

<b>MISSISSIPPI DEPARTMENT OF HUMAN SERVICES DIVISION OF YOUTH SERVICES JUVENILE INSTITUTIONS</b>	
<b>Subject:</b> Due Process Hearings	<b>Policy Number:</b> 9
<b>Number of Pages:</b> 9	<b>Section:</b> VII.9
<b>Attachments:</b>	<b>Related Standards &amp; References</b>
Due Process Rights Form VII.9.A Notice of Violation Form VII.9.B Special Accommodations Form VII.9.0 Youth Statement Form VII.9.D Review of Evidence Form VII.9.E Due Process Hearing Report Form VII.9F	ACA 4-JCF 3B-02, ACA 4-JCF 3B-03, ACA 4-JCF 3B-04, ACA 4-JCF 3B-05, ACA 4-JCF 3B-06, ACA 4-JCF 3B-07, ACA 4-JCF 3B-08, ACA 4-JCF 3B-09, ACA 4-JCF 3B-10, ACA 4-JCF-3C-01, ACA 4-JCF-3C-03, ACA 4-JCF-3C-05, ACA 4-JCF-3C-07, ACA 4-JCF-3C-08, ACA 4-JCF-3C-09, ACA 4-JCF-3C-10, ACA 4-JCF-3C11, ACA 4-JCF-3C-12, ACA 4-JCF-3C-13, ACA 4-JCF3C-14, ACA 4-JCF-3C-15
<b>Effective Date:</b> 05/04/10 <b>Revised:</b> 06/30/12, 2/25/14, 8/9/17, 8/1/18	<b>Approved:</b> DocuSigned by: <i>James Maccarone</i> 2C316EF5186B4A2...

**I. POLICY:**

It is the policy of the Mississippi Department of Human Service, Division of Youth Services (DYS), to maintain a safe and secure environment and that, in all cases where youth are alleged to have committed a major, or a pattern of minor violations, a due process hearing shall occur. Sanctions administered as a result of a due process hearing shall not be retaliatory; corporal or degrading punishment, cruel or unusual punishment, punishment that interferes with eating or sleeping, or punishment that endangers a youth physically or psychologically shall be imposed.

**II. DEFINITIONS**

As used in this policy and procedure, the following definitions apply:

- A. Due Process Hearing—** A non-judicial administrative procedure to determine if substantial evidence exists to find a youth guilty of a rule violation.
- B. Constitutional Right —** Liberties to which youth are entitled by mandate of the United States Constitution and Mississippi State Statutes. Examples of such rights include, but are not limited to, access to exercise and fresh air, access to mail, educational programs, medical care, a balanced and nutritional diet, attorney access, and protection from harm.
- C. Privileges —** Earned liberties, which may be given or withheld from a youth, based on their behavior, including absence of disciplinary incidents, participation in treatment, reaching a criterion on daily point sheets, and progress toward service/treatment team goals. Privileges may include such activities as watching television (e.g., suitable broadcast programs and movies), playing video and electronic games, listening to music, (radio and suitable CDs), extended bed times, receiving extra telephone calls, using a personal computer for suitable activities, participating in special recreational activities, and taking trips off campus.

