

5123:2-1-12

Resolution of complaints involving county boards of developmental disabilities and appeals of adverse action proposed or initiated by county boards of developmental disabilities.

(A) Purpose

The purpose of this rule is to set forth the process for resolution of complaints involving the programs, services, policies, or administrative practices of a county board of developmental disabilities or an entity under contract with a county board of developmental disabilities; set forth the process for individuals to appeal adverse actions proposed or initiated by a county board of developmental disabilities; and set forth the requirement for county boards of developmental disabilities to give notice of the process to be followed for resolution of complaints and appeals of adverse action.

(B) Scope

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

(2) This rule shall not be applicable:

- (a) When the county board is a vendor or subcontractor for service delivery.
- (b) 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.
- (c) 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 rule. 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.
- (d) To medicaid services including home and community-based services waiver services and targeted case management services. Complaints or appeals concerning such services shall follow rules adopted by the Ohio department of medicaid. The county board shall not require the use of the process set forth in this rule for issues regarding medicaid services.
- (e) 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.

(f) 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.

(3) If the county board determines that a complaint or appeal of adverse action filed with the county board is not subject to this rule, the county 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.

(4) An individual receiving 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 rule.

(C) Definitions

(1) "Adverse action" means any of the following:

(a) Denial of a request for a non-medicaid service.

(b) Reduction in frequency and/or duration of a non-medicaid service.

(c) Suspension of a non-medicaid service.

(d) Termination of a non-medicaid service (except when the recipient of that service is deceased).

(e) The outcome of an eligibility determination.

(2) "Advocate" means any person selected by an individual to act and/or communicate as authorized by the individual.

(3) "Contracting entity" means an entity under contract with a county board for the provision of services to individuals with developmental disabilities.

(4) "County board" means a county board of developmental disabilities including a county board when acting through a council of governments.

(5) "Department" means the Ohio department of developmental disabilities.

(6) "Director" means the director of the Ohio department of developmental

disabilities or his or her designee.

(7) "Hearing" means the opportunity to present one's case regarding a complaint or appeal of adverse action.

(8) "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 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.

(9) "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.

(10) "Notice" means and is deemed to have occurred upon:

(a) For an individual who has selected email as his or her preferred method of communication, electronic confirmation that the individual has read the email;

(b) Personal delivery to an individual; or

(c) 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.

(11) "Person" has the same meaning as in section 1.59 of the Revised Code.

(D) General provisions

(1) 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 rule, the county board shall, to the extent necessary, assist the individual or person in filing a complaint or appeal.

(2) At all times throughout the resolution of complaints and appeals of adverse

action process, the county board shall maintain the confidentiality of the identities of individuals unless an individual gives written permission to share information.

- (3) An advocate may assist an individual at any time during the resolution of complaints and appeals of adverse action process.
- (4) The county 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 rule, is presented using language and in a format understandable to affected individuals and persons. All notices and responses made pursuant to this rule 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.
- (5) The time lines set forth in this rule may be extended if mutually agreed upon in writing by all parties involved.
- (6) Initiation of the formal process set forth in this rule does not preclude the resolution of a 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.
- (E) Requirements for county boards to provide information about the process for resolution of complaints and appeals of adverse action and to give notice of adverse action

 - (1) General information about the process for resolution of complaints and appeals of adverse action.

 - (a) 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.
 - (b) Upon request, a county board or contracting entity shall provide a copy of this rule.
 - (c) The county board shall publicly post the "Complaint or Appeal of Adverse Action Explanation Form" contained in the appendix to this rule.
 - (2) Specific notice of adverse action.

 - (a) 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 paragraph (E)(3) of this rule, 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.

(b) 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) 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.

(a) 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 individuals;

(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 (E)(3)(c) and (E)(3)(d) of this rule;

(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.

(b) 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) 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.

(d) 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 paragraphs (E)(2)(a)(i) to (E)(2)(a)(x) of this rule 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.

(F) Informal process for resolution of complaints and appeals of adverse action

A county board may adopt a written policy describing an informal process that shall take no longer than thirty days for resolution of complaints and appeals of adverse action. An individual or person may elect to participate in the informal process or may initiate the formal process set forth in paragraph (G) of this rule.

(G) Formal process for resolution of complaints and appeals of adverse action

(1) Step one: filing a complaint or appeal of adverse action with the supervisor or manager responsible for the program, service, policy, or administrative practice of the county board.

(a) An individual or person must file a complaint with the supervisor or manager 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.

(b) An individual must file an appeal of adverse action with the supervisor or manager 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 paragraph (F) of this rule. 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.

(c) The supervisor or manager 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.

(d) Within fifteen calendar days of receipt of the complaint or appeal, the supervisor or manager 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 supervisor or manager.

(2) Step two: filing a complaint or appeal of adverse action with the superintendent of the county board.

(a) 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 paragraph (G)(1) of this rule, the individual or person may file a complaint or appeal with the superintendent of the county board.

(b) 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 supervisor or manager of the county board. If no decision is provided by the supervisor or manager of the county board within fifteen calendar days in accordance with paragraph (G)(1)(d) of this rule, 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 supervisor or manager.

(c) 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.

(d) 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 supervisor's or manager's decision and shall provide the individual or person the opportunity to present reasons why the supervisor's or manager's decision should be reconsidered.

(e) 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.

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

(a) 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 paragraph (G)(2) of this rule, the individual or person may file a complaint or appeal with the president of the county board.

(b) 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 paragraph (G)(2)(e) of this rule, 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.

(c) 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.

- (d) 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.
- (e) 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.
- (f) During the hearing, both parties may present evidence to support their positions.
- (g) The individual or person requesting the hearing and the county board have the right to be represented by an attorney.
- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.

(4) Step four: filing a complaint or appeal of adverse action with the director.

- (a) If the individual filing the complaint or appeal of adverse action is not satisfied with the outcome of the process set forth in paragraph (G)(3) of this rule, the individual may file a complaint or appeal with the director.
- (b) 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 paragraph (G)(3)(k) of this rule, 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.

- (c) The director shall send a copy of the complaint or appeal of adverse action to the superintendent and president of the county board.
- (d) 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.
- (e) 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.
- (f) 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.

(H) Other remedies

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. This rule is not intended to provide any right or cause of action that does not exist absent this rule.

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Certification

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