

**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.1998 d.64, effective December 22, 1997.  
See: 29 N.J.R. 4275(a), 30 N.J.R. 492(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 122E, Removal of Foster Children and Closure of Homes, expires on June 20, 2003. See: 35 N.J.R. 532(a).

**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. 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 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 ensure that quality foster home resources are retained for the placement of children. Accordingly, clear guidelines are provided for the closure of a foster home when circumstances exist or develop which indicate that the foster parents cannot provide proper and safe care to children placed in the home or do not wish to continue to provide foster care.

**10:122E-1.3 Scope**

The provisions of this chapter shall apply to each foster child, his or her family, each foster family approved by the Division and the Division.

**10:122E-1.4 Definitions**

The definitions in N.J.A.C. 10:122B-1.4 are hereby incorporated in this chapter by reference.

**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 at imminent risk of harm in the foster home.

(b) When abuse or neglect of any child in a foster home is substantiated, the office manager may consult with the Institutional Abuse Investigation Unit of the Division, when that unit conducted the child abuse and neglect investigation.

(c) When abuse or neglect of any child in a foster home is substantiated, the office manager shall:

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 Division Director 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) A foster parent may request an emergency removal of a foster child and the Division 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.

(e) 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 shall respond promptly and shall remove the foster child when necessary.

(f) A foster child may request emergency removal from his or her foster home and the Division shall remove the foster child when the foster child is at imminent risk of harm in the foster home.

(g) In all emergency cases, the Division 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).

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

(a) The Division 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'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 to ensure compliance.

(b) A foster parent may request that a foster child be removed, giving the Division 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.

### 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 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) The 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.

**10:122E-2.4 Removal due to criminal conviction or domestic violence**

(a) The Division shall remove the foster children from the foster home when any foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or when any foster parent or household member has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member, or of a crime of a sexual nature or of any other act of a similarly serious nature.

(b) The office manager shall determine whether to:

1. Remove the foster children from the foster home when any foster parent or household member has been convicted of a criminal or disorderly persons offense involving crimes not cited in (a) above; or
2. Recommend to the Division Director that the foster children continue to be placed in the foster home.

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

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

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

(a) The Division 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 abused or neglected child's injuries for which neither the foster family nor the abused or neglected 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 abused or neglected child's allegations or report of the situation; and

13. 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. If the allegation of child abuse or neglect is not substantiated, the Division 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.

**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.

(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. The Division representative shall also inform the child's parent as soon as possible after the child is placed. If there is a difference of opinion between the foster parent and the Division regarding the removal, the Division representative shall inform the foster parent and the 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. 10:122E-2.7 shall be followed.

**10:122E-2.7 Disagreements**

(a) 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.

(b) When a foster parent disagrees with a decision to remove the foster child, the foster parent shall be informed in writing by a Division representative whether the foster parent has a right to appeal the decision and that the foster parent may request a local dispositional conference. Upon such request, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit, if appropriate. The office manager shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision and that, to appeal the decision the foster parent may request a regional dispositional conference. The office manager shall inform the parent, in writing, of the results of the conference and the reasons for the decision, if the foster child is removed from the foster home.

(c) Upon the request of a foster parent who disagrees with the results of the local dispositional conference, the regional administrator shall hold a regional dispositional conference. The regional administrator shall make a decision and shall inform the foster parent, in writing, of the decision, the reasons for the decision, and that, if the foster parent is eligible under (d) below, the foster parent has a right to further reviews. If the foster parent is not eligible under (d) below, the foster parent shall be advised that the regional administrator's decision is a final administrative determination of the Division.

(d) A foster parent who disagrees with the results of the regional dispositional conference has a right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, Administrative Hearings, to contest the removal of a foster child, if the foster child has been in the foster home continuously for two years or more and if the foster child is not being returned to the parent. See N.J.S.A. 30:4C-26.7.

(e) Notwithstanding the provisions of (b) through (d) above, if the placement of the foster child after removal is the subject of an existing court order or is pending the decision of a court, the foster parent who disagrees with the removal of a foster child shall be informed in writing by a Division representative that the foster parent may request local and regional dispositional conferences, but that such conferences are not required, and that, at the option of the foster parent, he or she may seek to bring the matter directly before the court. There is no right to an administrative hearing, pursuant to the provisions of N.J.A.C. 10:120-2, if the placement of the foster child after removal has been the subject of a court order or is pending the decision of a court.

