

CHAPTER 122E**REMOVAL OF FOSTER CHILDREN AND
CLOSURE OF FOSTER HOMES****Authority**

N.J.S.A. 30:4C-4(h) and 30:4C-26a.

Source and Effective Date

R.2003 d.256, effective June 5, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Chapter Expiration Date

Chapter 122E, Removal of Foster Children and Closure of Foster Homes, expires on June 5, 2008.

Chapter Historical Note

Chapter 122E, Removal of Foster Children and Closure of Foster Homes, was adopted as new rules by R.1993 d.18, effective January 4, 1993 (operative July 1, 1993). See: 23 N.J.R. 3708(a), 25 N.J.R. 127(a).

Pursuant to Executive Order No. 66(1978), Chapter 122E, Removal of Foster Children and Closure of Foster Homes, was readopted as R.1998 d.64, effective December 22, 1997. See: 29 N.J.R. 4275(a), 30 N.J.R. 492(a).

Chapter 122E, Removal of Foster Children and Closure of Foster Homes, was readopted as R.2003 d.256, effective June 5, 2003. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**10:122E-1.1 Authority**

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Human Services, is authorized to establish rules for the removal by the Division of a foster child from a foster home and for the closure of a foster home. Under the above statute, the Division has the discretionary authority to remove a foster child from a foster home at any time with or without the consent of the foster parent, parent or foster child.

Case Notes

Child Placement Review Act was not proper vehicle for resolution of what foster home a child may reside in; issue of removal of child and placed with other foster parents was matter to be resolved by the Director for Division of Youth and Family Services and reviewed by Appellate Division. State in Interest of J.B., 293 N.J.Super. 485, 681 A.2d 668 (Ch.1996).

10:122E-1.2 Purpose

(a) The first purpose of this chapter is to describe when it is appropriate for the Division to remove a foster child from a foster home. A foster child may be removed from a foster home in order to ensure the foster child's safety, to protect the foster child from risk of harm, to ensure that the case goal is implemented, and to ensure that the interests of the Division, the foster child, the parents and the foster parent are considered.

(b) The second purpose is to state the circumstances in which the Division closes a foster home for reasons not related to licensing issues prescribed by N.J.A.C. 10:122C.

Amended by R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

In (a), inserted "to ensure the foster child's safety," preceding "to protect the foster child" in the second sentence; rewrote (b).

10:122E-1.3 Scope

The provisions of this chapter shall apply to each foster child, his or her family, each foster family licensed by the Division for the placement of children under the Division's supervision, and the Division.

Amended by R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Substituted "licensed" for "approved" and inserted "for the placement of children under the Division's supervision,".

10:122E-1.4 Definitions

The definitions in N.J.A.C. 10:122B-1.3 and 10:122C-1.2 and 1.3 are hereby incorporated in this chapter by reference.

Amended by R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).
Amended N.J.A.C. references.

SUBCHAPTER 2. REMOVING THE CHILD FROM THE FOSTER HOME

10:122E-2.1 Removal in emergency situations

(a) The Division representative shall remove a foster child from a foster home when the Division determines that the foster child is not safe in the foster home.

(b) When abuse or neglect of any child in a foster home is substantiated, the office manager may consult with:

1. The Institutional Abuse Investigation Unit of the Division or the Office of the Public Defender acting as the Division's agent in conflict matters, when that unit conducted the child abuse and neglect investigation; and

2. The Bureau of Licensing to determine if the foster home license will be suspended or revoked.

(c) When abuse or neglect of any child in a foster home is substantiated, the office manager shall determine if each foster child is safe in the foster home and then:

1. Determine whether to remove any foster child in the foster home and, if necessary, direct a Division representative to remove the foster child; or

2. Recommend to the Deputy Director, Program Operations, that a foster child continue to be placed in the foster home, based upon the considerations set forth in N.J.A.C. 10:122E-2.5(a).

(d) The Deputy Director, Program Operations, decides whether or not to remove the foster child from the foster home, based on the considerations in N.J.A.C. 10:122E-2.5(a), when child abuse or neglect of any child is substantiated in a foster home.

