

**Licking County Board of Developmental Disabilities**

**Administrative Policy Manual**

**Policy: Complaint Resolution and Appeals of Adverse Actions**

**Board Approved: 2/96**

**Revised: 8/02, 9/14, 4/19, 08/19**

**Reviewed: 7/04, 5/09, 04/10, 2/12, 10/16**

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**POLICY**

It is the Policy of the Licking County Board of Developmental Disabilities, hereinafter referred to as the Board, that complaints involving its services, programs, programmatic policies, or administrative practices and those of its contract agencies be promptly and satisfactorily addressed. This policy and related procedures includes potential adverse actions defined as denial of a request for a non-Medicaid funded service; reduction in frequency and/or duration of a non-Medicaid service; suspension of a non-Medicaid service; termination of a non-Medicaid service; and an eligibility determination outcome.

The Board offers and encourages the use of an informal process for the resolution of complaints and appeals of adverse actions. This informal process involves the appointment of one or more persons by the Superintendent to conduct an informal hearing of a dispute for the purpose of seeking to resolve the issue within a timeframe of no more than thirty days. The use of this informal process shall not affect the rights of the complainant to file an appeal through the administrative resolution (appeal) procedures. Any complainant that chooses to utilize this informal procedure should contact the Superintendent who will initiate the process. At the conclusion of the informal hearing, the Superintendent will meet with the complainant to discuss the findings and recommendations of the individual(s) appointed to conduct the informal hearing.

When resolution by informal means does not satisfy the complainant, then consistent with Ohio Administrative Code 5123:2-1-12, the Board provides to any person, other than a staff member of the Board, the opportunity to use the complaint resolution procedures established to implement this policy. No person or organization that chooses to use these procedures will be subject to retaliation of any sort from the Board.

Any person receiving supported living services through a contracted provider of the Board shall follow the process for resolving complaints established under division (B) of Section 5126.45 of the Ohio Revised Code. After exhausting the process for resolving complaints established by the supported living contract, a person may initiate a complaint under this policy and its related procedures.

This policy and its related procedures are not applicable to:

- The Board when it is a vendor or subcontractor for service delivery;
- To education services arranged by the local education agency (school district).  
For these children the Operational Standards for Ohio Schools Serving Students

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with Disabilities as promulgated by the Ohio Department of Education shall be followed;

- To services provided under Part C of the Individuals with Disabilities Education Act (IDEA). Complaints or appeals concerning these services will follow rules adopted by the Ohio Department of Developmental Disabilities, which has responsibility for administration of Part C of the IDEA.
- Services funded in part by a Medicaid home and community-based waiver, and targeted case management. Complaints and appeals concerning these services follow rules adopted by the Ohio Department of Medicaid. Concurrent with any appeal to the Ohio Department of Medicaid, the complainant and the Board may attempt to informally resolve issues related to services funded in part by a home and community-based waiver and targeted case management.
- 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 Ohio Administrative Code. Complaints or appeals concerning these matters are made to the Ohio Department of Developmental Disabilities using the process established in Ohio Administrative code 5123:2-1-17;
- To persons who are residents of an intermediate care facility for the developmentally disabled. Complaints or appeals concerning these services will follow regulations governing intermediate care facilities for the developmentally disabled.

The Board will assist a complainant, upon request, with the administrative resolution of complaint procedures, as well as with any other appeal procedures promulgated by the Ohio Department of Education, Ohio Department of Developmental Disabilities, Ohio Department of Medicaid, Ohio Department of Health and/or any other entity from which an eligible person believes an adverse action has been taken or is planned.

**I. Notification of the Administrative Resolution (Appeal) Process**

- A. The Board will place this policy and Appendix A of Ohio Administrative Code 5123:2-1-12 Complaint or Appeal of Adverse Action Explanation form on its website at [www.lcountydd.org](http://www.lcountydd.org). A paper or electronic copy of any of these documents, and Ohio Administrative Code 5123:2-1-12 is available at any time by calling the Board office at 740-349-6588.

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- B. The Board will provide a paper or electronic copy of Appendix A to OAC 5123:2-1-12, Complaint or Appeal of Adverse Action Explanation Form (hereinafter referred to as the explanation form) to persons seeking services, their guardians, family members and other representatives when:
1. Services are initially requested;
  2. Annually thereafter to each person receiving or on the waiting list for services not funded by Medicaid;
  3. There is a complaint or the Board proposes an adverse action as defined earlier in this policy.

