

TO BE RESCINDED

5123:2-17-03 **Abuser registry.**

(A) Purpose

The purpose of this rule is to set forth procedures to be used to determine whether the name of a person should be placed on the registry established under section 5123.52 of the Revised Code.

(B) Application

- (1) This rule shall apply to all MR/DD employees and any person or government entity employing, hiring, or contracting with an MR/DD employee.
- (2) No person or government entity shall hire, contract with, or employ as an MR/DD employee a person whose name is on the registry.

(C) Definitions

- (1) "Abuse" means all of the following:
 - (a) The use of physical force that can be reasonably expected to result in physical harm or serious physical harm, as those terms are defined in section 2901.01 of the Revised Code.
 - (b) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.
 - (c) Verbal abuse. "Verbal abuse" means purposely using words to threaten, coerce, intimidate, harass, or humiliate an individual.
- (2) "Department" means the Ohio department of mental retardation and developmental disabilities.
- (3) "Director" means the director of the department, unless otherwise stated, or the director's designee.
- (4) "Individual" means a person with mental retardation or other developmental disabilities.

- (5) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including Chapters 2911. and 2913. of the Revised Code.
- (6) "MR/DD employee" means all of the following:
 - (a) An employee of the department;
 - (b) An employee of a county board of mental retardation and developmental disabilities;
 - (c) An "ICF/MR worker" as defined in section 5123.193 of the Revised Code;
 - (d) A person who is employed in a position that includes providing specialized services to an individual.
- (7) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services necessary to maintain the health and safety of the individual.
- (8) "Registry" means the registry of MR/DD employees found to have committed abuse, neglect, or misappropriation established under section 5123.52 of the Revised Code.
- (9) "Specialized services" means any program or service designed and operated to serve primarily individuals, including a program or service provided by an entity licensed or certified by the department. A program or service available to the general public is not a specialized service.

(D) Department review

- (1) The department shall review all reported cases of abuse, neglect, or misappropriation to determine whether the facts of the case may warrant consideration for placement of the name of the alleged perpetrator on the registry. When conducting this review, the department may conduct its own investigation or adopt the findings of an investigation conducted by any entity authorized to conduct such investigations. When considering whether to adopt the findings of an investigation conducted by another entity, the department shall consider the following:

- (a) Whether the entity that conducted the investigation is a law enforcement agency;
 - (b) Whether the findings of the investigation include sufficient information to allow the department to determine whether the standard for placement on the registry has been met;
 - (c) Any other relevant factors that may require the department to conduct its own investigation.
- (2) If the department determines that the facts of a case may warrant placement of a person's name on the registry, the department shall:
- (a) Determine whether any criminal proceeding or collective bargaining arbitration arising from the same allegations has concluded.
 - (b) Present the case to a review committee appointed by the director. The review committee shall make a recommendation regarding whether the facts of the case would warrant placement of the person's name on the registry.
 - (c) Consider the review committee's recommendation and determine whether the person's name should be considered for placement on the registry.

(E) Hearing procedure

- (1) Before placing any person's name on the registry, the department shall conduct an adjudication in accordance with all requirements set forth in Chapter 119. of the Revised Code.
- (2) If the person whose name is being considered for placement on the registry requests a hearing, the director shall appoint an independent hearing officer to conduct the hearing. If the person is an employee of the department and is represented by a union, the director and a representative of the union shall jointly select the hearing officer.
- (3) At least fifteen days prior to the date set for hearing, the department and the person whose name is being considered for placement on the registry shall exchange witness lists and lists of exhibits to be introduced at the hearing. The hearing officer may extend the time for good cause shown.

- (4) The hearing officer shall conduct a hearing in accordance with the provisions of Chapter 119. of the Revised Code for the purpose of determining whether the department has established by clear and convincing evidence that the person:
 - (a) Misappropriated the property of an individual;
 - (b) Knowingly abused or neglected such an individual;
 - (c) Recklessly abused or neglected such an individual, with resulting physical harm; or
 - (d) Negligently abused or neglected such an individual, with resulting serious physical harm.
- (5) In making this determination, the hearing officer shall give weight to the decision in any collective bargaining arbitration regarding the same allegation, and shall consider all extenuating circumstances, including whether the person used physical force necessary as self-defense.
- (6) If the person whose name is being considered for placement on the registry is an employee of the department, the hearing officer shall submit the report to the director of the Ohio department of health or that director's designee.
- (7) If the director or, if applicable, the director of the Ohio department of health or that director's designee, determines that the person's name should be placed on the registry, the director shall sign an adjudication order directing that the person's name be placed on the registry and provide appropriate notice to the person pursuant to Chapter 119. of the Revised Code.
- (8) The department shall send copies of the order to the person or government entity that employs or contracts with the person, the individual who was the subject of the report, the individual's guardian, the attorney general, and the prosecuting attorney or other law enforcement agency.

