

TO BE RESCINDED

4759-1-01 **Public notice of rule adoption.**

- (A) Prior to adoption, amendment or rescission of any rule, except an emergency rule, the Ohio board of dietetics shall give public notice thereof as provided by section 119.03 of the Revised Code, at least thirty days prior to the date set for the public hearing. The board shall provide persons who are subject to, or may be affected by, the rules with reasonable notice by publication of that notice in the register of Ohio. Such notice shall contain a synopsis or general statement of the rule or rules to be adopted, amended, or rescinded, and the date, time, and place of the hearing on the proposed action.
- (B) The board may give whatever other notice it reasonably considers necessary by mailing or faxing the notice one time to the following persons or organizations:
- (1) Notice shall be sent to any person or organization included on the board's subscriber list during the past five years.
 - (2) Notice shall be sent to "The Ohio Academy of Nutrition and Dietetics" and such of their affiliate district associations as registered with the board.
- (C) The board may post the notice on the board's web-site as well as the full text of the proposed rules to be adopted, amended, or rescinded.
- (D) The board may post the notice in the board's newsletter.
- (E) Copies of the notice of the public hearing and the full text of the proposed rules shall be available at the board's offices at least thirty days prior to the date of the public rules hearing.
- (F) The board may assess a reasonable fee, not to exceed the cost of copying and mailing, for notices sent to persons in accordance with this rule.

Effective:

Five Year Review (FYR) Dates: 8/30/2019

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 4759.05(A)
Rule Amplifies: 119.03, 4759.05(A)
Prior Effective Dates: 07/27/1987 (Emer.), 11/30/1987, 03/15/2003,
04/01/2013

TO BE RESCINDED

4759-1-02 **Notice of board meetings.**

- (A) Any person may ascertain the time and place of all regularly scheduled meetings of the Ohio board of dietetics, and the time, place, and purpose of all special meetings of the board by any one of the following methods:
- (1) Calling the board office by telephone during normal business hours (no collect calls will be accepted under any circumstances);
 - (2) Contacting the board office in person during normal business hours; or
 - (3) Providing the board with a written request for such notification and with a stamped self-addressed business-size envelope.
 - (4) Checking the board's website at www.dietetics.ohio.gov.
- (B) Any person or organization who makes written request for routine notification of all regularly scheduled and special meetings of the board, shall be placed on the subscriber list maintained in the board office. Subscribers shall provide the board with one self-addressed stamped business-size envelope for each month during the time period that they wish to be notified. After the requested notification period has ended, such notification will cease, unless it is renewed in the manner set forth in this paragraph.
- (1) Notices will be electronically disseminated at least seven calendar days prior to any regularly scheduled meeting, and at least four calendar days prior to any special meeting, unless the meeting is an emergency meeting. Notices of special meetings will include the type of business to be discussed.
 - (2) It is the responsibility of the person requesting notification to keep the board informed in writing of changes in the person's current mailing address.
 - (3) The obligation of the board under paragraph (B) of this rule to each person or organization fully complying with said requirements shall be deemed fully discharged with the mailing of notification to the most current mailing address and name on file with the board for this purpose, as of seven days prior to the particular regularly scheduled meeting.
- (C) A representative of a news media organization, or of the business office of "The Ohio Academy of Nutrition and Dietetics," may receive notification of board meetings by making written request to the board office. The board will compile a mailing list and will mail notification of all regularly scheduled and special meetings to

these representatives at their business addresses in accordance with the schedule in paragraph (B)(1) of this rule.

- (1) Provided that not more than one representative of a radio or television station, newspaper, or other publication or of "The Ohio Academy of Nutrition and Dietetics" may receive such notification.
 - (2) It is the responsibility of the news media organization or "The Ohio Academy of Nutrition and Dietetics" to notify the board in writing of changes in the name or mailing address of the recipient of such information.
 - (3) Notification under paragraph (C) of this rule will remain in effect for one year from the date of the written request after which time the name of the organization will be removed from the mailing list unless the request is renewed in writing.
 - (4) The obligation of the board under paragraph (C) of this rule to each organization fully complying with said requirements shall be deemed fully discharged with the mailing of notification to the most current address and name on file with the board for this purpose, as of seven days prior to the particular regularly scheduled meeting, or four days prior to the particular special meeting.
- (D) A representative of a news media organization may obtain telephone notification of emergency board meetings by making a written request to the board, including the name of the individual to be contacted, the individual's mailing address, and a maximum of two telephone numbers where the individual can be reached. The board will maintain a list of all representatives of the news media who request telephone notice of emergency meetings.
- (1) In the event of an emergency meeting, the board shall immediately notify by telephone all representatives on the list of such meeting.
 - (2) Such telephone notice shall be complete if a message has been left for the media representative or if, after a reasonable effort, the board has been unable to provide such telephone notice.
 - (3) The media representative's name shall remain on the telephone notification list for one year from the date of the written request, after which time it will be removed unless the request is renewed in writing.
 - (4) It shall be the responsibility of the media representative or the media representative's organization to inform the board of any changes in telephone number or in the name of the person to be notified.

- (E) The failure of any individual, organization, or organization representative to comply with the above requirements shall relieve the board of any obligation to provide advance notice of any kind of any public meeting to that individual, organization, or organization representative.

