

Chapter: Rules for State-Operated Programs and Facilities Subchapter: Behavior Management and Youth Discipline Division: Due Process Hearings Procedures <b>Rule: Level I Hearing Procedure</b>  ACA: 4-JCF-3A-27 Statutes: Human Resources Code §245.051 References: <i>Morales v. Turman</i> Settlement Agreement Section (V)(J)	<b>Effective Date: 10/1/15</b>  Page: 1 of 6  Replaces: GAP.380.9551, 9/1/09
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**RULE**

(a) **Purpose.**

The purpose of this rule is to establish a due process procedure to be followed when seeking to revoke the parole status of a youth as a disciplinary consequence for behavior that presents an unacceptable risk to the safety of persons and property.

(b) **Definitions.**

Definitions pertaining to this rule are under [§380.9550](#) of this title.

(c) **General Provisions.**

- (1) A Level I hearing is required to revoke a youth's parole status. Parole status may be revoked if it is found that a youth has committed a law violation or a parole rule violation as established in [§380.9504](#) of this title and:
  - (A) revocation is determined to be in the best interest of the youth or community; and/or
  - (B) the youth is found to be in need of further rehabilitation at a residential facility operated by the Texas Juvenile Justice Department (TJJD) or under contract with TJJD.
- (2) The hearing examiner must consider the following information to determine if parole revocation is appropriate:
  - (A) the severity of the offense(s) found true at the hearing;
  - (B) any behavioral or adjustment issues while on parole and the steps taken by the staff representative to address those issues;
  - (C) whether or not the youth's conduct while on parole presents a threat to persons or property;
  - (D) reasons the youth is in need of services offered at a TJJD or contract facility;
  - (E) whether appropriate community-based alternatives have been exhausted;
  - (F) any impact statement(s) written by the victim(s);
  - (G) any participation in constructive activity; and
  - (H) any extenuating circumstances.
- (3) The youth must be assisted by an attorney at the hearing. The agency will appoint an attorney for indigent youth from the list of defense attorneys who contract with TJJD for this purpose.
- (4) A Level I hearing on any allegation(s) must be scheduled as soon as possible but no later than seven days after the date of the alleged offense, excluding weekends and holidays, except when:
  - (A) TJJD staff documents that it was impossible, impractical, or inappropriate to have scheduled the hearing sooner; or
  - (B) local authorities make a written request that TJJD defer an allegation to their jurisdiction for prosecution; or

- (C) TJJJ staff elects to defer a Level I hearing on all allegations of misconduct due to criminal allegation(s) pending or filed as adult charges, except that if the pending charge is a first degree felony or capital offense, there must be a written request as described in subparagraph (B) of this paragraph to defer the allegation.
- (5) TJJJ may re-issue a directive to apprehend and request a Level I hearing concerning new or previously deferred allegation(s) if later circumstances make such action appropriate.
- (6) If a youth is on parole from another state and is being supervised by TJJJ under agreement with the other state, a parole revocation hearing may be held by TJJJ and the youth may be returned to the sending state. Such a hearing is coordinated by the Texas Interstate Compact for Juveniles (ICJ) Office and the TJJJ Office of General Counsel.
- (7) If a TJJJ parolee commits an offense in another state, the return of the youth is coordinated by the Texas ICJ Office and the TJJJ Office of General Counsel. A parole revocation hearing is coordinated by and held at the request of the assigned TJJJ staff representative.
- (d) **Notice.**
- (1) The staff representative must provide the youth with written notice of the date and time of the hearing not less than three working days before the scheduled hearing date. This notice must include:
- (A) the reason(s) for the hearing;
- (B) the proposed action to be taken; and
- (C) the youth's rights in connection with the hearing.
- (2) If the youth is under 18 years of age, the staff representative must make reasonable efforts to inform the youth's parent(s) or guardian of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. If the youth is 18 years of age or older, this notice may be provided only with the youth's written authorization.
- (3) The staff representative must provide the youth's attorney with written notice of the date, time, and location of the hearing and the reasons for the hearing not less than three working days before the scheduled hearing date. The notice to the attorney must also include:
- (A) the name, address, and telephone number of the staff representative and the hearing examiner;
- (B) a list of all witnesses the staff representative intends to call;
- (C) an indication of the expected testimony of each witness;
- (D) copies of any statements made by the youth;
- (E) copies of any statements, affidavits, reports, or other documentation relied upon as grounds for the proposed action; and
- (F) copies of any reports or summaries that will be relied upon at disposition.
- (4) The staff representative must provide the youth's attorney with reasonable access to all information held by TJJJ concerning the youth. The youth's attorney must respect the confidential nature of this information and must comply with TJJJ requests to withhold sensitive information from the youth or the youth's family.
- (5) As soon as possible after receiving the hearing notice and no later than the commencement of the hearing, the youth's attorney must inform the staff representative of any witnesses he/she wishes to call on behalf of the youth. If necessary and possible, the staff representative must assist the youth's attorney in contacting those witnesses and securing their attendance at the hearing.
- (6) The staff representative must ensure that all witnesses he/she intends to call are given written notice of the time, date, and location of the hearing not less than three days before the hearing.

