

# Stark County Board of Developmental Disabilities

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## ADMINISTRATIVE RESOLUTION OF COMPLAINTS

### POLICY

The Board is committed to protecting the rights of the individuals it serves and insuring the availability of an appropriate complaint resolution process which adheres to Ohio Revised Code (ORC) 5126.026 and Ohio Administrative Code (OAC) 5123:2-1-12, as well as, access to Medicaid due process hearings. This commitment is demonstrated through the maintenance of an administrative process that allows constituents to notify the Board about complaints involving programs, services, policies or administrative practices of the Board, or certain entities providing services under contract with the Board. This process is available to any person, except employees of the Board.

The administrative resolution of complaints process is not intended to resolve issues related to Medicaid Home and Community Based Services (HCBS) Waiver applications, enrollments or services. These complaints should be submitted to the Ohio Department of Job and Family Services (ODJFS) in the form of a request for a state hearing (appeal), in accordance with the applicable rules promulgated by ODJFS in the State Hearings section of the Ohio Administrative Code. However, concurrent to any such appeal to ODJFS, the individual and the Board may attempt to informally resolve the issue(s) related to waiver services through a grievance procedure convened by the Superintendent or designee.

The procedures developed pursuant to this policy, for children and youth placed in a Board education program by a local education agency, will conform to the rules set forth for the education of handicapped children, as promulgated by the State of Ohio Board of Education.

On an annual basis the Board will review the formal complaints/grievances and appeals in total for the purpose of identifying trends and areas for performance improvement.

The Superintendent is authorized to develop, revise and maintain the necessary procedures to implement this policy. All such procedures will comply with any applicable federal and state statutes and rules.

<p><b>Historical Resolution Information</b></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Date</th> <th style="text-align: left;">Resolution Number</th> </tr> </thead> <tbody> <tr> <td>3/22/14</td> <td>03-15-14</td> </tr> <tr> <td>4/25/17</td> <td>04-18-17</td> </tr> <tr> <td>5/26/20</td> <td>05-25-20</td> </tr> </tbody> </table>	Date	Resolution Number	3/22/14	03-15-14	4/25/17	04-18-17	5/26/20	05-25-20	<p><b>Reviewer(s):</b> Superintendent</p>
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## ADMINISTRATIVE RESOLUTION OF COMPLAINTS

### PROCEDURE

#### A. Scope

This procedure establishes the process for the Stark County Board of Developmental Disabilities to address the administrative resolution of complaints involving the programs, services, policies, or administrative practices of the Board or certain entities acting under contract with the Board.

#### B. Application

1. This procedure applies to any person receiving services from the Board unless noted otherwise in Section B.2. of this procedure.
2. This procedure does not apply to:
  - a. An individual applying for, or enrolled in, services provided pursuant to the Medicaid Home and Community-Based Services (HCBS) Waiver. All such appeals of decisions of the Board shall be made to the Ohio Department of Job and Family Services (ODJFS) in accordance with applicable rules for appeals promulgated by ODJFS under Chapters 5101:6-1 to 5101:6-9 of the Ohio Administrative Code (OAC). Such individuals may appeal other decisions of the Board related to services or administrative practices of the Board, other than HCBS waiver services, using the applicable process under this procedure. Concurrent to any such appeal to ODJFS, the individual and the Board may attempt to informally resolve issues related to HCBS waiver services through the grievance procedure adopted by the Board in accordance with Section (E) of this procedure.
  - b. Complaints regarding the performance of delegable nursing tasks at the Board. In these cases the procedures outlined in 5123:2-6-07 and 5123:2-17-01 of the OAC shall apply.
  - c. An individual ineligible for service who elects to be provided services on a fee for services basis. The Board shall be the sole arbitrator of how its services will be allocated and how non-eligible persons may access them.
  - d. Complaints originated by employees of the Board and/or on behalf of employees.

