

CHAPTER 16**DEPARTMENT OF HUMAN SERVICES CHILD
DEATH AND CRITICAL INCIDENT
REVIEW BOARD****Authority**

N.J.S.A. 9:6-8.10a and b, 9:6-8.21 and 30:4C-4(h).

Source and Effective Date

R.1992 d.513, effective December 21, 1992.
See: 24 N.J.R. 3506(a), 24 N.J.R. 4536(a).

Executive Order No. 66(1978) Expiration Date

Chapter 16, Department of Human Services Child Death and Critical Incident Review Board, expires on December 21, 1997.

Chapter Historical Note

Chapter 16, Department of Human Services Child Death and Critical Incident Review Board, became effective on December 21, 1992. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS**10:16-1.1 Purpose**

This chapter establishes the Department of Human Services Child Death and Critical Incident Review Board and describes its organization, scope, membership, functions, and procedures.

10:16-1.2 Scope

(a) The scope of this chapter applies to situations involving children currently or formerly (within the past 12 months) under the supervision of the Division of Youth and Family Services (DYFS):

1. Who are alleged to have died due to child abuse or neglect;
2. Who have died, and whose death is not alleged to be due to child abuse or neglect, but who died under circumstances that have been identified by the Deputy Commissioner or by the Director as presenting issues which could result, through Board review, in recommendations for systems, policy, legislative or regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies; or
3. Who were the subject of a critical incident (not resulting in death) that was:
 - i. Alleged to have been due to child abuse or neglect, and
 - ii. Has been identified by the Deputy Commissioner or by the Director as presenting issues that could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies.

(b) This chapter applies regardless of where the child involved in the situation described in (a) above is residing or of which State government agency, Division of this Department or non-government provider is or was responsible for caring for the child.

10:16-1.3 Definitions

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

“Abused or neglected child” means a child:

1. Less than 18 years of age:
 - i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;
 - ii. Whose parent or guardian creates or allows to be created a substantial or continuing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No 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 for this reason alone be considered to be abused or neglected.

"Board" means the Department of Human Services Child Death and Critical Incident Review Board.

"Child" means any child less than 18 years of age who has been alleged to have been abused or neglected.

"Child abuse death" or "death due to child abuse or neglect" means the death of a child as a result of acts or omissions by a parent or guardian that constitute child abuse or neglect, as these terms are defined in N.J.S.A. 9:6-8.21a, b and c.

"Critical incident" means a serious injury, a life-threatening condition, or a newsworthy event occurring to a child currently or formerly (within the past 12 months) under DYFS supervision and alleged to have been due to abuse or neglect.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Deputy Commissioner" means the Deputy Commissioner of the Department of Human Services.

"Director" means the Director of the Division of Youth and Family Services in the Department of Human Services.

"DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Formerly under DYFS supervision" means that the child's case was closed and was not actively receiving DYFS services on the day the injury or death occurred, but had been actively receiving services within the past 12 months.

"Life-threatening condition" means any condition caused by exceptional or extraordinary occurrences which creates a high probability of death within the reasonably foreseeable future.

"Newsworthy event" means any incident which has attracted media (television, newspaper or radio) interest.

"Parent" or "guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Serious injury" includes, but is not limited to, any fracture of the skull or long bones, ribs, spine or pelvis; head injury, such as concussion; human bites puncturing the skin or wounds requiring extensive suturing; extensive burns; bodily injury resulting in gastrointestinal symptoms or genital-urinary symptoms; teeth knocked out; injury to the eye; injury causing multiple hematomas; choking injury leaving marks; and any injury requiring hospitalization.

"Under DYFS supervision" means that the child is registered on the DYFS Service Information System as being actively under investigation or receiving DYFS services on the day the injuries or death occurred.

SUBCHAPTER 2. ORGANIZATION OF THE BOARD

10:16-2.1 Authority of the Board

The Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

10:16-2.2 Functions of the Board

(a) The Board shall be multidisciplinary in nature and shall serve to give an objective review of the case circumstances and to develop recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall examine ways to achieve better coordination of effort on child welfare and child protective services cases to promote prevention of serious incidents or deaths of vulnerable children and shall seek the involvement of many different professionals and agencies that provide services to children.

10:16-2.3 Responsibilities of the Board

(a) The Board is responsible for reviewing those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall not participate in any discussion or determination regarding employee disciplinary action.

10:16-2.4 Review by the Board

Board members shall have the authority to review all case materials pertinent to the situation and to interview DYFS and other Department of Human Services staff, as appropriate.

10:16-2.5 Composition of the Board

(a) The Board shall consist of at least five members, in accordance with the following:

1. The Deputy Commissioner, who shall act as chairperson of the Board;
2. The Director of the Division of Youth and Family Services;
3. At least one State government-employed person from within or outside the Department of Human Services, as chosen by the Deputy Commissioner; and
4. At least one non-State government-employed person, who shall participate on a case-by-case basis. This member or members shall be chosen by the Deputy Commissioner from the fields of medicine, child welfare, law enforcement, judiciary, courts, social work or other related fields, including voluntary or child advocacy agencies. The Deputy Commissioner is authorized to choose different persons to serve as Board members in this category on a rotational basis, as necessary and appropriate.