(e) **Evidence.**

- (1) All factual issues are determined by a preponderance of evidence.
- (2) The Texas Rules of Evidence generally apply to the fact-finding portion of the hearing. Unless specifically precluded by statute, evidence that is not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Criminal exclusionary rules do not apply in TJJD hearings.
- (3) The hearing examiner must determine the admissibility of evidence. Irrelevant, immaterial, or unduly repetitious evidence is excluded.
- (4) A judgment from a court indicating a youth has pled guilty or true to an offense and has not received deferred adjudication or deferred prosecution is sufficient to prove the youth committed the offense.
- (5) Copies of due process hearing documents need not be certified if these documents are part of the youth's record(s) or have been received through ICJ. These documents are considered reliable and admissible for all purposes.
- (6) Accomplice testimony is sufficient to prove an allegation if it is corroborated by other evidence tending to connect the youth with the alleged violation. The corroboration is not sufficient if it merely shows the commission of the alleged violation. If two accomplices testify, the testimony of each may serve to corroborate the other.
- (7) Legally recognized privileges of relationships are given effect.
- (8) Evidence that is otherwise admissible may be received in written form if doing so will expedite the hearing and will not significantly prejudice the rights or interests of the youth. This includes but is not limited to use of affidavits admitted to show the following:
  - (A) ownership and lack of consent;
  - (B) identity of signature on instrument and lack of consent of complaining witness in a forgery case;
  - (C) lack of permission to leave designated placement;
  - (D) chain of custody;
  - (E) identity of substance found in urine sample;
  - (F) identity of controlled substance found in youth's possession.
- (9) A youth's written statement concerning his/her possible involvement in an alleged violation is admissible if it is signed by the youth and accompanied by evidence indicating that the youth made the statement voluntarily after being advised of:
  - (A) the right to remain silent;
  - (B) the possible consequences of giving the statement;
  - (C) the right to consult with an attorney prior to giving the statement; and
  - (D) the right to have an attorney provided if the youth is indigent.
- (10) A youth's non-recorded oral statement is admissible if it:
  - (A) relates facts that are found to be true and that tend to establish the youth's guilt; or
  - (B) was *res gestae* of the conduct that is the subject of the hearing or the arrest; or
  - (C) does not stem from law enforcement or TJJD staff questioning of youth, even if the statement does not meet criteria in subparagraph (A) or (B) of this paragraph; or
  - (D) is voluntary and bears on the youth's credibility as a witness, even if the statement stems from law enforcement or TJJD staff questioning of the youth.

- (11) A youth's recorded oral statement (i.e., audio recorded or visually or otherwise electronically recorded) concerning his/her possible involvement in illegal activities is admissible if it is accompanied by evidence on the recording that it was given after the youth was advised of the rights in paragraph (9) of this subsection. All voices on the recording must be identified and the recording must be accurate and unaltered. A transcript of the recordings is not sufficient.
- (12) A youth's admissible out-of-hearing/court statement admitting he/she committed an offense is sufficient to prove the offense only if it is corroborated by other evidence that the offense was committed.

(f) **Hearing Process.**

- (1) The hearing must be conducted by an impartial hearing examiner appointed by the TJJD general counsel.
- (2) The TJJD staff member requesting a hearing must appoint a staff representative to appear at the hearing and to present the reasons for the proposed action. The staff representative is also responsible for making relevant information available to all parties to the hearing.
- (3) The hearing must be held in the community where the alleged rule violation occurred unless the hearing examiner directs that it be held in another location.
- (4) All necessary parties must be present at the hearing site unless the hearing is conducted by telephone pursuant to [§380.9553](#) of this title.
- (5) At the request of the staff representative or defense attorney, the hearing examiner may sign and issue a subpoena to compel the attendance of a necessary witness at the hearing or the production of books, records, papers, or other objects. A person who testifies falsely, fails to appear when subpoenaed, or fails or refuses to produce material under the subpoena is subject to the same orders and penalties as a person who takes those actions before a court.
- (6) Before the hearing, the hearing examiner may review copies of any documentation previously provided to the youth's attorney except for those documents that relate solely to dispositional criteria. The hearing examiner may review information relating solely to dispositional criteria only if the hearing proceeds to disposition.
- (7) To protect the confidential nature of the hearing, persons other than the youth, the youth's attorney, the staff representative, and the youth's parent(s) or guardian may be excluded from the hearing room at the discretion of the hearing examiner; however:
  - (A) observers may be permitted with the consent of the youth and the youth's attorney; and
  - (B) any person except the youth's attorney or the staff representative may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the youth's exclusion must be stated on the record.
- (8) A victim who appears as a witness must be provided a waiting area that eliminates or minimizes contact between the victim and the youth, the youth's family, and witnesses on behalf of the youth.
- (9) The hearing is conducted in two parts: fact-finding and disposition.
  - (A) The purpose of the fact-finding is to establish whether there is a preponderance of evidence to prove the youth engaged in the alleged misconduct.
  - (B) The purpose of the disposition is to determine whether revocation of parole status is appropriate under the circumstances.

