



NOTICE OF PROPOSED RULEMAKING HEARING

Oregon Department of Human Services (ODHS) Office of Developmental Disabilities Services (ODDS)		411
Agency and Division Name	Administrative Rules Chapter Number	
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Rule Contact/Coordinator	Email/Address	Telephone

FILING CAPTION

ODDS: Complaints and Contested Case Hearings for Developmental Disabilities Services and Providers (411-318)

Last Date and Time for Public Comment: [May 21, 2024 at 11:00 p.m.]

May 17, 2024	2:30 p.m.	Rule Hearing - Zoom Register to provide comments: https://www.zoomgov.com/meeting/register/vJlfsuGvqDovH3j98fh-A54-uRjtUvTfeTU Join by phone (audio only): 1-669-254-5252, 161 987 6155#	Staff
	6:00 p.m.	Rule Hearing - Zoom Register to provide comments: https://www.zoomgov.com/meeting/register/vJltcOqtqT4jGVplaqf2KmBYEup3FXAC_Q0 Join by phone (audio only): 1-669-254-5252, 160 735 7593#	Staff

Hearing Date	Time	Address/Teleconference	Hearings Officer
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RULE HEARING NOTES: A rule hearing is for people to provide comments about proposed rule changes. If you wish to attend the rule hearing, please join no later than 15 minutes after the hearing has started.

Questions about the rule content or other developmental disabilities services are not answered during a rule hearing. If you need help or have questions, please email Stacie.M.Coleman@odhs.oregon.gov or call (971) 707-2322.

WRITTEN COMMENTS: Comments about the proposed rule changes may also be made in writing. Written comments may be sent by email to ODDS.Rules@odhs.oregon.gov or mailed to ODDS Rules, 500 Summer Street NE, E-09, Salem, Oregon, 97301-1073. Written comments must be received by **11:00 p.m. on May 21, 2024.**

LANGUAGE ACCESS AND ACCOMODATIONS: We provide free help so everyone can use our services. <https://www.oregon.gov/odhs/Pages/language-assistance.aspx>
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For people who speak or use a language other than English, people with disabilities or people who need additional support, we can provide free help. Some examples:

- Sign language and spoken language interpreters
- Written materials in other languages
- Braille
- Real-time captioning (CART)
- Large print
- Audio and other formats

If you need accommodations, please email ODDS.Rules@odhs.oregon.gov or call (971) 413-4225. We accept all relay calls.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

AMEND:

411-318-0005, 411-318-0015, 411-318-0025, 411-318-0030

STATEMENT OF NEED AND RULE SUMMARIES

The Oregon Department of Human Services, Office of Developmental Disabilities Services (ODDS) needs to make changes to the rules in **OAR chapter 411, division 318 about complaints and contested case hearings for developmental disabilities services and service providers.**

The proposed changes:

(1) Improve the complaint process as recommended by the Secretary of State, Oregon Audits Division in their 2021-24 audit report, "Developmental Disabilities Leadership is Proactively Addressing Program Challenges to Ensure Optimal Service Delivery".

(2) Update the rules about contested case hearings to specify:

- An Administrative Hearing Request and a copy of the Notification of Planned Action, if applicable, must be submitted to ODDS' electronic payment and reporting system (eXPRS) no later than one business day after receiving the hearing request.
- Records used in a Notification of Planned Action that's the subject of a hearing request, must be submitted to ODDS within three business days from the date of the hearing request.

OAR 411-318-0005 about definitions and acronyms is being amended to:

- Update the definition of complaint.
- Define complainant, complaint form, and personnel complaint.
- Delete definitions for terms that are no longer used.
- Remove regulatory language that does not belong in a definition.
- Specify form numbers and the use of the forms.
- Reflect technical changes that improve the accuracy, structure, and clarity of the rule.

OAR 411-318-0015 about complaints is being amended to:

- Specify staff addressing or reviewing a complaint can't have a conflict of interest with the complaint or the complainant.
- Clarify a complaint related to a developmental disabilities service or provider may be filed at any time.
- Clearly establish the types of complaints that are, and are not, addressed through the complaint process.
- Require agencies, Community Developmental Disabilities Programs (CDDP), and Brokerages to have policies and procedures for the handling of personnel complaints.
- Ensure no punitive action is threatened or taken against a complainant.
- Improve accessibility of the complaint process.
- Update the policies and procedures agencies, CDDPs, and Brokerages must have to include when a complaint must be logged in the complaint log, the

process for personnel complaints, and the submission of documents to the Department.

- Specify records requested by the Department must be submitted within three business days.
- Clearly establish when an expression of dissatisfaction is considered a complaint.
- Update the sections about the complaint log, screening of complaints, filing a complaint, process for addressing complaints, request for review, and process for addressing and resolving a request for review.
- Reflect technical changes that improve the accuracy, structure, and clarity of the rule.

OAR 411-318-0025 about contested case hearings for reductions, suspensions, termination, or denials is being amended to:

- Specify an Administrative Hearing Request and a copy of the Notification of Planned Action, if applicable, must be submitted to eXPRS no later than one business day after receiving the hearing request.
- Require that if a Notification of Planned Action identifies records used in a decision that is the subject of a hearing request, the records must be submitted to ODDS within three business days from the date of a hearing request.
- Reflect technical changes that improve the accuracy, structure, and clarity of the rule.

