

*A Basic Guide to the
New Jersey Court Process
for Resource Families*



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Kidlaw Resource Center

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Please Note: This guide is intended as a reference guide for foster parents (resource parents) providing foster care for children placed in their home by the New Jersey Division of Child Protection and Permanency (DCP&P), formerly the Division of Youth and Family Services or DYFS. It is not intended to offer legal advice or legal guidance. For more information or if you have questions not answered in this guide, contact Mary Coogan via email mcoogan@acnj.org.) or at (973) 643-3876.

The **Kidlaw Resource Center** is a program at ACNJ which offers information, assistance, training and legal publications about the rights of children and legal processes affecting New Jersey's children. The center provides free fact sheets, guides and other information. Staff is available to provide presentations and training on children's legal rights to community groups and professionals. Visit www.acnj.org for more information.

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Table of Contents

Introduction	1
New Jersey Foster Care.....	1
Overview of the Law	5
Court Process for Child Abuse & Neglect Cases.....	8
Child Placement Review Process.....	13
Family Team Meetings Child Welfare Mediation	14
Termination of Parental Rights Process	16
Achieving Permanency for the Child	21
Addressing the Child's Needs	30
Who Can You Turn To For Help?	37
Resources	41

Introduction

The Division of Child Protection and Permanency (DCP&P or the Division), formerly the Division of Youth and Family Services or DYFS has placed a child in your home. DCP&P has trained and approved or **licensed** you as a **resource family** and provides you with a monthly board payment, Medicaid for the child, a clothing allowance and, if needed, child care.

You are also involved in a court process through which a judge is making decisions regarding the care and custody of the foster child in your home. This guide is intended to help you understand the laws that govern this court process, your role in that process and how you can advocate for the foster child in your home. Please understand that this is just an overview. Each factual situation may bring different results.

New Jersey Foster Care

All living arrangements involving a child being placed outside his/her home are generally referred to as **foster care**. These can include the homes of relatives, non-related foster parents or group homes. New Jersey calls relatives who provide foster care and non-related foster parents, as well as individuals interested in adopting children in foster care, **resource families**.

Trained and licensed by the state, you, as a resource family, are obligated to provide support and stability to the child until he/she can return home, is placed

permanently with a relative, is adopted or becomes an independent adult.

The Division pays you a monthly **board payment** to help you support the child, and provides training and supportive services to you and the child. You, in turn, are required to meet licensing regulations and to follow DCP&P's policy and plan, and any court orders issued by the judge for the child. This includes working with DCP&P to try to return the child home, as long as reunification remains the goal.

Once a child is placed with your family, a **resource family support worker (RFSW)** will be assigned from the local DCP&P office to identify your family's ongoing needs and facilitate the referral and provision of services. The RFSW will assist the DCP&P worker assigned to your child's case with ongoing monitoring and safety assessments.

The DCP&P caseworker assigned to the child's case, called a **case manager**, may ask you to help meet the identified needs of the child in your home. This includes transporting the child to visits with parents and other family members, taking the child to counseling or addressing the child's special needs at school. Some foster homes are specialized. These resource families take on more responsibilities and make more adjustments in their home to accommodate the child's special medical and/or emotional needs. They are also paid a higher monthly board rate.

How did the child come to be placed in your home?

DCP&P is part of the Department of Children and Families (DCF). DCP&P is the state agency mandated to investigate all allegations of abuse and neglect of children in New Jersey, determine whether the abuse and/or neglect occurred and take the action necessary to ensure the health and safety of a child and permanent home for the child.

If abuse or neglect occurred, the law requires that DCP&P initially offer appropriate services, such as counseling, to stabilize the family, and keep the child at home. If DCP&P cannot be certain that a child is not at risk of further harm at home, DCP&P may ask the court to authorize the removal of the child from the home and placement of the child into foster care.

In those cases, the attorney who represents DCP&P, a **deputy attorney general (DAG)**, will file a complaint in family court, asking the judge to give DCP&P legal and physical custody of the child. The parents are to be notified of this request and of their right to appear in court to oppose the removal.

The judge will look at the information presented both from DCP&P and the parents and then decide if the child should be placed into foster care. The judge's decision is based on a **preponderance of the evidence**, which means that the judge will grant DCP&P' request to remove the child if there is enough evidence to make it more likely than not that abuse or neglect occurred. The parents can

provide information to oppose the placement at this initial hearing, as well as at later hearings. The judge's decision will be reflected in a written **court order**.

If the parents cannot afford an attorney, they can request an attorney through the **Office of Parental Representation (OPR)** in the Office of the Public Defender. Some parents are also represented by attorneys who work for a legal services office.

All children in court-ordered foster care are entitled to legal representation and are assigned an attorney called a **law guardian**. As the child's attorney, the law guardian should represent the child's wishes and legal interests in the court proceeding. The law guardian and/or the **law guardian investigator** should have regular contact with the child in your home. The law guardian should inform the judge of any concerns regarding the child's health and well-being, so it is important that you keep the law guardian updated.

