

**CHAPTER 120****ADMINISTRATION****Authority**

N.J.S.A. 30:1-9 et seq., 30:1-12, 30:4C-4,  
26a and 49 and 52:14B-4(b).

**Source and Effective Date**

R.1996 d.347, effective July 5, 1996.  
See: 28 N.J.R. 1590(a), 28 N.J.R. 3791(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 120, Administration, expires on July 5, 2001.

**Chapter Historical Note**

Chapter 120, Administration, was adopted as R. 1972 d.97, effective May 22, 1972. See: 4 N.J.R. 126(c).

Pursuant to Executive Order No. 66(1978), Chapter 120, Administration, was readopted by R.1983 d.442, effective September 26, 1983. See: 15 N.J.R. 1340(a), 15 N.J.R. 1769(a). Pursuant to Executive Order No. 66(1978), Chapter 120 expired on September 26, 1988.

Chapter 120, Administration, was adopted as new rules by R.1989 d.300, effective August 21, 1989. See: 20 N.J.R. 2742(a), 21 N.J.R. 2513(b).

Pursuant to Executive Order No. 66(1978), Chapter 120, Administration, was readopted as R.1991 d.397, effective July 9, 1991. See: 23 N.J.R. 1658(a), 23 N.J.R. 2309(a).

Pursuant to Executive Order No. 66(1978), Chapter 120, Administration, was readopted as R.1996 d.347, effective July 5, 1996. See: 28 N.J.R. 1590(a), 28 N.J.R. 3791(a).

Subchapter 1, Organization of the Division of Youth and Family Services, was repealed and Subchapter 1, Organization of the Division of Youth and Family Services, was adopted as new rules, Subchapter 2, Administrative Hearings, was repealed, and Subchapter 3, Fair Hearing Guidelines, was recodified as Subchapter 2, Hearings, by R.1999 d.266, effective August 16, 1999. See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a). See, also, section annotations.

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**SUBCHAPTER 3. (RESERVED)****SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF YOUTH AND FAMILY SERVICES****10:120-1.1 Organization**

(a) In addition to its Central Office that is administrative in nature, the Division of Youth and Family Services (DYFS) has Regional Offices that are also administrative; Adoption Resource Centers that place children for adoption; a centralized screening system that accepts referrals of child abuse and neglect in institutional settings; Institutional Abuse Investigation Units that investigate allegations of child abuse and neglect in institutions such as schools and residential facilities, as well as foster homes; District Offices that accept referrals and investigate allegations of child abuse or neglect and family problems, as well as provide family support, prevention and reunification services; a centralized screening system that accepts referrals of child abuse and neglect in homes outside of regular office hours; and residential treatment centers, that treat seriously emotionally disturbed youths.

(b) To report suspected incidents of child abuse or to request services for themselves or others, the public may contact the District Office or Adoption Resource Center in their area using the blue pages, State government section, of the telephone book to locate the local Division office. The public may obtain information about the Division or make general submissions or requests by writing to:

Division of Youth and Family Services  
PO Box 717  
Trenton, New Jersey 08625-0717

**Case Notes**

Foster parent liability program was quasi-legislative initiative of Division of Youth and Family Services (DYFS) that had to be established by administrative rules promulgated under Administrative Procedures Act. *Scott v. State*, 265 N.J.Super. 591, 628 A.2d 379 (A.D. 1993).

Foster parent's continuation of her duties after receipt of brochure resulted in unilateral contract that required indemnification of foster parent. *Scott v. State*, 265 N.J.Super. 591, 628 A.2d 379 (A.D.1993).

Lack of final administrative decision did not prevent foster parent from bringing contract action against state for indemnification. *Scott v. State*, 265 N.J.Super. 591, 628 A.2d 379 (A.D.1993).

**SUBCHAPTER 2. HEARINGS****10:120-2.1 Right to hearings**

(a) It is the right of an applicant for or recipient of a social service rendered by a provider under contract with the

Division to request and have a hearing in the manner established by this subchapter when the contract provider has made a decision or action or has failed to act in a way which meets the conditions outlined in (b) below. The availability of a local administrative review shall be in addition to and independent of the right to a hearing.