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Statutory Authority: 4759.05(A)

Rule Amplifies: 121.22(F), 4759.04

Prior Effective Dates: 11/30/1987, 02/09/1998, 03/15/2003, 04/01/2013

TO BE RESCINDED

4759-1-03 **Personal information systems.**

- (A) The board shall appoint one employee to be directly responsible for each personal information system maintained by the board. Said employee shall:
- (1) Inform all employees who have any responsibility for the operation or maintenance of said system or the use of personal information maintained in the system, of the applicable provisions of Chapter 1347. of the Revised Code and rules adopted thereunder; and
 - (2) Inform all persons requested to supply personal information for a system whether or not the person is legally required to provide such information; and
 - (3) Restrict the collection, maintenance, and use of personal information to only that which is necessary and relevant to functions of the board as required or authorized by statute or rule; and
 - (4) Provide all persons asked to supply personal information that will be placed in an interconnected or combined system, with information relevant to the system, including the identity of all other agencies or organizations that have access to the system; and
 - (5) Allow a person who is the subject of a record in a personal information system to inspect the record pursuant to section 1347.08 of the Revised Code. Upon the request and verification that the person requesting access to the record is the subject of information contained in the system, the employee shall:
 - (a) Inform the person of any personal information in the system of which the person is subject;
 - (b) Permit the person or the person's legal guardian, or an attorney who presents a signed authorization made by the person, to inspect all personal information in the system of which the person is subject, except where prohibited by law;
 - (c) Inform the person of the uses made of the personal information and identify other users who have access to the system;
 - (d) Allow a person who wishes to exercise rights as provided by this rule to be accompanied by one individual of that person's choice;
 - (e) Provide, for a reasonable charge, copies of any personal information the person is authorized to inspect; and

- (6) Investigate disputes concerning the accuracy, relevance, timeliness, or completeness of personal information pursuant to section 1347.09 of the Revised Code and paragraph (D) of this rule.
- (B) The board shall reprimand in writing any employee who initiates or otherwise contributes to any disciplinary or other punitive action taken against another individual who brings attention to the appropriate authorities, the press, or a member of the public, any evidence of unauthorized use of any material contained in the personal information system. A copy of the reprimand shall be entered in the employee's personal file.
- (C) The board shall monitor its personal information system by:
- (1) Maintaining the personal information system with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination made by the board which is based on information contained in the system; and
 - (2) Eliminating unnecessary information from the system.
- (D) The board shall investigate, upon request, the accuracy, relevance, timeliness, or completeness of personal information which is disputed by the subject of a record contained in the system, within ninety days after receipt of a request from the disputant; and
- (1) Notify the disputant of the results of the investigation and any action the board intends to take with respect to the disputed information; and
 - (2) Delete any information the board cannot verify or finds to be inaccurate; and
 - (3) Permit the disputant, if the disputant is not satisfied with the determination made by the board, to include within the system:
 - (a) A brief statement of the person's position on the disputed information; or
 - (b) A brief statement that the person finds the information in the system to be inaccurate, irrelevant, outdated, or incomplete; and
 - (4) The board shall maintain a copy of all statements made by the disputant.
- (E) The board shall not place personal information into an interconnected and combined system, unless said system contributes to the efficiency of the agencies or organizations authorized to use the system in implementing programs which are required or authorized by law.

- (F) The board shall not use personal information placed into an interconnected or combined system by another state or local agency or organization, unless the personal information is necessary and relevant to the performance of a lawful function of the board.
- (G) The board shall make available, upon request, all information concerning charges made by the board for reproduction of materials contained in its personal information system.

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Promulgated Under: 119.03
Statutory Authority: 4759.05(A)
Rule Amplifies: 1347
Prior Effective Dates: 11/30/1987

TO BE RESCINDED

4759-3-01 **Duties of board members.**

(A) Chairman:

- (1) The chairman shall preside at all board meetings at which the chairman attends and perform all duties prescribed by law or board regulations; and
- (2) The chairman is authorized by the board to make minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(B) Vice chairman:

- (1) The vice chairman shall perform the duties of the chairman if the chairman is absent or disabled; and
- (2) If the office of chairman becomes vacant, the vice chairman will serve until a successor is elected.

(C) Board members:

The policy of the board is that members shall attend regular and special meetings as scheduled, and shall be compensated on a per diem basis when attending meetings or conducting official business for the agency.

(D) Election of officers:

Election of officers shall be conducted in accordance with the calendar year.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.04
Prior Effective Dates: 11/30/1987, 02/09/1998, 03/15/2003

TO BE RESCINDED

4759-3-02 **Executive secretary/executive director.**

- (A) The board shall designate an executive secretary who shall serve at the pleasure of the board. The executive secretary shall be the chief administrative officer of the board, may use the working title executive director, and shall be responsible to the board for the daily activities of its staff.
- (B) The executive secretary/executive director shall be a licensee of the board but shall not engage in the practice of dietetics for compensation outside the scope of the duties of the executive secretary/executive director.
- (C) In appointing an executive secretary/executive director, the board shall select a person of the highest available competence who has a minimum of five years of experience in the practice of dietetics and is the holder of a master's degree.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.04
Prior Effective Dates: 11/30/1987, 02/09/1998, 03/21/2008

TO BE RESCINDED

4759-3-03

Minutes of board meetings.

- (A) The unapproved minutes of all board meetings shall be recorded and open to public inspection in a binder located in the board office during normal business hours within ten business days of their recordation.
- (B) Within ten business days after their approval by the board, the approved minutes of all board meetings shall be substituted for the unapproved minutes and shall be open to public inspection in the manner provided for in paragraph (A) of this rule and also posted to the board's web site within a reasonable time.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 149.43, 4759(D)
Prior Effective Dates: 11/30/1987, 03/21/2008

TO BE RESCINDED

4759-3-04

Cooperation and communication with professional organizations.

The board shall maintain and foster communications between the board and all professional organizations in the state whose members are licensees. The board shall recognize "The Ohio Academy of Nutrition and Dietetics" for the purpose of requesting such state organization to designate an official liaison to the board. In the event such a liaison is designated by "The Ohio Academy of Nutrition and Dietetics," the board, the executive secretary/executive director, and the staff shall cooperate with the liaison in maintaining and fostering communication between the board and the association and the liaison may attend all board meetings or designate a substitute when unavailable to attend. The liaison shall be permitted to participate in board discussions to the extent the board deems appropriate, except the liaison shall not participate in any deliberation on the discipline of a licensee.

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Rule Amplifies: 4759.04, 4759.05
Prior Effective Dates: 11/30/1987, 03/21/2008, 04/20/2013

TO BE RESCINDED

4759-3-05

Advisory committees.