OAR 411-318-0030 about contested case hearings for provider notices of involuntary reduction, transfers or exits is being amended to:

- Update form numbers for the Notice of Involuntary Reduction, Transfer, or Exit.
- Specify an Administrative Hearing Request must be submitted to ODDS no later than one business day after receiving the hearing request.
- Reflect technical changes that improve the accuracy, structure, and clarity of the rule.

Other technical changes may be made to these rules to make the rules easier to understand and implement, correct grammatical errors, ensure consistent terminology, and address issues identified during the public comment period. These changes will not affect services or introduce additional requirements or processes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Secretary of State, Oregon Audits Division. (2021). *Developmental Disabilities Leadership is Proactively Addressing Program Challenges to Ensure Optimal Service Delivery (Report 2021-24)*. Available at:

<https://sos.oregon.gov/audits/Documents/2021-24-e-reader.pdf>

RACIAL EQUITY IMPACT STATEMENT

Statement Identifying How Adoption of Rule(s) Will Affect Racial Equity in this state:

The proposed rule changes may impact:

- Tribes.
- Racial, ethnic, and culturally-based communities.
- People who identify as LGBTQIA2S+.
- Religious minorities.
- People with limited English proficiency.
- Immigrants.
- Refugees.

The proposed rule changes improve accessibility by specifying:

- A person can file a complaint either orally or in writing using their preferred language.
- Information about the complaint process must be accessible for people with disabilities and provided in a person's preferred language.

Additionally, the proposed rules add accountability by making it clear that discrimination or retaliation is not tolerated.

FISCAL ANDECONOMICIMPACT

The fiscal and economic impact is stated below in the cost of compliance statement. The fiscal and economic impact was evaluated as part of the Rules Advisory Committee (RAC) process and is based on data and information currently available to ODDS.

COST OF COMPLIANCE

Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

ODDS does not anticipate any cost of compliance for ODDS, other state agencies, individuals receiving services, providers, or members of the public because the proposed rule changes clarify existing expectations and practices.

Case management entities (units of local government): There may be a potential fiscal impact if CDDPs and Brokerages experience an increase in complaints because complaints about a setting were added to the complaint process. Entering and processing additional complaints would increase their workload. There would be more work with the documentation process, managing the complaint log, and mailing formal responses.

The workload model is reviewed on a regular basis to determine which measurements have been impacted by proposed rule changes. Until the workload model is reviewed, ODDS is unable to estimate a specific cost of compliance for case management entities.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There are 25 CDDPs and 14 Brokerages. A CDDP and Brokerage do not meet the definition of a small business in ORS 183.310.

There are approximately 855 agencies certified by ODDS. An agency may be considered a small business as defined by ORS 183.310. ODDS is unable to estimate the number of agencies that may be considered a small business.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

ODDS does not anticipate any effect on small businesses because the proposed rule changes clarify existing expectations and practices.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

ODDS does not anticipate any effect on small businesses because the proposed rule changes clarify existing expectations and practices.

Describe how small businesses were involved in the development of these rule(s)?

Small businesses as defined in ORS 183.310 were invited to participate in the RAC and are included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

If not, why not?

Yes. The RAC was held in 2023 on May 24, June 9, and August 14. Prior to the RAC, ODDS held a Workgroup that met in 2023 on January 10, February 13, and February 28.

OREGON DEPARTMENT OF HUMAN SERVICES
OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 318

INDIVIDUAL RIGHTS, COMPLAINTS, NOTIFICATION OF PLANNED
ACTION, AND CONTESTED CASE HEARINGS FOR DEVELOPMENTAL
DISABILITIES SERVICES

411-318-0005 Definitions and Acronyms

In addition to the following definitions and acronyms, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 318. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule ~~s~~ applies.

(1) "CDDP" means "Community Developmental Disabilities Program" as defined in OAR 411-317-0000.

(2) "Claimant" means the person directly impacted by an action that is the subject of a hearing request.

(3) "Complainant" means an individual, as defined in OAR 411-317-0000, or an individual's representative.

~~(34) "Complaint" means an oral or written expression of dissatisfaction with a developmental disabilities service or provider. means a complainant - expresses dissatisfaction with a case management entity or provider, in their preferred language, and requests a formal response.~~

(5) "Complaint Form" means the form used to file a complaint (form 0946).

~~(46) "Complaint Investigation" means the investigation of a non-abuse related complaint that has been made to the Department or a local program a proper authority.~~

~~(57) "Complaint Log" means a list of complaint-related information.~~

(68) "Continuing Services" means the continuation of a developmental disabilities service following the request for a hearing. Services continue until a Final Order is issued.

(79) "DD Administrative Hearing Request" means the form used to request an administrative hearing to contest an action related to developmental disabilities services (form 0443DD).

(810) "Denial" means ~~any~~ rejection of a request for a developmental disabilities service or for an increase in a developmental disabilities service. A denial of a Medicaid service requires a Notification of Planned Action.

(11) "Department" means the Oregon Department of Human Services, including the Office of Developmental Disabilities Services.

(912) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-05100500.

(~~4013~~) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter. ~~For the purposes of the complaint process, Department staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.~~

(~~4114~~) "Exit" means termination or discontinuance of a Department-funded developmental disabilities service.

(15) "eXPRS" means the Department's electronic payment and reporting system.

(~~4216~~) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(~~1317~~) "Hearing" means a contested case hearing subject to OAR 137-003-0501 ~~to through~~ 137-003-0700, which results in a Final Order.

