

**CHAPTER 132A**  
**LEGAL GUARDIANSHIP**

**Authority**

N.J.S.A. 3B:12A-1, 3B:12A-6f, 30:4C-4(h), 30:4C-12.1,  
30:4C-84 through 88, and 44:10-44 through 54.

**Source and Effective Date**

R.2008 d.364, effective October 31, 2008.  
See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 132A, Legal Guardianship, expires on April 28, 2016. See: 47 N.J.R. 3094(a).

**Chapter Historical Note**

Chapter 132A, Legal Guardianship, was adopted as new rules by R.2003 d.169, effective May 5, 2003. See: 34 N.J.R. 3046(a), 35 N.J.R. 1904(b).

Chapter 132A, Legal Guardianship, was readopted as R.2008 d.364, effective October 31, 2008. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 132A, Legal Guardianship, was scheduled to expire on October 31, 2015. See: 43 N.J.R. 1203(a).

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**SUBCHAPTER 1. DYFS LEGAL GUARDIANSHIP  
SUBSIDY PROGRAM**

**10:132A-1.1 Purpose of N.J.A.C. 10:132A-1 and 2**

The purpose of this subchapter and N.J.A.C. 10:132A-2 is to establish the DYFS Legal Guardianship Subsidy Program within the Division of Youth and Family Services. The program provides financial support and permanency to children placed by the Division with a relative or family friend who subsequently obtains kinship legal guardianship through the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 et seq.

**10:132A-1.2 Scope of N.J.A.C. 10:132A-1 and 2**

The provisions of this subchapter and N.J.A.C. 10:132A-2 apply to each child whose participation in the DYFS Legal Guardianship Subsidy Program is approved or is being evaluated, each relative or family friend who agrees to participate or is being evaluated to participate in the program, each other household member, each parent of a child who participates or is being evaluated to participate in the program, and each Division representative.

**10:132A-1.3 Definitions**

(a) The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this chapter by reference.

(b) The following words and terms shall have the following meaning in this chapter and not the meaning defined in N.J.A.C. 10:133-1.3:

“Parent” means a person who is the mother or father of a child through birth or adoption.

“Relative” means any person, other than the child’s parent, who is related to the child through blood, marriage, adoption, civil union, or domestic partnership and including a stepparent, or a “family friend,” as defined in N.J.A.C. 10:133-1.3.

(c) In addition, the following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

“Household member” means an adult or child who resides either full-time or part-time in the home of a relative who participates in the DYFS Legal Guardianship Subsidy Program.

“Placed by the Division” means a Division representative determined that a child could not remain in his or her own home, the Division had legal authority for removal of the child, and a Division representative physically located or arranged for the child to be placed in a relative’s home.

“Program” means the DYFS Legal Guardianship Subsidy Program, as defined in N.J.A.C. 10:133-1.3.

Administrative correction.

See: 35 N.J.R. 3360(a).

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

In (b), in definition “Relative”, substituted “blood, marriage, adoption, civil union, or domestic partnership” for “blood or marriage or adoption”; in (c), in definition “DYFS Legal Guardianship Subsidy Program”, deleted “or family friend” following “relative”; in definition “Household member”, substituted “participates” for “agrees to participate”; deleted definition “Income”; and in definition “Placed by the Division”, inserted “placed” and deleted “the care of a public or private facility or” preceding “a relative’s home”.

Amended by R.2010 d.108, effective June 21, 2010.

See: 42 N.J.R. 120(a), 42 N.J.R. 1204(a).

In (c), deleted definitions “DYFS Legal Guardianship Subsidy Program” and “Kinship caregiver assessment”; and added definition “Program”.

#### 10:132A-1.4 Service limitations

The availability of the program established by this chapter is subject to the continued availability of funding.

#### 10:132A-1.5 Responsibilities of a relative participating in the DYFS Legal Guardianship Subsidy Program

(a) A relative who agrees to participate in the program shall provide accurate information and submit documents the Division determines necessary to confirm eligibility and meet the program standards for the program in accordance with N.J.A.C. 10:132A-1.6 and 1.7.

(b) A relative approved for the program shall:

1. Provide accurate information and submit documents the Division determines necessary to confirm continued eligibility for the program in accordance with N.J.A.C. 10:132A-1.9;
2. Report to a Division representative any changes in circumstances, which may affect eligibility for the program, including a change in household composition, prior to the change if possible or immediately thereafter; and
3. Cooperate with the rules of the program contained in this chapter.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

In (b)2, inserted a comma following “circumstances” and inserted “including a change in household composition”.

