

**CHAPTER 120
ADMINISTRATION**

Authority

N.J.S.A. 30:1-9.

Source and Effective Date

R.1991 d.397, effective July 9, 1991.
See: 23 N.J.R. 1658(a), 23 N.J.R. 2309(b).

Executive Order No. 66(1978) Expiration Date

Chapter 120, Administration, expires on July 9, 1996.

Chapter Historical Note

Chapter 120, Administration, was filed and became effective May 22, 1972, as R. 1972 d.97. See: 4 N.J.R. 126(c). Chapter 120 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 was adopted as new rules by R.1989 d.300, effective August 21, 1989. See: 20 N.J.R. 2743, 21 N.J.R. 2513(b). (At the agency's request, Chapter 120 was assigned a two-year expiration period, ending August 21, 1991.) Pursuant to Executive Order No. 66(1978), Chapter 120 was readopted by R.1991 d.397. Chapter 120 expired September 26, 1988. New rules were adopted as R.1989 d.300, effective August 21, 1989. See: Source and Effective Date.

Rulemaking activity in Chapter 120 is as follows:

R.1974 d.160, effective June 20, 1974.

See: 6 N.J.R. 264(c).
R.1976 d.99, effective March 31, 1976.
See: 8 N.J.R. 121(a), 8 N.J.R. 232(a).
R.1976 d.363, effective November 17, 1976.
See: 8 N.J.R. 558(c).
R.1980 d.308, effective July 8, 1980.
See: 12 N.J.R. 321(b), 12 N.J.R. 482(c).
R.1983 d.442, effective September 26, 1983.
See: 15 N.J.R. 1340(a), 15 N.J.R. 1769(a).
See section and subchapter annotations for other rulemaking activity.

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SUBCHAPTER 1. ORGANIZATION OF THE DIVISION OF YOUTH AND FAMILY SERVICES

10:120-1.1 Purpose

(a) The Division of Youth and Family Services (DYFS) serves as the State's comprehensive social services agency for children and families in New Jersey. Its primary goals are to preserve and strengthen the family unit and to protect children from abuse and neglect, by providing a wide range of supportive and reinforcing services designed to encourage and maintain family stability and self-sufficiency.

(b) The Division of Youth and Family Services is responsible for the investigation of abuse and neglect complaints involving children. The Division provides a wide range of services and programs that address the protective service needs of children. These services include, but are not limited to: foster care, residential treatment, adoption, family preservation, day care, counseling, advocacy, and case management.

Amended by R.1991 d.397, effective August 5, 1991.
See: 23 N.J.R. 1658(a), 23 N.J.R. 2309(b).

Revised entire section to delineate current organization of DYFS and its purpose.

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).

10:120-1.2 Scope

(a) The Division of Youth and Family Services is responsible for the implementation of programs to preserve families and protect children from abuse and neglect in New Jersey.

(b) The Division is responsible for investigating allegations of child abuse and neglect occurring in families and institutions.

(c) The Division of Youth and Family Services provides a variety of services to children and families directly. These services include, but are not limited to: protective services for abused and neglected children, foster and group home placements, residential placements, child care, adoption services, counseling, advocacy and case management, adult protective services and personal attendant services.

(d) The Division contracts with community social service providers for services DYFS does not provide directly. These services include, but are not limited to: day care for children, protective services for victims of domestic violence, family planning, mental health therapy and counseling, and legal services in non-criminal matters.

(e) The Division is mandated to license and regulate publicly and privately operated facilities and programs serving children and families, including, but not limited to: child care centers, children's residential treatment facilities, children's group homes, children's and families-in-crisis shelters and homes, and adoption agencies. The Division also regulates the State's voluntary family day care registration program.

(f) The Division is responsible for supervising the social service units of the county welfare agencies, which include the adult protective services program and the personal attendant services program. The Division administers services to vulnerable adults through the social service units of the county welfare agencies, and by contracting with county offices on aging and with community providers. These services, within available resources, include, but are not limited to: services to residents of rooming houses, boarding homes, and residential health care providers, services to handicapped individuals living at home, and services to families whose level of functioning is marginal.

