

CHAPTER 17
CHILD PLACEMENT RIGHTS

Authority

N.J.S.A. 9:6B-6; 30:1-12.

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CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10:17-1.1 Purpose
- 10:17-1.2 Scope
- 10:17-1.3 Definitions

SUBCHAPTER 2. POLICIES AND PROCEDURES

- 10:17-2.1 Rights of child placed outside his or her home
- 10:17-2.2 Data on children placed in out-of-home settings

SUBCHAPTER 1. GENERAL PROVISIONS

10:17-1.1 Purpose

This chapter establishes and describes the Department of Human Services' policies and procedures regarding the rights of children placed outside their home in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-1 et seq.) which concerns the rights of children placed outside their home by the Department of Human Services, the Department of Health or a board of education, or an agency or organization with which the applicable department contracts to provide certain services.

10:17-1.2 Scope

The scope of this chapter applies to the Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services which place children outside their home.

10:17-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Case Plan" (CP) means a Division of Youth and Family Services written plan developed for a child in placement outside of the home in accord with N.J.A.C. 10:133D-2. It is a single plan which includes the case goals for the child,

the progress towards its achievement and any obstacles to reaching it, as well as the services or actions intended to meet the identified needs and who is responsible to provide the services and complete the activities, with projected time frames.

"Child" means a person under 18 years of age, except that persons under the age of 21 may retain the right to services, education and training in accord with N.J.S.A. 30:4-24.1 and 9:17B-2(f).

"Department" means the Department of Human Services.

"Division(s)" means the Division of Developmental Disabilities and the Division of Youth and Family Services.

"Every reasonable effort" means actions to maintain or reunite families rather than placing or maintaining children in out of home placement which include: identifying family problems; arranging and funding services to help families stay together; assessing extended family and friends as supports to the family or as alternatives to placement; arranging visitation with parents and siblings; ensuring that the child is in a stable placement which is appropriate to meet his or her needs; and periodic review of the child's continued need for an out of home placement and the possibility of return home, if appropriate.

"Individual Habilitation Plan" (IHP) means a Division of Developmental Disabilities written plan of intervention and action that is developed by the interdisciplinary team for each person to be provided services in accord with N.J.S.A. 30:6D-10 et seq. The IHP specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan which may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services.

"Placement Plan" means the plan regarding the child's placement which is encompassed in the case plan (CP) in the case of the Division of Youth and Family Services and the Individual Habilitation Plan (IHP) in the case of the Division of Developmental Disabilities.

SUBCHAPTER 2. POLICIES AND PROCEDURES

10:17-2.1 Rights of child placed outside his or her home

(a) All placements of children outside the home by a division shall be in accord with all applicable Federal and State statutes and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4 by which the

disbursement of public monies or incurrence of obligations in excess of appropriation and limit of expenditure is prohibited as criminal activity. In an effort to provide for all clients fairly, it is recognized that division appropriations and allocations need to be applied across the State and across the entire fiscal year, and that planning and judgment are necessary and appropriate on a case by case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one client to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source. The divisions have rules regarding placement and appeal rights and procedures which supplement this rule.

(b) When placement is deemed appropriate, a Division shall place a child in a placement consistent with the health, safety and physical and psychological welfare of the child and as appropriate to the individual child's physical, emotional or mental development. A division may place a child for treatment purposes to address physical, emotional or developmental needs, while the Division of Youth and Family Services may additionally place a child for protection from abuse or neglect. Regardless, although the amount of contact the child will continue to have with his or her family while in placement will vary according to a number of factors, in all situations the best interest of the child is the driving force in any IHP/CP that is developed for that child. The Division of Youth and Family Services' rules regarding placement outside of the home at N.J.A.C. 10:122A, 10:122B, 10:122C, 10:122D and 10:122E.

(c) The specific rights of children placed out of home are clarified in this subsection in accord with applicable law and rule and as set forth in the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-4):

1. A child has the right to placement outside his or her home only after the Department has made every reasonable effort to enable the child to remain in his or her home. Except in emergencies, those efforts shall be identified in his or her IHP/CP, including the provision or arrangement of financial (as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82) or other assistance and services available through other divisions of the Department and community agencies and subject to the division's appropriation, consideration of the needs of other eligible persons, and specific division rules which supplement this chapter.

i. In the instance of an emergency, the division shall develop an IHP/CP as soon as possible, but no less than 30 days after the emergency placement.

