

## **CHILDREN AND FAMILIES**

### **DIVISION OF YOUTH AND FAMILY SERVICES**

#### **Case Management**

Readoption with Amendments: 10:133D

Adopted Amendments: N.J.A.C. 10:120A-1.3, 2.2 and 2.7; 10:122D-1.4, 1.6 and 2.4;  
10:133E-2.3; and 10:133H-3.4 and 3.7

Proposed: May 4, 2009 at 41 N.J.R. 1929(a).

Adopted: September 22, 2009 by Kimberly S. Ricketts, Commissioner, Department of  
Children and Families.

Filed: September 22, 2009 as R. 2009, d. 318 with substantive and technical changes not  
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:4C-4(h) and 25 and 9:6-8.15.

Effective Dates: September 22, 2009, Readoption;  
October 19, 2009, Amendments.

Expiration Dates: December 9, 2013, N.J.A.C. 10:120A;  
December 2, 2013, N.J.A.C. 10:120A;  
September 22, 2014, N.J.A.C. 10:122D;  
October 23, 2012, N.J.A.C. 10:133E; and  
February 23, 2013, N.J.A.C. 10:133H.

#### **Summary of Public Comments and Agency Responses:**

Comments were received from Debra L. Wentz, Ph.D., CEO of the New Jersey  
Association of Mental Health Agencies, Inc. (NJAMHA), Mary E. Coogan, Esq.,  
Assistant Director of the Association for Children of New Jersey (ACNJ) and Jo Astrid  
Glading, First Assistant Public Advocate, Office of the Child Advocate (OCA).

N.J.A.C. 10:133D-1.4

1. COMMENT: NJAMHA applauds the Division for amending the language found at N.J.A.C. 10:133D-1.4(a) to state that the case plan will be developed with each family member to reflect the current practice of engaging the family member in the planning process. NJAMHA also commends the Division for amending N.J.A.C. 10:133D-1.4(c) to require that the case plan be revised if the case situation shows significant change. Your emphasis on inclusion of the family in the planning throughout the life of the case is notable.

RESPONSE: The Division thanks the New Jersey Association of Mental Health Agencies, Inc., for its support.

2. COMMENT: With reference to N.J.A.C. 10:133D-1.4(a), the Association for Children of New Jersey agrees that the case plan should be developed with each family for whom services will be provided. We are concerned that the proposed change does not take in account situations when parents or other needed family members do not participate in the planning process. The wording in N.J.A.C. 10:133D-1.5 and 1.8 acknowledges that some parents are unwilling to participate in the development of the case plan. ACNJ recommends that additional wording be added to ensure that it is clear that a case plan is required when a parent does not participate in the process and that the case plan reflects services offered to each parent. For example(additions in boldface):

(a) A case plan shall be developed for each family for whom services will be provided. **To the extent possible the case plan will be developed with each parent and other appropriate family members.**

RESPONSE: The Division thanks ACNJ for its support. The Division agrees that a case plan must be completed for each family where the child lives at home and for each child in out-of-home placement. The Division maintains that N.J.A.C. 10:133D-1.5 makes this clear and that it is the correct location for this information.

N.J.A.C. 10:133D-1.5(a)

3. COMMENT: The Division's emphasis on the family is also evident in the amendment to recodified N.J.A.C. 10:133D-1.5(a), which permits any person identified by the parent to participate in the case plan development. NJAMHA recognizes that the Division has been working toward these goals for some time; however, the codification of these requirements will help to solidify the partnership between the family and the Division.

RESPONSE: The Division thanks NJAMHA for its recognition of the Division's efforts to improve.

N.J.A.C. 10:133D-1.6

4. COMMENT: ACNJ agrees with the additional wording in recodified N.J.A.C. 10:133D-1.6(a) that requiring that the case plan identify "needs, outcomes, supports, services and tasks which are needed to meet the needs and achieve the case goal..." is a solid addition to this provision and provides clarity to the case planning process. We believe that the case plan should also identify the "problem(s)," which caused DYFS to be involved with the family and/or the placement of the child involved. We are not sure why the proposed amendments seek to delete the word "problems" from the section and recommend that word remain.

RESPONSE: The Division thanks ACNJ for its support for the amendments to this section. The Division's case practice model is a strength-based, positive, collaborative process of engaging families. The Division's rules must reflect that model in terminology. The Division believes that identifying needs, rather than problems, contributes to this collaboration by its positive terminology.

5. COMMENT: ACNJ thinks that the original subsection (b) of N.J.A.C. 10:133D-1.6 should remain. The subsection creates a level of expectation of involvement by the family. It does not prevent a family member from determining his or her level of participation. If family members are to participate in the case plan development in the way that they prefer, then our comments regarding N.J.A.C. 10:133D-1.4 (Comment 2) are even more critical. The Division has a responsibility to ensure the health and safety of the child and thus the ultimate responsibility to develop a case plan which will ensure the health and safety of the child regardless of the level of participation by members of the family.

