

RULE ADOPTIONS

CHILDREN AND FAMILIES

(a)

OFFICE OF LICENSING

Manual of Requirements for Residential Child Care Facilities

Readoption: N.J.A.C. 3A:55

Proposed: November 6, 2023, at 55 N.J.R. 2233(a).

Adopted: February 20, 2024, by Christine Norbut Beyer, M.S.W.,

Commissioner, Department of Children and Families.

Filed: February 20, 2024, as R.2024.d.018, **without change**.

Authority: N.J.S.A. 30:1-14 and 15 and 30:4C-4.

Effective Date: February 20, 2024.

Expiration Date: February 20, 2031.

Summary of Public Comments and Agency Responses:

The official comment period ended on January 5, 2024. Comments were received from Mary A. Ciccone, Director of Policy, Disability Rights New Jersey (DRNJ).

Restrictive Behavior Management Practices

1. COMMENT: DRNJ encourages the Department of Children and Families (Department) to revisit and revise the language in these regulations regarding the restrictive behavior management practices. The commenter requests revisions to the rules that govern restrictive behavior management practices to incorporate the explicit limitations related to the use of physical restraints and behavior management rooms pursuant to 42 U.S.C. § 290jj and P.L. 2017, c. 291.

RESPONSE: The Department appreciates the commenter's recommendation; however, the Department declines to make the requested changes at this time. N.J.A.C. 3A:55-6.13 and 14 narrowly defines the limited circumstances in which restrictive behavior management may be used and require that implementation of such practices may occur only after the child has failed to respond to non-restrictive behavior management interventions. N.J.A.C. 3A:55-6.13 establishes requirements that facilities must implement before, during, and after the implementation of restrictive behavior management interventions. The readopted rules include clear procedural, training, and notification requirements for staff and administrators.

With regard to behavior management rooms, N.J.A.C. 3A:55-6.13(n) explicitly details the procedures and protocols for use of the rooms in certain limited circumstances. The requirements expressly prohibit the placement of children in behavior management rooms for non-violent or non-assaultive offenses or behaviors, including for the prevention of runaways, or as punishment for stealing, cursing, or failing to cooperate with house rules. The readopted rules further limit the frequency and duration of placements and include mandatory safety protections that staff must follow if a placement is implemented.

As N.J.A.C. 3A:55-6.13 provides clear guidelines and standards to ensure the safe implementation of any restrictive behavior management practices, and further complies with all applicable implementing guidance and regulations related to 42 U.S.C. § 290jj, the Department declines to make any additional changes.

2. COMMENT: DRNJ asks the Department to the remove the requirements related to mechanical restraints at N.J.A.C. 3A:55-6.13(l).

RESPONSE: The Department appreciates the commenter's concerns related to the provisions related to mechanical restraints. However, the provisions may remain relevant for facilities that are still in the licensing cycle that includes the dates identified at N.J.A.C. 3A:55-6.13(k) and (l). The Department is also satisfied that the plain language of the rules at N.J.A.C. 3A:55-6.13(k) and (l) clearly and unambiguously prohibits the use of mechanical restraints on or after January 1, 2020. Therefore, the Department declines to further amend N.J.A.C. 3A:55-6.13(l) at this time.

Education

3. COMMENT: DRNJ recommends N.J.A.C. 3A:55-6.1 be amended to require a representative from the child's responsible school district and/or current school be a member of the treatment team that is responsible for the development of a treatment plan. DRNJ suggests, when a representative from the child's school district is not a necessary member of the treatment team, that the regulation requires consultation with a representative from the responsible school district to ensure that educational services, which address the child's unique needs, as documented in the child's individualized education program (IEP), are provided in the educational setting chosen for the student.

