

ADMINISTRATIVE RESOLUTION OF COMPLAINTS/DUE PROCESS

- A. The Jackson County Board of Developmental Disabilities shall protect the rights of individuals receiving, or applying to receive, Board services. Individuals, parents, guardians, and/or caregivers shall be given annual notice of this policy. This appeal policy for Board enrollees is in addition to any other rights which an individual, parent of a minor, guardian, or agency may have pursuant to Ohio Revised Code or any other applicable state or federal law.
- B. All individuals are encouraged to first try to resolve complaints through the Board's Informal Dispute Resolution Procedures. The Board authorizes the Superintendent to appoint one or more persons to conduct an informal hearing of such disputes. The Superintendent and persons conducting the hearing shall seek to resolve the issue within thirty days.
- C. Most questions, concerns and complaints can be answered simply and quickly through the informal process. However, if the informal dispute resolution procedure has not been successful, or if an individual disagrees with a decision to change a service, the formal Administration Resolution of Complaint Process shall be initiated.
- D. Any person, other than an employee of the Board, may file a complaint using the administrative resolution process established under Ohio Administrative Code (OAC) 5123:2-1-12, and shall use this process prior to commencing a civil action regarding the complaint.
- E. Individuals, parents of a minor, guardians, and residential and support providers shall be informed annually of the right to due process and Administrative Resolution of Complaints in accordance with Chapter 5126 of the Ohio Revised Code and OAC 5123:2-1-12. This applies to services provided directly by the Board, as well as services under contracts provided by other agencies under contract with the Board. Notice will be given at the annual ISP or ISFP meetings. Notice will be given to contracting entities when each contract is initiated and renewed.
- F. Areas subject to due process include, but are not necessarily limited to, eligibility determination, arranging appropriate services for eligible individuals, or any denial, reduction, or termination of services by the Board.
- G. Only issues under the control of the Board are subject to due process. Any appeal filed with the Board will not cancel any other rights to services. If an individual, parent of a minor, or guardian is appealing a termination or reduction of services or change in services, current services shall continue to be provided pending final resolution.
- H. An individual who wishes to appeal a decision may be given assistance by an advocate who may speak on behalf of the individual at the individual's request.
- I. The Board shall inform the individual served, parents of a minor, or guardian that a representative of the Board is available to assist the individual with the appeal process.

- J. The provisions of this policy shall not apply to an individual applying for or enrolled in services provided pursuant to the Medicaid TCM program or 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 Administrative Code. Such individuals may appeal other decisions of the Board related to services or administrative practices of the Board other than TCM or HCBS waiver services, using the applicable process under this policy. Concurrent to any such appeal to ODJFS, the individual and the Board may attempt to informally resolve issues related to HCBS waiver TCM services through the informal grievance procedure.
- K. Individuals receiving services and supports through the Medicaid TCM program and the Home and Community-Based Services Waiver program will be informed of due process rights at the time of application for services, annually, and when it is proposed that services be denied, reduced or terminated.
- L. The provisions of this policy shall not apply to complaints regarding the performance of delegated nursing tasks at the Board. The procedures outlined in Rules 4723-21-28 and 5123:2-1-07 of the Administrative Code shall apply.
- M. The Board and Department shall at all times maintain confidentiality concerning the identities of individuals, complainants, witnesses, and other involved parties who provide information unless the individual or his/her representative, in writing, authorizes the release of information.
- N. Timelines may be extended if mutually agreeable to all involved parties.
- O. The toll-free number for the Ohio Department of DD and Ohio Legal Rights Service shall be posted in a visible place at all locations in which the Agency provides or contracts to provide services.
- P. Procedures for the administrative resolution of complaints, Medicaid due process, and the informal grievance process shall be developed.
- Q. For an individual placed by the local education agency (LEA) in the Board program, the *Operating Standards for Ohio's Schools Serving Children with Disabilities*, as promulgated by the State Agency of Education Chapter 3301-51 of the Ohio Revised Code, shall be followed, as well as the Ohio Department of Education model procedures.

