

4. Emergency services may be continued for an additional 30 days in order to transition the individual to return back to his or her home or to the long-term placement arranged by the agency in coordination with the Division.

5. When emergency services are provided, an IHP shall be developed prior to the individual's return home or to the provision of a long-term placement.

(c) When the Regional Administrator determines that an emergency exists and no emergency services are available, the individual shall be offered a placement in a funded vacancy which can meet his or her basic needs as defined in N.J.A.C. 10:46B-1.3. The Division may provide additional supports in the funded vacancy to meet the individual's basic needs.

1. The individual or legal guardian shall be notified by telephone by the case manager of the offer of emergency placement.

2. The individual or legal guardian shall be required to accept or reject the offer of placement within three working days.

3. The individual or legal guardian may visit the proposed emergency placement, so long as the visit occurs before the response to the offer of emergency placement is due.

4. If there is no response within the required time period, the offer of emergency placement shall be deemed by the Division to be rejected.

5. The Division shall confirm in writing the circumstances of the emergency, the offer of placement and the final disposition of the matter.

6. If an offer of emergency placement is declined, the Division may reevaluate whether there is a need for an emergency placement.

7. When the Division determines that the need for an emergency placement exists, the development of an IHP shall not be required prior to placement.

8. An IHP shall be developed within 30 calendar days following an emergency placement, to plan for an orderly transition to a more permanent placement, unless the IDT confirms the placement will meet the needs of this individual as a long-term placement. If the IDT determines that the placement is inappropriate, the individual shall be placed in the next appropriate Division funded vacancy that becomes available. If no Division funded vacancy becomes available beforehand, the individual shall be added when the Division receives an appropriation for placement.

Amended by R.2001 d.470, effective December 17, 2001.

See: 33 N.J.R. 2434(a), 33 N.J.R. 4354(a).

In (b), rewrote introductory paragraph and added 7; rewrote (d).

Amended by R.2005 d.153, effective May 16, 2005.

See: 36 N.J.R. 3975(a), 37 N.J.R. 1731(a).

Rewrote the section.

10:46B-3.4 Placement of children

(a) The best interests of the child shall be the driving force in any IHP developed.

1. A child may not be added to the priority waiting list unless he or she meets the requirements set forth in N.J.A.C. 10:46C.

(b) Children shall be maintained in their own home whenever possible.

(c) When a child is placed outside his or her own home, he or she shall be placed with a relative whenever possible.

(d) When a child cannot be maintained with his or her immediate or extended family, after a reasonable effort has been made to maintain the child in the home, he or she shall be placed in a family setting, such as a community care home as defined in N.J.A.C. 10:44B, whenever possible. To the extent possible, the child shall be maintained in his or her community.

(e) To the extent possible, the child shall be placed with his or her siblings, except where the child's medical condition or disability would make such a placement clinically inappropriate.

(f) A child may be placed in a congregate setting, such as a group home, only when the Regional Assistant Director certifies that no other placement exists and the placement would be appropriate given the child's needs. No certification by the Regional Assistant Director is required if the Division contracts with that setting for services to children.

(g) The IDT shall meet no less than 30 days following placement to review the needs of the child in the placement and to facilitate visitation by the family.

(h) A child placed outside his or her home has a right to be free from repeated changes in placement before his or her long-term placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in the placement shall be made in accordance with the child's IHP.

(i) The Division shall support the provision of a free and appropriate education for the child and shall participate in meetings to the extent possible within existing resources with the LEA to develop the Individual Education Plan (IEP). Representatives of the LEA shall be invited by the Division to attend meetings to develop the IHP.

(j) The appropriate LEA will provide education unless the child is placed in a State facility. If the child is placed in a State facility, the Office of Education shall provide education. A child is not considered placed in a State facility if he or she is receiving respite services in the facility.

(k) The need for placement shall be evaluated no less than annually at the time of the IHP. At each IHP meeting, the IDT shall consider the possibility of returning the child to his or her family.

