

CHAPTER 120A DISPUTE RESOLUTION

Authority

N.J.S.A. 30:4C-4(h) and 26a.

Source and Effective Date

R.2009 d.17, effective December 9, 2008.
See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

Chapter Expiration Date

Chapter 120A, Dispute Resolution, expires on December 9, 2013.

Chapter Historical Note

Chapter 120A, Dispute Resolution, was adopted as R.1998 d.71, effective February 2, 1998. See: 29 N.J.R. 4263(a), 30 N.J.R. 542(b).

Chapter 120A, Dispute Resolution, was readopted as R.2003 d.274, effective June 12, 2003. As a part of R.2003 d.274, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, was repealed and new Subchapter 2 was adopted, effective July 7, 2003. See: 34 N.J.R. 2768(a), 35 N.J.R. 2915(b).

Chapter 120A, Dispute Resolution, was readopted as R.2009 d.17, effective December 9, 2008. See: Source and Effective Date. See, also, section annotations.

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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 of the Division, to resolve disputes with the Division of Youth and Family Services;
2. Identify who may request a dispositional review and describe the procedures for a dispositional review;
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-2.5, 4.1, 4.2 and 4.3.

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 (a)3, deleted “and agency decisions” following “actions”; and in (a)4, deleted “, when other mechanisms for resolving a dispute, if desired by the appellant, have been exhausted or are not applicable” from the end.

10:120A-1.2 Scope

(a) These rules describe the preliminary efforts provided by the Division to resolve disputes regarding:

1. Services provided by or through the local offices;
2. A finding of substantiated child abuse or neglect made by the Division or the Office of the Public Defender acting as the Division’s agent in conflict matters in child protective service investigations; and
3. Status issues for service providers of the Division pursuant to N.J.S.A. 30:4C-12.1, and in accordance with N.J.A.C. 10:132A.

(b) These rules describe the informal procedures available to resolve disputes through the Division’s dispositional reviews.

(c) These rules also describe the procedures for requesting formal resolution through the OAL for contested and uncontested matters, in accordance with N.J.A.C. 1:1.

(d) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the Office of Licensing, Department of Children and Families, may be appealed in accordance with N.J.A.C. 10:121A-2.3 and 2.4, 10:122-2.5, 10:122C-2.4(d) and 2.5, 10:124-1.6, 10:126-5.8, 10:127-2.4 or 10:128-2.4 and, consequently, are not covered by these rules.

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

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

(g) These rules do not govern questions of fact relating to contractual activities.

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

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 the introductory paragraph of (a), substituted "efforts" for "and informal procedures"; in (a)1, substituted "local offices" for "Division's District Offices and Adoption Resource Centers"; in (a)3 deleted "10:121A-5.6, 10:122B, 10:122C, 10:122E, and" following "N.J.A.C."; added new (b); recodified former (b) through (g) as (c) through (h); in (d), substituted "Office" for "Bureau" and "Department of Children and Families" for "Division of Youth and Family Services" and inserted "10:122C-2.4(d) and 2.5,"; and rewrote (g).

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:122B-1.3 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.

"Administrative Hearings Unit" or "AHU" is the hearings unit of the Department 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.

"Agency decision" means any decision of the Division made as the result of a dispositional review and which is not a final agency decision.

"Appeal" means a request for modification or reversal of a Division action.

"Appellant" means the party who is requesting a reversal or modification of a Division action.

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

"Department" means the Department of Children and Families.

"Dispositional review" means an independent examination of a Division action that is conducted by a Review Officer through a record and document review or by examining relevant records and documents and either convening a

meeting of the relevant parties in the Division action under dispute or conducting a telephone conference.

