

CHAPTER 120A
DISPUTE RESOLUTION

Authority

N.J.S.A. 30:1-9 et seq., 30:1-12, 30:4C-4, 26a and 49, and 52:14B-4(b); and N.J.A.C. 10:6-1.

Source and Effective Date

R.2003 d.274, effective June 12, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 120A, Dispute Resolution, expires on December 9, 2008. See: 40 N.J.R. 3917(a).

Chapter Historical Note

Chapter 120A, Dispute Resolution, was adopted as R.1998 d.71, effective February 2, 1998. See: 29 N.J.R. 4263(a), 30 N.J.R. 542(b).

Chapter 120A, Dispute Resolution, was readopted as R.2003 d.274, effective June 12, 2003. As a part of R.2003 d.274, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, was repealed and new Subchapter 2 was adopted, effective July 7, 2003. See: Source and Effective Date. See, also, sections annotations.

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SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

10:120A-1.1 Purpose

(a) The purposes of this chapter are to:

1. Describe the procedures for a client, or specified service provider of the Division, to resolve disputes with the Division of Youth and Family Services;
2. Identify who may request a dispositional review and describe the procedures for a dispositional review;
3. Identify who may appeal certain Division actions and agency decisions to the Office of Administrative Law (OAL); and
4. Describe the procedures to request an administrative hearing before the OAL, except as limited by N.J.A.C. 10:120A-2.5, 4.1, 4.2 and 4.3, when other mechanisms for resolving a dispute, if desired by the appellant, have been exhausted or are not applicable.

Amended by R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Rewrote the section.

10:120A-1.2 Scope

(a) These rules describe the preliminary and informal procedures provided by the Division to resolve disputes regarding:

1. Services provided by or through the Division's District Offices and Adoption Resource Centers;
2. A finding of substantiated child abuse or neglect made by the Division or the Office of the Public Defender acting as the Division's agent in conflict matters in child protective service investigations; and
3. Status issues for service providers of the Division pursuant to N.J.S.A. 30:4C-12.1, and in accordance with N.J.A.C. 10:121A-5.6, 10:122B, 10:122C, 10:122E, and 10:132A.

(b) These rules also describe the procedures for requesting formal resolution through the OAL for contested and uncontested matters, in accordance with N.J.A.C. 1:1.

(c) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the Bureau of Licensing, Division of Youth and Family Services, may be appealed in accordance with N.J.A.C. 10:121A-2.3 and 2.4, 10:122-2.5, 10:124-1.6, 10:126-5.8, 10:127-2.4 or 10:128-2.4 and, consequently, are not covered by these rules.

(d) These rules do not govern employee personnel matters.

(e) These rules do not govern issues that are before, or have been resolved by, a trial court with jurisdiction over the matter under dispute.

(f) These rules do not govern appellants entitled to dispute resolution in accordance with N.J.A.C. 10:6, regarding Department of Human Services actions or inactions. These rules do not govern questions of fact relating to contractual activities.

(g) These rules do not govern across the board service reductions or terminations that are the result of reductions in Federal or State funding.

Amended by R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Rewrote the section.

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:122B-1.4 and 10:133-1.3 are hereby incorporated by reference. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Administrative hearing” means a hearing held by the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-9 et seq. and 52:14F-1 et seq., and N.J.A.C. 1:1 and 10:6.

“Administrative Hearings Unit” or “AHU” is the hearings unit of the Division responsible for monitoring and transmitting contested and uncontested cases, in accordance with N.J.A.C. 1:1-8.2 and 21.1, to the OAL, and for hearing appeals of substantiated findings of child abuse and neglect as determined by the Division’s Institutional Abuse Investigation Unit.

“Adoptive parent” means a person with whom the Division has placed a child for adoption or who has adopted a child through the Division.

“Agency decision” means any decision of the Division subject to further appeal made as the result of a dispositional review and which is not a final agency decision.

“Appeal” means a request for modification or reversal of a Division action or an agency decision.

“Appellant” means the party who is requesting a reversal or modification of a Division action or an agency decision.

“Business days” means the five working days of a week other than Saturday, Sunday and legal holidays.

“Dispositional review” means an independent examination of a Division action that is conducted by a Review Officer through a record and document review or by examining relevant records and documents in accordance with N.J.A.C. 10:6-1.4 and either convening a meeting of the relevant

parties in the Division action under dispute or conducting a telephone conference.

