outlined in this directive. AOs admitted to an AOSU will be confined in a cell/room for no more than eighteen hours per day, five days per week (excluding holidays), with six hours of out-of-cell time consisting of a minimum of four hours of out-of-cell programming for education, or other appropriate out-of-cell programming, with the goal of expediting the transition of the AO into general population and encouraging interaction with others, and two hours out-of-cell outdoor activities (weather permitting) seven days a week.

II. ASSOCIATED ACA EXPECTED PRACTICES

- 4-JCF-2A-17
- 4-JCF-2A-29
- 4-JCF-3B-02
- 4-JCF-3B-03
- 4-JCF-3B-06
- 4-JCF-3B-07
- 4-JCF-3B-08
- 4-JCF-3B-09
- 4-JCF-3B-10
- 4-JCF-3C-01
- 4-JCF-3C-02
- 4-JCF-3C-03
- 4-JCF-3C-05
- 4-JCF-3C-06
- 4-JCF-3C-07
- 4-JCF-3C-08
- 4-JCF-3C-09
- 4-JCF-3C-10
- 4-JCF-3C-11
- 4-JCF-3C-12
- 4-JCF-3C-14
- 4-JCF-4C-47

III. DEFINITIONS

- A. AO: An Adolescent Offender who has been sentenced under New York State Raise the Age Law and/or has been assigned to a NYS DOCCS Adolescent Offender Facility, regardless of age.
- B. Timeout: A form of behavioral modification which involves temporarily separating an AO from the environment in which the unacceptable behavior occurred. Effectively deescalating the incident, through communication and reflection.
- C. Adolescent Offender Separation Unit (AOSU): A group of cells designated by the Superintendent which has been approved by the Commissioner or designee, for the temporary separation of AOs from general population AOs.

IV. PROCEDURES FOR IMPLEMENTING STANDARDS OF AO BEHAVIOR

A. Scope and Interpretation of Rules

1. Applicability

- a. The rules set forth in this section establish procedures to supplement the Department's ordinary programs for AO's indoctrination, guidance, counseling, and training. They are to be applied for the following purposes:

(1) Implementation of standards of behavior where an AO:

- (a) Violates a rule governing behavior;
- (b) Fails or refuses to comply with an instruction given by an employee of the Department acting within the scope of official duties in giving such instruction; or
- (c) Attempts to escape, escapes, or engages in any other unlawful conduct; and

(2) Administration of procedures for granting good behavior allowances ("good time").

- b. The provisions of this Directive shall apply to all AO facilities in the Department.

2. General Policies on Discipline of AOs

- a. Disciplinary action is one of many essential elements in AO treatment. When applied reasonably and with fairness, it not only assists in the protection of the health, safety, and security of all persons within an AO facility; it is a positive factor in rehabilitation of AOs and the morale of the facility.

- b. Just as the sentencing of AOs by courts and the techniques used for correcting behavior must be appropriately varied to fit a complex matrix of individual circumstances and individual conditions, the disciplinary techniques within an AO facility must be appropriately varied to fit such factors as:
 - (1) The particular circumstances involved;
 - (2) The overall behavior pattern of the AO; and
 - (3) The problems in, and the present atmosphere of, the AO facility.Consequently, persons vested with responsibility for disciplinary measures in AO facilities of the Department should not establish rigid structures for disciplinary sanctions. They should consider each situation individually.
- c. Disciplinary action shall be taken only in such measures and degree as is necessary to:
 - (1) Regulate an AO's behavior within acceptable limits;
 - (2) Assist in achieving compliance by the entire AO population with required standards of behavior; and
 - (3) Preserve the confidence of all concerned (i.e., the AO population and the staff) in the administration's sincere belief in and determination to maintain the required standards of behavior.
- d. All control of AO 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).
- e. Disciplinary measures should not be overly severe. A sound disciplinary program also relies upon certainty and promptness of action, rather than upon severity.
- f. Disciplinary action must never be arbitrary or capricious, or administered for retaliation or revenge.
- g. Corporal punishment is absolutely forbidden for any purpose and under all circumstances.
- h. 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 AOs 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 AO or to others.

B. Cases of AO Misbehavior

- 1. General Policy: All incidents of AO violation of rules, AO misbehavior, and AO failure or refusal to comply with an instruction given by an employee acting within the scope of his or her official duties shall be handled as quietly and routinely as possible, giving due regard to danger to life, health, security, property, and AOs.
NOTE: See Directive #4944, "Use of Physical Force," and Title 7 NYCRR Section 251-3.1, "Misbehavior Report."