**SUBCHAPTER 3. CLOSURE OF A FOSTER HOME****10:122E-3.1 Reasons for closure of a foster home**

(a) The Division shall close a foster home when it is determined that the foster home cannot provide proper and safe care to children or 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 Division substantiates abuse or neglect of a child in the foster home by a foster parent or household member;
3. The foster family violates any Division rule through action or inaction which may cause or has caused physical or emotional harm to a foster child;
4. The foster family does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes;
5. A foster parent or household member has a finding of domestic violence as defined in N.J.S.A. 2C:25-1 et seq., or is convicted of a crime or disorderly persons offense;
6. The Division learns that the foster parent has given false information on the foster home application or other documents which impacts on the Division's ability to assess or reassess the foster home;
7. The foster home has been inactive for a period of one year;
8. The foster family has not met the standards agreed to by the end of an established time frame. See N.J.A.C. 10:122C-2.18(a), Division action when a foster home does not comply with written agreement; or
9. The foster family moves out of the State of New Jersey.

**10:122E-3.2 Considerations for closing a foster home**

(a) Before closing a foster home, the Division shall consider the reasons for the proposed closure, the Division's role in those circumstances and the feasibility of maintaining the home as a resource, and shall specifically consider the following:

1. The foster parent's desire to continue foster parenting;

2. Recommendations concerning closure made by Division representatives and others who have knowledge of the foster family based upon formal consultation and discussion, including those directly responsible for the supervision of the children placed in the foster home and responsible for the assessment of the foster home;

3. The circumstances surrounding the incident or conditions that led to the proposed closure, including any mitigating factors and any contributions that the Division may have made to creating, perpetuating or exacerbating the situation;

4. The willingness of the foster family to work with the Division to ameliorate factors contributing to the problem, and the feasibility of doing so;

5. The foster family's history with the Division as it relates to their cooperativeness, forthrightness, ability to resolve problems based upon previous problems in the foster home, and history of successful parenting;

6. The quality of care provided to current and former children placed in the foster home;

7. The length of time that the children currently in foster care have been in the foster home;

8. The potential impact of closure and removal on the well-being of any foster child currently placed in the foster home, based upon consultation with all Division representatives directly responsible for providing supervision to the foster children; and

9. Other unlisted convictions of the foster parent or a household member.

(b) 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.

#### **10:122E-3.3 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 shall determine the basis for the request and whether assistance can be provided by the Division 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 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 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 may make, with the foster family's approval, referrals for appropriate services or provide direct services to the foster family, during this period.

#### **10:122E-3.4 Closure due to substantiated abuse or neglect in the foster home**

(a) When it has been substantiated that any child in the foster home has been abused or neglected by the foster parent or a household member, the office manager may consult with the Institutional Abuse Investigation Unit of the Division when that unit conducted the investigation and determine whether to close the foster home or to recommend to the Division Director that the foster home continue to be used for the placement of children. The determination shall be based upon:

1. The circumstances of the abuse or neglect as described in the protective service investigation report;

2. The specific type of abuse or neglect;

3. Documentation of previously reported incidents of abuse or neglect, whether or not substantiated, and the circumstances pertaining to the incidents;

4. Special circumstances which caused the abuse or neglect and whether these are not likely to be repeated;

5. The feasibility of addressing problems in the foster home that led to the abuse or neglect;

6. The remedial action which may be taken by the foster family or the Division to resolve the problems; and

7. The considerations set forth in N.J.A.C. 10:122E-3.2.

(b) Only the Division Director may approve the continued use of a foster home for the placement of children when abuse or neglect of a child in the foster home has been substantiated. This approval may be given only when conditions which led to the abuse or neglect have been resolved. See N.J.A.C. 10:122C-2.17, Agreement to meet standards after reevaluation.

#### **10:122E-3.5 Closure due to violation of Division rules**

(a) The Division may close a foster home when any Division rule has been violated by the foster family and the violation impacts on the care or potential care of a child in the home.

(b) The Division shall assist the foster family to resolve a violation, when possible.

(c) The office manager shall decide whether to close the foster home based upon the nature of the violation, its impact or potential impact on foster children in the home and the considerations set forth in N.J.A.C. 10:122E-3.2.

**10:122E-3.6 Closure due to non-compliance with foster home standards**

(a) The Division may close a foster home when the foster home does not meet the requirements of N.J.A.C. 10:122C, Approval of Foster Homes.

(b) The Division may assist the foster family to meet the standards in order to preserve the foster home as a placement resource. See N.J.A.C. 10:122C-2.16, Division action when a foster home does not meet standards after reevaluation.

