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LAW AND PUBLIC SAFETY

JUVENILE JUSTICE COMMISSION

DEPARTMENT OF CORRECTIONS

THE COMMISSIONER

Transfer of Adjudicated Delinquents to the New Jersey Department of Corrections

Jointly Proposed Amendments: N.J.A.C. 13:91-1.1, 1.3, 1.4, 2.4, and 2.5

Jointly Proposed Repeals and New Rules: N.J.A.C. 13:91-2.1, 2.2, and 2.3

Jointly Proposed New Rules: N.J.A.C. 13:91-3

Authorized By: Executive Board of the Juvenile Justice Commission, by the Honorable John J. Hoffman, Acting Attorney General and Chair, Deborah R. Edwards, Attorney General's Designee, and Gary M. Lanigan, Commissioner, Department of Corrections.

Authority: N.J.S.A. 52:17B-170, 52:17B-171, and 52:17B-175.

Calendar Reference: See Summary below for explanation of exception to calendar requirements.

Proposal Number: PRN 2013-120.

Submit written comments by October 18, 2013 to:

John Wolff, Administrative Practice Officer
New Jersey Juvenile Justice Commission
1001 Spruce Street - Suite 202
Trenton, New Jersey 08638

The agency proposal follows:

Summary

The New Jersey Juvenile Justice Commission (Commission) and the New Jersey Department of Corrections (DOC) are jointly proposing amendments, new rules, and repeals to the rules found at N.J.A.C. 13:91. These rules set out procedures for the transfer of certain juveniles from the Commission to DOC, as authorized by N.J.S.A. 52:17B-175.e. Chapter 91 was first adopted on an emergency basis, effective May 29, 1997, subsequently readopted in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., effective August 18, 1997. The chapter was readopted with amendments, effective November 19, 2002, and readopted without change effective May 15, 2008 (See 40 N.J.R. 97(a); 3747(a)). Pursuant to N.J.S.A. 52:14B-5.1.b, the chapter expiration date was extended two years. The chapter is due to expire on May 15, 2015.

The proposed amendments would require a due process hearing before a juvenile who has not reached the age of 21 could be transferred to DOC.

On August 28, 2012 the Superior Court of New Jersey, Appellate Division held in *State of New Jersey In The Interest of J.J.* that procedural due process rights must be accorded to a juvenile prior to his or her transfer from the Commission to DOC. The proposed amendments, repeals, and new rules implement hearing procedures to satisfy this due process requirement, and make a number of minor stylistic changes.

The Commission is responsible for the custody and care of juveniles who have been

adjudicated delinquent in Family Court for offenses that if committed by an adult would constitute a crime. Pursuant to N.J.S.A. 52:17B-175, such a juvenile may be transferred to the custody of the DOC when: 1. the juvenile demonstrates disruptive behavior and his or her continued presence in the Commission facility threatens the safety of either the juvenile or others, or the ability of the Commission to operate the facility in a stable, safe, and orderly manner; 2. when the maturity level and criminal sophistication of the juvenile makes him or her inappropriate for Commission programs; or 3. his or her continued presence in the Commission facility impedes the effective delivery of the programs, services, and sanctions. DOC has the discretion to approve or disapprove all transfers.

N.J.S.A. 52:17B-175.e authorizes the transfer of juveniles to adult facilities once they reach the age of 16, two years younger than is provided for in N.J.A.C. 13:91. The higher age threshold used in the chapter is to ensure continued Federal funding of State and county programs under the Federal Juvenile Justice and Delinquency Prevention Act, P.L. 102-586 (JJDPA). Federal regulations at 28 CFR 31.303, adopted pursuant to the provisions of the JJDPA, condition formula grants from the Federal government on, among other factors, juveniles reaching the age of full criminal responsibility established by state law before they may be transferred to an adult facility, and then only if state law authorizes such transfers. The rules at N.J.A.C. 13:91 satisfy the provisions of the Federal regulations (28 CFR Part 31) because transfers to adult facilities are expressly authorized by N.J.S.A. 52:17B-175.e and the age of full criminal responsibility in New Jersey is 18.