2. Minor Infractions: An employee should deal with minor infractions, or other violations of rules and policies governing AO behavior, that do not involve danger to life, health, security, or property by counseling, warning, and/or reprimanding the AO; and the employee need not report such minor incidents.
3. Timeouts: A form of behavioral modification which involves temporarily separating an AO from the environment in which the unacceptable behavior occurred. This "cooling off" period is of short duration and should not restrict or deny program participation. The AO is returned to the group when the negative behavior is under control.
 - a. While in timeout:
 - (1) The timeout will occur in an area that has been designated for such by the Superintendent;
 - (2) The AO has the reason for the timeout explained and is given the opportunity to explain his/her reason(s) for the behavior;
 - (3) Staff contact is made and documented every 15 minutes;
 - (4) The AO participates in determining the end of the timeout; and
 - (5) Timeout or room restriction cannot exceed 60 minutes, specified at the time of assignment.
 - (6) However, upon determining that the AO's behavior has not changed sufficiently to allow for his/her return to routine activities, he/she may be confined as below.
4. Confinement
 - a. Where an Officer has reasonable grounds to believe that an AO should be confined to a cell, room, or housing area because he or she represents an immediate threat to the safety, security, order of the facility, is an immediate danger to other persons, himself or herself, to property, or has been charged with a major rule violation requiring confinement, such Officer shall take reasonable and appropriate steps to confine the AO. Confinement lasting longer than 24 hours in duration must be reviewed by the Deputy Superintendent for Security (DSS) or designee at least once every 24 hours.
 - b. An AO also may be confined to a cell or room where such action appears reasonably necessary for safety of the AO or other AOs. In any such case, however, the AO shall not be confined for more than 72 hours, and within such time period the AO shall either be:
 - (1) Transferred to another housing unit;
 - (2) Scheduled for transfer to another facility;
 - (3) Released from such confinement; or
 - (4) Placed in protective custody.

- c. If the Officer having charge of an AO or if any superior Officer has reasonable grounds to believe that an AO's behavior in a cell or room is disruptive, or will be disruptive of the order and discipline of the housing unit, or is inconsistent with the best interests of the AO or of the facility, such fact shall be reported to the Superintendent or the Officer in charge of the facility and the Superintendent or the Officer in charge of the facility may order confinement in an Adolescent Offender Separation Unit (AOSU). In the event a female AO is placed in an AOSU for any length of time, the Superintendent or the Officer in charge of the facility shall immediately notify the Assistant Commissioner for Special Housing and Inmate Disciplinary Programs.
 - d. An employee who places an AO in confinement in a cell or room or who places an AO in an AOSU, shall report such fact in writing to the Superintendent as soon as possible, and before going off duty.
 - e. 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 AOs or any segment of the AOs 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 and Assistant Commissioner for Special Housing and Inmate Disciplinary Programs.
5. Review Officer
- a. At each AO facility, dependent upon the AO facility needs, there shall be one or more staff members with the rank of Lieutenant or above, to be known as the Review Officer. The Superintendent may, if sufficient reason exists, designate some other employee to serve as the Review Officer.
 - b. The Review Officer shall receive, at least once daily, all misbehavior reports issued at the facility.
 - c. Except as provided in subdivision 5-e (below), the Review Officer shall review such reports and considering the seriousness of the alleged violations of the standards of AO behavior, refer such reports to the lowest appropriate disciplinary body (tier level) for action as indicated below:
 - (1) 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.
 - (2) Where the violation, if substantiated, would warrant only a penalty of loss of privileges up to and including 30 days, and including confinement to a cell or room (keeplock) for a period up to and including 30 days, the misbehavior report shall be forwarded to the Disciplinary Hearing Officer for appropriate action.

- (3) 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.

NOTE: The Review Officer must document reasons for any decision to assign a disciplinary violation other than to the lowest possible tier.