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## C. Definitions

1. "**Complainant**" means a person defined in OAC 5123:2-1-12, and shall include any person other than an individual, a corporation, business trust, estate, trust, partnership, or association having an interest with the Board through a contract.
2. "**Board**" means the Stark County Board of Developmental Disabilities, including Board members as an entity, the Superintendent and any person employed by or under contract with the Board who has authority for administrative or service implementation on behalf of the Board.
3. "**Department**" means the Ohio Department of Developmental Disabilities.
4. "**Employee**" means a person being compensated by the Board for assigned duties.
5. "**Individual**" means a person applying for, determined eligible for, denied eligibility for, or enrolled in the programs, services, and supports provided or arranged in accordance with Chapter 5126 of the ORC and includes the parents of an individual who is a minor, any guardian, or any other legally appointed representative acting on the individual's behalf.

## D. Notifications

1. The Board shall give annual notification of this procedure for administrative resolution of complaints to eligible individuals served by the Board. The Board shall post the toll free number for the Department and Ohio Legal Rights Service in a visible place. Board staff shall inform the individual that a representative of the Board is available to assist with the administrative complaint resolution procedure outlined herein.
2. Upon initial enrollment in a Board program, and annually thereafter, this procedure will be reviewed with the individual. The individual will be asked to sign an acknowledgment form indicating they have received notification describing the administrative resolution process. The acknowledgment form will be maintained in the individual's official file.
3. Upon receipt of any complaint subject to resolution under this procedure, the Superintendent or designee shall provide written notice of the rights to administrative resolution of the complaint to the individual. Such notice shall be written in language that can be reasonably understood by the complainant or individual, and shall include the following:

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- a. A detailed description of the issue/action/decision leading to complaint;
- b. A clear statement of the reasons for the action/decision, including the specification of any assessments or reports upon which such action is proposed;
- c. A statement that the complainant or individual has the right to seek administrative complaint resolution about action/decision, and;
- d. A copy of the written administrative complaint resolution process.

## E. Procedures

1. Subject to the limitations of Section 5123.043 of the ORC, any request for administrative resolution of a complaint filed in accordance with this procedure will not abrogate any other rights to services. If the Board is requesting a termination or reduction of services or change in services for an individual, current services shall continue to be provided pending final resolution unless a non-Board provider of services, authorized by the Board, terminates the services it is providing that individual.
2. When a complaint involves the action of the Board, the request for administrative resolution shall be in writing and shall be filed with a supervisor of the applicable service component of the Board. If an individual had difficulty in reading or writing, an oral report may be accepted and documented by the Board supervisor receiving the report. An individual who wishes to seek administrative resolution in accordance with the procedure may be assisted by an advocate who may speak on behalf of the individual at the individual's request.
  - a. The supervisor will conduct an investigation of the complaint within ten (10) calendar days of receipt of the request for administrative resolution of the complaint.
  - b. Within ten (10) calendar days of the completion of the investigation, a written report and decision will be completed and discussed with the complainant or individual. Such report shall include a description of the next step in the administrative resolution process.
  - c. Within ten (10) calendar days of receipt of the supervisor's written decision, the complainant or individual may request further administrative review of the written decision.

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- d. The aforementioned timelines may be extended if mutually agreeable to all involved parties.
  3. If the complainant or individual wishes an administrative review of the Board supervisor's decision, the following shall occur:
    - a. A request for administrative review shall be made in writing by the complainant or individual within ten (10) calendar days of receipt of the supervisor's written decision. This request shall be made to the Superintendent or designee.
    - b. Upon receipt of a request for administrative review of the supervisor's written decision, the Superintendent or designee shall, within ten calendar days, meet with the party initiating the request and conduct an administrative review.
      - i. During the administrative review, the Superintendent or designee may ask questions to clarify and review the circumstance and facts related to the decision, and provide the party initiating the request the opportunity to present reasons as to why the decision should be reconsidered.
      - ii. Within five (5) working days of the administrative review, the Superintendent's decision shall be made known, in writing, to the individual and shall include rationale for the decision and a description of the next step in the administrative resolution process.
    - c. The aforementioned timelines may be extended if mutually agreeable to all involved parties.
  4. If the individual is not satisfied with the decision of the Superintendent, written appeal may be filed with the Board President. The written appeal shall be filed with the Board President within ten (10) calendar days of receipt of the Superintendent's decision.
    - a. Upon receipt of a written request to appeal, the Board President or designee shall conduct a hearing no sooner than seven (7) calendar days, and not later than the next regularly scheduled Board meeting, at a time and place convenient to all parties. The Board may hear the case as a full Board or the President of the Board, with concurrence of the Board, may establish a committee of two or more Board members to hear the appeal. Such a committee shall be vested with the full rights and authorities as the Board in handling the appeal.

