

TO BE RESCINDED

5123:2-5-04 **Denial, suspension, and revocation of registration and certification.**

(A) This rule applies to applicants for and holders of adult services, early intervention, and service and support administration registration and certification.

(B) Definitions

(1) "County board" means a county board of developmental disabilities.

(2) "Disqualifying offense" means any of the offenses listed or described in divisions (A)(3)(a) to (A)(3)(e) of section 109.572 of the Revised Code.

(3) "Superintendent" means a person certified by the department in accordance with rule 5123:2-5-03 of the Administrative Code and employed in that capacity by a county board.

(C) A superintendent shall deny, suspend, or revoke a registration or certification if he or she finds, pursuant to an adjudication, that the applicant for or holder of the registration or certification has engaged in an immoral act, incompetence, negligence, or conduct that is unbecoming to the applicant's or holder's position.

(D) Except as provided in paragraph (E) of this rule, a superintendent shall deny or revoke a registration or certification if he or she finds, pursuant to an adjudication, that the applicant for or holder of the registration or certification:

(1) Has been convicted of or pleaded guilty to any of the disqualifying offenses listed or described in paragraph (E)(1)(a) of rule 5123:2-2-02 of the Administrative Code;

(2) Has been convicted of or pleaded guilty to any of the disqualifying offenses listed or described in paragraph (E)(1)(b) of rule 5123:2-2-02 of the Administrative Code if a period of ten years has not elapsed from the date the applicant or holder was fully discharged from imprisonment, probation, and parole;

(3) Has been convicted of or pleaded guilty to any of the disqualifying offenses listed or described in paragraph (E)(1)(c) of rule 5123:2-2-02 of the Administrative Code if a period of seven years has not elapsed from the date the applicant or holder was fully discharged from imprisonment, probation, and parole;

- (4) Has been convicted of or pleaded guilty to any of the disqualifying offenses listed or described in paragraph (E)(1)(d) of rule 5123:2-2-02 of the Administrative Code if a period of five years has not elapsed from the date the applicant or holder was fully discharged from imprisonment, probation, and parole;
 - (5) Has been convicted of or pleaded guilty to multiple disqualifying offenses if the applicable period of time in accordance with paragraph (E)(2) of rule 5123:2-2-02 of the Administrative Code has not elapsed from the date the applicant or holder was fully discharged from imprisonment, probation, and parole; or
 - (6) Has been included in one or more of the databases listed in paragraphs (C)(2)(a) to (C)(2)(e) of rule 5123:2-2-02 of the Administrative Code.
- (E) A conviction of or a plea of guilty to an offense listed or described in paragraphs (E)(1)(a) to (E)(1)(d) of rule 5123:2-2-02 of the Administrative Code shall not constitute grounds for the denial or revocation of a registration or certification if the requirements set forth in paragraph (F) of rule 5123:2-2-02 of the Administrative Code are met.
- (F) Applicants for or holders of registration or certification shall disclose a conviction that has been sealed.
- (G) Adjudication procedure
- (1) The superintendent shall notify an applicant for or holder of registration or certification in writing of his or her intent to deny, suspend, or revoke the applicant's or holder's registration or certification. The notice shall contain the following information:
 - (a) The right of the applicant for or holder of registration or certification to request a hearing within thirty days of the date of the notice.
 - (b) A statement that the applicant for or holder of registration or certification may appear in person or through an attorney.
 - (c) A statement that the applicant for or holder of registration or certification or his or her attorney may:
 - (i) Present the applicant's or holder's position, arguments, or contentions

entirely in writing; or

- (ii) If a hearing is requested, at the hearing may present evidence and examine witnesses appearing for and against them.
 - (d) That the failure to request a hearing shall result in the denial, suspension, or revocation of the registration or certification.
- (2) If the applicant for or holder of registration or certification timely requests a hearing, the superintendent shall appoint a hearing examiner to conduct the hearing. The hearing examiner shall not be an employee of the county board. The hearing examiner shall be admitted to the practice of law and possessed of such qualifications as to be able to render a neutral and informed decision.
 - (3) The hearing examiner shall notify the applicant for or holder of registration or certification of the time, date, and place of the hearing. If the applicant for or holder of registration or certification is unable to attend the hearing as scheduled, the applicant or holder may request that the hearing be rescheduled. The hearing examiner shall determine if rescheduling the hearing is warranted and shall make efforts to schedule the hearing at a time, date, and place mutually convenient.
 - (4) At least fifteen days prior to the date set for the hearing upon request by either party, the superintendent and the applicant for or holder of registration or certification shall exchange witness lists and lists of exhibits to be introduced at the hearing. The hearing examiner may extend the time for good cause shown.
 - (5) Both parties may be present at the hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the superintendent. The superintendent shall provide for a complete stenographic record of the proceedings, and upon request, a copy of the record shall be furnished to the applicant for or holder of registration or certification at no cost.
 - (6) The hearing examiner shall issue a written report and recommendation setting forth findings of fact, conclusions of law, and a recommendation for the superintendent within ten calendar days of the hearing. The report and recommendation shall be served upon the applicant for or holder of registration or certification or his or her attorney.

- (7) Within ten days of receipt of the report and recommendation, the applicant may file written objections with the superintendent. The superintendent shall issue a decision and serve upon the applicant for or holder of registration or certification and the applicant's or holder's attorney. The superintendent's decision is final.

Effective:

Five Year Review (FYR) Dates: 11/26/2014

Certification

Date

Promulgated Under: 119.03
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Rule Amplifies: 5123.04, 5123.081, 5126.25
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