(~~1418~~) "Informal Conference" means the discussion between a claimant, the claimant's representative ~~of the claimant~~, Department staff, and a Department hearing representative that is held prior to a hearing to address any matters pertaining to the hearing, as described in OAR 411-318-0025. An administrative law judge does not participate in an informal conference. ~~The~~ An informal conference may result in resolution of the issue.

~~(15) "Informal Discussion" means the conversation between an individual making a complaint, or as applicable the representative of the individual, and the designee of the Department or local program who received the complaint to address the content of the complaint. The informal discussion may result in resolution of the issue.~~

(~~1619~~) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(~~1720~~) "Involuntary Transfer" means a provider has made the decision to transfer an individual to another setting operated by the same provider without prior approval from the individual.

(~~1821~~) "Local Program" means the case management entity, provider organization, or other certified, licensed, or endorsed provider or agency ~~with which that contracts with~~ the Department ~~contracts~~ to provide developmental disabilities services, ~~and is providing including~~ services to ~~the an~~ individual ~~with whom a complaint is~~ associated with a complaint.

(~~1922~~) "Notice of Involuntary Reduction, Transfer, or Exit" means:

~~(a) Notice of Exit or Transfer for Residential Settings (form 0719RDD). This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.~~

~~(b) Notice of Exit, Suspension, or Reduction for Community Living and Supported Living Services (form 0719C).~~

(c) Notice of Exit, Suspension, Transfer, or Reduction for Day Support Activities and Employment Services (form 0719E).

(~~20~~23) "Notification of Planned Action" means ~~form 0947. The Notification of Planned Action is~~ the written decision notice issued to an individual in the event that a developmental disabilities service is denied, reduced, suspended, or terminated (form 0947).

(~~21~~24) "OAH" means the Office of Administrative Hearings.

(25) "OAR" means Oregon Administrative Rule.

~~(22) "OHA" means the Oregon Health Authority.~~

(26) "ORS" means Oregon Revised Statute.

(27) "Personnel Complaint" means a complaint involving the conduct of a person receiving funds to deliver developmental disabilities services.

(~~23~~28) "Program Director" means the Director of a local program, or the Director's designee ~~of the Director~~.

(~~24~~29) "Program Staff" means a person employed by the local program who is knowledgeable in a particular subject matter. ~~For the purposes of the complaint process, program staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.~~

(~~25~~30) "Representative" means any adult, such as a parent, family member, guardian, legal representative, advocate, or any other person, who is chosen by an individual or the individual's legal representative ~~of the individual~~ to represent the individual in connection with the provision of developmental disabilities services or during the complaint or hearing process. ~~The A~~ representative may not be an employee of the Department, CDDP, or Brokerage acting in official capacity. An individual or the individual's legal representative ~~for the individual~~ is not required to choose a representative.

(~~26~~31) "Request for Service" means:

(a) Submission of a completed application for developmental disabilities services as described in OAR 411-320-0080;

(b) A written request for a new developmental disabilities service or provider; or

(c) A written request for a change in a developmental disabilities service currently provided.

(~~2732~~) "Service" means the developmental disabilities services and service settings described in OAR chapter 411, divisions 004 and 300 to 455.

~~(28) "Service Funds" mean state public funds or Medicaid funds used to purchase developmental disabilities services.~~

(~~2933~~) "These Rules" mean the rules in OAR chapter 411, division 318.

(~~3034~~) "Transfer" means an exit immediately followed by an entry at another location administered or operated by the same provider. A transfer is subject to the same standards as an entry and exit.

(~~3135~~) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662

Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0015 Complaints

(1) The Department and local programs must address all complaints in accordance with their policies and procedures and these rules.

(2) Department staff and program staff addressing or reviewing a complaint may not have a conflict of interest with the complaint or the complainant. -

(3) A complaint related to a developmental disabilities service or provider may be filed at any time.

(24) A complaint may include, but is not limited to:

(a) An expression of dissatisfaction with a developmental ~~disability-~~
disabilities service or provider; ~~or~~. For example:

(A) The person-centered planning process, including but not limited to people chosen by an individual or an individual's ability to make informed, timely choices.

(B) Service planning as described in OAR 411-415-0070, including but not limited to an individual's choice of providers or additional services meeting an individual's needs, such as protocols, Positive Behavior Support Plans, Career Development Plans, etc.

(C) Home and community-based services as defined in OAR 411-317-0000, including but not limited to an individual's ability to choose their home, desired room decorations, food preferences, and transportation.

(D) Employment services, including but not limited to the choice of being employed, the choice to not be employed, or employment opportunities.

(b) An allegation of circumstances or events that are contrary to law, rule, policy, or otherwise, as determined by a complainant. ~~adverse to the interests of an individual.~~

(35) The complaint process described in this rule does not apply to a complaint in the following situations:

(a) Anonymous complaints and allegations of discrimination are reviewed by the Governor's Advocacy Office;.

(b) The merits of the complaint have been, or are going to be, decided by a judge or a juvenile court ruling;.

(c) The subject matter of the complaint is not related to a

developmental ~~disability-disabilities~~ service or a provider; ~~or~~.

(d) The complaint is about the personnel of a local program.

(A) An agency must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-323-0060(9).

(B) A Community Developmental Disabilities Program (CDDP) must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-320-0175(1).

