

## CHAPTER 48 ADMINISTRATION

### Authority

N.J.S.A. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5(b).

### Source and Effective Date

R.2001 d.157, effective May 21, 2001.  
See: 33 N.J.R. 346(a), 33 N.J.R. 1610(c).

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

Chapter 48, Administration, expires on May 21, 2006.

### Chapter Historical Note

Chapter 48, Administration, Subchapter 1, Appeal Procedure, was adopted as R.1979 d.62, effective February 15, 1979. See: 10 N.J.R. 431(c), 11 N.J.R. 133(a). Pursuant to Executive Order No. 66(1978), Chapter 48 expired on February 15, 1984.

Subchapter 1, Appeal Procedure, was adopted as new rules by R.1985 d.673, effective January 21, 1986. See: 17 N.J.R. 876(b), 18 N.J.R. 184(a).

Subchapter 3, Lead Control Program, was adopted as R.1989 d.347, effective July 3, 1989. See: 20 N.J.R. 2555(a), 21 N.J.R. 1905(a).

Subchapter 2, Viral Hepatitis, was adopted as R.1989 d.410, effective August 21, 1989. See: 20 N.J.R. 2437(a), 21 N.J.R. 2507(a).

Pursuant to Executive Order No. 66(1978), Chapter 48, Administration, was readopted as R.1991 d.27, effective December 19, 1990. See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b). Pursuant to Executive Order No. 66(1978), Chapter 48 expired on December 19, 1995.

Chapter 48, Administration, was adopted as new rules, and Subchapter 3, Lead Control Program, was repealed by R.1996, d.131, effective March 18, 1996. See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a). Pursuant to Executive Order No. 66(1978), Chapter 48, Administration, expired on March 18, 2001.

Chapter 48, Administration, was adopted as new rules by R.2001 d.157, effective May 21, 2001. See: Source and Effective Date.

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#### SUBCHAPTER 3. (RESERVED)

#### SUBCHAPTER 1. APPEAL PROCEDURE

##### Law Review and Journal Commentaries

Disabilities. Steven P. Bann, 133 N.J.L.J. No. 15, 73 (1993).

#### 10:48-1.1 General provision

(a) The purpose of this procedural rule is to delineate the steps to be taken when disagreements arise between citizens and the Division of Developmental Disabilities (DDD). Its aim is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.

(b) This subchapter pertains to all disputes and disagreements with service components of the Division of Developmental Disabilities involving a competent adult receiving services from or applying for services of the Division, the guardian of a minor or incompetent adult, the proposed guardian, a licensee of the Division or an authorized representative of a competent adult, guardian of a minor or incompetent adult. In the instance of an attorney, written verification of a client/attorney relationship shall be required.

(c) It is expected that, in most disputes between appellants and service components, the appellant will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the Administrative Practice Office of DDD (609) 633-2209.

(d) For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6:28-2.6 shall be available through the Office of Education, Department of Human Services. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education. A request for mediation is not prerequisite to a hearing.

(e) Division staff are responsible for informing persons served and their families/guardians about appeals and to supply them with copies of the appeal procedure.

(f) An appeal may be settled at any time by a written agreement of both parties. The settlement agreement shall be considered the final decision. The terms of the settlement agreement shall be binding upon the appellant and the Division. The terms of the settlement agreement shall be applicable only to the specific matter under appeal and shall not be released to anyone who is not a party to the settlement.

(g) A settlement may be accepted by the chairperson of an informal conference or the review officer in an administrative review in the same manner as an Administrative Law Judge, in the definition of settlement at N.J.A.C. 10:48-1.2.

(h) Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Non-contested matter shall be referred to administrative review.

(i) Appeals of eligibility, licensure action or specific offers of placement shall be initiated within 30 calendar days from the date on the written notification of ineligibility or licensure action.

(j) Appeals of services shall be limited to those services indicated in the Individual Habilitation Plan as defined at N.J.S.A. 30:6D-10.

(k) Except in emergencies, an appellant may request that the Division Director defer the placement of an individual pending resolution of an administrative appeal when the following circumstances apply:

1. The appeal is received verbally or in writing 10 calendar days before the proposed placement, and:

i. The appellant can demonstrate that the placement may place the individual at risk of abuse or neglect; or

ii. The appellant has new information that was not known or available at the time the placement offer was made; or

iii. The appellant can demonstrate that the placement shall significantly compromise the appellant's ability to have the Division's action reversed or modified through the appeal process.

2. If the Division Director agrees to defer the placement, the Division shall not be responsible to maintain the status quo unless the Division was funding placement prior to the request to defer.

(l) If a placement is made on an emergency basis, the appeal may be filed within 30 calendar days following the placement. The individual shall be maintained in the placement to which he or she was placed during the pending of the appeal.

(m) If an appellant fails to follow the time limits established, the Director's decision is final.

(n) No transcript shall be made of an informal conference.

(o) An initial appeal shall be made in writing to the administrative head of the service component in which the dispute exists except for licensure actions. Appeals of licensure actions shall be made to the Division Director.

(p) The administrative head of the component shall review the appeal to ensure that it conforms with the definition herein. If the administrative head determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the administrative head shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the administrative head of the component.

(r) Evidence as defined in N.J.A.C. 1:1-2 may be submitted in informal conference or administrative reviews. An allegation or conjecture does not constitute evidence.