Board Approved: June 16, 2015

INFORMAL DISPUTE RESOLUTION PROCEDURE

- A. The Jackson County Board of Developmental Disabilities shall support continuous improvement of quality services for individuals with disabilities. In an effort to informally resolve disputes with complainants or individuals the Board shall follow this informal complaint resolution procedure.
- B. The Board encourages individuals and families to make suggestions for the improvement of services provided by the Board.
- C. The Board encourages individuals and families to use the following guidelines to informally resolve disputes and/or complaints. The Board staff shall assist the individual or family through these guidelines. The individual or family member shall:
 - 1. Start with the right person: The people who have the best and quickest solutions are people you know, such as the direct service staff and department managers. If they cannot answer your concerns, they will help you find someone who can. Ask to see your service and support coordinator; they can help you.
 - 2. Issues need to be timely: The best time to correct a problem or consider a new idea is when it is fresh. It is very difficult to do anything about a problem that happened many days or weeks earlier.
 - 3. Be specific as to what you want: Tell us your concerns, involved individuals, when it occurred or did not occur and what you want to see happen in the future. Tell us what you want.
 - 4. Address one issue at a time: Some concerns can be addressed quickly and completely. Others will take more time.
- D. Filing of such grievances under this procedure shall not affect the rights of the complainant or individual to file an appeal through the administrative resolution procedures under the Board's Administrative Resolution of Complaints Policy. Notice of this right will be provided upon initiation of the informal process via supplemental issuance of the Administrative Resolution of Complaints Policy.
- E. The Superintendent will appoint one or more persons to conduct an informal hearing of such disputes. The persons conducting the hearing shall seek to resolve the issue within thirty days.
- F. Annual notice of the informal complaint resolution procedure shall be given to all individuals and any entity contracting with the Board. Notice will be given at the annual ISP or ISFP meeting. Notice will be given to contracting entities when each contract is initiated or renewed. In addition, the notice is available on the Board website.

ADMINISTRATIVE RESOLUTION OF COMPLAINTS/DUE PROCESS PROCEDURE

- A. Upon receipt of any complaint subject to administrative resolution under the Policy for Administrative Resolution of Complaints/Due Process, the Superintendent or appropriate designee shall provide written notice of the rights to administrative resolution of the complaint to the individual or complainant. Where circumstances permit, this notice shall be given at least ten (10) days before any proposed action. Such notice shall be written in terms the individual, the parents of a minor, or guardian can understand and will include the following:
 1. A statement of ineligibility or detailed description of proposed action.
 2. A clear statement of the reasons for the proposed action (or refusal to initiate action), including the specifications of any evaluative instruments or reports upon which such action (or refusal to initiate action) is proposed.
 3. A statement that the individual, the parent of a minor, or guardian has the right to seek administrative resolution regarding complaints about such decision.
 4. A copy of the written administrative resolution process.

- B. If the complaint is regarding the denial, reduction or termination of services funded by Medicaid, the individual or complainant and the Superintendent/designee shall follow the procedures outlined in the Medicaid Due Process procedure.

- C. Appeal to the Program Supervisor:
 1. Subject to 5123.043 of the Ohio Revised Code (ORC), any request for an administrative resolution of a complaint will not abrogate any other rights to service. If the Board is requesting a termination, reduction, or change of services for an individual, current services shall continue to be provided pending final resolution.
 2. Pursuant to Ohio Administrative Code (OAC) 5123:2-1-12, the appeal of any action of the Board shall begin at the level in which the decision/action was made. If there is an appeal of a decision of a contractor, the appeal shall begin with the contractor. The individual or complainant shall file a written appeal to the involved program supervisor.
 3. If the individual, or complainant has difficulty reading or writing, an oral report may be accepted and documented by the supervisor receiving the report. The individual may request that an advocate speak on his/her behalf.
 4. The Board supervisor will conduct an investigation of the complaint and respond to the appeal within ten (10) calendar days.
 5. Within ten (10) calendar days of the completion of the investigation, a written report and decision will be completed and be discussed with the individual or complainant. The report shall include a description of the next step in the administrative resolution process.
 6. If the individual or complainant would like an administrative review of the supervisor's decision, a written request for administrative review shall be made to the Superintendent/designee within ten (10) calendar days of receipt of the supervisor's written decision. Timelines may be extended if mutually agreeable to all involved parties. If the individual or complainant has difficulty in providing a written appeal, the superintendent may document and accept an oral appeal.