**II. Specific Notice of Adverse Action**

Any proposed action by the Board to deny, reduce, suspend, or terminate services must be preceded by a written notice to the person and his or her legal guardian fifteen (15) calendar days before the effective date of the proposed action. The written notice will include all of the following:

- An explanation of the Board's policy and/or authority for taking the adverse action;
- A description of the specific adverse action being proposed or initiated;
- The effective date of the proposed action;
- Reasons for the adverse action including description of specific assessment, documents, etc. that are the basis for the action;
- An explanation of the person's right to appeal the action;
- Notification that the person has ninety (90) days to appeal the action and the specific steps in the appeal process;
- Notification that the person must file his or her appeal prior to the effective date for the action to keep his or her services in place during the appeal process;
- The name and contact information for the Board staff member who can assist with an appeal; and
- The explanation form.

In rare circumstances it may be necessary to suspend services to a person without delay to provide for/ensure the health and safety of the person and/ or other eligible persons. When this occurs, the Board will use the individual support planning team to determine the steps necessary. The written notice, containing the relevant information outlined above, will be provided to the person and his or her legal guardian immediately.

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The Board will record the date of delivery of the notice. Delivery may be done electronically, in person, or by certified mail, whichever is preferred by the person or his/her legal guardian.

Within five calendar days of the notice of suspension of services the Board service coordinator will convene the support planning team to identify measures and strategies to reduce risk and eliminate the circumstances that jeopardize the health and safety of the person and/or other persons.

Within five calendar days of the support team meeting the Board will:

1. With the consent of the person or his/her guardian, implement measures proposed by the support team to eliminate the circumstances that jeopardize the health and safety of the person and/or other persons determined necessary to restore the suspended services; or
2. With the consent of the person or his/her guardian, continue to arrange for appropriate alternative services; or
3. Provide written notice that includes the required components identified in this policy that the Board intends to terminate the person's services at least fifteen days prior to the effective date of the termination of services. Alternative services will be kept in place if the person and his/her legal guardian decide to use the appeal process.

III. Additional Requirements

- A. The Board shall post the toll free number for the Ohio Department of Developmental Disabilities and Disability Rights Ohio in visible places in its buildings.
- B. Written procedures consistent with Ohio Administrative Code 5123:2-1-12 will be developed, posted on the Board's website at [www.lcountydd.org](http://www.lcountydd.org), and made available upon request.
- C. Notwithstanding any other provisions of this policy and procedures, the appeal of any action of the Board will begin at the level at which the decision or action was made.

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- D. Subject to the limitations of Section 5123.043 of the Revised Code, 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 change in services for a person, current services will continue to be provided pending final resolution unless an entity under contract with a county board for the provision of supported living terminates the services it is providing that person in accordance with the terms of its contract with the Board.
  - E. The Board will at all times maintain confidentiality concerning eligible persons who utilize complaint resolution procedures unless the person, in writing, authorizes the release of information.
  - F. If the person with the complaint has difficulty in reading or writing, an oral report may be accepted and documented by the component director or Board administrator receiving the report. A person who wishes to seek administrative resolution or appeal an adverse action in accordance with this policy may be assisted by a representative or advocate who has the person's permission to speak on his or her behalf.
  - G. If the person appeals an adverse action within the prior notice period, the person's services will not be suspended, reduced, or terminated until the appeal process is completed or the appeal is withdrawn by the person or his/her legal guardian. However, a person who appeals during the prior notice period may voluntarily consent in writing to the reduction, suspension, or termination of services during the appeal process.
  - H. The procedures include timelines for required steps in the process, which may be extended if mutually agreed upon in writing by the parties involved.

**IV. Procedures**

**A. Step One**

Complaints and appeals of proposed adverse actions should be placed in writing and provided to the component director or Board administrator responsible for the program, service, policy or administrative practice of the Board within ninety (90) calendar days that the complainant becomes aware of the program, service, practice, etc. that is the subject of the complaint; or within ninety calendar days of the conclusion of the informal complaint resolution process.

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1. The component director or appropriate Board administrator will conduct an investigation of the complaint or appeal that includes meeting with the person who filed the complaint or appeal.
  2. Within fifteen (15) calendar days of the receipt of the complaint or appeal a written report and decision will be completed and discussed with the person who filed the complaint or appeal. Such report shall include the rationale for the decision and a description of the next step in the administrative resolution (appeal) process.

