

CHAPTER 120A
DISPUTE RESOLUTION

Authority

N.J.S.A. 9:3A-7g, 9:3A-9, 30:4C-4.d, and 52:14B-9.1.

Source and Effective Date

R.2016 d.079, effective June 6, 2016.
See: 48 N.J.R. 110(a), 48 N.J.R. 1369(a).

Chapter Expiration Date

Chapter 120A, Dispute Resolution, expires on June 6, 2023.

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part of R.2003 d.274, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, was repealed and new Subchapter 2 was adopted, effective July 7, 2003. See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Chapter 120A, Dispute Resolution, was readopted as R.2009 d.17, effective December 9, 2008. See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 120A, Dispute Resolution, was scheduled to expire on December 9, 2015. See: 43 N.J.R. 1203(a).

Chapter 120A, Dispute Resolution, was readopted as R.2016 d.079, effective June 6, 2016. See: Source and Effective Date. See, also, section 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 Child Protection and Permanency;
2. Identify who may request a dispositional review and describe the procedures for a dispositional review;
3. Identify who may appeal certain Division actions 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.

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.

Amended by R.2009 d.17, effective January 5, 2009.

See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In (a)3, deleted "and agency decisions" following "actions"; and in (a)4, deleted ", when other mechanisms for resolving a dispute, if desired by the appellant, have been exhausted or are not applicable" from the end.

Amended by R.2016 d.079, effective July 5, 2016.

See: 48 N.J.R. 110(a), 48 N.J.R. 1369(a).

In (a)1, substituted "Child Protection and Permanency" for "Youth and Family Services".

10:120A-1.2 Scope

(a) These rules describe the preliminary efforts provided by the Division to resolve disputes regarding:

1. Services provided by or through the local offices;
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. 10:132A.

(b) These rules describe the informal procedures available to resolve disputes through the Division's dispositional reviews.

(c) 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.

(d) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the Office of Licensing, Department of Children and Families, may be appealed in accordance with N.J.A.C. 10:121A-2.3 and 2.4, 10:122-2.5, 10:122C-2.4(d) and 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.

(e) These rules do not govern employee personnel matters.

(f) These rules do not govern issues that are before, or have been resolved by, a trial court with jurisdiction over the matter under dispute.

(g) These rules do not govern questions of fact relating to contractual activities.

(h) 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.

Amended by R.2009 d.17, effective January 5, 2009.

See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In the introductory paragraph of (a), substituted "efforts" for "and informal procedures"; in (a)1, substituted "local offices" for "Division's District Offices and Adoption Resource Centers"; in (a)3 deleted "10:121A-5.6, 10:122B, 10:122C, 10:122E, and" following "N.J.A.C."; added new (b); recodified former (b) through (g) as (c) through (h); in (d), substituted "Office" for "Bureau" and "Department of Children and Families" for "Division of Youth and Family Services" and inserted "10:122C-2.4(d) and 2.5."; and rewrote (g).

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:122B-1.3 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.

"Administrative Hearings Unit" or "AHU" is the hearings unit of the Department 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.

"Agency decision" means any decision of the Division 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.

"Appellant" means the party who is requesting a reversal or modification of a Division action.

"Business days" means the five working days of a week, other than Saturday, Sunday and legal holidays.

"Department" means the Department of Children and Families.

"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 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, an Institutional Abuse Investigation Unit employee 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," a "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 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. 10:133D-1, and limited to: the denial of a request for, or the reduction, suspension, or termination by a Division representative of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: adoption subsidy, child care, discharge planning and aftercare services, domestic violence services, CP&P Legal Guardianship Subsidy Program, educational support, emergency maintenance service, family preservation services, health care services, homemaker service, mentor services, out-of-home placement, post-adoption services, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, substance abuse services, Title XIX Medicaid, or transportation; 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 Division representative to act with reasonable promptness on a request for any of the above services.

"Final agency decision" means:

1. A final decision by the Commissioner or designee pursuant to N.J.S.A. 9:3A-6 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 Review Officer, after a dispositional review conducted in accordance with these rules;
4. A Division action 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 Commissioner or designee granting summary disposition and affirming a Division action.

"Finding" means the final determination made by a child protective investigator and his or her supervisor of the results of a child protection investigation.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision, as defined in N.J.A.C. 1:1-2.1.

"Institutional Abuse Investigation Unit (IAIU)" means the Department unit charged with the responsibility of investi-