- d. The Review Officer may dismiss any misbehavior report which fails to state a valid charge, or may return it to be rewritten.
 - e. The Review Officer shall refer any report that includes a description that an AO has engaged in an act of self-harm to the DSS, who shall fulfill the function of the Review Officer and have the authority to dismiss the charge or charges if he or she believes, due to the AO's mental state or for any other reason, that proceeding to a hearing would serve no useful purpose.
 - f. The Review Officer shall review the status of each AO keeplocked pursuant to a misbehavior report under review, and may order the release of an AO who is no longer a threat to the safety and security of the facility or to himself or herself.
 - g. The Review Officer shall not act as a Hearing Officer in any proceeding arising from a misbehavior report which he or she has reviewed.
6. Misbehavior Report
- a. Every incident of AO misbehavior involving danger to life, health, security, or property must be reported, in writing, as soon as practicable. 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 his or her name on a report made by one of the employees.
 - b. The misbehavior report shall include the following:
 - (1) A written specification of the alleged incident of misbehavior involved;
 - (2) A reference to the AO rule book number and a brief description of the rule allegedly violated by the AO;
 - (3) The date, time, and place of the incident; and
 - (4) Where more than one AO was involved in an incident, the report should, to the extent practicable under the given circumstances, indicate the specific role played by each AO. 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.
 - c. 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 DSS or designee prior to the Hearing to make a statement on the need for continued prehearing confinement."

NOTE: Paragraphs (2) and (3) above, shall not be included in misbehavior reports used in connection with Violation Hearings.

- d. Employees of the Office of Mental Health may write misbehavior reports to the same extent as Department employees.

7. AO Assistant

- a. An AO shall have the opportunity to select any available employee from the AO's current facility who shall assist the AO when a misbehavior report has been issued against the AO if:
 - (1) The AO is either illiterate or Limited English Proficient (LEP) (the list of persons who may assist an LEP AO will only include qualified interpreters); or
 - (2) The AO is sensorially disabled, in which case the AO will be provided reasonable accommodations including, but not be limited to:
 - (a) The provision of a qualified sign language interpreter for a deaf and/or hard of hearing AO who uses sign language to communicate; or
 - (b) Provided all documentation in at least size 18 font for AOs who are LB/SVI (Legally Blind or Severely Visually Impaired), including the use of adaptive equipment (i.e., magnifier, portable CCTV, and/or scribe/reader, etc.); or
 - (3) The AO is charged with drug use as a result of a urinalysis test; or
 - (4) The AO is confined pending a Disciplinary Hearing or Superintendent's Hearing.
- b. In other cases where a misbehavior report has been issued, the Review Officer or Hearing Officer, in his or her absolute discretion, may offer an AO the opportunity to select an AO Assistant where such assistance would enable the AO to adequately comprehend the case in order to respond to the charges.
- c. Assistant: The Assistant's role is to speak with the AO charged, explain the charges and the hearing process to the AO, interview witnesses, and to report the results of those efforts to the AO. He or she may assist the AO in obtaining documentary evidence or written statements which may be necessary. The Assistant may be required by the Hearing Officer to be present at the Disciplinary or Superintendent's Hearing.

-
8. Timeliness
 - a. Where an AO is confined pending a Disciplinary Hearing or Superintendent's Hearing, the Hearing must be commenced as soon as is reasonably practicable following the AO's initial confinement pending said Disciplinary Hearing or Superintendent's Hearing; however, in no event may it be commenced beyond seven days of said confinement without authorization of the Commissioner or designee.
 - b. The Disciplinary Hearing or Superintendent's Hearing must be completed within 14 days following the writing of the misbehavior report, 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 or adjournment, and an AO should ordinarily be made aware of these reasons unless to do so would jeopardize institutional safety or AO facility goals.
 - c. Violation Hearings must be completed within seven days of the writing of the misbehavior report.
 - C. 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.
 1. Violation Officer
 - a. In each AO facility, dependent on the needs of the AO facility, there shall be one or more Officers with the rank of Sergeant or above who shall function as a Violation Officer.
 - b. The Violation Officer shall be responsible for conducting the Violation Hearing.
 - c. Upon receipt of a misbehavior report from the Review Officer, the Violation Officer shall:
 - (1) Give a copy of the misbehavior report and have the process explained to the AO within 24 hours, absent any extenuating circumstances;
 - (2) Notify the AO 24 hours in advance of the hearing;
 - (3) Allow the AO to be present at the Violation Hearing, unless he or she refuses to attend; and
 - (4) Allow the AO to present documentary evidence, to submit a written statement on his or her behalf, and to reply to the charge. The AO shall not have the right to call witnesses.
 - d. The Violation Officer may allow any evidence necessary to aid in the decision.
 2. AOs with Limited English Proficiency (LEP) and Sensorially Disabled AOs
 - a. An AO with LEP who cannot read and understand English must be given a translated notice of the charges; an AO with LEP who cannot speak and understand English must be provided with qualified interpretation services for the Hearing.
 - b. A deaf or hard of hearing AO 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 AO who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the Hearing.

