

CHAPTER 132A
LEGAL GUARDIANSHIP

Authority

N.J.S.A. 3B:12A-1, 3B:12A-6f, 30:4C-4(h), 30:4C-12.1,
30:4C-84 through 88 and 44:10-44 through 54.

Source and Effective Date

R.2003 d.169, effective May 5, 2003.
See: 34 N.J.R. 3046(a), 35 N.J.R. 1904(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 132A, Legal Guardianship, expires on November 1, 2008. See: 40 N.J.R. 3567(a).

Chapter Historical Note

Chapter 132A, Legal Guardianship, was adopted as new rules by R.2003 d.169, effective May 5, 2003. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

**SUBCHAPTER 1. DYFS LEGAL GUARDIANSHIP
SUBSIDY PROGRAM**

- 10:132A-1.1 Purpose of N.J.A.C. 10:132A-1 and 2
- 10:132A-1.2 Scope of N.J.A.C. 10:132A-1 and 2
- 10:132A-1.3 Definitions
- 10:132A-1.4 Service limitations
- 10:132A-1.5 Responsibilities of a relative participating in the
DYFS Legal Guardianship Subsidy Program
- 10:132A-1.6 Eligibility for the DYFS Legal Guardianship Sub-
sidy Program
- 10:132A-1.7 Program standards
- 10:132A-1.8 Division action
- 10:132A-1.9 Circumstances requiring redetermination
- 10:132A-1.10 Circumstances requiring termination
- 10:132A-1.11 Dispute resolution

SUBCHAPTER 2. SERVICES PROVIDED

- 10:132A-2.1 Types of services provided

**SUBCHAPTER 3. DIVISION RESPONSIBILITIES UNDER
THE LAW**

- 10:132A-3.1 Purpose
- 10:132A-3.2 Scope
- 10:132A-3.3 Kinship caregiver assessment done by the Division
- 10:132A-3.4 Information provided to a designated agency and the
court
- 10:132A-3.5 The Division's responsibility when the court may
vacate a kinship legal guardianship order

**SUBCHAPTER 1. DYFS LEGAL GUARDIANSHIP
SUBSIDY PROGRAM**

10:132A-1.1 Purpose of N.J.A.C. 10:132A-1 and 2

The purpose of this subchapter and N.J.A.C. 10:132A-2 is to establish the DYFS Legal Guardianship Subsidy Program within the Division of Youth and Family Services. The program provides financial support and permanency to children placed by the Division with a relative or family friend who

subsequently obtains kinship legal guardianship through the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 et seq.

10:132A-1.2 Scope of N.J.A.C. 10:132A-1 and 2

The provisions of this subchapter and N.J.A.C. 10:132A-2 apply to each child whose participation in the DYFS Legal Guardianship Subsidy Program is approved or is being evaluated, each relative or family friend who agrees to participate or is being evaluated to participate in the program, each other household member, each parent of a child who participates or is being evaluated to participate in the program, and each Division representative.

10:132A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this chapter by reference.

(b) The following words and terms shall have the following meaning in this chapter and not the meaning defined in N.J.A.C. 10:133-1.3:

“Parent” means a person who is the mother or father of a child through birth or adoption.

“Relative” means any person, other than the child’s parent, who is related to the child through blood or marriage or adoption and including a stepparent, or a “family friend,” as defined in N.J.A.C. 10:133-1.3.

(c) In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“DYFS Legal Guardianship Subsidy Program” or “program” means a service provided by the Division to provide financial support and permanency to certain children for whom a relative or family friend has obtained kinship legal guardianship pursuant to N.J.S.A. 3B:12A-1 et seq.

“Household member” means an adult or child who resides either full-time or part-time in the home of a relative who agrees to participate in the DYFS Legal Guardianship Subsidy Program.

“Income” means money received from employment, including self-employment; rental property payments made directly or through an agent; Social Security Disability, Retirement, or Survivors benefits; State disability benefits; worker’s compensation; pension; 401K payments; alimony; railroad retirement; General Assistance; unemployment; interest and dividend payments; veterans benefits; and child support. Income does not include Supplemental Security Income benefits.

“Kinship caregiver assessment” means a written report submitted to the court regarding the suitability of a relative to be designated legal guardian in accordance with the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5.

“Placed by the Division” means a Division representative determined that a child could not remain in his or her own home, the Division had legal authority for removal of the child, and a Division representative physically located or arranged for the child to be in the care of a public or private facility or a relative’s home.

Administrative correction.
See: 35 N.J.R. 3360(a).

10:132A-1.4 Service limitations

The availability of the program established by this chapter is subject to the continued availability of funding.