RESPONSE: The Department declines to amend N.J.A.C. 3A:55-6.1. N.J.A.C. 3A:55-6.1 already provides that a representative from the child's responsible school district and/or current school shall be included as a member of the child's treatment team, if necessary. If a facility fails to include a necessary representative from the child's responsible school district or current school on the child's treatment team, the facility would be in violation of N.J.A.C. 3A:55-6.1. Residential childcare facilities are further required to comply with applicable education laws and regulations related to special education, including the provision of appropriate educational services, pursuant to N.J.A.C. 6A:14.

Pursuant to N.J.A.C. 3A:55-2.3, the Office of Licensing may deny, suspend, revoke, or refuse to renew a certificate of approval if a facility fails to comply with the education requirements established at N.J.A.C. 3A:55-6.1. In addition to the potential licensing implications, parents and adult children may utilize the processes established by the Department of Education to submit complaints related to special education. The Department, therefore, concludes the readopted rules are appropriate and adequate without the requested changes.

4. COMMENT: DRNJ encourages the Department to clarify the requirements at N.J.A.C. 3A:55-6.7(f) to mirror Federal Education Law (IDEA) and State regulations governing special education. In particular, the commenter states that N.J.A.C. 6A:14-3.9 requires a classified student to be provided with related services, including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services, and speech language services, by appropriately certified and/or licensed professionals as specified in the student's IEP. Therefore, facilities must inform the child's appropriate school district if the facility's on-grounds education program cannot provide the services specified in a student's IEP, as it would if its on-grounds education program cannot provide instruction in all specific curriculum areas as required at N.J.A.C. 3A:55-6.7(f).

RESPONSE: The Department thanks the commenter for their recommendation but declines to amend N.J.A.C. 3A:55-6.7(f). The regulations related to special education are properly established by the Department of Education at N.J.A.C. 6A:14. Residential childcare facilities that provide on-grounds education programs have an affirmative obligation to comply with established rules and laws. The Manual of Requirements for Residential Child Care Facilities additionally affirms and incorporates this obligation at N.J.A.C. 3A:55-6.7(a), which requires facilities to "ensure that school-age children receive educational instruction to which they are entitled under provisions of Federal and State education laws and regulations." The Department finds the special education rules are clearly and adequately established. Repeating the Department of Education's regulations as DRNJ requests is, therefore, inappropriate and unnecessary.

5. COMMENT: DRNJ's applauds the Department's recognition of the importance of vocational education and preparation for self-sufficiency for children aged 14 and older and for having multiple regulations that address these important activities. DRNJ suggests the requirement at N.J.A.C. 3A:55-6.1 be strengthened to state that the information and documentation requirements provided at N.J.A.C. 3A:55-6.1(b)13 and 6.7(h) must also be included in the student's IEP.

RESPONSE: The Department appreciates DRNJ's support of the requirements related to self-sufficiency. As noted by DRNJ, N.J.A.C. 3A:55-6.1 already requires documentation of information related to how

the child is being prepared for self-sufficiency to be included in the child's treatment plan, including instruction in food preparation, budgeting and money management, and vocational planning and employment search efforts. In addition, N.J.A.C. 3A:55-6.1(e)13 specifies that the self-sufficiency information may be documented in the child's IEP. Documentation requirements related to a student's IEP are properly established by the Department of Education. Modifying or adding new IEP requirements is outside of the scope of the Department's authority. The Department will, therefore, refrain from making the requested changes.

Internet Access

6. COMMENT: DRNJ strongly requests that the Department consider adding instructions for "access to electronic communications and educational internet resources."

RESPONSE: The Department appreciates the commenter's recommendation but declines to add requirements related to accessing email and educational internet resources. N.J.A.C. 3A:55-6.6 provides requirements related to visitation and communication at this time. The readopted rules include provisions for in-person visiting with friends and family, telephone access, and the unrestricted right to send and receive mail, unless otherwise limited by court order. The Department is satisfied that the readopted rules incorporate sufficient options and opportunities for communication. The Department further notes that residential childcare facilities that provide on-grounds education programs are required to comply with any applicable State and Federal laws related to access of educational materials and equipment for the purposes of education.