(l) Records may be released in accordance with N.J.A.C. 10:41-2.13(a) to assist in the coordination of services between the LEA and the Division.

(m) The child has the right to visit with his or her parents or legal guardian as soon as possible after placement, but no more than 30 days after the placement. The child may have regular visits thereafter.

1. Visitation may be limited when clinically contraindicated or by court order.

2. Any limitation of visits shall be included in the IHP.

3. The Division shall facilitate contact between the child and family using existing and generic resources.

4. The Division's ability to provide direct transportation assistance shall be limited to Division resources.

Amended by R.2001 d.470, effective December 17, 2001.

See: 33 N.J.R. 2434(a), 33 N.J.R. 4354(a).

Rewrote the section.

SUBCHAPTER 4. PLACEMENT DECISIONS

10:46B-4.1 General standards for placement decisions

(a) Appropriations for placements received by the Division may be targeted to specific populations. The budget language may identify the persons eligible for consideration for placement. If no such language is provided, the Division shall be guided by (d) below.

(b) Placements are offered to persons in need of emergency residential services as defined in N.J.A.C. 10:46B-3.3.

(c) When a person has been placed outside the State of New Jersey by the Division, a caregiver, family member, legal guardian or another state or county entity, the Division shall make every effort to return him or her to the State of New Jersey as soon as possible unless the conditions of N.J.A.C. 10:46B-4.3 have been met. The Division shall not be responsible to return the individual to New Jersey until such time as the individual has been found eligible for services and the Division has assumed responsibility for funding.

(d) When a vacancy occurs in an existing program or an appropriation is targeted for a specific population, Division staff shall identify individuals to be placed, using the following criteria and considering any other information pertinent to the needs of the specific individual. No specific weight or priority shall be given to the 10 categories listed below:

1. The age, sex and functioning level of the individual and the geographic proximity of the proposed placement to interested family and/or friends;

2. The present needs of the individual as well as anticipated future needs;

3. Preferences including where the individual wishes to live, with whom the individual wishes to live and how geographically close to family and friends the individual wishes to live;

4. The ability of the placement to meet the individual's needs;

5. The likelihood of the success of the placement, including a review of past clinical or diagnostic history;

6. The stability of the individual's present placement, including how well the placement meets the behavior and/or medical needs of the individual;

7. The availability of a caregiver or parent to continue to provide care;

8. The availability of continued funding of a current placement by a party other than the Division;

9. The potential that the placement will be long term; and

10. Acceptance of the individual by the service provider.

(e) In the instance that a placement is equally appropriate for more than one individual, the placement shall be offered to the individual placed in the Priority Waiting List Category the longest, unless exceptional circumstances warrant otherwise based on each individual's circumstances and need for such services at the time placement becomes available.

(f) Information concerning the individual shall be provided to the individual(s) or agency(s) offering placement. The release of these records to further the individual's habilitation goals is consistent with the requirements of N.J.A.C. 10:41-2.13. Specific authorization from the competent individual or legal guardian shall not be required.

(g) When a placement is offered, the individual, legal guardian and/or family shall be notified by telephone and in writing in accordance with N.J.A.C. 10:46C-1.7. The written notification shall ask that the individual who is competent to make decisions concerning his or her living arrangement or legal guardian respond in writing within 14 calendar days of receipt, whether the offer is accepted or rejected. When the Division agrees that the individual is in need of guardianship services and a family member or the Bureau of Guardianship is pursuing guardianship, the Division shall recognize the proposed guardian as the decision-maker.

(h) When a placement is offered, the individual, legal guardian and/or family shall be given an opportunity to tour the placement and the site of any day programs to be provided.

(i) In the case of residential placements, it is expected in most cases that an overnight visit will occur. The overnight visit may be waived or additional visits required upon mutual agreement of the individual or legal guardian, the Division and the prospective provider.

(j) If a placement is offered and rejected, the Division shall follow the requirements of N.J.A.C. 10:46C-1.7(f).

