

CARROLL COUNTY BOARD OF DEVELOPMENTAL DISABILITIES

ADMINISTRATIVE RESOLUTION OF COMPLAINTS AND DUE PROCESS RIGHTS

I. Purpose:

It is the policy of the Board to provide due process protections to individuals, families, guardians or complainants in the resolution of complaints involving programs, services, policies or administrative practices of the Board or an entity under contract with the Board. The Board shall adhere to the administrative resolution of complaints process as outlined in the section 5123-4-04 of the Administrative Code.

II. Application:

- A. This policy shall apply to any individual or person, other than an employee of the Board. An individual may appeal an adverse action using the process set forth in this policy prior to commencing a civil action.
- B. This policy shall not be applicable:
 - 1. When the Board is a vendor or subcontractor for service delivery.
 - 2. To education services arranged by the local education agency. Complaints or appeals concerning such services shall follow rules adopted by Ohio Department of Education.
 - 3. 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 policy. Complaints or appeals concerning such services shall follow rules in Chapter 5123-10 of the Administrative Code.
 - 4. 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.
 - 5. To performance of health-related activities and administration of medication by developmental disabilities personnel pursuant to section 5123.42 of the Revised Code or compliance with Chapter 5123:2-6 of the Administrative Code. Complaints or appeals concerning these matters shall be made to the Department using the process established in rule 5123:2-17-01 of the Administrative Code.
 - 6. To services provided to a resident of an intermediate care facility (ICF), or provided on behalf of or through a contract with an ICF. Complaints or appeals concerning these services shall follow regulations governing ICFs.

- C. If the Board determined that a complaint or appeal of adverse action filed with the Board is not subject to this rule, the 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.
- D. 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 Board administrative resolution of complaints and informal grievance procedures.
- E. A variety of complaint processes are available to individuals and include appeals to different authorities. The circumstances and nature of the complaint will dictate the appropriate process. The processes include:
 - 1. The Administrative Resolution of Complaints Process,
 - 2. The Informal Grievance Process,
 - 3. A Medicaid process for complaints related to Medicaid-funded services that are denied, reduced, or terminated,
 - 4. An Ohio Board of Nursing Process for complaints related to delegated nursing,
 - 5. The Early Intervention Complaint process,
 - 6. A process for instances related to Pre-School and School Age Services,
 - 7. A process related to Supported Living Services, and
 - 8. A process related to HIPAA matters involving confidentiality or individual rights.
- F. The Board notifies individuals and families regarding the availability of these processes and will assist parties in choosing the most appropriate process for the complaint. Nothing prohibits an individual from using multiple processes for a complaint if applicable.

III. Definitions:

- A. “Adverse Actions” means any of the following:
 - 1. Denial of a request for a non-Medicaid service.
 - 2. Reduction in frequency and/or duration of a non-Medicaid service.
 - 3. Suspension of a non-Medicaid service.

4. Termination of a non-Medicaid service (except when the recipient of that service is deceased).
 5. The outcome of an eligibility determination.
- B. “Advocate” means any person selected by an individual to act and/or communicate as authorized by the individual.
 - C. “Board” means the Carroll County Board of Developmental Disabilities, including when the Board is acting through a council of governments.
 - D. “Contracting Entity” means an entity under contract with a county board for the provision of services to individuals with developmental disabilities.
 - E. “Department” means the Ohio Department of Developmental Disabilities.
 - F. “Director” means the Director of the Ohio Department of Developmental Disabilities or his/her designee.
 - G. “Hearing” means the opportunity to present one’s case regarding a complaint or appeal of adverse action.
 - H. “Individual” means a person with a developmental disability who is eligible, or purports to be eligible, for services pursuant to Chapter 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.
 - I. “Intermediate Care Facility for Individuals with Intellectual Disabilities” has the same meaning as in section 5124.01 of the Revised Code.
 - J. “Notice” means and is deemed to have occurred upon:
 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 (30) calendar days after the date the notice is resent, the resent notice is returned for failure of delivery.

K. "Person" has the same meaning as in section 1.59 of the Revised Code.

IV. Policy:

A. 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 rule 5123-4-04, the 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 Board shall maintain the confidentiality of the identities of the 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 Board shall make all reasonable efforts to ensure that information regarding resolution of complaints and appeals of adverse action process, including all notices and responses made, is presented using language and in a format which is understandable to the affected individuals and persons. All notices and responses made pursuant to rule 5123-4-04 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 timelines set forth in this policy, which are in accordance with rule 5123-4-04, may be extended if mutually agreed upon in writing by all parties involved.
6. Initiation of the formal process set forth in this policy does not preclude the resolution of complaints and appeals of adverse action at any point, as long as the outcome is mutually agreed upon in writing by all parties involved.