**B. Step Two**

If the complainant wishes to appeal the decision resulting from step one of the appeal procedures to the superintendent the following will occur:

1. The appeal to the superintendent will be filed by the complainant within ten (10) calendar days of receipt of the component director or other Board administrator's written decision or within twenty-five (25) days of filing the complaint or appeal with the component director or appropriate Board administrator.
2. If desired, the complainant can request to meet with the Superintendent or designee within ten days of receipt of the complaint or appeal. The Superintendent or designee will meet with the complainant within ten days of receipt of the complaint or appeal and conduct an administrative review.
3. During the administrative review, the Superintendent or designee may ask questions to clarify and review the circumstances and facts related to the step one decision, and provide the complainant the opportunity to present reasons why the step one decision should be reconsidered.
4. Within fifteen (15) calendar days of the receipt of the complaint or appeal the Superintendent or designee will send by certified mail a copy of his or her decision to the complainant. The decision will include the rationale for such decision and a description of the next step in the process if the person is not satisfied.

**C. Step Three**

If the complainant is not satisfied with the decision of the superintendent or designee, a written appeal may be filed with the Board President.

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1. The written appeal shall be filed with the Board President within ten (10) calendar days of receipt of the Superintendent or designee's decision, or within twenty-five (25) calendar days of filing the complaint or appeal with the superintendent if no written decision is received from the superintendent or designee
  2. The Board President will ensure 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. The following options are available to the Board:
    - a.) The full Board may hear the complaint or appeal; or
    - b.) The Board President, with the agreement of the Board, may establish a committee of two or more Board members to hear the complaint or appeal. The committee will issue a report with recommendations to the full Board within ten calendar days of the conclusion of the hearing; or
    - c.) The Board may appoint a hearing officer to 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 cannot be a staff member or contractor of the board. The hearing officer need not be an attorney, but be qualified to make neutral and informed decisions about the complaint or appeal. The Board may ask the Ohio Department of Developmental disabilities to decide if a person is qualified to be a hearing officer. The hearing officer will issue a report and recommendation to the Board within ten (10) calendar days of the conclusion of the hearing.

Additionally:

- a.) No less than ten (10) calendar days prior to the hearing, the complainant will be provided access to relevant Board records and materials;
- b.) The hearing will be private unless the complainant wants it to be open to the public;
- c.) Both parties may present evidence to support their positions;
- d.) Both parties have the right to be represented by an attorney at their own expense;
- e.) The complainant will be afforded the right to have in attendance and question any official, staff member or agent of the Board who may have evidence upon which the complaint or appeal is based.
- f.) Evidence presented at the hearing will be recorded by stenographic means or by use of audio-electronic recorder at the option of the Board. The record will be made at the expense of the Board and, upon request, one

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copy, in the recording medium used, will be provided to the complainant at no cost.

g.) The Board may request or consider additional information in making its decision with notice to all affected parties. It may also request a presentation in writing and/or in person from each party, or take other action necessary to make a determination.

3. The Board committee or hearing officer will issue a report and recommendation to the Board within ten (10) calendar days of the conclusion of the hearing.
4. Within fifteen (15) calendar days of the Board's receipt of the report, the Board president will send by certified mail the Board's decision to the complainant and the rationale for such decision and a description of the next step in the administrative resolution (appeal) process if the complainant is not satisfied.

**D. Step Four**

When a person filing a complaint is not satisfied with the outcome of the complaint or appeal thus far, the complainant has the right to appeal the decision of the Board to the Director of the Ohio Department of Developmental Disabilities. The following occurs when filing a complaint or appeal of adverse action with the director:

1. The appeal must be filed with the director within fifteen (15) calendar days of receipt of the Board's decision or within fifty-five (55) days of filing the complaint with the Board President if no decision is provided by the Board.
2. The director will send copies of the appeal to the superintendent and Board President.
3. Within twenty (20) calendar days, the Board shall send to the director copies of the hearing transcript and any exhibits, and the Board's written decision and rationale.
4. The director will act according to the requirements of Ohio Administrative Code 5123:2-1-12 with regard to making a decision about the complaint or appeal. Within forty-five (45) calendar days of the receipt of the Board's written decision and all supporting documents, the director shall send by certified mail to all affected parties a copy of his/her decision.