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- b. No less than seven (7) days prior to the hearing, the complainant or individual shall be provided access to Board records pertaining to the specifics of the appeal.
- c. The hearing shall be a closed meeting unless the complainant or individual requests an open meeting.
- d. During the hearing, evidence shall be presented by both parties to support their positions.
- e. The individual shall be afforded the right to be represented by legal counsel. An individual shall further have the right to be represented by another representative of the individual's choice. Any such representation is provided at the expense of the individual.
- f. The complainant or individual shall be afforded the right to have, in attendance, and question any official, employee or agent of the Board who may have evidence pertinent to the appeal.
- g. The decision of the Board shall be based solely upon evidence presented at the hearing.
- h. Evidence presented at the hearing shall be recorded by stenographic means or by use of an audio-electronic recording device as the Board determines at the time of the hearing. Such record shall be made at the expense of the Board and, upon request, one copy of the verbatim transcript shall be provided to the complainant or individual at no cost.
- i. In any hearing held under the authority of the Board pursuant to this procedure, the Board may appoint a Hearing Examiner to conduct said hearing. The Hearing Examiner shall have the same powers and authority in conducting the hearing as granted to the Board. The Hearing Examiner shall not be an employee of the Board. The Hearing Examiner need not be admitted to the practice of law, but shall possess such qualifications as to be able to render neutral and informed decisions on matters presented in the complaint. The Board may secure a list of approved Hearing Examiners from the Department. The Board may also request the Department to certify a Hearing Examiner as qualified to hear one or more cases for the Board in accordance with the person's experience and educational background.

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- i. Within five (5) calendar days of the date the hearing is deemed closed, the Hearing Examiner or Board President, or designee, shall issue a written report and recommendation, setting forth findings of fact, conclusions of law, and a recommendation for the disposition of the complaint. The report and recommendation shall be served upon the parties to the hearing by certified mail.
    - ii. The parties to the hearing may file, with the Board, written objections to the report and recommendation within ten days of receipt of the report and recommendation.
  - j. Within five (5) calendar days following the Board's action upon receipt of the report and any objections thereto, written notification of the Board's decision shall be sent by certified mail to the individual. Such notification shall include a rationale for the Board's decision and a description of the next step in the process.
  - k. The aforementioned timelines may be extended if mutually agreeable to all involved parties.
5. When a complaint has been made against the Board and the complaint involves services or supports provided or arranged by the Board for the individual, the individual shall have the right to appeal the decision of the Board to the Director of the Department. The following procedures shall be followed in such appeals to the Director:
  - a. The appeal must be filed with the Director within fifteen (15) calendar days of receipt of the Board's decision. Copies of the appeal letter shall also be sent to the Superintendent, the Board President, and the legal counsel or other representative(s) of either or both parties.
  - b. Upon receipt of notice of the appeal from the administrative action of the Board, the Board shall send to the Department copies of the verbatim transcript of the hearing with the Board, any exhibits incorporated into the transcript, and the Board's written decision.
  - c. The Director or designee shall review the appeal within thirty (30) calendar days of receipt of the appeal. The Director or designee shall determine if the decision of the Board is based upon applicable statute and/or administrative rule.

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- d. Within fourteen (14) calendar days following the department review, the Director's decision shall be made known, in writing, to all affected parties, and shall include a rationale for the decision.
    - e. The aforementioned timelines may be extended if mutually agreeable to all involved parties.
6. After exhausting the administrative remedies required in this procedure, if the complaint is not settled to his/her satisfaction, an individual may either file a complaint with the Department as permitted by rule 5123:2-17-01 of the OAC or commence a civil action against the Board.
7. The Board shall at all times maintain confidentiality concerning the identities of individuals, complainants, witnesses, and other involved parties who provide information unless the individual, in writing, authorizes the release of information.
8. Subject to the limitations of Sections 5123.043 of the ORC, the Administrative Resolution Process provided by this procedure is in addition to any other rights an individual or guardian or the parent of a minor may otherwise have pursuant to the ORC or any other applicable state or federal law.