10:132A-1.5 Responsibilities of a relative participating in the DYFS Legal Guardianship Subsidy Program

(a) A relative who agrees to participate in the program shall provide accurate information and submit documents the Division determines necessary to confirm eligibility and meet the program standards for the program in accordance with N.J.A.C. 10:132A-1.6 and 1.7.

(b) A relative approved for the program shall:

1. Provide accurate information and submit documents the Division determines necessary to confirm continued eligibility for the program in accordance with N.J.A.C. 10:132A-1.9;
2. Report to a Division representative any changes in circumstances which may affect eligibility for the program, prior to the change if possible or immediately thereafter; and
3. Cooperate with the rules of the program contained in this chapter.

10:132A-1.6 Eligibility for the DYFS Legal Guardianship Subsidy Program

(a) The Division representative advises a relative interested in the DYFS Legal Guardianship Subsidy Program of the requirements for eligibility and the circumstances which require termination of the program.

(b) A child is eligible for the DYFS Legal Guardianship Subsidy Program when:

1. A Division representative placed the child with a relative due to safety or risk of harm issues and the Division had legal authority for placement through consent of the parent or a court order;
2. The relative is related to the child through blood or marriage or adoption or is a family friend as defined at N.J.A.C. 10:133-1.3;
3. A Division representative made reasonable efforts when required to reunify the child and the parent, in accordance with N.J.A.C. 10:133I;

4. The Division representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible;

5. The relative and the child live in New Jersey;

6. The relative interested in being approved for the program has obtained kinship legal guardianship, pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5; and

7. The child does not have income greater than 500 percent of the State Median Income for a one person family. The State Median Income is published annually in the Federal Register.

10:132A-1.7 Program standards

(a) The Division requires a relative interested in being approved for the program to meet the following standards in order to be approved for the DYFS Legal Guardianship Subsidy Program:

1. The relative agrees to comply with the responsibilities of the program by signing the agreement;
2. The relative is at least 18 years of age, but if under 21, the relative has a spouse or other household member age 21 or older who resides full-time in the relative’s home and is willing to share responsibility for the child’s care;
3. No household member has been responsible for an incident of sexual abuse of a child or an incident of child abuse or neglect which caused serious injury or harm to a child, or caused death to a child through abuse or neglect;
4. No household member has been convicted of a crime specified in N.J.S.A. 30:4C-26.8 or any other crime or offense which could pose a risk of harm to the child;
5. The relative discloses any criminal convictions of each juvenile member of the household, age 14 years or older. The Division representative assesses the safety of a child placed with this relative in relation to the criminal convictions of any juvenile living with the relative;
6. If employed outside the home, the relative has an acceptable plan for care and supervision of the child during the relative’s absence from the home;
7. There is no indication of health, safety, or fire hazards in or around the relative’s home;
8. Sleeping arrangements for the child are adequate, including privacy appropriate to the age and needs of the child;
9. There is no indication that the relative or any other household member has personal characteristics or conduct which, in the judgment of the Division representative, would jeopardize the health or safety of the child;

10. The Division representative advises the relative that the Division encourages the use of fair, reasonable, and consistent discipline to enhance or modify the child's

behavior and strongly discourages the use of corporal punishment, and the relative agrees to this standard;

11. The relative agrees that all money received from the program will be used for the ongoing care of the child; and

12. The relative understands the child's need for protection and permanency and agrees to comply with conditions in the kinship legal guardianship court order regarding safety for the child.

10:132A-1.8 Division action

(a) The Division representative shall approve the child and the relative for participation in the DYFS Legal Guardianship Subsidy Program if all eligibility requirements in N.J.A.C. 10:132A-1.6 and all program standards in N.J.A.C. 10:132A-1.7 are met.

(b) The Division representative shall advise a relative who is not approved to participate in the DYFS Legal Guardianship Subsidy Program, in writing, of:

1. The reason for disapproval and that it is the responsibility of the relative, not the Division representative, to identify any change in circumstances that may alter the disposition;

2. The opportunity for dispute resolution in accordance with N.J.A.C. 10:132A-1.11; and

3. Information regarding any agency that may be able to provide benefits for the child, such as the county welfare agency and the Office of the Kinship Navigator in the Division of Family Development.

10:132A-1.9 Circumstances requiring redetermination

(a) Approval of the child continuing to participate in the DYFS Legal Guardianship Subsidy Program is redetermined:

1. Annually to confirm that the relative remains legally responsible for the child and the child's support and that the child does not have income which exceeds 500 percent of the State Median Income; and

2. Whenever information becomes available to the Division representative that there has been a change in circumstances that may affect eligibility for the program in accordance with N.J.A.C. 10:132A-1.6 or that may indicate that program standards are no longer being met in accordance with N.J.A.C. 10:132A-1.7.