As stated above, the proposed amendments, repeals, and new rules implement hearing procedures in order to satisfy a requirement for procedural due process in the

juvenile transfer process.

A summary of the proposed amendments, new rules, and repeals follows:

N.J.A.C. 13:91-1, General Provisions, provides the chapter purpose, scope, definitions, and forms. The Commission proposes to make a non-substantive amendment to N.J.A.C. 13:91-1.1, Purpose, for clarity and syntax.

In N.J.A.C. 13:91-1.3, Definitions, the Commission proposes to add definitions for "hearing officer," "interested party," and "Ombudsman." In addition, the Commission proposes to replace the existing definition for "adjudicated delinquent" with "juvenile." The definition for "adjudicated delinquent," a juvenile found by a court to have committed an act of delinquency, while legally accurate is too broad in that it does not restrict itself to those juveniles residing in Commission facilities. The new definition of "juvenile" corrects this. Finally, the Commission proposes to amend the definition of "juvenile facility" by deleting unnecessary references to specific facilities, making the definition general in nature, consistent with the corresponding definition found in N.J.A.C. 13:95, the Commission's rule on Secure Facilities.

The Commission proposes to amend N.J.A.C. 13:91-1.4 by adding two forms that will be used in connection with a voluntary request for transfer and the transfer hearings, Form 102, Transfer Hearing Form, and Form 103, Transfer Request Form. Paragraph (a)1 is also proposed for amendment to correct the appearance of the form name.

N.J.A.C. 13:91-2 sets forth criteria and procedures that govern the process of transferring a juvenile from the Commission to DOC. The Commission proposes to make a number of amendments to Subchapter 2. The Commission also proposes to add a new

Subchapter 3, Transfer Hearing, which will govern procedures at the transfer hearings, as discussed below.

The Commission proposes to change the heading of Subchapter 2 from “transfer” to “transfer and requirement for transfer hearing.”

The Commission proposes to repeal N.J.A.C. 13:91-2.1, Criteria upon which an adjudicated delinquent 18 years of age or older may be considered for transfer, and to replace that section with new N.J.A.C. 13:91-2.1, Transfer criteria, transfer hearing.

The existing section sets out the criteria for transfer a juvenile from the Commission to DOC, repeating the three criteria set out in N.J.S.A. 52:17B-175, namely: 1. the juvenile demonstrates disruptive behavior and his or her continued presence in the Commission facility threatens the safety of either the juvenile or others, or the ability of the Commission to operate the facility in a stable, safe, and orderly manner; 2. when the maturity level and criminal sophistication of the juvenile makes him or her inappropriate for Commission programs; or 3. his or her continued presence in the Commission facility impedes the effective delivery of the programs, services, and sanctions.

Proposed new N.J.A.C. 13:91-2.1 spells out clearly that each of the Superintendent, Secure Care Administrator, and Executive Director must concur that a threshold criteria has been met, and adds a requirement that a juvenile who has not reached the age of 21 can be transferred only if either the juvenile voluntarily requested the transfer in writing, on Form 103, Voluntary Transfer Request Form, or the transfer determination was upheld after a hearing before a hearing officer under the provisions of N.J.A.C. 13:91-3.

The Commission proposes to repeal N.J.A.C. 13:91-2.2, Recommendation for

transfer of an adjudicated delinquent 18 years of age or older, and to replace that section with new N.J.A.C. 13:91-2.2, JRCC recommendation, administrative reviews.

Existing N.J.A.C. 13:91-2.2 sets out a procedure under which a proposal to transfer a juvenile from the Commission to DOC is initiated by a Juvenile Reception Classification Committee (JRCC) and then proceeds through a number of administrative reviews that involve the Superintendent of the facility housing the juvenile, the senior Commission official with direct responsibility for secure facilities, and the Commission's Executive Director. If at the end of this process the proposed transfer is upheld, the proposal then is submitted to the Commissioner, DOC for his or her approval.