“Division action” means a decision, plan or conduct by a Division representative or an employee of the Office of the Public Defender acting as the Division’s agent in conflict matters within the scope of the individual’s official duties, which results in a “Division service issue,” “status issue” or which may result in a contested case as specified in N.J.A.C. 10:120A-4.3(a), but does not include an “agency decision” or a personnel action.

“Division service issue” means a Division action affecting a case goal or a case plan necessary to achieve a case goal as allowed in N.J.A.C. 10:121-2.4, 10:133C-4, and 10:133D-2, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division District Office or Adoption Resource Center of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E: adoption subsidy, child care, DYFS Legal Guardianship Subsidy Program, DYFS Relative Care Permanency Support Program, emergency maintenance service, family preservation services, homemaker service, out-of-home placement, post-adoption services, pre-and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, Title XIX Medicaid, transportation; or parent and child visitation as described in N.J.S.A. 9:6B-4 and N.J.A.C. 10:122D-1; or the failure of a DYFS District Office or Adoption Resource Center to act with reasonable promptness on a request for any of the above services.

“Final agency decision” means:

1. A final decision by the Director that adopts, rejects or modifies an initial decision by an administrative law judge;
2. An initial decision by an administrative law judge that becomes a final agency decision by operation of N.J.S.A. 52:14B-10;
3. A final decision by the Deputy Director or Assistant Director, at the designation of the Director, after a dispositional review conducted in accordance with these rules when the appellant is not eligible for further dispute resolution opportunities;
4. An agency decision that becomes a final agency decision when the appellant does not choose to exercise his or her right to further dispute resolution; or
5. A final decision by the Director granting summary disposition and affirming a Division action or agency decision.

“Finding” means the official determination by the Division of the results of a child protective service investigation, in accordance with N.J.A.C. 10:129A, or by the Office of the Public Defender acting as the Division’s agent in conflict matters.

“Initial decision” means the administrative law judge’s recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision, as defined in N.J.A.C. 1:1-2.1.

“Institutional Abuse Investigation Unit (IAIU)” means the Division unit charged with the responsibility of investigating allegations of abuse or neglect in out-of-home settings, excluding DYFS operated facilities.

“Motion for Summary Disposition” means a motion that is prepared when no material facts are in dispute. If granted by the Director, a Motion for Summary Disposition denies the request for an OAL hearing and requires the Division Director to determine whether the Division action or agency decision resulting from the undisputed facts is proper based on applicable law, regulations and policies, and accordingly issue a final agency decision, affirming, reversing or modifying the Division action or agency decision. If a motion for summary disposition is denied by the Director, the matter is transmitted to the OAL.

“Office of Administrative Law (OAL)” means the office in but not of the Department of State in which an administrative law judge presides over administrative hearings, established under N.J.S.A. 52:14F-1 et seq.

“Record and document review” means a type of dispositional review, conducted by a Review Officer, of the relevant documents and records related to a Division action under dispute.

“Reduction” means the Division action about a service determined by the Division to be necessary for the achievement of the case goal, which Division action causes the client to receive fewer hours or units of a service or a decrease in the level of adoption subsidy payments than the client had been receiving immediately prior to the Division action being taken. Reduction does not include a change in provider or location of the service or a change in the schedule of the service that does not also cause fewer hours or units of the service.

“Relative” means a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half blood or marriage and those denoted by the prefixes “grand” and “great,” including grandparent or great-grandparent, and limited to those having a history of being active in planning for the child’s future.

“Review Officer” means a Division representative or an employee of the Office of the Public Defender acting as the Division’s agent in conflict matters who was not involved in the Division actions being appealed and who is charged with the responsibility of conducting a dispositional review as authorized by these rules.

“Service provider” means:

1. A Division foster parent or applicant;
2. A Division adoptive parent or applicant;
3. Each of a child’s relatives who is assessed for his or her willingness and ability to assume care of the child pursuant to N.J.S.A. 30:4C-12.1; and
4. A relative or family friend caregiver or applicant in the DYFS Relative Care Permanency Support Program or the DYFS Legal Guardianship Subsidy Program.