These attorneys and investigators work for the Law Guardian Program in the Office of the Public Defender. To learn more about the role of the law guardian and to find the telephone numbers and addresses for Law Guardian Program offices, visit the Law Guardian Program's website

http://www.state.nj.us/defender/div_lawguardian.shtml

You can contact ACNJ if you have any problems finding out who the law guardian is or contacting that law guardian.

Overview of the Law

When a child comes into foster care because of abuse and/or neglect, the court case will generally proceed under **Title 9** of New Jersey law. There are also regulations and court rules that apply to these cases.

The laws governing these cases are based upon the concept of **permanency**, the belief that children grow up best in stable families and that every child needs nurturing from a consistent parent person who is committed to his/her care and well-being.

The parent-child relationship is critical to the child's healthy development. How the child grows, emotionally and physically, is influenced by the parent-child bond. The quality of that bond can profoundly affect the relationships children have with all other people in their lives.

Over the years, the law has defined permanency. There are three aspects to **legal permanency** that DCP&P must follow in these cases – family preservation, family reunification and alternative permanent placement

Family preservation requires that DCP&P attempt to keep the family together by offering services to strengthen the family. When the provision of services cannot ensure the child's safety, DCP&P must remove the child.

The child is then placed with a resource family such as yours. In the majority of cases, DCP&P has a legal obligation to offer services and work with the family towards **family reunification**. During this time, the legal responsibility for the child is shared between DCP&P, the resource parent who has day-to-day responsibility for the child and the birth parents who still retain parental rights and want their child returned to them. No one is solely responsible for the child. This is why foster care should be temporary.

If the child cannot be safely returned to the family unit within a reasonable period of time, DCP&P must find an **alternative permanent placement** for the child, preferably through adoption. For this reason, DCP&P now licenses all non-related foster parents, relative caregivers and families interested in adoption as resource families so the same family providing temporary care can commit to adopt the child, if adoption becomes the permanent plan for the child.

Children in Foster Care Have Rights

The *Child Placement Bill of Rights* is a law that entitles a child, who is living outside of his/her parent's care, to certain independent rights because the child is in foster care. These include the following:

- To live with a relative, or at least in the child's own town or city if he/she cannot live at home;
- To live in the same foster home with the child's brothers and sisters; if possible, or at least to visit regularly with them;
- To visit his/her parents;
- To be safe, both physically and emotionally;
- To see the DCP&P case manager on a regular basis;
- To stay in one foster home, or at least not be moved from home to home;
- To have a plan to either return home or be adopted, whichever is the best for the child;
- To be given the help needed to grow up healthy;
- To receive a good education;
- To have enough good food to eat, clothes to wear and a safe house to live in;
- To receive proper health care to maintain and advance the child's physical and mental well-being; and
- To be free from being physically restrained or isolated.

You, the resource parent should do what you can to ensure that these rights are protected and enforced.

Court Process for Child Abuse and Neglect Cases

The initial hearing at which DCP&P requests that the child be placed into foster care is called an **Order to Show Cause** hearing. If the judge grants the Division's request, the case will be given a **docket number** that starts with the letters **FN**. The FN docket number will be found on correspondence you receive from the court regarding your foster child's case.

In most cases, DCP&P is required to offer services to the parents to help correct the problem(s) that led to the child being removed from the home so that the child can be reunited with the parents. Some of these services may be ordered at the first hearing. Other services may be ordered for both the parents and the child at later hearings.

Contact between the child and his/her parents and siblings Children living in foster care have the right to visit with their parents immediately after placement and on a regular basis thereafter, consistent with the health, safety and physical and psychological welfare of the child and as appropriate to the individual circumstances of the child's physical or mental development. DCP&P needs to provide a specific reason for limiting visits or requiring visits to be supervised.

For most children entering foster care, the goal is to hold a visit every week for a period as long in duration as possible. You, as the child's caretaker, as well as the child's parents, should be involved in the development of

the visitation plan. With your permission, the visits can take place at your home or you can agree to transport the child to the visits at another location.

Brothers and sisters should be placed into the same foster home if possible and, if not placed together, should see each other regularly. DCP&P may ask for your help in arranging these visits with the other resource parents.

Providing information to the judge

As a foster/resource parent, you should receive notices from the court for hearings scheduled concerning the status of the foster child in your home. These hearings are scheduled every two to three months. You have the right to speak to the judge at these hearings. You can provide information to the judge about how your foster child is progressing, as well as ask questions or express concerns you may have about the child's well-being, DCP&P or the court process.

Since you are not a "party" to the court proceeding, you do not have a right to stay in the courtroom for the entire hearing. Once you have spoken to the judge, you may be asked to leave the courtroom.

With the notice of the court hearings, you should receive a **Resource Family Information Form** to provide information to the judge and others in the case. You are not obligated to complete this form, but the update will be helpful to the judge. You should send the form to the court at least seven (7) days prior to the hearing date.

If you cannot attend the court hearing because of your work schedule or other commitments, you can provide the judge with a written update by filling out the Information Form or writing a letter, adding new information you think might be helpful. Talk to your DCP&P case manager or the law guardian if you have questions.