(s) The assessment of an individual to contribute toward the cost of care and maintenance if he or she has been residentially placed by the Division may be appealed in accordance with N.J.A.C. 10:46-7.1(b)-(e).

(t) Recommendation of placement changes, where no specific offers of placement have been made, shall be considered non-contested.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

In (b) through (d), defined and clarified "appellants". Added (e) through (s).

Amended by R.1944 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

Amended by R.1999 d.432, effective December 20, 1999.

See: 31 N.J.R. 1786(a), 31 N.J.R. 4262(a).

In (k), substituted a reference to 15 calendar days for a reference to 30 calendar days.

#### Case Notes

Former regulations review process not futile or unfair. In the Matter of the Commitment of B.R., 202 N.J.Super. 182, 494 A.2d 333 (App. Div.1985), certification denied, 102 N.J. 354, 508 A.2d 224 (1985).

Placement decision was equivalent to "contested matter" entitled to a trial-type hearing. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

Conditions requiring trial-type administrative hearing are discussed. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

Appeal of administrative decision is properly made to appellate division of Superior Court. Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J.Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

#### 10:48-1.4 Office of Administrative Law

(a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If the contested matter is not settled or involves a licensure action, the Division Director shall transmit the matter to the Office of Administrative Law.

1. In the instance of licensure appeals, the matter shall be transmitted within 10 working days of the receipt of the appeal.

2. In the instance of all other contested matters, the matter shall be transmitted within 10 working days of the notice of the administrative head of the component that the settlement conference did not resolve the matter.

3. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue informally.

4. The Director, Division of Developmental Disabilities may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o)).

(c) A decision rendered by the OAL shall be adopted, rejected or modified by the Director, Division of Developmental Disabilities within 45 days of its receipt (N.J.S.A. 52:4B-10(c)). This shall be construed as constituting the final administrative decision of the matter under appeal.

(d) Upon issuance, the final administrative decision shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

(e) The Director shall notify the appellant that a matter has been transmitted to OAL.

Amended by R.1991 d.27, effective January 22, 1991.  
See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Clarified case transmittal procedure in accordance with N.J.S.A. 52:14B-2(b) and N.J.A.C. 1:1. Added (d).  
Recodified from 10:48-1.5 and amended by R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

Prior text at 10:48-1.4, Final step: Administrative review or Administrative Hearing, repealed.

#### Case Notes

Placement dispute was properly handled by administrative hearings as "noncontested". Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J.Super.

459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

Appeal of administrative decision is properly made to appellate division of Superior Court. Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J.Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

#### 10:48-1.5 Non-contested cases

(a) Informal conference requirements are as follows:

1. An informal conference shall be scheduled by the administrative head of the component in response to a non-contested matter. The informal conference shall be scheduled no more than 20 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

2. The administrative head of the component shall appoint a chairperson to convene the Informal Conference.

3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the positioning of both parties and a decision with respect to each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

4. The appellant may be represented by legal counsel at the informal conference.

5. No transcript shall be made of the informal conference.

6. The Rules of Evidence shall not be strictly enforced.

(b) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for an administrative appeal.

1. Written request for an administrative appeal shall be made within 15 working days from the date on the written summary.

2. The Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.

(c) Administrative paper review requirements are as follows:

1. Each party shall submit written arguments supporting their position to the review officer within 20 calendar days of the written notification of the paper review. Evidence may also be provided.

2. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement of an individual into evidence instead of an affidavit.

3. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

4. A written decision shall be forwarded to the involved parties within 20 working days of the receipt of both arguments. The written decision shall set forth the reasons for conducting a paper review. This shall be considered the Recommended Decision.

5. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

6. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

7. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

(d) Administrative review conference requirements are as follows:

1. An administrative review conference shall be scheduled within 20 working days of receipt of the appeal. Adjournments may be granted by the Division Director for good and valid reason.

2. The appellant may be represented by attorney or spokesperson and may present documentation and such witnesses as have knowledge of the issues involved.

3. The service component shall be represented by a person designated by the administrative head of the component and may produce documentation and such witnesses as have direct knowledge of the issues involved. The person representing the component may not be the same person who chaired the informal conference.

4. A verbatim tape recording of the proceeding shall be made. The party requesting a written transcript shall bear the costs of transcription and shall provide copies to the other party and review officer at no cost.

5. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement by an individual if the individual is not present at the administrative review.

6. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

7. The appellant may request that an employee of the Division testify at the conference. The appellant shall make such a request in writing to the Review Officer at least five working days prior to the conference. The request shall include the name, work location, title (if known) and a summary of the information to be provided by the employee.

8. The administrative review conference shall adhere to the following format:

i. An opening statement by each party;

ii. The presentation of testimony and evidence. There shall be the opportunity for cross examination;

iii. Rebuttal of testimony and evidence. There shall be the opportunity for cross examination; and

iv. A summary.

9. The review officer shall render a written decision within 20 working days of the review conference. This shall be considered the Recommended Decision.

10. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

11. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

12. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Section revised to clarify conduct of paper reviews and administrative review conferences.

Recodified from 10:48-1.6 and amended by R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

### **10:48-1.6 Emergency relief**

Emergency relief shall be available as provided in N.J.A.C. 1:1-2.6.

New Rule, R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

## **SUBCHAPTER 2. VIRAL HEPATITIS**

### **10:48-2.1 Purpose**

The purpose of this subchapter is to delineate Division of Developmental Disabilities policies and procedures regarding the screening, treatment and control of viral hepatitis B in the service components of the Division.