(g) Services of the Division are provided through a regional structure. Each regional office is headed by an administrator responsible for supervising DYFS local district offices, community social service providers under contract with the Division, and county welfare agency social services units in the counties comprising that region. The Division also operates adoption resource centers, children's residential treatment centers and children's day care centers.

(h) The Division's central office in Trenton provides support functions to the regional and district offices. These functions include, but are not limited to: policy and procedure development and publication, research and evaluation, management and fiscal services, monitoring residential placement facilities, quality assurance and accountability, regulatory and legislative services.

(i) The policies and procedures of the Division of Youth and Family Services are formalized in DYFS Field Operations and Provider Manuals and the Department of Human Services Contract Manuals. The DYFS Field Operations and Provider Manuals are available in the DYFS central, regional and district offices for examination or review during regular office hours on regular work days. DYFS issues these manuals and revises them as necessary.

Amended by R.1991 d.397, effective August 5, 1991.

See: 23 N.J.R. 1658(a), 23 N.J.R. 2309(b).

Revised entire section to update the scope of services provided by DYFS.

Added new language at (a)-(f).

Amended by R.1992 d.471, effective December 7, 1992.

See: 23 N.J.R. 3420(b), 24 N.J.R. 4386(a).

Recodified and revised text for subsections (b)-(f), adding new subsection (h). Recodified subsection (g) as new subsection (i).

SUBCHAPTER 2. ADMINISTRATIVE HEARINGS**10:120-2.1 Scope of Rules**

(a) These rules shall govern the filing of complaints by the Division and the procedure for requests for contested case hearings.

(b) All hearings pursuant to the section shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.

(c) These rules shall not govern fair hearings concerning the Social Security Act which shall be conducted pursuant to N.J.A.C. 10:120-3.1, or employee personnel matters.

10:120-2.2 Subject Matter Jurisdiction

The jurisdiction of the Division shall extend to all complaints arising under any statute, rule or regulation affecting the Division.

10:120-2.3 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.

10:120-2.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

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

“Director” means the Director of Division of Youth and Family Services within the Department of Human Services.

“Division” means the Division of Youth and Family Services within the Department of Human Services.

10:120-2.5 Notice of complaint

(a) Whenever it shall appear that a violation of any statute, rule or regulation affecting the Division has occurred or is occurring, the Division may issue a notice of complaint.

(b) The notice of complaint shall contain:

1. A reference to the particular sections of the statute, regulation or rule alleged to have been violated;

2. A concise statement of the facts giving rise to the alleged statutory, regulatory or rule violation. Should the complainant not have details sufficient to state the facts at the time notice is served, a statement of issues involved is sufficient until details are available but a statement of facts must be served upon respondent a minimum of five business days prior to the date of hearing as provided in N.J.A.C. 10:120-1.6;

3. A statement of the relief sought by the complainant; and

4. A statement that the respondent may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1.

10:120-2.6 Service of notice of complaint

(a) Where a party, other than the Division, is an individual, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to the last known place of business, residence or abode, within or without this State of such party from whom said receipt is requested, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return of receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice;

3. By leaving a copy thereof at such person’s dwelling house or usual place of abode with a competent member of his or her household of the age of 14 years or over residing therein; or

4. By delivering a copy thereof to a person authorized by appointment or by law to receive service of process on his behalf.

(b) Where a party, other than the Division, is a corporation, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to any person authorized by appointment or by law to receive service of process on behalf of the corporation at the registered office or principal place of business of the corporation, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice on either an officer, director, trustee or managing or general agent;

3. Upon personal delivery thereof on any person authorized by appointment or by law to receive service of process on behalf of the corporation;

4. Upon personal delivery of the notice on the person at the registered office of the corporation; or

5. Upon personal delivery of the notice on any servant of the corporation within this State acting in the discharge of his or her duties.

(c) If personal service cannot be effectuated after due diligence and an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served and submits an affidavit indicating the facts supporting the averment that personal service or service by certified mail has been attempted with due diligence but has failed.

10:120-2.7 Conduct of hearings

The conduct of all hearings shall conform to the requirements of 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.

