

CARROLL COUNTY BOARD OF MENTAL RETARDATION AND
DEVELOPMENTAL DISABILITIES
ADMINISTRATIVE PROCEDURES FOR
ADMINISTRATIVE RESOLUTION OF COMPLAINTS
AND
DUE PROCESS RIGHTS

I. GUIDING PRINCIPLES.

- A. These procedures establish the process for the Carroll County Board of MR/DD Administrative Resolution of Complaints and other Due Process Rights made available to individuals, families, guardians, or other complainants.

II. DEFINITIONS.

- A. "Complainant" means a person as defined in Section 159 of the Ohio Revised Code and shall include any person other than an individual as defined in this Rule, a corporation, business trust, estate, trust, partnership and association when such person has an interest with the County Board through a contract or in relation to an Administrative practice of the Board.
- B. "County Board" means the Carroll County Board of MR/DD, 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 Carroll County Board of MR/DD.
- C. "Department" means the Ohio Department of Mental Retardation and Developmental Disabilities.
- D. "Employee" means an unclassified employee of the Carroll County Board of MR/DD. Seeking to resolve employment issues who shall follow the procedures in the contract entered into pursuant to Section 5126_21 of the revised code and in accordance with Section 512623 of the Revised Code and classified employees of the County Board seeking to resolve employment issues who shall follow the procedures in Chapter 124 of the Ohio Revised Code or within the collective bargaining agreement entered into pursuant to Chapter 4117 of the Revised Code.
- E. "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 Revised Code 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.

M. NOTIFICATION OF POLICIES AND PROCEDURES. A,

Annual Notification of Due Process Procedures:

- 1, On an annual basis the Carroll County Board of MR/DD shall provide notification of the availability of the Policies and Procedures for Administrative Resolution of Complaints and Due Process to individuals, families, guardians and any entity in the county that serves persons or provides or desires to provide services and/or supports under contract with the County Board. The notice shall be incorporated into the individual or family planning process. The County Board shall post the toll free number for the Ohio Department of MR/DD and Ohio Legal Rights Service in a visible place in its facilities. Notifications shall occur annually or upon request or receipt of any complaint. Notification of the Rights of Ohioans with disabilities and Parents rights of those families receiving Early Intervention services shall be provided annually.

B. Providing Notice upon Receipt of Complaint:

1. Upon receipt of any complaint subject to Administrative Resolution using this procedure, the Carroll County Board of MR/DD shall provide written notice of the rights to Informal Grievance and Administrative Resolution Complaints processes or other applicable due process avenues, to the individuals, families, guardians, or complainants. The County Board shall inform the individual that a representative of the Carroll County Board of MR/DD is available to assist the individual with utilization of the informal grievance or Administrative Resolution Processes outlined in the procedure.
 - a Where circumstances permit, Due Process Rights shall be given at least ten (10) days prior to any action being taken. Such notice shall be written in terms and easily understood by the individuals, families, guardians, or complainants and shall include the following:
 - a A written detailed description of the proposed action;
 - b. A clear statement of the reasons for the proposed actions, including the specification of any evaluative instruments or reports upon which such action is proposed;
 - c. A statement that the complainant or individual has the right to seek Administrative Resolution regarding complaints about such decision; and
 - d. A copy of the written Administrative Resolution of Complaints 2

Process.

- C. Upon notice of an individual, family, guardian or complainant's intent to evoke their Due Process Rights all proposed actions shall halt until the issue is fully resolved to the satisfaction of all parties involved.

IV. APPLICATION OF DUE PROCESS PROCEDURES.

A. Informal Grievance Procedures:

1. The Informal Grievance Procedures represent the initial effort to resolve concerns of individuals, families, guardians, or complainants. Concerns not satisfactorily addressed may result in utilization of the Administrative Resolution of Complaints Process defined in these procedures.