The chairman of the board may appoint such advisory committees of board members and others as may assist the board in carrying out its responsibilities.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.04, 4759.05
Prior Effective Dates: 11/30/1987

TO BE RESCINDED

4759-3-06

Parliamentary procedures.

Unless required otherwise by statute or rule, meetings of the board and committees shall be conducted according to the latest edition of "Robert's Rules of Order."

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Rule Amplifies: 4759.04, 4759.05
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TO BE RESCINDED

4759-3-07

Adjudication hearings.

Any person receiving notice from the board of a violation of section 4759.02 of the Revised Code is entitled to a hearing if the person requests it within thirty days of the date of mailing the notice.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 119.07, 4759.05(A)(11)
Prior Effective Dates: 11/30/1987, 03/21/2008

TO BE RESCINDED

4759-4-05 **Licensure by reciprocity.**

If an applicant seeks licensure on the basis that the applicant has met equivalent requirements in another state or foreign country, the applicant shall attach to the application proof that the requirements of the other state or foreign country are equivalent to those of this state, unless the board has taken action recognizing that the requirements of the other state or foreign country to be waived are equivalent to similar requirements in this state.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.06(D)
Prior Effective Dates: 11/30/1987

TO BE RESCINDED

4759-4-06 **Status categories.****(A) Inactive status.**

A licensee may have a license placed in inactive status by written request to the board, signed by the holder of the license or the holder's legal guardian.

While a license is in inactive status, the licensee shall meet the cumulative continuing education/professional development requirements as required by rule 4759-4-04 of the Administrative Code, but is not required to pay the annual fee.

If a licensee fails to meet the continuing education/professional development requirements as prescribed in rule 4759-4-04 of the Administrative Code, the license may not be withdrawn from inactive status until any cumulative deficiency is corrected or waived by the board for good cause shown.

A license may be withdrawn from inactive status by completion of the application for reactivation, and providing evidence of compliance with cumulative continuing education/professional development requirements, and payment of the current reactivation fee.

An expired or lapsed license may not be placed in inactive status.

(B) Expired status.

A license not renewed by June thirtieth following its issuance is expired.

An expired license may not be placed in inactive status.

(C) Late status.

An application for renewal is late and the license is expired if it is postmarked after the thirtieth day of June but not later than the fifteenth day of August of the renewal year.

An individual seeking to renew an expired license during the late period shall complete the renewal application, and pay the current renewal and late fees.

An expired license may not be placed in inactive status during the late period.

(D) Lapsed status.

An expired license shall lapse after the fifteenth day of August of the renewal year.

An individual seeking to reinstate a lapsed, suspended, or revoked license shall complete the application for reinstatement, provide evidence of compliance with cumulative continuing education/professional development requirements as specified in rule 4759-4-04 of the Administrative Code, and pay the current reinstatement fee. The license may not be reinstated until any cumulative deficiency is corrected or waived by the board for good cause shown.

A lapsed license may not be renewed or placed in inactive status.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.05(A), 4759.06, 4759.08
Prior Effective Dates: 11/30/1987, 02/09/1998, 03/15/2003, 03/21/2008,
04/01/2013

TO BE RESCINDED

4759-4-07 **Failure to maintain licensure.**

An individual seeking to reinstate a license which has lapsed for more than two years shall meet the current licensure requirements including passing the examination, completion of the application for reinstatement, and payment of the reinstatement fee.

This rule does not apply to the holder of a license in inactive status, or a registered dietitian.

The board may waive the examination for good cause shown.

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Promulgated Under: 119.03
Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.06(C)
Prior Effective Dates: 11/30/1987, 02/09/1998

TO BE RESCINDED

4759-4-10 **Prorated initial license fee.**

For the purposes of section 4759.08 of the Revised Code, the board waives fifty per cent of the initial licensure fee if the license is only valid for the period between April first and June thirtieth.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.08(A)(1), 4759.08(D)
Prior Effective Dates: 11/30/1987, 02/09/1998, 03/15/2003

TO BE RESCINDED

4759-7-01 **Filing of complaints.**

- (A) Anyone may complain to the board alleging that a person has committed an action prohibited by Chapter 4759. of the Revised Code or the rules of the Ohio board of dietetics.
- (B) A person wishing to complain about a violation of Chapter 4759. of the Revised Code or the rules of the board, may direct a complaint to the executive secretary/executive director; except a complaint regarding the executive secretary/executive director, the staff or the board may be directed to the chairman of the board or any board member.
- (C) Upon receipt of a complaint, the executive secretary/executive director, unless the health and safety of the public otherwise requires, shall send to the complainant an acknowledgement letter, and request the complainant complete and return a complaint form.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 4759.05(B), 4759.07
Prior Effective Dates: 11/30/1987, 03/21/2008

TO BE RESCINDED

4759-8-01 **Representatives; appearances communications; applicability.**

- (A) As used in Chapter 4759-8 of the Administrative Code, "respondent" shall be defined as the person who is requesting or has requested a hearing as provided in Chapter 119. of the Revised Code.
- (B) The respondent may represent himself or may be represented by an attorney admitted to the practice of law in Ohio. If the respondent does represent himself, he shall be deemed the representative of record for purposes of Chapter 4759-8 of the Administrative Code.
- (C) The respondent is not required to personally appear at any hearing provided he has not been subpoenaed and has authorized his representative to represent him in all facets of a hearing before the board.
- (D) The respondent or his representative may present his position, arguments, or contentions in writing rather than personally appearing at any hearing provided the respondent has not been subpoenaed.
- (E) The representative of record for the respondent shall enter his appearance in writing.
- (F) The representative of record from the office of the attorney general shall enter his appearance in writing.
- (G) One who has entered an appearance as representative remains the representative of record unless and until a written withdrawal is filed with the board.
- (H) Except as otherwise provided under Chapter 119. of the Revised Code, communications from the board or its attorney hearing examiner shall be sent to the representative of record.
- (I) The members of the board shall base their decisions on any matter subject to hearing only on the evidence of record. No information acquired by a member of the board in any way other than by review of the evidence of record shall be considered by such member in that member's decision on a matter subject to hearing. The receipt of information about a matter subject to hearing outside the evidence of record shall not disqualify the member from participating in the decision on that matter unless the member excuses himself or herself from participation in the decision on the ground that he or she cannot restrict his or her decision on the matter only to the evidence of record.
- (J) Except as otherwise provided under this chapter or by statute, no attorney hearing examiner or member of the board shall initiate or consider ex parte communications

concerning a pending or impending adjudicatory proceeding. Nothing contained herein, however, shall preclude the attorney hearing examiner from nonsubstantative ex parte communications on procedural matters and matters affecting the efficient conduct of adjudicatory hearings.