- c. A LB/SVI AO must be given all relevant documentation (at a minimum of size 18 font) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, etc.), or other reasonable accommodations during the Hearing.
3. Dispositions at Violation Hearing
- a. 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:
 - (1) Loss of all or part of recreation (game room, day room, television, movies, yard, gym, special events including earned incentives) for up to 13 days;
 - (2) Loss of maximum of two of the following privileges:
 - (a) One commissary buy, excluding items related to the AO's health and sanitary needs;
 - (b) Withholding of radio or tablet for up to 13 days; and/or
 - (c) Withholding of packages for up to 13 days, excluding perishables that cannot be returned;
 - (3) The imposition of one cleaning task per day, not to exceed one hour other than regular assignments for a maximum of seven days, excluding Sundays and public holidays, to be performed on the AO's housing unit, or other designated area. AOs given such disposition, who are participating in a regular assignment, shall not be required to perform all tasks more than eight hours per day. The eight-hour limitation excludes educational or vocational school programming; and
 - (4) Counsel and/or reprimand.
 - b. Following the Violation Hearing, the AO shall receive a written statement indicating the penalty imposed as soon as possible; however, not later than 24 hours after the conclusion of the Hearing.
 - c. Records of disposition of Violation Hearings shall not be used for any purpose, except as follows:
 - (1) A Violation Officer shall have available records of an AO's suspended and uncompleted dispositions when conducting a Hearing with regard to the AO; and
 - (2) In determining the appropriate level at which an AO's misbehavior report should be handled, a Review Officer may consider descriptions of an AO's charges and dispositions of Violation Hearings dated within 14 days of the review.
 - d. 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 AO's institutional records.

4. 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.
5. Discretionary Review by Superintendent or designee: At any time during which a penalty imposed pursuant to a Violation Hearing is in effect, the Superintendent may reduce the penalty.

D. Disciplinary Hearing

1. At each AO facility, dependent on the needs of the AO facility, there shall be one or more Hearing Officers with the rank of Lieutenant or above who shall function as a Disciplinary Hearing Officer. The Superintendent may, in his or her discretion, designate some other employee to conduct Disciplinary Hearings. However, this designation may not extend below salary grade 20.
 - a. 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.
2. AOs with LEP and sensorially disabled AOs
 - a. An AO 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 AO with LEP who cannot speak and understand English must be provided with qualified interpretation services for the hearing.
 - b. A deaf or hard of hearing AO 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 AO who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the Hearing.
 - c. A LB/SVI AO must be given all relevant documentation (at a minimum of size 18 font) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, etc.), or other reasonable accommodations during the Hearing.
3. Formal Charge: The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions of this Directive.
4. Assistance: The AO shall be provided with an Assistant in accordance with the provisions of this Directive.
5. AO's Witnesses
 - a. The AO may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or AO facility goals. If permission to call a witness is denied, the Hearing Officer shall give the AO a written statement stating the reasons for the denial, including the specific threat to AO facility safety or goals presented.

- b. Any witness shall be allowed to testify at the Hearing in the presence of the AO unless the Hearing Officer determines that so doing will jeopardize institutional safety or AO facility goals.
 - c. Where an AO is not permitted to have a witness present, such witness may be interviewed out of the presence of the AO and such interview tape recorded. The recording of the witness' statement is to be made available to the AO at the Hearing unless the Hearing Officer determines that so doing would jeopardize AO facility safety or goals.
 - d. An AO may request a witness by either:
 - (1) Informing his/her Assistant or the Hearing Officer before the Hearing; or
 - (2) Informing the Hearing Officer during the Hearing.
6. Method of determination: Upon receipt of a misbehavior report from the Review Officer, the Hearing Officer shall commence the Disciplinary Hearing as follows:
 - a. The misbehavior report shall be served on the AO within 24 hours after being reviewed, except in extenuating circumstances. The AO must be advised of the hearing at least 24 hours before commencement. If the AO is confined and requests an Assistant, the Hearing may not be held until 24 hours after the Assistant meets with the AO.
 - b. The AO shall be present at the Hearing unless he or she refuses to attend, or is excluded for reason of AO facility safety or goals. The entire Hearing must be electronically recorded.
 - c. The AO, when present, may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on his or her behalf.
7. Dispositions and Mandatory Surcharge
 - a. Dispositions
 - (1) 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 30 days; however, correspondence and/or visiting privileges may not be withheld.
 - (c) Confinement to a cell or room continuously or to an Adolescent Offender Separation Unit (AOSU) under keeplock admission or on certain days during certain hours for a period of up to 30 days;
 - (d) Restitution for loss or intentional damage to property up to \$100; or
 - (e) The imposition of one task per day, other than a regular assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the AO's housing unit, or other designated area not to exceed one hour.