- D. Loss of Privileges**-Loss of privilege does not necessarily mean a total loss of Behavior Incentive Bucks earned prior to committing the offense. If a restriction is imposed the youth may or may not be allowed to make purchases with his bucks during the same week of his committing offense. The amount of bucks earned prior to the offense can be banked.
- E. Major Rule Violation** Actions that cause harm or which represent a threat to the safety, control, and security of the facility.
- F. Minor Rule Violation** – Behaviors that are prohibited by the rules but are not immediately threatening or dangerous to self, others, or the security of the facility.
- G. Disciplinary Hearing Officer** – An impartial supervisory staff member or designee assigned to conduct disciplinary hearings and with the authority to impose sanctions.
- H. Disciplinary Hearing Committee** – An impartial supervisory committee, that consist of a three member group (JCW Representative, Mental Health Representative, and the Disciplinary Hearing Officer) assigned to conduct disciplinary hearings and with the authority to impose sanctions.
- I. Due Process Isolation** – A sanction that arises from Due Process proceedings. A youth is confined alone in a room as a result of a rule violation.
- J. Pod Restriction:** Limitation on the use or enjoyment of activities held on the Pod. This form of restriction will not prohibit the youth from being able to go to school. (See pages 6-8 of this policy for possible duration of restriction)
- K. Room Restriction:** Limitation on the use or enjoyment of activities held on or off the pod. (See pages 6-8 of this policy for possible duration of restriction)
- L. Contingency Group(s):** Based upon youth behavior (see Major and Minor Violations attached to this policy), youth may earn access to preferred activities on campus (i.e. Basketball in Unit 2 Gym) through assigned groups (i.e. Group A, Group B, Group C, etc.) based upon the Master Schedule of Activities. The Hearing Officer assigns youth to groups upon review of behavior of youth. If the Hearing Officer is not available, a Supervisor, with permission of the Facility Administrator on Duty, may assign specified youth to the appropriate contingency group. In such an instance, within 72 hours, the Hearing Officer will approve/disapprove contingency group placement of the specified youth. Contingency groups do NOT restrict student access to daily scheduled services/activities.
- M. Rotating Floor Schedule (RFS):** Youth on the Behavior Management Unit (BMU) (policy XIII.8) or Observation Pod (OP) (Policy XIII.22) may be placed on a Rotating Floor Schedule (RFS) by the Hearing Officer or Facility Administrator based upon review of frequency of Major Violations (see Major Violations attached to this policy) and history of sanctions/restrictions imposed. RFS will only be implemented when placement on another pod is not a viable option for the specified youth based upon safety of youth. Specified youth will rotate from a room in which the door is closed and locked during the hours of non-sleep (not to exceed 1 hour) to the dayroom floor to receive services. Staff are required to document visual contact and behavior of youth at staggered intervals no more than 10 minutes apart whenever the youth are behind the door on the RFS. At least 6 checks per hour should be documented (see attachment VII.10-C). The rotation schedule assigned to the youth will be based upon the safety of youth. An exit plan will be established in coordination with the clinical department to ensure all efforts are made to incorporate youth back with other youth on the pod full-time. All other youth on the pod are to follow the Master Schedule. The following services are continued, when applicable,

when youth are placed on a Rotating Floor Schedule (RFS): regular meals, access to water, hygiene items, clothing, sleep, health and mental health care services, school, recreation services, correspondence, and phone calls/visitation with parents/guardian. Staff shall ensure that all rooms are properly ventilated, free from objects that may cause harm, and are at an appropriate temperature. Only in exigent circumstances, with approval from the Facility Administrator, may a Rotating Floor Schedule (RFS) be implemented on another pod other than BMU or OP.

### **III. PROCEDURES**

All Incident Reports are reviewed by the Disciplinary Hearing Officer (DHO) and Disciplinary Hearing Committee (DHC) that makes a determination based on the objective observations of the situation, that a Due Process Hearing should be held.

A. If the violation is minor the Disciplinary Hearing Officer and Committee shall discuss the violation with the student and explain that if this pattern of behavior is continued Due Process shall be initiated. Minor violations can receive limited sanctions such as early bedtime (8:00 pm), pod restriction, or room restrictions of short duration (see attachment list below for more descriptions of room and pod restrictions and coordinating violations).

- Students are placed on Pod/Room restriction as a result of inappropriate behavior on or off the housing unit.
1. Youth that are on pod or room restrictions will not be able to participate in any special activities that are not school related. Pod and room restriction will begin at 3:30pm on school days and at 8:00am on weekends and special activity days. Youth will be given a second chance to be removed from pod or room restriction prior to the scheduled special activity. In the case that the youth remains on restrictions, the youth will be prohibited from any participation in any special activities during the period of the restriction.
  2. Youth placed on pod or room restriction will receive meals on the unit, early bed time, recreation on the unit, restricted movement, no detail off the unit, or laundry detail.
  3. Youth will be seen by the Due Process Hearing Committee if the youth refuse to follow the rules and expectations of the facility. Once the Due Process Hearing Committee reviews all information and evidence related to an incident that a youth has been involved in and found that the youth was in the wrong, the youth will be told of the consequences of their behavior. The consequence (sanction) given will be based on the type of violation (major or minor). More than one sanction can be assigned to the youth depending on how often the youth has violated that rule or expectation in the past or the intent/seriousness of the youth's behavior.
  4. The youth's Length of Stay at Oakley Youth Development Center can be extended as a result of poor behavior.