(e) A foster parent may request an emergency removal of a foster child and the Division representative shall remove the foster child when:

1. The foster child is at risk of harm if he or she remains in the foster home; or

2. The foster family is at risk of harm if the foster child remains in the foster home.

(f) A foster parent may request an emergency removal of a foster child when the foster family is experiencing a personal emergency and is unable to make alternate appropriate plans for the foster child. The Division representative shall respond promptly and shall remove the foster child when necessary.

(g) A foster child may request emergency removal from his or her foster home and the Division representative shall remove the foster child when the foster child is not safe in the foster home.

(h) In all emergency cases, the Division representative shall document in the foster child's case record and the foster home record, the decision to remove or not remove the foster child and shall inform the foster parent, the foster child, the parents and other interested parties of the outcome.

Amended by R.1998 d.64, effective January 20, 1998.

See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

Amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Rewrote the section.

Administrative correction.

See: 36 N.J.R. 1225(a).

10:122E-2.2 Removal in non-emergency situations

(a) The Division representative may remove a foster child from a foster home for any of the following reasons:

1. The foster child's case goal is furthered or achieved by the move or a court order is being followed, for example, return to family, placement in an adoptive home or uniting a foster child with siblings.

2. The foster child has a need which cannot be met by the current foster family.

3. There is documented evidence that the foster family engages in behavior which is detrimental to any foster child.

4. There is documented evidence that the foster family disagrees with the approved case plan and repeatedly fails to cooperate with the Division or to make the foster child available for visits or services which are part of the approved case plan, despite the Division representative's attempts to involve the foster family in remediating the situation.

5. The foster family has a pattern of violating any Division rules, which may have a negative impact on any foster child, despite attempts by the Division representative to ensure compliance.

(b) A foster parent may request that a foster child be removed, giving the Division representative 15 days notice to make suitable alternate arrangements. The foster parent shall state the reason for the request.

(c) A foster child may request to be removed from a foster home. The foster child shall state the reason for the request.

(d) The parent of a foster child may request that the foster child be removed from the foster home. The parent shall state the reason for the request.

Amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Inserted "representative" following "Division" throughout.

10:122E-2.3 Procedures prior to a non-emergency removal

(a) Prior to a non-emergency removal, the Division representative shall interview the foster child, the foster parent, and any appropriate collateral contacts, including the parent, to determine:

1. Information from the foster child about any problems with the placement and his or her preferences;
2. Information from the foster parent about any problems with the placement and his or her preferences;
3. Information from the parent about any problems with the placement and his or her preferences, when the parent requests removal; and
4. Whether support services can remedy the problem.

(b) The Division representative shall inform the foster child, the foster parent, the parent, and any appropriate contacts at least 30 days prior to the move when the foster child will be removed to further or achieve the case goal or as soon as possible when a court order is being followed.

(c) The Division representative shall inform the parent of the need to change placement, if he or she is available.

(d) The Division representative shall remove the foster child within 15 days of the foster parent's request.

(e) When the foster child or parent has requested removal, the Division representative shall discuss the request with supervisory staff. The Division representatives shall make the decision within five days of the request. The Division representative shall inform the foster child or parent of the decision and shall remove the foster child within 15 days of the original request when it is determined that removal will occur.

(f) A Division representative shall document in the child's record and foster home record the decision to remove or not remove the foster child, including the reasons.

Amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

In (e), inserted "representative" following "Division"; in (f), substituted "A" for "The" at the beginning.

10:122E-2.4 Removal due to criminal conviction

(a) The Division representative shall remove the foster children from the foster home when any foster parent or household member has been convicted of a crime listed in N.J.S.A. 30:4C-26.8 in the following circumstances:

1. The foster home has been licensed as being in substantial compliance and a Federal criminal history check is returned to the Division with a conviction of a crime cited in (a) above; or
2. A new foster parent or household member moves into an already licensed foster home with a conviction of a crime as cited in (a) above.

(b) The office manager shall determine whether or not to remove the foster children from a licensed foster home when:

1. Any licensed foster parent or household member has been convicted of a criminal or disorderly persons offense involving crimes not cited in N.J.S.A. 30:4C-26.8; or
2. Any licensed foster parent or household member who has had a completed criminal history check, has been subsequently convicted of a crime cited in N.J.S.A. 30:4C-26.8, pursuant to N.J.S.A. 30:4C-27.8b.

