

CHAPTER 120A
DISPUTE RESOLUTION

Authority

N.J.S.A. 30:1-9 et seq., 30:1-12, 30:4C-4, 26a and 49 and 52:14B-4(b), and N.J.A.C. 10:6-1.

Source and Effective Date

R.1998 d.71, effective February 2, 1998.
See: 29 N.J.R. 4263(a), 30 N.J.R. 542(b).

Executive Order No. 66(1978) Expiration Date

Chapter 120A, Dispute Resolution, expires on February 2, 2003.

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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 regulated by the Division, to resolve disputes with the Division of Youth and Family Services;

2. Identify who may request a dispositional conference and describe the procedures for a dispositional conference;

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-2.2, 4.1 and 4.2, when other mechanisms for resolving a dispute, if desired by the appellant, have been exhausted or are not applicable.

10:120A-1.2 Scope

(a) These rules describe the informal and formal procedures provided by the Division to resolve disputes regarding services provided by or through the Division's District Offices and Adoption Resource Centers, disputes regarding findings made by the Division in child protective service investigations, disputes regarding status issues for service providers regulated by the Division in accordance with N.J.A.C. 10:121A-5.6(c), 10:122B, 10:122C, 10:122E, and the procedures for requesting formal resolution through the OAL for contested and uncontested matters, in accordance with N.J.A.C. 1:1.

(b) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the Bureau of Licensing, Division of Youth and Family Services, may be appealed in accordance with N.J.A.C. 10:122-2.5, 10:124-1.6, 10:127-2.4 or 10:128-2.4 and, consequently, are not covered by these rules.

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

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

(e) These rules do not govern appellants entitled to dispute resolution in accordance with N.J.A.C. 10:3-4 regarding Department of Human Services actions or inactions, or questions of fact relating to contractual activities.

(f) These rules do not govern across the board service reductions or terminations that are the result of reductions in Federal or State funding.

10:120A-1.3 Definitions

The definitions in N.J.A.C. 10:122B-1.4 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 and 10:6.

“Administrative Hearings Unit” or “AHU” is the hearings unit of the Division 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 and for hearing appeals of substantiated findings of child abuse and neglect as determined by the Division’s Institutional Abuse Investigation Unit.

“Adoptive parent” means a person with whom the Division has placed a child for adoption or who has adopted a child through the Division.

“Agency decision” means any decision of the Division subject to further appeal made as the result of a dispositional conference and which is not a final agency decision.

“Appeal” means a request for modification or reversal of a Division action or an agency decision.

“Appellant” means the party who is requesting a reversal or modification of a Division action or an agency decision.

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

“Dispositional conference” means an independent examination of a Division action that is conducted by a Review Officer at either the regional or central office level who was not involved in making or approving the original Division action, by convening a meeting of the relevant parties in the action under dispute or by examining the relevant records and documents in accordance with N.J.A.C. 10:6-1.4.

“Division action” means a decision, plan or conduct by a Division representative within the scope of the individual’s official duties, which results in a “Division service issue,” “status issue” or contested case as specified in N.J.A.C. 10:120A-4.2, but does not include an “agency decision” or 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. 10:121-2.4, 10:133C-4, and 10:133D-2, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division District Office or Adoption Resource Center of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E: adoption subsidy, child care, homemaker service, Title XIX Medicaid, post-adoption services, emergency maintenance service, family preservation services, out-of-home placement, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, transportation, or 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 DYFS District Office or Adoption Resource Center to act with reasonable promptness on a request for any of the above services.

“Final agency decision” means a final decision by the Director that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final agency decision by operation of N.J.S.A. 52:14B-10, or a decision by the Deputy Director, Assistant Director or Regional Administrator at the designation of the Director, after a dispositional conference or record or document review conducted in accordance with these rules when the appellant is not eligible for or does not choose to exercise his or her right to further dispute resolution opportunities.

“Institutional Abuse Investigation Unit (IAIU)” means the Division unit charged with the responsibility of investigating allegations of abuse or neglect in out-of-home settings excluding DYFS operated facilities.

“Office of Administrative Law (OAL)” means the office in but not of the Department of State in which an administrative law judge presides during administrative hearings, established under N.J.S.A. 52:14F-1 et seq.

“Record and document review” means a review by a Review Officer of the relevant documents and records related to a Division action under dispute.

“Reduction” means the action or decision of the Division about a service determined by the Division to be necessary for the achievement of the case goal, which action or decision causes the client to receive fewer hours or units of a service or a decrease in the level of adoption subsidy payments than the client had been receiving immediately prior to the action being taken. Reduction does not include a change in provider or location of the service or a change in the schedule of the service that does not also cause fewer hours or units of the service.

“Relative” means a birth or adoptive brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, first cousin, niece, nephew, as well as relatives of half blood or marriage and those denoted by the prefixes “grand” and “great” including grandparent or great-grandparent and limited to those having a history of being active in planning for the child’s future.

“Review Officer” means a Division representative who was not involved in the actions or decisions being appealed and who is charged with the responsibility of conducting a dispositional conference as authorized by these rules.

“Service providers” means Division foster parents and Division adoptive parents.

“Sibling” means birth brother or sister, half brother or sister, legal brother or sister and step-brother or sister.