

ADMINISTRATIVE RESOLUTION OF COMPLAINTS AND APPEALS OF ADVERSE ACTION POLICY

(A) Purpose

The purpose of this policy is to set forth the process for resolution of complaints involving the programs, services, policies, or administrative practices of the Fayette County Board of Developmental Disabilities, herein known as the Board or an entity under contract with the Board; set forth the process for individuals to appeal adverse actions proposed or initiated by the Board; and set forth the requirement for the Board to give notice of the process to be followed for resolution of complaints and appeals of adverse action. The Board will insure compliance with OAC 5123:2-1-12 as well as all applicable sections of the Ohio Revised Code.

(B) Scope

Any individual or person, other than an employee of the Board, may file a complaint using the process set forth in this policy. An individual may appeal an adverse action using the process set forth in this policy. The process set forth in this policy shall be followed before commencing a civil action.

A. This policy shall not be applicable:

- 1) When the Board is a vendor or subcontractor for service delivery.
- 2) To education services arranged by the local education agency. Complaints or appeals concerning such services shall follow rules adopted by the Ohio department of education.
- 3) To services provided under Part C of the Individuals with Disabilities Education Act, 34 C.F.R.303, as in effect on the effective date of this policy. Complaints or appeals concerning such services shall follow rules adopted by the lead agency responsible for administration of Part C of the Individuals with Disabilities Education Act.
- 4) To Medicaid services including home and community-based waiver services and targeted case management services. Complaints or appeals concerning such services shall follow rules adopted by the Ohio department of Medicaid. The Board shall not require the use of the process set forth in this policy for issues regarding Medicaid services.
- 5) To administration of prescribed medication, performance of health-related activities, and performance of tube feedings by developmental disabilities personnel pursuant to the authority granted under section 5123.42 of the Revised Code or compliance with Chapter 5123:2-6 of the Administrative Code. Complaints or appeals concerning such matters shall be made to the department using the process established in rule 5123:2-17-01 of the Administrative Code.
- 6) To services provided to a resident of an intermediate care facility by the intermediate care facility, or provided on behalf of or through a contract with an intermediate care facility. Complaints or appeals concerning such services shall follow regulations governing intermediate care facilities.

B. If the Board determines that a complaint or appeal of adverse action filed with the Board is not subject to this policy, the Board shall provide information to the individual or person filing the complaint or appeal, including the name and telephone number, if available, of the appropriate entity with which to file the complaint or appeal of adverse action.

- C. An individual received non-medicaid supported living services shall follow the terms of the contract of the service provider, as required by section 5126.45 of the Revised Code, prior to beginning the process for resolution of complaints or appeals of adverse action established in this policy.

1202 Definitions

- A. "Adverse action" means any of the following:
- 1) Denial of a request for a non-medicaid service.
 - 2) Reduction in frequency and/or duration of a non-medicaid service.
 - 3) Suspension of a non-medicaid service.
 - 4) Termination of a non-medicaid service (except when the recipient of that service is deceased).
 - 5) The outcome of an eligibility determination.
- B. "Advocate" means any person selected by an individual to act and/or communicate as authorized by the individual.
- C. "Contracting entity" means an entity under contract with the Board for the provision of services to individuals with developmental disabilities.
- D. "County board" means a county board of developmental disabilities including a county board when acting through a council of governments.
- E. "Department" means the Ohio department of developmental disabilities.
- F. "Director" means the director of the Ohio department of developmental disabilities or his or her designee.
- G. "Hearing" means the opportunity to present one's case regarding a complaint or appeal of adverse action.
- H. "Individual" means a person with a developmental disability who is eligible, or purports to be eligible, for services pursuant to Chapters 5123. and 5126. of the Revised Code and includes a parent of a minor child, an individual's guardian, or an adult authorized in writing by an individual pursuant to section 5126.043 of the Revised Code to make a decision regarding receipt of a service or participation in a program.
- I. "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.
- J. "Notice" means and is deemed to have occurred upon:
- 1) For an individual who has selected email as her or her preferred method of communication, electronic confirmation that the individual has read the email;
 - 2) Personal delivery to an individual; or
 - 3) The date of certified mailing to an individual unless:
 - i. The original certified mailing is refused, in which case notice is deemed to have occurred on the date the notice is resent by ordinary mail to the individual; or
 - ii. The original certified mailing is unclaimed, in which case notice is deemed to have occurred on the date the notice is resent by ordinary mail to the individual unless within thirty days after the date the notice is resent, the resent notice is returned for failure of delivery.
- K. "Person" has the same meaning as in section 1.59 of the Revised Code.