“Sibling” means birth brother or sister, half brother or sister, legal brother or sister and stepbrother or sister.

“Status issue” means:

1. The denial, suspension, restriction, or closure of a Division foster parent’s home in accordance with N.J.A.C. 10:122C or 10:122E;
2. The denial, suspension, restriction, or closure of a Division adoptive parent’s home in accordance with N.J.A.C. 10:121A-5.6(g);
3. The determination that a child’s relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b);
4. The denial or termination of a relative or family friend caregiver to participate or continue to participate in the DYFS Legal Guardianship Subsidy Program in accordance with N.J.A.C. 10:132A; or
5. The denial, suspension, restriction, or closure of a relative or family friend caregiver’s home in the DYFS Relative Care Permanency Support Program.

“Status quo” means the relevant circumstances immediately prior to the dispute.

“Substantiated” means a finding when the available information, as evaluated by the Division representative, indicates that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child has been harmed or placed at risk of harm by a parent, caregiver, temporary caregiver or institutional caregiver in accordance with N.J.A.C. 10:129A-3.3. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. 10:129A-3.4.

(b) The following terms shall have the following meanings within N.J.A.C. 10:120A-1, 2 and 3, unless the context clearly indicates otherwise:

"Division" means the Division of Youth and Family Services in the Department of Human Services or the Office of the Public Defender acting as the Division's agent in conflict matters.

"Division representative" means a professional employee of the Division of Youth and Family Services or of the Office of the Public Defender acting as the Division's agent in conflict matters.

Amended by R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Rewrote the section.

10:120A-1.4 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Director or his or her representative may, upon notice to all parties, relax the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

10:120A-1.5 Computation of time

The computation of time shall be in accordance with N.J.A.C. 1:1-1.4, unless otherwise indicated in these rules.

SUBCHAPTER 2. GENERAL PROVISIONS FOR DIVISION DISPUTE RESOLUTION AND ADMINISTRATIVE HEARINGS

10:120A-2.1 Notice of Division action to a service provider

(a) The Division shall provide proper notice to a service provider of a Division action that creates a status issue subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)3.

(b) Except as limited by (c) below, the Division shall provide proper written notice 10 days in advance of a Division action which is subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)3. The written notice shall include:

1. A statement of the proposed Division action and the reason for the Division action;
2. A statement explaining the individual's right to dispute resolution in accordance with these rules; and
3. The name, address and telephone number of a Division representative to contact to request a dispositional review.

(c) Advance notice shall not be required on the disposition of an application to become a service provider.

(d) The Division shall inform the foster parent immediately if the child is removed.

10:120A-2.2 Notice of Division action to a parent

(a) Except as limited by (d), (e), (f) and (g) below, the Division shall provide notice to a parent of a Division action that creates a Division service issue under N.J.A.C. 10:120A-3.1(a)1 at least 10 days in advance of the Division action to a parent requesting or receiving the service or a parent requesting the service on behalf of a child or a parent of a child receiving the service.

(b) Notice of the Division action as in (a) above shall include:

1. The right to appeal the Division action ;
2. The applicable time frames for requesting an appeal;
3. The parent's right to a dispositional review or an administrative hearing or if the parent can choose either one; and
4. The procedures for dispositional reviews and administrative hearings.

(c) Notice of the Division action shall be provided in any one or more Division documents distributed to the parent specifically, as in a case plan, in accordance with N.J.A.C. 10:133D-2, or generally, as in a handbook or other publication which is distributed in the routine course of business, through oral communication or any combination thereof.

(d) The Division shall not provide prior written notice on an application for service.

(e) The Division shall not provide separate notice for each Division action that is part of a case plan when the case plan has been shared in written form with the parent.

(f) The Division may delay notice up to 30 days when immediate action is necessary to protect a child who has been harmed or is at imminent risk of harm, pursuant to N.J.S.A. 9:6-8.8 et seq., N.J.S.A. 30:4C-1 et seq. or when harm or risk of harm is due to a violation of standards in N.J.A.C. 10:121A, 10:122, 10:122C, 10:124, 10:126, 10:127 or 10:128, or when the client's behavior creates a threat to himself or herself or others.