- (10) The hearing must be recorded. The hearing examiner must retain copies of all documents admitted into evidence. Physical evidence may be retained at the discretion of the hearing examiner; however, if it is not retained, an adequate description of the item(s) must be entered in the record by oral stipulation.
- (11) Factual issues not in dispute may be stipulated by the staff representative and the youth's attorney. Such stipulations must be made on the record of the hearing.
- (12) The youth must be given the opportunity to respond "true" or "not true" to each allegation before any evidence concerning the allegation is heard.
  - (A) The youth has a right to respond "not true" to each allegation and to require that proof of the allegation be presented at the hearing.
  - (B) A response of "true" to any allegation is sufficient to establish each and every element necessary to prove that allegation without the presentation of any other evidence.
- (13) The hearing examiner must administer an oath to all witnesses to testify truthfully.
- (14) With the exception of the youth and the staff representative, any person designated as a witness may be excluded from the hearing room during the testimony of other witnesses and may be instructed to refrain from discussing his/her testimony with anyone until all the witnesses have been dismissed.
- (15) The hearing examiner may question each witness at the hearing examiner's discretion. The youth's attorney and the staff representative must be given an opportunity to question each witness.
- (16) The hearing examiner may allow a witness to testify outside the presence of the youth if doing so appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the youth's attorney must be present during the testimony and must have the opportunity to review the testimony with the youth before questioning the witness.
- (17) The youth may not be called as a witness unless, after consulting with his/her attorney, the youth waives his/her right to remain silent on the record.
  - (A) The youth's decision not to testify does not create a presumption against him/her.
  - (B) A youth who waives his/her right to remain silent may be questioned only concerning those issues addressed by the youth's testimony.
- (18) The hearing examiner must rule immediately on any motions or objections made in the course of the hearing. The motions, objections, and rulings must be included in the hearing examiner's written report.
- (19) The hearing examiner may, upon his/her own motion or the good cause motion of any party, recess or continue the hearing when doing so is necessary to ensure an informed fact finding.
- (20) After the presentation of all evidence pertaining to the factual issues raised at the hearing, the hearing examiner must announce his/her findings on those issues.
  - (A) The hearing examiner may find that the evidence suffices to prove conduct other than the conduct that was originally alleged if the original allegation gave sufficient notice of the conduct proved.
  - (B) Regardless of the evidence, the hearing examiner may not find a criminal offense more serious than the offense that was originally alleged unless the original allegation has been amended on the record and after notice to the youth's attorney.

- (C) If the hearing examiner finds any allegation to be true, the hearing proceeds to disposition. If the hearing examiner does not find any allegation to be true, the hearing is adjourned with no change in the youth's status.
- (21) In the disposition phase, the staff representative presents evidence to establish why he/she believes the youth's parole status should be revoked. The youth is given the opportunity to present evidence as to why his/her parole status should not be revoked, including evidence of extenuating circumstances.
- (22) The evidence considered during disposition may be in the form of testimony from witnesses submitted during fact-finding or disposition, as well as written reports offered by youth, staff, professionals, counselors, or consultants. Relevant documents contained in the youth's record may be admitted and considered. All written documents to be offered must be provided to the parties no later than three days before the hearing unless otherwise waived. Hearsay evidence is admissible in disposition.
- (23) Parole status may be revoked if the hearing examiner determines that revocation is:
- (A) in the best interest of the youth; and/or
  - (B) in the best interest of the community; and/or
  - (C) the youth is in need of further rehabilitation at a residential facility operated by TJJJ or under contract with TJJJ.
- (24) If parole is revoked, the youth is assigned a minimum length of stay in accordance with [§380.8525](#) of this title, based on the most serious offense found true at the hearing. This minimum length of stay may be reduced in accordance with [§380.8525](#) of this title.
- (25) If the hearing examiner determines there are extenuating circumstances, the hearing examiner must take that into account when determining if the criteria for parole revocation exist. If, despite a finding of extenuating circumstances relevant to the proven offense, the hearing examiner finds revocation is appropriate under the circumstances, the youth's parole status will be revoked but the assigned minimum length of stay will be reduced, as determined by the hearing examiner.
- (26) If the youth's parole status is not revoked, lesser disciplinary consequences may be imposed for any rule violation(s) proved at the hearing.
- (27) After announcing the disposition decision, the hearing examiner must inform the youth of the right to appeal any or all findings and decisions made at the hearing.
- (28) Immediately after the hearing is closed, the hearing examiner must give the youth a copy of the hearing report form.
- (29) The hearing examiner's decision is effective and implemented when announced at the hearing, even if the youth appeals and a response is pending.
- (30) As soon as possible after the hearing is closed, the hearing examiner must prepare a written report that includes:
- (A) a summary of the evidence presented;
  - (B) findings of fact, including the reliability of the evidence and the credibility of the witnesses, and the reasons for those findings;
  - (C) conclusions of law;
  - (D) an explanation of the dispositional decision; and
  - (E) rulings made on motions and objections and the reasons for those rulings.
- (31) Copies of the hearing examiner's report must be provided to the youth, the youth's attorney, and the staff representative.
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