

**Resolution of Complaints (O.A.C. § 5123:2-1-12)**  
**Delaware County Board of Developmental Disabilities**

Board Review Date: June 19, 2014  
Board Resolution #: 14-06-07  
Effective Date: June 20, 2014  
Reviewing Department: Administration  
Next Review Date: June 2015

**I. General Principles**

**A. Basis for Review**

1. The Rule is intended to provide a process for:
  - (a) Resolution of complaints involving the programs, services, policies, or administrative practices of a DD Board or an entity under contract with a DD Board.
  - (b) Appeal of adverse actions proposed or initiated by a DD Board. 5123:2-1-12(A) (Hereinafter Rule (-)). An Adverse action includes any denial, reduction, suspension, or termination of a non-Medicaid services or denial of eligibility. Rule (C)(1).

**B. Who Can File**

1. A complaint may be filed by either an individual or person. Rule (B) (1).
2. An appeal can only be filed by an individual. Rule (B) (1).
3. Definitions
  - (a) The rule defines “individual” as any of the following:
    - i. 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
    - ii. a parent of a minor child,
    - iii. an individual's guardian, or
    - iv. an adult authorized in writing by the individual pursuant to section 5126.043 of the Revised Code to make a decision regarding receipt of a service or participation in a program. Rule (C) (8).
  - (b) The Rule defines “person” as including "an individual, corporation, business trust, estate, trust, partnership, and association.” Rule (C) ((11); R.C. 1.59 (C).

**C. Non-Medicaid Supported Living**

For Complaint/Appeals involving non-Medicaid supported living services, the individual must follow the Provider’s contract terms before filing an Complaint/Appeal under this rule. Rule (B) (1).

**D. Rule Does Not Apply to the Following Complaint/Appeals:**

1. When DD Board is subcontractor or vendor

2. Issues arising from special education or early intervention services including Help Me Grow services.
3. Medicaid appeals, including appeals involving HCBS services
4. Delegated nursing decisions
5. Services provided by an ICF/IID. Rule (B)(2).

If a Complaint/Appeal is not covered by 5123:2-1-12, the DD Board must provide information on how an appropriate Complaint/Appeal can be filed, including the name and telephone number, if available, of the appropriate entity with which to file the complaint or appeal of adverse action. Rule (B) (3).

#### **E. General Procedures for Complaint/Appeals**

1. Complaints and Appeals must be in writing. If necessary, the DD Board must assist the individual/person in filing the Complaint/Appeal. Rule (D) (1).
2. All Complaint/Appeal proceedings are confidential unless the individual specifically consents to disclosure in writing. Rule (D) (2).
3. An advocate may assist the individual at all times throughout the process. Rule (D) (3).
4. Time lines can be extended by mutual agreement of all parties in writing. Rule (D) (4).
5. Parties can resolve a dispute informally at any stage of the process if all parties agree in writing. Rule (D) (5).

#### **F. Review Proceedings Required before Filing Court Action**

A civil action or appeal can only be filed after exhausting the administrative remedies required by this rule. Rule (B) (1), (H); R.C. 5126.06. This rule is not intended to provide any right or cause of action that does not exist absent this rule. Rule (H).

### **II. Giving Information on Complaint/Appeal Procedures**

A DD Board shall provide a copy of the attached form which summarizes Complaint/Appeal procedures:

1. At time of initial request for services
2. At least annually to all individuals receiving non-Medicaid services
3. At least annually to all individuals on a waiting list for non-Medicaid services
4. Upon receipt of a complaint under the Rule
5. When the DD Board proposes an adverse action. Rule (E)(1).

### **III. Notices of Adverse Action**

#### **A. Definition of Adverse Action**

An Adverse action includes any denial, reduction, suspension, or termination of a non-Medicaid services or denial of eligibility. Rule (C) (1).

#### **B. Notice of Adverse Action (non-emergency)**

1. DD Board must give written notice at least 15 calendar days before proposed action, except when necessary to protect health and safety of the individual or others.
2. Notice must include all of the following (Rule E (2) (a)). The DD Board must retain documentation of receipt as defined above. Rule E (2) (b).
  - (a) An explanation of the county board's policy and/or authority for taking the adverse action;
  - (b) A description of the specific adverse action being proposed or initiated by the county board;
  - (c) The effective date for the adverse action;
  - (d) 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;
  - (e) An explanation of the individual's right to appeal the adverse action;
  - (f) An explanation of the steps the individual must take to appeal the adverse action;
  - (g) A statement that the individual has ninety calendar days to appeal the adverse action;
  - (h) 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;
  - (i) The name and contact information for the staff member of the county board who can assist the individual with his or her appeal; and
  - (j) The "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to the Rule.