(g) The Division may dispense with notice to the parent when:

1. The Division has factual information confirming the death of the client;
2. The Division 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 of services and the client has indicated that he or she understands that this is the consequence of supplying the information;

3. The client's whereabouts are unknown and Division mail directed to the client has been returned by the post office indicating no known forwarding address, or a home visit was made and documentation obtained that the client no longer resides there;

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

5. The client has relocated outside the jurisdiction of the Division office or local agency providing services, and has not provided 30 days advance notice of such relocation to enable the Division to continue uninterrupted service if the client continues to be eligible for the service despite the relocation; or

6. A service which is provided for a specific period of time is terminated and the client was informed in writing of the projected termination date of the service at the time of service initiation.

10:120A-2.3 Notice of substantiated findings

The Division shall provide notice of a finding of substantiated child abuse or neglect pursuant to N.J.A.C. 10:129A-3.4.

10:120A-2.4 Preliminary efforts

(a) Field contacts, office interviews with supervisory or management personnel, and consultation with regional and central office representatives comprise preliminary efforts to resolve matters under dispute. The Division representative shall advise the appellant that he or she has the opportunity to resolve a dispute using preliminary efforts prior to exercising a right to a dispositional review or an administrative hearing, if eligible.

(b) For disputes of matters for which an appellant has a right to an administrative hearing as set forth in N.J.A.C. 10:120A-4.3, the Division representative shall explain to the appellant that these preliminary efforts are not considered a prerequisite for an administrative hearing and in no event can they delay, interfere with or impede the processing of an administrative hearing request.

(c) Preliminary efforts may continue during the 30-day period following a request for an administrative hearing and pending the filing of the case with the Clerk of the Office of Administrative Law in accordance with N.J.A.C. 1:1-8.1(a) and as expanded by N.J.A.C. 1:1-8.1(b).

(d) For disputes of matters for which an appellant has a right to a dispositional review as set forth in N.J.A.C. 10:120A-3.1, the Division representative shall explain to the appellant that in no event are these preliminary efforts to be considered a prerequisite for a dispositional review and in no event can they delay, interfere with or impede the processing of a dispositional review.

(e) Preliminary efforts may continue throughout the dispositional review process.

10:120A-2.5 Requests for dispositional reviews and administrative hearings

(a) Any person noticed of a Division action and entitled to appeal that Division action as set forth in N.J.A.C. 10:120A-3.1 or 4.3 may request a dispositional review or an administrative hearing within 20 days of notice of that Division action, or within 20 days of learning of the Division action, as provided in (b) below. Any clear expression, oral or written, by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to a Division action, constitutes a request for a dispositional review or an administrative hearing.

(b) Any person entitled to appeal a Division action but who has not received notice of the Division action may request an appeal of that Division action within 20 days of learning of the Division action.

(c) Notice of a Division action shall provide the name, address, and telephone number of the person to whom a request for an appeal is made.

(d) Any person noticed of an agency decision in accordance with N.J.A.C. 10:120A-3.2(f) and entitled to appeal that agency decision as set forth in N.J.A.C. 10:120A-4.3 may request an administrative hearing within 20 days of learning of the agency decision. Any clear expression, oral or written, by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to an agency decision, constitutes a request for an administrative hearing.

(e) The recipient of the request to appeal a Division action or agency decision shall forward that request to the appropriate resolution authority as specified in N.J.A.C. 10:120A-3.1 or 4.3 within one business day of receipt of the request to appeal a Division action or agency decision.

(f) The Division shall acknowledge each request for appeal involving a matter described in N.J.A.C. 10:120A-3.1 or 4.3 within 10 business days and in writing. The written acknowledgment shall inform the appellant of the right to a dispositional review, an administrative hearing or both, whichever applies, and the procedures for a dispositional review or an administrative hearing.

(g) The Division shall deem the appellant to have waived his or her right to a dispositional review or administrative hearing, if an appellant fails to request a dispositional review or an administrative hearing within the time limits established for appealing a Division action or agency decision in accordance with (a), (b), and (d) above, except that the Division shall not deny the appellant's request if the

reason for the delay in making the request was not within the appellant's control.

