



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES

POLICY	
Department on Disability Services	Subject: Developmental Disabilities Administration (DDA) Formal Complaint System
Responsible Program or Office: Quality Assurance and Performance Management Administration	Policy No.: 2019-QAPMA-POL01
Date of Approval by the Director: December 16, 2019	Number of Pages: 10
Effective Date: January 1, 2020	Expiration Date, if any: N/A
Supersedes Policy: DDA Complaint Policy, 2016-DDA-POL001 (February 2, 2016); Internal Problem Resolution Policy, 2014-DDA-POL0015 (December 24, 2014).	
Cross References, Related Policies and Procedures, and Related Documents: Title I of the Disability Services Reform Amendment Act of 2018, effective May 5, 2018 (D.C. Law 22-93; D.C. Official Code § 7-761.13 (2018 Repl. & 2019 Supp.)); Final Rulemaking in Chapter 132, “Department on Disability Services Formal Complaint System” of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR); DDA Formal Complaint System Procedure, 2019-DDA-PROC002; DDA Provider Formal Complaint Process Procedure, 2019-DDA-PROC001; and Imposition of Sanctions Policy, 2012-DDS-QMD-POL002; Imposition of Provider Sanctions Procedure, 2014-DDS-PR001.	

1. PURPOSE

The purpose of this policy is to establish standards for the Department on Disability Services’ (DDS) Developmental Disabilities Administration (DDA) and Formal Complaint System, which is administered by the Quality Assurance and Performance Management Administration (QAPMA). Through this system, people who receive DDA supports and services may file a formal complaint about DDA supports or DDA provider services, request external review, and have the formal complaint resolved in a timely manner.

2. APPLICABILITY

This policy applies to all DDS employees, and all DDA and QAPMA subcontractors, providers, vendors, consultants, and volunteers, as well as people receiving DDA supports and services, and their representatives and supporters.

3. AUTHORITY

The authority for this policy is established in Title I of the “Disability Services Reform Amendment Act of 2018” (DSRAA), effective May 5, 2018 (D.C. Law 22-93; D.C. Official



Code §§ 7-761.09(a-2) and 7-761.13 (2018 Repl. & 2019 Supp.)), and in the new Chapter 132, “Department on Disability Services Formal Complaint System” of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

4. DEFINITIONS

These definitions apply to this policy and its related procedures: the DDA Formal Complaint System Procedure and the Provider Formal Complaint Process Procedure.

“Abuse” – The wrongful treatment of a person who receives supports from DDA that endangers his or her physical or emotional well-being, through the action or inaction of anyone, including, but not limited to, an employee, intern, volunteer, consultant, contractor, visitor, family member, guardian or stranger, whether or not the affected person is, or appears to be injured or harmed. Actions of people receiving services toward other people receiving services, staff, or members of the general public are not typically reported as abuse. However, neglect may be present, as the actions may be the result of the provider failing to identify and implement appropriate supports and services, or neglecting to protect people from harm from other people.

“Complaint System Coordinator” – One or more persons designated by the Director of the Department on Disability Services to manage the agency’s DDA Formal Complaint System.

“Formal Complaint System” – The District of Columbia Department on Disability Services’ process for the resolution of formal complaints, including formal complaints filed with a DDA provider, required by the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*).

“Consumer” – A person who receives supports or services funded or regulated by the DDS’s Developmental Disabilities Administration. Throughout this policy and the related procedures, this term means the person who files the formal complaint.

“DDA Provider” or “Provider” – Means an entity that is responsible for providing residential or day services to people supported by the DDS’s Developmental Disabilities Administration.

“DDA Supports” – The locally-funded supports and services provided by the Developmental Disabilities Administration, including cost of occupancy.

“Department on Disability Services” or “DDS” – Means the Department on Disability Services as established by the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*).

“Developmental Disabilities Administration” or “DDA” – An administrative subdivision of the Department on Disability Services.

“Director” – The Director of DDS.



