

ADMINISTRATIVE RESOLUTION OF COMPLAINTS

This policy establishes the process for the Portage County Board of Developmental Disabilities (herein after referred to as the Board) for the administrative resolution of complaints involving the programs, services, policies, or administrative practices of the Board or entities acting under contract with the Board. Areas subject to administrative resolution by the Board include, but are not necessarily limited to, eligibility determination, arranging appropriate services for eligible individuals, or any denial, reduction or termination of service to individuals served by the Board.

For purposes of this Policy, the following definitions apply:

"Complainant" means a person as defined in section 1.59 of the Ohio Revised Code (ORC), and shall include any person other than an individual as defined in this Policy, a corporation, business trust, partnership, and association when such person has an interest with the Board through a contract or in relation to an administrative practice of the Board.

"Board" means the Portage County Board of Developmental Disabilities, including Board members as an entity, the Superintendent of the Board and any person employed by or under contract with the Board who has authority for administrative or service implementation on behalf of the Board.

"Department" means the Ohio Department of Developmental Disabilities.

"Employee" means unclassified employees of the Board seeking to resolve employment issues who shall follow procedures in the contract entered into pursuant to section 5126.21 of the ORC and in accordance with section 5126.23 of the ORC and classified employees of the Board seeking to resolve employment issues who shall follow the procedures in Chapter 124 of the ORC or within an applicable collective bargaining agreement entered into pursuant to Chapter 4117 of the ORC.

"Individual" means a person applying for, determined eligible for, denied eligibility, 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 in a legal capacity on the individual's behalf.

APPLICATION

- A. Any person, other than Board employee, may file a complaint using the administrative resolution process established under this Policy, and shall use this process prior to commencing a civil action regarding the complaint.
- B. For an individual placed by the local education agency (LEA) into the Board's preschool or school age programs, the rules for the education of handicapped children as promulgated by the Ohio State Board of education, shall be followed with respect to due process and complaint resolution. Other eligible individuals shall be afforded the right to the administrative resolution process outlined in this Policy.
- C. The provisions of this Policy shall not apply to 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 Jobs 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. Such individuals may appeal other decisions of the Board other than HCBS waiver services using the applicable provisions of this Policy.
- D. The provisions of this Policy do not apply to complaints regarding the performance of delegable nursing tasks at the Board. The procedures outlined in OAC 4723:21-28 and 5123:2-1-07 shall apply to complaints related to delegable nursing tasks.
- E. An entity or individual receiving services under contract with the Board for the provision of supported living shall follow the process for resolving complaints established under division (B) of section 5126.45 of the ORC prior to initiating an appeal pursuant to this Policy. After exhausting the process for resolving complaints established by contract, a complaint may be initiated under this process at the level of the Director of the Ohio Department of MR/DD, per OAC 5123:2-1-12(B)(5).

Notification of the Administrative Resolution Process

- F. The Board shall give annual notification of the availability of the procedure for administrative resolution of complaints to individuals and any entity in the county that serves persons or provides or desires to provide other goods or services under a contract with the Board. The Board shall post the toll free number for the Department and Ohio Legal Rights Services in a visible place. The Board shall inform the individual that a representative of the Board is

available to assist the individual with the administrative resolution procedures outlined in this Policy.

- G. The Board may adopt a grievance procedure or an informal process for the resolution of disputes. The Superintendent may appoint one or more persons to conduct an informal hearing of disputes, with a timeframe of no more than thirty days to resolve the dispute. An individual shall still have access to this administrative resolution of complaints process if not satisfied with the outcome of the informal grievance procedure.
- H. Upon receipt of any complaint subject to administrative resolution under this Policy, the Superintendent or his/her designee shall provide written notice of the rights to administrative resolution of the complaint to the complainant or individual. Where circumstances permit, this notice shall be given at least ten (10) days before the action is taken. Such notice shall be written in terms reasonably calculated to be understood by the complainant or individual, and shall include the following:
1. A detailed description of the proposed action;
 - ~~1-2.~~ 2. A clear statement of the reasons for the proposed action, including the specification of any evaluative instruments or reports upon which such action is proposed;
 3. A statement that the complainant or individual has the right to seek administrative resolution regarding complaints about such decision; and
 - ~~3-4.~~ 4. A copy of the written administrative resolution process.

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Administrative Resolution Procedures

- I. Subject to the limitations of ORC 5123.043 any request for administrative resolution of a complaint filed in accordance with this Policy will not abrogate any other rights to services. If the Board is requesting a termination or reduction of services or changes in services for an individual, current services shall continue to be provided pending final resolution unless an entity under contract with the Board for the provision of supported living terminates the services it is providing that individual in accordance with the terms of its contract with the Board.
- 1) Notwithstanding any other provisions of this Policy, the appeal of any action of the Board or its employees shall begin at the level at which the decision or action was made.
 - 2) When a complaint involves the action of the Board, the request for administrative resolution shall be made in

writing to the supervisor of the applicable service component. If the individual is unable to write the complaint, a verbal complaint shall be accepted and documented by the appropriate supervisor. An individual may be assisted by an advocate of their choice if desired.