1203 General Provisions

- A. Complaints and appeals of adverse action shall be filed in writing. When an individual or person expresses dissatisfaction with an outcome subject to complaint or appeal in accordance with this policy, the Board shall, to the extent necessary, assist the individual or person in filing a complaint or appeal.
- B. At all times throughout the resolution of complaints and appeals of adverse action process, the Board shall maintain the confidentiality of the identities of individuals unless an individual gives written permission to share information.
- C. An advocate may assist an individual at any time during the resolution of complaints and appeals of adverse action process.
- D. The Board shall make all reasonable efforts to ensure that information regarding resolution of complaints and appeals of adverse action, including all notices and responses made pursuant to this policy, is presented using language and in a format understandable to affected individuals and persons. All notices and responses made pursuant to this policy shall include an explanation of the individual's or person's opportunity to file a complaint with or appeal to a higher authority, as applicable.
- E. The timelines set forth in this policy may be extended if mutually agreed upon in writing by all parties involved.
- F. Initiation of the formal process set forth in this policy does not preclude the resolution of complaint or an appeal of adverse action at any point, as long as the outcome is mutually agreed upon in writing by all parties involved.

1204 Requirements for the Board to Provide Information about the Process for Resolution of Complaints and Appeals of Adverse Action and to Give Notice of Adverse Action

- A. General information about the process for resolution of complaints and appeals of adverse action.
 - 1) The County board shall give the "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to this rule to an individual at the time of the individual's initial request for services, at least annually to each individual receiving or on a waiting list for non-medicaid services, and at the time a complaint within the scope of this rule is received or the county board proposes an adverse action.
 - 2) Upon request, a county board or contracting entity shall provide a copy this rule.
 - 3) The county board shall publicly post the "Complaint or Appeal of Adverse Action Explanation form" contained in the appendix to this rule.
- B. Specific notice of adverse action.
 - 1) Except when it is necessary to suspend an individual's services without delay to ensure the health and safety of the individual or other individuals in accordance with Section 1204(c) of this policy, the county board shall provide written notice to the affected individual of the county board's decision to deny, reduce, suspend, or terminate services at least fifteen calendar days prior to the effective date of such action. The notice shall include:
 - i. An explanation of the county board's policy and/or authority for taking the adverse action;
 - ii. A description of the specific adverse action being proposed or initiated by the county board;
 - iii. The effective date for the adverse action;