(C) A Brokerage must include policies and procedures for the handling of personnel complaints in accordance with OAR 411-340-0060(1).

~~(de)~~ The subject matter of the complaint is subject to review under the following:

(A) ORS 419B.005 to 419B.05~~50~~ for child abuse reports; ~~;~~

(B) OAR chapter 309, division 118 for the Oregon State Hospital ~~state institutions operated by the Oregon Health Authority;~~ ~~;~~

(C) OAR 407-005-0025 and 407-005-0030 for discrimination ~~against people with disabilities;~~ on the basis of disability.

(D) OAR 407-005-0100 to 407-005-0120 for staff conduct or customer service received from ~~of~~ Department personnel; ~~;~~

(E) OAR chapter 411, division 020 for adult protective services; ~~;~~ provided by the Department's Aging and People with Disabilities Program.

(F) OAR 410-141-~~3875 through 410-141-3915~~ ~~0260 to 410-141-0266~~ for the Oregon Health Plan; ~~Prepaid Health Plans;~~ ~~;~~

(G) OAR 413-010-0420 for Department ~~e~~Child ~~w~~Welfare decisions;

(H) OAR 413-010-0700 ~~to through~~ 413-010-0750 for ~~Department e~~Child ~~p~~Protective ~~s~~Services dispositions;

(I) OAR 413-120-0060 for Department Child Welfare adoption placement selections; ~~and.~~

(J) OAR chapter 582, division 020 for Department vVocational ~~r~~Rehabilitation service determinations.

(K) OAR chapter 839, division 003 for a violation of civil rights investigation conducted by the Bureau of Labor and Industries.

(46) If a complaint alleges circumstances that meet the criteria for an investigation of abuse, the allegation must be immediately reported to the appropriate protective service entity, such as:

(a) tThe Department;

(b) A CDDP;

(c) Support Services A Brokerage; ~~CHS,~~

(d) The Office of ~~Adult Abuse Prevention and Investigations, Training, Investigations, and Safety;~~

(e) eChild ~~w~~Welfare; or

(f) law enforcement.

(57) If ~~a complaint falls under an individual or the representative of the individual makes a complaint identified in~~ section (35) of this rule, the local program or Department must offer to assist the complainant individual or the representative of the individual with filing the complaint with the appropriate entity, ~~if requested by the individual or the representative of the individual.~~

(8) The local program or Department must ensure there is no punitive action threatened or taken against a complainant.

(9) Information regarding the complaint process must be accessible for people with disabilities and provided in a person's preferred language.

(610) ~~The A~~ local programs must have and implement written policies and procedures regarding individual complaints and the complaint process. A copy of the policies and procedures for resolving complaints must be maintained on file at the office of the local program and must be available to staff, individuals, individuals' representatives ~~of the individuals~~, providers, and the Department. The policies and procedures must include, but are not limited to, all of the following:

(a) Method ~~and form~~ used to submit a complaint. ~~(For example, form SDS-0946, verbal, email, may be used);~~

(b) When a complaint must be logged in the complaint log.

~~(bc)~~ Process for reviewing and resolving a complaint;

~~(ed)~~ Time frames for responding to a complaint as set forth ~~by in~~ this rule; ~~and~~

~~(de)~~ Documentation to be used in response to a complaint as set forth in this rule;

(f) The process for assisting an individual or an individual's representative with filing a personnel complaint or a complaint with another entity according to section (7) of this rule.

(g) Submission of documents to the Department.

(11) A local program must submit records requested by the Department within three business days from the receipt of the request.

(12) A complaint received on the Complaint Form (0946) constitutes a complaint and must be addressed through the complaint process described in section (17) of this rule.

(13) An expression of dissatisfaction about a developmental disabilities service or provider that is not submitted on the Complaint Form (0946) must be addressed through the complaint process described in section (17) of this rule, upon confirmation by an individual or an individual's representative that they wish to file it as a complaint or expresses the need to escalate it and receive a written outcome.

(714) COMPLAINT LOG.

(a) ~~The A~~ local programs must maintain a complaint log. At a minimum, the complaint log must include all of the following:

(A) The legal name of the individual for which the complaint is being filed;

(B) The individual's preferred name.

(C) The individual's preferred method of contact.

~~(B)~~ (D) The name and contact information of the person making the complaint, if known;

~~(E)~~ (E) The name of the person taking the complaint;

~~(D)~~ (F) The nature of the complaint, including if there was a request for new or changed developmental ~~disability~~ disabilities services which may result in a hearing;

~~(E)~~ (G) The date the complaint was received;

~~(F)~~ (H) The date the complaint was acknowledged in writing; as described in section (17)(a) of this rule.

(I) The date the local program offered the complainant an opportunity to discuss the complaint with the local program, as described in section (17)(b) of this rule, and the date of the discussion, if applicable.

(J) The date of an extension for a written outcome that was mutually agreed upon as described in section (17)(c) of this rule.

(GK) The written outcome of the complaint; and as described in section (17)(c) of this rule.-

(HL) The date and method that the written outcome was mailed provided to the complainant.-

(b) Personnel Ccomplaints ~~regarding personnel issues~~ and allegations of abuse must be maintained separately from the complaint log.