B. Requirements 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
 - a. The Board shall give the Complaint or Appeal of Adverse Action Explanation Form 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 of a complaint within the scope of this policy and rule 5123-4-04 is received or the Board proposes an

adverse action.

- b. Upon request the Board or contracting entity shall provide a copy of rule 5123-4-04.
- c. The Board shall publicly post the Complaint or Appeal of Adverse Action Explanation Form.

C. Specific Notice of Adverse Action:

- 1. 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 (IV)(D), the Board shall provide written notice to the affected individual of the Board's decision to deny reduce, suspend, or terminate services at least fifteen (15) calendar days prior to the effective date of such action. The notice shall include:
 - a. An explanation of the Board's policy and/or authority for taking the adverse action;
 - b. A description of the specific adverse action being proposed or initiated;
 - c. The effective date of the adverse action;
 - d. A clear statement of the reasons for the proposed actions, including a description of the specific assessments and/or documents that are the basis for the adverse action;
 - e. An explanation 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 (90) 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 Board staff member who can assist the individual with his or her appeal; and
 - j. A copy of the Complaint or Appeal of Adverse Action Explanation Form.
- 2. The 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.

D. 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 Individual:

1. 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 Board shall:
 - a. Determine what immediate steps are necessary to ensure 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 Board's policy and/or authority for suspending the individual's services;
 - ii. A description of the specific services being suspended;
 - iii. Effective date for the suspension of services;
 - iv. A clear statement of the reason for the suspension of services including a description of the specific circumstances that jeopardize health and safety of the individual or other individuals;
 - v. An explanation that the 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 Board shall take in accordance with (IV)(D)(3) and (IV)(D)(4) of this policy.
 - vii. The name and contact information for the Board staff member who can answer questions about the suspension of services; and
 - viii. The Complaint or Appeal of Adverse Action Explanation Form.
2. The 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 read the email.
3. Within five (5) calendar days of the notice of suspension of services, the Board will 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.

4. Within five (5) calendar days of the team meeting, the Board shall:
 - a. 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
 - b. With the consent of the individual, continue to arrange for appropriate alternative services; or
 - c. Provide written notice that includes the components described in paragraphs (IV)(C)(1)(a) to (IV)(C)(1)(j) of this policy to the individual of the Board's decision to terminate the individual's services at least fifteen (15) calendar days prior to the effective date of such action. If the individual files an appeal prior to the effective a date of termination of services, the Board shall keep alternative services in place until the appeal process is completed.

E. Informal Process for Resolution of Complaints and Appeals of Adverse Action:

1. Informal Grievance Process:
 - a. The informal grievance process represents the initial effort to resolve concerns of individuals, families, guardians, or complainants.
 - b. The informal grievance procedure is an informal method of resolving disputes. Upon notice of a potential dispute the Superintendent or designee shall inform the individual, family, guardian, or complainant of their right to utilization of the informal grievance process. Notice of a potential dispute may result from correspondence, emails, meetings or phone contact with the individual, family, guardian or complainant. The filing of such grievances under this policy shall not affect the rights of the individual, family, guardian or complainant to file an appeal through the administrative resolution of complaint process within this policy.
 - c. Informal complaints will be referred to the agency Ombudsman who will work with the complainant to facilitate satisfactory resolution of the complaint. If the complaint is related to SSA services, however, it will then be directed to the Service and Support Administration Director in lieu of the Ombudsman. This may include the Ombudsman serving as a facilitator in a team meeting or informal hearing with all parties involved in the complaint to arrive at a satisfactory outcome for all parties. Not all complaints will result in a hearing/team meeting.
 - i. An informal hearing may be requested by the individual or complainant to discuss the complaint within five (5) calendar days of

the complaint.

- ii. The individual shall contact the Ombudsman who will conduct all necessary follow up with the manager or director of the applicable Board program from which the complaint originated.
- iii. Upon receipt of the request for an informal hearing or team meeting, the Ombudsman shall coordinate with the manager or director and other team members and shall at a mutually agreeable time to all parties, schedule an informal hearing/team meeting to be held within five (5) calendar days of the request.
- iv. The informal hearing/team meeting shall include all persons requested to attend by the individual or complainant.
- v. During the informal hearing/team meeting, the manager or director shall respond to questions, review circumstances related to the decision and provide the party initiating the request, the opportunity to present reasons as to why any decision(s) should be reconsidered.
- vi. Prior to the conclusion of the informal hearing/team meeting, a Board representative shall provide the party initiating the request a copy of the Board Administrative Resolution of Complaints and Due Process Rights policy and any applicable forms. The informal grievance process shall be completed within thirty (30) calendar days.

