

# RULE ADOPTIONS

## CHILDREN AND FAMILIES

(a)

### OFFICE OF LICENSING

#### Manual of Standards for Children's Shelter Facilities and Shelter Homes

#### Readoption: N.J.A.C. 3A:53

Proposed: April 17, 2023, at 55 N.J.R. 625(a).

Adopted: August 11, 2023, by Christine Norbut Beyer, M.S.W.,

Commissioner, Department of Children and Families.

Filed: August 11, 2023, as R.2023 d.105, **without change**.

Authority: N.J.S.A. 2A:4A-20 et seq., 2A:4A-37, 9:3A-7.g, 9:3A-9, 30:1-14 and 15, and 30:4C-4(d).

Effective Date: August 11, 2023.

Expiration Date: August 11, 2030.

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

Comments were received from Mary A. Ciccone, Director of Policy, Disability Rights New Jersey (DRNJ).

1. COMMENT: The commenter requested revisions to the rules that govern restrictive behavior management practices to incorporate the explicit limitations and training requirements provided pursuant to 42 U.S.C. § 290jj and P.L. 2017, c. 291. The requested changes include additional staff training requirements and limitations prohibiting the use of physical restraints and seclusion except in emergency circumstances to secure the immediate physical safety of the youth or others.

RESPONSE: The Department of Children and Families (Department) will not be making the suggested change. The readopted rules at N.J.A.C. 3A:53 narrowly define the circumstances in which restrictive behavior management may be used and explicitly detail the procedural, training, and notification requirements for staff and administrators. Pursuant to N.J.A.C. 3A:53-4.11, children's shelters are subject to the rules and restrictions that govern restrictive behavior management practices in Children's Group Homes, as specified at N.J.A.C. 3A:56-6.13. The rules at N.J.A.C. 3A:56-6.13 expressly prohibit any restrictive behavior management practices that include seclusion, as defined at 42 U.S.C. § 290jj. The readopted rules further specify the limited circumstances in which physical restraint may be utilized. In particular, "physical restraint is used only to protect a child from self-harm, or to protect other children or staff members, or to prevent the destruction of property when the child fails to respond to non-restrictive behavior management interventions" pursuant to N.J.A.C. 3A:56-6.13(i)1.

In addition, the readopted rules that govern discipline in shelters provided pursuant to N.J.A.C. 3A:53-4.12(f) further limit disciplinary practices involving physical restraint and expressly prohibit the use of mechanical restraints. The Department's readopted rules already incorporate narrowly tailored standards for discipline and restrictive behavior management; therefore, the Department declines to adopt any additional amendments. Together, the readopted rules at N.J.A.C. 3A:53 provide clear guidelines, limitations, consistency, and accountability with respect to restrictive behavior management practices in children's shelters.

2. COMMENT: The commenter expressed concerns about N.J.A.C. 3A:53-4.5(a) requiring shelter homes and shelter facilities to ensure that each school-aged child in care for two weeks or longer receives a minimum educational program provided by the child's school district of residence. The commenter recommends shortening the two-week period to five days.

RESPONSE: The Department declines to reduce the two-week period provided at N.J.A.C. 3A:53-4.5(a). The readopted rules expressly require children's shelters to enforce each child's right to receive an appropriate free education and an educational program in accordance with N.J.S.A. 30:4C:26(c) and 18A:7B-12(a). Requiring shelters to ensure that children in shelter care for two-weeks or longer receive educational programs does

not diminish or circumvent the rules imposed upon school districts to facilitate the immediate enrollment of students.

3. COMMENT: The commenter asks the Department to amend the language at N.J.A.C. 3A:53-4.5(d), related to requests for educational home instruction to align with the standards provided pursuant to N.J.A.C. 6A:16.

The Department declines to make the requested change. N.J.A.C. 3A:53-4.5(d) already aligns standards for district boards of education provided pursuant to N.J.A.C. 6A:16. The rules for children's shelters, pursuant to N.J.A.C. 3A:53-4.5(d), require shelter facility administrators and shelter home coordinators to seek to have each school-aged child returned to educational instruction in a public school. It is only if, in the judgment of the shelter facility administrator or shelter home coordinator, returning to public school is not possible or feasible that an application for the provision of home instruction may be made to the chief school administrator of the child's district of residence. The readopted rules at N.J.A.C. 3A:53-4.5(d) do not permit the unilateral placement of a child in home instruction by a shelter facility administrator or a shelter home coordinator. Instead, the readopted rules simply identify circumstances when an application for home instruction may be made. Home instruction requests pursuant to N.J.A.C. 3A:53-4.5(d) do not interfere with the school district's authority to decide whether home instruction is appropriate or disturb the criteria that is used to reach its decision.

