

How To Represent Yourself Before The
Disciplinary Hearing Officer
By Cedric Dean

Each prison having the need for facilities to house inmates separate from the general population will establish a special housing unit consisting of two categories of cells: administrative detention and disciplinary segregation. Whenever an inmate is placed in administrative detention, he or she must receive an administrative detention order detailing reasons for placement within 24 hours of placement. A segregation review official must conduct a record review within 3 work days of AD placement and must hold a hearing and formally review the status of all inmates who spends seven continuous days in AD (in the inmates presence), and thereafter must hold review hearings at least every 30 days. At which time, documentary evidence may be submitted by the inmate to contest the continued placement. In addition, staff must conduct a psychiatric or psychological assessment, including a personal interview, when AD continues beyond 30 days. Institutional investigations have a grace period of 90 days; however, inmates may put forth evidence during the periodical hearings before the SRO. [Note: State policies vary from state to state – Federal policies are as mentioned above.] An inmate may be placed in disciplinary segregation only by order of a disciplinary hearing officer. (CFR 541.20) following a hearing in which the inmate has been found guilty of committing a prohibited act.

All inmates are given due process rights to safeguard the disciplinary process. After staff becomes aware of an inmates involvement in an incident, ordinarily staff has a maximum of 24 hours to give the inmate a notice of the charges. Within three (3) work days, ordinarily staff must hold a hearing to: refer serious charges to the DHO or informally resolve minor violations. During all hearings, inmates are allowed to present exculpatory evidence – i.e. documentary, statements from witnesses and testimony from witnesses, etc. In order to obtain statements and other evidence, the inmates must request a staff representative who will assist with gathering evidence, etc. Inmates must receive a 24 hour notice before appearing in front of a disciplinary hearing officer

In order to establish a record at the hearing and during the entire disciplinary process, inmates must present documentary (written) evidence on their behalf and/or a list of witnesses and request they testify at the hearing. Inmates are not allowed to question a witness; however, they are allowed to submit a list of questions to be asked by the DHO or the staff representative. (Witnesses may include staff.) In situations concerning fights or assaults, inmates may request injury reports, photos of injuries or for video cameras to be reviewed by the DHO or the staff representative.

At the DHO hearing or during all informal proceedings, inmates may request to read or have read to them all statements that will be used as evidence at the hearing. All requests must be submitted in writing by the inmate. (If not written, there's no evidence of the request.) Inmates must photocopy (all) request and documents for their personal files.

In order to win a DHO hearing, inmates must prove: (1) staff violated his due process right; (2) the violation caused an adverse affect; (3) the inmates was not at fault; or (4) the

inmate's actions were supported by a certain policy statement. (Just proving staff was wrong, doesn't mean the inmates was right.) The DHO must do the following to find an inmate guilty: substantially comply with the regulations on inmate discipline, base the decision on substantial evidence and not be involved in the incident in any way. And the sanction must be imposed according to the severity level of the prohibited act.

Always remember, "The burden of proof is on the inmate, not staff."

Next post: How To Make An Appropriate Request To Staff.