

## Program Removal Hearing Procedures

1. The "Oklahoma Department of Corrections Offense Report" (DOC 060125A) from disciplinary procedure OP-060125 entitled "Inmate/Offender Disciplinary Procedures" or a violation report shall be used to document the alleged program rule and/or condition violation. An inmate assigned to one of the community supervised programs may be disciplined for a violation of the "Acts Constituting Rule Violation" (OP-060125, Attachment A) and may also be removed from the program for violating a rule and condition as found on the rule and conditions signed by the inmate. The procedures found in this attachment will control in either event. If the inmate is considered for discipline, they will receive a finding as to the disciplinary offense. If the inmate is considered for program removal, they will receive a finding as to the rule and condition violation and a reason for program removal. If considered for both, the inmate will receive all three results.
2. When it is suspected that an inmate on community supervision has committed a violation of the rules and conditions of the program, a staff member will prepare a report identifying the program rule and/or condition believed that has been violated by the inmate. If the inmate is also suspected of violating an inmate rule violation (as determined in OP-060125 entitled "Inmate/Offender Disciplinary Procedures"), that rule will also be clearly identified. If the situation dictates, inmates may be placed in special management housing prior to the completion of the violation report. When this is appropriate, a special management housing order shall be prepared in accordance with OP-040204 entitled "Special Management Units." The inmate shall be served notice of the program rule violation within three working days of being placed in special management housing.
3. Procedures
  - a. The violation report will be prepared then reviewed and accepted by a supervisor before it is served to the inmate.
  - b. After acceptance, the inmate will be taken into custody and served with the "Notice of Rule and Condition Violation" (OP-161001, Attachment B) and/or "Offense Report" (DOC 060125A), and given at least three working days to prepare for the hearing: program removal and/or discipline. The hearing shall be conducted no later than 10 working days after the inmate has been served notice of the violation. The hearing may be rescheduled by staff if necessary and the reason for delay shall be documented. The inmate may ask for one continuance of three working days for good cause.
  - c. When notified of the violation and time of hearing the inmate shall be notified that if found guilty of the rule and condition violation, a removal review will be held following the hearing at which the inmate will be allowed to present evidence for mitigation (reasons for not being removed from the program and assigned to a facility).
  - d. If the inmate waives the opportunity for a hearing and/or pleads guilty, staff shall immediately conduct the removal review.

- e. During the rule and condition hearing, the inmate may call relevant witnesses and shall inform the investigating officer of their identity and what the substance of their testimony will be at the hearing. The inmate is also allowed to have relevant witness/witnesses for mitigation. It is the inmate's responsibility to notify his witnesses of the date and time of the hearing. The investigating officer may disallow any witness who does not have relevant testimony, such action shall be documented. The staff member(s) who witnessed the rule violation shall be present and available for questioning.
- f. At the rule and condition hearing, the inmate may pose relevant questions to the witnesses. The hearing officer may disallow non-relevant questions and will prevent any abuse of any witness by the inmate. The inmate may present relevant documentary evidence. If security reasons dictate, such as to protect the identity of an informant, the inmate will not be permitted to confront or cross-examine a witness and the denial and reason shall be documented by the investigating and hearing officer.
- g. The staff member assigned to conduct the hearing will also conduct the program removal review and make a decision regarding removal or non-removal from the program reassignment to a facility if the inmate is found to have violated the alleged rule and condition of the program. Only employees in job classification of team supervisor, unit manager, Case Manager IV or higher may be assigned as the program removal hearing officer. The hearing shall be recorded, except for any period of deliberation by the hearing officer.
- h. The assigned hearing officer shall not be a staff member who prepared the violation report, the inmate's supervising officer or the supervisor who reviewed the report and authorized its issuance or authorized the placement of the inmate in special management housing.
- i. If there is a finding of a rule and condition violation and the determination is to remove the inmate from the program, the reason for removal shall be documented referring to the evidence and anything relevant provided during the program removal review.
- j. The rule and condition hearing is a non-adversarial administrative hearing and the inmate is not permitted to be represented by an attorney, staff representative, or any other party unless the investigator determines the inmate is incompetent to adequately understand the charge against them and to represent themselves. In the case of an incompetent inmate, the investigator will assign a staff representative to assist the inmate in the preparation of their defense or the inmate may hire an attorney at their own expense or apply to the local public defender for assistance.