AOs given such disposition who are participating in regular assignments shall not be required to perform tasks more than eight hours per day. The eight-hour limitation excludes educational or vocational school programming.

- (2) Any penalty imposed pursuant to this section shall run consecutively to any other like penalty previously imposed.
 - (3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another Hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.
 - (4) The Disciplinary Hearing Officer may suspend imposition of any penalty for a period of up to 90 days. Any such suspended penalty 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.
 - (5) As soon as possible, but no later than 24 hours after the conclusion of the Hearing, the AO 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 his or her decision and set forth the reasons for any penalties imposed.
- b. Mandatory disciplinary surcharge
- (1) Upon the conclusion of a Disciplinary Hearing wherein the AO admits the charges, or where the Hearing Officer affirms one or more of the charges, a mandatory disciplinary surcharge in the amount of five dollars (\$5.00) shall be assessed automatically against the AO.
8. Appeal Procedures: The AO shall be advised of his or her 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.
9. Superintendent's Review: The Superintendent or designee will review all Disciplinary Hearing dispositions to assure conformity with policy and regulations.
10. Discretionary Review by Superintendent or designee: At any time during which a penalty imposed pursuant to a Disciplinary Hearing is in effect, the Superintendent may reduce the penalty.

E. Superintendent's Hearing

1. 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; however, the Superintendent may, in his or her discretion, designate some other employee to conduct the proceeding. 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; or
 - d. a person who has investigated the incident.
2. AOs with LEP and Sensorially Disabled AOs
- a. An AO 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 AO with LEP who cannot speak and understand English must be provided with qualified interpretation services for the hearing.
 - b. A deaf or hard of hearing AO 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 AO who uses an amplifier or other device as a reasonable accommodation must have the opportunity to use such device during the Hearing.
 - c. A LB/SVI AO must be given all relevant documentation (at a minimum of size 18 font) prior to the commencement of the disciplinary proceedings, including but not limited to other adaptive equipment (i.e., magnifier, portable CCTV, etc.), or other reasonable accommodations during the Hearing.
3. Formal Charge: The formal charge shall consist of the misbehavior report which shall be prepared in accordance with the provisions of this Directive.
4. Notice and assistance: The AO shall be provided with an assistant in accordance with the provisions of this Directive.
5. AO's witnesses
- a. The AO may call witnesses on his or her behalf provided their testimony is material, is not redundant, and doing so does not jeopardize AO facility safety or goals. If permission to call a witness is denied, the Hearing Officer shall give the AO a written statement stating the reasons for the denial, including the specific threat to AO facility safety or goals presented.
 - b. Any witness shall be allowed to testify at the Hearing in the presence of the AO unless the Hearing Officer determines that so doing will jeopardize AO facility safety or goals. Where an AO is not permitted to have a witness present, such witness may be interviewed out of the presence of the AO and such interview tape recorded. The recording of the witness' statement is to be made available to the AO at the Hearing unless the Hearing Officer determines that so doing would jeopardize AO facility safety or goals.
 - c. An AO may request a witness by either:
 - (1) Informing his/her Assistant or the Hearing Officer before the Hearing; or
 - (2) Informing the Hearing Officer during the Hearing.
6. Method of determination
- a. Generally, upon receipt of a misbehavior report from the Review Officer, the Hearing Officer shall commence the Superintendent's Hearing as follows:

