

"Status issue" means the denial, suspension, conditional approval, restriction, or closure of a Division foster home or a Division adoptive home in accordance with N.J.A.C. 10:121A-5.6(g) or 10:122C.

"Status quo" means the relevant circumstances immediately prior to the dispute.

#### 10:120A-1.4 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Director or his or her representative 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.

#### 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 Informal efforts

(a) Field contacts, office interviews with supervisory or management personnel, and consultation with regional and central office representatives comprise informal efforts to resolve matters under dispute. An appellant should make at least one attempt to resolve a dispute informally prior to exercising a right to a dispositional conference 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-4.2, the Division representative shall explain to the appellant that these informal 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) Informal efforts may continue during the 30 calendar 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 conference 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 informal efforts to be considered a prerequisite for a dispositional conference and in no event can they delay, interfere with or impede the processing of a dispositional conference.

#### 10:120A-2.2 Requests for dispositional conferences and administrative hearings

(a) Any person noticed of a Division action or agency decision on a Division action on appeal and entitled to appeal that action as set forth in N.J.A.C. 10:120A-3.1 or 4.2 may request a dispositional conference or an administrative hearing within 20 calendar days of notice of that Division action or agency decision, or within 20 calendar days of learning of the action, as provided in (b) below. Any clear expression, oral or written, 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 conference or an administrative hearing.

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

(c) A person who is directly and adversely affected by a Division action, who has the right to appeal, may make a request for a dispositional conference or an administrative hearing to any Division representative, as defined by N.J.A.C. 10:122B-1.4, including any person who participated in making or communicating the decision on appeal, or to any supervisor of that person.

(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 4.2 within one business day of receipt of the request to appeal a Division action.

(e) The Division shall acknowledge each request for appeal involving a matter described in N.J.A.C. 10:120A-3.1 or 4.2 within 10 business days and in writing. The written acknowledgment shall inform the appellant of the right to a dispositional conference, an administrative hearing or both, whichever applies, and the procedures for a dispositional conference or an administrative hearing.

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

#### 10:120A-2.3 Notice of Division action to a foster parent, adoptive parent and applicants to become an adoptive or foster parent

(a) Except as limited by (c) below, the Division shall provide proper notice of a Division action that creates a

status issue subject to a dispositional conference under N.J.A.C. 10:120A-3.1(a)3 below.

(b) The Division shall provide proper written notice 10 days in advance of a Division action which is subject to a dispositional conference under N.J.A.C. 10:120A-3.1(a)3. The written notice shall include:

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

(c) Advance notice shall not be required on the disposition of an application to become a foster parent or an adoptive parent.

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

#### **10:120A-2.4 Notice of Division action to the parent**

(a) Except as limited by (e), (f), (g) and (h) below, the Division shall provide notice of a Division action that creates a Division service issue under N.J.A.C. 10:120A-3.1(a)1 at least 10 days in advance of the 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 the right to appeal the Division action and 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.

(c) Except as limited by (e), (f), (g) and (h) below, the Division shall provide proper notice of an agency decision after a dispositional conference which has not resolved a service issue subject to an administrative hearing under N.J.A.C. 10:120A-4.2(a) to a parent requesting or receiving the service or the parent requesting the service on behalf of the child or a parent of a child receiving the service.

(d) Proper notice of an agency decision subject to an administrative hearing as in (c) above shall be in writing and shall include:

1. A statement of the Division action and the reason for the action;
2. A statement explaining the individual's right to dispute resolution in accordance with these rules; and

3. The name of a Division representative to contact to request an administrative hearing.

(e) The Division does not provide prior written notice on an application for service.

(f) The Division does not provide separate notice for each action or implementation of a decision that is part of a case plan when the case plan has been shared in written form with the affected party.

(g) 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.

(h) 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 Division office previously providing services;

5. The client has relocated outside the jurisdiction of the Division 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.

