

Erie County Board of Mental Retardation and Developmental Disabilities

Rights

November 2004

Due Process /Complaint Resolution Policy

This due process policy is applicable for program services funded by the Erie County Board of MR/DD.

The Board shall follow ODMR/DD rules regarding Administrative Resolution of Complaints for County Boards. However, the many, separate and independent due process and appeal procedures are often confusing and complicated to follow. They are often non-responsive and not enforced short of adversary legal proceedings. They seem to do more to create a false sense of protection for the client and their families and to attempt to intimidate the agencies to which the agency responds with reams of procedures rather than meaningful methods to resolve the conflicts.

The board will use the procedures of this policy when an area subject to the policy occurs. In such cases a copy of the policy will be provided to the client. Annually, the Board and its staff shall provide each client with a copy of the Board's Civil Rights Policy in program manuals. Copies of the Civil Rights Policy are posted at each program site and are available at the front desk of Board operated facilities. In addition, a flyer titled "Ideas, Suggestions, Complaints and Concerns" is available to assist anyone to present issues in an effective manner.

In addition, the Board has adopted and uses a broad base of practices to attempt to ensure consumer satisfaction and address concerns:

- A. The Program Evaluation, Planning and Budget Methods provide a systematic approach to ensure that the consumer's voice is heard and their rights to services are protected.
- B. The Board contracts with the Arc of Erie County to provide an independent monitor/advocate whose only role is to represent the concerns and interests of the people we serve.
- C. The Board attempts to foster self advocacy through training, providing experiences and encouraging individuals to participate in conferences and other related activities.

On occasion, conflicts arise in eligibility determination, the planning, delivery and/or changes in services to a child or adult with disabilities. The purpose of this policy is to identify the procedures to quickly, fairly, and effectively resolve grievances or complaints at the lowest step possible. Every responsible effort shall be made by the persons involved to affect the resolution of any due process grievance. This administrative resolution process also is required by O.R.C. 5126.041 before the complainant can begin a civil action.

The Board has written:

1. Policies and procedures concerning identification, evaluation, program enrollment, and periodic review processes.
2. Descriptions of available programs and related services.

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Formal Due Process Complaint Resolution Procedures

I. General Guidelines

- A. The Superintendent may appoint one or more persons to conduct an informal hearing of a complaint or grievance. The purpose is to seek resolution of the dispute within thirty (30) calendar days. This informal hearing process does not affect the rights of the complainant to file an appeal under this Administrative Resolution of Complaints policy.
- B. Only issues under the control of the Board are appealable.
- C. No settlement of any grievance shall conflict with applicable State Law, Federal Law, Ohio Department of Mental Retardation and Developmental Disability Rule, or ECBMR/DD policy or union contract.
- D. The appeal of any action of the Board or its employees shall begin at the level at which the action was made.
- E. The Board and Ohio Department MR/DD shall maintain confidentiality concerning the identities of individuals, complainants, witnesses, and other involved parties who provide information unless the individual authorizes the release of information in writing or unless required to release such information by law.
- F. The Board will provide individuals and any entity in the county that serves persons or provides goods or services under Board contract with an annual notification of the availability this Due Process/Administrative Complaint Resolution policy. A copy of this policy will be provided on request.
- G. The toll free number for the Department MR/DD and Ohio Legal Rights services shall be posted in all Board operated facilities and be available upon request.
- H. It is the responsibility of every Board employee affected to carry out their duties and responsibilities in a manner that is respectful of the rights of individuals and to take the necessary and appropriate action to resolve grievances and complaints if the resolution is within their employment capabilities.

