

§ 541.42 Designation of Hearing Administrator.

(a) The Regional Director in the region where the inmate is located shall review the institution's recommendation for referral of an inmate for placement in a control unit. If the Regional Director concurs with the recommendation, the Regional Director shall forward a written request, together with the institution's referral material, to the Regional Director of the region where the control unit is located. The Regional Director of the region where the control unit is located shall designate a person in the Regional Office to review the referral material and to conduct a hearing on the appropriateness of an inmate's placement in a control unit.

(b) The Hearing Administrator shall have the following qualifications:

(1) Correctional experience, including institutional work with inmates, processing of inmate disciplinary actions, significant institutional experience in observing and evaluating inmate adjustment and disruptive behavior, and knowledge of the options available in the Bureau of Prisons for dealing with such conduct;

(2) Lack of former personal involvement in an Institution Discipline Committee action involving the particular inmate in incident(s) referred; and

(3) Familiarity with Bureau of Prisons policies and operations, including the criteria for placement of inmates in different institutions and in a control unit.

§ 541.43 Hearing procedure.

(a) The Hearing Administrator shall provide a hearing to an inmate recommended for placement in a control unit. The hearing ordinarily shall take place at the recommending or sending institution.

(b) The hearing shall proceed as follows.

(1) Staff shall provide an inmate with an advance written notice of the hearing and a copy of this rule at least 24 hours prior to the hearing. The notice will advise the inmate of the specific act(s) or other evidence which forms the basis for a recommendation that the inmate be transferred to a control unit, unless such evidence would likely

endanger staff or others. If an inmate is illiterate, staff shall explain the notice and this rule to the inmate and document that this explanation has occurred.

(2) The Hearing Administrator shall provide an inmate the service of a full-time staff member to represent the inmate, if the inmate so desires. The Hearing Administrator shall document in the record of the hearing an inmate's request for, or refusal of staff representation. The inmate may select a staff representative from the local institution. If the selected staff member declines or is unavailable, the inmate has the option of selecting another representative or, in the case of an absent staff member, of waiting a reasonable period (determined by the Hearing Administrator) for the staff member's return, or of proceeding without a staff representative. When an inmate is illiterate, the Warden shall provide a staff representative. The staff representative shall be available to assist the inmate and, if the inmate desires, shall contact witnesses and present favorable evidence at the hearing. The Hearing Administrator shall afford the staff representative adequate time to speak with the inmate and to interview available witnesses.

(3) The inmate has the right to be present throughout the hearing, except where institutional security or good order is jeopardized. The Hearing Administrator may conduct a hearing in the absence of the inmate when the inmate refuses to appear. The Hearing Administrator shall document an inmate's refusal to appear, or other reason for non-appearance, in the record of the hearing.

(4) The inmate is entitled to present documentary evidence and to have witnesses appear, provided that calling witnesses would not jeopardize or threaten institutional security or individual safety, and further provided that the witnesses are available at the institution where the hearing is being conducted.

(i) The evidence to be presented must be material and relevant to the issue as to whether the inmate can and would function in a general prison population without being or posing a threat to

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staff or others or to the orderly operation of the institution. The Hearing Administrator may not consider an attempt to reverse or repeal a prior finding of a disciplinary violation.

(ii) Repetitive witnesses need not be called. Staff who recommend placement in a control unit are not required to appear, provided their recommendation is fully explained in the record. Staff who were involved, in any capacity, in former disciplinary proceedings need not be called as to their involvement in those proceedings, since this hearing is not to go over the factual basis for prior actions which have been decided.

(iii) When a witness is not available within the institution, or not permitted to appear, the inmate may submit a written statement by that witness. The Hearing Administrator shall, upon the inmate's request, postpone any decision following the hearing for a reasonable time to permit the obtaining and forwarding of written statements.

(iv) The Hearing Administrator shall document in the record of the hearing the reasons for declining to permit a witness or to receive documentary evidence.

§ 541.44 Decision of the Hearing Administrator.

(a) At the conclusion of the hearing and following review of all material related to the recommendation for placement of an inmate in a control unit, the Hearing Administrator shall prepare a written decision as to whether this placement is warranted. The Hearing Administrator shall:

(1) Prepare a summary of the hearing and of all information presented upon which the decision is based; and

(2) Indicate the specific reasons for the decision, to include a description of the act, or series of acts, or evidence on which the decision is based.

(b) The Hearing Administrator shall advise the inmate in writing of the decision. The inmate shall receive the information described in paragraph (a) of this section unless it is determined that the release of this information could pose a threat to individual safety, or institutional security, in which case that limited information may be

withheld. The Hearing Administrator shall advise the inmate that the decision will be submitted for review of the Executive Panel. The Hearing Administrator shall advise the inmate that, if the inmate so desires, the inmate may submit an appeal of the Hearing Administrator's decision to the Executive Panel. This appeal, with supporting documentation and reasons, must be filed within five working days of the inmate's receipt of the Hearing Administrator's decision.

(c) The Hearing Administrator shall send the decision, whether for or against placement in a control unit, and supporting documentation to the Executive Panel. Ordinarily this is done within 20 working days after conclusion of the hearing. Any reason for extension is to be documented.

§ 541.45 Executive Panel review and appeal.

The Executive Panel is composed of the Regional Director of the region where a control unit is located to which referral is being considered and the Assistant Director, Correctional Programs Division.

(a) The Executive Panel shall review the decision and supporting documentation of the Hearing Administrator and, if submitted, the information contained in an inmate's appeal. The Panel shall accept or reject the Hearing Administrator's decision within 30 working days of its receipt, unless for good cause there is reason for delay, which shall be documented in the record.

(b) The Executive Panel shall provide a copy of its decision to the Warden at the institution to which the inmate is to be transferred, to the inmate, to the referring Warden and region, and to the Hearing Administrator.

(c) An inmate may appeal a decision of the Executive Panel, through the Administrative Remedy Procedure, directly to the Office of General Counsel, Bureau of Prisons, within 30 calendar days of the inmate's receipt of the Executive Panel's decision.

§ 541.46 Programs and services.

The Warden shall provide the following services to a control unit inmate. These services must be provided