(c) ~~The complaint log for the local program~~ A local program must only documents only complaints ~~pertaining to about~~ their local program in their complaint log. (A) ~~In the event that an individual or the representative of the individual has~~ a complaint is against another agency or program, the local program must:

(A) assist the ~~Help the~~ individual or the individual's representative ~~of the individual with filing file~~ the complaint against with the other agency or program; and

(B) The local program does not document complaints against another agency or program in the complaint log for the local program, but does ddocument the support provided by the local program in the individual's progress notes ~~for the individual.~~

(815) SCREENING OF COMPLAINTS. ~~The A~~ local programs must screen all complaints for potential hearing related issues.

(a) In the event that a complaint appears to allege a denial, reduction, suspension, or termination of a developmental disability disabilities service, the local program must issue a Notification of Planned Action and advise the ~~individual or the representative of the individual~~ complainant of the right to a hearing and assist the ~~individual or the representative of the individual~~ complainant with filing a hearing request, if so desired.

~~(b) In the event that the individual or the representative of the individual, a complainant decides to file a complaint rather than a hearing request, the local program must document the complainant's decision in the individual's progress notes of the individual or the representative of the individual must be documented in the file for the individual.~~

(916) FILING A COMPLAINT.

(a) Complaints may be made orally, in writing, or on a eComplaint Form (0946) ~~(SDS 0946 may be used)~~.

(b) A complaint regarding dissatisfaction with the services of a provider organization may be filed with the Department or directly with the provider organization, ~~Support Services~~ Brokerage, or CDDP.

(c) A complaint regarding dissatisfaction with the services of a ~~Support Services~~ Brokerage or CDDP may be filed with the Department or directly with the ~~Support Services~~ Brokerage or CDDP.

~~(d) A complaint regarding dissatisfaction with CIIS may be filed with the Department or directly with the CIIS program.~~

(ed) A complaint regarding dissatisfaction with the Department, including complaints about the Stabilization and Crisis Unit (SACU), children's intensive in-home services (CIIS), and children's 24-hour residential services and settings, must be filed with the Department.

(4017) PROCESS FOR ADDRESSING COMPLAINTS.

(a) The local program or Department must provide written acknowledgement of a complaint to the an individual or the individual's representative ~~of the individual~~ within five business days from the receipt of the complaint. A copy of the written acknowledgment must be maintained in the individual's file.

(b) The written acknowledgement must inform the ~~individual or the representative of the individual of~~ complainant about the opportunity for an informal discussion to discuss the complaint with the Program Director of the local program or the Director of the Department, or their designee.

(A) ~~Choosing to engage in an informal discussion~~ This discussion does not preclude the ~~individual or the representative of the individual complainant~~ from receiving a written outcome ~~following after the local program or Department~~ has reviewed of the complaint ~~by the local program or Department.~~

~~(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or the Director of the Department.~~

~~(CB) The informal~~ This discussion must occur within 10 business days ~~of from~~ the date of the written acknowledgement ~~of the complaint.~~ The local program or Department must document all offers for a discussion in the complaint log.

~~(DC)~~ In the event that a resolution is reached during the ~~informal~~ discussion, the local program or Department must ~~mail~~ provide a written outcome to the ~~individual and the representative of the individual complainant~~ within 10 business days ~~of from~~ the ~~informal~~ date of the discussion. A copy of the written outcome must be maintained in the individual's file ~~for the individual.~~

(c) The local program or Department must complete a ~~review of the~~ complaint investigation and issue a written outcome to the ~~individual and the representative of the individual complainant~~ within 45 calendar days from the receipt of the complaint, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the complaint must include, but is not limited

to, an investigation and records review of the complaint by the Program Director of the local program or the Director of the Department, or their designee.

(B) The written outcome of the complaint may be issued on the complaint form or may be issued in a separate document. The written outcome must include all of the following:

(i) The rationale for the outcome, including the outcome of conferences or discussions with the complainant, individual, providers, or others;

(ii) The reports, documents, and other information relied upon in deciding the outcome of the complaint, or a summary of the reports, documents, and other information relied upon;

(iii) Information about the complainant's right ~~of the individual or the representative of the individual~~ to review the documents relied upon in determining the outcome (Notification of Rights SDS form 0948); ~~and~~.

(iv) Information about the complainant's right ~~of the individual or the representative of the individual~~ to request a review of the written outcome (Notification of Rights SDS form 0948).

(C) Notice that retaliation or discrimination, as a result of the outcome, is not tolerated.

(D) A copy of the written outcome must be maintained in the individual's file.

(~~11~~18) REQUEST FOR REVIEW.

(a) ~~An individual or the representative of the individual~~ A complainant may request a review of a written outcome ~~issued by a local program~~ within 30 calendar days ~~of from~~ the date identified ~~on in~~ the written outcome.

(A) If a provider organization issued the written outcome, the ~~individual or the representative of the individual~~complainant may request a review of the written outcome by:

(i) The local CDDP, ~~Support Services or~~ Brokerage, ~~or~~ CIIS program; or

(ii) The Department.

(B) If a CDDP, ~~Support Services~~ Brokerage, ~~or~~ CIIS, or SACU program issued the written outcome, the ~~individual or the representative of the individual~~complainant may request a review of the written outcome by the Department.

(C) If the Department issued the written outcome, the ~~complainant individual or the representative of the individual~~ may request a review of the written outcome by ~~OHA, the~~ Director of the Department or the Director's designee. ~~(D)~~ The written outcome issued by the ~~OHA, Director, or the Director's designee,~~ is the final response.