#### **10:120A-2.5 Eligibility for continued service and status**

(a) Pending the resolution of a request for a dispositional conference or an administrative hearing which has been received in accordance with N.J.A.C. 10:120A-2.2(a) and (b), the status quo shall be continued or reinstated at an unreduced level until the dispositional conference or the administrative hearing decisions is rendered when any of the following circumstances apply:

1. Disruption of the status quo shall significantly compromise the appellant's ability to have the Division's action reversed or modified through the appeal process;

2. Disruption of the status quo shall place a child at risk of abuse or neglect pursuant to N.J.S.A. 9:6-8.8 et seq.;

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) Pending the resolution of a request for a dispositional conference or an administrative hearing for appealing a Division action in accordance with N.J.A.C. 10:120A-2.2(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-2.16, 2.17, or 2.18(b);

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 conference when the appellant's behavior poses a threat to himself or others;

4. The Division shall not continue or reinstate services or status pending the outcome of a dispositional conference 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 conference 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 Division is in imminent risk of harm as a result of conditions in the home or facility.

#### 10:120A-2.6 Final agency decision

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

(b) For each dispositional conference decision that is not referred, accepted or eligible for administrative hearing, the Deputy Director, Assistant Director, or Regional Administrator, at the designation of the Director shall issue a final agency decision within 60 business days of receipt of the request for the dispositional conference.

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

1. If the parties wish to take exception to the initial decision, such exception shall be submitted in writing to the Director, except where parties who are unable to communicate in English or have a communication handicap have made arrangements with the Director's Office 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 conference and each administrative hearing for at least one year after the date the 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 conference or administrative hearing except as restricted by N.J.A.C. 10:120A-2.8.

(f) The Division shall deliver the final agency decision to the appellant either by hand delivery or by sending a copy of the 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 such decision.

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

#### 10:120A-2.7 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.

#### 10:120A-2.8 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 conference or administrative review 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 agency to reach a conclusion at the administrative hearing or dispositional conference at a reasonable time before

the date of the administrative hearing or dispositional conference, as well as during the administrative hearing, 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 a written summary of non-confidential information contained in the appellant's case file or 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, and N.J.A.C. 10:133G or information which constitutes child abuse/neglect information is embedded in the files, documents and records.

### SUBCHAPTER 3. DISPOSITIONAL CONFERENCE

#### 10:120A-3.1 When to hold a dispositional conference

(a) When informal efforts described in N.J.A.C. 10:120A-2.1 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional conference, and when the request is made in accordance with N.J.A.C. 10:120A-2.2, and 3.2(c), the Division shall provide a dispositional conference to:

1. The parent of a child under the supervision of the Division to dispute a denial, reduction, suspension, or termination of a Division service issue, unless it is an across the board action resulting from a reduction in Federal or State funding;
2. A child under the supervision of the Division, or a person with physical custody acting on behalf of that child, or a sibling of that child, or a relative as defined who disputes a denial, reduction, suspension, or termination of a Division service issue, unless the action is an across the board action resulting from a reduction in Federal or State funding;

3. A foster parent or adoptive parent or applicant to become a foster or adoptive parent who disagrees with a status issue;

4. A foster parent who disagrees with the removal of a foster child from his or her foster home, when the child has been residing with the foster parent for at least six months, when the child is not being returned to a birth parent or relative, when the child is not being united or reunited with siblings for whom the foster parent cannot or will not provide a home, when the child is not being moved from a temporary placement to a permanent adoptive placement and when the child has not been removed from a foster home pending the completion of an IAIU child abuse investigation;

5. An adoptive 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;

6. A foster or adoptive parent of one child in a sibling group who disagrees with the placement of a sibling in a separate foster or adoptive home consistent with N.J.S.A. 9:6B-4d;

7. A foster parent who disagrees with the re-placement of a foster child in another foster home consistent with N.J.S.A. 30:4C-53.3c(5);

8. An appellant who is identified as a perpetrator of child abuse or neglect to dispute a finding of substantiated; and

9. An appellant who is entitled to a hearing by the OAL as delineated in N.J.A.C. 10:120A-4.2(b).

#### 10:120A-3.2 Procedures related to dispositional conferences

(a) A request for a dispositional conference shall be made in accordance with N.J.A.C. 10:120A-2.2.