(b) A hearing shall be available in the following circumstances:

1. Any contract provider action, or failure to act with reasonable promptness, on a request for services, which includes undue delay in reaching a decision on eligibility or in the provision of services;
2. Any contract provider decision regarding eligibility for services in both initial and subsequent determinations; and
3. Any contract provider action resulting in a termination, suspension or reduction of services.

(c) The right to a hearing shall not extend to cases where there is:

1. A change in the placement of a child without constituting a reduction of social services;
2. An across-the-board service termination, suspension or reduction as a result of a reduction in funding from the Division; or
3. A Division action, rather than an action or inaction of the contract provider. In cases of a Division action, due process is available as specified in N.J.A.C. 10:120A.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).  
Rewrote the section.

#### 10:120-2.2 Notification of right to a hearing

(a) All notifications of contract provider decisions shall state in clear, simple language the nature of the decision, the effective date of the decision, and the factual and legal basis for the decision, including if the decision is based on an across-the-board service termination, suspension or reduction as a result of a reduction in funding from the Division. In adverse decisions, the notifications shall include, as a basis for the contract provider's action, one or more of the following references:

1. Statutory basis;
2. Regulatory reference or citation;
3. State plan (including budgetary provisions);
4. Social service transmittal; or
5. Policy memorandum.

(b) Proper notice to a client shall be timely and adequate.

1. Where the decision relates to any action which may entitle a client to a hearing, action may not be implemented until 10 days after the mailing of the notice of intent to suspend, reduce or terminate services.

2. Adequate means the notice must be written to include: a statement of the proposed contract provider action, the reason for the contract provider's action and the specific reference supporting the contract provider's action; a statement explaining the client's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1; and an explanation that services shall not continue until the date of the hearing except in the circumstances stated in N.J.A.C. 10:120-2.5(a)1.

(c) The contract provider may dispense with timely notice, but shall send adequate notice no later than the date of action when:

1. The contract provider has factual information confirming the death of the client;

2. The contract provider received an oral or clearly written statement signed by the client that he or she no longer wishes services or that he or she gives information which requires termination, suspension or reduction of services and the client has indicated in writing that he or she understands that this must be the consequence of supplying such information;

3. The client's whereabouts is unknown and mail from the contract provider directed to the client has been returned by the post office indicating no known forwarding address, or home visits have been made and documentation obtained that the client no longer resides there;

4. The client has been accepted for service in a new jurisdiction and that fact has been established by the jurisdiction previously providing services;

5. A special service which is provided for a specific period of time is terminated and the client has been informed in writing at the time of service initiation that the service shall automatically terminate at the end of the specified period; or

6. The client's behavior creates a threat of harm to himself or herself or others.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).  
Rewrote the section.

#### 10:120-2.3 Complaint procedures

(a) Prompt and courteous attention shall be given to all complaints whether or not such complaints constitute requests for hearings. All complaints involving a matter described in N.J.A.C. 10:120-2.1(a) or (b) shall be acknowledged in writing promptly and, if it is not mentioned in the complaint, the acknowledgment shall inform the client of the right to a hearing.

(b) Informal efforts to resolve the problem may be made through field contacts and office interviews with supervisory personnel. It shall be made clear to the client that in no event are these informal efforts to be considered a prerequisite for a hearing and in no event can they delay, interfere with or impede the processing of a hearing request.

(c) Any clear expression, oral or written, to the contract provider, by a client or a person acting as the client's representative to the effect that the client is dissatisfied with a decision, action or inaction by the contract provider, as described in N.J.A.C. 10:120-2.1(b), or that the client wants the opportunity to present his or her case to a higher authority constitutes a request for a hearing.

(d) A request made to the contract provider shall be immediately transmitted to the Division of Youth and Family Services Administrative Hearings Unit no later than one work day after the receipt of the request. An acknowledgment of receipt of the request for a hearing shall be sent by the Administrative Hearings Unit to the client immediately.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted references to hearings for references to fair hearings throughout; in (a) and (c), changed N.J.A.C. references; in (b), rewrote the first sentence, and substituted "shall" for "should" following "It" in the second sentence; in (c), inserted references to contract providers, and substituted a reference to decisions for a reference to agency decisions; and in (d), substituted a reference to contract providers for a reference to local agencies.