- (1) The misbehavior report shall be served on the AO within 24 hours, absent extenuating circumstances. The AO must be advised of the hearing at least 24 hours before commencement. If the AO is confined and requests an Assistant, the Hearing may not start until 24 hours after the Assistant's initial meeting with the AO.
 - (2) The AO shall be present at the Hearing unless he or she refuses to attend, or is excluded for reasons of AO facility safety or goals. The entire Hearing must be electronically recorded.
 - (3) The AO, when present, may reply orally to the charge and shall be allowed to submit relevant documentary evidence or written statements on his or her behalf.
 - (4) When applicable, the information identified in subparagraphs b-(1)-(a), (d), (e) and b-(2)-(a), (b) of this Section (below), 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.
- b. When an AO's mental state or intellectual capacity is at issue, a Hearing Officer shall consider evidence regarding the AO's mental state or intellectual capacity at the time of the incident and at the time of the Hearing in accordance with this Section.
- (1) For the purposes of this Section, an AO's mental state shall be deemed at issue when:
 - (a) The AO is classified as level 1 by the Office of Mental Health (OMH), as indicated on the Hearing record sheet;
 - (b) The AO is designated as an "S" by OMH, as indicated on the hearing record sheet;
 - (c) The AO is described as engaging in an act of self-harm, as indicated on the misbehavior report;
 - (d) The incident occurred while the AO was being transported to or from the Central New York Psychiatric Center (CNYPC), as alleged in the misbehavior report;
 - (e) The AO was an inpatient at the CNYPC within nine months prior to the incident, as indicated on the Hearing record sheet;
 - (f) The incident occurred while the AO was assigned to an OMH satellite unit or intermediate care program, as indicated on the Hearing record sheet;
 - (g) The incident occurred while the AO was being escorted to or from an OMH satellite unit or intermediate care program, as alleged in the misbehavior report;
 - (h) The Hearing was delayed or adjourned, after an extension of time was obtained in accordance with this Directive, because the AO became an inpatient at the CNYPC or was assigned to the OMH satellite unit; or

- (i) It appears to the Hearing Officer, based on the AO's testimony, demeanor, the circumstances of the alleged offense, or any other reason, that the AO may have been mentally impaired at the time of the incident or may be mentally impaired at the time of the Hearing.
 - (2) For the purposes of this Section an AO's intellectual capacity shall be deemed at issue when:
 - (a) The incident occurred while the AO was assigned to a Special Needs Unit (SNU);
 - (b) The AO has not scored above a 69 on any intelligence testing instrument administered to the AO by the Department and has not scored above a 3.0 grade level in any reading comprehension testing instrument administered to the AO by the Department, as indicated on the Hearing record sheet; or
 - (c) It appears to the Hearing Officer, based on the AO's testimony, demeanor, the circumstances of the alleged offense, or any other reason, that the AO may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the Hearing.
- c. Pursuant to subdivision 6-b above, when an AO's mental state or intellectual capacity is at issue, the Hearing Officer shall:
 - (1) Ask the AO whether he or she understands 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 this Directive, concerning any observations that they may have regarding the AO's mental state or intellectual capacity at the time of the incident; and
 - (3) Where an AO's mental state is at issue, out of the presence of the AO and on a confidential tape, interview an OMH clinician as may be available concerning the AO's mental state at the time of the incident and the time of Hearing; or
 - (4) Where an AO's intellectual capacity is at issue, out of the presence of the AO and on a confidential tape, interview an Offender Rehabilitation Coordinator or Teacher as may be available concerning the AO's intellectual capacity at the time of the incident and the time of the Hearing.
- d. If it is determined that the AO is unable to participate in the Hearing process because the AO does 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 the AO is able to participate in the Hearing process and, if necessary, a request for a time extension shall be made in accordance with this Directive.

- e. If it is determined that the AO is able to participate in the Hearing process but is in need of assistance, the Hearing shall be adjourned and the AO shall be offered an Assistant in accordance with this Directive. Pursuant to this Directive, the Assistant may be required by the Hearing Officer to be present at the Hearing.
 - f. If it is determined that the AO 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 AO's mental state or intellectual capacity at the time of the incident, if at issue in accordance with paragraphs b-(1) or (2) above, respectively, in determining the appropriate penalty to be imposed under this Directive.

In addition, if considering the AO's mental state 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, in accordance with of this Directive, reflect how the AO's mental state or intellectual capacity was considered.
 - g. A copy of a written statement of the disposition of the charges issued in accordance with subdivision 4-f above shall, if the disposition includes confinement to AOSU and the AO is housed in an AO 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. In an AO facility designated by OMH as level 1, the AO's status shall also be the subject of the next scheduled meeting of the facility's treatment team for AOs with serious behavior problems.
 - h. The Hearing Officer shall consider the AO's age as a mitigating factor. The written statement of the disposition of the charges, if any, shall, in accordance with this Directive, reflect how the AO's age affected the disposition (e.g., reduction of a penalty, alternative to a confinement penalty).
7. Dispositions and Mandatory Surcharge
- a. Dispositions
 - (1) Where the AO 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 privileges may be withheld with a particular person where the AO has been involved in improper conduct in connection with correspondence with such person;
 - (c) Confinement to a cell or room continuously or to an AOSU continuously or on certain days during certain hours for a specified period;
 - (d) Restitution for loss or intentional damage to property to be made from an AO's existing and future funds;

