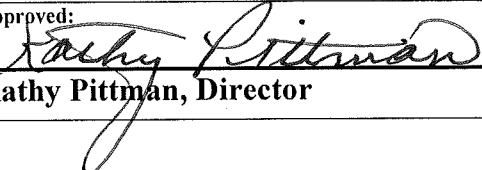


**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES  
DIVISION OF YOUTH SERVICES  
JUVENILE INSTITUTIONS**

<b>Subject:</b> <b>Due Process Hearings</b>	<b>Policy Number:</b> <b>9</b>
<b>Number of Pages:</b> <b>5</b>	<b>Section:</b> <b>VII</b>
<p style="text-align: center; margin: 0;"><b>Attachments</b></p> <ul style="list-style-type: none"> <li><b>A. Due Process Rights</b></li> <li><b>B. Notice Violation</b></li> <li><b>C. Special Accommodations</b></li> <li><b>D. Youth Statement</b></li> <li><b>E. Review of Evidence</b></li> <li><b>F. Due Process Hearing Report</b></li> <li><b>G. Witness Statement</b></li> <li><b>H. Disciplinary Sanctions</b></li> <li><b>I. Due Process Appeal Form</b></li> </ul>	<p style="text-align: center; margin: 0;"><b>Related Standards &amp; References</b></p> <p>ACA 3-JTS 3C-04, ACA 3-JTS 3C-09,  ACA 3-JTS 3C-10, ACA 3-JTS 3C-14,  ACA 3-JTS 3C-15, ACA 3-JTS 3C-16,  ACA 3-JTS 3C-17, ACA 3-JTS 3C-18,  ACA 3-JTS 3C-19, ACA 3-JTS 3C-20,  ACA 3-JTS 3C-21, ACA 3-JTS 3C-22,  ACA 3-JTS 3C-23, ACA 3-JTS 3C-24,  ACA 4-JCF-3C-01, ACA 4-JCF-3C-11  ACA 4-JCF-3C-01</p>
<b>Effective Date:</b>  <b>May 4, 2010</b>	<b>Approved:</b>  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <b>Kathy Pittman, Director</b>

**I. POLICY:**

It is the policy of the Mississippi Department of Human Services, Division of Youth Services (DYS), to maintain a safe and secure environment and that, in all cases where youth are alleged to have committed major or a pattern of minor violations, a recommendation for a due process hearing may be made. When deemed appropriate, the due process hearing shall occur. Discipline administered as a result of a due process hearing shall not be applied as a retaliatory measure; and no form of 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. **Disciplinary Hearing** – A non-judicial administrative procedure to determine if substantial evidence exists to find a youth guilty of a rule violation.
- B. **Rule Violation, Major** – Major violations are violations that cause harm to others and which represent a threat to the safety, control, and security of the institution.
- C. **Rule Violation, Minor** – Minor rule violations are behaviors that are prohibited by the rules and are unacceptable within the program, but which are not immediately threatening or dangerous to self, others, or the security of the facility.
- D. **Due Process Hearing Officer** – An impartial supervisory staff member or designee assigned to conduct major disciplinary hearings.

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E. **Due Process Isolation** - Any instance when a youth is confined alone for over 15 minutes in a room other than the room or cell in which he or she usually sleeps as a result of a rule violation, which is reviewed in a due process hearing.

F. **Behavior Management Isolation** – A “cooling off” period for youth; where placement of youth in a room either locked or unlocked for the purposes of controlling out-of-control behavior, restoring order, correcting undesirable behavior and to achieve compliance with behavioral rules and expectations.

### III. PROCEDURE

Whenever a staff member writing an Incident Report or a Shift Supervisor reviewing that report, makes a determination based on the objective observations of the situation, that consequences for the noted behaviors of the youth are appropriate, he/she may request a Due Process Hearing. The request for the Due Process Hearing occurs only via the completion of an incident report, which must be reviewed and approved by Shift Supervisor.