Fact-Finding Hearing

Within four months of the child coming into foster care, a **fact- finding hearing** should occur to determine whether the allegations against the parents are true. At this hearing, the parents may provide their own evidence in opposition to DCP&P's allegations or admit that certain allegations in the complaint are true. A **finding** by the judge that the child was abused or neglected gives the judge authority over the child and the family. If the evidence present to the judge does not support such a finding the judge may dismiss the case and return the child home to his/her parents.

Dispositional Hearing

Immediately following the fact-finding hearing or shortly after a **dispositional hearing** is held to decide the child's placement. The judge may decide to send the child back to his/her parents, keep the child in foster care and/or to order services for the parents, other family members and for the child.

Compliance Reviews

If the child remains in foster care after the dispositional hearing, regular court reviews every three to six months, sometimes called **compliance reviews**, follow. During these hearings, the judge receives reports about whether the parents and DCP&P have complied with court orders and what progress has been made to fix the problems that caused the child to be placed into foster care. At the review, the judge addresses issues identified by all involved with the case, including you, the resource parent.

Permanency Hearing

The law requires that the judge schedule a **permanency hearing within one year** of the child being placed into foster care. In certain situations, DCP&P may not be required to offer services or make **reasonable efforts** to reunite the child with the family. In these cases, DCP&P can ask the judge to make a finding that reasonable efforts are not required. If the judge determines that the evidence supports such a finding, the permanency hearing will occur within 30 days of the judge's decision.

The cases in which reasonable efforts are not required include situations in which:

- The parent has subjected the child to very severe abuse, neglect, cruelty or abandonment
- The parent has been convicted of committing or attempting murder or manslaughter of a child
- The parent has been convicted of committing or attempting an assault that resulted, or could have

resulted, in the death of, or significant bodily injury to a child, or

- When the rights of the parent to another child have been involuntarily terminated.

At the permanency hearing, the judge considers the **permanency plan** that DCP&P has proposed for the child. The plan should discuss the long-term goal or **permanency goal** for the child, the anticipated date for achieving that goal and what needs to be done to meet that goal.

New Jersey law states that the child is entitled to attend the permanency hearing. You should talk to the child's law guardian or the law guardian investigator about whether the child should attend a court hearing. If the child is older, you can tell the child that he/she can attend court hearings. If the child is interested he/she should talk to the law guardian. Notice needs to be given to the judge, who has the final say on whether the child can appear in court. Sometimes, special arrangements need to be made to bring a child to court. You can offer to bring the child to court if the child wishes to attend the hearing.

The attorneys for the parents and the law guardian can agree with the permanency plan, oppose the plan or ask for changes. Each can present information to the court through reports from **experts**, testimony from witnesses, and make arguments to the judge to support their clients' positions. The judge then decides whether to approve the permanency goal and plan.

Child Placement Review Board Process

Each county has **Child Placement Review (CPR) Boards**, made up of trained volunteers who monitor the cases of children living apart from their parents. CPR boards review each case within 45 days of the initial placement to make sure everyone is doing what they are supposed to do. At the review, the CPR board will gather critical information from DCP&P and others who attend.

Members of the Board will ask about the placement plan and any services to the child, parents and to you. They will inquire whether the parents have been given the opportunity to regularly visit with the child and what, if any, obstacles exist to achieve the long-term goal for the child.

Board members want to know how the child is doing, so you should make every effort to attend this review. If you cannot attend, you should consider sending a written update about the child or call the Board Coordinator at the courthouse to provide information. You can bring the child to the review, unless the court determines that it is not in the child's best interest. Check with the Board Coordinator or the Law Guardian if you have questions.

Following its completion of the review, the CPR Board submits its recommendations, questions and any concerns about the case to the judge who then issues an order.

You can find contact information for each county's CPR board on the state Child Placement Advisory Council's website at www.njcpac.org or by calling 609-633-2581.

Family Team Meetings

DCP&P attempts to convene a Family Team Meeting prior to or within 72 hours of a child's out-of-home placement. The purpose of the meeting is to continue to engage the parent and other family members and to discuss important issues as: efforts and services to prevent the need for placement; areas of concern for DCP&P or the parent; family's strengths and needs; relative (maternal and paternal) and family friend resources for placement and other types of support; developing a visitation plan; and ensuring that everyone understands that permanency within 12 months is the goal.

Everyone important in the life of a child, as well as the child in care (if of age and otherwise appropriate), should be asked to attend the Family Team Meeting. The parent with the help of the DCP&P caseworker identifies who should be invited to the meeting and can include: interested family members, friends, resource parents, and representatives from the child's support system such as teachers and therapists. Parents, children and youth (when appropriate), and all team members should engage in the decision making process involving what services and supports are needed, how and who should provide them, and deadlines for delivery and completion. Additional Family Team Meetings may be

reconvened at any point in the case upon the consent of the parents of the child or children in placement.

Child Welfare Mediation

Child welfare mediation is a way outside the court room for the parties to resolve issues concerning the children in the care of DCP&P. A neutral, trained person, **the mediator**, arranges a meeting between the parents, the DCP&P case manager, the attorneys, the resource parent(s) and anyone else who has an interest in the welfare of the child or children involved in the case, such as a CASA or a relative who is helping the parent.