Proposed new N.J.A.C. 13:91-2.2 more succinctly describes the administrative review process and adds a provision that upon his or her approval of a transfer of a juvenile who has not reached the age of 21 to DOC, the Executive Director or designee must refer the proposed transfer for a hearing under the provisions of N.J.A.C. 13:91-3, unless the juvenile agrees to the transfer and requests a transfer without a hearing by signing Form 103, Voluntary Transfer Request.

The Commission proposes to repeal N.J.A.C. 13:91-2.3, Approval for transfer of an adjudicated delinquent 18 years of age or older, and to replace that section with new N.J.A.C. 13:91-2.3, Forwarding of recommendation to Commissioner; Commissioner Action.

The existing provision deals substantively with the request for a transfer that is transmitted to DOC by the Commission, after the Commission has completed its review of the proposed transfer. The proposed new rule makes this focus more clear, eliminating

essentially redundant language that goes to the Executive Director's approval prior to transmission to DOC. Most significantly, it adds a requirement that a request for DOC Commissioner approval of a proposed transfer of a juvenile who has not reached the age of 21 can be made only after either transfer has been approved by a hearing officer after a transfer hearing under the provisions of proposed new N.J.A.C. 13:91-3 or the juvenile has requested a transfer by signing Form 103, Voluntary Transfer Request Form.

The Commission proposes to make minor non-substantive amendments to N.J.A.C. 13:91-2.4, Procedures for transfer, and to N.J.A. C. 13:91-2.5, Confidentiality of information and records, for purposes of clarity and to use the term "juvenile" in lieu of "adjudicated delinquent 18 years of age or older."

The Commission is proposing to promulgate new N.J.A.C. 13:91-3, Transfer Hearing, with 13 sections.

N.J.A.C. 13:91-3.1 states that provisions of the proposed Subchapter apply to proposed transfers of juveniles who have not reached the age of 21.

N.J.A.C. 13:91-3.2 provides for the designation of the hearing officer and gives him or her the authority to summon witnesses, take testimony, receive documentary evidence, have access to facility records, and to control the conduct of the hearing. All hearings on proposed transfers are to be conducted at a secure facility by a hearing officer designated by the Executive Director.

N.J.A.C. 13:91-3.3 provides for service upon the juvenile of the JRCC's determination to transfer him or her to DOC, gives the juvenile 48 hours, or more if requested, to prepare his or her objections to the transfer, and for the juvenile to be housed

in the facility's Behavior Accountability Unit pending final decision on the proposed transfer.

Under N.J.A.C. 13:91-3.4, the hearing officer may direct a further investigation in any case where he or she is of the opinion that additional information is necessary in order to either approve or reject the proposed transfer.

N.J.A.C. 13:91-3.5 provides that while hearings are to be convened at such times as are appropriate to carry out the work of the hearing officer, a juvenile is entitled to a hearing within three days of being served, absent exceptional circumstances, unavoidable delays, or reasonable postponements. This section also provides for one postponement of up to a week, if requested by either the juvenile or the Ombudsman. Finally, N.J.A.C. 13:91-3.5 provides that delays in hearing a proposed transfer are not permitted for the purpose of punishment or discipline.

Under N.J.A.C. 13:91-3.6, a failure to adhere to time limits prescribed by Subchapter 3 cannot alone mandate the denial of a proposed transfer.

N.J.A.C. 13:91-3.7 through 3.11 provide procedural safeguards for a juvenile that include representation at the hearing by the Commission's Ombudsman, the right to appear, allowance for statements in support of the juvenile to be submitted to the Ombudsman by defined interested parties, procedures for in absentia hearings, the opportunity to call witnesses and present evidence challenging the proposed transfer, and the right to confrontation and cross examination when deemed necessary by the hearing officer for an adequate presentation of the evidence.