2. A child being placed outside of his or her home has the right to the best effort of the division, including the provision or arrangement of financial (as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82) or other assistance and services available through other divisions of the Department and community agencies as necessary, to attempt to place the child with a relative. The efforts of the division shall be subject to the limit of the division's appropriation and specific division rules which supplement this rule, and shall reflect a reasonable allocation of the division's resources.

3. A child being placed outside of his or her home has the right to the best effort of the division, including the provision or arrangement of financial (as prescribed in Division of Family Development Assistance Standards Handbook at N.J.A.C. 10:82) or other assistance and services available through other divisions of the Department and community agencies as necessary, to place the child in an appropriate setting in his or her own community. The efforts of the division shall be subject to the limit of the division's appropriation and specific division rules which supplement this rule, and shall reflect a reasonable allocation of the division's resources.

4. A child being placed outside of his or her home has the right to the best effort of the division to place the child in the same setting with his or her sibling if the sibling is also being placed outside his or her home, except where such placement is determined to be clinically inappropriate. A child's placement in a setting not with his or her sibling may be effectuated if the child has a specific medical condition or disability which is not shared by the sibling, or such placement is not clinically appropriate. Where the above conditions are present the child may be placed in a situation licensed to accept only persons with such a medical condition or disability.

5. A child in placement outside of his or her home has the right to visit with his or her parents or legal guardian as soon as possible after placement, but no more than 30 days after the placement, and to visit with his or her parents or legal guardian, on a regular basis thereafter as indicated in the IHP/CP, and to otherwise maintain contact with his or her parents or legal guardian.

i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP. In Division of Youth and Family Services cases, visits may be further limited pursuant to N.J.A.C. 10:122D-1.5.

ii. The division shall arrange a follow-up visit with the parents or legal guardian and the child as soon as possible after the placement, but no more than 30 days after the placement, to develop an IHP/CP which shall establish the frequency of follow-up visits.

iii. The division, in accord with the IHP/CP, shall facilitate contact and provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources.

6. A child in placement outside of his or her home has the right to visit with his or her sibling on a regular basis and to otherwise maintain contact with his or her sibling if the child was separated from his or her sibling upon placement outside his or her home.

i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP.

ii. The division, in accord with the child's IHP/CP, shall facilitate visits between the child and his or her siblings or otherwise maintain contact between the child and his or her siblings where such contact is determined in the IHP/CP to be clinically appropriate.

iii. The division shall provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources. In Division of Youth and Family Services cases, visits may be further limited pursuant to N.J.A.C. 10:122D-1.5.

7. A child being placed or in placement outside of his or her home has the right to placement in the least restrictive setting appropriate to his or her needs and conducive to his or her health and safety. The IHP/CP shall document with specificity why a less restrictive setting is not appropriate and detail the information relied upon to support the placement.

8. A child being placed or in placement outside of his or her home has the right to be free from all forms of physical or psychological abuse including the use of corporal punishment, in accord with N.J.S.A. 9:6-1 et seq. which imposes a reporting requirement with regard to the abuse, abandonment, cruelty and neglect of children.

9. A child being placed or in placement outside of his or her home has the right to be free from repeated changes in placement before his or her permanent placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in placement shall be made in accordance with the child's IHP/CP.

10. A child in placement outside of his or her home has the right to have regular contact as indicated in the IHP/CP with any caseworker assigned to his or her case who is employed by the division or any agency or organization with which the division contracts to provide services and the opportunity, as appropriate to his or her age and ability, to participate in the planning and regular review of his or her placement plan, and to be informed on a timely basis of changes in any placement plan which is prepared pursuant to law or regulation and the reasons therefor in terms and language appropriate to his or her ability to understand. The Division of Youth and Family Services has rules regarding "In-person Visits with Clients and Substitute Care Providers" at N.J.A.C. 10:133D-4.