F. 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 Board.
 - a. An individual or person must file a complaint with the supervisor or manager of the Board within ninety (90) 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 within ninety (90) calendar days of notice of the adverse action or within ninety (90) days of the conclusion of the informal process. If the individual appeals 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 appeals process.

- c. The Board supervisor or manager will 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 (15) calendar days of the receipt of the complaint or appeal, the supervisor or manager shall provide and thereafter be available to discuss a written report and decision with the individual or person who filed the complaint or appeal. Such report shall include a description of the rationale for the decision and 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.
- 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 (IV)(F)(1), the individual or person may file a complaint or appeal with the Superintendent.
 - b. The complaint or appeal of adverse action must be filed with the Superintendent within ten (10) calendar days of notice of the supervisor's/manager's decision. If no decision is provided by the supervisor or manager of the Board within fifteen (15) calendar days in accordance with (IV)(F)(1)(d), the complaint or appeal of adverse action must be filed with the Superintendent within twenty-five (25) calendar days of filing the complaint or appeal of adverse action with the supervisor or manager of the Board.
 - c. The Superintendent or his or her designee shall, within ten (10) calendar days of receipt of the complaint or appeal, meet with the individual or person initiating the request and conduct an administrative review.
 - d. As a part of the administrative review, the Superintendent or his or her designee may ask questions to clarify and review the circumstances and facts related to the decision, and provide the individual or person initiating the request the opportunity to present reasons as to why the decision should be reconsidered.
 - e. Within fifteen (15) calendar days of the receipt of the complaint or appeal, the Superintendent 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. The decision shall include the rationale for the decision and a description of the next step in the administrative resolution of complaints process if the individual or person is not satisfied with the decision of the Superintendent or designee.
3. Step three: Filing a complaint or appeal of adverse action with the President of

the Board.

- a. If the individual or person filing the complaint or appeal of adverse action is not satisfied with the decision of the Superintendent, a complaint or appeal may be filed with the Board President.
- b. The complaint or appeal of adverse action must be filed with the Board President within ten (10) calendar days of notice of the Superintendent's decision. If no decision is provided by the Superintendent within fifteen (15) calendar days in accordance with (IV)(F)(2)(e), the complaint or appeal of adverse action must be filed with the Board President within twenty-five (25) days of filing the complaint or appeal with the Superintendent.
- c. The Board President shall ensure that a hearing is conducted within twenty (20) calendar days of receipt of the complaint or appeal at a time and place convenient to all parties. At the hearing:
 - i. The Board may hear the complaint or appeal;
 - ii. The President of the Board, with the agreement of the Board, may appoint a committee of two or more Board Members to hear the complaint or appeal. The committee shall issue a report and recommendation to the Board within ten (10) calendar days of the conclusion of the hearing; or
 - iii. A hearing officer appointed by the 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 Board. The hearing officer shall not be an employee or contractor of the 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 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 Board within ten (10) 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 (10) 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, evidence may be presented by both parties to support their positions.

- g. The individual or person requesting the hearing and the 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 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 Board. The record shall be made at the expense of the Board and, upon request, one (1) copy of a written transcript shall be provided to the individual or person requesting the hearing at no cost.
 - j. In making its decision, the 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 necessary action to make a determination.
 - k. Within fifteen (15) calendar days of the conclusion of the Board hearing or the Board's receipt of the report and recommendation from the Board-appointed committee or hearing officer, the President of the Board or his or her designee shall send by certified mail, a copy of the Board's decision to the individual or person who requested the hearing. This 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 Board.
4. Step four: Filing a complaint or appeal of adverse action with the Director.
- 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 section (IV)(F)(3) of this policy, 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 (15) calendar days of the notice of the decision of the Board. If no decision is provided by the President of the Board within fifteen (15) calendar days in accordance with (IV)(F)(3)(k), this complaint or appeal of adverse action must be filed with the Director within fifty-five (55) calendar days of filing the complaint with the Board President.
 - c. The Director shall send a copy of the complaint or appeal of adverse action to the Superintendent and Board President.
 - d. The Board President or his or her designee shall send the Director the written

transcript of the Board hearing, copies of any exhibits, and a copy of the Board's decision within fifteen (15) 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 thirty (30) calendar days of receipt of the written transcript of the Board hearing, copies of any exhibits, and a copy of the Board's decision from the Board President, 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 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.

G. Other Remedies

- 1. After exhausting the administrative remedies in this policy, 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.

Adopted by the Carroll County Board of Developmental Disabilities

Date: 1-27-2022

Signature of Board Officer: _____