(c) Under the circumstances in (b) above, if the office manager decides it is not in the foster child's best interest to be removed from this foster home, the office manager shall recommend through the Assistant Director, Program or Adoption Operations to the Deputy Director, Program Operations, who may recommend to the Division Director that the foster children continue to be placed in the foster home.

(d) Only the Division Director may approve continued placement of foster children in the foster home under the circumstances listed in (b) and (c) above.

(e) The determination made by the office manager in (b) above, the Assistant Director, Program or Adoption Operations, and the Deputy Director, Program Operations in (c) above and by the Division Director in (d) above shall be based upon the criteria listed in N.J.A.C. 10:122E-2.5(a).

Amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Rewrote the section.

10:122E-2.5 Considerations in deciding whether or not to remove

(a) The Division representative shall consider the following points when deciding whether to remove a foster child, in emergency and non-emergency situations:

1. The age of the foster child;
2. The length of stay in this foster home;
3. The relationship between the foster child and the foster family;
4. The number and impact of prior moves on the foster child;
5. The foster child's adjustment to the extended foster family and community;
6. The foster child's expressed wishes;
7. The foster family's history with the Division and of successful parenting;
8. The availability of support services to maintain the placement;

9. The willingness of the foster family and the foster child to work to overcome problems;

10. The child's injuries for which neither the foster family nor the child can offer a reasonable explanation;

11. The foster family's cooperation or lack of cooperation with any child abuse and neglect investigation;

12. The child's allegations of child abuse or neglect;

13. The foster child's immediate safety;

14. The foster child's risk of future harm; and

15. The location of the foster child's siblings and the ability to keep them together or reunite them or facilitate visits.

(b) A foster child may be removed temporarily from a foster home before or during a child abuse or neglect investigation for the child's protection. If the Division representative makes a finding of either not substantiated or unfounded (as defined in N.J.A.C. 10:129A-3.3(a)), the Division representative shall use the criteria listed in (a) above to determine whether the foster child who has been removed will be returned to the foster home.

Amended by R.1998 d.64, effective January 20, 1998.
See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

In (a), substituted references to children for references to abused or neglected children; and in (b), substituted "Division representative makes a finding of either not substantiated or unfounded (as defined in N.J.A.C. 10:129A-3.3)" for "allegation of child abuse or neglect is not substantiated".

Amended by R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

In (a), inserted "representative" following "Division" in the introductory paragraph, added new 13 and 14, and recodified former 13 as 15; in (b), inserted "for the child's protection" at the end of the first sentence, inserted "representative" following "Division".

10:122E-2.6 Notification

(a) The Division representative shall notify each parent who retains legal rights to the child and any relative who visits, when the foster child will be removed or has been removed in an emergency. The Division representative shall also inform the child's parents as soon as possible after the child is placed.

(b) The Division representative shall notify the Deputy Attorney General responsible for the case when a foster child will be removed or has been removed in an emergency when:

1. The foster child is the subject of a case in litigation; or
2. Commencement of guardianship litigation for the foster child is imminent.

(c) The Division representative shall notify the Child Placement Review Board and the family part of the Chancery Division of the Superior Court when there is a change in placement of any foster child known to the court. The Division representative shall notify the foster child's Law Guardian, if any, when the foster child is removed from a foster home.

(d) The Division representative who removes the foster child shall notify each other Division representative who supervises a foster child in the foster home about the removal.

(e) The Division representative shall inform the foster parent immediately of the removal and the reasons for removal if the foster child was not removed directly from his or her physical care. If there is a difference of opinion between the foster parent and the Division representative regarding the removal, the Division representative shall inform the foster parent in writing of the reasons for the decision, whether the foster parent may have the right to appeal, and that to appeal the removal, the procedures in N.J.A.C. 10:120A shall be followed.

Amended by R.1998 d.64, effective January 20, 1998.
See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

In (e), substituted a reference to N.J.A.C. 10:120A-3 for a reference to N.J.A.C. 10:122E-2.7.

Amended by R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

In (a), added the second sentence; rewrote (e).

10:122E-2.7 Disagreements

The Division representative, the foster child and the foster family shall try to resolve any disagreement before the foster child is removed, unless an emergency removal is necessary.

Amended by R.1998 d.64, effective January 20, 1998.
See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

Deleted former (b) through (e).