RESPONSE: The Division strongly prefers that parents and family members participate in family team meetings to plan for and monitor each child's safety, permanency and well-being. If it is a challenge for the parent or family member to participate in the family team meeting, the Division agrees that parents and other family members can participate in the case planning process by meeting individually with the Division representative, providing written information to the Division representative or talking with the Division representative by telephone. The Division agrees to reinstate paragraph (b)2, 3 and 4 to indicate this willingness to work with families in ways that

they choose. The Division is not readopting the phrase "...in descending order of preference..." The Division will work with case planning participants in the way that best meets their needs.

N.J.A.C. 10:133D-1.7

6. COMMENT: The Division proposed the addition of a new paragraph, recodified N.J.A.C. 10:133D-1.7(a)2, to include "the underlying needs of each family member" in the case plan for each child living at home. As stated in the notice of proposal Summary, "the Division believes that this is critical information to include in the case plan as it supports the planning for change." The OCA commends the Division for recommending practice in keeping with a family engagement model of case management, however, the language "underlying needs" is vague, especially given the demonstrated need for specificity and clarity when developing a case plan. The proposed addition appears congruent with child welfare reform efforts, as well as with the Modified Settlement Agreement, with regard to the position on family-centered case practice. Further enumeration is necessary to ensure that the proposed regulatory change is implemented consistently and as intended. OCA suggests the following addition to N.J.A.C. 10:133D-1.7(a)(additions in boldface):

(a) The written case plan for a family with the child living at home shall include:

1. (No change in text.)
2. The underlying needs of each family member, **including but not limited to: developmental, physical, emotional, mental**

**health, educational, vocational, social, cultural, and treatment needs.**

RESPONSE: The Division does not wish to enumerate examples of underlying needs in the rules, as no list will be complete. The Division prefers that the underlying needs of each family member be included in the case plan, without limits.

7. COMMENT: ACNJ agrees with and supports most of the proposed changes to N.J.A.C. 10:133D-1.7. They clarify what is required to make a completed and accurate case plan that will keep all members of the family involved in the case and the DFYS case manager informed and updated. One concern we do have is the change to recodified N.J.A.C. 10:133D-1.7(a)5, concerning supports and services to the family. The proposed amendment correctly adds supports to this section. However the proposed paragraph replaces the word “offered” with “provided.” We think that both words should be included. We are concerned about the documentation of “reasonable efforts” to prevent placement should DYFS determine that placement is needed in the future. Thus, the paragraph will read that the written case plan will include(additions in boldface):

5. The supports and services **offered**, provided to, and used by the family since the last case plan was developed, for each case plan after the initial case plan. If any service is court-ordered, the case plan shall contain that service.

RESPONSE: The Division appreciates ACNJ’s support. The Division agrees with ACNJ’s comment that documenting supports and services in the case plan that were

offered to a family is helpful in determining reasonable efforts to prevent placement. The Division is reinstating “offered to” and retaining the other proposed amendments to the paragraph.

8. COMMENT: The OCA supports the Division’s proposed requirement to include court-ordered services as part of the case plan at N.J.A.C. 10:133D-1.7(a)5. According to the Summary of proposed rule changes put forth by the Division, the Division indicates that “information about services that were offered, but not used, is no longer needed in the case plan.” The OCA respectfully submits that services offered to but declined by a family, parent, caregiver or any identified individual in a case conveys essential information pertinent to comprehensive and deliberative case planning. This information is crucial to helping the Division identify patterns of behavior that may warrant Division action, such as more intensive supervision of the family or removal of the child. Should the case ultimately end up in guardianship proceedings, the documented unwillingness to accept offered services may be an important element in determining whether the Division has met its obligation to make reasonable efforts to help the parent.

Current Division operational policy provides that “if the parent declines services, the case is terminated unless the situation meets the criteria for court intervention.” For those reasons, it is recommended that the Division continue its existing practice of documenting services offered to a family, including those which were declined. It is further recommended that the Division implement documentation practices to record the reasons for the declination of services as well as any current child welfare concerns related to any refusal to accept recommended services. The OCA suggests modified

adoption of the changes as proposed with the following addition to N.J.A.C. 10:133D-1.7(a)(additions in boldface):

**6. The supports and services offered to, but declined by, the family, including documentation of the reason for declination of services as well as any current child welfare concerns related to any refusal to accept recommended services.**

RESPONSE: The Division thanks the Office of the Child Advocate for its support. The Division agrees that documenting, in the case plan, supports and services offered to the family may be helpful in documenting that the Division met its obligation to make “. . . reasonable efforts to provide services to help the parent correct the circumstances which led to the child’s placement outside the home. . .” N.J.S.A. 30:4C-15.1a(3). The change mentioned in the Response to Comment 7 addresses this comment as well.

9. COMMENT: OCA recommends that enumeration of “underlying needs” be incorporated into recodified N.J.A.C. 10:133D-1.7(b), to be inserted after paragraph(b)2. This change will provide consistency in case planning for each child living at home, as well as those in out-of-home placement(additions in boldface).