(b) The Division shall conduct a record and document review in lieu of having the parties present, when:

1. The appellant has no factual dispute and declines to meet with the review officer; or
2. The appellant has no witnesses to present and declines to meet with the review officer.

(c) Participation in a dispositional conference shall be in accordance with N.J.A.C. 10:6-1.5(e).

(d) 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 conference where the outcome of the dispositional conference shall have a direct impact on the child or children.

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

(f) The Division shall grant a request for postponement of a dispositional conference only for good cause. An appellant who does not appear at the dispositional conference, and who has not been granted a postponement, shall be considered to have withdrawn the request for a dispositional conference unless such failure to appear is due to unavoidable causes.

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

(h) The dispositional conference shall include a summary of the factual basis for the contested 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 conference.

(i) The Review Officer conducting the dispositional conference shall make a decision based on the record and the information presented at the dispositional conference or during any consultation with other Division representatives.

(j) The Division shall forward written notification of the agency decision of the dispositional conference to the appellant within 45 days of the conclusion of the dispositional conference and shall include notice of whether the appellant has a right or opportunity to appeal further and, if so, notice of the procedures for initiating further appeals.

(k) 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-2.2, except that the Division shall not deny an appeal where the request for an appeal was delayed for reasons beyond the appellant's control.

(l) If the appellant does not request further review within 10 business days of notification of the agency decision, the dispositional conference decision shall be considered the final agency decision.

(b) The request for an administrative hearing shall be specific as to the exact nature of the Division action or agency decision in dispute. The Division shall help the appellant express his or her request, as necessary.

(c) The Division shall process a request for an administrative hearing through the Administrative Hearings Unit.

(d) Upon receipt of a request for an administrative hearing, the Administrative Hearings Unit shall make a record thereof and determine whether the appellant is entitled to an administrative hearing in accordance with N.J.A.C. 10:120A-4.2.

(e) If the appellant is deemed eligible for an administrative hearing, the AHU shall transmit the case to the OAL for an administrative hearing in accordance with N.J.A.C. 1:1-4.1 and 8.1.

(f) If the appellant is not eligible for an administrative hearing, the AHU shall notify the appellant of this determination within 10 business days of receiving the request, as well as provide the appellant with information concerning other appeal avenues which may be available.

#### 10:120A-4.2 Transmittal to OAL

(a) The Administrative Hearings Unit shall transmit a matter that constitutes a contested case, pursuant to N.J.A.C. 1:1-1.1 or as defined by law in accordance with N.J.A.C. 10:6-1.3(a) to the Office of Administrative Law, including:

1. A request by a parent of a child under the supervision of the Division to dispute a denial, reduction, suspension or termination of a Division service issue, unless the action is an across the board action resulting from a reduction in Federal or State funding.

(b) The Director, at his or her discretion and with the concurrence of the Director of the Office of Administrative Law, may transmit an uncontested case for an administrative hearing before an administrative law judge in accordance with N.J.A.C. 10:6-1.3(b) and 1:1-2.1.

(c) The Administrative Hearings Unit shall not transmit the following requests to the Office of Administrative Law:

1. Requests to appeal the terms of a court order which specifically addresses the disputed Division action;
2. Requests to dispute a change in the out-of-home placement of a child without constituting a reduction of services; or
3. Requests to change a finding in a child abuse investigation.

#### 10:120A-4.3 Withdrawal of administrative hearing request

The filing of a request for an administrative hearing shall not preclude continued effort to accomplish corrective ac-

### SUBCHAPTER 4. ADMINISTRATIVE HEARINGS

#### 10:120A-4.1 General provisions

(a) A request for an administrative hearing shall be made in accordance with N.J.A.C. 10:120A-2.2.

tion or interpretation by the Division through informal efforts in accordance with N.J.A.C. 10:120A-2.1 and N.J.A.C. 1:1-4.2 and 8.1. If, as a result of satisfactory adjustment or for any other reason, the appellant desires to withdraw the request for the administrative hearing, he or she shall so notify the Division and the OAL in accordance with N.J.A.C. 1:1-19.2.