10:132A-1.10 Circumstances requiring termination

(a) The child's participation shall be terminated from the DYFS Legal Guardianship Subsidy Program when:

1. The child reaches age 18 or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later;

2. The legal guardian adopts the child;

3. The child's income exceeds 500 percent of the State Median Income;

4. The relative approved for the program no longer provides the child's support and the child no longer lives with that relative;

5. Each relative approved for the program is deceased;

6. The relative and the child no longer live in New Jersey; or

7. The court has vacated the kinship legal guardianship order.

10:132A-1.11 Dispute resolution

A relative whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose approval is terminated may request a dispositional review of the denial or termination. A child whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose participation in the program is terminated or a person named to act on the child's behalf in N.J.A.C. 10:120A-3.1(a)1 or 2 may request a dispositional review of the denial or termination. A DYFS Review Officer conducts the dispositional review in accordance with N.J.A.C. 10:120A.

SUBCHAPTER 2. SERVICES PROVIDED

10:132A-2.1 Types of services provided

(a) The DYFS Legal Guardianship Subsidy Program:

1. Provides a maintenance payment of \$250.00 per month for each child approved for participation in the program; and

2. Ensures that each child approved for participation in the program has health care coverage through the Division or other sources available to the child.

(b) The program provides no maintenance payment or health care coverage for any time prior to the date of the award of kinship legal guardianship through the Kinship Legal Guardianship Act at N.J.S.A. 3B:12A-5.

(c) The program does not provide placement-related activities, administrative activities or services other than those stated in (a) above from the Division. A child participating in the DYFS Legal Guardianship Subsidy Program is not subject to the placement review requirements of N.J.S.A. 30:4C-50 et seq. and N.J.A.C. 10:133H-3.

(d) These rules shall not be construed to negate a child's right to receive child protective services and child welfare services from the Division, as necessary to ensure the child's

health and safety, based upon the Division representative's assessment of the needs of the child.

SUBCHAPTER 3. DIVISION RESPONSIBILITIES UNDER THE LAW

10:132A-3.1 Purpose

The purpose of this subchapter is to state the Division's responsibilities pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 et seq. and 30:4C-84 et seq.

10:132A-3.2 Scope

The provisions of this subchapter apply to each Division representative responsible for the activities described in this subchapter.

10:132A-3.3 Kinship caregiver assessment done by the Division

(a) The Division shall provide the court with a kinship caregiver assessment pursuant to the Kinship Legal Guardianship Act at N.J.S.A. 30:4C-85, when a relative is seeking kinship legal guardianship for a child:

1. Who was removed from the child's home by a Division representative within 12 months prior to the date the kinship caregiver assessment is requested;
2. Who has an open or currently active case with the Division and where legal representation is being provided by the Office of the Public Defender either through its Law Guardian Program or Parental Representation Unit; or
3. Who has an otherwise open or currently active case with the Division.

(b) The Division representative shall complete a kinship caregiver assessment and assist a relative with an open or currently active case with the Division to petition the court for kinship legal guardianship when:

1. No Division representative placed the child with the relative; and
2. The Division representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible.

(c) The provisions of (a) and (b) above shall not apply when the Division is actively investigating a child protective service referral.

(d) A Division representative shall conduct the kinship caregiver assessment at no cost to the relative seeking kinship legal guardianship.

10:132A-3.4 Information provided to a designated agency and the court

(a) A Division representative shall provide the agency designated to complete the kinship caregiver assessment pursuant to N.J.S.A. 30:4C-85b with information regarding any current involvement of the Division when the Division is not providing the kinship caregiver assessment in accordance with N.J.A.C. 10:132A-3.3.

(b) A Division representative shall provide the court with the results of a child abuse record information check and a domestic violence check for the relative seeking kinship legal guardianship and each adult household member when the Division is not providing the kinship caregiver assessment in accordance with N.J.A.C. 10:132A-3.3.

(c) Division staff shall conduct the child abuse record information check and domestic violence check at no cost to the relative seeking kinship legal guardianship.

10:132A-3.5 The Division's responsibility when the court may vacate a kinship legal guardianship order

(a) The Division representative prepares a parenting assessment of a child's parent when:

1. The court is determining whether the kinship legal guardianship order should be vacated and the child returned to his or her parent; and
2. The court requests the parenting assessment because the Division was originally involved in petitioning the court to grant kinship legal guardianship in accordance with N.J.A.C. 10:132A-3.3(a) and (b).

(b) The Division representative includes information in the parenting assessment about whether the parent's initial incapacity and inability to care for and support the child have been remediated.