B. Administrative Resolution of Complaints Process:

1. Individuals, families, guardians, or complainants utilize the Administrative Resolution of Complaints Process when the concern was not satisfactorily addressed in the informal Grievance Procedures. Procedures for the Administrative Resolution of Complaints Process are outlined in this procedure.

V. ADDITIONAL AVENUES FOR RESOLVING COMPLAINTS THAT MAY APPLY TO INDIVIDUALS, FAMILIES, GUARDIANS OR COMPLAINANTS:

- A. Specific service or support areas may require utilization of additional avenues for resolving disputes of individuals, families, guardians or complainants. They may include the utilization of the following:

1. Delegated Nursing:

- a. The Ohio Board of Nursing (OBN) and/or the Department shall accept complaints regarding alleged violations of Sections 4723:2101 through 4723:21-28 of the Revised Code and/or Section 5123:21-07 of the Administrative Code,
- b. Investigations resulting from complaints related to County Board workers performance of delegated nursing tasks, inclusive of qualifications of board workers to give and/or apply prescribed medications, shall be conducted by the Department utilizing the Complaint Resolution Procedures as outlined in 5123:2-17-01 of the Administrative Code. Department investigations may be conducted in conjunction with the OBN.
- c. Complaints related to delegated nursing practices shall be referred 3

to the OBN. The procedures outlined in Section 4723:21-25 of the Administrative Code shall be used by ODN to investigate allegations. A report of the findings of the OBN investigation shall be submitted to the Department Director. The Department Director shall notify the Superintendent of the County Board in writing of the outcome of the investigation.

- d. If a complaint alleges circumstances, which would jeopardize health, safety or welfare of the individual, an investigation shall commence immediately. If the complaint does not allege circumstances, which would pose imminent harm to the health, safety or welfare of the individual, the investigation shall proceed within seven working days.
- e. Any complaints related to the scope of nursing practices shall be referred to the OBN, which regulates nursing practices in accordance to Chapter 4723 of the Revised Code.

B. Medicaid Funded State Plan Services (CAFS) and Medicaid Home and Community-Based Waiver Services:

- 1. When Medicaid-Funded services pursuant to Home and Community Based Waiver Services and/or Medicaid Funded State Plans Services such as Community Alternative Funding System (CAPS) are denied, reduced, or terminated the affected Medicaid-eligible individual has the right to a state hearing if they wish to appeal the decision.
- 2. When a request for an initial Medicaid-funded service or a request to increase frequency/duration of an existing service is denied, the individual or their representative shall be given notice of the denial by the habilitation center through distribution of the Ohio Department of Jobs and Family Services (ODJFS) Form 7334.
- 3. When a decision has been made to terminate a service received or to reduce the frequency and/or duration of the service, ODJFS Form 4065 shall be provided to the individual.
- 4. The individual or authorized representative has ninety calendar days from the mailing or delivery of the notice (four) in which to file an appeal. The request may be in writing or verbally indicated. If a verbal request is indicated, the request shall be transcribed in a written format. No reduction or termination of service shall occur without giving notice to the individual or representative not less than fifteen days prior to the effective date of the proposed action. Services shall continue if an appeal is received within fifteen days. If there is no appeal, services will be terminated and payment will stop. Services will not be reinstated if the

appeal is received within ninety days, but after fifteen days, unless there is a good cause for failing to request a hearing within the fifteen-day period.

5. A request for a state hearing on disagreements with the decisions of the Carroll County Board of MRIDD shall be made to the Ohio Department of Family and Job Services in accordance with Rules for Appeals Promulgated by ODJFS under Chapter's 5101:6-1 to 5101:6-9 of the Administrative Code.
6. Individuals may use the Carroll County Board of MR/DD Due Process Procedures for disputes unrelated to denial, termination, and reduction of service. The individual and the County Board may attempt to informally resolve these disputes through the informal grievance procedures or Administrative Resolution of Complaints Process.