The Department will take the request under advisement in future rulemakings, if deemed appropriate at that point in time. The Department declines to impose additional communications-related requirements at this time.

Psychiatric Residential Treatment Facilities (PRTF) Manual

7. COMMENT: DRNJ recommends the Department review the PRTF regulations at N.J.A.C. 10:75 and adopt substantial protections for youth with disabilities and mental health diagnoses into the Manual of Requirements for Residential Child Care Facilities, in particular, DRNJ recommends including:

"A requirement to report serious occurrences to DRNJ at N.J.A.C. 3A:55-3.7 to align with N.J.A.C. 10:75-1.6 in the PRTF regulations.

A provision that requires residential childcare facility providers to include the contact information for Disability Rights NJ in guardian admission materials under N.J.A.C. 3A:55-6.13(d), to match N.J.A.C. 10:75-3.4(c).

A requirement for youth to be involved in Treatment Planning and Treatment Plan Meetings under N.J.A.C. 3A:55-6.1(b) to match N.J.A.C. 10:75-2.4(c) in the PRTF regulations."

RESPONSE: The Department appreciates the commenter's suggestions; however, the Department disagrees that it is necessary to incorporate the provisions at N.J.A.C. 10:75 into the Manual of Requirements for Residential Children Care Facilities. The rules at N.J.A.C. 10:75 expressly apply to all psychiatric residential treatment facilities that provide psychiatric services to children/youth/young adults enrolled with the Division of the Children's System of Care (DCSOC), whether or not they are eligible for Medicaid/NJ FamilyCare. The requirements must be met as a condition to become certified. As the requirements are already established, the Department declines to duplicate the requirements at N.J.A.C. 3A:55.

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 residential childcare facilities and establish residential childcare inspection and reporting requirements in accordance

with §§ 670 and 671. 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:55.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND COMMUNITY RESOURCES

Notice of Readoption

Local Housing Authority Crime Reports

Readoption: N.J.A.C. 5:44A

Authority: N.J.S.A. 52:27D-3.4.

Authorized By: Jacquelyn A. Suárez, Acting Commissioner.

Effective Date: February 14, 2024.

New Expiration Date: February 14, 2031.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 5:44A were scheduled to expire on May 11, 2024. The rules are intended to implement N.J.S.A. 52:27D-3.4 et seq., which requires local housing authorities and the Department of Community Affairs (Department) to report certain information on violent crimes and drug offenses to the Legislature. The rules establish procedures for collecting and reporting data on violent crimes and drug offenses committed on housing authority properties, as well as on properties of 10 or more rental units receiving project-based Federal Section 8 rental assistance (project-based housing). The rules require all executive directors of housing authorities and all owners of project-based housing to file reports with the Department, no later than September 1 of each year, on a form provided by the Department for this purpose. The report must include the number and type of violent crimes and drug offenses that occurred on the property during the preceding State fiscal year (July 1 through June 30).

The rules consist of two subchapters and an appendix. Subchapter 1 sets forth the general provisions addressing title, scope, applicability, definitions, and severability. Subchapter 2 addresses reporting requirements, procedures, compliance, enforcement, and right of appeal. Appendix A is a template for the reporting form.

The Department has reviewed the rules and has determined that they should be readopted without change. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c, these rules are readopted and shall continue in effect for a seven-year period.

ENVIRONMENTAL PROTECTION

(b)

OFFICE OF NATURAL LANDS MANAGEMENT

Notice of Readoption

Natural Areas and the Natural Areas System

Readoption with Technical Changes: N.J.A.C. 7:5A

Authority: N.J.S.A. 13:1B-3, 13:1B-15.4 et seq., 13:1B-15.12a et seq., 13:1B-15.100 et seq., 13:1D-9, and 13:1L-1 et seq.

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Effective Dates: February 12, 2024, Readoption;

March 18, 2024, Technical Changes.

New Expiration Date: February 12, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the Natural Areas and the Natural Areas System rules at N.J.A.C. 7:5A are readopted and