

30:4C-26 Placing child in resource family home or institution.

26. a. Whenever the circumstances of a child are such that his needs cannot be adequately met in his own home, the division may effect his placement in a resource family home, with or without payment of board, in a group home, or in an appropriate institution if such care is deemed essential for him. The division shall make every reasonable effort to select a resource family home, a group home or an institution of the same religious faith as the parent or parents of such child.

b. Whenever the division places any child, as provided by this section, in any municipality and county of this State, the child shall be deemed a resident of such municipality and county for all purposes except school funding, and he shall be entitled to the use and benefit of all health, recreational, vocational and other facilities of such municipality and county in the same manner and extent as any other child living in such municipality and county.

c. Whenever the division shall place any child, as provided by this section, in any school district, the child shall be entitled to the educational benefits of the district determined pursuant to section 3 of P.L.2010, c.69 (C.30:4C-26b); provided, however, that the district of residence, as determined by the Commissioner of Education pursuant to law, shall be responsible for paying, as applicable, tuition and transportation costs for such child to the district in which he is placed.

d. No municipality shall enact a planning or zoning ordinance governing the use of land by, or for, single family dwellings which shall, by any of its terms or provisions or by any rule or regulation adopted in accordance therewith, discriminate between children who are members of such single families by reason of their relationship by blood, marriage or adoption, children placed with such families in such dwellings by the division or other entity designated by the Commissioner of Children and Families, and children placed pursuant to law with families in single family dwellings known as group homes.

Any planning or zoning ordinance, heretofore or hereafter enacted by a municipality, which violates the provisions of this section, shall be invalid and inoperative.

L.1951, c.138, s.26; amended 1962, c.197, s.27; 1974, c.178, s.2; 1979, c.207, s.18; 2004, c.130, s.58; 2006, c.47, s.130; 2010, c.69, s.2.

30:4C-26a. Rules and regulations

Subject to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), the Commissioner of Institutions and Agencies is authorized to formulate and adopt all rules and regulations necessary to effectuate the purposes of this act.

L.1974, c. 178, s. 5, eff. Dec. 10, 1974.

30:4C-26b Child in resource family home, determination of school placement.

3. a. Whenever the Division of Youth and Family Services in the Department of Children and Families places any child in a resource family home, including a change in a placement following the initial placement, there shall be a presumption that the child shall remain in the school currently attended by the child and the child shall remain in that school, pending a best interest determination as set forth in subsection c. of this section, unless the division determines that the circumstances provided in subsection b. of this section are present.

b. If the division determines that remaining in the present school is not in the best interest of the child upon consideration of the best interest factors listed in subsection f. of this section, and would present significant safety concerns or otherwise be a significant and immediate detriment to the child, the child may be immediately enrolled in the school district in which the resource family home is located. If the division enrolls the child in the school district in which the resource family home is located, pursuant to this subsection, the division shall, within two business days of taking such action, provide notice to the child's law guardian and a parent or legal guardian, of the new school placement and the basis for such action. If the division determines there exists a credible safety issue for the child if the location of the school in the resource family's district is disclosed to the parent or legal guardian, the division shall not include the location of that school or other information about the identity of the school in the notice to the parent or legal guardian.

c. Except as provided in subsection b. of this section, within five business days of placement in a resource family home, the division shall make a determination, upon consideration of the best interest factors listed in subsection f. of this section, whether the presumption that the child continue to attend the school that the child currently attends is outweighed by the best interest factors supporting placement in the school district in which the resource family home is located.

In making that determination, the division shall make reasonable efforts to consult with a parent or guardian of the child, the child, the child's law guardian, a representative from the school the child attended at the time of removal, and any school district under consideration for placement.

d. If the division's determination, pursuant to subsection c. of this section, is that it is in the best interest of the child to enroll the child in the school district in which the resource family home is located, the determination shall remain preliminary pending the completion of the requirements of this subsection. If the division's determination is consistent with the presumption established pursuant to subsection a. of this section, the determination shall be deemed conclusive at the time the determination is made.

(1) The division shall immediately transmit a written notice to the child's law guardian and a parent or legal guardian of the child: (a) advising of the preliminary determination; (b) providing the basis for the preliminary determination; and (c) that the preliminary determination shall be deemed conclusive if the division does not receive notice that an application pursuant to this subsection has been made with the court by the date indicated on the notice, which date shall be five business days from the date the notice is transmitted by the division.

The child shall remain enrolled in his current school at least until the time allotted to seek a court review of the preliminary determination is exhausted.

(2) Any party may make an application with the court seeking a review of whether the division's preliminary determination is in the best interest of the child upon consideration of the best interest factors listed in subsection f. of this section within the time allotted by the division as specified in the division's notice, which date shall be five business days from the date the notice is transmitted by the division, unless the child's law guardian, on behalf of the child, and a parent or legal guardian of the child agrees, in writing, to waive the opportunity for a court review of the preliminary determination pursuant to this subsection, in which case the determination becomes conclusive.

Any party who makes an application for court review of the preliminary determination pursuant to this subsection shall provide simultaneous notice to the division and all other parties involved in the division's complaint for custody and guardianship. The court shall hear and decide such application in an expedited manner. In any such proceedings, the division shall bear the burden of proof, based on a preponderance of the evidence, that its determination to enroll the child in the school district in which the resource family home is located is in the best interest of the child.

If a party makes an application for court review of the division's preliminary determination pursuant to this subsection, the child shall continue to attend his current school while the court hears and decides the application.

(3) If the division does not receive timely notice pursuant to paragraph (2) of this subsection that an application has been made for court review within five business days of the transmittal date of the notice of the preliminary determination, the preliminary determination shall be deemed conclusive and the division shall implement its determination as provided in subsection g. of this section.

e. (1) At any time during placement of a child in a resource family home, the court may, upon application by any party to the division's complaint for custody or guardianship, review the child's school placement upon consideration of the best interest factors listed in subsection f. of this section, and make appropriate orders regarding school placement.

(2) At any time during placement in a resource family home, the division may reconsider the child's school placement and make a new determination in accordance with subsection b. or c. and d. of this section, upon consideration of the best interest factors listed in subsection f. of this section.

f. The factors the division and the court shall consider in making a best interest determination, as provided in this section, shall include, but not be limited to:

- (1) safety considerations;
- (2) the proximity of the resource family home to the child's present school;
- (3) the age and grade level of the child as it relates to the other best interest

factors listed in this subsection;

- (4) the needs of the child, including social adjustment and wellbeing;
- (5) the child's preference;
- (6) the child's performance, continuity of education, and engagement in the school the child presently attends;
- (7) the child's special education programming if the child is classified;
- (8) the point of time in the school year;
- (9) the child's permanency goal and the likelihood of reunification;
- (10) the anticipated duration of the current placement; and
- (11) such other factors as provided by regulation of the Commissioner of Children and Families.

g. At the time a determination becomes conclusive or upon any subsequent decision by the court, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district, and the mandated student record shall be provided to the new school district in accordance with applicable regulations of the State Board of Education.

h. The division shall provide transportation for the child to attend school during the time that a determination is being made or while a court review is pending as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by the division or a decision is rendered by the court, the division shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.

The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by the division where the child will attend school.

i. Nothing in this section shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.

j. Notwithstanding the provisions of this section, the division shall not be required to identify the school where the child is or will be enrolled to a parent or legal guardian, if the release of such information would pose a risk to the safety of the child.

L.2010, c.69, s.3.