- 3) The Board supervisor will conduct an investigation of the complaint within ten (10) calendar days of receipt of the complaint. Within ten (10) calendar days of the completion of the investigation, the supervisor shall provide a written report and decision to the complainant and shall discuss the report with the complainant. This report shall include a description of the next step in the process.
- 4) Within ten (10) calendar days of receipt of the supervisor's report, the complainant may request administrative review of the supervisor's decision.
- 5) Timelines may be extended if mutually agreeable to all parties.
- 6) If the complainant or individual wishes an administrative review of the Board supervisor's decision, the request for administrative review shall be made in writing by the complainant within ten (10) calendar days of receipt of the supervisor's written decision. The request for administrative review shall be made to the Superintendent or his/her designee.
- 7) Upon receipt of a request for administrative review of the supervisor's written decision, the Superintendent or his/her designee shall meet with the complainant within ten (10) calendar days. The parties may ask questions or provide reasons as to why the decision should be reconsidered. Within five (5) working days of the administrative review, the Superintendent shall provide a written decision to the complainant along with a description of the next step in the complaint resolution process. Timelines may be extended if mutually agreeable to all parties.
- 8) If the complainant is not satisfied with the decision of the Superintendent or his/her designee, a written appeal may be filed with the Board president within ten (10) calendar days of receipt of the Superintendent's decision.
- 9) The Board president shall conduct a hearing no sooner than seven (7) calendar days nor later than the next regularly scheduled Board meeting. The Board may hear the appeal as a full Board or the president with concurrence of the Board may establish a committee of two (2) or more Board members to hear the appeal. Such committee shall be vested with the full rights and authorities as the Board in handling the appeal.

No less than seven days prior to the hearing the complainant shall be provided access to the county board records pertaining to the specifics of the appeal.

The hearing shall be a closed meeting unless the complainant requests an open meeting. Evidence shall be presented by both parties to support their positions. The complainant may be represented by legal counsel or other representative at the complainant's expense. The complainant may also be afforded the right to have in attendance and question any official, employee or agent of the Board who may have information about the matters under appeal. The Board's decision shall be based solely upon evidence presented at the hearing, and all evidence presented shall be preserved stenographically or by audio-electronic recording devices. 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.

The Board also has the option of appointing a hearing examiner to hear the appeal. The hearing examiner shall have the same powers and authority in conducting the hearing as granted to the Board. The hearing examiner shall be neutral and knowledgeable on the matters presented in the complaint. The Board may request assistance from the Department with obtaining a qualified hearing examiner. If the Board uses a hearing examiner, the hearing examiner shall, within five (5) days of the date the hearing is deemed closed, issue a written report and recommendation setting forth findings of fact, conclusions of law, and a recommendation for the disposition of the complainant. The report and recommendation shall be served upon the parties to the hearing by certified mail. The parties to the hearing may file with the Board written objections to the report and recommendation within ten (10) days of receipt of the report.

10. Within five (5) calendar days of the hearing or within five (5) calendar days following the Board's action upon receipt of the hearing examiner's report and any subsequent objections, written notification of the Board's decision shall be sent by certified mail to the complainant or individual. This notice shall include the rationale for the decision and a description of the next step in the complaint resolution process. Timelines may be extended if mutually agreeable to all involved parties.
11. The Board shall at all times maintain the 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.

12. Subject to the limitations of ORC sections 5123.043, the administrative resolution process provided by this Policy is in addition to any other rights an individual or the parent of minor or guardian may otherwise have pursuant to the Ohio Revised Code or any other applicable state or federal law.
13. When a complaint has been made against the Board and the complaint has been made by an individual involving 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 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.
 3. The Director or his/her designee shall review the appeal within thirty (30) calendar days of receipt of the appeal. The Director or his/her designee shall determine if the decision of the Board is based upon applicable statute and/or administrative rule.
 4. Within fourteen (14) following the Department level review, the Director's decision shall be made known, in writing, to all affected parties, and shall include a rationale for the decision.
 5. Timelines may be extended if mutually agreeable to all involved parties.
14. After exhausting the administrative remedies required in this Policy, an individual may commence a civil action if the complaint is not settled to his/her satisfaction
15. After exhausting the administrative remedies required in this rule, if the complaint is not settled to his/her satisfaction, a complainant may either file a complaint with the Department as permitted by rule 5123:2-17-01 of the Administrative Code or commence a civil action against the Board.

DARE OF BOARD AMENDMENT: August 19, 2009
NEXT SCHEDULED REVIEW: August 2014
DATE OF BOARD AMENDMENT: March 20, 2003
DATE OF BOARD AMENDMENT: July 17, 2002
DATE BOARD ADOPTION: July 18, 2001

REFERENCE: Ohio Revised Code: 1.59; Chapter 124; Chapter 4117;
5123.043; Chapter 5126; 5126.21; 5126.23; 5126.45; Ohio Administrative
Code: 4723:21-28; 5101:6-1 to 5101:6-9;5123:2-1-07; 5123:2-1-12(B)(5);
5123:2-17-01.