

**Note:** Upload completed document to the Electronic Rule Filing System.

Hearing Date: 9/3/2020

Today's Date: 9/4/2020

Agency: Opportunities for Ohioans with Disabilities

Rule Number(s): 3304-2-62; 3304-1-09

---

If no comments at the hearing, please check the box. ☐

---

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Disability Rights Ohio - Alison McKay, 3304-2-62

2. Click here to enter text.

3. Click here to enter text.

4. Click here to enter text.

5. Click here to enter text.

6. Click here to enter text.

7. Click here to enter text.

8. Click here to enter text.

9. Click here to enter text.

10. Click here to enter text.

11. Click here to enter text.

12. Click here to enter text.

13. Click here to enter text.

14. Click here to enter text.

15. Click here to enter text.

16. Click here to enter text.

## Hearing Summary Report

### **Consolidated Summary of Comments Received**

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

---

3304-2-62,

1. Concerned written notice of the right to appeal is not included in this rule.
2. States there is an improper standard for hearing officer decisions by omitting state regulations and policies must be consistent with federal requirements.
3. Believes the ability to modify, suspend, or terminate services due to fraud denies the right to a fair hearing/appeal.
4. States OOD added a subsection in violation of 34 CFR 361.57(b)(4) to permit suspension of services if the services were approved in violation of federal or state laws and regulations
5. -Concerned that OOD providing videoconferencing hearings or in person hearings – without an exception to have the hearing at an alternate site or to testify telephonically – violates the ADA.  
-Also concerned that persons desiring to testify remotely must test their video connection two weeks in advance of the hearing.  
-Also concerned with the requirement the parties exchange exhibits prior to the start of the hearing.  
-Also concerned that appeals to OOD is confused with complaints filed with various other entities.
6. Asserts that stating an appeal must be filed in accordance with Ohio law and this rule is unclear and violates due process.

## Hearing Summary Report

### **Incorporated Comments into Rule(s)**

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

---

1. This rule concerns the appeal itself. Written notice of the right to appeal is included in other rules – 3304-2-51; and 3304-2-61; and in OOD policies and procedures adopted pursuant to federal regulations.
2. The rule incorporates the Rehabilitation Act and federal vocational rehabilitation regulations in 3304-2-62(E)(2). There is no need to duplicate the federal regulations into this state rule.
3. This provision does not deny the right to a fair hearing due to fraud. OOD may deny services due to fraud pending the results of the fair hearing. The rule initially starts with, “while an appeal is pending. . .” OOD may suspend, modify or terminate services due to fraud. This provision is supported by 34 CFR 361.57(b)(4)(ii).
4. OOD is charged with operating a statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation program. 34 CFR 361.1. OOD has the permissive ability to suspend services if the service violates federal or state laws and regulations to account for the proper spending of federal and state funds. The principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function.
5. -OOD is expanding the ability of individuals with disabilities to participate in administrative hearings. An individual with technology may testify remotely or in person. An individual without technology may testify in person. An individual without technology, and is unable to travel to OOD’s central office for medical reasons, may testify at any location where technology is available, including any one of several OOD regional or satellite offices. Telephonic testimony is never appropriate due to the inability to have sworn testimony or to evaluate witness credibility.
  - With regards to testing connectivity, OOD is concerned with wasting valuable government resources by holding a remote hearing where the parties and witnesses are not able to connect and testify. OOD agrees to amend the language to place the burden on the person participating remotely to test their connectivity prior to the start of the hearing or jeopardize the ability to testify remotely. A person may always testify in person. OOD can facilitate the connectivity test or the parties may test their connection and compatibility without OOD’s assistance.
  - With regards to the exchange of exhibits, federal regulations require individual’s with disabilities to have the ability to submit evidence during the hearing. 34 CFR 361.57(b)(3)(i). Federal regulations also provide for OOD establishing procedures for the fair hearing/appeal. 34 CFR 361.57(a). This rule does not deny the ability to submit evidence during the hearing. This rule requires proposed exhibits be exchanged between the parties prior to the start of the hearing to facilitate the hearing. The hearing officer has inherent discretion to permit rebuttal witnesses and exhibits after the hearing has started.
  - With regards to appeals versus complaints, OOD agrees to revise and clarify the language as to what is an appeal and what is a complaint.
6. R.C. 119.07 states, “Whenever a party requests a hearing in accordance with this section and section 119.06 of the Revised Code. . .” OOD has adopted this statutory language into this rule which provides the necessary procedure to perfect an appeal.