4. COMMENT: The commenter encourages the Department to amend N.J.A.C. 3A:53-2.3 to require intake staff to collect education and disability documents upon admission to allow shelter staff to adequately plan accommodation and prepare for the child or youth's needs. The commenter further recommends using disability-related education documents, such as Individualized Education Programs (IEPs) or 504 Plans to inform staffing supervision levels (that is, minimum staff-to-youth ratios).

RESPONSE: The Department declines to make the suggested change. Authorization to access a student's education records is governed by State and Federal statutes, rules, and regulations. Authorizing access to or the disclosure of education and medical records is outside the scope of N.J.A.C. 3A:53. The Department, therefore, declines to adopt any provisions that would require shelter staff to obtain or utilize education and disability-related records. The Department notes that the disability and education-related information may be voluntarily disclosed to intake staff at N.J.A.C. 3A:53-2.3(c). Shelter staff is not restricted from collecting and documenting information that is shared or disclosed during or after the admission process.

5. COMMENT: The commenter recommends expanding N.J.A.C. 3A:53-2.2 to require shelters to provide the written and posted notice of children's rights in the child's home language.

RESPONSE: The Department declines to add the requested home language requirement to N.J.A.C. 3A:53-2.2. The readopted rules at N.J.A.C. 3A:53-2.2 provide an explicit list of children's rights and require shelters to provide notice of such rights by posting and providing each child with a copy of the list. Although shelters are not restricted from providing the list of rights in additional languages, the Department will not adopt a home language requirement at this time.

6. COMMENT: The commenter requests amending N.J.A.C. 3A:53-4.14 to include access to email communications and access to educational internet resources.

RESPONSE: The Department declines to add requirements related to accessing email and educational internet resources. Each child has the right to send and receive mail without restriction, and N.J.A.C. 3A:53-4.14 further requires shelter facilities and shelter homes to provide each child with a reasonable postage allowance and writing materials for correspondence. Although shelter facilities and shelter homes may choose to provide internet access, in addition to, written and telephone communications, the Department declines to impose additional requirements for shelter facilities and shelter homes at this time.

7. COMMENT: The commenter recommends amending the staff training requirements at N.J.A.C. 3A:53-3.2 to incorporate the minimum

standards of the Children's System of Care and the New Jersey Division of Developmental Disabilities. The commenter further encourages the inclusion of evidence-based staff training requirements designed to benefit youth, such as trauma-informed care, adverse childhood experiences, and positive behavior support.

RESPONSE: The Department declines to amend N.J.A.C. 3A:53-3.6 to include additional training requirements. Instructional and staff training requirements provide sufficient skill development opportunities for shelter staff members. Pursuant to N.J.A.C. 3A:53-3.6, shelter facilities must have continuing in-service training programs for all staff members. In addition, upon employment staff members must also receive instruction on emergency procedures, administrative procedures, and the shelter facility's service program. New employee orientation programs are also required to pair new staff members with an experienced staff member. Shelters are also required to comply with the training requirements related to restrictive behavior management practices in accordance with N.J.A.C. 3A:56-6.13.

8. COMMENT: DRNJ requests the removal any references to character, emotional health, or good health related to shelter staff requirements.

RESPONSE: The Department declines to amend N.J.A.C. 3A:53-3.1 and 3.2 to remove language related to character, emotional health, or good health. The commenter is concerned that certain language used to describe the background, skills, and attributes of shelter staff is outdated, not inclusive, and ambiguous. In particular, the commenter objects to the provisions at N.J.A.C. 3A:53-3.1(a) that require staff to be of "good character and reputation" and in "satisfactory physical, mental, and emotional health to perform his or her job duties satisfactorily." The Department does not agree that "good character and reputation" is impermissibly ambiguous. Employers commonly evaluate the character and reputation of employees and job candidates through the use of background checks, letters of recommendation, work history, and ongoing disclosure policies after employees are hired. The unique demands of children's shelter facilities require staff to respond to a wide range of needs and situations. The requirements related to physical and emotional health and character and reputation are closely linked the requirements placed on shelter staff. The terms further provide flexibility for shelter facility operators to assess staff in view of the particular needs of the shelter.