10:120A-2.6 Eligibility for continued service and status

(a) Upon receipt of a request for a dispositional review or an administrative hearing which has been received in accordance with N.J.A.C. 10:120A-2.5(a) and (b), the status quo shall be continued or reinstated at an unreduced level until the agency decision or initial decision is rendered when any of the following circumstances apply:

1. Disruption of the status quo shall place a child at risk of child abuse or neglect pursuant to N.J.S.A. 9:6-8.8 et seq.;
2. Disruption of the status quo shall significantly compromise the appellant's ability to have the Division action reversed or modified through the appeal process;
3. The appellant has new information that was not known or not available at the time of the Division action; or
4. An administrative law judge determines that the issue is one of fact rather than law or policy.

(b) Upon receipt of a request for a dispositional review or an administrative hearing for appealing a Division action or agency decision in accordance with N.J.A.C. 10:120A-2.5(a), (b) and (d), the status quo shall not be continued or reinstated when continuing or reinstating the service would pose a risk of harm or injury to a child, adult client or other adult related to the issue in dispute, including, but not limited to, the following circumstances:

1. The Division shall not return a child to the out-of-home placement from which a child has been removed because the child or any other child in the out-of-home placement has been abused or neglected or has been alleged to have been abused or neglected pursuant to N.J.S.A. 9:6-8.8 et seq. or when the out-of-home placement fails to meet the standards for continued approval, except as permitted in N.J.A.C. 10:122C-2.16, 2.17, or 2.18(b);
2. The Division shall not return a child to the out-of-home placement from which the child has been removed, when the child has been returned to his or her parents or relatives, united or reunited with separated siblings or placed in an adoptive home;
3. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review when the appellant's behavior poses a threat to himself or others;
4. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review when the matter is pending the results of an IAIU investigation; or

5. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review when the Division has determined that a child in an out-of-home placement or other care in a home or facility subject to the regulatory jurisdiction of the Division is in imminent risk of harm as a result of conditions in the home or facility.

10:120A-2.7 Final agency decision

(a) The final agency decision shall be binding on all parties concerned.

(b) For each agency decision that is not eligible for an administrative hearing, the Deputy Director or Assistant Director at the designation of the Director, shall:

1. Issue a final agency decision within 45 days of the conclusion of the dispositional review; or
2. If no material facts are in dispute, consider the case for a Motion for Summary Disposition.

(c) For an appellant who is eligible for an administrative hearing but does not request one within 20 days of notification, in accordance with N.J.A.C. 10:120A-3.2(m), the agency decision becomes the final agency decision at the end of the 20 days.

(d) For each initial decision, the Director shall review the record and any exceptions submitted by any party and issue the final agency decision within 45 days of receipt of that initial decision of the administrative law judge in accordance with N.J.A.C. 1:1-18.4.

1. The Division Director or designee shall inform the appellant that he or she can contact the Division Director or designee to arrange an alternative means to submit exceptions, if the party cannot communicate in English or has a communication handicap. If the parties wish to take exception to the initial decision, such exception shall be submitted in writing to the Director, except where parties who are unable to communicate in English or have a communication handicap have made arrangements with the Division Director or designee for alternative means for submitting their exception.

(e) The final agency decision shall be effective on the date it is rendered unless another effective date is designated.

(f) The Division shall maintain an official record of each dispositional review and each administrative hearing for at least one year after the date the decision is rendered. During this one year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the dispositional review or administrative hearing except as restricted by N.J.A.C. 10:120A-2.9.

(g) The Division shall deliver the final agency decision to the appellant either by hand delivery or by sending a copy of the final agency decision to the current or last known address of the appellant and, where applicable, to counsel, no later than five business days following the rendering of the final agency decision.

(h) The Division shall take such steps as may be necessary to assure that the final agency decision is carried out.

10:120A-2.8 Appeal of final agency decision

Any appeal of the final agency decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey Court Rule 2:2-3. The final agency decision shall include notice to the appellant of the right to file an appeal to the Appellate Division, the time frames and related procedures.

10:120A-2.9 Accessibility of records

(a) The Division shall advise the appellant of the accessibility of records and any limits of such accessibility at the time the request for a dispositional review or administrative hearing is granted, in accordance with this section.