- (K) The attorney hearing examiner and members of the board shall disclose on the record the source and substance of any ex parte or attempted ex parte communications. That disclosure shall be made at the earliest possible opportunity, but at least prior to deliberation on a pending or impending adjudicatory proceeding.
- (L) Except as otherwise provided under this chapter or by statute, a rule promulgated under this chapter shall apply only to those administrative proceedings for which the notice of opportunity for hearing was mailed to respondent, or his representative, on or after the effective date of the particular rule.

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Statutory Authority: 4759.05(A)
Rule Amplifies: 119, 4759.09, 4759.07(A)(1)
Prior Effective Dates: 03/15/2003

TO BE RESCINDED

4759-8-02 **Filing request for hearing.**

- (A) In order to request a hearing under Chapter 119. of the Revised Code, a respondent or his representative must, in accordance with rule 4759-8-01 of the Administrative Code, file in writing a statement requesting such adjudication hearing within thirty days of the date of mailing of the board's notice of opportunity for hearing. The date of mailing shall be the date appearing on the certified mail receipt.
- (B) A respondent or his representative properly filing a request for an adjudication hearing shall be entitled to such adjudication hearing within fifteen days but not sooner than seven days after such request has been filed unless both representatives agree otherwise or a continuance is granted pursuant to section 119.09 of the Revised Code and rule 4759-8-07 of the Administrative Code.

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Rule Amplifies: 119, 4759.09, 4759.07(A)(1)
Prior Effective Dates: 03/15/2003

TO BE RESCINDED

4759-8-03

Notice of hearings.

Notice specifying the date, time and place set for hearing shall be mailed by certified mail to the representatives as identified in rule 4759-8-01 of the Administrative Code.

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Rule Amplifies: 119, 4759.09, 4759.07(A)(1)
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TO BE RESCINDED

4759-8-04 **Authority and duties of attorney hearing examiners.**

- (A) Adjudication hearings may be conducted before the board or an attorney hearing examiner pursuant to sections 4759.07 and 4759.09 of the Revised Code. All attorney hearing examiners shall perform their duties in accordance with a current contract with the board.
- (B) All hearings shall be open to the public, but the hearing examiner or presiding board member conducting a hearing may close the hearing to the extent necessary to protect compelling interests and rights or to comply with statutory requirements. In the event the hearing is closed, the hearing examiner or presiding board member shall state the reasons therefore in the public record.
- (C) Hearings shall be conducted in such a manner as to prevent unnecessary delay, maintain order, and ensure the development of a clear and adequate record.
- (D) The authority of the attorney hearing examiner or presiding board member shall include, but not be limited to, authority to:
- (1) Administer oaths and affirmations;
 - (2) Order issuance of subpoenas and subpoenas duces tecum to require the attendance of witnesses at hearings and depositions and to require the production of evidence for hearings and depositions;
 - (3) Examine witnesses and direct witnesses to testify;
 - (4) Make rulings on the admissibility of evidence;
 - (5) Make rulings on procedural motions, whether such motions are oral or written;
 - (6) Hold prehearing and status conferences pursuant to rules 4759-8-17 and 4759-8-18 of the Administrative Code;
 - (7) Request briefs before, during or following the hearing, as well as suggested findings, orders, and conclusions of law within such time limits as the attorney hearing examiner or presiding board member may determine;
 - (8) Prepare entries, findings, orders, or reports and recommendations pursuant to rule 4749-8-15 of the Administrative Code;
 - (9) Request preparation of entries, findings, or orders;

- (10) Make rulings on requests to broadcast, record, televise or photograph the hearing;
 - (11) Take such other actions as may be necessary to accomplish the purposes of paragraph (C) of this rule;
 - (12) Determine the order in which any hearing shall proceed.
- (E) The authority of the attorney hearing examiner or presiding board member shall not include authority to:
- (1) Grant motions for dismissal of charges;
 - (2) Modify, compromise, or settle charges or allegations.
- (F) The attorney hearing examiner or presiding board member shall have such other powers, duties, and authority as are granted by statutes or rules.
- (G) If the hearing is held before an attorney hearing examiner, all rulings on evidence and motions and on any other procedural matters shall be subject to review by the board upon presentation of the proposed findings of facts and conclusions of law. When such rulings warrant, the matter may be remanded to the attorney hearing examiner.

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Prior Effective Dates: 03/15/2003

TO BE RESCINDED

4759-8-05

Consolidation.

Upon motion by any representative of record, the attorney hearing examiner or presiding board member may consolidate two or more hearings into a single hearing.

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4759-8-06 **Intervention.**

Petitions to intervene shall not be permitted.