“Exploitation” – The illegal or improper act or process of an employee, contractor, consultant, volunteer, or intern, using the resources of an individual for their own monetary or personal benefit or gain. This may also include, but is not limited to, coercion or manipulation of an individual to spend his or her own personal funds for something the individual may not have use for; and the soliciting of gifts, funds, labor, or favors.

“External Reviewer” – A person selected by the Director to provide review and resolution of formal complaints, who has

- (a) Extensive experience in alternative dispute resolution;
- (b) Experience working with people with intellectual disabilities; and
- (c) An understanding of DDS.

“Failure To State A Claim” – Means that, even if all the factual allegations in a formal complaint are true, they are insufficient to meet the requirements for filing a formal complaint with DDA or a DDA provider.

“Formal Complaint” – Means a statement by a person of his or her dissatisfaction with DDA or a DDA provider that is filed with a provider or with DDA and that is the type of issue that can be resolved under this policy and its related procedures.

“Host Home” – In accordance with Section 1999.1 of Chapter 19 of Title 29 of the DCMR, means the residence owned or leased by the homeowner or principal care provider who provides host home services to the person enrolled in the Home and Community Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

“Individual Support Plan” or **“ISP”** – Identifies the supports and services to be provided to the person and the evaluation of the person’s progress on an ongoing basis to assure that the person’s needs and desired outcomes are being met.

“Intellectual Disability” – Means a substantial limitation in capacity that manifests before eighteen (18) years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with two (2) or more significant limitations in adaptive functioning as defined in section 103 of the Citizens With Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.03(15A)). The determination of intellectual functioning includes consideration of the standard error of measurement associated with the particular intelligence quotient (IQ) test. The adaptive functioning deficits must cross at least two of the following three domains: conceptual, practical, and social.

“Neglect” – The failure to provide proper care, supervision or attention to a person or to the person’s health, safety, or well-being; failure to provide necessities such as food, clothing, essential medical treatment, adequate supervision, shelter or a safe environment. The failure to exercise one’s duty to intercede on behalf of the person also constitutes neglect.



“Office of Administrative Hearings” or “OAH” – Means the District of Columbia Office of Administrative Hearings as established by the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*).

“Peer Supporter” – A person trained through the DDA Peer Support Pilot Program for the purposes of assisting a person with intellectual disabilities with a formal complaint filed through the DDA Formal Complaint System.

“Policy” – A written statement developed by DDS that gives specific direction regarding how DDS, DDA, a DDA provider, a person, their representative or supporter, and/or an external reviewer shall operate administratively and programmatically.

“Principal care provider” – In accordance with Section 1999.1 of Chapter 19 of Title 29 of the DCMR, means the person who owns and/or leases the host home and provides host home services and supports to the person enrolled in the ID/DD Waiver.

“Procedure” – A written set of instructions developed by DDS describing the step-by-step actions to be taken by DDS, DDA, a DDA provider, a person, their representative or supporter, and/or the external reviewer.

“Provider” – Means an entity that is responsible for providing residential or day services to people supported by the DDS Developmental Disabilities Administration.

“Reportable Incident” or “Serious Reportable Incident” – Events that, due to the occurrence or the severity, require action by DDS in addition to the internal review and investigation by the provider agency.

“Representative” – An individual designated by a person to represent him or her in conjunction with a formal complaint filed with a DDA provider or through the DDA Formal Complaint System.

“Service Coordinator” – The DDS staff responsible for coordinating a person’s services pursuant to their ISP and Plan of Care.

“Supporter” – An individual named by a person with intellectual disabilities to assist him or her with the DDA Formal Complaint System (including a DDA provider formal complaint process) either informally, or formally in writing, through a D.C. Supported Decision Making Agreement, with the person retaining the right to make his or her own decisions.

“Third Party” – Means a friend, family member, advocate, independent peer advocate or host home principal care provider who is acting on behalf of the person with the person’s consent related to the DDA Formal Complaint System.

“Timely” – Means by the deadlines established by this policy and its related procedures.