10:120-2.8 Director’s review and final decision

(a) Upon receipt of the initial decision and any exceptions submitted by any party, the Director shall review the record and issue the final decision.

(b) The Director’s final decision shall be rendered not later than 15 business days after the deadline for filing objections. Service shall be either by personal service or by sending a copy of the decision by certified mail, return receipt requested, to the last known address of the party and, where applicable, to counsel no later than five business days following the rendering of such decision. Service shall

be effective upon personal service, or upon receipt of the decision by the parties as evidenced by the return receipt.

(c) If an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served.

10:120-2.9 Appeal of final decision

The Director's decision shall be the final determination concerning the subject matter of the hearing. Any appeal of such decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey court rules.

SUBCHAPTER 3. FAIR HEARING GUIDELINES

10:120-3.1 Right to fair hearings

(a) It is the right of every applicant for or recipient of a Title XX funded social service to request and have a fair hearing in the manner established by this subchapter. The availability of a local administrative review shall be in addition to an independent of the right to a fair hearing.

(b) A copy of the pamphlet "How to Request a Fair Hearing" shall be furnished to every applicant for services at the time of application and to any client upon his or her request at the time of any adverse action.

(c) The pamphlet shall include an explanation of the client's right to a conference, right to a fair hearing, and the circumstances under which service is continued if a fair hearing is requested. Whenever possible, the client shall be advised verbally of his or her right to a fair hearing in addition to the receipt of the printed pamphlet.

(d) The fair hearing shall include consideration of the following:

1. Any agency 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 agency decision regarding eligibility for services in both initial and subsequent determinations; and
3. Any agency action resulting in a suspension or reduction of services.

(e) The right to a fair 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 application by foster parents for placement of a child for adoption, pursuant to N.J.S.A. 30:4C-26.7, which gives foster parents, who have cared for a child continuously for a period of two years or more, preference and first consideration to their application over all other applications for adoption placements.

10:120-3.2 Notification of right to fair hearing

(a) All notifications of agency 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. In adverse decisions, the notifications shall include, as a basis for agency action, one or more of the following references:

1. Statutory basis; and/or
2. Regulatory reference or citation.

(b) In addition to the basis for the agency action cited above, the notification may also include:

1. State plan (including budgetary provisions);
2. Social service transmittal; and/or
3. Policy memorandum.

(c) 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 fair 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 agency action, the reason for the agency action and the specific regulations supporting the agency action; a statement explaining the individual's right to a fair 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 of the conditions under which services will continue until the date of hearing.

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

1. The agency has factual information confirming the death of the client;
2. The agency 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 determination 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 agency mail directed to the client has been returned by the post office indicating no known forwarding address, or home visits 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; or

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.

10:120-3.3 Complaint procedures

(a) Prompt and courteous attention shall be given to all complaints whether or not such complaints constitute requests for fair hearings. All complaints involving a matter described in N.J.A.C. 10:120-3.1(d) or (e) shall be acknowledged in writing promptly and, if it is not mentioned in the complaint, the acknowledgement shall inform the client of the right to a fair hearing.

(b) Informal efforts to resolve the problem may be made through field contacts, office interviews with supervisory personnel, and consultation with regional and central office staff. It should 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 fair hearing request.

(c) Any clear expression, oral or written, by a client or a person acting as the client's representative to the effect that the client is dissatisfied with an agency decision, action or inaction, as described in N.J.A.C. 10:120-3.1(d) or (e), or that the client wants the opportunity to present his or her case to a higher authority constitutes a request for a fair hearing.

(d) Request made to the local agency 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 acknowledgement of receipt of the request for a fair hearing shall be sent by the Administrative Hearings Unit to the client immediately.

10:120-3.4 Time limitation on entitlement to a fair hearing

If a request for a fair hearing relates to an agency action or lack of agency action that occurred more than 90 calendar 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.