1. The appellant, or his or her representative with the appellant's authorization in writing, shall have adequate opportunity to examine such portions of the appellant's case file and all documents and records to be used by the Division to reach a conclusion at the administrative hearing or dispositional review at a reasonable time before the date of the administrative hearing or dispositional review, as well as during the administrative hearing or dispositional review, except as limited by:

i. The Adoption Assistance and Child Welfare Act, 42 U.S.C. § 671(a)(8) and regulations promulgated thereunder, as from time to time amended, applicable State laws, and N.J.A.C. 10:133G;

ii. 45 C.F.R. 205.50, as made applicable by 45 C.F.R. 1355.21; or

iii. N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G, which limit the provision of information which constitutes child abuse or neglect records or reports to the appellant, his or her representative or the OAL, except under circumstances expressly authorized by N.J.S.A. 9:6-8.10a and Federal regulations;

2. The appellant or his or her representative may apply for relief of any limits of access to records due to confidentiality, if desired by the appellant, to a court of competent jurisdiction at any point in the dispute resolution process; and

3. A Division representative shall provide to the appellant an edited version of confidential reports and all documents and records used by the agency to reach the disputed conclusion when confidential information pursuant to 45 C.F.R. 205.50, 45 C.F.R. 1355.21, N.J.S.A.

9:6-8.10a, and N.J.A.C. 10:133G or information which constitutes child abuse/neglect information is embedded in the files, documents and records.

New Rule. R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

SUBCHAPTER 3. DISPOSITIONAL REVIEW

10:120A-3.1 When to hold a dispositional review

(a) When preliminary efforts described in N.J.A.C. 10:120A-2.4 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional review, and when the request is made in accordance with N.J.A.C. 10:120A-2.5, the Division shall provide a dispositional review with:

1. The parent of a child under the supervision of the Division to dispute a denial, reduction, suspension, or termination of a Division service issue, unless it is an across the board action resulting from a reduction in Federal or State funding;

2. A child under the supervision of the Division, or a person with physical custody acting on behalf of that child, or a sibling of that child, or a relative as defined who disputes a denial, reduction, suspension, or termination of a Division service issue, unless the denial, reduction, suspension, or termination is an across the board action resulting from a reduction in Federal or State funding;

3. A service provider who disagrees with a status issue;

4. A foster parent who disagrees with the removal of a foster child from his or her foster home, when the child has been residing with the foster parent for at least six months, when the child is not being returned to a birth parent or relative, when the child is not being united or reunited with siblings for whom the foster parent cannot or will not provide a home, when the child is not being moved from a temporary placement to a permanent adoptive placement and when the child has not been removed from a foster home pending the completion of an IAIU child abuse and neglect investigation;

5. An adoptive parent who disagrees with the removal of a child who has been in the home continuously for six months or more for the purpose of finalizing an adoption;

6. A foster or adoptive parent of one child in a sibling group who disagrees with the placement of a sibling in a separate foster or adoptive home consistent with N.J.S.A. 9:6B-4d;

7. A foster parent who disagrees with the re-placement of a foster child in another foster home consistent with N.J.S.A. 30:4C-53.3c(5); and

8. An appellant who is identified as a perpetrator of child abuse or neglect to dispute a substantiated finding.

Amended by R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).
Rewrote the section.

10:120A-3.2 Procedures related to dispositional reviews

(a) A request for a dispositional review shall be made in accordance with N.J.A.C. 10:120A-2.5.

(b) The appellant shall submit any information that he or she has agreed to submit to the Review Officer within the time limit agreed upon between the appellant and the Review Officer.

(c) The Review Officer shall conduct a dispositional review through a telephone conference in lieu of having the parties present, when the appellant declines to meet in person with the Review Officer, but agrees to communicate by telephone.

(d) The Division shall conduct a record and document review in lieu of having the parties present when the appellant declines to meet in person with the Review Officer and declines to communicate by telephone.

(e) Participation in a dispositional review shall be in accordance with N.J.A.C. 10:6-1.5(e).

(f) The Division shall determine whether and in what manner the child's position on the matters at issue shall be ascertained and the nature of the child's participation in the dispositional review where the outcome of the dispositional review shall have a direct impact on the child or children.

(g) The Division shall send the appellant written notification of whether a dispositional review shall be a meeting/gathering of the parties, or a telephone conference, or a record and document review, at least five business days prior to the dispositional review, and include the time and location of the dispositional review and issues to be considered.