N.J.A.C. 13:91-3.12 provides that a proposed transfer can be approved by the hearing officer only upon substantial credible evidence that one or more of the threshold

standards set forth in N.J.A.C. 13:91-2.1 have been satisfied and requires that evidence relied upon in making a determination be specified in writing. In cases where a juvenile has assaulted either a staff member or another juvenile, and the assault was reported to a law enforcement agency, N.J.A.C. 13:91-3.12 provides a presumption that the transfer is appropriate, and requires that the juvenile show why the transfer should not occur.

Finally, N.J.A.C. 13:91-3.13 provides that after the hearing has been completed, the hearing officer shall make a written determination on Form 102, Transfer Hearing Form, either approving or rejecting the proposed transfer, including a description of the facts, evidence relied upon, and the reasons for the decision. Copies of Form 102 and the supporting documentation must be given to the juvenile.

This notice of proposal is excepted from the calendar requirements of N.J.S.A. 52:14B-3(4) because the agency is providing a 60-day comment period, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed repeals, amendments, and new rules will have a positive social impact, by ensuring that before a juvenile under the age of 21 may be involuntarily transferred from a Commission facility to the Department of Corrections that he or she must receive a due process hearing before an impartial hearing officer to determine whether or not the factual basis for the proposed transfer should be upheld.

Economic Impact

The costs associated with the transfers provided for in N.J.A.C. 13:91 have been and will be met through the established budget process with funds allocated by the State. The Commission and DOC anticipate that the proposed repeals, amendments, and new rules will not have an economic impact on the Commission or any other department or agency of the State government.

Federal Standards Statement

The proposed repeals, amendments, and new rules comply with 28 CFR 31.303 and do not exceed the standards or requirements imposed by Federal law.

Jobs Impact

The Commission and DOC do not anticipate that any jobs will be generated or lost if the proposed repeals, amendments, and new rules are adopted.

Agriculture Industry Impact

The Commission and DOC do not anticipate that the proposed repeals, amendments, and new rules would have any impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed repeals, amendments, and new rules impose no reporting, recordkeeping, or other compliance requirements on small businesses as the term is

defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not required because the proposed repeals, amendments, and new rules concern only the transfer of youth from juvenile to adult correctional facilities.

Housing Affordability Impact Analysis

The proposed repeals, amendments, and new rules will have an insignificant impact on affordable housing in New Jersey, and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing, because the proposed rules concern only the transfer of youth from juvenile to adult correctional facilities.

Smart Growth Development Impact Analysis

The proposed repeals, amendments, and new rules will have an insignificant impact on smart growth, and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the proposed rules concern only the transfer of youth from juvenile to adult correctional facilities.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:91-2.1, 2.2, and 2.3.

Full text of the proposed new rules and amendments follows (additions

indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

13:91-1.1 Purpose

This chapter sets forth the rules for the transfer of [persons 18 years of age or older from the custody and] **juveniles from the care** [of the New Jersey Juvenile Justice] **and custody of the** Commission to the [New Jersey] Department, [of Corrections] **as authorized by N.J.S.A. 52:17B-175.e.**

13:91-1.3 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

["Adjudicated delinquent" means an individual found by a court to have committed an act of delinquency.]

...

["Juvenile facility" means any secure facility created or operated by the Commission including, but not limited to, the New Jersey Training School, the Juvenile Medium Security Facility, the Female Secure Care and Intake Facility and the Stabilization and Reintegration Program (Boot Camp).]

"Hearing officer" means a staff member of the Commission designated to hear requests for transfers of juveniles from the care and custody of the Commission to DOC under the provisions of N.J.A.C. 13:91-3, Transfer Hearing.

“Interested party” means:

- 1. A person who is related to the juvenile through blood, marriage, adoption, civil union, or domestic partnership and including a stepparent;**
- 2. A person appearing on a list of visitors approved under the provisions of N.J.A.C. 13:95-20.4;**
- 3. A legal or other representative; or**
- 4. A member of the clergy.**

“Juvenile,” for the purpose of transfers to DOC under this chapter, means an individual who has been adjudicated delinquent and sentenced to a term of incarceration to be served under the custody of the Commission and who is residing in a juvenile facility.