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Rule Amplifies: 119, 4759.09, 4759.07(A)(1)
Prior Effective Dates: 03/15/2003

TO BE RESCINDED

4759-8-07 **Continuance of hearing.**

- (A) The board or the board through its attorney hearing examiner, may continue a hearing upon its own motion in order to more efficiently and effectively conduct its business unless the circumstances establish that a continuance would not serve the interest of justice.
- (B) The attorney hearing examiner or presiding board member may continue a hearing upon the motion of a representative of record.
- (C) Hearings shall not be continued upon motion by a representative unless a showing of reasonable cause and proper diligence is presented. Before granting any continuance, consideration shall be given to harm to the public which may result from delay in proceedings. In no event will a motion for a continuance by a representative, requested less than five days prior to the scheduled date of the hearing, be granted unless it is demonstrated that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a continuance.
- (D) No continuance of an adjudicatory hearing under section 4759.09 of the Revised Code shall be granted without the written agreement of the respondent or his representative and the board.
- (E) If a continuance is granted, the attorney hearing examiner or presiding board member shall immediately establish a new hearing date, unless circumstances prohibit.
- (F) Hearings shall not be continued due to the unavailability of a subpoenaed witness without approval of the attorney hearing examiner or presiding board member. The hearing record may be held open to accept a deposition in lieu of oral testimony of a subpoenaed witness. The procedures set forth in rule 4759-8-19 of the Administrative Code shall apply to any deposition taken pursuant to this rule.
- (G) No adjudication hearing shall be continued for more than ninety days for the purpose of exchanging witness or document lists to the extent provided in rule 4759-8-16 of the Administrative Code unless the board or attorney hearing examiner finds in writing that such exchange was diligently pursued but was not completed due to the unusual circumstances of the case.

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Certification

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TO BE RESCINDED

4759-8-08 **Motions.**

- (A) Except as otherwise provided under Chapter 4759-8 of the Administrative Code or Chapter 119. of the Revised Code, all motions, unless made upon the record at the hearing, shall be made in writing. A written motion shall state with particularity the relief or order sought, shall be accompanied by a memorandum setting forth the grounds therefor, and shall be filed in compliance with rule 4759-8-09 of the Administrative Code. A proposed entry may accompany any motion. All motions except those filed subsequent to the close of the hearing shall be made no later than fourteen days before the date of hearing unless express exception is granted by the attorney hearing examiner, the presiding board member, or by this chapter.
- (B) All motions, together with supporting documentation, if any, shall be served as provided in rule 4759-8-10 of the Administrative Code.
- (C) Within ten days after service of a written prehearing motion, or such other time as is fixed by the attorney hearing examiner or presiding board member, a response to that motion may be filed. A movant may reply to a response only with the permission of the attorney hearing examiner or presiding board member.
- (D) Before ruling upon a written motion, all memoranda and supporting documents filed shall be considered. A written ruling shall be entered and copies shall be issued to the representatives as identified under rule 4759-8-01 of the Administrative Code. The ruling on all oral motions made at hearing shall be included in the record except where the board or the attorney hearing examiner elects to take the motion under advisement and issue a written ruling at a later time. The attorney hearing examiner or presiding board member shall include in each written ruling on a motion a short statement of the reasons therefor.
- (E) Except as otherwise provided in this chapter or Chapter 119. of the Revised Code, rulings on all motions filed subsequent to the issuance of the report and recommendation shall be rendered by the board or, if the board is not in session, by the presiding board member acting on its behalf.

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TO BE RESCINDED

4759-8-09 **Filing.**

- (A) A document is "filed" when it is received and time stamped in the offices of the board. The burden of ensuring proper filing of the document(s) is borne by the party filing the document(s).
- (B) An original of any document required to be filed by Chapter 4731-13 of the Administrative Code shall be filed with the board not more than three days after service.
- (C) All filings shall be addressed to the board to the attention of its executive secretary/ executive director and shall contain the name, address, and telephone number of the person submitting the motion or brief and shall be appropriately captioned to indicate the name of the respondent.

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TO BE RESCINDED

4759-8-10 **Service on parties.**

- (A) Any document required by Chapter 4759-8 of the Administrative Code to be served by a representative of record may be served either personally, or by mail. Service shall be made upon the representative as identified in rule 4759-8-01 of the Administrative Code. Service is complete on the post mark date or on personal service of the document.
- (B) All motions and briefs shall contain the name, address, and telephone number of the person submitting the motion or brief and shall be appropriately captioned to indicate the name of the respondent.
- (C) A motion shall be considered by the board or its attorney hearing examiner only if a certificate of service appears on it. Any signed statement is an acceptable certificate of service so long as it contains all of the following information:
- (1) Date of service;
 - (2) Method by which service was made;
 - (3) Address where service was made; and
 - (4) Name of the person or authority who was served.

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TO BE RESCINDED

4759-8-11 **Computation and extension of time.**

- (A) The date of occurrence of the event causing time to run is not counted in the computation of any time limit under Chapter 4759-8 of the Administrative Code. The last day of the period is included in the computation of the time limit. If the last day of a period is not a regular business day, the time period runs through the end of the next regularly scheduled business day.
- (B) The board or its attorney hearing examiner may extend the time for filing or responding to motions and briefs.
- (1) Requests for extension of time shall be made in writing and filed as provided in rule 4759-8-09 of the Administrative Code prior to the expiration of any applicable time limit.
 - (2) Requests for extension of time shall be addressed to the attention of the board's executive secretary/executive director and shall be served as provided in rule 4759-8-10 of the Administrative Code.

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TO BE RESCINDED

4759-8-12 **Transcripts.**

- (A) Duplicate transcripts of the stenographic record taken of hearings may be obtained directly from the court reporter at the requestor's expense prior to receipt of the original transcript by the board.
- (B) Upon request made to the board's executive secretary/executive director, a copy of original transcripts may be reviewed at the board offices. Additional copies may be prepared at the requestor's expense.
- (C) Original transcripts shall not be removed from the board offices.