~~(b) The local CDDP, Support Services Brokerage, CIIS program, Department, may uphold, alter, or overturn a written outcome issued by a provider organization.~~ (c) The Department may uphold, alter, or overturn a written outcome issued by a provider organization, ~~local~~ CDDP, ~~Support Services~~ Brokerage, ~~or~~ CIIS, or SACU.

~~(d) OHA may uphold, alter, or overturn a written outcome issued by the Department.~~

(1219) PROCESS FOR ADDRESSING AND RESOLVING A REQUEST FOR REVIEW.

(a) The receiving entity of a request for a review of a written outcome must acknowledge receipt of the request by issuing a written acknowledgement to the ~~individual and the representative of the individual~~complainant within five business days from the receipt of the request for a review.

(b) The written acknowledgement must inform the complainant individual and the representative of the individual of about the opportunity to discuss the complaint with the Program Director of the local program or the Director of the Department, or their designee for an informal discussion.

(A) ~~Choosing to engage in an informal~~ This discussion does not preclude the ~~individual or the representative of the individual from pursuing a review of the written outcome by complainant from receiving a written determination after~~ the receiving entity has reviewed the complaint.

~~(B) The informal discussion includes a conversation between the individual or the representative of the individual and the Program Director of the local program or Director of the Department.~~

~~(CB) The informal~~ This discussion must occur within 10 business days from the date of the written acknowledgement ~~of the request for a review.~~

~~(DC) In the event that a resolution is reached during the informal discussion, the local program, the or Department, or OHA must mail provide~~ a written determination to the complainant individual and the representative of the individual within 10 business days from the date of the ~~informal~~ discussion. A copy of the written determination must be maintained in the individual's file for the individual.

(c) The local program, ~~the or Department, or OHA~~ must review the written outcome and issue a written determination to the complainant individual and the representative of the individual within 45 calendar days from the receipt of the request for a review, unless both parties mutually agree to extend the timeframe. The extension may not exceed an additional 45 calendar days.

(A) The review of the written outcome must include, but is not limited to, an investigation and records review by the Program

Director of the local program or the Director of the Department, or their designee~~OHA~~.

(B) The written determination must include all of the following:

(i) The rationale for the determination, including the outcome of conferences or discussions with the complainant, individual, providers, or others;

(ii) The reports, documents, and other information relied upon in making the determination, or a summary of the reports, documents, and other information relied upon; ~~and~~.

(iii) Information about the complainant's right ~~of the individual or the representative of the individual~~ to review the documents relied upon in making the determination.

(C) Notice that retaliation or discrimination, as a result of the determination, is not tolerated.

(D) A copy of the written determination must be maintained in the individual's file.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662
Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007, 427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0025 Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials

(1) An individual or ~~the an individual's~~ representative ~~of the individual~~ may request a hearing, as provided in ORS chapter 183, if the individual experiences a denial, reduction, suspension, or termination of a developmental disabilities service, or in instances when a timely Notification of Planned Action has not been provided.

(2) HEARING REQUESTS.

(a) ~~The A~~ request for a hearing must be made within 90 calendar days from the date on a Notification of Planned Action.

(b) The request for a hearing may be made orally, in writing, or by completing the DD Administrative Hearing Request (form 0443DD).

(A) ORAL HEARING REQUESTS.

(i) ~~The An~~ individual or the representative of ~~the an~~ individual may orally express a desire for a hearing to the local program or Department staff.

(ii) Upon receipt of an oral request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form ~~to the Central Office of the Department within three and a copy of the Notification of Planned Action, if applicable, to eXPRS no later than one~~ business days of receiving the request for a hearing. A copy of the ~~form DD~~ Administrative Hearing Request must be ~~mailed provided~~ to the individual and the individual's representative ~~of the individual~~.

(B) WRITTEN HEARING REQUESTS.

(i) ~~The An~~ individual or ~~the an individual's~~ representative ~~of the individual~~ may provide a written request for a hearing to the local program or Department staff.

(ii) Upon receipt of a written request for a hearing, the local program or Department staff must complete the DD Administrative Hearing Request and submit the form ~~to the Central Office of the Department within three business days of receiving the request for a hearing and a copy of the Notification of Planned Action, if applicable, to eXPRS no later than one business day of receiving the request for a hearing~~. A copy of the ~~form DD~~ Administrative Hearing Request must be ~~mailed provided~~ to the individual and the individual's representative ~~of the~~

individual.

(c) The Department processes late hearing requests as described in OAR 411-001-0520.

(3) If a Notification of Planned Action identifies records used in a decision that is the subject of a hearing request, the records must be submitted to the Department within three business days from the date of the hearing request.

(34) CONTINUING SERVICES PENDING A FINAL ORDER.

(a) In the event of a reduction, suspension, or termination of a developmental disabilities service, a claimant or the claimant's representative ~~of the claimant~~ may request continuing services for the claimant during the hearing process. To receive continuing services, a claimant or the claimant's representative ~~of the claimant~~ must either:

(A) Request a hearing before the effective date of action; or

(B) Within 10 business days after the effective date of action identified on the Notification of Planned Action, request a hearing and continuing services.

(b) The Department shall ~~grants~~ a late request for continuing services when the Department determines a claimant or the claimant's representative ~~of a claimant~~ has good cause for the late request.