(k) An IHP shall be developed by the IDT at least 30 days prior to the projected date of placement, except in an emergency. Family members may attend the IHP meeting unless there is an objection by the competent individual or legal guardian.

1. The IHP shall indicate the habilitation goals to be achieved by the placement, and the services needed during the transition.

2. The IHP shall be reviewed and revised as necessary, but not later than 30 days following placement.

Amended by R.2001 d.470, effective December 17, 2001.

See: 33 N.J.R. 2434(a), 33 N.J.R. 4354(a).

In (c), deleted “; an LEA” following “legal guardian”; rewrote (d); in (e), substituted “Priority” for “Urgent”; in (j), deleted “through (k)”; deleted (l).

Case Notes

The ward in a program that his guardian allegedly could no longer afford was not entitled to emergency placement or alternate services by the Division of Developmental Disabilities; the resident was not homeless or in imminent peril, and the guardian was pleased with the arrangements for the resident. *J.D. ex rel. D.D.H. v. New Jersey Division of Developmental Disabilities*, 329 N.J.Super. 516, 748 A.2d 613 (N.J.Super.A.D. 2000).

Community-based placement was appropriate for 23-year-old man who suffered from profound retardation, psychosis, autism, and hyperactivity. *J.E., on Behalf of G.E. v. Department of Human Services*, 96 N.J.A.R.2d (DDD) 55.

Developmental center was most appropriate alternate placement available for petitioner. *M.S. v. Division of Developmental Disabilities*, 93 N.J.A.R.2d (DDD) 5.

10:46B-4.2 Placements in private institutions

(a) Placements in private institutions shall not be made on a routine basis and shall only be approved by the Division Director when the Director determines that the following criteria have been met:

1. The individual cannot be appropriately cared for in any existing Division placement including a developmental center;

2. The private institution is licensed by the state in which it is located;

3. A contract exists between the private institution and the Division; and

4. Funding is available and authorized by the Division Director.

(b) All requests for funding shall be made through the Regional Assistant Director. If the Regional Assistant Director supports the request, he or she shall forward the request to the Division Director. If the Regional Assistant Director does not support the request, he or she shall document the reasons for lack of his or her support in the client record. The individual may appeal this decision in accordance with N.J.A.C. 10:46B-5.1.

(c) The Director shall communicate his decision to the Regional Assistant Director in writing.

(d) When the Division assumes responsibility for funding residential services in a private institution, planning for that individual's return from the private institution to a New Jersey community placement shall begin.

(e) A transition IHP shall be developed to assist the person's transfer to a community placement in New Jersey.

(f) When the Division has located a placement in New Jersey other than the private institution, the Division shall offer the placement, in writing, to the individual or legal guardian.

1. The individual and his or her legal guardian shall plan with the Division for the return of the individual to a New Jersey community placement.

2. The New Jersey placement shall be contingent upon a successful overnight visit by the individual to the offered placement, if such a visit is required by N.J.A.C. 10:46B-4.1(i).

3. The individual's legal guardian, if any, shall be invited by the Division to visit the proposed placement.

4. Once a successful overnight visit has occurred, if a visit is required by N.J.A.C. 10:46B-4.1(i), admission to the New Jersey placement may be scheduled by the Division.

5. If the individual or legal guardian does not agree to plan with the Division to return the individual to a community placement in New Jersey, which shall include an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding at the private institution within 90 days. At the same time, the Division shall also notify the private institution of the date on which funding will cease. The individual shall remain eligible for other services from the Division.

6. If the individual or legal guardian reconsiders and agrees to cooperate in planning for the return of the

individual to New Jersey, the Division shall withdraw its notice to cease funding.

Amended by R.2001 d.470, effective December 17, 2001.

See: 33 N.J.R. 2434(a), 33 N.J.R. 4354(a).

In (b), added the last sentence; rewrote (d); in (e), deleted "return to" preceding "New Jersey"; in (f)5, deleted "competent" following "If the" and substituted "At the same time, the" for "The" preceding "Division shall also".

