

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

Chapter 120A, Dispute Resolution, expires on June 12, 2008.

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 As a part of d.274, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, was repealed and new Subchapter 2 was adopted as R.2003 d.274, effective July 7, 2003.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.