

CHAPTER 5
DISPUTE RESOLUTION

Authority

N.J.S.A. 9:3A-7g, 9:3A-9, 30:4C-4.d, and 52:14B-9.1.

Source and Effective Date

R.2016 d.079, effective June 6, 2016.
See: 48 N.J.R. 110(a), 48 N.J.R. 1369(a).

Chapter Expiration Date

Chapter 5, Dispute Resolution, expires on June 6, 2023.

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part of R.2003 d.274, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, was repealed and new Subchapter 2 was adopted, effective July 7, 2003.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: 40 N.J.R. 3917(a), 41 N.J.R. 242(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 120A, Dispute Resolution, was scheduled to expire on December 9, 2015. See: 43 N.J.R. 1203(a).

Chapter 120A, Dispute Resolution, was readopted as R.2016 d.079, effective June 6, 2016. See: Source and Effective Date. See, also, section annotations.

Chapter 5, Dispute Resolution, was recodified from N.J.A.C. 10:120A, Dispute Resolution, by administrative change, effective January 3, 2017. As part of the recodification, attendant technical changes were made to the rule text concerning cross-references, agency names, addresses, etc. See: 49 N.J.R. 98(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

- 3A:5-1.1 Purpose
- 3A:5-1.2 Scope
- 3A:5-1.3 Definitions
- 3A:5-1.4 Construction
- 3A:5-1.5 Computation of time

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

- 3A:5-2.1 Notice of Division action to a service provider
- 3A:5-2.2 Notice of Division action to a parent
- 3A:5-2.3 Notice of substantiated findings
- 3A:5-2.4 Preliminary efforts
- 3A:5-2.5 Requests for dispositional reviews and administrative hearings
- 3A:5-2.6 Eligibility for continued service and status
- 3A:5-2.7 Final agency decision
- 3A:5-2.8 Appeal of final agency decision
- 3A:5-2.9 Accessibility of records

SUBCHAPTER 3. DISPOSITIONAL REVIEW

- 3A:5-3.1 When to hold a dispositional review
- 3A:5-3.2 Procedures related to dispositional reviews

SUBCHAPTER 4. ADMINISTRATIVE HEARINGS

- 3A:5-4.1 General provisions
- 3A:5-4.2 Motion for Summary Disposition
- 3A:5-4.3 Transmittal to OAL
- 3A:5-4.4 Withdrawal of administrative hearing request

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

3A:5-1.1 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 Child Protection and Permanency;
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. 3A:5-2.5, 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.

Amended by R.2016 d.079, effective July 5, 2016.
See: 48 N.J.R. 110(a), 48 N.J.R. 1369(a).

In (a)1, substituted "Child Protection and Permanency" for "Youth and Family Services".

3A:5-1.2 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. 3A:20.

(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. 3A:50-2.3 and 2.4, 3A:52-2.5, 3A:51-2.4(d) and 2.5, 3A:53-1.6, 3A:54-5.8, 3A:55-2.4 or 3A:56-2.4 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).

3A:5-1.3 Definitions

(a) The definitions in N.J.A.C. 3A:14-1.3 and 3A:11-1.3 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. 3A:5-4.3(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. 3A:12-1, 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. 3A:11-1.3 and listed in N.J.A.C. 10:133E-2: adoption subsidy, child care, discharge planning and aftercare services, domestic violence services, CP&P Legal Guardianship Subsidy Program, 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, or transportation; parent and child visitation as described in N.J.S.A. 9:6B-4 and N.J.A.C. 3A:15-1; 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 dispo-

sition, 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 CP&P-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 the Treasury, 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 CP&P 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 CP&P Legal Guardianship Subsidy Program in accordance with N.J.A.C. 3A:20.

“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. 3A:11-1.3 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. 3A:10-4.

(b) The following terms shall have the following meanings within N.J.A.C. 3A:5-1, 2, and 3, unless the context clearly indicates otherwise:

“Division” means the Division of Child Protection and Permanency, 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 Child Protection and Permanency, 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.

Amended by R.2009 d.318, effective October 19, 2009.
See: 41 N.J.R. 1929(a), 41 N.J.R. 3930(b).

In definition “Division service issue”, inserted a comma following “goal” and inserted “DYFS Legal Guardianship Subsidy Program,” following “domestic violence services,” substituted “10:133D-1” for “10:133D-2” and deleted “DYFS Legal Guardianship Subsidy Program,” following “child care,”

Amended by R.2012 d.005, effective January 3, 2012.
See: 42 N.J.R. 3030(a), 44 N.J.R. 83(b).

In (a), in definition “Division service issue”, deleted “10:121-2.4 and” preceding “10:133D-1”, and inserted “adoption subsidy,”

Amended by R.2016 d.079, effective July 5, 2016.
See: 48 N.J.R. 110(a), 48 N.J.R. 1369(a).

In (a), in definition "Division service issue", inserted a comma following "suspension", substituted "CP&P" for "DYFS", and substituted "or transportation;" for "transportation; or"; in definition "Institutional Abuse Investigation Unit (IAIU)", and in paragraph 2 of definitions "Service provider" and "Status issue", substituted "CP&P" for "DYFS"; and in definition "Office of Administrative Law (OAL)", inserted a comma following the first occurrence of "in" and following "of", and substituted "the Treasury," for "State"; and in (b), in the introductory paragraph, inserted a comma following "2", and in definitions "Division" and "Division representative", substituted "Child Protection and Permanency" for "Youth and Family Services"

3A:5-1.4 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".

3A:5-1.5 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

3A:5-2.1 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. 3A:5-3.1(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. 3A:5-3.1(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".

3A:5-2.2 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. 3A:5-4.3(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. 3A:12-1, 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. 3A:50 through 3A:56 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;