- iv. A clear statement of the reasons for the adverse action including a description of the specific assessments and/or documents that are the basis for the adverse action;
 - v. An explanation of the individual's right to appeal the adverse action;
 - vi. An explanation of the steps the individual must take to appeal the adverse action;
 - vii. A statement that the individual has ninety calendar days to appeal the adverse action;
 - viii. A statement that the individual must file his or her appeal prior to the effective date for the adverse action to keep his or her services in place during the appeal process;
 - ix. The name and contact information for the staff member of the county board who can assist the individual with his or her appeal; and
 - x. The "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to this rule.
- 2) The county board shall retain written evidence of the date the notice is personally delivered or sent by certified mail to the individual or for an individual who has selected email as his or her preferred method of communication, the date of electronic confirmation that the individual has read the email.
- C. Specific notice of adverse action when it is necessary to suspend an individual's services without delay to ensure the health and safety of the individual or other individuals.
- 1) When it is necessary to suspend an individual's services without delay to ensure the health and safety of the individual or other individuals, the county board shall:
- i. Determine what immediate steps are necessary to ensure the health and safety of the individual and other individuals; and
 - ii. Provide written notice to the affected individual immediately. The notice shall include:
 - a) An explanation of the county board's policy and/or authority for suspending the individual's services;
 - b) A description of the specific services being suspended;
 - c) The effective date for the suspension of services;
 - d) A clear statement of the reasons for the suspension of services including a description of the specific circumstances that jeopardize the health and safety of the individual or other individual's;
 - e) An explanation that the county board shall arrange for appropriate alternative services and a description of the specific alternative services available to the individual;
 - f) An explanation of the steps the county board shall take in accordance with paragraphs 1204(c)(3) and 1204(c)(4) of this policy;
 - g) The name and contact information for the staff member of the county board who can answer questions about the suspension of services; and
 - h) The "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to this rule.
- 2) The county board shall retain written evidence of the date the notice is personally delivered or sent by certified mail to the individual or for an individual who has selected email as his or her preferred method of communication, the date of electronic confirmation that the individual has read the email.

- 3) Within five calendar days of the notice of suspension of services, the county board shall convene a team meeting to identify measures that may be implemented to eliminate the circumstances that jeopardize the health and safety of the individual or other individuals.
- 4) Within five calendar days of the team meeting, the county board shall:
 - i. With the consent of the individual, implement measures to eliminate the circumstances that jeopardize the health and safety of the individual or other individuals as necessary and restore the suspended services; or
 - ii. With the consent of the individual, continue to arrange for appropriate alternative services; or
 - iii. Provide written notice that includes the components described in Section 1204(b) of this policy to the individual of the county board's decision to terminate the individual's services at least fifteen calendar days prior to the effective date of such action. If the individual files an appeal prior to the effective date of the termination of services, the county board shall keep the individual's alternative services in place until the appeal process is completed.

1205 Informal process for resolution of complaints and appeals of adverse action

The following grievance procedure is an informal process for the resolution of disputes with complainants or individuals:

- A. A County Board designee, *as appointed by the Superintendent* shall serve as the representative to conduct an informal hearing of such disputes seeking to resolve the issue within a time frame of no more than thirty (30) days. The filing of such grievances under this policy shall not affect the rights of the complainant or individual to file an appeal through the administrative resolution procedures under paragraph (D) (03) of this policy.
 - 1) A case conference may be requested by the complainant or individual to discuss conflict issues with ten (10) days of the complaint.
 - 2) The complainant or individual shall contact the County Board Program Director of the applicable service component from which the pending issue originated.
 - 3) Upon receipt of the request for a case conference, the Program Director shall, at a mutually agreeable time to all parties, schedule a case conference. Case conferences shall be scheduled within five (5) working days of the request.
 - 4) The case conference shall include all persons requested to attend by the complainant and/or individual.
 - 5) During the case conference the Program Director shall; respond to question, review the circumstances related to the decision, and provide the party initiating the request the opportunity to present reasons as to why any decision(s) should be reconsidered.
 - 6) Prior to the conclusion of the case conference, the Program Director shall provide the party initiating the request for the case conference, a copy of the County Board Administrative Resolution of Complaints for County Boards.
 - 7) The Program Director will inform the complainant or individual that the appeal process to the grievance procedure is the Administrative Resolution Procedure.