4. Inmates found guilty of the rule and condition violation may appeal the findings of the hearing officer through the appeal procedures outlined in OP-060125 entitled "Inmate/Offender Disciplinary Procedures" utilizing the "Rule and Condition Violation Appeal Form and Due Process Review" (OP-161001, Attachment D).

5. If a decision to remove the inmate from the program is made, the inmate may grieve the decision through the grievance procedures in OP-090124 entitled "Inmate/Offender Grievance Process."

## RULE AND CONDITION HEARING GUIDE

1. Test the recorder. The entire hearing shall be recorded. Advise participants that they need to answer "yes" or "no" to questions asked.
2. "I am \_\_\_\_\_, the hearing officer, and this is a rule and condition hearing for inmate \_\_\_\_\_, ODOC # \_\_\_\_\_, who is charged with the rule violation of \_\_\_\_\_, which is alleged to have occurred on \_\_\_\_\_. This hearing is being recorded on tape number \_\_\_\_\_. All present will speak clearly and distinctly. The hearing is being held on \_\_\_\_\_ (date/time) at \_\_\_\_\_ (location). Each person present will state your name and title/status for the audio record please". Pause to let each speak.
3. If the inmate has been previously sworn in for the disciplinary hearing, you may skip this section, but note into the tape that the inmate was previously sworn in for the disciplinary hearing. "Inmate \_\_\_\_\_, you have the right to remain silent. However, adverse inferences may be drawn from your silence. Anything you say can, and will, be used against you in this proceeding and in a court of law. You may stop talking anytime you wish. Do you understand each of these rights I have explained to you?" Allow inmate to answer.

Swear in the inmate. "Do you solemnly swear or affirm that the testimony that you are about to give in this hearing is the truth, the whole truth, and nothing but the truth?" Allow inmate to answer. "Be advised, inmate \_\_\_\_\_, that any disruptive behavior on your part may result in your removal, and the hearing will proceed without you. Do you understand?" Allow inmate to answer.

4. "Inmate \_\_\_\_\_, did you receive notice of the charge against you by use of the "Notice of Rule and Condition Violation" (OP-161001, Attachment B) form?" Allow inmate to answer.
5. Read the rule violation into the record. Indicate to the inmate that you have reviewed the evidence and allow the inmate to present their evidence regarding the rule violation. At this time, the inmate may cross-examine their accuser, but will direct their questions through the hearing officer. The inmate may present live witnesses, witness statements, or other documentary evidence relevant to whether or not the rule was violated.
6. The inmate and all witnesses will be asked to step out of the hearing, or the hearing officer may leave the hearing. The hearing officer will deliberate and make a determination of whether or not there is some/any evidence that the inmate violated the rule of the program. The finding will be documented in Section I of the "Program Rule and Condition Violation Hearing Action (OP-161001, Attachment C) form.
7. The inmate and all witnesses will be brought back into the hearing and advised of the finding. If the inmate is found to have violated the rule, the inmate will then be

allowed to present their defense, witnesses, witness statements, and/or documentary evidence relevant to why he should not be removed from the program. The officer may give their recommendation and reason also.

8. The inmate and all witnesses will be asked to step out of the hearing or the hearing officer may leave the hearing. The hearing officer will then deliberate and make a determination of whether or not the inmate will be removed from the program and reassigned to a correctional facility. The decision will be documented in Section 2 of the "Program Rule and Condition Violation Hearing Action" (OP-161001, Attachment C) form.
9. If witnesses were disallowed during the hearing, this information and the reason will be documented in Section 3 of the "Program Rule and Condition Violation Hearing Action" (OP-161001, Attachment C) form.
10. The inmate will be brought back into the hearing and the inmate shall be advised of the finding and reason. The inmate shall be given a copy of the completed "Program Rule and Condition Violation Hearing Action" (OP-161001, Attachment C) form.
11. The inmate shall be advised of the appeal process. "You may appeal the finding that you did commit the rule violation through the department inmate disciplinary process found in OP-060125 entitled "Inmate/Offender Disciplinary Procedures." You have fifteen calendar days from today to begin the appeal by submitting the "Rule and Violation Appeal Form" (OP-161001, Attachment D) to the Assistant Regional Supervisor. You may grieve the removal from the program by utilizing the grievance process found in OP-090124 entitled "Inmate/Offender Grievance Process." You have seven calendar days to begin the grievance process by submitting a "Request to Staff" (OP-090124, DOC 090124D) form to your supervising officer."
12. Turn off the recorder.