(h) The Division shall grant a request for postponement of a dispositional review only for good cause, which shall include the appellant's need for additional time to provide necessary information. The Division shall consider that an appellant has withdrawn his or her request for a dispositional review when the Division has not granted a postponement and the appellant:

1. Does not appear at the scheduled dispositional review, unless such failure is due to unavoidable causes; or
2. Does not provide the agreed upon information for the dispositional review within the agreed upon time limit, unless delayed for reasons beyond the appellant's control or for other good reason.

(i) Prior to the dispositional review, the Review Officer conducting the dispositional review, at his or her discretion, may consult with Division staff who have information related to the issue being appealed.

(j) The dispositional review shall include a summary of the factual basis for the Division action, in accordance with N.J.A.C. 1:1-8.2(a)5, the relevant rules and policy, a review of information gathered through prior consultation with staff, information presented orally or in writing by the appellant, information presented orally or in writing by witnesses, supporters or representatives for both the Division and the appellant, and questions asked and answered in the course of the dispositional review.

(k) The Review Officer conducting the dispositional review shall make an agency decision based on the record and the information presented at the dispositional review or during any consultation with other Division representatives.

(l) The Division shall forward written notification of the agency decision of the dispositional review to the appellant within 60 business days of the completion of the dispositional review process and shall include notice of whether the appellant has a right or opportunity to appeal further and, if so, notice of the procedures for initiating further appeals, including the name, address and telephone number of the person to whom a request for further appeal is made.

(m) The Division may deem waived any appeal opportunity that has not been exercised in accordance with the time frames specified in N.J.A.C. 10:120A-2.5(a), (b), and (d), except that the Division shall not deny an appeal where the request for an appeal was delayed for reasons beyond the appellant's control.

(n) If the appellant does not request further dispute resolution within 20 business days of notification of the agency decision, or is not eligible for further dispute resolution when material facts are in dispute, the agency decision shall be considered the final agency decision.

(o) If the appellant is not eligible for further dispute resolution because no material facts are in dispute, the Division shall assess the case for a Motion for Summary Disposition in accordance with N.J.A.C. 10:120A-4.2.

Amended by R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).
Rewrote the section.

SUBCHAPTER 4. ADMINISTRATIVE HEARINGS

10:120A-4.1 General provisions

(a) A request for an administrative hearing shall be made in accordance with N.J.A.C. 10:120A-2.5.

(b) The request for an administrative hearing shall be specific as to the exact nature of the Division action or agency decision in dispute. The Division shall help the appellant express his or her request, as necessary.

(c) The Division shall process a request for an administrative hearing through the Administrative Hearings Unit.

(d) Upon receipt of a request for an administrative hearing, the Administrative Hearings Unit shall request information from the appellant in order to make a determination as to whether material facts are in dispute. The Administrative Hearings Unit shall make a record thereof and determine whether the appellant is entitled to an administrative hearing in accordance with N.J.A.C. 10:120A-4.3.

(e) If the appellant is eligible for an administrative hearing, the AHU shall transmit the case to the OAL for an administrative hearing in accordance with N.J.A.C. 1:1-4.1 and 8.1.

(f) If the appellant is not eligible for an administrative hearing for reasons other than the absence of material disputed facts, the AHU shall notify the appellant of this determination within 10 business days of making the determination, as well as provide the appellant with information concerning other appeal avenues which may be available.

Amended by R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

In (a), amended the N.J.A.C. reference; rewrote (d); in (e), deleted "deemed" preceding "eligible"; in (f), inserted "for reasons other than the absence of material disputed facts" following "administrative hearing" and substituted "making the determination" for "receiving the request" following "within 10 business days of".

10:120A-4.2 Motion for Summary Disposition

(a) When the Administrative Hearings Unit determines that an appellant is ineligible for an administrative hearing because of the absence of material disputed facts, the Administrative Hearings Unit recommends to the Assistant Director of the Division's Office of Intergovernmental Affairs that the matter is appropriate for a Motion for Summary Disposition.

(b) The Assistant Director for Intergovernmental Affairs, in consultation with a representative of the Attorney General's Office, shall determine whether to proceed with a Motion for Summary Disposition, based on whether or not there are material facts in dispute.