#### 10:132A-1.6 Eligibility for the DYFS Legal Guardianship Subsidy Program

(a) When the Division determines kinship legal guardianship as a permanent plan for the child, the Division representative advises a relative interested in the DYFS Legal Guardianship Subsidy Program of the requirements for eligibility and the circumstances that require termination of the program.

(b) A child is eligible for the DYFS Legal Guardianship Subsidy Program when:

1. A Division representative placed the child with a relative due to safety or risk of harm issues and the Division had legal authority for placement through a court order;
2. The relative is related to the child through blood, marriage, adoption, civil union, or domestic partnership or is a family friend as defined at N.J.A.C. 10:133-1.3;
3. A Division representative made reasonable efforts when required to reunify the child and the parent;
4. The Division representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible;
5. The relative has obtained kinship legal guardianship, pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-5; and
6. The relative’s home meets the program standards articulated in N.J.A.C. 10:132A-1.7, for as long as the subsidy is paid.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

In (a), substituted “When the Division determines kinship legal guardianship as a permanent plan for the child, the” for “The” and substituted “that” for “which”; in (b)1, deleted “consent of the parent or” following “through”; in (b)2, substituted “blood, marriage, adoption, civil union, or domestic partnership” for “blood or marriage or adoption”; in (b)3, deleted “, in accordance with N.J.A.C. 10:133I” following “parent”; deleted former (b)5; recodified former (b)6 as (b)5; in (b)5, deleted “interested in being approved for the program” following “relative”; added new (b)6; and deleted (b)7.

#### 10:132A-1.7 Program standards

(a) The Division requires a relative interested in being approved for the program to meet the following standards in order to be approved for the DYFS Legal Guardianship Subsidy Program:

1. The relative agrees to comply with the responsibilities of the program by signing the agreement;
2. The relative is at least 18 years of age;
3. No household member has been responsible for an incident of sexual abuse of a child or an incident of child abuse or neglect, which caused death, serious injury or harm, or significant risk of serious injury to a child;
4. The child’s parent does not reside in the relative’s home, unless an exception is made by the DYFS Director or his or her designee for those rare and limited circumstances including, but not limited to, where the parent is dependent upon the caregiver because he or she is a minor

or developmentally challenged and not capable of residing independently;

5. No household member has been convicted of a crime specified in N.J.S.A. 30:4C-26.8;

6. The relative discloses any criminal convictions of each juvenile member of the household. The Division representative assesses the safety of a child placed with this relative in relation to the criminal convictions of any juvenile living with the relative;

7. If employed outside the home, the relative has an acceptable plan for care and supervision of the child during the relative's absence from the home;

8. There is no indication of health, safety, or fire hazards in or around the relative's home;

9. Sleeping arrangements for the child are adequate, including privacy appropriate to the age and needs of the child;

10. There is no indication that the relative or any other household member has personal characteristics or conduct which, in the judgment of the Division representative, would jeopardize the health or safety of the child;

11. The Division representative advises the relative that the Division encourages the use of fair, reasonable, and consistent discipline to enhance or modify the child's behavior and strongly discourages the use of corporal punishment, and the relative agrees to this standard;

12. The relative has adequate income to support himself or herself and each household member, excluding each child in placement, without the addition of the maintenance payment from the DYFS Legal Guardianship Subsidy Program;

13. The relative agrees that all money received from the program will be used for the ongoing care of the child; and

14. The relative understands the child's need for protection and permanency and agrees to comply with conditions in the kinship legal guardianship court order regarding safety for the child.

Amended by R.2008 d.364, effective December 1, 2008.  
See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

Rewrote (a)2 and (a)3; added new (a)4; recodified former (a)4 and (a)5 as (a)5 and (a)6; in (a)5, deleted "or any other crime or offense which could pose a risk of harm to the child"; in (a)6, deleted "age 14 years or older" following "household"; recodified former (a)6 through (a)10 as (a)7 through (a)11; added new (a)12; and recodified former (a)11 and (a)12 as (a)13 and (a)14.

#### 10:132A-1.8 Division action

(a) The Division representative shall approve the child and the relative for participation in the DYFS Legal Guardianship Subsidy Program if all eligibility requirements in N.J.A.C. 10:132A-1.6 and all program standards in N.J.A.C. 10:132A-1.7 are met.