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TO BE RESCINDED

4759-8-13 **Subpoenas for purposes of hearing.**

- (A) Upon written request of either party, the board shall issue subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Each subpoena shall indicate on whose behalf the witness is required to testify. Copies of such subpoenas shall be issued to the representatives as identified in rule 4759-8-01 of the Administrative Code.
- (B) For purposes of a hearing conducted under Chapter 119. of the Revised Code, subpoena requests shall specify the name and address of the individual to be served and the date, time, and location at which they are to appear. With respect to the production of books, records and papers, such request may specify a date of compliance not more than seven days prior to hearing.
- (C) Except upon leave of the board or its attorney hearing examiner or presiding board member, subpoena requests are to be filed with the board as provided in rule 4759-8-09 of the Administrative Code at least fourteen days in advance of the requested date of compliance in order to allow sufficient time for preparation and service of the subpoenas.
- (D) In the event that the number of subpoenas requested appears to be unreasonable, the board or its attorney hearing examiner may require a showing of necessity therefore, and, in the absence of such showing, may limit the number of subpoenas. Absent such a limitation, subpoenas shall be issued within five business days of request. Failure to issue subpoenas within this time may constitute sufficient grounds for the granting of a continuance.
- (E) After the hearing has commenced, the board or its attorney hearing examiner or presiding board member may order the issuance of subpoenas for purposes of hearing to compel the attendance and testimony of witnesses and production of books, records and papers. Copies of such subpoenas shall be issued to the representatives as identified in rule 4759-8-01 of the Administrative Code.
- (F) Upon motion and for good cause, the board or its attorney hearing examiner or presiding board member may order any subpoena be quashed. Motions to quash shall be made in the manner provided in rules 4759-8-08 and 4759-8-09 of the Administrative Code, except that motions to quash shall be filed at least five days prior to the date of compliance. The non-moving party may file a response no later than four days after service of the motion to quash or at least one day prior to the date of compliance whichever is earlier. Unless a motion to quash has been granted, a witness shall attend the hearing to which he was subpoenaed. The board shall make a reasonable attempt to contact any witness whose subpoena has been quashed.

(G) Witnesses may not be subpoenaed to prehearing conferences.

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TO BE RESCINDED

4759-8-14

Mileage reimbursements and witness fees.

- (A) Mileage shall be paid in the same manner as that allowed in the court of common pleas in criminal cases in the county of hearing.
- (B) The respondent may not subpoena himself.
- (C) Mileage and witness fees shall not be paid to anyone who fails to register at the hearing for which he was subpoenaed.

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TO BE RESCINDED

4759-8-15 **Reports and recommendations.**

- (A) Within thirty days following the close of an adjudication hearing conducted by an attorney hearing examiner pursuant to Chapter 119. of the Revised Code, the attorney hearing examiner shall submit a written report setting forth proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the board. The hearing shall not be considered closed until such time as the record is complete, as determined by the attorney hearing examiner.
- (B) A copy of such written report shall be issued to the representatives of record as identified in rule 4759-8-01 of the Administrative Code. The copy issued to the respondent's representative of record shall be accompanied by notice of the date the report and recommendation is to be considered by the board.
- (C) The respondent's representative of record may, within ten days of his receipt of the attorney hearing examiner's report and recommendation, file written objections to the report and recommendation. Only those objections filed in a timely manner shall be considered by the board before approving, modifying, or disapproving the attorney hearing examiner's recommendation.
- (D) Upon written request, the board may grant extensions of the time within which to file objections. In the event that the board is not in session, the chairman of the board may grant such extensions.
- (E) The board shall consider the attorney hearing examiner's report and recommendation and any objections thereto at its next regularly scheduled meeting after the time for filing objections has passed. At that time, the board may order additional testimony to be taken or permit the introduction of further documentary evidence, or act upon the report and recommendation. For purposes of taking such additional testimony or documentary evidence, the board may remand to the attorney hearing examiner.
- (F) Any motion to reopen the hearing record for purposes of introducing newly discovered material evidence which, with reasonable diligence could not have been discovered and produced at the hearing shall be made in the manner provided in rules 4759-8-08 and 4759-8-09 of the Administrative Code. Such motion to reopen shall be filed not later than ten days prior to the scheduled consideration by the board of the attorney hearing examiner's report and recommendation and any objections thereto. If such motion is filed prior to the issuance of the attorney hearing examiner's report and recommendation, the attorney hearing examiner shall rule on the motion. If such motion is filed subsequent to the issuance of the attorney hearing examiner's report and recommendation, the board shall rule upon the motion.

- (G) Without leave of the board, the respondent or any representative of record shall not be permitted to address the board at the time of consideration of the attorney hearing examiner's report and recommendation. Any request for such leave shall be filed by motion no less than five days prior to the date the report and recommendation is to be considered by the board and shall be served upon the representative of record.
- (H) If a request to address the board is granted, the opposing representative may also address the board.

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TO BE RESCINDED

4759-8-16

Exchange of documents and witness lists.

- (A) Any representative of record may serve upon the opposing representative of record a written request for a list of both the witnesses and the documents intended to be introduced at hearing. All lists requested under this rule shall be exchanged no later than seven days prior to the commencement of the administrative hearing.
- (B) Failure without good cause to comply with paragraph (A) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

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TO BE RESCINDED

4759-8-17 **Pre-hearing conference.**

- (A) At any time prior to hearing, the attorney hearing examiner or presiding board member may direct participation by the representatives of record in a prehearing conference. Such conference may be initiated by the attorney hearing examiner, by the board, or upon motion of either representative.
- (B) Prehearing conferences may be held for the following purposes:
- (1) Identification of issues;
 - (2) Obtaining stipulations and admissions;
 - (3) Agreements limiting the number of witnesses;
 - (4) Discussion of documents, exhibits, and witness lists;
 - (5) Estimating the time necessary for hearing;
 - (6) Discussion of any other matters tending to expedite the proceedings.
- (C) All representatives of record shall attend the prehearing conference fully prepared to discuss the items enumerated in paragraph (B) of this rule.
- (D) Procedural orders may be issued by the attorney hearing examiner or presiding board member based upon information obtained at a prehearing conference.

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TO BE RESCINDED

4759-8-18

Requirements for pre-hearing exchange of information.

The hearing examiner or presiding board member shall, upon written motion of any representative of a party, issue an order setting forth a schedule by which the parties shall exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses. Any written report by an expert required to be exchanged shall set forth the opinions to which the expert will testify and the bases for such opinions. The failure of a party to produce a written report from an expert under the terms of the order shall result in the exclusion of that expert's testimony at hearing. The failure of a party to produce an exhibit under the terms of the order shall result in the exclusion of that exhibit from evidence. The failure of a party to identify a lay or expert witness under the terms of the order may result in the exclusion of that witness' testimony at hearing.