"Division action" means a decision, plan or conduct by a Division representative, an Institutional Abuse Investigation Unit employee or an employee of the Office of the Public Defender acting as the Division's agent in conflict matters within the scope of the individual's official duties, which results in a "Division service issue," a "status issue," or which may result in a contested case as specified in N.J.A.C. 10:120A-4.3(a), but does not include 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 and 10:133D-2, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division representative of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: child care, DYFS Legal Guardianship Subsidy Program, discharge planning and aftercare services, domestic violence services, educational support, emergency maintenance service, family preservation services, health care services, homemaker service, mentor services, out-of-home placement, post-adoption services, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, substance abuse services, Title XIX Medicaid, 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 Division representative to act with reasonable promptness on a request for any of the above services.

"Final agency decision" means:

1. A final decision by the Commissioner or designee pursuant to N.J.S.A. 9:3A-6 that adopts, rejects or modifies an initial decision by an administrative law judge;
2. An initial decision by an administrative law judge that becomes a final agency decision by operation of N.J.S.A. 52:14B-10;
3. A final decision by the Review Officer, after a dispositional review conducted in accordance with these rules;
4. A Division action that becomes a final agency decision when the appellant does not choose to exercise his or her right to further dispute resolution; or
5. A final decision by the Commissioner or designee granting summary disposition and affirming a Division action.

"Finding" means the final determination made by a child protective investigator and his or her supervisor of the results of a child protection investigation.

"Initial decision" means the administrative law judge's recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record

which is sent to the agency head for a final decision, as defined in N.J.A.C. 1:1-2.1.

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

“Motion for Summary Disposition” means a motion that is prepared when no material facts are in dispute. If granted by the Commissioner or designee, a Motion for Summary Disposition denies the request for an OAL hearing and requires the Commissioner or designee to determine whether the Division action resulting from the undisputed facts is proper based on applicable law, regulations and policies, and accordingly to issue a final agency decision, affirming, reversing or modifying the Division action. If a motion for summary disposition is denied by the Commissioner or designee, the matter is transmitted to the OAL.

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

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

“Reduction” means the Division action about a service determined by the Division to be necessary for the achievement of the case goal, which Division action causes the client to receive fewer hours or units of a service. 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, step-parent, 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.

“Resource parent” means a person licensed pursuant to N.J.S.A. 30:4C-27.3 et seq.

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

“Service provider” means:

1. Each of a child’s relatives who is assessed for his or her willingness and ability to assume care of the child pursuant to N.J.S.A. 30:4C-12.1;

2. A relative or family friend caregiver or applicant in the DYFS Legal Guardianship Subsidy Program; or

3. A resource parent.

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

“Status issue” means:

1. The determination that a child’s relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b); or

2. The denial or termination of a relative or family friend caregiver to participate or continue to participate in the DYFS Legal Guardianship Subsidy Program in accordance with N.J.A.C. 10:132A.

“Status quo” means the relevant circumstances immediately prior to the dispute.

“Substantiated” means a finding when the available information, as evaluated by the child protective investigator and supervisor, indicates by a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child victim has been harmed or placed at risk of harm by a parent or guardian, as defined in N.J.S.A. 9:6-8.21. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. 10:129-4.

(b) The following terms shall have the following meanings within N.J.A.C. 10:120A-1, 2 and 3, unless the context clearly indicates otherwise:

“Division” means the Division of Youth and Family Services, the Institutional Abuse Investigation Unit in the Department of Children and Families, or the Office of the Public Defender acting as the Division’s agent in conflict matters.

“Division representative” means a professional employee of the Division of Youth and Family Services, the Institutional Abuse Investigation Unit, or of the Office of the Public Defender acting as the Division’s agent in conflict matters.

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).

Rewrote the section.

10:120A-1.4 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Commissioner or designee may, upon notice to all parties, relax

the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

Amended by R.2009 d.17, effective January 5, 2009.

See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

Substituted "Commissioner or designee" for "Director or his or her representative".

10:120A-1.5 Computation of time

The computation of time shall be in accordance with N.J.A.C. 1:1-1.4, unless otherwise indicated in these rules.

