

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

Chapter 120B, Hearings, expires on December 13, 2011.

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