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TO BE RESCINDED

4759-8-19 **Status conference.**

With or without written motion from the representative of any party, the attorney hearing examiner or presiding board member may convene a status conference with representatives of the parties to address any matter related to preparation for hearing or the conduct of a hearing. The hearing examiner may issue such orders related to preparation for hearing and the conduct of the hearing which in the judgment of the hearing examiner facilitate the just and efficient disposition of the subject of the hearing.

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TO BE RESCINDED

4759-8-20

Depositions and transcripts of prior testimony.

(A) Upon written motion of any representative of record, and upon service of that motion to all other representatives, the attorney hearing examiner may order that the testimony of a prospective witness be taken by deposition under such conditions and terms as specified in the order and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

- (1) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; and
- (2) The testimony of the prospective witness is material; and
- (3) The testimony of the prospective witness is necessary in order to prevent a failure of justice.

In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for consideration of the motion of a representative to take a deposition.

(B) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney hearing examiner or presiding board member shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. The attorney hearing examiner has the discretion to be present at the deposition in lieu of testimony at hearing.

(C) A deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and may be offered into evidence at hearing by either representative in lieu of the prospective witness' personal appearance. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is offered as evidence at the hearing shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor.

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TO BE RESCINDED

4759-8-21

Prior action by the board.

The attorney hearing examiner or presiding board member shall admit evidence of any prior disciplinary action entered by the Ohio board of dietetics against the respondent.

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TO BE RESCINDED

4759-8-22

Stipulation of facts.

Representatives of record may, by stipulation, agree on any or all facts involved in proceedings before the attorney hearing examiner or presiding board member. Thereafter the attorney hearing examiner or presiding board member may require development of any fact deemed necessary for just adjudication.

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TO BE RESCINDED

4759-8-23 **Witnesses.**

- (A) All witnesses shall testify under oath or affirmation.
- (B) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and that legal counsel may neither examine nor cross-examine any witnesses.
- (C) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.
- (D) The presiding attorney hearing examiner or any board member, because of his duties, shall not be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or an attorney hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, board members and attorney hearing examiners shall not be competent witnesses nor subject to deposition in any adjudication proceeding. Evidence from other persons relating to the mental processes of the presiding attorney hearing examiner or board members shall not be admissible.
- (E) Any representative of record may move for a separation of witnesses. Expert witnesses shall not be separated.
- (F) Each representative of record shall inform the attorney hearing examiner or presiding board member prior to the commencement of a hearing of the identity of each potential witness for his cause present in the hearing room. Failure to so identify potential witnesses at this time may be grounds for their later disqualification as witnesses.
- (G) No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, in the discretion of the attorney hearing examiner or presiding board member, testify as to an ultimate issue of fact.

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TO BE RESCINDED

4759-8-24

Conviction of a crime.

A certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

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TO BE RESCINDED

4759-8-25

Rules of evidence.

- (A) The "Ohio Rules of Evidence" may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling.
- (B) The attorney hearing examiner or presiding board member may permit the use of electronic or photographic means for the presentation of evidence.

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TO BE RESCINDED

4759-8-26

Broadcasting and photographing administrative hearings.

If the attorney hearing examiner or presiding board member determines that broadcasting, televising, recording or taking of photographs in the hearing room would not distract participants or impair the dignity of the proceedings or otherwise materially interfere with the achievement of a fair administrative hearing, the broadcasting, televising, recording or taking of photographs during hearing proceedings open to the public may be permitted under the following conditions and upon request:

- (A) Requests for permission for the broadcasting, televising, recording or taking of photographs in the hearing room shall be made in writing to the attorney hearing examiner or presiding board member prior to the commencement of the hearing, and shall be made a part of the record of the proceedings;
- (B) Permission is expressly granted prior to commencement of the hearing in writing by the attorney hearing examiner and is made a part of the record of the proceedings;
- (C) If the permission is granted, the place or places in the hearing room where operators and equipment are to be positioned shall be specified by the attorney hearing examiner or presiding board member.
- (D) The filming, videotaping, recording or taking of photographs of witnesses who object thereto shall not be permitted.

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TO BE RESCINDED

4759-8-27 **Sexual misconduct evidence.**

In those cases where sexual misconduct has been alleged:

- (A) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's sexual activity with the offender, and only to the extent that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.
- (B) Prior to taking testimony or receiving evidence of any sexual activity of the victim, the attorney hearing examiner or presiding board member shall resolve the admissibility of the proposed evidence in a closed hearing. The victim may be represented by counsel in that hearing or other proceedings to resolve the admissibility of evidence upon approval by the attorney hearing examiner or presiding board member.
- (C) Nothing in this rule shall be construed as limiting the authority of the hearing examiner or presiding board member to close a hearing as provided paragraph (B) of rule 4759-8-04 of the Administrative Code.

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TO BE RESCINDED

4759-8-28 **Reinstatement of license.**

Any disciplinary action taken by the board pursuant to division (A) of section 4759.07 of the Revised Code which results in suspension from practice shall either lapse by its own terms or contain a written statement of the conditions under which the license may be reinstated.

Such conditions may include but are not limited to:

- (A) Submission of a written application for reinstatement;
- (B) Payment of all appropriate fees as provided in Chapter 4759. of the Revised Code;
- (C) Mental or physical examination;
- (D) Additional education or training;
- (E) Reexamination;
- (F) Practice limitations;
- (G) Participation in counseling programs;
- (H) Demonstration that applicant can resume practice in compliance with acceptable and prevailing standards.