SUBCHAPTER 2. GENERAL PROVISIONS FOR DIVISION DISPUTE RESOLUTION AND ADMINISTRATIVE HEARINGS

10:120A-2.1 Notice of Division action to a service provider

(a) The Division shall provide proper notice to a service provider of a Division action that creates a status issue subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)1.

(b) Except as limited by (c) below, the Division shall provide proper written notice 10 days in advance of a Division action, which is subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)1. The written notice shall include:

1. A statement of the proposed Division action and the reason for the Division action;
2. A statement explaining the individual's right to dispute resolution in accordance with these rules; and
3. The name and address of a Division representative to contact to request a dispositional review.

(c) Advance notice shall not be required on the disposition of an application to become a service provider.

(d) The Division shall inform the resource parent immediately if the child is removed.

Amended by R.2009 d.17, effective January 5, 2009.

See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In (a) and the introductory paragraph of (b), updated the N.J.A.C. reference; in the introductory paragraph of (b), inserted a comma following "action"; in (b)3, substituted "and" for a comma following "name" and deleted "and telephone number" following "address"; and in (d), substituted "resource" for "foster".

10:120A-2.2 Notice of Division action to a parent

(a) Except as limited by (d), (e), (f) and (g) below, the Division shall provide notice to a parent of a Division action that creates a Division service issue under N.J.A.C. 10:120A-4.3(a)1 at least 10 days in advance of the Division action to a parent requesting or receiving the service or a parent requesting the service on behalf of a child or a parent of a child receiving the service.

(b) Notice of the Division action as in (a) above shall include:

1. The right to appeal the Division action ;
2. The applicable time frames for requesting an appeal;
3. The parent's right to an administrative hearing; and
4. The procedures for administrative hearings.

(c) Notice of the Division action shall be provided in any one or more Division documents distributed to the parent specifically, as in a case plan, in accordance with N.J.A.C. 10:133D-2, or generally, as in a handbook or other publication which is distributed in the routine course of business, through oral communication or any combination thereof.

(d) The Division shall not provide prior written notice on an application for service.

(e) The Division shall not provide separate notice for each Division action that is part of a case plan when the case plan has been shared in written form with the parent.

(f) The Division may delay notice up to 30 days when immediate action is necessary to protect a child who has been harmed or is at imminent risk of harm, pursuant to N.J.S.A. 9:6-8.8 et seq., N.J.S.A. 30:4C-1 et seq. or when harm or risk of harm is due to a violation of standards in N.J.A.C. 10:121A, 10:122, 10:122C, 10:124, 10:126, 10:127 or 10:128, or when the client's behavior creates a threat to himself or herself or others.

(g) The Division may dispense with notice to the parent when:

1. The Division has factual information confirming the death of the client;
2. The Division 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 termination of services and the client has indicated that he or she understands that this is the consequence of supplying the information;
3. The client's whereabouts are unknown and Division mail directed to the client has been returned by the post office indicating no known forwarding address, or a home visit was made and documentation obtained that the client no longer resides there;
4. The client has been accepted for services in a new jurisdiction and that fact has been established by the local office previously providing services;
5. The client has relocated outside the jurisdiction of the local office or local agency providing services, and has not provided 30 days advance notice of such relocation to enable the Division to continue uninterrupted service if the client continues to be eligible for the service despite the relocation; or

6. A service which is provided for a specific period of time is terminated and the client was informed in writing of the projected termination date of the service at the time of service initiation.

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

In (a), updated the N.J.A.C. reference; in (b)3, deleted "a dispositional review or" following "right to" and "or if the parent can choose either one" following "hearing"; in (b)4, deleted "dispositional reviews and" preceding "administrative"; in (g)4, deleted "Division" following "local"; and in (g)5, substituted "local" for "Division" preceding "office".

10:120A-2.3 Notice of substantiated findings

The Division shall provide notice of a finding of substantiated child abuse or neglect to each perpetrator pursuant to N.J.A.C. 10:129-5.4(c).