C. Early Intervention Services:

1. Families have a right to -a state hearing with the Ohio Department of Health to resolve complaints pertaining to Early Intervention Services provided by the Carroll County Board of MR/DD. Upon receipt of a complaint the County Board shall make families aware of their right to a state hearing. Families may file a complaint when they disagree with any of the following:
 - a. Eligibility determination for services;
 - b, An evaluation or assessment for their child;
 - c. Provision of services provided in the Early Intervention program;
 - d. Payment for Early Intervention Services.
2. Families may also utilize the Carroll County Board of MR/DD informal grievance and Administrative Resolution of Complaints processes contained in this procedure if they so choose.

School Age Services:

1. Individuals placed at the Carroll County Board of MRJDD for school age services by the Local Education Agency (LEA) shall utilize the Rules contained in IDEA as promulgated by the Ohio Department of Education to resolve disputes and complaints.

E. Supported Living:

1. Individuals, guardians, complainants receiving or providing supported living services under contracts with the County Board or MEORC shall utilize grievance procedures contained in the contract for resolving disputes. Use of these procedures shall be specific to complaints related to the contracts for Supported Living services and supports.
2. In the case of disputes related to the termination, reduction or change of Supported Living services or support if an individual shall utilize the County Board Due Processes contained in these procedures. The individual or authorized representative has ninety calendar days from the notice in which to file an appeal. No reduction or termination of service shall occur without giving notice to the individual or representative not less than fifteen days prior to the effective date of the proposed action. Services shall continue if an appeal is received within fifteen days. If there is no appeal, services will be terminated and payment will stop. Services will not be reinstated if the appeal is received within ninety days, but after fifteen days, unless there is a good cause for failing to request a hearing within the fifteen-day period,

VI. INFORMAL GRIEVANCE PROCEDURE.

- A. The individual or authorized representative has ninety calendar days from the notice of a change in services in which to file an appeal. No reduction or termination of service shall occur without giving notice to the individual or representative not less than fifteen days prior to the effective date of the proposed action. Services shall continue if an appeal is received within fifteen days, If there is no appeal, services will be terminated and payment will stop. Services will not be reinstated if the appeal is received within ninety days, but after fifteen days, unless there is a good cause for failing to request a hearing within the fifteen-day period
 - B. The informal grievance procedure is an informal method of resolving disputes. An appeal of the informal grievance procedure decision may result in utilization of the Resolution of Complaint Procedure as defined in these procedures.
 - C. 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 procedure and other applicable avenues available to resolve the dispute. Notice of a potential dispute may result from correspondence, memos, meeting or phone contact with the individual, family, guardian or complainant.
- ID, The Superintendent of the Carroll County Board of MR/DD shall appoint one or more persons to serve as the County Board representative to conduct an informal hearing to resolve such disputes within a timeframe of no more than 30 days. 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 Procedures wither this procedure.

1. The County Board representative shall act as a liaison for the individual, family, guardian, or complainant to explain the Informal Grievance Procedure.
 2. An individual, family, guardian, or complainant may grieve a decision of the County Board within ninety (90) days of the proposed action being appealed. Services shall continue uninterrupted if an appeal is received within fifteen days of the proposed action.
 3. The individual, family, guardian or complainant may request a case conference, through the County Board representative, for the purpose of discussing the dispute issues. The individual, family, guardian or complainant shall convene the case conference within 10 days of the request.
 4. The case conference shall include the department supervisor of the applicable service component of the Carroll County Board of MRDD from which the pending dispute originated.
 5. Up on receipt of the request for a case conference, the department supervisor shall at mutually agreeable time to all parties, schedule a case conference.
 6. The case conference shall include all persons requested to attend by the individual, family, guardian or complainant. The case conference shall be scheduled at a time convenient to all parties.
 7. During the case conference the department supervisor 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.
- S. Prior to the conclusion of the case conference the County Board representative shall provide the party initiating the request for the case conference a copy of the Carroll County Board of MRDD Administrative Resolution of Complaints.
9. The individual, family, guardian or complainant will be notified, in writing, of the decision of the department supervisor resulting from the case conference and inform them of their right to utilize the Administrative Resolution of Complaints process and/or other appropriate due process avenues if concerns still exist.