SUBCHAPTER 3. CLOSURE OF A FOSTER HOME

10:122E-3.1 Purpose

The purpose of this subchapter is to state additional reasons and procedures for closing a foster home, in addition to those stated in N.J.A.C. 10:122C-2.3.

Repeal and New Rule, R.2003 d.256, effective July 7, 2003.
See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Section was "Reasons for closure of a foster home".

10:122E-3.2 Reasons for closure of a foster home

(a) The Division shall close a foster home when it is determined that the foster home is no longer a viable placement resource for children.

(b) The determination for closure shall be based upon at least one of the following:

1. The foster parent requests that the home be closed;
2. The foster home has been inactive for a period of one year; or
3. The foster family moves out of the State of New Jersey.

Amended by R.1998 d.64, effective January 20, 1998.

See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

In (a)9, substituted a reference to criminal convictions for a reference to unlisted convictions.

Recodified from N.J.A.C. 10:122E-3.1 and amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Rewrote section. Former N.J.A.C. 10:122E-3.2, Considerations for closing a foster home, recodified to N.J.A.C. 10:122E-3.3.

10:122E-3.3 Considerations for closing a foster home

(a) Whenever the Division considers closing a foster home and children are in placement at the time, a determination is made whether to remove all or some of the children in placement prior to the final decision concerning closure based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

Recodified from N.J.A.C. 10:122E-3.2 and amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Deleted (a) and recodified (b) as (a). Former N.J.A.C. 10:122E-3.3, Request for closure by the foster parent, recodified to N.J.A.C. 10:122E-3.4.

10:122E-3.4 Request for closure by the foster parent

(a) A foster parent may request that his or her foster home be closed at any time and for any reason.

(b) When the foster parent requests that his or her foster home be closed, the Division representative shall determine the basis for the request and whether assistance can be provided by the Division representative to ameliorate the condition or circumstances which led to the request for closure.

(c) The Division representative shall discuss with the foster family how the circumstances which led to the request for closure might be remedied.

(d) The Division representative shall close the foster home upon the request of the foster parent, if the foster parent chooses not to continue in the program after this discussion.

(e) If the foster parent chooses to continue in the program, the Division representative shall determine, in consultation with the foster parent, whether additional placements will be made or current children in placement will be removed during the period in which the foster parent's concerns are being addressed. This determination shall be based on the foster family's ability and willingness to provide proper care for foster children during this period.

(f) The Division representative may make, with the foster family's approval, referrals for appropriate services or provide direct services to the foster family, during this period.

Recodified from N.J.A.C. 10:122E-3.3 and amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Inserted "representative" after "Division" throughout. Former N.J.A.C. 10:122E-3.4, Closure due to substantiated abuse or neglect in the foster home, repealed.

10:122E-3.5 Closure due to foster home being inactive for a period of one year

(a) The Division may close a foster home when no placements have been made in the foster home for a period of one year because either:

1. The foster family has requested no placements; or
2. They have repeatedly rejected placements of the type requested.

(b) The Division shall make reasonable efforts to assist a foster family to ameliorate conditions which discourage or preclude the foster family from accepting children for placement.

Recodified from N.J.A.C. 10:122E-3.9 by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Former N.J.A.C. 10:122E-3.5, Closure due to violation of Division rules, repealed.

10:122E-3.6 Closure due to foster family moving out of the State of New Jersey

(a) The Division shall close a foster home when the foster family moves out of the State of New Jersey, unless:

1. Provisions have been made for a foster child already in the foster home to move with the foster family; or
2. The requirements of the N.J.S.A. 9:23-10 through 17, Interstate Compact on Placement of Children, have been met.

Recodified from N.J.A.C. 10:122E-3.10 by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Former N.J.A.C. 10:122E-3.6, Closure due to non-compliance with foster home standards, repealed.

10:122E-3.7 Notification to foster parent

When a foster home is closed, the Division representative shall inform the foster parent in writing of the decision to close the foster home and the reasons for closing the home in accordance with N.J.A.C. 10:120A-2.

Recodified from N.J.A.C. 10:122E-3.12 and amended by R.2003 d.256, effective July 7, 2003.

See: 35 N.J.R. 532(a), 35 N.J.R. 2931(a).

Inserted N.J.A.C. reference. Former N.J.A.C. 10:122E-3.7, Closure due to criminal conviction or domestic violence, repealed.