At the meeting or **mediation session**, the mediator helps everyone discuss concerns they have about the child and/or children in the case, the family, DCP&P and/or the legal process. Since the session is held outside the court room, there is more time for conversation during which the participants can express their opinions and learn how others feel.

With few exceptions, whatever is said in the mediation session is confidential. While the mediator helps to keep the conversation positive and focused on the child. The mediator does not take sides or make any decisions. Only the participants can make decisions. If an agreement is reached, the mediator will put the terms of the agreement in writing to be presented to the judge. If approved, the agreement will become an enforceable court order.

At any point after the fact-finding hearing, the judge may refer the case involving the child in your home to mediation. The judge can make this referral based upon the request of one of the parties through their attorney. The judge will sign an order that directs everyone involved in the case to attend one mediation session. Mediation sessions are free. Most counties offer mediation for DCP&P cases.

Family Team Meetings are Different from Child Welfare Mediation

Child Welfare Mediation and Family Team Meetings are similar in many ways, but there are differences. Both models seek to engage the family more fully. Family Team Meetings may include anyone the parents want in attendance; whereas, in Child Welfare Mediation, although inclusive, the Judge makes the decision regarding who should attend. The most significant difference is that Child Welfare Mediation is a *court* sponsored program and involves the attorneys for all of the parties, including the child's attorney, the Law Guardian. Family Team Meetings are *DCP&P* sponsored events and generally the attorneys representing the parents, DCP&P, and the child do not attend. Child Welfare Mediation is a confidential process with very limited exceptions. While Family Team Meetings are private, the information gleaned at the meeting may be reflected in the DCP&P record and can be share with the parent's permission.

Termination of Parental Rights Process

If the problems that caused the child's placement are not corrected within a reasonable period of time, DCP&P is legally obligated to find another permanent home for the child, preferably through adoption.

The law requires that a **termination of parental rights** complaint be filed when the child has been in placement for 15 of the last 22 months, unless there is an exception to the requirement. This deadline can be extended by the judge if the parents are making progress or under other special circumstances. Through this process, the child can become legally free to be placed for adoption.

A termination of parental rights case is also called a **guardianship** case. This case will have a new docket number that starts with FG and a new complaint will be filed. You can find out whether your foster child's case is an abuse and neglect case or a termination of parental rights case by looking at the docket number on the notices that you receive for your foster child's court hearings.

Generally the same law guardian will represent the child for both court processes. Sometimes different attorneys represent DCP&P and the parents.

Legal Basis for Terminating Parental Rights

Title 30 of New Jersey law (statutes) governs termination of parental rights. There are five grounds upon which DCP&P can seek to terminate parental rights:

- **A criminal conviction** against the parent because of abandonment, neglect or cruelty;
- **A criminal conviction** against the parent for murder or manslaughter of the child's brother or sister or a conviction for an assault that resulted or could have resulted in significant bodily injury to the child or a sibling;
- **Abandonment** of the child;
- **Best interests** of the child; or
- The parents' failure to remedy the problem which caused the placement despite DCP&P' **reasonable efforts** to help the parents.

In the majority of cases, DCP&P argues one or both of the last two grounds. To establish a case where it appears that the child's best interests require the judge terminate the parents' rights, DCP&P must submit evidence to meet each aspect of a four-part test:

- The child's safety, health or development has been or will continue to be endangered by the parental relationship; and
- The parent is unwilling or unable to eliminate the harm facing the child or is unable or unwilling to provide a safe and stable home for the child and the delay of permanent placement will add to the harm. Such harm may include evidence that separating the child from his foster/resource parents would cause serious and enduring emotional or psychological harm to the child; and
- DCP&P has made reasonable efforts to provide services to help the parent correct the circumstances that

led to the child's placement outside the home, and the court has considered alternatives to termination of parental rights; and

- Termination of parental rights will not do more harm than good.

To make a case on the grounds of **reasonable efforts**, DCP&P must submit evidence that the parent has failed for a period of one year to remove the circumstances or conditions that led to the removal and placement of the child despite the **reasonable efforts** of DCP&P to assist the parent in remedying the conditions. Reasonable efforts are defined in the law to include DCP&P:

- Consulting with the parent to develop a plan for appropriate services;
- Providing the court-ordered services to accomplish family reunification;
- Informing the parents of the child's progress, development and health; and
- Facilitating appropriate visitation.

In cases when a parent has disappeared and has not had contact with the child, with you or with DCP&P for six months or more, and the parent's whereabouts are unknown despite DCP&P conducting official searches for the parent, a case can be made for **abandonment**.

Possible Outcomes of a Termination of Parental Rights Case

At trial, the Division has to prove its case by **clear and convincing evidence**, which means the evidence must be sufficient to leave the judge no doubt that DCP&P has met the requirements of the law.

If the judge decides to terminate parental rights, the child should be placed for adoption. If the judge decides that there is not enough evidence to prove DCP&P' case, the request to terminate parental rights will be denied.

Either party has 45 days to **appeal** the judge's decision to the Appellate Division, asking this higher state court to review the trial evidence and determine whether the trial judge made the correct decision under the law. Appeals stop the court process, thus delaying the finalization of the child's permanent plan.