- (e) Forfeiture of money confiscated as contraband;
 - (f) Loss of a specified period of good behavior allowance ("good time"), subject to restoration as provided in Section IV- B of this directive;
 - (g) The imposition of one task per day, other than a regular assignment for a maximum of seven days, excluding Sundays and public holidays, to be performed on the AO's housing unit, or other designated area not to exceed one hour per day.

AOs given such disposition who are participating in a regular assignment shall not be required to participate in a task assignment for more than eight hours per day. The eight-hour limitation excludes such assignments as educational or vocational school programming; or
 - (h) Where applicable, removal from the elected Inmate 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.
 - (3) Whenever a confinement penalty is being served and a more restrictive confinement penalty is imposed as a result of another Hearing, the more restrictive penalty shall begin to be served immediately, and any time owed on the less restrictive penalty shall be served after completion of the more restrictive penalty period.
 - (4) The Hearing Officer may suspend imposition of any penalty for a period of up to 180 days. Any 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.
 - (5) As soon as possible, but no later than 24 hours after the conclusion of the Hearing, the AO 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 his or her decision and also set forth the reasons for any penalties imposed and, if applicable, pursuant to this Directive, reflect how the AO's mental state, intellectual capacity, or age was considered.
- b. Mandatory disciplinary surcharge: Upon the conclusion of a Superintendent's Hearing wherein the AO admits to the charges, or where the Hearing Officer affirms one or more of the charges, a mandatory disciplinary surcharge in the amount of five dollars (\$5.00) shall be assessed automatically against the AO.
8. Appeal Procedures: Any AO shall have the right to appeal the disposition of any Superintendent's Hearing to which he or she was a party, to the Commissioner within 15 days of receipt of the disposition. The Commissioner or designee shall issue a decision within 30 days of receipt of the appeal. The Commissioner or designee may:

- a. Affirm the Hearing disposition;
 - b. Modify the Hearing disposition by dismissing certain charge(s) and/or reducing the penalty imposed;
 - c. Remand the hearing back to the Hearing Officer to correct a procedural, technical, or other error. Whenever the hearing is remanded back pursuant to this subdivision, the penalty imposed at the conclusion of the corrected hearing, if any, may not exceed the penalty imposed at the original hearing inclusive of subsequent reductions; or
 - d. Reverse the Hearing disposition and order a new Hearing. Whenever a new Hearing is ordered pursuant to this subdivision, a new Hearing Officer shall preside over the Hearing, and the penalty imposed at the new Hearing may not exceed the penalty imposed at the original Hearing inclusive of subsequent reductions; or
 - e. Reverse the Hearing disposition.
9. Superintendent's Review: The Superintendent or designee will review all Superintendent's Hearing dispositions to assure conformity with policy and regulations.
 10. Discretionary Review by Superintendent: At any time during which a penalty imposed pursuant to a Superintendent's Hearing is in effect, the Superintendent may reduce the penalty.

V. PROCEDURES FOR GRANTING GOOD BEHAVIOR ALLOWANCES

A. Application of Good Behavior Allowances

1. The opportunity to earn good behavior allowances offers AOs a tangible reward for positive efforts made during incarceration.
2. For all AOs serving determinate or indeterminate sentences (other than life sentences) who are not granted parole or a returned parolee, but who nevertheless have performed well within the AO 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 AO facility.
3. Nature of Allowances: Good behavior allowances are in the nature of a privilege to be earned by the AO and no AO has the right to demand or to require that any good behavior allowance be granted.
4. Criteria for Allowances
 - a. All recommendations and decisions must be made through completely impersonal, impartial, fair, and reasonable evaluations.
 - b. 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:
 - (1) The attitude of the AO;
 - (2) The capacity of the AO; and

(3) The efforts made by the AO within the limits of his or her capacity.

5. Forfeitures and Disallowances

- a. An AO shall not automatically forfeit or automatically be disallowed any good behavior allowance by reason of the fact that he or she has been confined to a cell or room or in a special housing unit for a period of time.
- b. 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.

