

(g) The Division shall take such steps as may be necessary to assure that the final agency decision is carried out.

Amended by R.2009 d.17, effective January 5, 2009.
See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

Rewrote the introductory paragraph of (b); deleted former (c); recodified former (d) through (h) as (c) through (g); in the introductory paragraph of (c), substituted "Commissioner or designee" for "Director"; in (c)1, substituted the first, second and fourth occurrences of "Commissioner" for "Division Director" and substituted the third occurrence of "Commissioner or designee" for "Director"; in (e), inserted "final agency", substituted "one-year" for "one year" and inserted a comma preceding "except".

10:120A-2.8 Appeal of final agency decision

Any appeal of the final agency decision shall be solely to the Appellate Division of the Superior Court within time limits allowed by New Jersey Court Rule 2:2-3. The final agency decision shall include notice to the appellant of the right to file an appeal to the Appellate Division, the time frames and related procedures.

10:120A-2.9 Accessibility of records

(a) The Division shall advise the appellant of the accessibility of records and any limits of such accessibility at the time the request for a dispositional review or administrative hearing is granted, in accordance with this section.

1. The appellant, or his or her representative with the appellant's authorization in writing, shall have adequate opportunity to examine such portions of the appellant's case file and all documents and records to be used by the Division to reach a conclusion at the administrative hearing or dispositional review at a reasonable time before the date of the administrative hearing or dispositional review, as well as during the administrative hearing or dispositional review, except as limited by:

i. The Adoption Assistance and Child Welfare Act, 42 U.S.C. § 671(a)(8) and regulations promulgated thereunder, as from time to time amended, applicable State laws, and N.J.A.C. 10:133G;

ii. 45 C.F.R. 205.50, as made applicable by 45 C.F.R. 1355.21; or

iii. N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G, which limit the provision of information which constitutes child abuse or neglect records or reports to the appellant, his or her representative or the OAL, except under circumstances expressly authorized by N.J.S.A. 9:6-8.10a and Federal regulations;

2. The appellant or his or her representative may apply for relief of any limits of access to records due to confidentiality, if desired by the appellant, to a court of competent jurisdiction at any point in the dispute resolution process; and

3. A Division representative shall provide to the appellant an edited version of confidential reports and all documents and records used by the agency to reach the

disputed conclusion when confidential information pursuant to 45 C.F.R. 205.50, 45 C.F.R. 1355.21, N.J.S.A. 9:6-8.10a, and N.J.A.C. 10:133G or information which constitutes child abuse/neglect information is embedded in the files, documents and records.

New Rule, R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

SUBCHAPTER 3. DISPOSITIONAL REVIEW

10:120A-3.1 When to hold a dispositional review

(a) When preliminary efforts described in N.J.A.C. 10:120A-2.4 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional review, and when the request is made in accordance with N.J.A.C. 10:120A-2.5, the Division shall provide a dispositional review with:

1. A service provider who disagrees with a status issue;
2. A resource parent who disagrees with the removal of a child receiving foster care in his or her resource home when the child has been residing with the resource parent for at least six months, except when:
 - i. The child is not being returned to a birth parent or relative;
 - ii. The child is not being united or reunited with siblings for whom the resource parent cannot or will not provide a home;
 - iii. The child is not being moved from a temporary placement to a permanent adoptive placement;
 - iv. The child has not been removed from a resource home pending the completion of an IAIU child abuse and neglect investigation; or
 - v. The resource parent or household member has a finding of substantiated abuse or neglect in accordance with N.J.A.C. 10:129-5.3(a);
3. A resource parent who disagrees with the removal of a child who has been in the home continuously for six months or more for the purpose of finalizing an adoption;
4. A resource parent of one child in a sibling group who disagrees with the placement of a sibling with a separate resource family for either foster care or adoption consistent with N.J.S.A. 9:6B-4d; and
5. A resource parent who disagrees with the replacement of a child needing foster care in another resource home consistent with N.J.S.A. 30:4C-53.3c(5).

(b) A relative does not have a right to appeal, as a status issue, a Division action that it is not in a child's best interest to be placed with a relative. A relative can appeal a Division

action that the relative is either unwilling or unable to care for a child.

Amended by R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Rewrote the section.