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TO BE RESCINDED

4759-8-29 **Settlements, dismissals, and voluntary surrenders.**

- (A) Any matter which is the subject of a hearing may be settled at any time prior to the close of the hearing record. If settlement negotiations are to continue after the close of the hearing record, the representatives of record must, within ten days of the close of the hearing, jointly present the attorney hearing examiner or presiding board member with written notice specifying a period of time, not to exceed thirty days, for which the record is to be held open for purposes of negotiation. Such notice shall toll the thirty-day time period for issuance of finding of fact and conclusions of law pursuant to rule 4759-8-15 of the Administrative Code. If the attorney hearing examiner has not received appropriate written notice that a settlement agreement has been executed within the time period specified by the representatives' joint notice, the tolling of the attorney hearing examiner's thirty-day period for issuance of findings of fact and conclusions of law shall cease, no further settlement negotiations shall be undertaken, and no settlement agreement shall be executed in lieu of the issuance of a final order by the board.
- (B) Settlement shall be negotiated on behalf of the board by the probable review panel. Concurrence of the full board will be required prior to the execution of any settlement agreement containing terms not in conformity with disciplinary guidelines previously adopted.
- (C) All settlement agreements shall be in writing and shall be signed by the respondent and chairman of the board.
- The representative from the office of the attorney general and the respondent's attorney, if any, shall sign the agreement in their representative capacities.
- (D) Signed settlement agreements shall be submitted for ratification by the board.
- (E) Authorization to enter a notice of dismissal must be received from the presiding board member or chairman. Such a notice may be entered at any time prior to closing of the hearing record. If negotiations are to be continued and the hearing record has been closed, the procedures in paragraph (A) of this rule must be followed. Any notice of dismissal must be signed by the board's chairman.
- (F) In the event that the board issues an amended notice of opportunity for hearing, the original notice of opportunity for hearing is automatically superseded by the amended notice. To request a hearing pursuant to Chapter 119. of the Revised Code, the respondent must file a new hearing request in response to the amended notice of opportunity for hearing.

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TO BE RESCINDED

4759-10-01 **Definitions.**

For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

- (A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.
- (B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the agency rule addressing requirements in section 1347.15 of the Revised Code.
- (C) "Board" means the Ohio board of dietetics.
- (D) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.
- (E) "Confidential personal information" (CPI) has the meaning as defined by division (A) (1) of section 1347.15 of the Revised Code and identified by rules promulgated by the board in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the board confidential.
- (F) "Employee of the state board" means each employee of a state board regardless of whether he/she holds an elected or appointed office or position within the state board. "Employee of the state board" is limited to the specific employing state board.
- (G) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.
- (H) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.
- (I) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.
- (J) "Person" means a natural person.
- (K) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

- (L) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.
- (M) "Research" means a methodical investigation into a subject.
- (N) "Routine" means commonplace, regular, habitual, or ordinary.
- (O) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the agency for internal administrative and human resource purposes.
- (P) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.
- (Q) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

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TO BE RESCINDED

4759-10-02 **Procedures for accessing confidential personal information.**

For personal information systems, whether manual or computer systems, that contain confidential personal information, the agency shall do the following:

- (A) Criteria for accessing confidential personal information. Personal information systems of the board are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the agency to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The board shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.
- (B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:
- (1) The board will comply with any written request from an individual for a list of confidential personal information that the board keeps on that individual unless the confidential personal information relates to an investigation about the individual based upon specific statutory authority. Additionally, the board will follow rule 4759-1-03 of the Administrative Code as it relates to personal information systems and sections 1347.08 and 1347.09 of the Revised Code. Any such requests shall be reviewed by the executive director in consultation with legal counsel. All requests will be processed without undue delay with a written response to the requestor.
 - (2) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;
 - (3) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and

- (4) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.

(C) Notice of invalid access.

- (1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

"Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.

- (2) Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.
- (3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(D) Appointment of a data privacy point of contact. The board director shall designate an employee of the agency to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both the implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.

(E) Completion of a privacy impact assessment. The board director shall designate an employee of the agency to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

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4759-10-03 **Valid reasons for accessing confidential personal information.**

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system:

Performing the following functions constitute valid reasons for authorized employees of the board to access confidential personal information:

- (A) Responding to a public records request;
- (B) Responding to a request from an individual for the list of CPI the agency maintains on that individual;
- (C) Administering a constitutional provision or duty;
- (D) Administering a statutory provision or duty;
- (E) Administering an administrative rule provision or duty;
- (F) Complying with any state or federal program requirements;
- (G) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;
- (H) Auditing purposes;
- (I) Licensure or eligibility for examination processes;
- (J) Investigation or law enforcement purposes;
- (K) Administrative hearings;
- (L) Litigation, complying with an order of the court, or subpoena;
- (M) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
- (N) Complying with an executive order or policy;

(O) Complying with a board policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or

(P) Complying with a collective bargaining agreement provision.

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4759-10-04 **Confidentiality statutes.**

The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the board confidential and identify the confidential personal information within the scope of rules promulgated by this board in accordance with section 1347.15 of the Revised Code:

- (A) Social security numbers: 5 U.S.C. 552a., unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.
- (C) Medical records: Health Insurance Portability and Accountability Act, Title II 45 CFR 160, 42 USC 1320.
- (D) The Family Education Right to Privacy Act (FERPA), 20 U.S.C. 1232g.
- (E) Personal information systems, rule 4759-1-03 of the Administrative Code.
- (F) Section 149.43 of the Revised Code.

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TO BE RESCINDED

4759-10-05 Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

- (A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.
- (B) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (C) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.
- (D) Logging requirements regarding confidential personal information in existing computer systems.
 - (1) The board shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access.
 - (2) Access to confidential information is not required to be entered into the log under the following circumstances:
 - (a) The employee of the board is accessing confidential personal information for official board purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (b) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.
 - (c) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(d) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual requests confidential personal information about himself/herself.

(ii) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The board shall issue a policy that specifies the following:

(1) Who shall maintain the log;

(2) What information shall be captured in the log;

(3) How the log is to be stored; and

(4) How long information kept in the log is to be retained.

Nothing in this rule limits the board from requiring logging in any circumstance that it deems necessary.

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