(F) Check of registry

- (1) The department shall establish a process to be used by parties to determine whether a person's name has been placed on the registry. The process shall ensure that parties submitting inquiries can accurately determine whether the person about whom an inquiry is made is the person whose name is on the registry, while also ensuring that confidential information about the person is

not made public. The process shall specify both electronic and non-electronic means by which inquiries may be made.

- (2) The department shall establish and maintain a procedure setting forth the manner in which parties making inquiries shall be informed of the result. The procedure shall ensure that parties making inquiries by electronic means receive an immediate response and that parties making inquiries by non-electronic means receive a response within three working days.
- (3) Any person or government entity seeking to hire, contract with, or employ a person as an MR/DD employee shall make an inquiry to the department regarding whether the person's name is on the registry. If the subject of the inquiry is on the registry, the inquiring party shall not hire, contract with, or employ the person as an MR/DD employee.

(G) Petition for removal from registry

- (1) A person whose name has been placed on the registry may petition the director to have the person's name removed from the registry.
- (2) Any petition for removal from the registry must be made in writing to the director. The petition shall include the name of the person, the action for which the person's name was placed on the registry, and any reasons demonstrating the appropriateness of removal of the person's name.
- (3) Upon receipt of a petition for removal, the department shall notify the individual who was the victim of the action for which the person's name was placed on the registry, the individual's guardian, and any other persons to whom the department determines notification should be given. Any party receiving the notification shall have the right to send written comments regarding the petition to the department.
- (4) The director shall consider the petition, along with any comments received from any person regarding the petition, and shall determine whether good cause exists to remove the person's name from the registry.
- (5) In determining whether good cause exists, the director shall consider the following:
 - (a) Whether a criminal conviction arising from the act that resulted in the person's name being placed on the registry has been subsequently reversed on appeal, and no new conviction on the same charge has

occurred.

- (b) Whether new substantial and material evidence has been discovered which would indicate that the person did not commit the act for which the person's name was placed on the registry. The person claiming that such new evidence has been discovered shall provide a detailed description of said evidence, along with a statement of the reasons for the failure to discover the evidence prior to the adjudication hearing.
- (c) Whether the person can demonstrate that the person has been rehabilitated. In determining whether a person has been rehabilitated, the director shall consider the following factors:
 - (i) The nature and seriousness of the act for which the person's name was placed on the registry, including whether the person was criminally convicted for the act;
 - (ii) Whether the person has been convicted of any crimes other than those related to the act for which the person's name was placed on the registry;
 - (iii) The time elapsed since the person's name was placed on the registry;
 - (iv) The person's efforts at rehabilitation and the result of those efforts;
 - (v) Personal references provided by the person;
 - (vi) The person's employment history; and
 - (vii) Any other relevant factors.
- (6) A petition claiming that good cause for removal exists because the person has satisfied the rehabilitation standards set forth in paragraph (G)(5)(c) of this rule can be filed no earlier than five years from the date the person's name was placed on the registry. If the person has previously made a petition to have the person's name removed from the registry based on the rehabilitation standards set forth in paragraph (G)(5)(c) of this rule, the director shall not consider any subsequent petition unless at least two years have passed since the previous petition was filed.

- (7) The director shall inform the person in writing of the outcome of the petition within thirty days of receipt of the petition. The director's decision is final and may not be appealed.
- (8) If the director determines that good cause exists to remove a person's name from the registry, the director shall issue an order directing that the person's name be removed from the registry. If a person's name has been removed from the registry, the department shall respond to any inquiries regarding whether the person's name is currently on the registry in the negative, and shall not voluntarily disclose the fact that the person's name was previously on the registry.
- (H) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

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CERTIFIED ELECTRONICALLY

Certification

08/04/2006

Date

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