D. Appeal to the Superintendent/Designee:

1. Upon receipt of a request for administrative review, the Superintendent/designee shall, within ten (10) calendar days, meet with the party initiating the request and conduct an administrative review.
2. During the administrative review, the Superintendent/designee may ask and respond to questions to clarify and review the circumstances related to the decision, and provide the party initiating the request the opportunity to present reasons as to why the decision should be reconsidered.
3. Within five (5) working days of the administrative review, the Superintendent's decision shall be made known, in writing, to the individual or his/her representative, and shall include a rationale for such decision, and a description of the next step in the administrative resolution process. Timelines may be extended if mutually agreeable to all individual parties.

E. Appeal to the Board President:

1. If the individual or complainant is not satisfied with the decision of the Superintendent, a written appeal may be filed with the Board President within ten (10) calendar days of the receipt of the Superintendent's decision. If the individual or complainant has difficulty in providing a written appeal, the Board President may document and accept an oral appeal.
2. Upon receipt of a request to appeal, the Board's President/designee shall conduct a hearing no sooner than seven (7) calendar days, nor later than the next regularly scheduled Board meeting, at a time and place convenient to all parties. The Board may hear the appeal as a full Board or the Board President, with the concurrence of the Board, may establish a committee of two (2) or more Board members to hear such appeals. The committee shall be vested with full rights and authorities as the Board in handling the appeal.
3. No less than seven (7) days prior to the hearing, the individual or complainant shall be provided access to the Board records pertaining to the specifics of the appeal.
4. The hearing shall be a closed meeting unless the individual or complainant requests an open meeting.
5. During the hearing, evidence shall be presented by both parties to support their positions.
6. The individual or complainant shall be afforded the right to be represented by legal counsel or by such other representative of the party's choice and at the expense of the individual or complainant.
7. The individual or complainant shall be afforded the right to have in attendance and question any official, employee, or agent of the Board who may have evidence upon which the appeal is based.
8. The decision of the Board/Board committee shall be based solely upon evidence presented at the hearing.
9. Evidence presented at the hearing shall be recorded at the expense of the Board and, upon request; one copy of the verbatim transcript shall be provided to the individual or his/her representative at no cost.
10. The Board may appoint a hearing examiner to conduct the 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 and shall be qualified to be able to render neutral and informed decisions on matters presented in the complaint. The Director of DODD has a list of approved hearing examiners. The Board may also request DODD to certify a hearing examiner.

- a. Within five (5) calendar days of the date the hearing is deemed closed, the hearing examiner 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.
 - b. 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 and recommendation.
 11. 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 objections thereto, written notification of the Board's decision shall be sent by Certified Mail to the complainant or individual. Such notification shall include a rationale for the Board's decision and a description of the next step in the process.
 12. Timelines may be extended if mutually agreeable to all parties involved.
- F. Appeal to the Director of the Ohio Department of Developmental Disabilities:
1. If an individual or representative is not satisfied with the decision of the Board, a written appeal may be filed with the Director of the Ohio Department of Developmental Disabilities.
 2. The appeal must be filed with the Director of the Department 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 of other representative of either or both parties.
 3. Upon receipt of notice of the appeal from the administrative action, the Board shall send to the Department, copies of the verbatim transcript of the hearing with the Board, any exhibits incorporated into the transcripts, and the Board's written decision.
 4. The Director or his/her designee shall review the appeal within thirty (30) calendar days of receipt of the appeal. The Director shall determine if the decision of the Board is based upon applicable statute and/or administrative rule.
 5. Within fourteen (14) calendar days 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.
 6. Timelines may be extended if mutually agreeable to all involved parties.
- G. After exhausting the administrative remedies in this policy/procedure, the individual and/or their representative may commence civil action if the complaint is not settled to his/her satisfaction
- H. The Board shall not take any retaliatory steps against the complainant during this process as specified under HIPAA privacy rules 45 CFR 160.310(b).
- I. The Board shall retain all documentation of complaints related to the uses and disclosure of related protected health information, and the disposition of those complaints, in accordance with their Confidentiality policy and procedures as defined under the HIPAA privacy rules 45 CFR 164.530(j).