5. RESPONSIBILITY

The responsibility for this policy is vested in the DDS Director. Implementation for this policy is the responsibility of the DDS Deputy Director for QAPMA.

6. POLICY

It is the policy of DDS to:

A. Establish and maintain a DDA Formal Complaint System that people who receive DDA services and supports can use to resolve formal complaints related to:

1. The denial, delay, reduction or termination of DDA supports or services including Medicaid waiver services (Use of the DDA Formal Complaint System will not change or lengthen the deadline for filing a Medicaid appeal at the D.C. Office of Administrative Hearings (OAH));
2. The application of DDA policies, procedures or practices to the person; and
3. The application of DDA providers' policies, procedures or practices to the person.

The DDA Formal Complaint System shall have three stages of review. Stage One shall be Internal DDS Review. Stage Two shall be External Review. Stage Three shall be External Reviewer's Final Report and DDS Director's Final Decision.

B. Establish and maintain a DDA Formal Complaint System where two types of complaints that may not be filed or resolved are:

1. DDA initial eligibility appeals; and
2. Challenges to pending IMEU investigations or appeals of IMEU investigation reports.

C. Accept formal complaints filed by people into the DDA Formal Complaint System who have:

1. Received a DDA provider Chief Executive Officer (CEO) complaint process decision about their complaint about a provider, and still are not satisfied with the resolution of the complaint, or where the provider failed to reply within the required 30 days to a formal complaint filed;
2. A formal complaint about a provider, where the person has requested and received a DDS Director determination that the person has a good faith fear of retaliation from their provider if they file the complaint through the provider's complaint process.
3. A formal complaint about DDA of the type described in Section A, above; or
4. A joint complaint about DDA (of the type described in Section A, above) and a DDA provider.

D. Require DDA providers to adopt policies and procedures necessary to establish and maintain provider formal complaint processes so that people eligible to receive DDA provider services can use those processes to resolve complaints about DDA provider



services. A person shall use the provider's formal complaints process for complaints about alleged action(s) or inactions by the provider. A person's issue involving a specific DDA provider staff member or contractor shall be treated as involving the DDA provider that employs or contracts with the staff member or contractor. DDA providers shall be responsible for participating in the DDA Formal Complaint System about formal complaints involving their employees and contractors.

- E. Provide accessible DDA Formal Complaint System processes, including providing language interpretation services by a qualified interpreter, fluent in the person's primary language (including sign language), and auxiliary aids, if required.
- F. Resolve formal complaints in the DDA Formal Complaint System, and require DDA providers to resolve formal complaints through provider formal complaint processes, according to applicable law, regulations and policy.
- G. Provide notice about the DDA Formal Complaint System to each person who applies for or receives DDA supports and services at the time of application and at least annually for people who receive DDA supports and services.
- H. Establish a Peer Support Pilot Program for people to use when they have filed a formal complaint with the DDA Formal Complaint System, and may choose to provide funding and work collaboratively with a selected vendor to meet this requirement.
- I. Require a person, or a third party acting on behalf of the person and with their consent, whose formal complaint is about a DDA provider to use the provider's complaint process, unless the DDS Director, or his or her designee, determines that the person has a reasonable fear of retaliation and waives the requirement of filing first with a provider, in which case the person may file the complaint about a provider directly with the DDA Formal Complaint System.
- J. Contract with one or more external reviewer(s) to provide timely, neutral and impartial review, in accordance with this policy and the related procedures, of complaints that have not been resolved to the person's satisfaction during Stage One: Internal DDS Review. An external reviewer leads the Stage Two External Review and Stage Three through the External Reviewer's Final Report.
- K. Upon reasonable belief that a person who has filed a formal complaint or on whose behalf a complaint has been filed is at imminent risk of serious harm, immediately take all steps necessary to protect the person. The person or his/her representative may request that he/she no longer be subject to a staff person, provider, or service coordinator during the resolution of the formal complaint. If the facts of the formal complaint amount to a Reportable Incident (RI) or Serious Reportable Incident (SRI) under DDA's Incident Management and Enforcement Unit (IMEU) policies and procedures, then section M, below, applies.



