

	STANDARD OPERATING PROCEDURE <small>State Form 39870(R/S-06)</small>	Reference Number IIS-002
	Subject Disciplinary Hearings and Appeals of Disciplinary Actions	
	Special Instructions Replaces PST-002 dated March 27, 2012	Effective Date January 15, 2015

I. PURPOSE

Establish guidelines for conducting disciplinary hearings and appeals of disciplinary actions brought against an employee.

II. POLICY

A disciplinary hearing shall be conducted on all alleged violations for which Written Charges have been prepared against the accused employee, unless waived by the accused employee. Employees may request an appeal of a disciplinary action to be brought against them by the Department.

III. DISCIPLINARY HEARING

A. During a disciplinary hearing or appeal (at any level) the accused employee shall be unarmed and in plain clothes, as outlined in ENF-025 (attire for official meetings).

B. Employee waiver:

1. Employees who waive the hearing or fail to make an appearance at the scheduled hearing without good cause shall be subject to the disciplinary action imposed by the hearing officer or the Superintendent. Such disciplinary action shall be final and not subject to review unless good cause is shown.

2. Employees may waive a hearing by signing the bottom section of the “Acknowledgement of Receipt of Charges and Notice of Hearing” and then returning it to the responsible commander. If the hearing is waived by the employee proceed to section V.

C. Disciplinary hearings (when not waived by the employee) shall:

1. Be conducted by a disciplinary hearing officer (DHO) as indicated in sub-sections a and b below; unless, otherwise determined by the Superintendent or a designee;

a. A major subordinate commander shall serve as the hearing officer for all hearings involving any employee within their command, where the possible punishment shall not exceed 10 days loss of pay.

b. The Chief of Staff shall serve as the hearing officer for all GHQ hearings and all other hearings where the possible penalty exceeds 10 days loss of pay.

2. Be scheduled not less than five (5) but within 15 days from the date the Statement of Charges was delivered to the accused employee;

3. Only be scheduled or continued, outside the time limits specified in section C. 2, with a valid reason, and with the approval of the Commander of the Internal Investigations Section (IIS);
4. Be informal and without recourse to the technical common law rules of evidence required for proceedings in judicial courts. All hearings except those conducted before the Indiana State Police Board are not subject to the provisions set forth in the Administrative Adjudication Act (IC 4-21.5);
5. Determine the facts and arrive at a just and effective remedy;
6. Be held at a reasonable time in relation to the accused employee's work schedule.
7. Be limited to the facts and allegations set forth in the statement of charges; and
8. May only be attended by:
 - a. The accused employee (AE) with or without legal counsel, unless the appearance is waived or the employee fails to appear without good cause,
 - b. The AE's commander or designee and other members of the AE's chain of command,
 - c. Other members of the Department's Legal Office or IIS, and
 - d. Any other person(s) with information relevant to the proceedings who will appear as requested by either the DHO or the AE.

IV. DISCIPLINARY HEARING/REVIEW PROCESS

- A. The DHO shall electronically record the hearing in its entirety.
 1. The date, time, location, and identity of all persons in attendance shall be noted for the record. The DHO and all persons present shall be identified by name and rank.
 2. It is not necessary that the record of the hearing be transcribed.
 3. The hearing record shall be forwarded to the IIS Commander after the hearing has been concluded.
- B. Legal counsel representing the accused at disciplinary hearings other than before the State Police Board shall:
 1. Not participate in the hearing other than to privately counsel their client;
 2. Not attempt to influence the hearing officer conducting the hearing in any manner;
 3. Not respond verbally to any questions directed to the accused; and
 4. Not interrupt the hearing process. Upon any interruption, the hearing officer may have counsel removed from the hearing.

C. The DHO shall ensure that the following information is included on the record:

1. Were the written charges received by the accused?
2. Were the written charges delivered personally by a commanding officer?
3. The hearing officer shall read or cause to be read each charge individually, and then

- a. Ask if the accused understands the charge; and
- b. Ask the accused to enter a plea to the charge.

(1) The accused may admit to (in full), admit in part, or deny the charge.

(2) If the accused refuses to enter a plea, the hearing officer shall automatically enter a plea of denial for the individual.

4. The DHO shall read or cause to be read the following administrative rights to the accused.

“We would like to inform you that you will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the constitution of the United States, including the right not to be compelled to incriminate yourself. If you refuse to answer questions at this time which relate directly to the performance of your official duties or fitness for duty, you will be subject to Departmental disciplinary charges which could result in your dismissal from the Department.”

- a. Ask if the accused understands these rights?
- b. The DHO then reads the following:

“Do you understand that any statement you make, whether they indicate violation of rules and regulations or violations of criminal law, may be used against you in any subsequent Departmental charges?”

5. Introduction of evidence relating to the charges.

The DHO shall note in the record the number of the internal investigation that will be considered as evidence when making a determination as to the outcome of the written charges.

6. The DHO shall offer the accused an opportunity to respond to written charges.

- a. The DHO may consider as evidence an oral statement, written statement, or other documentation provided by the accused employee.

- b. If the accused employee wishes to have other individuals present to offer testimony, it shall be the sole discretion of the DHO as to whether or not that testimony is relevant or will be allowed.