#### 10:120-2.4 Time limitation on entitlement to a hearing

If a request for a hearing relates to an action or lack of action by a contract provider that occurred more than 90 days prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action unless there are extraordinary extenuating circumstances. The decision that extraordinary extenuating circumstances exist shall be made by the Director of the Division of Youth and Family Services.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted a reference to hearings for a reference to fair hearings, and substituted a reference to actions or lack of actions by contract providers for a reference to agency actions or lack of agency actions in the first sentence.

#### 10:120-2.5 Termination of services

(a) The contract provider may terminate, suspend or reduce social services any time during the month, provided that the contract provider gives a 10 day advance notice to the client, as stated in N.J.A.C. 10:120-2.2(b)1, and except for the conditions listed in N.J.A.C. 10:120-2.2(c).

(b) When there is a request for a hearing, the contract provider shall not continue or reinstate services at an unreduced level until the hearing is held, except for the circumstances in (b)1 below. Services shall not be continued

unreduced pending the judge's decision except for the circumstances in (b)1 below.

1. The contract provider shall continue or reinstate services at an unreduced level until the hearing is held or pending the judge's decision only when the client demonstrates to the contract provider that the loss of the services creates a severe hardship. The contract provider shall consult with the Division's Regional Business Office before making the decision and shall consider the Regional Business Office's recommendation when making the decision. Services shall be continued or reinstated based on a severe hardship only when:

- i. There is the danger of a client's loss of employment or loss of a bona fide offer of employment;
- ii. There is imminent danger of the immediate breakup of the family, with a child needing out-of-home placement;
- iii. The client is in imminent physical danger or at risk of child abuse or neglect; or
- iv. There is danger of serious harm to the client who is medically diagnosed as mentally or physically incapable of caring for himself or herself and leading to inpatient hospital care or institutionalization.

(c) Upon receipt of a request for a hearing, the Administrative Hearings Unit shall make a record thereof and shall promptly transmit the case to the Office of Administrative Law for a hearing. The Administrative Hearings Unit shall send an acknowledgment of the request to the client, along with a copy of the statement entitled "How a Hearing is Conducted." The contract provider shall be kept informed of the arrangements for the hearing.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).  
Rewrote the section.

#### 10:120-2.6 Withdrawal of hearing request

The filing of a request for a hearing shall not preclude continued effort to accomplish corrective action or interpretation by the contract provider through informal adjustment procedures. If, as a result of satisfactory adjustment or for any other reason, the client desires to cancel the hearing, he or she shall so notify the contract provider or the Division of Youth and Family Services. The client shall be requested to notify the contract provider in writing regarding the decision for discontinuance or cancellation of the hearing.

Amended by R.1999 d.266, effective August 16, 1999.  
See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted references to hearings for references to fair hearings and substituted references to contract providers for references to local agencies throughout, and deleted a reference to the Division of Youth and Family Services in the first sentence.

**10:120-2.7 Contract provider responsibility**

The contract provider is required to assist the client, if necessary, in arranging for attendance at the hearing either directly or through purchase.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted a reference to contract providers for a reference to local agencies.

**10:120-2.8 Accessibility of records**

(a) The client or his or her representative, with the client's authorization in writing, shall have adequate opportunity to examine the contents of the client's case file and all documents and records to be used by the contract provider at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

(b) Information contained in child abuse/neglect records and reports shall not be disclosed except under circumstances expressly authorized by State and Federal law and regulations, including 42 U.S.C. §§ 5101 et seq., N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

In (a), substituted a reference to contract providers for a reference to agencies; and in (b), added "and regulations, including 42 U.S.C. §§ 5101 et seq., N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G" at the end.

**10:120-2.9 Hearing involving medical issues**

When a hearing involves medical issues, such as those concerning a diagnosis or an examining physician's report, a medical assessment other than that of the person or persons involved in making the original decision may be ordered by the judge. The medical assessment shall be obtained at a reasonable expense to the contract provider from a source satisfactory to the client and shall be made part of the record.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted a reference to contract providers for a reference to agencies in the last sentence.