- L. Establish and maintain Complaint Files upon the filing of formal complaints in the DDA Formal Complaint System.
- M. Screen all formal complaints filed by people to determine whether:
 - 1. There is a substantially similar complaint, meaning a complaint involving the same person and set of facts, pending at Office of Administrative Hearings (OAH) or in Superior Court for the District of Columbia, and if so, administratively close the complaint;
 - 2. The facts stated amount to a RI, and if they do, the Complaint System Coordinator shall enter the facts into MCIS and mark it as a RI and refer the complaint to the provider, who shall enter the complaint into their system and place it on administrative hold, and provide notice of that fact to the person;
 - 3. The facts stated amount to a SRI, and, if they do, to refer the incident to the DDS IMEU for review and possible investigation and place the complaint on hold; or
 - 4. The formal complaint is of a type that may be resolved through the DDA Formal Complaint System, and if not, administratively close the complaint.

Notice of an administrative hold or closure shall be sent to the person and their legal representative, if any, within seven (7) calendar days of discovery of the reason for the hold or closure.

- N. Respect the right of the person to have a legal or other representative, or one or more informal or formal supporter(s), of the person's choosing and at the person's own expense.
- O. Ensure that both the person and any DDA provider named in a formal complaint have notice and the opportunity to be heard in the DDA Formal Complaint System. Where an external reviewer leads efforts during Stage Two, the external reviewer is responsible for providing to all parties to a complaint the opportunity to be heard and to present evidence, including witnesses. Where a complaint is about DDA, DDA shall have the opportunity to be heard and to present evidence, including witnesses.
- P. Continue to provide DDA supports and services to a person who filed a formal complaint regarding those supports and services without limitation, reduction or termination, until the person's complaint is resolved through the DDA Formal Complaint System, meaning that either the person is satisfied with the resolution of the issue and the formal complaint is closed, or they have received a DDS Director Final Decision about their complaint. When a person has filed a timely formal complaint regarding termination or reduction of services or supports, DDA will restore the services or supports to the level they were at prior to the termination or reduction for the period that the person's formal complaint is pending through the DDA Formal Complaint System.
- Q. Inform a person who receives the DDS Director's final decision about his or her formal complaint of their right to appeal to OAH.



- R. Prohibit retaliation by DDS staff and DDA provider staff against any person based upon the filing of a complaint with the DDA Formal Complaint System or a provider's formal complaint process.
- S. Ensure that, under the Home and Community-Based Services Waiver for People with Intellectual and Developmental Disabilities, providers have an anonymous complaint option, inform people about how to file anonymous complaints both orally and in writing, and attempt to resolve anonymous complaints.

7. STANDARDS

- A. DDA shall establish and maintain procedures for the DDA Formal Complaint System and for DDA providers required formal complaint processes.
- B. DDS will design and operate the Peer Pilot Support Program so that, subject to availability, a person who receives supports from DDA who files a formal complaint with the DDA Formal Complaint System may choose, if they wish, to use the support of a peer supporter as their formal complaint makes its way through the three stages of the DDA Formal Complaint System. DDS shall issue an annual report on the utilization of the Peer Support Pilot Program.
- C. The Director or his or her designee shall select external reviewer(s) for the DDA Formal Complaint System to provide timely, neutral and impartial review and recommendations for resolution of issues in Stages 2 and 3. Any external reviewer with whom DDS contracts to review and resolve one or more complaints shall be required to have the following qualifications, at a minimum:
 - 1. Experience with alternative dispute resolution, including mediation and/or arbitration;
 - 2. Experience working with people with intellectual disabilities; and
 - 3. An understanding of the DDA service delivery system.

External reviewers shall serve at the pleasure of the DDS Director.

