

(b) The notice of complaint shall contain:

1. A reference to the particular sections of the statute, regulation or rule alleged to have been violated;

2. A concise statement of the facts giving rise to the alleged statutory, regulatory or rule violation. Should the complainant not have details sufficient to state the facts at the time notice is served, a statement of issues involved is sufficient until details are available but a statement of facts must be served upon respondent a minimum of five business days prior to the date of hearing as provided in N.J.A.C. 10:120-1.6;

3. A statement of the relief sought by the complainant; and

4. A statement that the respondent may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1.

10:120-2.6 Service of notice of complaint

(a) Where a party, other than the Division, is an individual, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to the last known place of business, residence or abode, within or without this State of such party from whom said receipt is requested, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return of receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice;

3. By leaving a copy thereof at such person's dwelling house or usual place of abode with a competent member of his or her household of the age of 14 years or over residing therein; or

4. By delivering a copy thereof to a person authorized by appointment or by law to receive service of process on his behalf.

(b) Where a party, other than the Division, is a corporation, service is effective either:

1. Upon mailing a copy of the notice of complaint by certified mail, return receipt requested, to any person authorized by appointment or by law to receive service of process on behalf of the corporation at the registered office or principal place of business of the corporation, except that no default shall be entered for failure to appear unless service is effected under another provision of this subsection, or unless a return receipt requested is received with the appropriate signature;

2. Upon personal delivery of the notice on either an officer, director, trustee or managing or general agent;

3. Upon personal delivery thereof on any person authorized by appointment or by law to receive service of process on behalf of the corporation;

4. Upon personal delivery of the notice on the person at the registered office of the corporation; or

5. Upon personal delivery of the notice on any servant of the corporation within this State acting in the discharge of his or her duties.

(c) If personal service cannot be effectuated after due diligence and an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served and submits an affidavit indicating the facts supporting the averment that personal service or service by certified mail has been attempted with due diligence but has failed.

10:120-2.7 Conduct of hearings

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:120-2.8 Director's review and final decision

(a) Upon receipt of the initial decision and any exceptions submitted by any party, the Director shall review the record and issue the final decision.

(b) The Director's final decision shall be rendered not later than 15 business days after the deadline for filing objections. Service shall be either by personal service or by sending a copy of the decision by certified mail, return receipt requested, to the last known address of the party and, where applicable, to counsel no later than five business days following the rendering of such decision. Service shall be effective upon personal service, or upon receipt of the decision by the parties as evidenced by the return receipt.

(c) If an addressee refuses to claim or accept delivery of certified mail, service may be made by ordinary mail addressed to him or her, after the Director or his or her representative is convinced through investigation that the refusing addressee is the addressee intended to be served.

10:120-2.9 Appeal of final decision

The Director's decision shall be the final determination concerning the subject matter of the hearing. Any appeal of such decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey court rules.

SUBCHAPTER 3. FAIR HEARING GUIDELINES

10:120-3.1 Right to fair hearings

(a) It is the right of every applicant for or recipient of a Title XX funded social service to request and have a fair hearing in the manner established by this subchapter. The availability of a local administrative review shall be in addition to an independent of the right to a fair hearing.

(b) A copy of the pamphlet "How to Request a Fair Hearing" shall be furnished to every applicant for services at the time of application and to any client upon his or her request at the time of any adverse action.

(c) The pamphlet shall include an explanation of the client's right to a conference, right to a fair hearing, and the circumstances under which service is continued if a fair hearing is requested. Whenever possible, the client shall be advised verbally of his or her right to a fair hearing in addition to the receipt of the printed pamphlet.

(d) The fair hearing shall include consideration of the following:

1. Any agency action, or failure to act with reasonable promptness, on a request for services, which includes undue delay in reaching a decision on eligibility or in the provision of services;
2. Any agency decision regarding eligibility for services in both initial and subsequent determinations; and
3. Any agency action resulting in a suspension or reduction of services.

(e) The right to a fair 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 application by foster parents for placement of a child for adoption, pursuant to N.J.S.A. 30:4C-26.7, which gives foster parents, who have cared for a child continuously for a period of two years or more, preference and first consideration to their application over all other applications for adoption placements.

Case Notes

Decision to terminate increasingly aggressive and unruly child from program at day care center was not unreasonable. Mile Square v. M.G., 95 N.J.A.R.2d (DYF) 4.

10:120-3.2 Notification of right to fair hearing

(a) All notifications of agency 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. In adverse decisions, the notifications shall include, as a basis for agency action, one or more of the following references:

1. Statutory basis; and/or
2. Regulatory reference or citation.

(b) In addition to the basis for the agency action cited above, the notification may also include:

1. State plan (including budgetary provisions);
2. Social service transmittal; and/or
3. Policy memorandum.

(c) 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 fair hearing, action may not be implemented until 10 days after the mailing of the notice of intent to suspend, reduce or terminate services.

2. Adequate means the notice must be written to include: a statement of the proposed agency action, the reason for the agency action and the specific regulations supporting the agency action; a statement explaining the individual's right to a fair hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1; and an explanation of the conditions under which services will continue until the date of hearing.

(d) The agency may dispense with timely notice, but shall send adequate notice no later than the date of action when:

1. The agency has factual information confirming the death of the client;
2. The agency 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 determination 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;