

TO BE RESCINDED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 DD employee should be placed on the registry established under section 5123.52 of the Revised Code and standards for determining whether such employee has been rehabilitated.

(B) Application

This rule shall apply to all DD employees and any person or governmental entity employing, hiring, or contracting with a DD employee.

(C) Definitions

- (1) "DD employee" means at the time of the incident any of the following:
 - (a) An employee of the department;
 - (b) An employee of a county board of developmental disabilities; or
 - (c) A person who is employed in a position that includes providing specialized services to an individual.
- (2) "Department" means the Ohio department of developmental disabilities.
- (3) "Director" means the director of the department, unless otherwise stated, or the director's designee.
- (4) "Individual" means a person with a developmental disability.
- (5) "Registry" means the registry established under section 5123.52 of the Revised Code of DD employees found to have committed abuse, neglect, misappropriation, a failure to report, or engaged in prohibited sexual relations.
- (6) "Registry offense" means the acts set forth in division (C)(3)(a) of section 5123.51 of the Revised Code.
- (7) "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) Registry review committee

- (1) The department shall establish a committee to review the facts of a case and make a recommendation regarding whether there is a reasonable basis for believing that a DD employee committed a registry offense.
 - (a) The review committee shall consist of at least five members who represent various stakeholder groups.
 - (b) The director shall appoint members of the review committee for a term of four years, except that a member may be appointed for a term of less than four years in order to stagger the members' terms, so that no more than half of the members' terms expire in the same year. Members may be reappointed or removed by the director.
 - (c) Members shall agree in writing to maintain the confidentiality of all information and proceedings before the committee.
- (2) If the department determines a case is appropriate for consideration by the review committee, the department shall present the case to the review committee. If the DD employee has been convicted of a criminal offense for the same incident, the case need not be reviewed by the review committee. The department shall consider the review committee's recommendation and determine whether there is a reasonable basis for believing that a DD employee has committed a registry offense.
- (3) If there is a reasonable basis for believing that a DD employee has committed a registry offense, the department shall provide notification to the DD employee of the charges against the DD employee and the DD employee's right to a hearing if timely requested.

(E) Hearing procedure

- (1) Before conducting a hearing, the department shall determine whether any criminal proceeding or collective bargaining arbitration arising from the same allegation has concluded. The department may conduct a hearing before a criminal proceeding concerning the same allegation is concluded if the department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing and the prosecutor consents to the hearing.
- (2) Except as otherwise provided by statute, all hearing and adjudication proceedings shall be conducted in accordance with the requirements set forth in Chapter

119. of the Revised Code. Nothing in this rule precludes a DD employee from waiving his or her rights.

- (3) If the DD employee timely requests a hearing, the director shall appoint an independent hearing officer to conduct the hearing. If the DD employee 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.
- (4) At least fifteen days prior to the date set for hearing, upon request by either party, the department and the DD employee 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.
- (5) The hearing officer shall conduct a hearing for the purpose of determining whether the department has established by clear and convincing evidence that the DD employee has committed a registry offense.
- (6) If the director or, if applicable, the director of the Ohio department of health or that director's designee, determines that the DD employee's name should be placed on the registry, the director shall sign an adjudication order directing that the DD employee's name be placed on the registry and provide notice to the DD employee.
- (7) The department shall send copies of the order to the individual who was the subject of the report, the individual's guardian, the attorney general, the prosecuting attorney or other law enforcement agency, and to any person or governmental entity that employs or contracts with the DD employee. Any notified person or entity employing or contracting with the DD employee shall, within ten days of notification, inform the department of the DD employee's employment status. If the DD employee holds a license, certification, registration, or other authorization to engage in a profession issued pursuant to Chapter 3319. of the Revised Code or Title 47 of the Revised Code, the director shall notify the entity responsible for regulating the DD employee's professional practice. If the department has issued to the DD employee, a license, certification, registration, or other authorization to provide services, the department shall initiate the process to revoke the license, certification, registration, or authorization.

(F) Check of registry

- (1) The department shall maintain a process to be used 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 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 governmental entity seeking to hire, contract with, or employ a person as an employee of the department, county board of developmental disabilities, or in a position that provides specialized services to an individual 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 in any of these capacities.

(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) A petition claiming that good cause for removal exists because the person has satisfied the rehabilitation standards set forth in paragraph (G)(6)(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)(6)(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. If good cause exists, the director may waive the timelines set forth in this paragraph, except that the director may not remove a person's name from the registry until one year after the date the person's name was placed on the registry.

- (6) 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) Whether the person, at the time of the incident, sought immediate medical attention for the individual if necessary, timely reported the incident, and accurately related the facts of the incident including the person's part in the incident;
 - (iv) The time elapsed since the person's name was placed on the registry;
 - (v) The person's efforts at rehabilitation and the result of those efforts;

- (vi) Personal references provided by the person;
 - (vii) The person's employment history; and
 - (viii) Any other relevant factors.
- (7) The director shall inform the person in writing of the outcome of the petition within ninety 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, unless the information is specifically requested, disclose the fact that the person's name was previously on the registry. The department will notify the parties set out in paragraph (E)(7) of this rule that the person's name has been removed from the registry.
- (H) Information contained in the registry is a public record for the purposes of section 149.43 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 4/3/2020

Certification

Date

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