(b) The written case plan for a child in an out-of-home placement shall include:

1. The legal authority for the out-of-home placement;
2. (No change.)

**3. The underlying needs of each child in out-of-home placement and caregiver from whom the child was removed, including but not limited to: developmental, physical, emotional, mental health, educational, vocational, social, cultural, religious, and treatment needs.**

RESPONSE: The Division does not believe that it is necessary to include a new paragraph stating the child's underlying needs in the out-of-home placement case plan because the case plan must already contain "the needs of the child...and the child's out-of-home placement provider in order to meet the case goal," N.J.A.C. 10:133D-1.7(b)9.

10. COMMENT: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (FCSIAA) (P.L. 110-351), 42 U.S.C. §627, provides for matching Federal grants "to state, local, or tribal child welfare agencies, and experienced private nonprofit organizations to help children in, or at risk of entering, foster care to reconnect with family members." Given that the State of New Jersey is eligible for such matching funds, and it is in the best interest of the State to pursue fiscal support for programs as identified in the Federal legislation, the OCA recommends that the Division amend N.J.A.C. 10:133D-1.7(b)3 to codify efforts in keeping with Section 103 of the Act. The Act provides for notice within 30 days of a child's removal, as well as the provision of information to grandparents and other relatives regarding children placed in out-of-home care, including "options" the relatives may have to participate in the care and placement of the child. Such early notice to, and involvement of, a child's relatives has the potential for enormous impact on the early case planning stages addressed in this section of the proposed regulations.

Therefore, the OCA suggests modification of N.J.A.C. 10:133D-1.7(b) to add a new paragraph 3(b)(additions in boldface):

**3. Documentation of efforts which demonstrate exercise of due diligence by the Division to identify and provide notice of the removal to all adult grandparents and other adult relatives of the child (including any other adult relative suggested by the parents), pursuant to P.L. 110-351, sec. 103.**

RESPONSE: The Division believes that the rule on case plans is not the best place to include information about notifying relatives of a child's placement and of the relative's options to care for the child. The Division has decided to amend another rule to address the Division's responsibility to notify relatives. This amendment will be proposed in 2010.

11. COMMENT: The Division proposed amending the language included in recodified N.J.A.C. 10:133D-1.7(b)5 regarding "the efforts made to find a missing parent or relative, pursuant to N.J.S.A. 30:4C-12 et seq." The OCA is in agreement with the proposed expansion of the language from "parent" to "mother and father" to clarify the importance of searching for missing fathers, as well as missing mothers. However, the OCA has concerns that this proposed change insufficiently reflects contemporary family dynamics within our society. In order to accurately identify all possible legal and biological relationships between parents and children, the proposed amendment should be expanded to specify birth and adoptive families. Therefore, the OCA suggests the following modification to the proposed change in N.J.A.C. 10:133D-1.7(b)5(additions in boldface):

5. The efforts made to find a missing **birth or adoptive** mother and father or relative, pursuant to N.J.S.A. 30:4C-12 et seq.

RESPONSE: The Division thanks the Office of the Child Advocate for its support of the amendment.

The Division agrees that families are created in a variety of ways. The Division does not agree that it is necessary to identify those ways in this paragraph. The Division believes that there is no distinction between a birth parent and an adoptive parent once the adoption is finalized. Specifying these distinctions is unnecessary. The Division needs to find a child's parents whenever they are missing.

12. COMMENT: Proposed changes to the section regarding content for the written case plan for a child in out-of-home placement include a decrease in the age at which the Division must create a written plan to prepare the child for self-sufficiency. Upon review of N.J.A.C. 10:122D-1.7, the OCA identified an absence of enumerated permanency options in recodified paragraph (b)17. The OCA recommends that this paragraph be further amended to specify the associated case goals (additions in boldface; deletions in brackets):

17. Programs and services to help the child transition from out-of-home placement to [self-sufficiency skills] **independent living**, for a child 14 or older, in accordance with N.J.A.C. 10:122D-2.7, **or programs and services to provide other long-term specialized care or to assist with individual stabilization.**

RESPONSE: Both terms, self-sufficiency skills and independent living, are defined terms in N.J.A.C. 10:133-1.3. Based on the definitions, the Division asserts that “self-sufficiency skills” expresses the correct meaning for this paragraph.

The Division’s mission when working with any adolescent is to support his or her transition to self-sufficiency. The Division does not believe that adding the suggested specific case goals to this paragraph supports the mission, as all of the Division’s case goals are not included in this list.

13. COMMENT: Recodified N.J.A.C. 10:133D-1.7(c)2 addresses kinship legal guardianship. ACNJ agrees with and supports the position reflected in this proposed provision. It reflects current State law, as well as the Federal FCSIA Act enacted last October.

RESPONSE: The Division thanks ACNJ for its support of this amendment.