“Juvenile facility” means any Commission facility that houses juveniles and employs custody personnel (N.J.S.A. 52:17B-174) to provide security.

...

“Ombudsman” means the individual within the Commission responsible for resolving complaints made by juveniles about the facility, the action or inaction of staff, or any other matter of concern to the juvenile.

...

13:91-1.4 Forms

(a) The following forms related to the transfer of [adjudicated delinquents 18 years of age

or older is] **juveniles are** available [by contacting] **through** the Juvenile Reception Classification Committee:

1. Form 101[—REQUEST TO TRANSFER TO THE NEW JERSEY DEPARTMENT OF CORRECTIONS.], **Request to Transfer to the New Jersey Department of Corrections;**

2. **Form 102, Transfer Hearing Form; and**

3. **Form 103, Voluntary Transfer Request Form.**

SUBCHAPTER 2. TRANSFER AND REQUIREMENT FOR TRANSFER HEARING

13:91-2.1 Transfer criteria; transfer hearing

(a) A juvenile who has reached the age of 21 may be transferred to the Department, only when the Superintendent, Secure Care Administrator, and Executive Director have approved a determination of the JRCC that the threshold criteria set forth in (c) below have been satisfied.

(b) A juvenile who has reached the age of 18, but who has not reached the age of 21 may be transferred to the Department, only when the Superintendent, Secure Care Administrator, and Executive Director have approved a determination of the JRCC that the threshold criteria set forth in (c) below have been satisfied and:

1. The juvenile voluntarily requests a transfer to the Department by signing the Voluntary Transfer Request Form, Form 103; or

2. The determination has then been upheld after a hearing before a hearing

officer under the provisions of N.J.A.C. 13:91-3.

(c) The threshold criteria for transfer of a juvenile to the Department are that the juvenile:

1. Demonstrates disruptive behavior, and that his or her continued presence in the juvenile facility threatens:

i. The safety of the public, juvenile facility staff, or other juveniles; or

ii. The ability of the Commission to operate the juvenile facility in a stable, safe, and orderly manner;

2. The juvenile's maturity level and criminal sophistication makes the juvenile inappropriate for the available Commission programs; or

3. The juvenile's continued presence in the juvenile facility impedes the effective delivery of the programs, services, and sanctions developed and implemented by the Commission to meet the special needs of the juvenile-aged offenders committed to the care, custody, and control of the Commission.

13:91-2.2 JRCC recommendation; administrative reviews

(a) When the JRCC determines that the threshold requirements of N.J.A.C. 13:91-2.1(c) have been satisfied, the chair of the JRCC shall complete Form 101, recommending transfer of the juvenile to the Department, and shall submit the form, along with a copy of a classification summary, progress notes, and a narrative report describing the reasons for the transfer request, to the Superintendent.

(b) The Superintendent shall review the form submitted and supporting documentation identified in (a) above, and within three business days of receipt shall forward his or her recommendation for or against the recommended transfer, and the reasons therefor, by completing and signing Form 101, and shall then forward the form and supporting documentation to the Secure Care Administrator.

(c) The Secure Care Administrator shall make a recommendation for or against the transfer by signing Form 101 within three business days of receipt of the transfer request.

(d) If the Secure Care Administrator agrees with the recommendation for transfer of a juvenile, the Secure Care Administrator shall submit Form 101 and the supporting documents to the Executive Director or designee.

1. If the Secure Care Administrator does not agree with the recommendation for transfer of a juvenile, the Secure Care Administrator shall provide his or her reasons for not recommending the transfer on Form 101 and shall submit it and the supporting documents to the Executive Director or designee.

(e) The Executive Director or designee shall approve or disapprove the recommended transfer by signing Form 101.

1. With respect to the proposed transfer of a juvenile who has reached the age of 21, if the Executive Director or designee approves the proposed transfer, he or she shall indicate approval on Form 101 and then forward the form to the Commissioner, as provided for in N.J.A.C. 13:91-2.3.