- B. A disciplinary tracking number shall be assigned to the Incident Report by the Disciplinary Hearing Officer. This log should contain the date the incident was referred for a due process hearing, the date of the violation, the nature of the violation, the name(s) of the accused youth, and the disposition of the Disciplinary Hearing Officer.
- C. The Disciplinary Hearing Committee shall discuss with the youth the rule violation/s that he/she is being accused of and shall explain the youth's due process rights.
  1. At this time Form VII.9.B Notice of Rights —Violation shall be presented to the youth with an explanation by the Disciplinary Hearing Officer. The youth will be asked to sign the form after he/she has been afforded the opportunity to ask questions and understands the information before him. The youth's counselor shall be present to act as a liaison.
  2. At this time the youth will be asked to:
    - a. Plead guilty, in which case no investigation or hearing will be held and a sanction will be issued and explained to the youth by the Disciplinary Hearing Officer, or
    - b. Plead innocent in which case the youth will be allowed to "tell his side", explain his actions and name witnesses. An investigation will begin conducted by the Disciplinary Hearing Committee and will be documented on the following forms:
      - i. Form VII.9.D Youth Statement Form
      - ii. Form VII.9.E Review of Evidence Form
      - iii. Form VII.9.F Due Process hearing Report
      - iv. Form V11.9.G Witness Statement Form
  - All relevant information gathered during this time shall be documented on Form VII.9.C Due Process Hearing Report.
  3. All Due Process Hearings shall be held within 24 hours of the notification of the hearing, excluding weekends and state observed holidays. All youth shall be present for Due Process hearings; unless the youth waives the right and the wavier is in writing.
  4. When a youth has been identified as having special education needs, a special education professional shall perform an assessment and confer with the Disciplinary Hearing Officer to decide on an appropriate sanction. If the youth proceeds with the hearing a special education teacher or appropriate substitute should be present to act as a liaison.
  5. When a youth is being serviced on the mental health caseload, a Qualified Mental Health Professional (QMHP) shall conduct an evaluation to determine the youth's current mental status (within 24 hours of notification) and shall confer with the Disciplinary Hearing Committee to decide on an appropriate sanction. If the youth proceeds with the hearing a QMHP or appropriate substitute should be present to act

as a liaison.

6. The youth may request any staff member to act as a staff representative to provide assistance during Due Process hearing. If the requested staff representative is not available, the youth may request another staff member to assist them.

D. The DHC may identify a variety of sanctions or consequences that are appropriate based on the violation at hand and the youth's behavioral history. Based on the severity of the specific offense, or the youth's behavior pattern or history, the DHC may impose a sanction of pod restriction or room restriction.

The following sanctions shall not be used for:

1. Retaliation or revenge
2. Physical punishment

E. Students who have been sanctioned shall not be denied educational, counseling, medical, dental, psychiatric, psychological, recreational or dietary services.

F. If the youth is found guilty, a copy of the Due Process hearing report shall be placed in the youth's master file and a copy given to the youth. If the youth is found not guilty, the Due Process hearing report will not be entered into the youth's master file.

G. Appealing a Sanction —Youth have the right to appeal the findings of any Due Process hearing to the Facility Administrator by submitting Form VII.9.H Due Process Appeal Form. Youth have one (1) week to file an appeal following the receipt of the Disciplinary Hearing Committee's decisions. When receiving a youth appeal, the Facility Administrator or designee shall consider the following:

1. Was there any variation from outlined procedures;
2. Was the Disciplinary Hearing Committee decision based on substantial evidence;
3. Was the sanction imposed appropriate.

H. The Disciplinary Hearing Committee shall forward all hearing records to the Facility Administrator to assure that all Due Process hearings and actions taken conform to DYS policy and procedures and expected practice.

I. The facility administrator may, at his discretion, administer a new Length of Stay to the youth based on his/her positive or negative behavior. This will be in accordance with the Length of Stay Policy (Length of Stay Policy #15, Section XIII).