II. Due Process and Complaint Resolution for children 3-6 enrolled in pre-school programs.

For individuals placed by one of the a local Erie County school districts in the preschool program operated by the Board, the Board shall follow the Ohio Department of Education's Rules for the Education of Handicapped Children as detailed in the respective Due Process Procedure of the enrollee's home school district. This section is applicable to all children ages 3 through 6 who have been accepted into a Board pre-school program at the LEA's request. (3301-51-02 "Rules for the Administration of Handicapped Children")

III. Due Process and Complaint Resolution for individuals receiving or requesting all other Board services.

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- A. For decisions subject to appeal, the Superintendent or designee will provide an understandable, written notice of the appeal rights to the individual/complainant at least 10 calendar days before the action is taken. It will include:
 1. A description of the proposed action.
 2. A clear statement of the reasons for the proposed action (or refusal to initiate action).
 3. Specification of any evaluative instruments or reports on which the proposed action is based.
 4. A copy of this Due Process/Resolution of Complaints policy and procedure which describes the overall process.
 5. A statement that the complainant or individual has the right to seek administrative resolution regarding a decision made.
- B. An appeal filed with the Board will not abrogate 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, unless an entity under contract with the Board terminates the services it is providing the individual in accordance with the terms of the contract with the Board.
- C. An individual who wishes to appeal a decision may, at their request, be assisted by an advocate to speak on their behalf. If the individual has difficulty in reading or writing, an oral appeal may be put in writing by the designee of the Program Director or an advocate selected by the individual.
- D. Costs incurred in the administrative resolution of complaints will be assumed by the ECBMR/DD except in the following situations:
 1. The party requesting an independent evaluation shall assume the cost of such evaluation.
 2. Expert testimony, outside medical evaluation, and attorney fees will be paid for by the party requesting such services.
 3. Evidence presented at the Step Three (3) hearing will be recorded. Cost of the verbatim transcript of the hearing at only the Board level will be paid for by the Board and, upon request, one (1) copy of this transcript will be provided to the party requesting the hearing at no cost. Additional copies will be paid for by the party requesting the hearing.
- E. Information needed: All appeals, to be considered, must contain the following information in writing on the "Administrative Resolution of Complaints" form:
 1. The name of the person grieved, their supervisor, and the names of others presenting the grievance;
 2. A description of the incident(s) giving rise to the grievance;
 3. Date(s) and time(s) incident(s) occurred;
 4. The location where the incident(s) occurred;
 5. Names of witnesses;

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6. Specific policies and/or laws which are alleged to have been misinterpreted, misapplied or violated;
7. Desired remedy to resolve the grievance;
8. A notation of any informal steps taken to resolve the situation prior to filing the grievance;
9. The date the grievance was filed in writing.

F. The Grievance Process:

- a. All grievances must be processed at the proper step in order to be considered at subsequent steps. No steps may be skipped.
- b. An individual/complainant may withdraw the grievance at any point by submitting a written statement to that effect, or by permitting the time requirement to lapse.
- c. Any grievance which is not processed by the individual/complainant within the stipulated time limits shall be considered resolved based upon management's last answer.
- d. Any grievance not answered by management within the stipulated time limits may be advanced by the individual/complainant to the next step in the grievance procedure.
- e. All time limits on grievances may be extended upon mutual written consent of the parties.
- f. A copy of all written grievances, regardless of the outcome, will be forwarded to the confidential secretary.

IV. DUE PROCESS STEPS

- A. The Superintendent may appoint a designee to act on his/her behalf.
- B. Overview of Due Process Steps and timelines the number of days to appeal after the incident or receipt of written notification.

Step	Schedule	Days to Investigate	Written Decision	Days to Appeal
Step 1	Program Director or designee	10 days	10 days	10 days
Step 2	Superintendent or designee	10 days	5 days	10 days
Step 3	Board President (Committee/Hearing Regular Board Meeting)	7 days/Next	5 days	15 days
Step 4	Directors, Ohio Depart. MR/DD	30 days	14 days	