2. With respect to the proposed transfer of a juvenile who has reached the age of 18, but who has not reached the age of 21, if the Executive Director or designee approves the proposed transfer, he or she shall indicate approval on Form 101, and then return the form through the Secure Administrator to the Superintendent for the scheduling of a hearing under the provisions of N.J.A.C. 13:91-3, unless the juvenile agrees to the transfer and requests a transfer without a hearing by signing the Voluntary Transfer Request Form, Form 103.

3. If the Executive Director or designee disapproves of the proposed transfer, he or she shall indicate disapproval on Form 101, explaining the reasons therefor, and then return the form through the Secure Care Administrator and the Superintendent to the JRCC.

13:91-2.3 Forwarding of recommendation to Commissioner; Commissioner action

(a) The Executive Director or designee shall transmit Form 101 to the Commissioner together with a formal a request to transfer a juvenile to the Department:

1. Upon the Executive Director's approval of the transfer of a juvenile, who has reached the age of 21, under the provisions of N.J.A.C. 13:91-2.1(f)1;

2. Upon receiving the written determination provided for in N.J.A.C. 13:91-3.14 that the hearing officer has approved the transfer of a juvenile who has reached the age of 18 but who has not reached the age of 21; or

3. If a juvenile requests a transfer by signing Form 103, Voluntary Request

Form.

(b) The Commissioner or designee shall approve or disapprove the recommended transfer by signing Form 101, and then forward the form indicating approval or disapproval, including reasons for disapproval, to the Executive Director or designee, who shall then submit Form 101 to the JRCC through the Secure Care Administrator and the Superintendent.

(c) Upon receiving notice that a proposed transfer has been disapproved by either the hearing officer or the Commissioner, the Executive Director or designee shall return Form 101 through the Secure Care Administrator and the Superintendent to the JRCC.

13:91-2.4 Procedures for transfer

(a) Upon approval of a requested transfer **by the Commissioner or designee**, the JRCC shall arrange for [processing the adjudicated delinquent 18 years of age or older] **the transfer of the juvenile**.

(b) The JRCC shall [then] coordinate the date and time of the transfer of the [adjudicated delinquent 18 years of age or older] **juvenile**, along with his or her records and property, with administrative staff of the receiving correctional facility of the Department.

(c) The Department shall provide transportation of the [adjudicated delinquent 18 years of age or older] **juvenile**.

13:91-2.5 Confidentiality of information and records

(a) Commission and Department staff shall not discuss or disclose information to any unauthorized person or agency regarding a specific [adjudicated delinquent 18 years of age or older] **juvenile** approved, being considered, or recommended for transfer.

(b) The records of [an adjudicated delinquent 18 years of age or older] **a juvenile** are designated confidential and shall not be disclosed to unauthorized persons or agencies in accordance with N.J.S.A. 2A:4A-60 et seq.

SUBCHAPTER 3. TRANSFER HEARING

13:91-3.1 Applicability

The requirement for a transfer hearing and the provisions of this subchapter shall apply to the proposed transfer of a juvenile who has reached the age of 18, but who has not reached the age of 21.

13:91-3.2 Designation and authority of the hearing officer

(a) All hearings on proposed transfers of juveniles to the Department shall be conducted at a secure facility by a hearing officer designated by the Executive Director.

(b) The hearing officer shall have the authority to summon witnesses, take testimony, receive documentary evidence, and have access to all facility records that are relevant and necessary to the adjudication of a proposed transfer.

(c) The hearing officer shall have the discretion to keep the hearing within reasonable limits and to refuse to permit the collection and presentation of evidence that is not necessary for an adequate understanding of the case. The hearing officer shall exercise control over all presentations to prevent lack of relevancy, harassment, abuse, or repetitiveness.

13:91-3.3 Service of JRCC determination; segregation of the juvenile

(a) Form 101 and accompanying narrative reports shall be served upon the juvenile by the Superintendent or designee within 24 hours of the Executive Director's approval under N.J.A.C. 13:91-2.2(f), shall be signed by the person delivering it, and the date and time of delivery shall be noted. The juvenile shall have at least 48 hours to prepare his or her objections to the transfer, and may request additional time to prepare by requesting a postponement under the provisions of N.J.A.C. 13:91-3.5(c).