J. Criminal Violations/Serious property Damage — Youth who commit acts that are considered criminal under state law, in addition to receiving an appropriate sanction, may also be subject to

referral to juvenile court for a formal hearing. The state may also proceed civilly to collect restitution from the youth and the youth's family for the cost of medical services related to injuries caused to other youth, staff and/or damage to state property.

#### IV. ATTACHMENTS

- A. Below is a list of infractions that are classified as **Minor Violations**. The ranges of the specific sanctions and the duration of the restriction are noted next to the category of violations. Based on the severity of the specific offense, or the youth's behavior pattern or history, the 01-IC may impose a sanction of pod restriction or room restriction.

<b>Minor Infraction or Violation</b>	<b>Sanction &amp; Duration of Restriction</b>
Throwing bodily fluids and/or by-products at individuals other than staff	Counseling intervention, up to 2 days loss of privileges, Pod and/or Room Restriction
Throwing liquids and/or any food product at individuals other than staff	Counseling intervention, up to 1 day loss of privileges, Pod and/or Room Restriction
Tattooing and/or ear piercing	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Fighting without injury	Counseling intervention, up to 3 days loss of privileges, and/or 1 day Due Process Isolation privileges, or Pod and/ or Room Restriction
Minor damage of facility property	Counseling intervention, up to 3 days loss of privileges, and/or 1 day Due Process Isolation, and/or fined up to 5 positive behavior incentive bucks privileges, Pod and/or Room Restriction
Refusing to follow adult instruction	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Leaving assigned area	Counseling intervention, up to 3 days loss of privileges, Pod and/or

	Room Restriction
Communication with unauthorized outside individuals	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Refusal to maintain clean and orderly personal and common space	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Use of obscenity, profanity, vulgar language or verbal abuse to others	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Entering another's room without permission	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Soliciting staff to violate facility rules	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction
Aiding others to violate rules	3 days of loss privileges, Pod and/or Room Restriction
Possession of non-security related contraband	3 days of loss privileges, Pod and/or Room Restriction
Lying	3 days of loss privileges, Pod and/or Room Restriction
Interfering with facility count	3 days of loss privileges, Pod and/or Room Restriction
Trafficking or trading contraband	3 days of loss privileges, Pod and/or Room Restriction
Trading food	3 days of loss privileges, Pod and/or Room Restriction
Gambling	3 days of loss privileges, Pod and/or Room Restriction

Violation of school activity rules	3 days of loss privileges, Pod and/or Room Restriction
Letter writing to youth of the opposite sex	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction

B. Below is a list of infractions that are classified as **Major Violations**. The ranges of the specific sanctions and the duration of the restriction are noted next to the category of violations. Based on the severity of the specific offense, or the youth's behavior pattern or history, the **DHC** may impose a sanction of due process isolation, pod restriction, or room restriction.

<b>Major Infraction or Violation</b>	<b>Sanction &amp; Duration of Restriction</b>
Inappropriate sexual conduct (i.e. touching, positioning, exhibition)	Counseling intervention, up to 1 day loss of privileges, Pod and/or Room Restriction, and/or 2 days Due Process Isolation
Creating serious disturbances	Counseling intervention, up to 1 day loss of privileges, Pod and/or Room Restriction, and/or 2 days Due Process Isolation
Disorderly conduct or creating a security risk to the facility	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction, and/or 1 day Due Process Isolation
Fighting with injury	Counseling intervention, up to 5 days loss of privileges, Pod and/or Room Restriction, and/or 2 days Due Process Isolation
Entering an unauthorized area without permission	Counseling intervention, up to 3 days loss of privileges, Pod and/or Room Restriction, and/or 1 day Due Process Isolation

**\*Room restriction is based on inappropriate/aggressive behavior and repeated patterns of assault or aggression with staff and/or students**



<b>Major Infraction or Violation</b>	<b>Duration of Restriction</b>
Physical Violence with Injuries: Youth on Youth	Up to 3 days of Due Process Isolation
Physical Violence: Youth on Staff	Up to 3 days of Due Process Isolation
Verbal threats toward youth/staff	Up to 3 days of Due Process Isolation
Serious Group disturbances	Up to 3 days of Due Process Isolation
Gang related activity	Up to 3 days of Due Process Isolation
Making weapons to harm staff/youth	Up to 3 days of Due Process Isolation