A parent may not show for the trial, resulting in a **default** judgment being entered against the parent. This allows DCP&P to present its evidence to the judge without opposition from the parent.

If the judge rules against DCP&P, and the parent is not ready to have the child live with the parent, the judge may order DCP&P to provide services to ensure the child's safe reunification. The child may continue to live in your home while these services are put in place. The prior child abuse and neglect (FN) court case is reopened for continued court monitoring.

The parent may, at any time, decide to surrender his/her legal rights to the child. New Jersey allows a parent to surrender his/her parental rights for purposes of having the child adopted by a person specified by the surrendering parent, such as you, the resource parent. This is called an **identified surrender**. If, for some reason, the identified person does not adopt the child, the parent's surrender becomes null and void.

Achieving Permanency for the Child Adoption Finalization

A resource parent who has cared for a foster child for two years or more, and who wishes to adopt that child once legally free to be adopted, shall have first consideration for the adoption of that child. If you are interested in adopting the child in your home, you should always inform DCP&P of that interest. This should be done in writing. All licensed resource families should meet the standards to be a temporary foster home, as well as an adoptive home.

If you would like more information about adoption and/or if you have questions about whether you should adopt, contact **New Jersey's Adoption Resource Clearing House (NJ-ARCH)**. The toll free number is **1-877-4ARCHNJ (1-877-427-2465)** or call 973-763-2041. Or visit NJ-ARCH's website at www.njarch.org

If DCP&P decides that there is a better adoption plan for the child, the Division can decide against you. If you are not chosen as the adoptive home, you can request a review of this decision.

If you are not interested in adopting, hopefully DCP&P has already begun to search for another resource family that can adopt the child. Once this home has been found, the child will be moved to that home for a period of time to assess whether this is an appropriate home for the child. Then the process to finalize the adoption will take

place. A child must be in a home for at least six months before the adoption can be finalized.

Adoption Subsidies

Many of the children adopted from foster care have emotional and/or physical problems that will continue after they are adopted. Some will have significant medical bills or need psychological counseling. New Jersey, like other states, provides subsidies to families who adopt **special needs** or **hard-to-place** children. New Jersey receives federal funding to maintain this program.

In New Jersey, children are considered hard-to-place if they have:

- A health problem that requires frequent medical or dental treatment;
- A physical handicap that makes or is expected to make the child partially or totally unable to attend school or get a job;
- Major disfigurement;
- A diagnosed psychological or psychiatric problem or is developmentally disabled and unable to relate to peers or authority figures;
- Children at certain ages or who come from certain situations, including:
 - Children who are one of a group of three or more siblings, and who must be placed together;
 - Siblings of children who meet the hard-to-place criteria, and who must be placed together;
 - Children over age 10;

- Children over age 2 who are a member of an ethnic group with few available adoptive homes;
- Children over age 5 who have been living with foster parents for at least 12 months and for whom adoption by the foster parents is the most appropriate plan;
- Any other condition that may be approved by the DCP&P director.

Adoptive parents for hard-to-place children must meet certain standards, including:

- Be age 18 before the adoption has been finalized and shall be at least 10 years older than the person(s) he/she wishes to adopt;
- Be capable of raising the child in a decent, moral environment;
- A resident of NJ and/or any other state, if approved for adoption by a licensed agency in that state and meet all interstate requirements;
- Have sufficient financial resources to provide for the basic health, education, general well-being and normal development of the adopted child with the addition of the subsidy;
- Have the ability to manage family financial resources efficiently to meet the basic cost of raising the child in a suitable way;
- Be in reasonably good physical and emotional health, as attested to by an examination by a physician, if necessary;

- Be free from any physical or mental illness or disability that would jeopardize the normal health, education and well-being of the adopted child; and
- Be able to provide for the normal development of the adopted child and provide for the general health, education and well-being of the adopted child.

DCP&P must determine and approve the child's qualifications for subsidy payments **prior to the completion of an adoption proceeding**. Payment includes 100 percent of the monthly foster care board payment until the child turns 18, or until the child completes high school, whichever event occurs later.

Medicaid continues to cover the medical expenses of these children. The adoptive parent may receive payment of expenses resulting from a qualifying condition not covered by Medicaid or other insurance, such as equipment for a child of extraordinary needs. This is negotiated in the subsidy agreement. Subsidy payments and Medicaid coverage continue if you move out-of-state.

Adoptive parents can also receive a payment for adoption expenses, such as legal fees and court costs. Preschool child care and post-adoption counseling services are available. Adoptive parents who finalize an adoption in 2011 can take a federal tax credit of up to \$13,360. For more details visit <http://www.nacac.org/taxcredit/taxcredit2011.pdf>.

Adoption Registry

The **Adoption Registry** can facilitate contact between birth family members and adoptees whose adoptions were processed by DCP&P. If you adopt the foster child in your home, you can fill out an application for the Adoption Registry. The registry will notify you if the birth parents register. Non-identifying information about the birth family can be provided to you as the adoptive parent or to the child you adopted when he/she becomes an adult. This may include family health histories, social and medical characteristics of birth family members, and summaries of the case record material.