7. Closing the hearing.

- a. Upon the close of evidence, ask if the accused has anything further to say.
- b. The DHO shall close the hearing by reading the following:

“I will consider the evidence and statements made here today and will make a determination. You will receive written notification as to my decision within 15 days.”

c. The DHO shall make the final statement: *“Let the record show that this hearing is concluded.”*

d. Note for the record the time the hearing ended.

8 Upon final determination of the hearings outcome the DHO shall confer with the IIS regarding past practices and the employee’s past disciplinary history and then generate the Finding and Order.

V. WRITTEN NOTICE OF FINDING AND ORDER

A. Any DHO taking disciplinary action pursuant to Regulation 7 shall give the disciplined employee written notice of the Finding and Order prior to the effective date of the disciplinary action and within 15 days of the hearing.

B. Upon delivery of the Finding and Order to the employee a copy of the written charges and a copy of the Finding and Order shall be sent directly to the IIS and the Assistant Chief of Staff Investigations and Intelligence.

C. If an investigation of misconduct results in a dismissal, the written notice shall contain a summary of the violation committed, the reason for dismissal, the effective date of the dismissal, a statement of the status of fringe and retirement benefits after dismissal, and a statement as to the content of the employee’s employment record relating to the dismissal.

D. All notifications of Finding and Order shall be sent by certified mail, return receipt requested, and shall be addressed to the disciplined employee at the last known place of residence;

E. Upon receipt of the Finding and Order the disciplined employee’s commander shall ensure all items related to the internal investigation are forwarded to the IIS.

VI. APPEAL OF DISCIPLINARY ACTION

A. Disciplinary action involving a loss of pay not to exceed 10 days loss of pay.

1. An employee may, within 15 days of receiving written notice of disciplinary action to be assessed against the employee, appeal, through channels, to the Superintendent, who shall forward the appeal to the chairperson of the Disciplinary Hearing/Review Board (as defined in Regulation 3):

2. Such appeal shall be made in writing by alleging that such disciplinary action is:

- a. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or
- b. Contrary to constitutional rights, power, privileges or immunity; or

- c. Otherwise discriminatory; or
- d. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
- e. Without observance of procedure required by law; or
- f. Unsupported by substantial evidence.

3. Upon receipt of such appeal, the chairperson of the Disciplinary Hearing/Review Board shall notify the employee of a scheduled hearing before said board. Such hearings shall be held within thirty (30) days after receipt of the appeal unless extended by the Superintendent.

a. The chairperson shall notify the Disciplinary Hearing/Review Board of a scheduled hearing.

b. Disciplinary appeals taken before the board must be done in compliance with the required statute, but shall not necessarily be on the appellant's duty time.

4. Disciplinary Hearing/Review Board hearings shall be informal, without recourse to the technical common law rules of evidence required in judicial courts and said board shall:

a. Make a determination based on the evidence presented; and

b. Notify the employee and the employee's supervisor of its findings within fifteen (15) days after the hearing.

5. All disciplinary actions outlined in Regulation 7, except an actual suspension without pay, shall be final upon determination by the Disciplinary Hearing Review Board and not subject to further review.

6. Any employee receiving disciplinary action, resulting in actual suspension without pay, may, within fifteen (15) days of receiving written notice of the Disciplinary Hearing/Review Board's findings, appeal such findings to the Superintendent.

a. The Superintendent's office shall notify the employee within fifteen (15) days of receipt of the appeal, of the employee's appearance date before the Superintendent.

b. At the appearance, the Superintendent shall consider statements made by the disciplined employee, the Disciplinary Hearing/Review Board's findings, and all other relevant information available, and then notify the employee of his/her findings within 15 days after the appearance.

B. Disciplinary action involving a loss of pay exceeding 10 days loss of pay or termination.

1. An employee may, within 15 days of receiving written notice of disciplinary action to be assessed against the employee, appeal, through channels, to the Superintendent.

a. The Superintendent's office shall notify the employee within fifteen (15) days of receipt of the appeal, of the employee's appearance date before the Superintendent.

b. At the appearance, the Superintendent shall consider statements made by the disciplined employee and all other relevant information available, and then notify the employee of the findings within 15 days after the appearance.

G. Appeals to the State Police Board may be made when:

1. An employee may, within fifteen (15) days of receiving written notice of the Superintendent's findings, appeal such findings to the State Police Board.

2. If an employee fails to request a hearing before the State Police Board within fifteen (15) days, the Superintendent's finding shall be final and not subject to review.

3. An employee, who requests a hearing before the State Police Board, may be represented by legal counsel.

4. The State Police Board hearing is informal and without recourse to the technical common law rules of evidence required in proceedings in judicial courts.

5. After all the evidence has been presented, the State Police Board shall make an informal finding of facts and a determination based upon said facts.

6. The State Police Board shall notify the employee of its Finding and Determination.

H. Any employee aggrieved by such determination may seek judicial review by following the applicable provisions of the Administrative Adjudication and Court Review Act.

I. All notification of findings shall be by certified mail, return receipt requested, and shall be addressed to the employee at the last known place of residence.

J. This procedure is to be used in conjunction with all relevant Department regulations, rules, policies, and procedures.