(c) ~~The A~~ claimant may be required to pay back any benefits received during the hearing process if the Final Order is not in the claimant's favor ~~of the claimant~~.

(45) EXPEDITED HEARINGS.

(a) An individual or the individual's representative may request an expedited hearing when:

(A) The time otherwise permitted for a hearing may jeopardize

the individual's life, health, or ability to attain, maintain, or regain maximum function; or

(B) An individual receiving a notice of exit from a residential setting is not allowed to remain in the setting.

(b) An expedited hearing must be held within five business days ~~of from~~ the date the Office of Administrative Hearings (OAH) ~~receiving a receives the~~ request for an expedited hearing that meets the criteria of subsection (A) or (B) of section (a).

(c) A written decision shall be issued within three business days after the hearing record is closed.

~~(56)~~ INFORMAL CONFERENCE.

(a) The Department staff, Department hearing representative, and the claimant or the claimant's representative ~~of the claimant~~ may have an informal conference, without the presence of an administrative law judge, to discuss the action that is the subject of ~~the a~~ hearing request. An informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant or the claimant's representative ~~of the claimant~~ to settle the matter;_

(B) Ensure the claimant or the claimant's representative ~~of the claimant~~ understands the reason for the action that is the subject of the hearing request;_

(C) Give the claimant or the claimant's representative ~~of the claimant~~ an opportunity to review the information that is the basis for the action that is the subject of the hearing request;_

(D) Inform the claimant or the claimant's representative ~~of the claimant~~ of the rules that serve as the basis for the action that is the subject of the hearing request;_

(E) Give the Department and the claimant or the claimant's

representative ~~of the claimant~~ the chance to correct any misunderstanding of the facts;.

(F) Give the claimant or the claimant's representative ~~of the claimant~~ an opportunity to provide additional information to the Department; ~~and.~~

(G) Give the Department an opportunity to review the action that is the subject of the hearing request with the claimant or the claimant's representative.

(b) At any time prior to the hearing date, the claimant or the claimant's representative ~~of the claimant~~ may request an additional informal conference with a Department hearing representative. ~~At the discretion of the Department representative, the~~ A Department hearing representative may grant, at their discretion, an additional informal conference to facilitate the hearing process.

(c) The Department may provide a claimant the reprieve sought at any time before a Final Order is issued.

(67) REPRESENTATION.

(a) A representative may be chosen by a claimant to represent the interests of the claimant during an informal conference and hearing.

(b) Employees for the Department, CDDP, and Brokerage are authorized to appear as a witness on the Department's behalf ~~of the Department~~ during an informal conference and hearing.

(78) HEARINGS NOT OPEN TO THE PUBLIC. Non-participants may attend a hearing only with the consent of the claimant or the claimant's representative ~~of the claimant~~ and the Department hearing representative.

(89) WITHDRAWAL OF HEARING REQUEST. A claimant or the claimant's representative ~~of a claimant~~ may withdraw a hearing request at any time prior to the issuance of a Final Order. The withdrawal is effective on the date the request for the withdrawal is received by OAH. The Department shall issue an order of withdrawal to the last known address of the

claimant. The claimant or the claimant's representative ~~of the claimant~~ may cancel the withdrawal up to 10 business days following the date the order of withdrawal is issued.

(~~910~~) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative ~~of the claimant~~ appears by phone or in person at the hearing. The dismissal order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant or the claimant's representative ~~of the claimant~~ upon a showing that the claimant or the claimant's representative ~~of the claimant~~ has good cause for not attending the hearing or requesting a postponement.

(~~4011~~) When the Department refers a hearing under these rules to OAH, the Department shall indicate on the referral:

(a) Whether the Department is authorizing OAH to issue a Final Order, a ~~p~~Proposed ~~e~~Orders, or a ~~p~~Proposed and Final Order; and

(b) If the Department is establishing an earlier deadline for written exceptions and argument because the hearing request is being referred for an expedited hearing.

(~~4112~~) FINAL ORDER. A Final Order is the final action expressed in writing by OAH or the Department as described in OAR 137-003-0665. A Final Order is issued:

(a) ~~w~~Within 90 calendar days ~~of the from the~~ request for a hearing; or

(b) ~~w~~Within 90 calendar days from the receipt of a ~~p~~Proposed ~~e~~Orders or a ~~p~~Proposed and Final Order from OAH.

(~~4213~~) PROPOSED ORDERS. ~~The Department issues a Final Order a~~After OAH issues a ~~p~~Proposed ~~e~~Orders, the Department shall issue a Final Order unless the Department authorizes OAH to issue the Final Order under as described in OAR 137-003-0655 and section (11)(a) of this rule.

(~~4314~~) PROPOSED AND FINAL ORDERS. A ~~p~~Proposed and Final Order becomes a Final Order 21 calendar days after OAH issues ~~a~~the

pProposed and Final Order unless:

- (a) The claimant or the claimant's representative ~~of the claimant~~ has filed written exception and written argument as described in section ~~(1415)~~ of this rule;
- (b) The Department has issued a revised order; or
- (c) The Department has notified OAH and the claimant or the claimant's representative ~~of the claimant~~ that the Department shall issue the Final Order.

~~(1415)~~ EXCEPTIONS.