Identifying or contact information about you will not be released. Cards or letters attached to one's registry application can be forwarded when the family member for whom the letter is intended contacts the registry. You should update the registry when your address and/or telephone number change if you and/or your child upon reaching 18 wish to be contacted. To obtain an application for the registry, call 609-984-6800 or 609-292-8816.

Open Adoption

Open adoption¹ is the term used to describe any contact between a birth family and an adoptive family before and/or after an adoption has been finalized. It can be

¹For more information about open adoption see ACNJ Special Reports on Open Adoption and Post Adoption Sibling Contact on www.kidlaw.org.

limited to permitting the birth family to assist in the selection of an adoptive home. It can also include post-adoption contact, from the sharing of information between the families to actual visits.

The New Jersey Supreme Court has held that while voluntary agreements between the birth family and the adoptive family will be recognized, they will not be enforced by the courts. That means that if a birth parent surrenders custody of a child and the promise of future contact is a condition of that surrender, that surrender is not considered valid in New Jersey courts.

An open adoption agreement may be appropriate if the child has a relationship with his/her birth family and if you, as the adoptive parent(s), determine that continued contact is good for the child. However, such an agreement should not be forced upon you if you adopt the child. You and your family must be comfortable with the continuing contact. Once the adoption is finalized, DCP&P will not be available to help you arrange visits or to address problems that might arise. Consideration should be given to the terms of the agreement to make sure that the child will continue to benefit from the contact.

The Supreme Court has also ruled that a child has the right to seek contact with a sibling, even over the objection of an adoptive parent. The sibling seeking contact must show that denying the contact will have a negative impact on the adopted sibling.

Kinship Legal Guardianship – An Alternative to Adoption

Adoption is ideal for children who cannot be reunified with birth parents because it is the most permanent legal arrangement, giving a child a new **forever family**. However, for a child to be adopted, the judge must first take away or “terminate” the birth parents’ rights and then award those rights to the adoptive parent(s).

The law recognizes that adoption is not possible in all situations. For example, you may love and be willing to raise the child, but you do not want to end the parents’ rights. The child still needs a **legal** permanent home that will provide stability for the child to at least age 18, if not longer.

Next to adoption, **kinship legal guardianship** is the most permanent legal option. You legally assume responsibility for the care and support of the child, and the parents retain certain rights.

If you are a relative or close family friend who has had the child in your home for at least one year and the parents have serious problems that appear to be continuing for the foreseeable future, and you have strong reasons for not wanting to adopt the child,

you may ask to become the child's **kinship legal guardian (KLG)**.

As a kinship legal guardian, you will have almost all the same rights and responsibilities as a parent and commit to take care of the child until age 18. You will have the authority to consent to the child's routine or emergency medical treatment, school needs and any other activity requiring parental consent. A KLG cannot consent to the child's adoption or to a name change.

The child can still see and/or talk to his/her birth parents. Since the parents' rights are not terminated, the parent(s) often have a right to visitation through the final court order. Once the KLG order is finalized, DCP&P will no longer provide services or assist in arranging for visits between the child and the parents. You will have to make those arrangements on your own.

The parent(s) may also seek to modify or vacate the **Final Judgment of Kinship Legal Guardianship** at a later date, although it is not easy for a parent to prove to a judge that custody should be returned to the parent.

You will continue to receive a monthly KLG subsidy payment from DCP&P and Medicaid for the child until he/she turns 18 or completes high school. DCP&P currently continues KLG subsidy payments if you move to another state. However you have to meet the Medicaid eligibility requirements in that state.

Eligibility for assistance for college will be determined on case-by-case basis. You should ask your DCP&P case manager for details or check out other related materials at www.kidlaw.org.

In addition to the monthly KLG subsidy payments, **relative** KLGs may also qualify for help from the **Kinship Navigator Program, once the DCP&P case is closed and based upon your income. You must be a relative.** The program provides assistance with child care expenses and wrap-around services (short-term or one-time expenses related to the child such as tutoring, furniture). The Kinship Navigator Program telephone number is **2-1-1**.

For more information regarding kinship legal guardianship, contact ACNJ for a copy of *Kinship Legal Guardianship: A permanency option in DCP&P cases*. The publication can be found online at www.kidlaw.org.

Addressing the Child's Needs

Medical Needs

Prior to the child entering foster care, DCP&P will arrange for the child to be examined by a physician. This doctor will report to DCP&P on the child's medical condition and needs. DCP&P should also obtain the child's previous medical records. DCP&P is required by law to share healthcare information about the foster child with you.

Within 30 days of entering foster care, a child should have a comprehensive health exam. This will include a complete physical examination, a developmental assessment and a mental health screen.

If possible, you should attend the evaluation. Your knowledge about the child will be helpful to the doctors. Ask your case manager about scheduling the evaluation if one has not been scheduled. You will receive the results so that you can work with the DCP&P case manager to obtain services to address any difficulties identified.

DCP&P is responsible for ensuring that the foster child in your home receives appropriate medical and dental care. You can ask for counseling and other health related services for the child in your

home. You should help by taking the child to necessary medical and dental appointments. Generally, the health insurance is Medicaid and the child will be enrolled in an HMO. Ask your DCP&P case manager for details.