(b) The Division representative shall advise a relative of a child whose case goal is kinship legal guardianship who is not approved to participate in the DYFS Legal Guardianship Subsidy Program, in writing, of:

1. The reason for disapproval and any acceptable timely remedies of the reason for disapproval;

2. The opportunity for dispute resolution in accordance with N.J.A.C. 10:132A-1.11; and

3. Information regarding any agency that may be able to provide benefits for the child, such as the county welfare agency and the Office of the Kinship Navigator in the Division of Family Development.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

In the introductory paragraph of (b), inserted "of a child whose case goal is kinship legal guardianship"; and rewrote (b)1.

#### 10:132A-1.9 Circumstances requiring redetermination

(a) Approval of the child continuing to participate in the DYFS Legal Guardianship Subsidy Program is redetermined:

1. Annually to confirm that the relative remains legally responsible for the child and the child's support and that the child's parent does not reside in the home, unless an exception has been previously granted by the DYFS Director or his or her designee; and

2. Whenever information becomes available to the Division representative that there has been a change in circumstances that may affect eligibility for the program in accordance with N.J.A.C. 10:132A-1.6 or that may indicate that program standards are no longer being met in accordance with N.J.A.C. 10:132A-1.7.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

Rewrote (a)1.

#### 10:132A-1.10 Circumstances requiring termination

(a) The child's participation shall be terminated from the DYFS Legal Guardianship Subsidy Program when:

1. The child reaches age 18 or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later;

2. The legal guardian adopts the child;

3. The relative approved for the program no longer provides the child's support or the child no longer lives with that relative;

4. Each relative approved for the program is deceased; or

5. The court has vacated the kinship legal guardianship order.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

Deleted former (a)3; recodified former (a)4 and (a)5 as (a)3 and (a)4; in (a)3, substituted "or" for "and" following "support"; in (a)4, inserted "or" at the end; deleted former (a)6; and recodified former (a)7 as (a)5.

### 10:132A-1.11 Dispute resolution

(a) A relative caring for a child whose goal is kinship legal guardianship and whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose approval is terminated may request a dispositional review of the denial or termination. A child whose participation in the DYFS Legal Guardianship Subsidy Program is denied or whose participation in the program is terminated or a person named to act on the child's behalf in N.J.A.C. 10:120A-3.1(a)1 or 2 may request a dispositional review of the denial or termination in accordance with N.J.A.C. 10:120A.

1. The court's award of kinship legal guardianship is separate from the determination of eligibility for the DYFS Legal Guardianship Subsidy Program. Dispute resolution through these rules is not available for court actions.

Amended by R.2008 d.364, effective December 1, 2008.  
See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).  
Rewrote the section.

## SUBCHAPTER 2. SERVICES PROVIDED

### 10:132A-2.1 Types of services provided

(a) The DYFS Legal Guardianship Subsidy Program:

1. Provides a maintenance payment that equals the rate paid for a child in resource family care, excluding any specialized rates, for each child approved for participation in the program; and

2. Ensures that each child approved for participation in the program has health care coverage through the Division or other sources available to the child.

(b) The program provides no maintenance payment or health care coverage for any time prior to the date of the award of kinship legal guardianship through the Kinship Legal Guardianship Act at N.J.S.A. 3B:12A-5.

(c) The Division shall renegotiate the amount of the maintenance payment to a maximum of \$250.00 per month for up to one year when:

1. A child in the program is living in a treatment facility;

2. The plan is to return the child to the relative at the conclusion of the treatment; and

3. The relative is actively participating in the child's treatment plan.

(d) The program does not provide placement-related activities, administrative activities or services other than those

stated in (a) above from the Division. A child participating in the DYFS Legal Guardianship Subsidy Program is not subject to the placement review requirements of N.J.S.A. 30:4C-50 et seq. and N.J.A.C. 10:133H-3.

(e) These rules shall not be construed to negate a child's right to receive child protective services and child welfare services from the Division, as necessary to ensure the child's health and safety, based upon the Division representative's assessment of the needs of the child.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

Rewrote (a)1; added new (c); and recodified former (c) and (d) as (d) and (e).

## SUBCHAPTER 3. DIVISION RESPONSIBILITIES UNDER THE LAW

### 10:132A-3.1 Purpose

The purpose of this subchapter is to state the Division's responsibilities pursuant to the Kinship Legal Guardianship Act, N.J.S.A. 3B:12A-1 et seq. and 30:4C-84 et seq.