### **C. Notice of Adverse Action in Emergency**

1. This notice section applies when it is necessary to suspend an individual's services without delay to ensure the health and safety of the individual or other individuals. Rule (E) (3). The DD Board must retain documentation of date of service of notice in accordance with requirements summarized in section III.D.
2. The following steps are required for notice in emergency:
  - (a) Determine what immediate steps are necessary to ensure the health and safety of the individual and other individuals; and
  - (b) Provide written notice to the affected individual immediately. The notice shall include:
    - (i) An explanation of the county board's policy and/or authority for suspending the individual's services;
    - (ii) A description of the specific services being suspended;

- (iii) The effective date for the suspension of services;
  - (iv) 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 individuals;
  - (v) An explanation that the county board shall arrange for appropriate alternative services and a description of the specific alternative services available to the individual;
  - (vi) An explanation of the steps the county board shall take in accordance with paragraphs (E) (3) (c) and (E) (3) (d) of this rule;
  - (vii) The name and contact information for the staff member of the county board who can answer questions about the suspension of services; and
  - (viii) The "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to the Rule.
3. The DD Board shall convene a team within 5 calendar days of service of notice. The team must consider ways to eliminate the identified risk to health and safety.
  4. Five calendar days after the team meeting, the DD Board must do any one of the following:
    - (a) With consent of the individual, eliminate risk to individual or others and restore services; or
    - (b) With consent of the individual, arrange for appropriate alternative services; or
    - (c) Provide written notice that includes the components described in section B.2 of this summary. The notice must be served 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.

#### **D. When Notice is deemed to have been served**

The following criteria are used to determine whether notice has been properly served and when the time requirements for further action begin (Rule (C) (10)):

1. For an individual who has selected email as his 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:
  - (a) 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
  - (b) 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.

#### IV. Informal Process for Complaints and Appeals

DD Boards may adopt a policy which allows an individual or person to engage in informal dispute resolution, providing that the informal process does not take longer than 30 days. Use of the informal process will delay the time required for filing an appeal. Rule (F); (G)(1)(b).

#### V. Formal Process for Complaints and Appeals

Event	Days	5123:2-1-12
Notice (non-emergency)  Content of notice at section III.B.2	15 calendar days prior to effective date of proposed action	E.2.a
Notice (emergency)  Content of emergency notice at Summary section III.C.2(b) above.  If emergency notice issued, there are Mandatory DD Board meetings at Summary sections III.C.3, III.C.4 above.	Immediately	E.3.a.ii
Filing <b>complaint</b> with supervisor or manager of DD Board	Within 90 Calendar days of becoming aware of the program, service, policy, or administrative practice that is the subject of the complaint.	G.1.a
Filing <b>appeal</b> after notice of adverse action. Appeal filed with supervisor or manager of DD Board	Within 90 calendar days of notice of the adverse action or within ninety calendar days of conclusion of the informal process set forth in paragraph (F) of this rule.	G.1.b
<b>STEP ONE: REVIEW BY SUPERVISOR/MANAGER</b>		
Supervisor or manager shall conduct investigation, including a meeting the individual/person who filed complaint/appeal.  Written report required which includes <ul style="list-style-type: none"> <li>- rationale for the decision</li> <li>- description of the next step in the review process</li> </ul> Supervisor or manager must be available to discuss written report	Within 15 calendar days of receipt of complaint or appeal.	G.1.c, d