1. When the Assistant Director for Intergovernmental Affairs and the representative of the Attorney General's Office determine to proceed with a Motion for Summary Disposition because no material facts are in dispute, the case shall be transmitted to the Attorney General's Office for assignment for preparation of the Motion for Summary Disposition.

2. When the Assistant Director for Intergovernmental Affairs and the representative of the Attorney General's

Office determine not to proceed with a Motion for Summary Disposition, because material facts are in dispute, the matter shall be transmitted to the OAL in accordance with N.J.A.C. 10:120A-4.3.

(c) The assigned representative of the Attorney General's Office transmits the completed Motion for Summary Disposition to the Division Director and, in accordance with N.J.A.C. 1:1-12.2, to the appellant.

1. The appellant shall have 10 days to file exceptions with the Division Director.

(d) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the Division Director determines that no material facts are in dispute, the Division Director shall sign an order denying the appellant's request for an administrative hearing. The Division Director shall then determine whether the Division action or decision resulting from the undisputed facts is proper based on applicable law, regulations and policies. The Division Director shall affirm, reverse, or deny the Division action or agency decision and issue a final agency decision accordingly.

1. The appellant may appeal the final agency decision in accordance with N.J.A.C. 10:120A-2.8.

(e) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the Division Director determines that material facts are in dispute, the Division Director shall sign an order denying the Motion for Summary Disposition and granting the request for an administrative hearing.

1. The Administrative Hearings Unit shall transmit the matter to the Office of Administrative Law in accordance with N.J.A.C. 10:120A-4.3.

New Rule, R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Former N.J.A.C. 10:120A-4.2, Transmittal to OAL, recodified to N.J.A.C. 10:120A-4.3.

10:120A-4.3 Transmittal to OAL

(a) The Administrative Hearings Unit shall transmit a matter that constitutes a contested case, pursuant to N.J.A.C. 1:1-1.1 or as defined by law in accordance with N.J.A.C. 10:6-1.3(a), to the Office of Administrative Law, including:

1. A request by a parent of a child under the supervision of the Division to dispute a denial, reduction, suspension or termination regarding a Division service issue, unless the denial, reduction, suspension, or termination is an across the board action resulting from a reduction in Federal or State funding; or

2. A request by a perpetrator of child abuse or neglect to appeal a substantiated finding of child abuse or neglect, when there are material disputed facts.

(b) The Director, at his or her discretion and with the concurrence of the Director of the Office of Administrative Law, may transmit an uncontested case for an administrative hearing before an administrative law judge in accordance with N.J.A.C. 10:6-1.3(b) and 1:1-2.1.

(c) The Administrative Hearings Unit shall not transmit the following requests to the Office of Administrative Law:

1. Requests to appeal the terms of a court order which specifically addresses the disputed Division action or agency decision;

2. Requests to dispute a change in the out-of-home placement of a child without constituting a reduction of services.

3. Requests to dispute a finding of substantiated child abuse or neglect or other Division action or agency decision being processed in accordance with N.J.A.C. 10:120A-4.2;

4. Requests to dispute the Division action that a child's relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b); or

5. Requests to dispute a Division action related to participation in the DYFS Legal Guardianship Subsidy Program or the DYFS Relative Care Permanency Support Program.

Recodified from N.J.A.C. 10:120A-4.2 and amended by R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768a(), 35 N.J.R. 2915(b).

In (a), rewrote 1 and added 2; in (c), inserted "or agency decision" following "Division action" in 1, rewrote 3 and added 4 and 5. Former N.J.A.C. 10:120A-4.3, Withdrawal of administrative hearing request, recodified to N.J.A.C. 10:120A-4.4.

10:120A-4.4 Withdrawal of administrative hearing request

The filing of a request for an administrative hearing shall not preclude continued effort to accomplish corrective action or interpretation by the Division through preliminary efforts in accordance with N.J.A.C. 10:120A-2.4 and N.J.A.C. 1:1-4.2 and 8.1. If, as a result of satisfactory adjustment or for any other reason, the appellant desires to withdraw the request for the administrative hearing, he or she shall so notify the Division and the OAL in accordance with N.J.A.C. 1:1-19.2.

Recodified from N.J.A.C. 10:120A-4.3 and amended by R.2003 d.274, effective July 7, 2003.

See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Substituted "preliminary" for "informal" preceding "efforts" and amended the N.J.A.C. reference.