14. COMMENT: The proposed phrase “neither feasible nor appropriate” is problematic in N.J.A.C. 10:133D-1.7(c)2. This language is inconsistent with the statutory formulation of “neither feasible nor likely” (N.J.S.A. 3B:12A-6(d)3(b)) and would introduce a new standard for kinship legal guardianship determinations that deviates from the statutory formulation. Furthermore, the proposed language is superfluous, given that subsection (c) indicates that the case goal has already been determined to be “either adoption or kinship legal guardianship.”

Further, best practice research and DYFS’ Mandated Full Disclosure policy support kinship legal guardianship as a viable permanency option. The OCA also suggests replacing the word “steps” with the word “efforts” in recodified N.J.A.C.

10:133D-1.7(c)2 in order to maintain consistency with the language proposed by the OCA in Comment 9. The OCA suggests the following modifications (additions in boldface; deletions in brackets):

(c) The written case plan for a child in an out-of-home placement and whose case goal is either adoption or kinship legal guardianship shall include the [steps] **efforts** the Division representative is taking to place the child with:

1. (No change.)
2. A relative or caregiver who is willing to assume care of a child[,] **and** become a kinship legal guardian [and finalize the kinship legal guardianship, after steps are taken to determine that reunification and] **when** adoption [are] **is** neither feasible nor [appropriate] **likely**, and the child meets the eligibility requirements for kinship legal guardianship.

The OCA recommends these language changes as stated above, and that the Division assess necessary changes in DYFS Policy Manual to ensure consistency of articulated position regarding kinship legal guardianship throughout all DYFS policy materials.

RESPONSE: The Division believes that the term “steps” is more specific than the term “efforts” and more accurately describes the process that the Division representative is following to establish permanency for a child. The Division used the phrase “neither feasible nor appropriate” as it contains language consistent with both State and Federal laws. The term “feasible” is used in N.J.S.A. 3B:12A-6d(3). The term “appropriate” is used in 42 U.S.C. §673(d)(3)(A)(II)(ii) to describe permanency options.

The Division believes the meaning of the language in this paragraph and the statutes are analogous and that the standard for determining kinship legal guardianship has not changed.

The Division thanks the OCA for its recommendation to review the Division's policy manuals for accuracy.

N.J.A.C. 10:133D-2.6

15. COMMENT: N.J.A.C. 10:133D-2.6(a)1 reflects that a schedule for visits be based upon tasks to be accomplished directly by the Division representative. Deleted from the proposed amendments are services to be provided. ACNJ believes that tasks are different from services and thus schedules should be based on both.

Paragraph (a)1 should read (additions in boldface):

1. The **services to be provided and the** tasks to be accomplished directly by the Division representative.

RESPONSE: The Division agrees that the in-person visitation schedule should be developed taking into account the services to be provided and the tasks to be accomplished, as both may affect the frequency of contact needed. The Division agrees to reinstate "services" and "provided."

16. COMMENT: NJAMHA is pleased that recodified N.J.A.C. 10:133D-2.6(c) and (d) have been amended to require in-person visits between once a week to monthly and to reflect that exceptional in-person visitation schedules are considered to be at least once every three months. We all agree that frequent contact is required to produce positive outcomes for children and families.

RESPONSE: The Division thanks NJAMHA for its support of these amendments.

17. COMMENT: Through proposed amended language in N.J.A.C. 10:133D-2.6(d), the Division suggests a shift of responsibility from the Central Office to the local office managers regarding approval for exceptions to the required minimum visitation requirement between a caseworker and a child. The OCA supports DYFS' effort to empower local offices to play a stronger role in the lives of the children served by the Division. However, the absence of specific criteria to guide local office managers' decision-making processes in these cases is concerning. The criteria should include, but not be limited to: assessment of the child's strengths and needs; reason for removal; family resources; case goals; and reason for out-of-state placement. The decision should also account for the terms set forth in the Interstate Compact on the Placement of Children or other legally binding agreement between New Jersey and the state in which the child is placed. Documentation of: (1) the justification for the decision and (2) timely review of the visitation schedule, should be required to permit adjustments and to implement necessary changes if such schedule does not meet the needs of the child in placement.

The OCA further suggests amending the proposed language to more clearly define guidelines in cases where an exception may be appropriate as follows (additions in boldface; deletions in brackets):

(d) The local office manager may approve an in-person visitation schedule of once every three months for a child, parent, or out-of-home

placement provider, when a child resides in an out-of-home treatment-based placement program further than 50 miles of the New Jersey State border that precludes an in-person visitation [more frequently ] **schedule of no less** than once every three months.

The OCA also recommends that DCF should adopt a set of criteria for use by all local office managers in the State when making decisions about the required visitation schedule for a caseworker and the child on his or her caseload who is placed out-of-state.

RESPONSE: The Division believes that the phrase “. . .that precludes in-person visitation more frequently than once every three months” is clearer than “. . .that precludes an in-person visitation schedule of no less than once every three months.” The Division is adopting this subsection as proposed.

The Division considers local office managers to be high-level decision-makers who are responsible to make decisions about the safety, risk of harm and permanency of children. The Division does not believe that the criteria used in decision-making need to be regulated.