Amended by R.2005 d.153, effective May 16, 2005.

See: 36 N.J.R. 3975a(), 37 N.J.R. 1731(a).

Rewrote (a); in (d) and (f)1, inserted references to community placement following "New Jersey".

10:46B-4.3 Private out-of-State placements (POSP)

(a) When an individual has been identified for placement pursuant to N.J.A.C. 10:46B-4.1 or is in need of an emergency placement and has been in a POSP for at least one year and the individual has requested funding by the Division in a POSP, the Division may defer plans for his or her return to the State of New Jersey if the following conditions have been met.

1. The person is on the priority waiting list and there is funding available;
2. The individual or legal guardian requests that the POSP be continued;
3. The Division determines that the person is appropriately placed in the POSP;
4. The individual is over 21 years of age; and
5. The cost of the POSP is at or below the cost of the current average community placement in New Jersey, as determined by the Division. The Division shall announce that amount annually in the New Jersey Register at the beginning of each fiscal year.

(b) If the conditions in (a) above are met, the Division shall defer a plan to return the individual to New Jersey, as long as the person remains appropriately placed and the cost of the placement remains at or below the cost of the current average community placement in New Jersey. The placement shall be reviewed annually at the time of the IHP.

(c) The Division shall not fund placement in the POSP if it is determined by the Division to be inappropriate to meet the needs described in the IHP.

(d) If the Division does not fund the placement for any of the reasons in (a) above, the Division will plan to return the individual to an available placement in New Jersey.

(e) The POSP shall maintain an appropriate license, certificate or other approval by the state in which it is located. Loss of the required license, certification or approval shall be grounds for immediate return of the individual to New Jersey.

(f) The Division's Chief Fiscal Officer shall ensure that a copy of the appropriate license, certification or approval is obtained annually.

(g) The POSP shall agree in writing to provide to the Division a copy of all reports of unusual incidents involving the person placed, as a condition of continued placement.

(h) If the conditions in this section cannot be met, the Division shall give the individual or legal guardian the option to seek a transfer through the Interstate Compact or to apply directly to the state in which the person is located, if the person wishes to remain out-of-State.

(i) When one of the criteria in this section is not met and it is determined by the Division that the individual must be returned to New Jersey, a transition IHP shall be developed by the Division to assist the person in his or her return to New Jersey.

(j) When a placement in New Jersey has been identified, the Division shall offer a placement in writing, consistent with the IHP, to the individual or legal guardian. The individual and his or her legal guardian shall be invited to visit the proposed placement.

(k) It is expected that an overnight visit to the proposed placement shall occur. The overnight visit may be waived or additional visits required by mutual agreement of the individual or legal guardian, the Division and the proposed provider.

(l) If the individual or legal guardian does not plan with the Division to return the individual to New Jersey and to participate in an overnight visit, the Division shall determine that it cannot implement the IHP. The individual or legal guardian shall be notified in writing that the Division shall cease funding the POSP within 90 days. The Division shall also notify the POSP in writing of the date funding will cease. The individual shall continue to remain eligible for other services of the Division.

(m) If the individual or legal guardian reconsiders and agrees to cooperate in planning for the return of the individual to New Jersey, the Division shall withdraw its notice to cease funding.

Amended by R.2001 d.470, effective December 17, 2001.

See: 33 N.J.R. 2434(a), 33 N.J.R. 4354(a).

In (a), substituted "priority" for "urgent" in 1 and added the second sentence in 5; in (b), deleted the last sentence; rewrote (f).

Amended by R.2005 d.153, effective May 16, 2005.

See: 36 N.J.R. 3975(a), 37 N.J.R. 1731(a).

In (a), rewrote 1.

SUBCHAPTER 5. APPEALS

10:46B-5.1 Placement appeals

(a) Placement decisions may be appealed in accordance with N.J.A.C. 10:48.