Mental Health Services

If you think your foster child needs mental health services, you need to contact your DCP&P case manager and/or your child's law guardian to discuss what services are needed. Mental health services may require pre-approval by Medicaid or the HMO. The judge can order that services be provided.

The Division of Child Behavioral Health Services (DCBHS), also located within the DCF, may be providing behavioral health services for your foster child jointly with DCP&P. **Mobile Response and Stabilization Services (MRSS)** can be accessed through DCBHS. MRSS provides short-term, intensive, preventive services that include behavioral and rehabilitative interventions designed to diffuse an immediate crisis and keep the child at home, rather than having to be hospitalized. To access MRSS, call 1-877-652-7624.

Emergency Medical Care

If your foster child needs emergency medical care, you must contact the case manager or call the DCP&P 24-hour hotline (1-800-792-8610) on weekends, holidays and after regular working hours. You may consent to emergency care only when immediate consent is necessary to protect the child's well-being and when DCP&P cannot be contacted within the time required. In such situations, you must notify DCP&P as soon as possible about the treatment.

Other services

If your foster child is identified as having additional service needs, DCP&P should arrange appropriate community resources to provide the service to the child in a timely fashion. If there is a delay because the needed service is not available or limited in your community, DCP&P should encourage and promote the development of needed services.

A youth who is in foster care at least one day past his/her 18th birthday is eligible to continue receiving Medicaid until age 21. To find out about a specific child's eligibility, call 1-877-235-4766.

Educational Needs

You are responsible for **registering your foster child in school**. The Foster Parent Identification letter will provide the school with the proof of residency required for enrollment. You need to bring the child's immunization records and medical records, which should be provided by DCP&P at the time the child was placed in your home.

The Foster Parent Identification letter gives you, as the resource parent, the right to give consent for the child to participate in elective classes, school activities, sports and to sign report cards and permission slips.

Enrolling your foster child in a private school can only be accomplished if the child's parents agree to the private school placement, the school satisfies the New Jersey Department of Education requirements, the school is consistent with the religion of the child if it is a religious school and there is no cost to DCP&P.

You cannot home school your foster child.

Addressing a developmental delay or learning disability of an infant/toddler (birth to age 3)

Developmentally delayed and disabled children are entitled to **Early Intervention Services (EIS)** from

birth to age 3. Anyone can report a potential candidate for EIS to the County Office of Special Child Health, which is part of the Department of Health and Senior Services (DHSS). All children, ages 0 to 3, for whom there has been a substantiated abuse and/or neglect allegation must be referred for an EIS evaluation.

A free evaluation will be scheduled to determine if and what services can assist the child and your family. A specific plan, called an Individualized Family Service Plan (IFSP) will be developed with the family. Services are usually provided in the child's home. They can also be provided in a community setting. For the telephone numbers of the county Offices of Special Services, visit www.kidlaw.org.

Addressing your foster child special education needs

Your foster child may already be receiving special education services or may need additional educational services. Federal and state law dictate that children between the ages of 3 and 21 who have identified learning disabilities must be provided with a **free, appropriate, public education (FAPE)** in the **least restrictive environment (LRE)**. This

means that the student's education must be individualized to meet his/her unique needs. If the child has already been classified eligible for special education, the previous school district would have drawn up an **Individualized Education Plan (IEP)**. The new district must **immediately** review the evaluation information and the IEP and conduct a meeting with the parent present.

If both parties agree, the IEP will be implemented as written. If either party disagrees, the IEP must be implemented as written pending resolution of the dispute. If the current IEP is unavailable, the new district must place the student based on the information available and complete the evaluation/IEP process **without delay**.

The role of the legal parent, foster/resource parent in educational decision-making.

If you suspect your foster child has a learning disability that has not been formally assessed, you should write the school district's director of special education and request a formal evaluation. This process, including the identification of a special education need, evaluation, classification and program implementation, is fully explained in a booklet entitled *A Basic Guide to Special Education*

available in print from ACNJ or on the www.kidlaw.org website.

New Jersey regulations require written parental consent for evaluation and initial placement of a child in special education programs. The law permits a foster/resource parent to provide consent for education-related decisions in certain situations. Therefore, if you suspect or know your foster child has a learning disability, consult the district, your DCP&P case manager, and/or the child's law guardian to determine if you have legal authority to consent to the evaluation and classification of your foster child. You can also contact ACNJ for assistance.

Who Can You Turn To For Help?

The Division

DCP&P' mission is twofold. First, it is to ensure the safety, permanency and well-being of children, and, second, to support families. There are several people at the local DCP&P office that will be involved in your foster child's case and are there to assist you in helping the child. They include:

The child's **case manager**, sometimes called the **case worker**, is responsible for making sure that your foster child is doing well and has everything that he/she needs. The case manager is your first contact at DCP&P. When you need assistance or to need inform DCP&P of something, you should contact the case manager.

Each resource family will now be assigned a **resource family support worker (RFSW)** who will guide your family through the home study and licensing process. Once a child is placed in your home, the RFSW will facilitate the referral and provision of supportive services and identify ongoing needs of your family.