Amended by R.2009 d.17, effective January 5, 2009.
See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

Deleted former (a)1 and (a)2; recodified former (a)3 through (a)7 as (a)1 through (a)5; rewrote (a)2; in (a)3, substituted "A resource" for "An adoptive"; in (a)4, substituted "resource" for "a foster or adoptive", "with" for "in" following "sibling" and "resource family for either foster care or adoption" for "foster or adoptive home", and inserted "and" at the end; in (a)5, substituted "resource" for "foster" preceding both "parent" and "home" throughout, deleted "foster" preceding "child", inserted "needing foster care" and substituted a period for "; and" at the end; deleted (a)8; and added (b).

10:120A-3.2 Procedures related to dispositional reviews

(a) A request for a dispositional review shall be made in accordance with N.J.A.C. 10:120A-2.5.

(b) The appellant shall submit any information that he or she has agreed to submit to the Review Officer within the time limit agreed upon between the appellant and the Review Officer.

(c) The Review Officer shall conduct a dispositional review through a telephone conference in lieu of having the parties present, when the appellant declines to meet in person with the Review Officer, but agrees to communicate by telephone.

(d) If there is no in-person or telephone meeting, the Review Officer shall conduct a record and document review in lieu of having the parties present.

(e) The Division shall determine whether and in what manner the child's position on the matters at issue shall be ascertained and the nature of the child's participation in the dispositional review where the outcome of the dispositional review shall have a direct impact on the child or children.

(f) The Division shall send the appellant written notification of whether a dispositional review shall be a meeting/gathering of the parties, or a telephone conference, or a record and document review, at least five business days prior to the dispositional review, and include the time and location of the dispositional review and issues to be considered.

(g) The Division shall grant a request for postponement of a dispositional review only for good cause, which shall include the appellant's need for additional time to provide necessary information. The Division shall consider that an appellant has withdrawn his or her request for a dispositional review when the Division has not granted a postponement and the appellant:

1. Does not appear at the scheduled dispositional review, unless such failure is due to unavoidable causes; or

2. Does not provide the agreed upon information for the dispositional review within the agreed upon time limit, unless delayed for reasons beyond the appellant's control or for other good reason.

(h) Prior to the dispositional review, the Review Officer conducting the dispositional review, at his or her discretion, may consult with Division staff who have information related to the issue being appealed.

(i) The dispositional review shall include a summary of the factual basis for the Division action, in accordance with N.J.A.C. 1:1-8.2(a)5, the relevant rules and policy, a review of information gathered through prior consultation with staff, information presented orally or in writing by the appellant, information presented orally or in writing by witnesses, supporters or representatives for both the Division and the appellant, and questions asked and answered in the course of the dispositional review.

(j) The Review Officer conducting the dispositional review shall make an agency decision based on the record and the information presented at the dispositional review or during any consultation with other Division representatives.

(k) The Division shall forward written notification of the agency decision of the dispositional review. Containing each element stated in N.J.A.C. 10:120A-3.2(i) to the appellant within 60 business days of the completion of the dispositional review process and shall include notice of whether the appellant has a right or opportunity to appeal further in accordance with N.J.A.C. 10:120A-2.8 and, if so, notice of the procedures for initiating further appeals and the contact information, including the address and telephone number.

(l) The Division may deem waived any appeal opportunity that has not been exercised in accordance with the time frames specified in N.J.A.C. 10:120A-2.5(a) and (b), except that the Division shall not deny an appeal where the request for an appeal was delayed for reasons beyond the appellant's control.

Amended by R.2003 d.274, effective July 7, 2003.
See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Rewrote the section.

Amended by R.2009 d.17, effective January 5, 2009.
See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In (d), substituted "If there is no in-person or telephone meeting, the Review Officer" for "The Division" and deleted "when the appellant declines to meet in person with the Review Officer and declines to communicate by telephone" from the end; deleted former (e); recodified former (f) through (m) as (e) through (l); in (k), inserted ". Containing each element stated in N.J.A.C. 10:120A-3.2(i)" and "in accordance with N.J.A.C. 10:120A-2.8", substituted "and the contact information, including the" for "; including the name," and deleted "of the person to whom a request for further appeal is made" from the end; in (l), substituted "and (b)" for "; (b), and (d),"; and deleted (n) and (o).