(a) ~~The Once OAH has issued either a Proposed Order or a Proposed and Final Order, a~~ claimant or ~~the a claimant's~~ representative ~~of the claimant~~ may file a written exception and written argument ~~for the Department to consider to be considered by the Department once OAH has issued either a proposed order or a proposed and Final Order.~~ The written exception and written argument must be postmarked to the location indicated in the OAH order no later than 20 calendar days after service of the pProposed ~~e~~Order or pProposed and Final Order unless an earlier deadline has been established ~~pursuant according~~ to section ~~(1011)~~(b) of this rule.

(b) Unless the Department receives a timely written exception and written argument as described above, the Department shall issue the Final Order unless the Department authorizes OAH to issue the Final Order in compliance with OAR 137-003-0655 and section (11)(a) of this rule.

~~(1516)~~ PETITION OF FINAL ORDER. A claimant or ~~the a claimant's~~ representative ~~of the claimant~~ may file a petition for reconsideration or rehearing up to 60 calendar days after a Final Order is served. The petition must be filed with the entity that issued the Final Order, unless stated otherwise on the Final Order.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662
Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007,

427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662

411-318-0030 Contested Case Hearings for Provider Notices of Involuntary Reductions, Transfers, or Exits

(1) This rule applies to involuntary reductions, transfers, or exits by a provider, including a licensed or certified provider organization, who has a contract with the Department, CDDP, or Brokerage. This rule does not apply to providers who have a direct employer-employee relationship with an individual or ~~the~~ an individual's employer representative ~~of the individual~~.

(2) ~~The An~~ individual must be given the opportunity to dispute an involuntary reduction, transfer, or exit by requesting a hearing as provided in ORS chapter 183.

(3) An individual or the individual's representative ~~of the individual~~ may request a hearing either orally or in writing when the individual and the individual's representative ~~of the individual~~ receives a Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E~~0719DD~~).

(a) To request a hearing in writing:

(A) The individual or the individual's representative ~~of the individual~~ must complete the Administrative Hearing Request ~~form~~ included with the Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 719C, 0719E) and submit the form to the Office of Developmental Disabilities Services (ODDS) Central Office of the Department for processing as described on the form; or

(B) The individual or the individual's representative ~~of the individual~~ may meet with a staff person of the ~~local program~~ CDDP, Brokerage, or Department to complete the Administrative Hearing Request ~~form~~ included with the Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E). After meeting with the individual or the individual's representative ~~of the individual~~, the CDDP, Brokerage, or Department must submit the ~~Administrative Hearing Request~~

form to ~~the Central Office of the Department ODDS~~ within three business days. A copy of the form must be mailed to the individual and the individual's representative ~~of the individual~~.

(b) To request a hearing orally, the individual or the individual's representative ~~of the individual~~ must orally express the desire for a hearing to a staff person of the CDDP, Brokerage, or Department. Upon receipt of an oral request for a hearing, the CDDP, Brokerage, or Department must complete the Administrative Hearing Request ~~form~~ included with the Notice of Involuntary Reduction, Transfer, or Exit (form 0719R, 0719C, 0719E) and submit the ~~Administrative Hearing Request~~ form to ~~the Central Office of the Department ODDS~~ within ~~three~~ one business days. A copy of the form must be mailed to the individual and the individual's representative ~~of the individual~~.

(4) Upon receipt of the Administrative Hearing Request form for a Notice of Involuntary Reduction, Transfer, or Exit, ~~the Central Office of the Department must~~ ODDS shall:

(a) Refer the hearing request to the Office of Administrative Hearings within five business days from the receipt of the hearing request; ~~;~~

(b) Assist the claimant or the claimant's representative ~~of the claimant~~ in gathering and submitting exhibits; ~~and~~.

(c) Act as a liaison between the Office of Administrative Hearings and the CDDP or Brokerage responsible for the claimant's services ~~of the claimant~~.

(5) The Office of Administrative Hearings communicates directly with ~~the a~~ claimant and the claimant's representative ~~of the claimant~~ regarding informal conference dates, hearing dates, and the Final Order as ~~defined-~~ described in OAR chapter 137, division -003-0501 through 137-003-0655.

(6) If an individual or ~~the an individual's~~ representative ~~of an individual~~ requests a hearing within 15 calendar days ~~of from~~ the issuance of ~~the a~~ Notice of Involuntary Reduction, Transfer, or Exit, the individual must continue to receive the same services until receipt of ~~the a~~ Final Order.

(7) When an individual has been given less than 30 calendar days advanced written Notice of Involuntary Reduction, Transfer, or Exit due to a medical emergency or because the individual is engaging in behavior that poses an imminent danger to self or others, and the individual or the individual's representative ~~of the individual~~ has requested a hearing as described in this rule, ~~their~~ provider must continue ~~provision of service to~~ provide services to the individual until receipt of ~~the a~~ Final Order.

(8) An individual or the individual's representative may request an expedited hearing according to OAR 411-318-0025(45) when:

(a) The request for a hearing is more than 15 calendar days following the issuance of the Notice of Involuntary Reduction, Transfer, or Exit and the individual requests to continue to receive the same services until receipt of the Final Order; or

(b) The individual has been given less than 30 calendar days advanced written Notice of Involuntary Reduction, Transfer, or Exit, and the individual has not been allowed to remain in the setting.

Statutory/Other Authority: ORS 409.050, 427.104, 427.107, 430.662
Statutes/Others Implemented: ORS 183.411-183.471, 409.010, 427.007,
427.101, 427.104, 427.107, 427.109, 430.215, 430.610, 430.662