(b) Pending the hearing and any subsequent transfer to the Department, the juvenile shall be separated from the general population and referred to the juvenile facility's Behavior Accountability Unit under the provisions of N.J.A.C.

13:95-7.

13:91-3.4 Requiring further investigation of proposed transfer

The hearing officer may direct a further investigation in any case where he

or she is of the opinion that additional information is necessary in order to either approve or reject the determination of the JRCC.

13:91-3.5 Scheduling transfer hearings

(a) Transfer hearings shall be convened at such times as are appropriate to carry out the work of the hearing officer.

(b) The juvenile shall be entitled to a hearing within three days of being served with Form 101, including weekends and legal holidays, unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Should the third day fall on a Saturday, Sunday, or legal holiday, the last day for the hearing shall be the weekday immediately following the weekend or legal holiday.

(c) A request for one postponement of up to one week shall be granted if a request is communicated to the office of the Superintendent at any time prior to the hearing time scheduled under (a) above by either the juvenile or the Ombudsman representing the juvenile under the provisions of N.J.A.C. 13:91-3.7.

(d) A request for a postponement made by a juvenile may be directed to any facility staff member, who shall immediately forward the request to the Office of the Superintendent. A request for a postponement made by the Ombudsman shall be submitted by fax or by email.

(e) No delays in hearing a proposed transfer shall be permitted for the purpose of

punishment or discipline.

13:91-3.6 Failure to adhere to time limits

The failure to adhere to any of the time limits prescribed by this subchapter shall not by itself mandate the denial of a proposed transfer.

13:91-3.7 Representation by Ombudsman; interested party statements

(a) The Ombudsman shall represent the juvenile at all transfer hearings, including at an in absentia hearing held under the provisions of N.J.A.C. 13:91-3.9.

1. The Ombudsman shall be permitted reasonable time to speak to the juvenile and shall be given at least 48 hours to prepare a challenge to the proposed transfer, and may request additional time to prepare by requesting a postponement with the consent of the juvenile under the provisions of N.J.A.C. 13:91-3.5(c).

2. An interested party, as defined in N.J.A.C. 13:91-1.3, may submit a written statement to the Ombudsman in support of the juvenile's case either by mail or fax, provided that it shall be up to the discretion of the Ombudsman whether the written statement bears sufficiently on the merits of the proposed transfer to warrant being presented for consideration by the hearing officer.

(b) All written statements and accompanying explanations must be recorded on the Transfer Hearing Form, Form 102.

(c) The juvenile shall be allowed to present his or her case through an interpreter,

if necessary.

13:91-3.8 Right of juvenile to appear at transfer hearing

(a) A juvenile shall be permitted to be present throughout the transfer hearing except during the necessary deliberations of the hearing officer, and except in instances where facility security would be jeopardized by the juvenile's presence.

(b) The reasons for excluding a juvenile from the hearing shall be documented on the Transfer Hearing Form, Form 102.

13:91-3.9 In absentia hearings

(a) A full in absentia hearing shall be conducted if the juvenile refuses to appear at the transfer hearing.

(b) The following procedures shall apply at all transfer hearings conducted in absentia that will enable the hearing officer to ensure that the juvenile has been given every opportunity to be present for the hearing.

1. The escorting staff member shall report the juvenile's refusal to appear before the hearing officer.

2. A staff member shall deliver to the juvenile who refuses to appear a Refusal to Attend Hearing Notice that includes the following statement: "I voluntarily refuse to appear at this hearing. I understand that the hearing will be held in my absence."

3. The staff member shall advise the juvenile that the refusal to appear at the transfer hearing may result in an incomplete understanding by the hearing officer of the circumstances surrounding the proposed transfer. If the juvenile still refuses to appear at the transfer hearing, the juvenile shall be requested to sign a Refusal to Attend Hearing Notice immediately after the statement noted in (b)2 above.