**10:120-2.10 Conducting the hearing**

The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted a reference to hearings for a reference to fair hearings.

**10:120-2.11 Adjournments**

Adjournments shall not affect the client's right to a continuation of the hearing. The Office of Administrative Law handles requests for adjournment, in accordance with N.J.A.C. 1:1-9.6.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Rewrote the section.

**10:120-2.12 Group hearing**

The Director of the Division of Youth and Family Services may respond to a series of individual requests by ordering a single group hearing when the sole issue involved is one of State or Federal law or policy changes based on State or Federal law, except as indicated in N.J.A.C. 10:120-2.1(c)2. All rules governing the conduct of individual hearings shall be followed.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted "based on State or Federal law, except as indicated in N.J.A.C. 10:120-2.1(c)2" for "in State or Federal law" at the end of the first sentence, and substituted a reference to rules for a reference to policies and substituted a reference to hearings for a reference to fair hearings in the last sentence.

**10:120-2.13 Decision on hearing**

(a) The Director shall issue the final agency decision within 45 days of receipt of the initial decision of the administrative law judge, in accordance with N.J.A.C. 1:1-18.4. The decision of the Director of the Division of Youth and Family Services shall be final and binding on all parties concerned.

(b) The hearing decision shall be effective on the date of final decision unless another effective date is designated.

(c) An official and complete record of each hearing shall be maintained in the files of the State Office, Division of Youth and Family Services, for at least one year after the date the decision is rendered. During this one year period, the client or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the hearing.

(d) A decision requiring action by the contract provider may apply to future action by the contract provider or retroactively to the date an incorrect action was taken.

(e) The State Division of Youth and Family Services shall take such steps as may be necessary to assure that the decision has been carried out. Any action required by the decision must be completed by the contract provider within the time frame specified by the Director in the final agency decision.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Substituted references to hearings for references to fair hearings throughout; rewrote (a), (d) and (e); and in (c), substituted a reference to clients for a reference to appellants in the last sentence.

**10:120-2.14 Representation**

A contract provider may represent himself or herself, or be represented by an attorney or a non-lawyer representative, in accordance with the provisions of N.J.A.C. 1:1-5.1 through 5.5.

Repeal and New Rule, R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

Section was "Role of agency personnel during the fair hearing".

#### **10:120-2.15 Contract provider responsibilities**

(a) To assure orderly and expeditious processing of complaints and hearing requests, each contract provider, contract agency director or designee shall be responsible for, at a minimum, performing the following duties:

1. Telephoning the Administrative Hearings Unit within one work day after an oral or written request for a hearing involving a matter described in N.J.A.C. 10:120-2.1(b) is received, to advise of the receipt of the request and provide information as requested;

2. Establishing a system to assure that every written request for a hearing involving a matter described in N.J.A.C. 10:120-2.1(b) which is received by the contract provider is stamped with the date of receipt and forwarded to the Division of Youth and Family Services within one work day after that date;

3. Reviewing incoming requests for possible corrective action prior to the hearing;

4. Identifying and arranging for participation of staff individuals who are essential to a hearing, assembling all

records relevant to a hearing and arranging for an interpreter when the client is non-English speaking;

5. Contacting the client or his or her representative not less than two work days prior to a hearing to confirm attendance and arrange for transportation of a client when necessary;

6. Submitting special reports on hearing requests prior to the hearing date when requested by the Administrative Hearings Unit; and

7. Submitting reports on the implementation of a State hearing decision as soon as such action is taken.

Amended by R.1999 d.266, effective August 16, 1999.

See: 31 N.J.R. 1055(a), 31 N.J.R. 2402(a).

In (a), rewrote the introductory paragraph, substituted references to work days for references to days in 1 and 5, changed N.J.A.C. references in 1 and 2, substituted a reference to contract providers for a reference to local agencies in 2, substituted a reference to hearings for a reference to fair hearings in 7, and deleted a former 8.

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#### **SUBCHAPTER 3. (RESERVED)**