VII. ADMINISTRATIVE RESOLUTION OF COMPLAINTS PROCEDURE.

- A. 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 procedure will not abrogate any other rights to services.
- B. If the complaint relates to the County Board requesting a termination, reduction or change of services for an individual, current services shall continue to be provided pending final resolution. Individual protections afforded by ODJFS for Medicaid funded services may be used in lieu of, or in addition to, the County Board Administrative Resolution of Complaints.
- C. Notwithstanding any other provisions of this procedure, the appeal of any action of the Board or its employees shall begin at the level in which the decision or action was made. If there is an appeal of a decision taken by a contractor of the Board, the appeal shall begin with the contractor in place of the supervisor.
- D. The request for Administrative Resolution shall be in writing and shall be filed with the supervisor/designee of the applicable service component of the Carroll County Board of MR/DD. If an individual has difficulty reading or writing an oral report may be accepted and documented by the County Board supervisor receiving the report. An advocate who may speak on behalf of the individual may assist an individual who wishes to seek Administrative Resolution in accordance with this procedure.
 1. The County Board supervisor/designee will conduct an investigation of the complaint within ten calendar days of receipt of the request for Administrative Resolution of the Complaint.

Within ten 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,
 3. Within ten calendar days of receipt of the Carroll County Board of MR/DD supervisor's/designee's written decision, the complainant or individual may request Administrative review of the supervisor's/designee's written decision.
 4. Timelines may be extended if mutually agreeable to all involved parties.
- E. If the complainant or individual desires an Administrative review of the supervisor's/designee's decision, the following shall occur.

1. A request for an Administrative review shall be made in writing by the complainant or individual within ten calendar days of the receipt of the supervisor's/designee's written decision. The request for Administrative review shall be made to the Superintendent of the Carroll County Board of M R/DD.
 2. Upon receipt of a request for Administrative review of the supervisor's written decision, the Superintendent shall, within ten calendar days, meet with the party initiating the request and conduct an Administrative review.
 - a. During the Administrative review, the Superintendent may ask questions to clarify the circumstances 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.
 - b. Within five working days of the Administrative review, the Superintendent's decision shall be made known in writing to the complainant or individual and include a rationale for such decision, and a written description of the next step in the Administrative Resolution process.
 - c. Timelines may be extended if mutually agreed up on by all involved parties.
- F. If the complainant or individual is not satisfied with the decision of the Superintendent, a written appeal may be filed with the Carroll County Board of MRIDD. The written appeal shall be filed with the Carroll County Board of MRJDD President within ten calendar days of receipt of the Superintendent's decision.
1. Upon receipt of a written request to the appeal, the Carroll County Board of MR/DD president or designee shall conduct a hearing no sooner than seven calendar days, nor later than the next regularly scheduled Board Meeting, at a time and place convenient to all parties. The Carroll County Board of MR/DD may hear the case as a full Board or the President of the Board with the concurrence of the Board, may establish a committee of two or more Board Members to hear such appeals. The committee shall be vested with full rights and authorities as the County Board in handling the appeal.
 2. No less than seven days prior to the hearing the complainant or individual shall be provided access to the Carroll County Board of MR/DD records pertaining to the specifics of the appeal.
 3. The hearing shall be a closed meeting unless the complainant or individual

requests an open meeting.