4. In the event the juvenile refuses to sign his or her name where designated on the Refusal to Attend Hearing Notice and still refuses to appear, the notice shall be returned to the hearing officer and the following statement on the notice shall be acknowledged by the signature of the escorting staff member:

"Juvenile refuses to sign _____."
Signature of Staff Member, Date

5. The refusal of a juvenile to attend a transfer hearing should be noted on the Transfer Hearing Form, Form 102, and the completed Refusal to Attend Hearing Notice shall be forwarded to the hearing officer and attached to the Transfer Hearing Form, Form 102.

13:91-3.10 Opportunity to call witnesses and present evidence

(a) Juveniles shall be allowed to call witnesses and present documentary evidence in support of their challenge to a proposed transfer, unless the hearing officer determines that permitting such witnesses or evidence would pose a threat to the safety of either the juvenile, other juveniles, staff, or to the orderly

and safe operation of the facility.

(b) All permitted witnesses and documentary evidence accepted shall be recorded on the Transfer Hearing Form, Form 102.

(c) The hearing officer shall review the evidence offered as reasonably available and necessary for proper understanding of the circumstances surrounding the proposed transfer, and shall have discretion to keep the hearing within reasonable limits and to refuse to call repetitive witnesses and witnesses who may create a risk of reprisal. For purposes of this subsection, "repetitive witnesses" are witnesses who provide the same account as a previous witness. "Repetitive witnesses" are not intended to refer to the calling of a witness who previously provided written documentary evidence. Unavailable witnesses may be asked to submit written statements. If the hearing officer refuses to permit one or more witnesses or accept any evidence, the reasons for each such refusal shall be documented on the Transfer Hearing Form, Form 102.

(d) The hearing officer, the juvenile, and the Ombudsman may question witnesses called at the request of the juvenile. The juvenile or the Ombudsman may request that specific questions be directed by the hearing officer to a witness. The hearing officer may take testimony in any manner or form necessary to protect facility safety. Such manner or form shall include, but shall not be limited to, the consideration of confidential reports.

1. If confidential reports are considered and relied upon by the hearing

officer, a non-confidential summary must be provided to the juvenile and the Ombudsman and attached to the Transfer Hearing Form, Form 102.

13:91-3.11 Confrontation and cross-examination

(a) The opportunity for confrontation and cross-examination shall be provided to the juvenile in such instances where the hearing officer deems it necessary for an adequate presentation of the evidence, particularly when serious issues of credibility are involved. The confrontation and cross-examination of all adverse witnesses must be noted on the Transfer Hearing Form, Form 102.

(b) The hearing officer may refuse confrontation and cross-examination when such confrontation and cross-examination would be unduly hazardous to facility safety. If the hearing officer refuses to permit cross-examination or confrontation, the reasons for each such refusal shall be documented on the Transfer Hearing Form, Form 102.

13:91-3.12 Standard for approval of transfer

(a) A proposed transfer shall be approved by the hearing officer only upon substantial credible evidence that one or more of the threshold standards set forth in N.J.A.C. 13:91-2.1(c) have been satisfied.

(b) Evidence relied upon in making a determination shall be specified in writing on the Transfer Hearing Form, Form 102.

(c) Where the juvenile has assaulted a staff member or another juvenile and that assault has been reported to a law enforcement agency, there shall be a presumption that the transfer is appropriate and the juvenile shall be required to show why the transfer should not occur.

13:91-3.13 Hearing determination, referral to Executive Director, and notice to juvenile

(a) Within 24 hours after the hearing has been completed, the hearing officer shall make a written determination on the Transfer Hearing Form, Form 102, either approving or rejecting the proposed transfer, which determination shall include a description of the facts, evidence relied upon, and the reasons for the decision.

(b) The Transfer Hearing Form, Form 102, and all supporting documentation shall immediately be forwarded to the Executive Director or designee, and copies shall be given to the juvenile and forwarded to the Superintendent and Secure Care Administrator.