11. A child being placed or in placement outside of his or her home has the right to have a placement plan, as required by law or regulation, that reflects his or her best interests and is designed to facilitate his or her placement or return home in a timely manner that is appropriate to his or her needs, and to services of a high quality that are designed to maintain and advance his or her mental, emotional and physical well-being.

i. In the case of placements by the Division of Developmental Disabilities, the interdisciplinary team shall consider the continued need for an out of home placement, the appropriateness of the present placement and the possibility of return home at the time of the annual IHP. Additionally, a review of the IHP may be requested at any time by the parent or legal guardian.

ii. In the case of placements by Division of Youth and Family Services, the placement shall be in accord with the case plan as set forth at N.J.A.C. 10:133D-2.

12. A child being placed or in placement outside of his or her home has the right in that placement to services of a high quality that are designed to maintain and advance the child's mental, emotional and physical well-being in accordance with the child's IHP/CP. Except where the child lives in his or her own home or with a relative, the division shall place the child in an appropriately licensed or approved facility or in an otherwise approved placement.

13. A child being placed or in placement outside of his or her home has the right in that placement to be represented in the planning and regular review of his IHP/CP and the provision of services to him or her, his or her parents or legal guardian and temporary caretaker. This representative may be the child's division caseworker or a person appointed by the court for this purpose. The division shall provide notice concerning a child's placement rights to the parents or legal guardian. The child may be represented by a person other than his or her parents or legal guardian and temporary caretaker who will advocate for his or her best interests and the enforcement of his or her rights. The parent, legal guardian,

temporary caretaker, advocate or other interested party shall be invited to attend the annual IHP/CP meeting.

14. A child being placed or in placement outside of his or her home has the right in that placement to receive an educational program which will maximize his or her potential. Responsibility for the provision of the child's education shall remain with the local education authority (LEA). The division shall advocate for the provision of a free and appropriate education for the child and may attend any meeting with the LEA to develop the individualized education plan. The educational plan may be incorporated in the IHP or CP, as appropriate.

15. A child in placement outside of his or her home shall have the right to receive adequate, safe and appropriate food, clothing and housing. This may be provided through the use of division specific or generic resources. This right shall be assured by placing children only with appropriately licensed or approved facilities and providers.

16. A child in placement outside of his or her home shall have the right to receive adequate and appropriate medical care; as authorized by and described in the State's Title XIX Medicaid State Plan. This may be provided through the use of division specific or generic resources.

17. A child in placement outside of his or her home shall have the right in that placement to be free from unwarranted physical restraint. Isolation, which is the use of a locked room, shall be prohibited.

i. The Division of Developmental Disabilities' use of any mechanical restraints shall comply with the provision of N.J.A.C. 10:42.

ii. The Division of Youth and Family Services prohibits the use of mechanical restraints in division-operated facilities. The Division of Youth and Family Services Manual of Requirements for Residential Child Care Facilities at N.J.A.C. 10:127 permits the use of certain types of mechanical restraints in privately-operated facilities, although stringent controls are imposed on the uses of such restraints.

Law Review and Journal Commentaries

"Love alone is not enough!" in transracial adoptions - scrutinizing recent statutes, agency policies, and prospective adoptive parents. Cynthia R. Mabry, 42 Wayne L.Rev. 1347 (1996).

10:17-2.2 Data on children placed in out-of-home settings

(a) The divisions shall prepare and update at least every six months aggregate non-identifying data about children under their care, custody or supervision who are placed in out-of-home settings in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5). The reports of the divisions shall be compiled semi-annually and provided by the Department to the public upon request.

(b) The data to be prepared and updated by the Department/divisions shall include the following in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5):

1. The number of children placed outside their homes during the six-month period and the cumulative number of children residing in out-of-home settings;
2. The age, sex and race of the children residing in out-of-home settings;
3. The reasons for placement of these children;
4. The types of settings in which these children reside;
5. The length of time that these children have resided in these settings;
6. The number of placements for those children who have been placed in more than one setting;
7. The number of children who have been placed in the same county in which their parents or legal guardians reside and the number who have been placed outside of the State;
8. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes during the six-month period, and a projection of the number of children who will be permanently placed or returned to their homes during the following six-month period; and
9. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes who are subsequently returned to an out-of-home setting during the six-month period.