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

Inserted "to each perpetrator" and updated the N.J.A.C. reference.

10:120A-2.4 Preliminary efforts

(a) Field contacts, office interviews with supervisory or management personnel, and consultation with area and central office representatives comprise preliminary efforts to resolve matters under dispute. The Division representative shall advise the appellant that he or she has the opportunity to resolve a dispute using preliminary efforts prior to exercising a right to a dispositional review or an administrative hearing, if eligible.

(b) For disputes of matters for which an appellant has a right to an administrative hearing as set forth in N.J.A.C. 10:120A-4.3, the Division representative shall explain to the appellant that these preliminary efforts are not considered a prerequisite for an administrative hearing and in no event can they delay, interfere with or impede the processing of an administrative hearing request.

(c) Preliminary efforts may continue during the 30-day period following a request for an administrative hearing and pending the filing of the case with the Clerk of the Office of Administrative Law in accordance with N.J.A.C. 1:1-8.1(a) and as expanded by N.J.A.C. 1:1-8.1(b).

(d) For disputes of matters for which an appellant has a right to a dispositional review as set forth in N.J.A.C. 10:120A-3.1, the Division representative shall explain to the appellant that in no event are these preliminary efforts to be considered a prerequisite for a dispositional review and in no event can they delay, interfere with or impede the processing of a dispositional review.

(e) Preliminary efforts may continue throughout the dispositional review process.

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

In (a), substituted "area" for "regional".

10:120A-2.5 Requests for dispositional reviews and administrative hearings

(a) Any person noticed of a Division action and entitled to appeal that Division action as set forth in N.J.A.C. 10:120A-3.1 may request a dispositional review or in N.J.A.C. 10:120A-4.3 may request an administrative hearing, as appropriate, within 20 days of notice of that Division action, or within 20 days of learning of the Division action, as provided in (b) below. Any written expression by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to a Division action, constitutes a request for a dispositional review or an administrative hearing, as appropriate, when done in accordance with the notice provided. A Division representative shall help the appellant write his or her request when the appellant requests help.

(b) Any person entitled to appeal a Division action but who has not received notice of the Division action may request an appeal of that Division action within 20 days of learning of the Division action.

(c) Notice of a Division action shall provide contact information, including the address to which a request for an appeal is made.

(d) The recipient of the request to appeal a Division action shall forward that request to the appropriate resolution authority as specified in N.J.A.C. 10:120A-3.1 or 4.3 within one business day of receipt of the request to appeal a Division action.

(e) The Administrative Hearings Unit shall acknowledge in writing each request for appeal involving a matter described in N.J.A.C. 10:120A-3.1 or 4.3 within 10 business days. The written acknowledgment shall inform the appellant of the right to a dispositional review or an administrative hearing and the procedures for a dispositional review or an administrative hearing.

(f) The Division shall deem the appellant to have waived his or her right to a dispositional review or administrative hearing, if an appellant fails to request a dispositional review or an administrative hearing within the time limits established for appealing a Division action in accordance with (a) and (b) above, except that the Administrative Hearings Unit shall not deny the appellant's request if the reason for the delay in making the request was not within the appellant's control.

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

Rewrote (a) and (c); deleted former (d); recodified (e) through (g) as (d) through (f); in (d), deleted "or agency decision" following "action" twice; in (e) and (f), substituted "Administrative Hearings Unit" for "Division"; in (e), inserted "in writing", deleted "and in writing" following "days" and "or both, whichever applies" following the first occurrence of "administrative hearing", and substituted "or" for a comma following the first occurrence of "review"; and in (f), deleted "or agency decision" following "action" and substituted "and (b)" for " (b), and (d)".