A. **Prohibitions** – The following prohibitions shall apply to discipline administered via due process hearings:

1. **Retaliation** - Disciplinary action shall not be capricious or used for purposes of retaliation or revenge.
2. **Corporal Punishment** - No form of corporal punishment shall be used as discipline or for any other purpose.
3. **Mail** - A student shall not be prohibited from receiving or sending mail as a disciplinary sanction.
4. **Services** - Students shall not be denied educational, vocational, counseling, medical, dental, psychiatric, psychological, recreational or dietary services as discipline. However, privileges such as television time, movie time, and participation in competitive sports may be temporarily withdrawn.
5. **Visiting** - Visitation restrictions may not be used as discipline for a disciplinary violation unless the disciplinary violation occurred in the visiting area. Restriction may also be placed on any visitor who violates campus rules and regulations.
6. **Removal from Population** - Students shall not be separated from the general student population, except that:
  - i. **Behavior Management Isolation** – Youth are seriously out of control and pose an imminent threat to the safety of others or the operations of the facility. (See policy VII.10: Behavior Management Isolation)
  - ii. **Due Process Isolation** – Youth have committed a major rule violation and have had or are awaiting a due process hearing to determine the appropriate sanction(s). (See policy VII.11: Due Process Isolation)

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- iii. **Special Management** - Youth who have demonstrated a pattern of inappropriate behavior, the level of which continues to escalate or does not decrease when addressed by other behavior management methods such as behavior management and due process isolation. (see policies XIII.8: SMU-BMU and XIII.7: SMU-AMU)
  - iv. **Behavior Plan** – High-risk youth who cannot control their assaultive behavior or who present a danger to themselves may require special management. The Treatment Team lead by the QMHP should provide input into a constructive plan of behavior management, which includes appropriate services and programs. It may be necessary to separate these individuals from the general population to allow for individualized attention.
  
- B. **Initiating Hearings** – Before approving the request for due process, the Shift Supervisor must ensure that the appropriate interventions have been implemented and documented in the Incident Report. Additionally, the Shift Supervisor shall consider the rule violation committed as well as the observed behavior of the youth when deciding the appropriateness of the due process request. Upon approval by the Shift Supervisor, the Incident Report documenting the due process hearing request shall be forwarded to the Due Process Hearing Officer.
  
- C. **Tracking and Logging** – A tracking number shall be assigned to the incident by the Due Process Hearing Officer. A bound master log shall be maintained of all Due Process Hearings. 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 Due Process Hearing Officer.
  
- D. **Notice of Rights and Violation** – Prior to conducting the hearing the Due Process Hearing Officer shall discuss with youth the reason(s) he/she is being held in Due Process Isolation and/or what rule violation he/she has been accused of and shall explain the youth’s due process rights. Additionally, the Due Process Hearing Officer shall discuss with the youth the range of consequences that may be sanctioned as a result of his/her behavior. At this time the youth shall be presented with the Notice of Rights-Violation (Attachment B), which will be explained to the youth by the Due Process Hearing Officer and signed by the youth. The Youth shall also be given the opportunity to state the reason(s) for his/her behavior, the related circumstances, and identify possible or desired witnesses. All relevant information gathered during this time shall be documented in the Due Process Hearing Report (Attachment C).
  
- E. **Staff Representative** – The youth may request any staff member to act as a staff representative to provide assistance during a due process hearing. If the requested staff representative is not available, the hearing officer shall appoint another staff member to represent the youth. (ACA 3-JTS 3C-19)
  
- F. **Conduct of Hearing** – The Disciplinary Hearing Officer shall interview staff and/or youth involved in or having witnessed the noted incident, gather evidence and collect witness

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statements for review. The Due Process Hearing Officer shall then document such findings in the Due Process Hearing Report.