(b) No designee may attend in a member's stead.

(c) The Board may seek the advice of the following persons within or outside State government in a consulting capacity in specific cases: persons skilled in the disciplines of pediatric medicine, forensic medicine, nursing, psychiatry, psychology, social work, child welfare practice or education, law enforcement, judiciary, child or human care advocacy or other related fields, when facts or circumstances of a particular case warrant such additional expertise. The chairperson of the Board may also invite representatives of other public agencies authorized to investigate child abuse and neglect within the provisions of the law (N.J.S.A. 9:6-8.10a) to join the Board in its review of a case.

10:16-2.6 Conflicts of interest

(a) If, in reviewing a child death or critical incident case, a Board member becomes aware of a potential conflict involving a personal or family involvement in the case or of any other issue that would or could jeopardize the objectivity of the review, the member shall discuss his or her concerns with the Deputy Commissioner regarding his or her participation in the review of that case.

(b) If the Deputy Commissioner concludes that there is a conflict that would impede the review's objectivity, the Deputy Commissioner shall require the affected Board member to withdraw from participation in the case under review and select an alternate to serve in his or her place.

10:16-2.7 Quorum

A quorum of the Board shall be not less than three members, or a majority of the current membership of the Board, whichever is greater. Of this quorum, at least two, or a majority of the quorum, whichever is greater, must be members who were appointed under either N.J.A.C. 10:16-2.5(a)3 or (a)4.

SUBCHAPTER 3. PROCEDURES OF THE BOARD

10:16-3.1 Reporting of child death and critical incidents

(a) The Director shall ensure that the chairperson of the Board is kept advised of each situation as described in N.J.A.C. 10:16-1.2, Scope.

(b) The Director shall cause an immediate verbal communication to be transmitted to the chairperson of each occurrence of a situation described in N.J.A.C. 10:16-1.2, Scope, followed by a brief written report within no more than 10 working days after the Director receives knowledge of the incident or death.

10:16-3.2 Internal review

(a) The appropriate local, regional and central offices of DYFS shall complete an internal review of the case no later than 30 working days after receiving knowledge of the incident or death, or sooner if requested by the chairperson of the Board. The internal review may take longer than 30 working days if the delay is caused by circumstances beyond the control of the Division.

(b) After DYFS has completed the internal review of the case, the Director shall inform the chairperson of the status of the case and shall forward to the chairperson and to each Board member a copy of the case materials and the internal review summary.

(c) The chairperson shall schedule a meeting of the Board to discuss the case within 30 working days of receiving the case materials and internal review summary, such meeting to be held within 30 working days after the notice of the meeting is received by the Board members.

10:16-3.3 Case materials

(a) Case materials shall include, as applicable, the following documents:

1. The child's case record;
2. Copies of DYFS Service Information System data;
3. Police, prosecutor, fire, physician, psychologist, psychiatric and hospital records, as applicable and permissible; and
4. Autopsy results and death certificate, when available.

(b) Case materials shall also include information about:

1. The child and his or her family and household;
2. The nature and circumstances of the incident;
3. The nature of DYFS or Department of Human Services involvement with the child, family, or household;
4. A summary of Department of Human Services or other agency responses to the death or incident;
5. A summary of the circumstances leading to the child's death or the incident; and
6. Recommendations regarding the family, the alleged perpetrator, and DYFS or Department of Human Services operations.

10:16-3.4 Periodic summary report

(a) The Board shall periodically, but no less frequently than every two years, prepare for the Commissioner and the Director a summary report of recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The periodic summary report may include the Department's and/or the Division's comments or corrective or follow-up actions that have been or will be taken by the Department of Human Services or by the Division of Youth and Family Services regarding reported situations.

10:16-3.5 Release of periodic summary report

(a) The Commissioner shall release to the public the periodic summary report provided under N.J.A.C. 10:16-3.4 no later than 60 days after he or she receives it.

(b) Any such information released shall in no way contain any direct or indirect personally identifying information about the child or children or their families whose deaths or critical incidents are the basis of the periodic summary report.

10:16-3.6 Confidentiality

(a) All proceedings and records, including reports of the Board's discussions and recommendations, of the Board are confidential, except as herein provided under N.J.A.C. 10:16-3.5, Release of periodic summary report, and are subject to applicable Federal and State laws and regulations governing access to and confidentiality of records. Also, information and materials obtained by Board members and consulting persons are confidential and shall be treated as confidential by Board members and consulting persons.

(b) Upon joining the Board, each member shall complete and sign a sworn statement agreeing to abide by all applicable State confidentiality laws and rules concerning child abuse and neglect. Consulting persons shall complete and sign a similar sworn confidentiality statement when they participate in a Board review. Any persons supplying clerical support to the Board shall also complete and sign a sworn confidentiality statement.

(c) The report of the Board's discussion shall be limited to internal use by the Department and the Division and are not to be released outside of the Department or the Division.

(d) The periodic summary report shall omit any direct or indirect client identifying information.