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- C. The Superintendent may appoint one or more persons to conduct an informal hearing of a complaint or grievance within thirty (30) days.
- D. Administrative Resolution of Complaints shall begin at the level in which the decision or action was made.
- E. All appeals must be filed in writing on the Administrative Resolution of Complaints form. Copies are available at both Board buildings.
 - 1. To expedite resolution within identified time lines, all parts of the identification section and the current applicable step section must be completed by the complainant.
 - 2. The completed form must be signed and date stamped by the secretary in either building for each appeal step (1-3).
 - 3. Copies of the completed, date stamped appeal form should be given to the person noted in each step of section (IV) (B).
 - 4. If a complainant is not satisfied with the decision made at the current step, section (IV) (B) identifies the period of time (calendar days) within which the written appeal must be filed to be taken to the next level step.
- F. Step 1 (Program Director): Within ten (10) calendar days after receiving the complaint, the Program Director shall complete the investigation which also includes meeting with the individual/complainant. The purpose of the meeting is to formally investigate the complaint by identifying the issues, seeking additional information, and identifying the complainant's suggested solution.
 - 1. The Program Director shall discuss his/her written response with the complainant or individual including the rationale and a description of the next step in due process within ten (10) calendar days after completing the investigation.
 - 2. The individual/complainant has ten (10) calendar days from the date of the response to appeal the written disposition to step two.
 - 3. If the individual/complainant decides to appeal to step 2, a written request shall be made to the Superintendent/designee within ten (10) calendar days from the date of the written response.
- G. Step 2 Appeal (Superintendent): Within ten (10) calendar days after receiving the Step 2 appeal notice, the Superintendent, without undue delay and at a time and place convenient to all parties, shall conduct an administrative review.
 - 1. For individual/complainant, this step is used to ask and answer questions, review circumstances and/or issues, provide additional information, and allow the individual initiating the complaint the opportunity to present reasons as to why the decision should be reconsidered.
 - 2. All parties have the right to invite others to participate in the hearing, including legal counsel. All representative costs will be at the expense of the complainant or his representative.
 - 3. Within five (5) working days after the administrative review, the Superintendent shall deliver his/her written response including the rationale and a description of the next step in due process.

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4. Any party aggrieved by the decision of the Superintendent may present a formal complaint in writing within ten (10) calendar days to the Board President requesting an impartial due process hearing.
- H. Step 3 Appeal (Board President): Upon receiving the Step 3 appeal notice, the Board President, or designee will schedule a hearing no sooner than seven (7) calendar days and no later than the next regularly scheduled Board meeting. The hearing shall be held at a time and place convenient to the parties.
 1. Appeal overview:
 - a. The Board may hear the case as a full Board or the president, with the concurrence of the Board, may establish a committee of two or more Board members to hear such appeals. Such a committee shall be vested with the full rights and authority as the County Board in handling the appeal.
 - b. The Board also has the option of appointing a hearing examiner to conduct the hearing. The examiner will have the same powers and authority as the Board in conducting the hearing. Qualifications: a hearing examiner shall not be an employee of the Board. She/he need not be admitted to the practice of law, but shall possess such qualifications as to be able to render neutral and informed decisions on the matters presented in the complaint.
 - c. Within five (5) calendar days after the hearing is deemed closed, the person in charge of the hearing shall issue a written report and recommendation. It will set forth findings of fact, conclusions of law, and a recommendation for the disposition of the complaint. It shall be written in English and in the native language of the home, if other than English.
 - i. The report will be served on the parties to the hearing by certified mail.
 - ii. The parties to the hearing may file with the Board written objections to the report and recommendations within ten (10) calendar days of receipt of the examiner report.
 - d. After five (5) calendar days following the Board's receipt of the examiner's report and any objections from the other party, the Board shall send written notification by certified mail of the Board's decision and its rationale to the complainant or individual.
 - e. The decision of the county board should be based solely on evidence presented at the hearing.
 - f. The notification also shall include a statement of the procedures necessary to appeal the Board's decision to the Director of the Ohio Department of Mental Retardation and Developmental Disabilities.
 - g. The decision shall be binding on all parties unless the case is appealed. If the case is appealed, current services shall continue to be provided pending the outcome of the appeal.
 - h. The individual/complainant may present a formal complaint in writing to the Director of the Ohio Department of Mental Retardation and

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Developmental Disabilities within fifteen (15) days of the receipt of the Board's decision.