- D. A person may not pursue a substantially similar formal complaint, meaning a complaint involving the same person and set of facts, through a DDA provider's formal complaint process and the DDA Formal Complaint System at the same time. A person with a complaint about a provider generally must use the provider's formal complaint process, unless he or she qualifies for a fear of retaliation exception to take the complaint directly to the DDA Formal Complaint System.
- E. A person has the right to representation when using the DDA Formal Complaint System, or a provider's formal complaint process, but DDS shall not appoint, assign or compensate a person's representative.



- F. A person may choose one or more informal or formal supporters to assist them throughout the DDA Formal Complaint System, or a provider's formal complaint process, however, DDS shall not appoint, assign or compensate a person's supporter, except as specifically provided below.
 - 1. Support for a person who files a formal complaint with the DDA Formal Complaint System may be available through the DDA Peer Support Pilot Program.
 - 2. When a person brings a supporter to or requests their presence during any DDA Formal Complaint System process, DDS, the external reviewer or the provider, respectively, may disclose personal information during the meeting without first obtaining written consent from the person or the person's representative.
 - 3. By inviting a third-party supporter to participate in any DDA Formal Complaint System process, the person is considered to have provided implied consent to release information in the presence of the third party during the proceeding.
 - 4. Representatives and supporters are subject to the requirements of federal and District law regarding the confidentiality of protected mental health, medical and other information about a person.

- G. DDS will provide plain language information about the DDA Formal Complaint System on the DDS website, at intake, and at least annually to all people receiving DDA supports.

- H. DDS shall require DDA providers to post and provide plain language notices about their formal complaint processes.

- I. Persons receiving DDA supports and services, or another person on their behalf and with their consent, may file a complaint about the person's DDA supports and services, as long as they do within 90 calendar days from the final day of the event that the person says took place, or did not take place when the person believes it should have, giving rise to the complaint. This time limit applies whether the person's complaint is filed with a DDA provider or with DDA Formal Complaint System. A person may file a formal complaint when an issue is ongoing.

- J. A person may request a waiver of the 90 calendar day filing requirement from the DDS Director, or his or her designee. The request must include the facts the person asserts to support their request for a waiver, and the DDS Director will consider those facts and determine whether to grant the waiver.
 - 1. The Director shall grant a waiver for the following reasons:
 - a. The events that form the basis of the complaint could not reasonably be expected to be known by the person or their representative within the 90-day period;
 - b. The person was not able to effectively communicate their issue or supporters were not able to understand a person's communication well enough to help him or her file an formal complaint; or
 - c. Illness or incapacitation of the person.



2. The DDS Director may grant a waiver for other reasons that he or she determines to be reasonable.

The length of waiver granted by the DDS Director shall be reasonable and be based on the nature and timing of the circumstances.

- K. DDA shall provide written notice, including the reason for administrative hold or closure, to the person who filed the formal complaint.
- L. If a person disagrees with DDS's administrative closure, the person may file a request for reconsideration of that decision with the complaint coordinator, within fourteen (14) calendar days. DDS will issue a decision on the request for reconsideration within fourteen (14) calendar days of the request. A DDS reconsideration decision is a final agency decision, and a person may appeal this decision to OAH, if they so choose.
- M. At the external review stage of the DDA Formal Complaint System, the external reviewer shall give all parties to the complaint the opportunity to review and comment on the external reviewers report prior to the DDS Director making a Final Decision on the formal complaint.
- N. DDS may impose sanctions on any provider that does not comply with this policy or the related procedures.
- O. Any person who believes they have been retaliated against for filing a complaint with, using or participating in the DDA Formal Complaint System or provider formal complaint processes should contact DDS immediately. DDS may impose sanctions and may report any employee, agency, or provider that retaliates against that person with the DDA Formal Complaint System to the D.C. Office of the Inspector General.

A handwritten signature in blue ink, appearing to read 'Andrew P. Reese', written over a horizontal line.

Andrew P. Reese, Director

A handwritten date '12/16/19' in blue ink, written over a horizontal line.

Approval Date