4. During the hearing evidence shall be presented by both parties to support their positions.
5. The complainant or individual 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.
6. The complainant or individual shall be afforded the right to have in attendance and question any official, employee or agent of the Carroll County Board of MR/DD who may have evidence upon which the appeal is based.
7. The decision of the Carroll County Board of MR/DD shall be solely based upon evidence presented at the hearing
8. Evidence presented at the hearing shall be recorded by stenographic and/or use of audio-electronic recording devices as the Carroll County Board of MR/DD determines at the time of the hearing. Such record shall be made at the expense of the Carroll County Board of MR/DD and, upon request, one copy of the verbatim transcript and/or recording shall be provided to the complainant or individual at no cost.
9. In any hearing held under the authority of the Carroll County Board of MR/DD pursuant to the Administrative Rule 51232-1-12, the Carroll County Board of MR/DD 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 Carroll County Board of MR/DD, but shall not be a Carroll County Board of MR/DD employee. The hearing examiner need not be admitted to the practice of law, but shall be possessed of such qualifications as to be able to render neutral and informed decisions on matters presented in the complaint. The Director or his/her designee shall maintain a list of approved hearing examiners, which a County Board may request in order to select a qualified examiner. The Carroll County Board of MR/DD may also request the Department to certify a qualified hearing examiner.
10. Within five calendar days of the date the hearing is closed, the hearing examiner shall issue a written report and a recommendation, setting forth findings of fact, conclusions of law, and recommendation for the disposition of the complaint. The report and recommendation shall be served upon the parties to the hearing by certified mail.
- 11, The parties to the hearing may file with the Carroll County Board of IMIRIDD written objections to the report and recommendation within ten

days of receipt of the report and recommendation.

12. Within five calendar days of the hearing or within five calendar days following the Board's action upon receipt of the hearing examiner's report and any objections thereto, written notification of the Carroll County Board of MRDD's decision shall be sent by certified mail to the complainant or individual. Such notification shall include a rationale for the Carroll County Board of MRDD's decision and description of the next step in the process.

13. Timelines may be extended if it is mutually agreed upon by all parties.

G. In the event the complainant or individual wishes to appeal the decision of the Carroll County Board of MRJDD, the individual/complainant shall have the right to appeal the decision of the Carroll County Board of MRIDD to the Director of the Department. The following procedures shall be followed in such appeals to the Director:

The appeal shall be filed with the Director within fifteen calendar days of receipt of the Carroll County Board of MRDD's decision. Copies of the appeal letter shall also be sent to the Superintendent, the Carroll County Board of MR/DD's President, and the legal counsel or other representative of either/or both parties .

2. Upon receipt of the notice of the appeal from the Administrative action of the Carroll County Board of MRIDD, the County Board shall send to the Department, copies of the verbatim transcript of the hearing with the County Board, any exhibits incorporated into the transcript, and the County Board's written decision.

The Director or designee shall review the appeal within thirty calendar days of the receipt of the appeal. The Director or designee shall determine if the decision of the Carroll County Board of MRJDD was based upon applicable Statute and/or Administrative Rule.

4. Within, fourteen calendar days following the Department level review, the Directors' decision shall be made known, in writing, to all parties, and shall include a rationale for the decision.

5. Timelines may be extended if mutually agreed upon by all involved parties.

H. After exhausting the Administrative remedies in Section 5123:2-1-12 of the Administrative Code, if the complaint is' not settled to their satisfaction, a complainant or individual may either file a complaint *with* the Department of Mental Retardation Developmental Disabilities as permitted by Section 5123:217-01 of the Administrative Code or commence a civil action against the Carroll County Board of MR/DD.

- I. Subject to the limitations of Sections 5123.043 of the Revised Code, the Administrative Resolution Process provided by 51232-1-12 Administrative Rule are 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.

VIII. CONFIDENTIALITY.

- A. The Carroll County Board of MRIDD shall at all times maintain confidentiality concerning the identities of individuals, families, guardians, complainants, witnesses or other involved parties who provide information unless an authorized release of information is obtained.

LY. UPDATING AND DEVELOPING POLICIES AND PROCEDURES SPECIFIC TO DUE PROCESS.

- A. The Carroll County Board of MRIDD shall annually review policies of the Board to ensure they are current and reflect current practice.
- B. Corresponding procedures outlining the due process protections and Administrative Resolution of Complaint process shall be developed and updated as deemed necessary by the Superintendent.