1206 Formal process for resolution of complaints and appeals of adverse action

- A. Step one: filing a complaint or appeal of adverse action with the Division Director responsible for the program, service, policy, or administrative practice of the county board.
- 1) An individual or person must file a complaint with the Division Director of the county board within ninety calendar days of becoming aware of the program, service, policy, or administrative practice that is the subject of the complaint.
 - 2) An individual must file an appeal of adverse action with the Division Director of the county board within ninety calendar days of notice of the adverse action or within ninety calendar days of conclusion of the informal process set forth in Section 1205 of this Policy. If the individual appeals an adverse action within the prior notice period (i.e., the period of time between notice of the intended adverse action and the effective date of the adverse action), the individual's services shall not be reduced, suspended, or terminated until the appeal process is completed or the appeal is withdrawn by the individual. An individual who appeals during the prior notice period may voluntarily consent in writing to the reduction, suspension, or termination of services during the appeal process.
 - 3) The Division Director of the county board shall conduct an investigation of the complaint or appeal which shall include meeting with the individual or person who filed the complaint or appeal.
 - 4) Within fifteen calendar days of receipt of the complaint or appeal, the Division Director of the county board shall provide and thereafter be available to discuss a written report and decision with the individual or person who filed the complaint or appeal. The written report and decision shall include the rationale for the decision and a description of the next step in the process if the individual or person is not satisfied with the decision of the Division Director.
- B. Step two: filing a complaint or appeal of adverse action with the superintendent of the county board.
- 1) If the individual or person filing the complaint or appeal of adverse action is not satisfied with the outcome of the process set forth in Section 1206(a) of this Policy, the individual or person may file a complaint or appeal with the superintendent of the county board.
 - 2) The complaint or appeal of adverse action must be filed with the superintendent of the county board within ten calendar days of notice of the decision of the Division Director of the county board. If no decision is provided by the Division Director of the county board within fifteen calendar days in accordance with Section 1206(a) of this Policy, the complaint or appeal of adverse action must be filed with the superintendent of the county board within twenty five calendar days of filing the complaint or appeal with the Division Director.
 - 3) The superintendent of the county board or his or her designee shall, within ten calendar days of receipt of the complaint or appeal, meet with the individual or person and conduct an administrative review.
 - 4) As part of the administrative review, the superintendent of the county board or his or her designee may ask questions to clarify and review the circumstances and facts related to the Division Director's decision and shall provide the individual or person the opportunity to present reasons why the Division Director's decision should be reconsidered.
 - 5) Within fifteen calendar days of receipt of the complaint or appeal, the superintendent of the county board or his or her designee shall send by certified mail, a copy of his or her decision to the individual or person who submitted the complaint or appeal. Such

decision shall include the rationale for the decision and a description of the next step in the process if the individual or person is not satisfied with the decision of the superintendent of the county board or his or her designee.

C. Step three: filing a complaint or appeal of adverse action with the president of the county board.

- 1) If the individual or person filing the complaint or appeal of adverse action is not satisfied with the outcome of the process set forth in Section 1206 of this Policy, the individual or person may file a complaint or appeal with the president of the county board.
- 2) The complaint or appeal of adverse action must be filed with the president of the county board within ten calendar days of notice of the decision of the superintendent of the county board or his or her designee. If no decision is provided by the superintendent of the county board or his or her designee within fifteen calendar days in accordance with Section 1206 of this Policy, the complaint or appeal of adverse action must be filed with the president of the county board within twenty-five calendar days of filing the complaint or appeal with the superintendent.
- 3) The president of the county board shall ensure that a hearing is conducted within twenty calendar days of receipt of the complaint or appeal at a time and place convenient to all parties. At such hearing:
 - i. The county board may hear the complaint or appeal;
 - ii. A committee of two or more county board members appointed by the president of the county board with agreement of the county board may hear the complaint or appeal. The committee shall issue a report and recommendation to the county board within ten calendar days of the conclusion of the hearing; or
 - iii. A hearing officer appointed by the county board may hear the complaint or appeal. The hearing officer shall have the same powers and authority in conducting the hearing as granted to the county board. The hearing officer shall not be an employee or contractor of the county board providing any service other than that of hearing officer. The hearing officer need not be an attorney, but shall possess qualifications to be able to make neutral and informed decisions about the complaint or appeal. The county board may ask the department to decide if a person is qualified to be a hearing officer. The hearing officer shall issue a report and recommendation to the county board within ten calendar days of the conclusion of the hearing.
- 4) Upon request, the individual or person filing the complaint or appeal shall be provided access to all records and materials related to the complaint or appeal no less than ten calendar days before the hearing.
- 5) To the extent permitted by law, the hearing shall be private unless the individual or person requesting the hearing wants it open to the public.
- 6) During the hearing, both parties may present evidence to support their positions.
- 7) The individual or person requesting the hearing and the county board have the right to be represented by an attorney.
- 8) The individual or person requesting the hearing shall have the right to have in attendance at the hearing and question any official, employee, or agent of the county board who may have evidence upon which the complaint or appeal is based.
- 9) Evidence presented at the hearing shall be recorded by stenographic means or by use of an audio recorder at the option of the county board. The record shall be made at the