#### Federal Standards Statement

The licensing standards incorporate, and do not exceed the requirements required to maintain eligibility pursuant to Title IV of the Social Security Act. Title IV-E of the Social Security Act, 42 U.S.C. § 670, authorizes funds under the Social Security Act to be appropriated to allow states to provide foster and transitional care programs and services for children in-out-of-placements. Title IV-E of the Social Security Act, 42 U.S.C. §§ 671(a)(10) and (11), requires the state to establish and maintain standards for foster homes and childcare institutions. The readopted rules provide standards for shelter facilities and shelter homes and establish shelter inspection and reporting requirements, in accordance with §§ 670 and 671 of the Social Security Act. The process of rule readoption is part of the periodical review of these standards. As applicable Federal standards are met, but not exceeded, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 3A:53.

(a)

## COMMISSIONER

### Notice of Readoption

### Organization of the Department of Children and Families

### Readoption: N.J.A.C. 3A:1

Authority: N.J.S.A. 9:3A-7.f, 52:14B-3.a, and 52:14B-4.b.

Authorized By: Christine Norbut Beyer, M.S.W., Commissioner,  
Department of Children and Families.

Effective Date: August 8, 2023.

New Expiration Date: August 8, 2030.

**Take notice** that, pursuant to N.J.S.A. 52:14B-5.1.c, the rules for the organization of the Department of Children and Families (Department) were scheduled to expire on September 16, 2023. The summary of the readopted subchapter follows.

Subchapter 1 sets forth the Department's mission to ensure the safety, well-being, and success of children and families in partnership with New Jersey's communities. Subchapter 1 further provides a list of the Department's divisions and offices, and sets forth contact information for the Department, including the telephone number, address, and email and website addresses to use for conveying, requesting, or obtaining information.

The Department of Children and Families has reviewed the rules at N.J.A.C. 3A:1 and found them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

## COMMUNITY AFFAIRS

(b)

### DIVISION OF CODES AND STANDARDS

#### Maintenance of Hotels and Multiple Dwellings

#### Adopted Amendment: N.J.A.C. 5:10-23.2

#### Adopted New Rule: N.J.A.C. 5:10-15.5

Proposed: October 3, 2022, at 54 N.J.R. 1897(a).

Adopted: July 20, 2023, by Lt. Governor Sheila Y. Oliver,  
Commissioner, Department of Community Affairs.

Filed: August 9, 2023, as R.2023 d.103, **without change**.

Authority: N.J.S.A. 55:13A-1 et seq.; and P.L. 2020, c. 37.

Effective Date: September 5, 2023.

Expiration Date: January 30, 2030.

Summary of Public Comment and Agency Response:

**There were no public comments submitted.**

#### Federal Standards Statement

No Federal standards analysis is required for the adopted amendment and new rule because the adopted amendment and new rule are not being adopted in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows:

#### SUBCHAPTER 15. WATER SUPPLY

##### 5:10-15.5 Drinking water test reporting

(a) The owner of a multiple dwelling who is required to prepare a Consumer Confidence Report, pursuant to the Safe Drinking Water Act Amendments of 1996, 42 U.S.C. §§ 300f et seq., or who receives a Consumer Confidence Report from the owner or operator of a public community water system, as that term is defined at N.J.S.A. 58:12A-41, shall post each Consumer Confidence Report it prepares or receives in each common area routinely used by the tenants living in the multiple dwelling unit.

(b) The owner of a multiple dwelling who is a supplier of water but is not required to prepare a Consumer Confidence Report, pursuant to the Safe Drinking Water Act Amendments of 1996, 42 U.S.C. §§ 300f et seq., and who is required to conduct tests of its drinking water by the Department of Environmental Protection, shall post a chart setting forth the results of the water tests in each common area routinely used by the tenants living in the multiple dwelling unit.