1. The Division representative shall determine whether the non-compliance impacts on the proper care and safety of children currently in placement and determines whether removal is warranted in accordance with N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

2. The Division representative shall inform the foster parent verbally and in writing of the standard that is not being met.

3. The Division representative shall identify with the foster parent methods to achieve compliance with the standard. The Division and foster family shall develop a written agreement which outlines the actions necessary to achieve compliance, including time frames which shall not exceed a six month period. The Division may assist the foster family to achieve compliance by providing information and referral services and special funding. See N.J.A.C. 10:122C-2.16 and 2.17.

4. The Division shall close the foster home when the home does not achieve compliance in accordance with the written agreement, unless the provisions of N.J.A.C. 10:122C-2.18(b) are met.

(c) The Division regional administrator may approve continued use of a foster home which does not comply with the written agreement to enable a foster child to continue placement in the foster home. This approval shall be based upon the provisions of N.J.A.C. 10:122E-2, Removing the Child from the Foster Home.

**10:122E-3.7 Closure due to criminal conviction or domestic violence**

(a) The Division shall close a foster home when a foster parent or household member has a finding of domestic violence, as defined in N.J.S.A. 2C:25-1 et seq., or has been convicted of a crime of violence or a disorderly persons offense on the basis of an act of violence against any child or against a family member or a crime of a sexual nature or any other act of a similarly serious nature.

(b) The office manager shall determine whether to close a foster home when a foster parent or household member has been convicted of a criminal or disorderly persons offense involving other crimes not cited in (a) above or to recommend to the Division Director that the home continue to be used for the placement of children. The determination shall be based upon:

1. The nature of the crime or disorderly persons offense committed and possible impact of the offense on the care and safety of foster children in the home;

2. The amount of time that has passed since the crime or disorderly persons offense was committed;

3. Whether the crime or disorderly persons offense was an isolated or repeated incident;

4. Whether the foster parent or household member successfully completed some course of rehabilitation or treatment related to the criminal or disorderly persons offense; and

5. The age of the person when the crime or disorderly persons offense was committed.

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

**Cross References**

See N.J.A.C. 10:122C-2.15, Foster home closure after reevaluation.

**10:122E-3.8 Closure due to false statement made on the foster home application**

(a) The Division may close a foster home at any time when the Division determines that information provided by the foster parent on the application or some other document is false and the information is pertinent to the Division's assessment or reassessment of the foster home.

1. The Division representative shall discuss the false information with the foster parent in order to obtain an explanation of how and why the false information was provided.

2. The Division shall assess the information provided to determine whether the falsification contributes to the harm or risk of harm to a foster child placed in the home.

(b) The office manager shall be responsible for approving continued use of the foster home when a foster parent has falsified information on the application or other document. The office manager shall give consideration to the provisions of N.J.A.C. 10:122E-3.2.

**10:122E-3.9 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.

**10:122E-3.10 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.

**10:122E-3.11 Notice of outcome of consideration for closure**

(a) The Division shall inform the foster family in writing when a determination has been made to close the foster home, or the foster home has been considered for closure and a determination has been made to keep the foster home open with or without remedial actions. The notification shall include:

1. The anticipated date of closure, when applicable;
2. The reason for closure or consideration for closure;
3. A summary of actions taken by the Division to preclude closure, when applicable;
4. Identification of remedial actions required and the persons responsible for these in order for the foster home to remain open, when applicable; and

5. Information about appealing the decision to close the foster home.

(b) The office manager shall inform verbally and in writing each Division representative who either supervises a foster child in the foster home or is responsible for ongoing assessment of the home when a decision is made to either close a foster home or special approval is given to keep a foster home open.

**10:122E-3.12 Disagreements**

(a) The Division representative and the foster family shall try to resolve any disagreement before a foster home is closed.

(b) When a foster home is closed, the Division representative shall inform the foster parent in writing of the decision to close the foster home, the reasons for closing the home and that the foster parent may request a local dispositional conference.

(c) Upon the request of a foster parent who disagrees with the office manager's decision to close his or her foster home, the office manager shall hold a local dispositional conference, inviting the Institutional Abuse Investigation Unit of the Division, if appropriate, and including the foster parent. The office manager shall make a decision and shall inform the foster parent in writing of the decision, the reasons for the decision, and that, to appeal the decision, the foster parent may request that the regional office hold a regional dispositional conference.

(d) Upon the request of a foster parent who disagrees with the decision of the office manager, the regional administrator shall hold a regional dispositional conference, shall make a decision and shall inform the foster parent in writing of the decision and the reasons for the decision. The decision of the regional administrator is the final administrative determination of the Division.