10:120-3.5 Eligibility for continued services

(a) When there is a request for a fair hearing within 10 days from the date of mailing of a timely notice of termination, suspension or reduction, services will be reinstated or continued at an unreduced level until the fair hearing is held unless the client requests a postponement. Services will be continued unreduced pending a decision if the judge determines that the issue is one of a fact rather than law or policy. In any case where action was taken without timely notice, if the recipient requests a hearing within 10 days of the mailing of the notice of the action and the agency determines that the action resulted from other than the application of State or Federal law, assistance shall be reinstated and continued until a decision is rendered.

(b) The agency may terminate, reduce or suspend social services any time during the month, provided that the agency provides a 10 day advance notice to the client.

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

10:120-3.6 Withdrawal of hearing request

The filing of a request for a fair hearing shall not preclude continued effort to accomplish corrective action or interpretation by the Division of Youth and Family Services or by the local agency through informal adjustment procedures. If as a result of satisfactory adjustment or for any other cel¹ the hearing, he or she shall so notify the agency or the Division of Youth and Family Services. The client shall be requested to notify the agency in writing regarding the decision for discontinuance or cancellation of the fair hearing.

¹ So in original.

10:120-3.7 Local agency responsibility

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

10:120-3.8 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 agency 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.

10:120-3.9 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 will be obtained at a reasonable expense to the agency from a source satisfactory to the client and shall be made part of the record.

10:120-3.10 Conducting the fair hearing

The fair 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.

Case Notes

Claim of denial of right to counsel in administrative review of agency decision found without merit; said claim does not give rise to a fair hearing argument. *Drake v. Dept. of Human Services*, 186 N.J.Super. 532, 453 A.2d 254 (App.Div.1982).

10:120-3.11 Adjournments

(a) Adjournments will not affect the client's right to a continuation of the fair hearing. However, an adjournment of a hearing shall not prolong continuation of services at an unreduced level unless such adjournment is due to delay caused by the State or local agency, or unless adjournment is due to unavoidable causes such as an illness on the part of the client or his or her representative or to hear additional testimony. Services will also be continued if the local agency fails to provide requested assistance for transportation.

(b) The total of all adjournments shall not exceed 30 days, unless a greater extension of time is requested for good cause by the client or by the local agency and approved by the judge.

10:120-3.12 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 in State or Federal law. All policies governing the conduct of individual fair hearings must be followed.

10:120-3.13 Decision on fair hearing

(a) The decision of the Director of the Division of Youth and Family Services shall be final and binding on all parties concerned and shall be rendered and implemented within 90 days of the date the request for the hearing was received, unless the hearing was postponed or delayed for good cause.

(b) The fair 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 fair hearing will 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 appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the fair hearing.

(d) A decision requiring action by the local agency may apply either prospectively with regard to future action by the agency or retroactively to the date an incorrect action was taken.

(e) The State Division of Youth and Family Services will take such steps as may be necessary to assure that the decision has been carried out. Any corrective action required by the decision must be completed by the agency within 15 days of the date of publication of the decision or within 90 days of the date of the request for hearing whichever comes first, unless otherwise directed by the Division.

10:120-3.14 Role of local agency personnel during the fair hearing

The agency representative is advocate of the agency, supporting the decision that the agency has made, putting aside personal feelings. The agency representative must be able to present the agency case, supplying the judge with that information needed to substantiate the agency action. The agency representative must be attentive to new information coming to light which may impact on the original agency decision. If there is such new information, the agency representative may request a brief recess. If the recess is granted, the agency representative should then present this information to those individuals in the agency who determined the original agency action. If the agency representative feels that he or she must be an advocate of the client and if unable to represent the agency, then another agency staff person must appear at the hearing to fulfill the above identified role.

10:120-3.15 Agency liaison

(a) To assure orderly and expeditious processing of complaints and hearing requests, each agency office will designate a liaison between the agency and the Division of Youth and Family Services whose duties shall include, but not be limited to, the following:

1. Telephoning the Administrative Hearings Unit within one working day after an oral or written request for a hearing involving a matter described in N.J.A.C. 10:120-3.1(d) or (e) 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. 10:120-3.1(d) or (e) which is received in the local agency 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 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;
7. Submitting reports on implementation of State fair hearing decision as soon as such action is taken; and
8. Serving as the single individual in the agency regarding matters relating to hearings.