<b>STEP TWO: REVIEW BY SUPERINTENDENT</b>		
<p>If process in Step One is not satisfactory, the individual/person can file complaint/appeal with Superintendent</p>	<p>Within 10 calendar days of notice of decision of supervisor/manager</p> <p>If supervisor/manager does not draft report, 25 calendar days of filing complaint/appeal with supervisor/manager</p>	<p>G.2.a, b</p>
<p>Superintendent or designee shall meet with individual/person and conduct administrative review.</p> <p>Superintendent may ask questions, review circumstances and facts.</p> <p>Individual/Person filing complaint/appeal shall have opportunity to present Superintendent with reasons why decision of supervisor/manage should be reconsidered.</p>	<p>Within 10 calendar days of receipt of complaint/appeal</p>	<p>G.2.c, d</p>
<p>Superintendent shall send decision to individual/person who filed complaint/appeal.</p> <p>Decision shall be sent certified mail, return receipt requested. Decision must include:</p> <ul style="list-style-type: none"> <li>- rationale for the decision</li> <li>- description of the next step in the review process</li> </ul>	<p>Within 15 days of receipt of complaint/appeal</p>	<p>G.2.e</p>
<b>STEP THREE: REVIEW BY DD BOARD</b>		
<p>If process in Step Two is not satisfactory, the individual/person can file complaint/appeal with president of the DD Board.</p>	<p>Within 10 calendar days of notice of decision of superintendent/designee.</p> <p>If superintendent does not issue decision within required time, 25 calendar days of filing complaint/appeal with superintendent</p>	<p>G.3.a, b</p>
<p>Complaint/appeal may be reviewed by DD Board in one of three ways:</p> <ul style="list-style-type: none"> <li>- Full DD Board</li> <li>- Committee of two Board members</li> <li>- Hearing officer who is not an employee or contractor with the DD Board.</li> </ul>		<p>G.3.c</p>

Upon request, individual/person has access to all records and materials related to appeal	Not less than 10 days before hearing	G.3.d
Hearing private unless individual/person requesting hearing chooses to make hearing public		G.3.e
Both parties may present evidence		G.3.f
Individual/person has right to be represented by counsel		G.3.g
Individual/person may require attendance of, and question, any official, employee, or agent of the county board who may have evidence upon which the complaint/appeal is based.		G.3.h
DD Board shall record proceedings either with stenographer or recording.  Individual/person filing complaint/appeal is entitled to one free copy of transcript.		G.3.i
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.		G.3.j
DD Board shall send decision to individual/person, by certified mail, return receipt requested.  Decision shall include: - rationale for the decision - description of the next step in the review process	Within 15 calendar days of board hearing or  Within 15 calendar days of receipt of report/recommendation of committee or hearing officer	G.3.k
<b>STEP FOUR: REVIEW BY DIRECTOR OF DODD</b>		
If process in Step Three is not satisfactory, the individual can file complaint/appeal with Director of DODD  <b>NOTE THAT ONLY AN INDIVIDUAL AS DEFINED IN I.B.3(a) CAN FILE AN APPEAL TO DODD</b>	Within 15 calendar days of notice of decision of DD Board.  If DD Board does not issue decision within required time, within 55 days of filing complaint with president of DD Board	G.4.a, b
Director shall send copy of complaint/appeal to superintendent and president of DD Board		G.4.c

President of DD 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 20 calendar days of receiving the copy of the complaint/appeal of adverse action from the director.	G.4.d
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.		G.4.e
Director shall issue decision with rationale. Decision must be sent certified mail, return receipt requested, to all parties	Within 45 days of receipt of the written transcript of the DD board hearing, copies of any exhibits, and a copy of the county board's decision	G.4.f
Standard of review by director:  Whether the decision of the DD Board is in accordance with applicable statute and administrative rule		G.4.f
<b>OTHER REMEDIES</b>		
After completion of all procedures, the individual/person may commence a civil action or appeal.		H

## COMPLAINT OR APPEAL OF ADVERSE ACTION EXPLANATION FORM

### **Why would I file a complaint or appeal?**

- You may file a complaint if you are dissatisfied with a program, service, policy, or practice of the county board of developmental disabilities.
- 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.

### **Do I have to file a formal complaint or appeal?**

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.

### **Should I try to resolve my complaint or appeal informally before filing a formal complaint or appeal?**

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.

### **When should I file a complaint or appeal?**

- 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.
- An appeal must be filed within 90 days of receiving notice that your services are being denied or taken away.

### **Important!**

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.**

### **How do I file a formal complaint or appeal?**

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.

### **How will I be notified about my complaint or appeal?**

The county board will respond to you in writing. Each response will explain the next step and the time line for completing it.

### **What will happen after I file a formal complaint or appeal?**

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.

### **What if I am not satisfied with the supervisor's or manager's decision?**

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.

**What if I am not satisfied with the Superintendent's decision?**

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.

**What will happen at the hearing?**

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.

**What will happen after the hearing?**

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.

**What if I am not satisfied with the county board's decision?**

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.

**What if I am not satisfied with the Director's decision?**

You may file a claim through the court system.

**Who else can help me with my complaint or appeal?**

Arc of Ohio at 1-800-875-2723

Disability Rights Ohio at 1-800-282-9181

Ohio Department of Developmental Disabilities at 1-877-464-6733