1. **Timeline** - All Due Process Hearing shall be held within 24 hours of the violation, excluding weekends and state observed holidays. All youth being held or accused of a major violation or series of minor violations shall be present for Due Process Hearings; unless such right is waived in writing or youth's behavior determines otherwise. Reasons for youth's absence from the hearing shall be documented.
  2. **Special Education Participation** – When a youth who has been identified as having special education needs that prevent the youth from understanding or abiding by the sanctions imposed on the general population, is brought before the Due Process Hearing Officer, a special education professional shall confer with the Due Process Hearing Officer to decide on an appropriate sanction. Additionally, the youth's Functional Behavior Assessment should be reviewed (see policy XII.22), and a member of the education staff that is familiar with the needs of special education students, should be present to act as a liaison.
  3. **Mental Health Participation** - Each youth subject to disciplinary sanction shall participate in the reading of rights by the Due Process Hearing Officer. At this session, a youth services counselor shall act as liaison and recommend additional mental health input from a Qualified Mental Health Professional (QMHP) if the student appears to not understand his or her rights because of mental disability. Before a youth with mental disability is brought before the Due Process Hearing Officer, a QMHP shall conduct an evaluation to determine the youth's current mental status and risk for deterioration in functioning if confined and to recommend to the Due Process Hearing Officer an appropriate sanction, as necessary.
  4. **Pre-Hearing Confinement** – When youth have been placed in Due Process Isolation prior to the conduct of a hearing due to violent behavior. The Due Process Hearing Officer may release a youth based on time served or add additional time in isolation to the time already served up to 72 hours; documentation of such should be made in the Due Process Hearing Report.
  5. **Sanction** – DPHO may identify a variety of sanctions or consequences that are appropriate based on the circumstances related to the violation at hand and the youth's behavioral history. In cases of mentally ill youth, the observations and recommendations related to the appropriateness of sanctions of the QMHP shall be observed.
- G. **Due Process Hearing Report** – A copy of the due process hearing report shall be placed in the youth's master file and given to youth. When the alleged rule violation addressed during a due process hearing is found to be invalid, the report shall be removed from the youth's master file. When the report reflects multiple violations, and only some are found to be valid, the report should clearly indicate in the report which violations were found to be invalid. (ACA 3-JTS 3C-22)

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H. **Documentation and Statistics** - All Due Process Hearing Reports, regardless of decision, shall be kept and used for statistical or research purposes. However, no reference to a youth's identity shall be used when compiling or sharing statistical information. (ACA 3-JTS 3C-22)

1. Monthly, a summary report shall be prepared by the Due Process Hearing Officer and submitted to the Facility Administrator. The report should include information about the number of disciplinary violations filed in a given month; the types of violations that have taken place; trends observed regarding the types of violations, thoroughness of reports and/or common errors in Incident Reports and other forms; and any other items felt noteworthy.
2. Monthly, the Due Process Hearing Officer or designee shall review the Master Files of youth whose hearing resulted in unfounded allegations, to verify that the due process hearing report had been removed or is well documented.

I. **Appealing a Sanction** – Youth have the right to appeal the findings of any due process hearing to the Facility Administrator by submitting a Due Process Appeal Form (attachment I). Youth have one (1) week to file an appeal following the receipt of the Due Process Hearing Officer's decision. (ACA 3-JTS 3C-24) When reviewing a youth appeal, the Facility Administrator or designee shall consider the following:

1. **Procedural Compliance** – Whether there was substantial compliance with the procedures as outlined in this policy;
2. **Validity** – Whether the Due Process Hearing Officer's decision was based on substantial evidence;
3. **Appropriateness** - Whether, based on the circumstances, the sanction imposed was proportionate to the rule violation and youth demonstrated behavior.

J. **Administrative Review** – The Due Process Hearing Officer shall forward all hearing records to the Facility Administrator or designee for review, to assure that all due process hearings and action taken conform to MDHS/DYS policy and procedures and expected practice. (ACA 3-JTS 3C-23)

K. **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 collection of restitution and/or certification to the adult court system. 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. (ACA 3-JTS 3C-09)

L. **Training** - All staff who come in regular contact with youth shall receive pre-service training on due process hearings. In-service training requirements shall be determined annually through the training needs assessment process. (See policy IV.1: Training Management.) (ACA 3-JTS 3C-04)