2. Procedures for conducting the hearing:
 - a. The proceedings shall be conducted in a fair and impartial manner so that all parties involved shall have an opportunity, and be encouraged to present their evidence and testimony.
 - b. At a reasonable time prior to the hearing/not less than 7 days, the complainant or his representative shall be provided access to Board records pertaining to the specifics of the appeal.
 - c. The hearing shall be a closed meeting unless the complainant requests an open meeting.
 - d. They may require the attendance at the hearing of any officer, official, employee, or agent of the Board agency who may have evidence or testimony relevant to the needs, abilities, or proposed program of/for the individual upon which the appeal is based.
 - e. The complainant or individual shall be afforded the right to be represented by legal counsel. An individual shall further have the right to be represented by such other representative of the party's choice and at the expense of the individual.
 - f. Both parties and/or their representatives shall have the right to present evidence and testimony.

I. Step 4 Appeal (Ohio Director MR/DD):

1. The complainant has fifteen (15) calendar days from the receipt of the Board's decision to file an appeal with the Director of the Department MR/DD. The address/phone number:

The Ohio Department of Mental Retardation and Developmental Disabilities
1810 Sullivant Avenue,
Columbus, Ohio 43223-1239
Telephone: 614-466-0129

2. Copies of the appeal letter shall be sent to the Superintendent, the Board president, and the legal council or other representative of the complainant or Board.
3. Upon receipt of the appeal notice, the Board will send to the Director copies of the verbatim transcript of the hearing with the county board, any exhibits incorporated into the transcript, and the Board's written decision.
4. The Director or his designee shall review the appeal within thirty (30) calendar days of receipt of the appeal.
 - a. If new information not available for consideration by the County Board is provided, the Director may refer the individual or his representative back to the Board for a reconsideration of the matter.

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- b. The Director's written decision shall be made within fourteen (14) calendar days following his review. His review shall include a rationale for the decision.
- c. The due process rights provided by this paragraph are in addition to any other rights an individual or the parent of a minor or guardian may otherwise have pursuant to the Ohio Revised Code or any other applicable state or federal law.

V. HIPPA Requirements

- A. The county board will not take any retaliatory steps against the complainant during this process as specified under HIPAA privacy rules 45 CFR 160.310(b)
- B. The county board will 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 HIPAA documentation policy as defined under the HIPAA privacy rules 45 CFR 164.530(j)

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Informal Complaint Resolution

TO: Consumers, Parents, Staff and Citizens of Erie County

There are occasions when you have a complaint regarding the services or operation of the Erie County Board of Mental Retardation Developmental Disabilities, or you have suggestions to improve our services. We are interested in your ideas and in using them to improve services.

Many formal procedures already exist to voice complaints. The Board's Civil Rights Policy outlines procedures that protect the rights of people receiving services or employed by the Board. Likewise, there are procedures for complaints defined by the rules of the Department of Education and Department of Mental Retardation and Developmental Disabilities. All of these are available and have specific requirements on the agency and on the complainant. If you wish to receive a copy of these procedures please contact the Board offices at (419) 626-1048.

Another, and probably more effective way to get your ideas across, is direct, face-to-face contact with the right person. Here are some guidelines that might help you and will certainly help the department manager, Superintendent and the Board in responding.

Start with the right person.

The people who have the best and quickest solutions are the direct service staff and department managers. If they cannot answer your concerns, they will help you find someone who can.

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 earlier.

Be specific.

Objectively state concerns, involved individuals, when it happened or did not happen and what you want to see happen in the future.

Address one issue at a time.

Some concerns can be addressed quickly and completely. Others will take more time. A shopping list of problems usually can never be totally and finally resolved.

By using these guidelines, you will be able to have most of your ideas or questions answered quickly by simple verbal requests. If verbal requests do not cause a response, please put them in writing. You may want to use the "complaint/recommendation" form.

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COMPLAINT/RECOMMENDATION

To: _____

From: _____

Date: _____

Briefly state your complaint or recommendation:

State what changes you are requesting and the justification for the changes:

Supervisor's response to recommendation or complaint:

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Signature: _____

Date: _____

cc: Superintendent