

CHAPTER 120B**HEARINGS****Authority**

N.J.S.A. 30:1-9 et seq., 30:1-12 and 30:4C-4(h).

Source and Effective Date

R.2007 d.16, effective December 13, 2006.
See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 120B, Hearings, expires on December 13, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 120 of Title 10, Administration, was readopted as R.2007 d.16, effective December 13, 2006. As a part of R.2007 d.16, Subchapter 2, Hearings, was recodified as Chapter 120B, Hearings, effective January 16, 2007. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. HEARINGS NOT BASED ON DIVISION ACTIONS**10:120B-1.1 Right to hearings on a matter other than a Division action**

(a) Applicants for and recipients of a social service rendered by a provider under contract with the Division are entitled to request and have a hearing in the manner established by this chapter when the service provider has made a decision or action or has failed to act in a way which meets the conditions outlined in (b) below.

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

1. Any service provider action, or failure to act with reasonable promptness, on a request for services, which in-

cludes undue delay in reaching a decision on eligibility or in the provision of services;

2. Any service provider decision regarding eligibility for services in both initial and subsequent determinations; and

3. Any service provider action resulting in a termination, suspension, or reduction of services.

(c) The availability of a local administrative review shall be in addition to and independent of the right to a hearing.

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

1. A change in the placement of a child without constituting a reduction of social services;

2. An across-the-board service termination, suspension, or reduction as a result of a reduction in funding from the Division; or

3. A Division action, rather than an action or inaction of the service provider. In cases of a Division action, due process is available as specified in N.J.A.C. 10:120A.

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

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

Rewrote the section.

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Rewrote (a); in (b), substituted "service" for "contract" throughout; inserted a new (c); recodified former (c) as (d) and substituted "service" for "contract" in (d)3.

Recodified from 10:120-2.1 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

Section was "Right to hearings". Rewrote (a); and in (b)3 and (d)2, inserted a comma following "suspension".

10:120B-1.2 Notification of right to a hearing

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

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

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

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

2. Notice is adequate when it is written to include: a statement of the proposed service provider's action, the reason for the service provider's action and the specific reference supporting the service provider's action; a statement explaining the client's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1; and an explanation that services shall not continue until the date of the hearing except in the circumstances stated in N.J.A.C. 10:120B-1.5(b)1.

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

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

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

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

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

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

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

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

Rewrote the section.

Amended by R.2001 d.238, effective July 16, 2001.
See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (a), substituted "service" for "contract" in the introductory paragraph; in (b)2, substituted "service" for "contract" and amended the N.J.A.C. reference; in (c)1, (c)2 and (c)3, substituted "service" for "contract".

Administrative correction.

See: 33 N.J.R. 3746(b).

Recodified from 10:120-2.2 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

In (b)2, substituted "Notice is adequate when it is" for "Adequate means the notice must be"; inserted "et seq." following both N.J.S.A. references, and updated the N.J.A.C. reference.

10:120B-1.3 Complaint procedures

(a) Prompt and courteous attention shall be given to all complaints whether or not such complaints constitute requests for hearings. All complaints involving a matter described in N.J.A.C. 10:120B-1.1(a) or (b) shall be acknowledged in writing promptly by the Administrative Hearings Unit and, if not previously informed, the acknowledgment shall inform the client of any right to a hearing.

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

(c) Any written expression to the service provider, by a client or a person acting as the client's representative to the effect that the client is dissatisfied with a decision, action or inaction by the service provider, as described in N.J.A.C. 10:120B-1.1(b), or that the client wants the opportunity to present his or her case to a higher authority, constitutes a request for a hearing.

(d) A request made to the service provider shall be immediately transmitted to the Administrative Hearings Unit no later than one business day after the receipt of the request. An acknowledgment of receipt of the request for a hearing shall be sent by the Administrative Hearings Unit to the client immediately.

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (c) and (d), substituted "service" for "contract" throughout.

Recodified from 10:120-2.3 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

Rewrote (a); in (b), inserted a comma following "interfere with"; in (c), substituted "written expression" for "clear expression, oral or written," and updated the N.J.A.C. reference; and in (d), deleted "Division of Youth and Family Services" preceding "Administrative" and substituted "business" for "work".

10:120B-1.4 Time limitation on entitlement to a hearing

If a request for a hearing relates to an action or lack of action by a service provider that occurred more than 90 days prior to the date of the request, there shall be no entitlement to a hearing on such action or lack of action unless there are extraordinary extenuating circumstances. The decision that

extraordinary extenuating circumstances exist shall be made by the Director of the Division of Youth and Family Services.

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Substituted "service" for "contract".