18. COMMENT: The recommendations put forth by the Division in recodified N.J.A.C. 10:133D-2.6(e) are in keeping with proposed rule changes, which increase visitation requirements for exceptional cases from six months to three months. The Federal government’s standard for visitation requirements set forth in the Child and Family Services Improvement Act of 2006 (P.L. 109-288, sec. 7(a)(17)) asserts that children should be visited monthly, at minimum. The OCA acknowledges that monthly

visitation for children placed outside of the New Jersey border may be ideal, though not feasible or necessary in every case.

Per the guidelines set forth in the Child and Family Services Improvement Act of 2006 (P.L. 109-288), the Division should move toward a goal of monthly visitation with each child. N.J.A.C. 10:133D-2.6(e) relies heavily on the contractual agreement between the sending state and the receiving state identified in the Interstate Compact on the Placement of Children (ICPC). However, the absence of such standards among states suggests that DYFS should assume responsibility for arranging visitation when the receiving state is unable to meet and adequately document visitation. This approach should be codified in the aforementioned rule in order to ensure compliance with visitation under any circumstances in which the ICPC is involved. Further, such codified language should require DYFS to fulfill the agreed visitation schedule in the event that the receiving state fails to comply with the schedule during the ICPC process, or if the receiving state fails to meet the schedule or appropriately document visitation.

The OCA suggests the following modification to N.J.A.C. 10:133D-2.6(e)(additions in boldface):

(e) For a New Jersey child who resides with his or her resource family in another state, where the distance from New Jersey precludes in-person visitation more frequently than once every six months, the local office manager may approve a yearly in-person visitation schedule of two in-person visits by the Division representative and two in-person visits by an agency pursuant to the Interstate Compact on the Placement of Children, N.J.S.A. 9:23-5 et seq. **The shared visitation schedule between New Jersey and the receiving state shall be included in documentation of the visitation schedule as approved by the local office manager,**

**including notice that DYFS representatives maintain responsibility to meet the visitation requirement in the event that the receiving state fails to comply with visitation.**

RESPONSE: The Division's proposed amendments exceed the Federal requirement at 42 U.S.C. §675(5)(A)(ii) that a child placed in foster care outside the State is to be visited not less frequently than once every six months. The Division agrees to add a documentation requirement of the visitation schedule for a New Jersey child in resource care in another state as approved by the local office manager to N.J.A.C. 10:133D-2.6(e). The Division does document these decisions and is willing to place this in rules in order to inform the public. The Division agrees that it is its responsibility to assure that each child's in-person visitation schedule is met. The Division does not believe that additional rules on this issue are necessary.

N.J.A.C. 10:133D-2.7

19. COMMENT: The Division proposes expansion of the acceptable locations for a DYFS representative to meet with the prior custodial parent of a child removed from the home at recodified N.J.A.C. 10:133D-2.7(a)3. The proposed change would better serve the Division's family-centered approach if it recognized that when such visits with parents take place in the parent's home, it provides a better opportunity to assess the parents' progress toward addressing the issues that led to the child's removal. The Division cannot adequately or appropriately assess the parents' progress toward meeting case goals without assessing the parent in his or her environment, as well as other familial or non-familial relationships that may exist in the home.

Therefore, the OCA suggests the following modification to the proposed change in N.J.A.C. 10:133D-2.7(a)3, 5 and (new) 6 (additions in boldface; deletions in brackets):

3. The in-person visit with the prior custodial parent may occur in either the parent's home, the office or other mutually-agreed upon location, **with preference to the visit occurring at the parent's home and each parent of a child with another case goal shall receive at least one visit per month, unless parental rights have been terminated.**

4. (No change.)

5. Each parent of a child with a case goal of reunification shall receive at least two in-person visits per month [and each parent of a child with another case goal shall receive at least one visit per month, unless parental rights have been terminated], **with at least one of those visits occurring in the parent's home.**

**6. All dates, persons seen, physical observations, and other pertinent information obtained during in-person visits shall be documented as necessary for the purpose of informing the continuing appropriateness of reunification, termination of parental right, or other case goal.**

RESPONSE: The Division disagrees with this comment. The Division believes that the amended language as proposed at N.J.A.C. 10:133D-2.7(a)3 allows adequate flexibility in location to arrange in-person visits with parents in order to meet the needs of the parent and the Division representative. The Division also prefers to retain the standard in-person visitation schedule for the parent in paragraph (a) 5. Although the

Division does document all in-person visits, adopting the new N.J.A.C. 10:133D-2.7(a)6 is beyond the scope of this rule adoption and would require a new proposed amendment to the chapter.

#### Federal Standards Analysis

In order to receive Federal appropriations under Titles IV-B and IV-E of the Social Security Act, the State must have a State plan requiring a case plan and a case review for each child in out-of-home placement at 42 U.S.C. §§671(a)(16) and 622(b)(10)(B)(ii). The terms “case plan” and “case review system” are defined at 42 U.S.C. §675(1) and (5).

