



Administrative Policies and Procedures: 25.6

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| Subject: | Disciplinary and Appeal Process for Youth in DCS Group Homes |
| Authority: | TCA 37-5-105, 37-5-106 |
| Standards: | DCS Practice Standards: 7-202A, 7-203A |
| Application: | To All Department of Children's Services Group Home Employees |

Policy Statement:

All youth housed in a DCS group home, who are alleged to have committed a major violation, shall receive a fair and impartial hearing to evaluate evidence and determine the appropriate disciplinary action, if the allegations are substantiated.

Purpose:

To ensure rules of conduct, sanctions and procedures are communicated to all youth and staff. When youth violate rules of conduct, to ensure due process, it is essential that youth are given written notice of the charges against them as soon as possible and are granted the right to appeal disciplinary decisions.

Procedures:

A. Responsibilities of hearing officer

1. The DCS group home supervisor will designate a hearing officer to hear each case, evaluate evidence and determine appropriate disciplinary action. The hearing officer must be knowledgeable of departmental and local policies and procedures as well as the operation of the facility.
2. The hearing officer(s) will report directly to the facility director or designee in matters relating to the disciplinary process.
3. The hearing officer will receive form **CS-0055, Disciplinary Report/Notice of Hearing** that alleges a major violation has occurred. Upon receipt of this notification, the hearing officer will:
 - a) Ensure that the youth understands the nature of the Disciplinary Report;
 - b) Ensure that an investigation of major violations has begun within twenty-four (24) hours of the time the violation is reported;
 - c) Ensure the youth is aware of his/her rights and possible sanctions for the offense;
 - d) Hold a hearing within seven (7) days, excluding weekends and holidays, of the alleged incident for any major violation.
 - e) Provide for postponement or continuance of the disciplinary hearing for a reasonable period of time not to exceed five (5) days.

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| | <p>f) The DCS group home supervisor or designee must approve postponement.</p> |
| <p>B. Conduct of hearing</p> | <ol style="list-style-type: none"> 1. The youth may waive the right to a hearing provided that the waiver is documented and reviewed by the facility director or designee. 2. The youth may appear at the hearing and participate in the hearing, unless he/she waives that right in writing or his/her behavior during the hearing justifies exclusion; 3. The reason(s) for a youth's exclusion from a hearing will be documented on form CS-0211, Summary of Hearing; 4. An advocate of his/her choice may represent the youth during the hearing. The advocate will be a DCS group home staff member who is not involved in the incident; 5. When a youth does not select an advocate, one will be appointed when it is apparent that the youth is not capable of effectively collecting and presenting evidence on his/her own behalf; 6. The youth and the advocate may call witnesses and may present any testimony or documentary information relative to the allegation; 7. The reporting DCS group home staff member will be present at all contested hearings and may call witnesses and present any testimony or documentary information relative to the allegations. The reporting DCS group home staff member will present all factual information in a non-adversarial manner; 8. The youth, advocate, and reporting DCS group home staff member will have the opportunity to question witnesses when statements or testimony are presented at the hearing, except when doing so may severely jeopardize the life or safety of persons or the security or order of the facility. In a case where the hearing officer/discipline committee limits this opportunity, the hearing officer/discipline committee will acknowledge this in writing, giving written reason(s) for the limitation. This documentation will be included in the dispositional information of the hearing; 9. The youth is not required to show that the allegations are untrue, rather, the hearing officer/discipline committee must determine, based on the information presented, including staff reports, the statements of the youth and evidence derived from witnesses and documents, that the allegations are true by the greater weight of the evidence and that, based upon this finding, the program sanction is warranted. 10. If the allegation is found to be true, the hearing officer/discipline committee will designate a program sanction as prescribed in DCS policy <u>25.9, Disciplinary Punishment Guidelines for Youth in DCS Group Homes</u>. 11. The original summary of the hearing report will be placed in the youth's permanent file and the hearing officer/discipline committee will prepare a written hearing report that will include the findings, the evidence relied on, the reason(s) for the decision and the disciplinary action to be taken, if warranted. |

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| | <p>12. The hearing officer/discipline committee will provide the youth with a copy of the written findings, form CS-0211, Summary of Hearing and ensure that the youth and advocate are informed of the right and manner in which to file an appeal. If youth requests to file an appeal of findings, an appeal form, CS-0210, Notice of Disciplinary Appeal will be provided.</p> |
| <p>C. Findings</p> | <p>Following the hearing and written notice of the findings (form CS-0211, Summary of Hearing), the sanction for a guilty finding will be imposed as soon as is practical. The sanction will not be imposed until resolution of the appeal.</p> |
| <p>D. Youth's appeal of findings</p> | <ol style="list-style-type: none"> 1. The youth may appeal the decision of the hearing officer to the Discipline Committee. He/she may also elect to appeal the decision of the discipline committee to the facility director or designee. The youth does not have to be present for the discipline review of appeal. Each appeal should be within twenty-four (24) hours but cannot exceed fifteen (15) days of receipt of the written findings, if the youth feels that: <ol style="list-style-type: none"> a) New information which was not presented at the hearing becomes available and warrants reconsideration of the matter; b) The sanction is too severe in relation to the offense and the information presented at the hearing; c) The hearing proceedings did not comply with policies and procedures applicable to disciplinary hearings; d) The information presented to the hearing officer/discipline committee was not sufficient to justify the conclusion that the allegations were true. 2. Each appeal level will, within fifteen (15) days of receipt, excluding weekends and holidays, review the written findings, the youth's appeal and render a decision. The decision may include: <ol style="list-style-type: none"> a) Refer the appeal back to the hearing officer/discipline committee based on new evidence presented by the youth; b) Reaffirm the written findings and the disciplinary action; c) Reaffirm the written findings but deny the disciplinary action recommended; issue alternate disciplinary action which, in no case, would exceed the sanction issued by the hearing officer/discipline committee; d) Deny the written findings and the disciplinary action recommended; conduct a new investigation and render a new written decision; e) Dismiss the disciplinary action. 3. The last level of appeal is to the appropriate central office Director of DCS Group Homes whose decision will be final. |

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| E. Finding or sanction changed on appeal | In the event the written findings are dismissed, the following will occur: <ol style="list-style-type: none">1. The DCS group home director or designee will ensure that the youth is no longer subject to any sanction imposed for the incident;2. The DCS group home case manager will ensure that no record of the incident or the proceedings is placed or allowed to remain in the youth's file.3. In the event the sanction imposed is reduced, the hearing officer will ensure that the youth is subject only to the part of the sanction remaining, if any. |
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| Forms: | <u>CS-0210, Notice of Disciplinary Appeal</u> <u>CS-0211, Summary of Hearing</u> <u>CS-0055, Disciplinary Report/Notice of Hearing</u> |
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| Collateral documents: | <i>None</i> |
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