Recodified from 10:120-2.4 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.5 Termination of services

(a) The service provider may terminate, suspend, or reduce social services any time during the month, provided that the service provider gives a 10-day advance notice to the client, as stated in N.J.A.C. 10:120B-1.2(b)1, and except for the conditions listed in N.J.A.C. 10:120B-1.2(c).

(b) When there is a request for a hearing, the service provider shall not continue or reinstate services until the hearing is held, except for the circumstances in (b)1 below. Services shall not be continued pending the judge's decision, except for the circumstances in (b)1 below.

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

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

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

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

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

Rewrote the section.

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Substituted "service" for "contract" throughout; in (b)1, deleted "Business" preceding "Office" and "Office's".

Recodified from 10:120-2.5 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

In (a), inserted a comma following "suspend", substituted "10-day" for "10 day", and updated the N.J.A.C. references; in the introductory paragraph of (b), deleted "at an unreduced level" preceding "until" and "unreduced" preceding "pending", and inserted a comma following "decision"; and in (b)1, substituted "Area" for both "Division's Regional" and "Regional".

10:120B-1.6 Withdrawal of hearing request

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Substituted "service" for "contract" throughout.

Recodified from 10:120-2.6 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.7 Service provider responsibility

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Substituted "service" for "contract" and inserted "of transportation" following "through purchase".

Recodified from 10:120-2.7 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.8 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 service provider at the hearing at a reasonable time before the date of the hearing as well as during the hearing.

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

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

In (a), substituted a reference to contract providers for a reference to agencies; and in (b), added "and regulations, including 42 U.S.C. §§ 5101 et seq., N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G" at the end.
Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (a), substituted "service" for "contract".
Recodified from 10:120-2.8 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

In (b), substituted "abuse or neglect" for "abuse/neglect".

10:120B-1.9 Hearing involving medical issues

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (a), substituted "service" for "contract".

Administrative correction.

See: 33 N.J.R. 3746(b).

Recodified from 10:120-2.9 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.10 Conducting the hearing

The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Administrative Hearings Unit shall receive all initial decisions and exceptions relative to those initial decisions, from the Office of Administrative Law, pursuant to N.J.A.C. 1:1.

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

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

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

Recodified from 10:120-2.10 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

Rewrote the section.

10:120B-1.11 Adjournments

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

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

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

Rewrote the section.

Recodified from 10:120-2.11 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.12 Group hearing

The Commissioner or designee may respond to a series of individual requests by ordering a single group hearing when the sole issue involved is one of State or Federal law or policy changes based on State or Federal law, except as indicated in N.J.A.C. 10:120B-1.1(d)2. All rules governing the conduct of individual hearings shall be followed.

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

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

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

Recodified from 10:120-2.12 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

Substituted "Commissioner or designee" for "Director of the Division of Youth and Family Services" and updated the N.J.A.C. reference.

10:120B-1.13 Decision on hearing

(a) The Commissioner or designee shall issue the final agency decision within 45 days of receipt of the initial decision of the administrative law judge, unless an extension is accommodated by N.J.A.C. 1:1-18, in accordance with N.J.A.C. 1:1-18.4. The decision of the Commissioner or designee shall be final and binding on all parties concerned.

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

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

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

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (d) and (e), substituted "service" for "contract".

Recodified from 10:120-2.13 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

In (a), substituted "Commissioner or designee" for both "Director" and "Director of the Division of Youth and Family Services" and inserted "unless an extension is accommodated by N.J.A.C. 1:1-18,".

10:120B-1.14 Representation

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

Substituted "service" for "contract".

Recodified from 10:120-2.14 by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

10:120B-1.15 Service provider responsibilities

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

1. Telephoning the Administrative Hearings Unit within one business day after a written request for a hearing involving a matter described in N.J.A.C. 10:120B-1.1(b) is received, to advise of the receipt of the request and provide information as requested;

2. Establishing a system to assure that every written request for a hearing involving a matter described in

N.J.A.C. 10:120B-1.1(b), which is received by the service provider is stamped with the date of receipt and forwarded to the Division within one business 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 business days prior to a hearing to confirm attendance and arrange for transportation of a client when necessary;

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

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

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

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

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

Amended by R.2001 d.238, effective July 16, 2001.

See: 33 N.J.R. 358(b), 33 N.J.R. 2505(c).

In (a), substituted "service" for "contract" preceding "provider" and deleted "contract" preceding "agency director" in the introductory paragraph, and substituted "service" for "contract" in 2.

Recodified from 10:120-2.15 and amended by R.2007 d.16, effective January 16, 2007.

See: 38 N.J.R. 3118(a), 39 N.J.R. 211(a).

In the introductory paragraph of (a), inserted a comma following "director"; in (a)1, (a)2 and (a)5, substituted "business" for "work"; in (a)1 and (a)2, updated the N.J.A.C. references; and in (a)1, substituted "a" for "an oral or" preceding "written".