B. Time Allowance Committees

1. There shall be in each AO facility a committee to be known as the Time Allowance Committee.
 - a. Such Committee shall consist of at least three members designated by the Superintendent.
 - b. 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.
 - c. Each such Committee shall have a Chairman designated by the Superintendent from among the members and the Chairman shall be responsible for the proper operation of the Committee.
2. 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 AOs who are eligible to be considered for such allowance.
 - a. For AOs entitled to be considered for good behavior allowances, the file of each such AO shall be considered in the fourth month preceding the month of the earliest possible date he or she would be entitled to consideration for release if that date depends on the amount of good behavior allowance to be granted.
 - b. The Committee shall consider the entire file of the AO, and then shall decide upon a recommendation as to the amount of good behavior allowance to be granted.

At such meetings, conducted in accordance with subdivision 3-a of this Section, any AO 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 AO's subsequent behavior merits restoration of all or part of the lost allowance and its reasons therefor.

- c. 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 AO and make its own determination.
 - d. 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.
 - e. All recommendations of the Committee shall be pursuant to a decision of a majority of the members, but any member who disagrees shall note his or her 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 Chairman shall report such fact and each member shall report his or her recommendation and reasons in the report made by the Chairman.
 - f. 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 AO may be scheduled to reappear before another Time Allowance Committee in accordance with the direction of the Commissioner, Superintendent, or Committee Chairperson.
3. Time Allowance Hearing
- a. 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, 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.
 - b. At least 48 hours prior to the Time Allowance Hearing and for the purposes stated in subdivision 4-a of this Section, the Chairman shall designate an employee to file and deliver to the AO 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.
 - c. The Chairman of the Time Allowance Committee shall designate an employee to furnish assistance to the AO.
Such employee shall be of the AO's choice, selected from a list established by the Superintendent or any other employee upon approval of the Superintendent.
 - d. Such employee shall explain the nature of the Hearing and the particulars specified in the formal notice. The employee also shall ask the AO whether there is any factual matter that can be presented in his or her behalf and shall investigate any reasonable factual claim that the AO may make.

- e. 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 Chairman of the Time Allowance Committee prior to the commencement of the special meeting.
 - f. The Time Allowance Committee shall reconsider the entire file of the AO, shall interview the AO, shall consider any factual matter brought to its attention by the AO or the person designated to provide assistance to the AO, and may in the Committee's discretion interview any person who may have information relevant to the Hearing.
 - g. The Time Allowance Committee shall advise the AO 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 AO the opportunity to comment thereon and to make any statement he or she may care to submit in respect to his or her time allowance.
 - h. Where the Time Allowance Committee is satisfied, after hearing the AO, 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.
 - i. 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.
 - j. A written report, including a statement of the reasons for the recommendation, shall be provided to the AO following review by the Superintendent and by the Commissioner or designee.
- C. Granting of Time Allowances
1. 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 subchapter, the Committee shall make a recommendation to the Superintendent as to the amount of good behavior allowance to be accorded to the AO.
 - b. The Superintendent shall promptly review the report of the Committee and shall endorse any comments he or she 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 committee for re-evaluation and a Hearing.

- 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 AO.
The grant of the good behavior allowance shall be contingent on the AO's continued good behavior, efficient and willing performance of duties assigned, and progress and achievement in an assigned treatment program. The AO shall be given a copy of this determination promptly.

D. Stay of Good Behavior

1. Stay of Good Behavior Allowance: Between the time a decision has been made with respect to good behavior allowance and the time that an AO 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.
2. Procedure for Stay of Good Behavior Allowance
 - a. Superintendent's Hearing
 - (1) The decision directing that a misbehavior report be heard in a Superintendent's Hearing against an AO shall stay the award of any good behavior allowance that has been granted such AO, and such allowance shall be suspended and of no force and effect until a final decision has been made in the Superintendent's Hearing.
 - (2) At the conclusion of the Hearing, if the disposition does not involve loss of good behavior allowance, the allowance previously granted shall be reinstated.
 - (3) Where the disposition does involve loss of good behavior allowance, and the AO has an approved conditional release date earlier than his or her maximum expiration date, the disposition shall automatically be reviewed by the Commissioner or designee.
 - (4) If the Hearing decision is affirmed, the recommended loss of good behavior allowance shall be applied to the AO's conditional release date. Any modification or other decision rendered by the Commissioner or designee shall be applied as specified in such decision. The AO shall be given a copy of this determination promptly.
3. Disregard for Statutory Criteria
 - a. If an AO 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 to reconsider the amount of good time to be granted.