10:120A-2.6 Eligibility for continued service and status

(a) Upon receipt of a request for a dispositional review or an administrative hearing which has been received in accordance with N.J.A.C. 10:120A-2.5(a) and (b), the status quo shall be continued or reinstated at an unreduced level until the agency decision or initial decision is rendered when any of the following circumstances apply:

1. Disruption of the status quo shall place a child at risk of child abuse or neglect pursuant to N.J.S.A. 9:6-8.8 et seq.;
2. Disruption of the status quo shall significantly compromise the appellant's ability to have the Division action reversed or modified through the appeal process;
3. The appellant has new information that was not known or not available at the time of the Division action; or
4. An administrative law judge determines that the issue is one of fact rather than law or policy.

(b) Upon receipt of a request for a dispositional review or an administrative hearing for appealing a Division action in accordance with N.J.A.C. 10:120A-2.5(a) and (b), the status quo shall not be continued or reinstated when continuing or reinstating the service would pose a risk of harm or injury to a child, adult client or other adult related to the issue in dispute, including, but not limited to, the following circumstances:

1. The Division shall not return a child to the out-of-home placement from which a child has been removed because the child or any other child in the out-of-home placement has been abused or neglected or has been alleged to have been abused or neglected pursuant to N.J.S.A. 9:6-8.8 et seq. or when the out-of-home placement fails to meet the standards for continued approval, except as permitted in N.J.A.C. 10:122C-2.5(b) and 2.6(f);
2. The Division shall not return a child to the out-of-home placement from which the child has been removed, when the child has been returned to his or her parents or relatives, united or reunited with separated siblings or placed in an adoptive home;
3. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the appellant's behavior poses a threat to himself, herself or others;
4. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the matter is pending the results of an IAIU investigation; or
5. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the Division has determined that a child in an out-of-home placement or other care in a home or facility subject to the regulatory jurisdiction of the

Department is in imminent risk of harm as a result of conditions in the home or facility.

Amended by R.2009 d.17, effective January 5, 2009.

See: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In the introductory paragraph of (b), deleted "or agency decision" following "action" and substituted "and (b)" for " , (b), and (d)"; in (b)1, substituted "2.5(b) and 2.6(f)" for "2.16, 2.17. or 2.18(b)"; in (b)3 through (b)5, inserted "or administrative hearing"; in (b)3, inserted " , herself"; and in (b)5, substituted "Department" for "Division".

10:120A-2.7 Final agency decision

(a) The final agency decision shall be binding on all parties concerned.

(b) For each agency decision, the Commissioner or designee, shall:

1. Issue a final agency decision within 45 days of the conclusion of the dispositional review; or
2. If no material facts are in dispute, consider the case for a Motion for Summary Disposition.

(c) For each initial decision, the Commissioner or designee shall review the record and any exceptions submitted by any party and issue the final agency decision within 45 days of receipt of that initial decision of the administrative law judge in accordance with N.J.A.C. 1:1-18.4.

1. The Commissioner or designee shall inform the appellant that he or she can contact the Commissioner or designee to arrange an alternative means to submit exceptions, if the party cannot communicate in English or has a communication handicap. If the parties wish to take exception to the initial decision, such exception shall be submitted in writing to the Commissioner or designee, except where parties who are unable to communicate in English or have a communication handicap have made arrangements with the Commissioner or designee for alternative means for submitting their exception.

(d) The final agency decision shall be effective on the date it is rendered unless another effective date is designated.

(e) The Division shall maintain an official record of each dispositional review and each administrative hearing for at least one year after the date the final agency decision is rendered. During this one-year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the dispositional review or administrative hearing, except as restricted by N.J.A.C. 10:120A-2.9.

(f) The Division shall deliver the final agency decision to the appellant either by hand delivery or by sending a copy of the final agency decision to the current or last known address of the appellant and, where applicable, to counsel, no later than five business days following the rendering of the final agency decision.

(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)I, substituted the first, second and fourth occurrences of "Commissioner" for "Division Director" and substituted the third occurrence of "Commissioner or designee" for "Director"; and 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).

Administrative correction.

See: 41 N.J.R. 876(a).