42 U.S.C. §671(a)(30)(D) and 675(8)(B)(iv)(V) require the case plan to contain information explaining a child’s medical condition if the medical condition prevents the child from attending school on a full-time basis. The Division has amended recodified N.J.A.C. 10:133D-1.7 to include a new paragraph (d)2 to contain this new case plan requirement.

42 U.S.C. §622(b)(17) requires that the state have standards, which ensure that a child in foster care is visited, at a minimum, on a monthly basis by the caseworker. This Federal requirement is supported by 42 U.S.C. §§624(e)(1) and 679b(6). The Division is requiring that for the first two months of out-of-home placement, a child is visited by the Division representative at least twice a month. The Division is adopting this standard in rules, as the Division has agreed to it in *Charlie and Nadine H., et al v. Jon S. Corzine, as Governor, and Kevin M. Ryan, as Commissioner, Modified Settlement Agreement*,

United States District Court for the district of New Jersey, Civ. Action No. 99-3 678 (SRC), July 18, 2006, III B 7 and 8.

42 U.S.C. §§675(1)(D) and (5)(C) require that the case plan contain a description of programs and services, which will help a child age 16 and over prepare for the transition from foster care to independent living. Recodified N.J.A.C. 10:133D-1.7(b)17 requires that this information be included in a child's case plan beginning at age 14. The Division believes that it is important to begin this planning by age 14 in order to plan the child's high school course work to meet his or her educational and career goals.

42 U.S.C. §675(5)(A)(ii) requires that each child who is placed out-of-State be visited in his or her home or institution no less frequently than once every six months and that the case plan contain a report about each visit. Recodified N.J.A.C. 10:133D-2.6(d) and (e) require in-person visits once every three months. The Division believes that quarterly visits with New Jersey children placed out-of-State are crucial to implementing a permanent case goal for each child.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:133D.

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**CHAPTER 120A**  
**DISPUTE RESOLUTION**

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

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:

...

“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-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. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: child care, discharge planning and aftercare services, domestic violence services, DYFS 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, 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.

...

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

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

(a)-(b) (No change.)

(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-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)-(g) (No change.)

10:120A-2.7 Final agency decision

(a) (No change.)

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

1.-2. (No change.)

(c)-(g) (No change.)

**CHAPTER 122D**

**SERVICES FOR CHILDREN IN OUT-OF-HOME PLACEMENT**

SUBCHAPTER 1. VISITS BETWEEN THE CHILD AND THE CHILD'S FAMILY

10:122D-1.4 Visitation plan

(a) A written visitation plan shall be developed to identify the type and frequency of visits to be instituted for every child in out-of-home placement unless

otherwise directed by the court. The visitation plan is included in the case plan, in accordance with N.J.A.C. 10:133D-1.7(b)7.

(b)-(d) (No change.)

#### 10:122D-1.6 Distribution of the visitation plan

The Division representative shall give a copy of the visitation plan to the parent, the out-of-home placement provider, the child, when of an appropriate age, and other parties, including siblings, who are involved in developing the visitation plan and their representatives.

### SUBCHAPTER 2. SERVICES TO CHILDREN IN OUT-OF-HOME PLACEMENT

#### 10:122D-2.4 Case management

(a) The Division representative shall have face-to-face and other contact with the child, out-of-home placement provider, parent and other interested parties according to N.J.A.C. 10:133D-2 and which is written in the case plan in order to:

1.-6. (No change.)

(b) The Division representative shall have face-to-face contact with parent, when applicable, the out-of-home placement provider and the child in accordance with N.J.A.C. 10:133D-2.7, 2.8 and 2.9.

## **CHAPTER 133D**

### **CASE MANAGEMENT**

#### SUBCHAPTER 1. CASE PLAN

Recodify existing N.J.A.C. 10:133D-2.1 through 2.3 as 1.1 through 1.3\_(No change in text.)

10:133D-1.4 When a case plan is developed

(a) A case plan shall be developed with each family for whom services will be provided. The Division representative shall prepare the case plan:

1. Within 60 calendar days of receipt of a report, as defined at N.J.A.C. 10:129-1.3, or a child welfare services referral or application; or
2. Within 30 calendar days of a child entering or reentering out-of-home placement.

(b) (No change.)

(c) The case plan shall be revised more often than the standard set forth in (a) and (b) above, if the case situation shows significant change.

10:133D-1.5 Participants in developing the case plan

(a) The Division representative shall develop the case plan with the child's parent, unless he or she is unwilling to participate, any person identified by the parent to participate, any person appointed by the court for this purpose and the child, if the Division representative determines that the child is willing and able to participate in the development of the case plan, in accordance with this subchapter. Other interested parties or service providers may be invited to participate.

(b) In addition to (a) above, when the child lives in an out-of-home placement, the Division representative shall develop the case plan with the participation of each child's out-of-home placement provider.