### 10:132A-3.2 Scope

The provisions of this subchapter apply to each Division representative responsible for the activities described in this subchapter.

### 10:132A-3.3 Kinship caregiver assessment done by the Division

(a) The Division shall provide the court with a kinship caregiver assessment pursuant to the Kinship Legal Guardianship Act at N.J.S.A. 30:4C-85, when a relative is seeking kinship legal guardianship for a child:

1. Who was removed from the child's home by a Division representative at least 12 months prior to the date the kinship caregiver assessment is requested;

2. Who has an open or currently active case with the Division and where legal representation is being provided by the Office of the Public Defender either through its Law Guardian Program or Parental Representation Unit; or

3. Who has an otherwise open or currently active case with the Division.

(b) The Division representative shall complete a kinship caregiver assessment and assist a relative with an open or currently active case with the Division to petition the court for kinship legal guardianship when:

1. No Division representative placed the child with the relative; and

2. The Division representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible.

(c) The provisions of (a) and (b) above shall not apply when the Division is actively investigating a child protective service referral.

(d) A Division representative shall conduct the kinship caregiver assessment at no cost to the relative seeking kinship legal guardianship.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

In (a)1, substituted "at least" for "within".

#### **10:132A-3.4 Information provided to a designated agency and the court**

(a) A Division representative shall provide the agency designated to complete the kinship caregiver assessment pursuant to N.J.S.A. 30:4C-85b with information regarding any current involvement of the Division when the Division is not providing the kinship caregiver assessment in accordance with N.J.A.C. 10:132A-3.3.

(b) A Division representative shall provide the court with the results of a child abuse record information check and a domestic violence check for the relative seeking kinship legal guardianship and each adult household member when the Division is not providing the kinship caregiver assessment in accordance with N.J.A.C. 10:132A-3.3.

(c) Division staff shall conduct the child abuse record information check and domestic violence check at no cost to the relative seeking kinship legal guardianship.

#### **10:132A-3.5 The Division's responsibility when the court is considering whether to vacate a kinship legal guardianship order**

(a) The Division representative prepares a parenting assessment of a child's parent when the court is determining whether the kinship legal guardianship order should be vacated and the child returned to his or her parent and one of the following occurs:

1. The court requests the parenting assessment because the Division was originally involved in petitioning the court to grant kinship legal guardianship in accordance with N.J.A.C. 10:132A-3.3(a) and (b); or

2. There is prima facie evidence to support vacating the kinship legal guardianship order and the Division wants to take a position on the parent's motion to vacate the kinship legal guardianship order.

(b) The Division determines whether to take a position on the motion after evaluating the factors listed in N.J.A.C. 10:132A-3.6.

(c) When preparing a parenting assessment, the Division representative shall review the Division's computerized records. If further information is needed, the Division representative shall review the child's and the guardian's case files. If the Division representative finds it necessary, a Division representative may conduct a home visit or obtain an evaluation of the parent undertaken by a consultant.

(d) If the Division prepares a parenting assessment, the Division representative shall include information about whether the parent's incapacity and inability to care for and support the child have been remediated.

Amended by R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).

Section was "The Division's responsibility when the court may vacate a kinship legal guardianship order". Rewrote (a); added new (b) and (c); recodified former (b) as (d); in (d), substituted "If the Division prepares a parenting assessment, the" for "The" and "shall include" for "includes"; and deleted "in the parenting assessment" following "information" and "initial" preceding "incapacity".

#### **10:132A-3.6 Factors to consider regarding motions to vacate kinship legal guardianship orders**

(a) The Division shall consider the following factors related to the child's safety when determining whether to take a position on a motion to vacate a kinship legal guardianship order:

1. The child's age;
2. The duration of the Division's involvement with the child, prior to the granting of kinship legal guardianship;
3. The total length of time the child was in out-of-home placement;
4. The length of time the child has lived with the guardian, prior to and after the granting of kinship legal guardianship;
5. When kinship legal guardianship was granted;
6. What the original harm or risk of harm to the child was;
7. The parent's present fitness to care for the child;
8. Any subsequent allegations of abuse or neglect received by the Division and their findings; and
9. What plan is proposed for the child if the guardianship is vacated.

New Rule, R.2008 d.364, effective December 1, 2008.

See: 40 N.J.R. 3567(a), 40 N.J.R. 6808(a).