expense of the county board and, upon request, one copy of a written transcript shall be provided, at no cost, to the individual or person requesting the hearing.

- 10) In making its decision, the county board may request or consider additional information with notice to all affected parties, may request a presentation in writing and/or in person from each party, or take other action necessary to make a determination.
 - 11) Within fifteen calendar days of conclusion of a county board hearing or the county board's receipt of the report and recommendation from a county board-appointed committee or a hearing officer, the president of the county board shall send by certified mail, a copy of the county board's decision to the individual or person who requested the hearing. Such decision shall include the rationale for the decision and a description of the next step in the process if the individual or person is not satisfied with the decision of the county board.
- D. Step four: filing a complaint or appeal of adverse action with the director.
- 1) If the individual filing the complaint or appeal of adverse action is not satisfied with the outcome of the process set forth in Section 1206 of the Policy, the individual may file a complaint or appeal with the director.
 - 2) The complaint or appeal of adverse action must be filed with the director within fifteen calendar days of notice of the decision of the county board. If no decision is provided by the president of the county board within fifteen calendar days in accordance with Section 1206 of the Policy, the complaint or appeal of adverse action must be filed with the director within fifty-five days of filing the complaint with the president of the county board.
 - 3) The director shall send a copy of the complaint or appeal of adverse action to the superintendent and president of the county board.
 - 4) The president of the county board shall send the director the written transcript of the county board hearing, copies of any exhibits, and a copy of the county board's decision within twenty calendar days of receiving the copy of the complaint or appeal of adverse action from the director.
 - 5) Upon request by an affected party or at the director's initiation, the director may request or consider additional information with notice to all affected parties, may request a presentation in writing and/or in person from each party, or take other action necessary to make a determination.
 - 6) Within forty-five calendar days of receipt of the written transcript of the county board hearing, copies of any exhibits, and a copy of the county board's decision from the president of the county board, the director shall send by certified mail, a copy of his or her decision to all affected parties. The director shall uphold the decision of the county board if the director determines that the decision is in accordance with applicable statute and administrative rule. The director's decision shall include the rationale for the decision.
- E. Other Remedies
- 1) After exhausting the administrative remedies required by this rule, an individual or person may commence a civil action if the complaint or appeal of adverse action is not resolved to his or her satisfaction. The rule is not intended to provide any right or cause of action that does not exist absent this rule.