10:133D-1.6 Process of developing the case plan

(a) Participation in developing the case plan shall include providing information, identifying needs, outcomes, supports, services and tasks, which are needed to meet the needs and achieve the case goal, suggesting the time frames for beginning and completing the identified services and tasks and specifying who is responsible for completing the identified services and tasks.

**\*(b) If the participants in the case plan development process are unable to participate in a family team meeting, they may participate by:**

- 1. Meeting individually with the Division representative;**
- 2. Providing written information to the Division representative;**

**or**

- 3. Talking with the Division representative by telephone.\***

\*[b]\* \*(c)\* (No change in text.)

10:133D-1.7 Contents of the written case plan

(a) The written case plan for a family with the child living at home shall include:

1. (No change.)
2. The underlying needs of each family member;
3. (No change in text.)
4. The schedule for contacts between the Division representative and

the family members, pursuant to N.J.A.C. 10:133D-2, In-Person Visits with Clients and Out-of-Home Placement Providers;

5. The supports and services **\*offered to,\*** provided to and used by the family since the last case plan was developed, for each case plan after the initial case plan. If any service is court-ordered, the case plan shall contain that service;

Recodify existing 5.-7. as 6.-8. (No change in text.)

(b) The written case plan for a child in an out-of-home placement shall include:

1. The legal authority for the out-of-home placement;
2. (No change.)
3. The case goal for each child, the progress towards its achievement and any obstacles to reaching it;
4. An assessment of the safety and appropriateness of the current placement and the plan to assure that each child receives safe and appropriate care;
5. The efforts made to find a missing mother and father, or relative, pursuant to N.J.S.A. 30:4C-12 et seq.;
6. The schedule for contacts between the Division representative and the family members, pursuant to N.J.A.C. 10:133D-2, In-Person Visits with Clients and Out-of-Home Placement Providers;
- 7.-10. (No change.)
11. 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, as well as the appropriateness of the services for the child. See N.J.A.C. 10:122D-2, Services to Children in Out-of-Home Placement;
12. Any stipulations reflected in a court order;
13. (No change.)

14. How the placement is safe, near the parent's home and the least restrictive and most family-like available, consistent with the best interest and special needs of the child;

15.-16. (No change.)

17. Programs and services to help the child transition from out-of-home placement to self-sufficiency skills, for a child age 14 or older, in accordance with N.J.A.C. 10:122D-2.7.

(c) The written case plan for a child in an out-of-home placement and whose case goal is either adoption or kinship legal guardianship shall include the steps the Division representative is taking to place the child with:

1. An adoptive family, including child specific recruitment efforts, such as the use of adoption resource exchanges in accordance with N.J.A.C. 10:121C-2.4 and 2.5, and to finalize the adoption; or

2. A relative or caregiver who is willing to assume care of a child, become a kinship legal guardian and finalize the kinship legal guardianship, after steps are taken to determine that reunification and adoption are neither feasible nor appropriate and the child meets the eligibility requirements for kinship legal guardianship.

(d) The case plan for a child in out-of-home placement shall include documentation of:

1. The appropriateness of the child's current educational setting; and

2. A child's inability to attend school on a full-time basis due to the child's medical condition.

(e) (No change in text.)

10:133D-1.8 Notice of the case plan

(a) (No change.)

(b) The Division representative shall give a copy of the case plan to each person who signs the case plan, including the out-of-home placement provider, and to each parent who declines to participate in or sign the case plan. The Division shall give a modified copy of the case plan to those who participated in \*[the]\* developing the case plan and to each parent who declined to participate in or sign the case plan, when required by State and Federal confidentiality or child protection laws.

SUBCHAPTER 2. IN-PERSON VISITS WITH CLIENTS AND OUT-OF-HOME  
PLACEMENT PROVIDERS

10:133D-2.1 Authority

N.J.S.A. 30:4C-25 requires the Division of Youth and Family Services, Department of Children and Families to regularly visit all children under its care, custody, and supervision.

10:133D-2.2 (No change in text.)

10:133D-2.3 Scope

The provisions of this subchapter shall apply to each child receiving services from the Division, his or her parent and each out-of-home placement provider of a Division-supervised child and to the Division.

10:133D-2.4 Definitions

The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this subchapter by reference.

10:133D-2.5 Purpose of in-person visits by the Division representative

(a) Each in-person visit by the Division representative shall be made for one or more of the following purposes:

- 1.-2. (No change.)
3. To determine what progress is being made toward achieving the case goal; or
4. To determine whether barriers to achieving the case goal are being alleviated.

(b) Each in-person visit by a Division representative with a child in out-of-home placement shall be made to determine the child's adjustment to and progress in the out-of-home placement and to obtain information and concerns about the child from the out-of-home placement provider and the child, in addition to the purposes in (a) above.

10:133D-2.6 Establishing a schedule for in-person visits

(a) The Division representative and supervisor shall establish a schedule for each child, his or her parent and out-of-home placement provider based on the following:

1. The **\*services to be provided by the Division and the tasks to be\*** accomplished directly by any Division representative;

2.-4. (No change.)

(b) The supervisor and the Division representative shall manage the schedule when appropriate.