If you are unable to reach your case manager directly, you should leave a message and allow one or two days for a return phone call, unless it is an

emergency. You can also fax a note. If still unsuccessful, contact the case manager's **supervisor**. If you have an emergency and cannot reach the case manager, you should ask to speak with the supervisor.

The **casework supervisor** gives support and assistance to case managers and supervisors. If you have an emergency and you cannot reach either the case manager or the immediate supervisor, ask to speak with the casework supervisor for your child's case. If you have tried unsuccessfully to contact both the case worker and the immediate supervisor about non-emergent issues for a few days, advise the casework supervisor.

Each DCP&P office has a **manager** who is responsible for the overall operations of the office. They also have the authority to give approval for special requests. Contact information of the DCP&P offices, can be found at www.state.nj.us/dcf/contact.

DCF has an **Office of Advocacy** that is a Helpline you can call if you have concerns about DCP&P' handling of a situation involving your foster child. Before calling the Helpline, try to resolve the problem by talking with the case worker and his or her supervisors. The number is 1-877-543-7864.

Court Appointed Special Advocate (CASA)

The **CASA** volunteer serves as an advocate for a child in foster care. Any party in the case can request that a **CASA** be assigned to a case, but the judge must appoint the **CASA**. The **CASA** helps ensure that the child's needs are being met and that the child finds a permanent home. Not every child has a **CASA**.

If the child in your home is assigned a **CASA** volunteer, the **CASA** should visit with you and your foster child and can report any problems or concerns to the judge. Contact information for current programs is on **CASA** of New Jersey's website at www.casaofnj.org.

Foster and Adoptive Family Services (FAFS) is an organization that answers questions, offers support and training, and refers foster and adoptive parents to appropriate agencies. **FAFS** offers vocational and higher educational opportunities to foster and adoptive children and sponsors events for foster and adoptive families. Ph: 1-800-222-0047;
www.fafsonline.org

ACNJ's website, www.kidlaw.org has numerous publications that provide information regarding the legal rights of New Jersey's children, and contact

information for CASA programs, CPR Boards and Law Guardian Program offices.

For more information on the **DCP&P Adoption Registry** contact:

New Jersey Department of Human Services

DCP&P, Adoption Registry Coordinator

P.O. Box 717, Trenton, NJ 08625-0717

PH: 609-888-7474; FAX 609-984-5449

dcfadoptionregistry@dcf.state.nj.us

<http://www.nj.gov/njfosteradopt/adoption/registry/>

RESOURCES

Law Guardian Program Offices:

http://www.state.nj.us/defender/div_lawguardian.shtml

Help for Children with Education Problems

Advocates for Children of New Jersey (ACNJ)

35 Halsey Street

Newark, NJ 07102

973-643-3876

www.acnj.org

ACNJ handles case advocacy calls related to special education, residency and discipline, will attend school meetings and mediation with parent or caregiver. Spanish-speaking attorney on staff.

Education Law Center (ELC)

60 Park Place, Suite 300

Newark, NJ 07102

973-624-1815; 973-624-4618 TTY

www.edlawcenter.org

ELC's Student Rights Project provides free legal representation in cases involving special education, school discipline and residency.

Legal Services of New Jersey (LSNJ)

Statewide Legal Hotline

1-888-LSNJ-LAW (1-888-576-5529)

www.lsnj.org: LSNJ has staff attorneys at some of the local legal services offices who handle education related

matters. Callers must meet income eligibility requirements to obtain assistance. Interpreters are available to handle multiple languages.

Disability Rights NJ

210 South Broad Street, 3rd Floor

Trenton, New Jersey 08608

609-292-9742 or 800-922-7233 (in NJ ONLY)

609-633-7106 TTY - www.drnj.org

NJP&A is New Jersey's designated protection and advocacy system for people with disabilities. NJP&A provides representation and publications.

Statewide Parent Advocacy Network (SPAN)

35 Halsey Street

Newark, NJ 07102

973-642-8100 or 1-800-654-SPAN

www.spannj.org

SPAN provides support, information, training, and advocacy regarding the healthy development and educational rights of children to families, professionals, and advocates.

Special Education Clinic

Rutgers School of Law – Newark

123 Washington Street

Newark, NJ 07102

973-353-5576

Law students supervised by attorneys provide information, assistance, and legal representation in early intervention and special education matters.

Advocates for Children of New Jersey is a non-profit, non-partisan organization. ACNJ is the trusted, independent voice putting children's needs first for more than 30 years. We educate the public and policymakers and equip caregivers with the information they need to be their child's strongest ally.

Our work results in better laws and policies, more effective funding and stronger services for children and families. This means more children are given the chance to grow up safe, healthy and educated.

To maintain our independence, we accept no government funding for our advocacy work and rely on donations from individuals and foundations to sustain our work on behalf of New Jersey children. If you found this guide helpful, please consider a tax-deductible donation.

Donations can be made online at www.acnj.org or by mailing a check to:

Advocates for Children of New Jersey
35 Halsey Street
Newark, NJ 07102