Appendix
5123:2-1-12
DATE: 04/14/2014
COMPLAINT OR APPEAL OF ADVERSE ACTION EXPLANATION FORM

- A. Why would I file a complaint or appeal?
- 1) You may file a complaint if you are dissatisfied with a program, service, policy, or practice of the county board of developmental disabilities.
 - 2) You may file an appeal of adverse action ("appeal") if your request for services is denied or if services you have been receiving are being taken away.
- B. Do I have to file a formal complaint or appeal?
- 1) No; if you choose, you may start by trying to resolve your complaint or appeal informally with a supervisor or manager at the county board of developmental disabilities. You and the supervisor or manager can agree to work together to try and resolve your complaint or appeal. The informal process shall take no longer than 30 days.
- C. Should I try to resolve my complaint or appeal informally before filing a formal complaint or appeal?
- 1) That is entirely up to you. Trying to resolve your complaint or appeal informally does not prevent you from filing a formal complaint or appeal.
- D. When should I file a complaint or appeal?
- 1) A complaint must be filed within 90 days of becoming aware of the program, service, policy, or practice that is the subject of your complaint.
 - 2) An appeal must be filed within 90 days of receiving notice that your services are being denied or taken away.
- E. Important!
- 1) In most cases, the county board must notify you at least 15 days prior to the date it plans to take away your services. If you file an appeal before the date your services are scheduled to be taken away, your services will stay in place during the appeal process.
- F. How do I file a formal complaint or appeal?
- 1) The complaint or appeal must be filed in writing with the supervisor or manager responsible for the program, service, policy, or practice of the county board. Staff of the county board will assist you if you need help.
- G. How will I be notified about my complaint or appeal?
- 1) The county board will respond to you in writing. Each response will explain the next step and the time line for completing it.
- H. What will happen after I file a formal complaint or appeal?
- 1) The supervisor or manager will meet with you to discuss your complaint or appeal and will investigate your complaint or appeal. Within 15 days, the supervisor or manager will provide you with a written response to your complaint or appeal. If you make a request, the supervisor or manager will discuss the written response with you.
- I. What if I am not satisfied with the supervisor's or manager's decision?
- 1) You may file your complaint or appeal with the Superintendent of the county board. Your complaint or appeal must be filed in writing within 10 days of receiving the supervisor's or manager's written response. Staff of the county board will assist you if you need help. The Superintendent or his or her designee will meet with you within 10 days of receipt of your complaint or appeal and provide you with a written response within 15 days of receipt of your complaint or appeal.

- J. What if I am not satisfied with the Superintendent's decision?
 - 1) You may file your complaint or appeal with the President of the county board. Your complaint or appeal must be filed in writing within 10 days of receiving the Superintendent's written response. Staff of the county board will assist you if you need help. A hearing will be conducted within 20 days of receipt of your complaint or appeal.
- K. What will happen at the hearing?
 - 1) The hearing may be conducted by the full county board, by a committee of two or more members of the county board appointed by the President of the county board, or by a hearing officer appointed by the President of the county board. You will have an opportunity to explain your complaint or appeal. You may be represented by an attorney. You have the right to question officials or employees of the county board who have information related to your complaint or appeal. You may be asked questions about your complaint or appeal.
- L. What will happen after the hearing?
 - 1) You are entitled to receive, at no cost, a written transcript of the hearing. Within 15 days of a hearing conducted by the county board or the county board's receipt of the report and recommendation from a hearing officer, the President of the county board will send you by certified mail, the county board's decision regarding your complaint or appeal. The decision must include a rationale and a description of what you should do if you are still dissatisfied.
- M. What if I am not satisfied with the county board's decision?
 - 1) You may file your complaint or appeal with the Director of the Ohio Department of Developmental Disabilities. Your complaint or appeal must be filed in writing within 15 days of receiving the county board's decision. Staff of the county board will assist you if you need help. The Director or his or her designee may request additional information from you. Within 45 days of receipt of necessary documents related to your complaint or appeal, the Director or his or her designee will send you by certified mail, his or her decision regarding your complaint or appeal.
- N. What if I am not satisfied with the Director's decision?
 - 1) You may file a claim through the court system.
- O. Who else can help me with my complaint or appeal?
 - 1) Arc of Ohio at 1-800-875-2723
 - 2) Disability Rights Ohio at 1-800-282-9181
 - 3) Ohio Department of Developmental Disabilities at 1-877-464-6733