(c) Each established schedule for in-person visits shall fall between a range of once every week to monthly, except as provided in (d) and (f) below.

(d) The local office manager may approve an in-person visitation schedule of once every three months for a child, parent or out-of-home placement provider, when a child resides in an out-of-State treatment-based out-of-home placement program further than 50 miles of the New Jersey State border, that precludes in-person visitation more frequently than once every three months.

(e) For a New Jersey child who resides with his or her resource family in another state, where the distance from New Jersey precludes in-person visitation more frequently than once every six months, the local office manager may approve a yearly in-person visitation schedule of two in-person visits by the Division representative and two in-person visits by an agency pursuant to the Interstate Compact on the Placement of Children, N.J.S.A. 9:23-5 et seq. **\*The shared in-person visitation schedule between New Jersey and the receiving state shall be included in documentation of the visitation schedule as approved by the local office manager.\***

(f) The local office manager may approve:

1. An in-person visitation schedule of once every three months for a parent when the parent lives out-of-State at a distance which precludes more frequent in-person visitation and the case plan indicates a continuing need for interaction between the parent and the Division representative; or

2. (No change.)

(g) Whenever an in-person visitation schedule of once every three months has been approved under the provision of (d) above, the Division representative shall maintain monthly telephone contact between visits with all parties, as well as with collateral individuals; for example, school personnel.

(h) (No change.)

10:133D-2.7 In-person visitation when a child is placed out of his or her own home

(a) In addition to the visits made in accordance with the provisions of N.J.A.C. 10:133D-2.6, Establishing a schedule for in-person visits, whenever a child is placed out of his or her own home:

1. An initial in-person visit with the child, the prior custodial parent and the out-of-home placement provider shall be made by the Division representative within five working days following the child's placement out of his or her own home;

2. The visit with the child shall occur in the home of the out-of-home placement provider;

3. The in-person visit with the prior custodial parent may occur in either the parent's home, the office or other mutually-agreed upon location;

4. During the first two months of an initial or a subsequent placement, each child shall receive at least two in-person visits per month, with at least one visit occurring in the home of the out-of-home placement provider and at least one visit per month thereafter, occurring in the home of the out-of home placement provider; and

5. Each parent of a child with a case goal of reunification shall receive at least two in-person visits per month and each parent of a child with another case goal shall receive at least one visit per month, unless parental rights have been terminated.

10:133D-2.8 (No change in text.)

10:133D-2.9 Placement in a treatment-based out-of-home placement program further than 50 miles from the New Jersey State border

(a) When a child is placed in a treatment-based out-of-home placement program further than 50 miles from the New Jersey State border, the Division representative shall speak with the child by telephone within five working days of the child's placement in a treatment-based out-of-home placement program, unless contraindicated by the individual treatment plan for the child.

(b) When a child is placed in a treatment-based out-of-home placement program further than 50 miles from the New Jersey State border, the Division representative shall visit the child and attend the conference to develop the child's treatment plan within 30 calendar days of placement.

10:133D-2.10 Initial in-person visit

(a) In addition to the standards set by N.J.A.C. 10:133D-2.7, 2.8 and 2.9, the Division representative shall make an in-person visit with the child, the parent, and the out-of-home placement provider, if applicable, in the child's residence within 10 working days when:

1.-2. (No change.)

10:133D-2.11 (No change in text.)

## **CHAPTER 133E**

### **SERVICES**

#### **SUBCHAPTER 2. SERVICES**

10:133E-2.3 Services to consider for the case plan

(a) In developing the case plan in accordance with N.J.A.C. 10:133D-1, the Division representative shall consider:

1.-5. (No change.)

(b) (No change.)

## **CHAPTER 133H**

### **GENERAL PLACEMENT PROVISIONS**

#### **SUBCHAPTER 3. REVIEW OF CHILDREN IN OUT-OF-HOME PLACEMENT OR CARE PROVIDED BY A RELATIVE**

10:133H-3.4 Determination of whether out-of-home placement or care provided by a relative should continue

(a) In deciding whether the out-of-home placement or care provided by a relative should continue, the Division shall consider and determine the following:

1.-2. (No comment.)

3.. Whether the Division in the provision of services has made reasonable efforts to return the child home and the failure to achieve that return home is not due to a lack of appropriate Division services or actions, as specified in the case plan, see N.J.A.C. 10:133D-1;

4.-8. (No change.)

10:133H-3.7 Convening and conducting the Division placement review

(a)-(c) (No change.)

(d) The Division shall inform the parent, in accordance with N.J.A.C. 10:133D-1.8(b), the child, if appropriate, and the Child Placement Review Board of the outcome of the Division's placement review, except that those persons cited in N.J.A.C. 10:133H-3.6(a)2 and 6 and (b) may receive only that information from the placement review, which has a direct effect on the care or services being provided by that person or professional. The Division shall inform legal counsel for the child, the parent or the Division of the outcome of the placement review upon the request of each legal counsel

(e) (No change.)