



OHIO EDUCATION ASSOCIATION



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**Senate Education Committee**  
**SB 270**  
**Interested Party Testimony**  
**March 11, 2008**

Good afternoon, Chairwoman Padgett, members of the committee. My name is Michelle Francis and I represent the Ohio School Boards Association. Today I am pleased to present joint testimony with the following organizations:

The Buckeye Association of School Administrators  
The Ohio 8  
The Ohio Association of Elementary School Administrators  
The Ohio Association of Secondary School Administrators  
The Ohio Association of School Business Officials  
The Ohio Education Association  
The Ohio Federation of Teachers

Representatives from these organizations will be on hand to make comments and to answer your questions. We appreciate the opportunity to speak to you regarding SB 270 and our thoughts for issues we believe should be included in the bill.

First, we want to be clear about our support for protecting the safety and well-being of students at all times. We support the intent behind other recent legislation such as HB 79 from the 126<sup>th</sup> General Assembly and HB 190 passed by the 127<sup>th</sup> General Assembly last year. Our organizations have been proponents of legislative provisions that would prevent criminals from working in our public schools and interacting with students. We continue to want to work with you to make the laws governing school employee misconduct even stronger.

We also believe it is important to balance these protective measures with the need for due process rights for school employees who may be falsely accused of misconduct. Our positions on SB 270 reflect that intent. We also want to be sure that accountability measures for school leaders and others responsible for reporting are appropriate, fair and reasonable.

Enclosed are legislative recommendations from our eight statewide education organizations regarding school employee misconduct. You should have already received a copy with a letter dated February 12<sup>th</sup> of this year. The recommendations include our position on adjustments needed to provisions contained in previously passed HB 190, our reaction to ODE legislative recommendations that they have distributed to you and to other stakeholders, and this legislation, SB 270, currently under consideration. Since we distributed the recommendations on February 12<sup>th</sup>, we have added one additional point that we will outline in a few minutes.

I would like to review the points in our position paper briefly with you this afternoon. We will not go into detail on each item since you have already seen the information. Rather, we want to highlight the various issues that we think should be addressed in SB 270 and then leave time for your questions.

The first set of issues are **Recommendations from ODE staff with which we generally concur.** They are:

**Automatic revocation of an educator license for certain convictions.**

We agree, but believe the list of offenses should be confined to the four categories named in the current rule for the State to grant a license (OAC 3301-20-01) and as included in SB 270.

Also, to ensure adequate due process, an individual should have the opportunity to request a judicial review of the State Board's revocation.

**Provide ODE with BCII "rap back" service for licensed educators.**

We agree but urge caution that an individual's due process rights be respected. An arrest may not lead to a conviction.

**Require districts to remove teachers from the classroom upon arrest for specific offenses.**  
**Require districts to notify ODE that a teacher has been removed due to an arrest.**

We support this provision assuming the offenses are those listed in OAC 3301-20-01. Also, we support language in SB 270 that requires that the educator not be allowed to return to the classroom until the conclusion of the criminal action, but request that the prosecutor be required to notify the school district once the criminal action is completed.

Having said that, the educator should be entitled to judicial review to ensure the accuracy of the information leading to the removal and to verify identification of the individual. For example, has the person removed been misidentified, is the type of arrest accurately identified.

Additionally, it is our understanding that nothing in the proposed legislation, or current law would restrict the ability of a district to remove an educator from the school environment while it investigates allegations or awaits the actions of appropriate law enforcement authorities. We believe this discretion on the part of the district should continue.

**Provide protections for persons reporting educator misconduct.**

We support the protection of legitimate reporters. It is important that incidences of misconduct not be withheld because someone is fearful of the ramifications of reporting. However, we believe there must also be ramifications for someone who intentionally makes false accusations.

**Require ODE access to Public Children Services Agencies (PCSA) information.**

We agree with this provision with the caveat that the PCSA case should be completed before the information is passed on to the Department of Education to avoid duplication of efforts. This would not prohibit school districts from taking action in a given situation as they see fit as under current law.

The second set of issues involves **Additional Recommendations from the Eight Education Organizations that should be a part of SB 270** not included in the ODE list. They are:

**Clarify provisions in HB 190 regarding “contractors” and other non-licensed employees.**

There has been confusion over this issue since the passage of HB 190. We believe the law should be amended to require employees of private contractors providing certain services to school districts to undergo a criminal records check if they will have unsupervised access to children while working in schools. We are aware of the fact that amendment language has been drafted to address this issue.

**Clarification is needed on required notification.**

The notification requirement in HB 190 is vague. We strongly believe that any required reporting or penalties in the context of educator misconduct be based on the same standard articulated in current law concerning report of abuse or neglect. Under current law, the duty to report abuse or neglect is based on actual knowledge or a reasonable cause to suspect abuse or neglect based on a reasonable person standard.

**Due process and convictions overturned**

We strongly support the provision in SB 270 that establishes a process for licensure reinstatement if an individual is proven not guilty after being convicted of a crime leading to automatic licensure revocation. We also suggest some enhancements to this provision as outlined in our legislative recommendations.

**Civil Immunity Expansion**

Civil immunity should be expanded to school employees who report alleged school employee misconduct to the superintendent, or designee, of a school district. SB 270 only provides civil immunity to individuals who report alleged misconduct to the state board or superintendent of public instruction. This protection is necessary because the January 29, 2008 “Final Educator Standards Board Draft” of the “Licensure Code of Professional Conduct for the Ohio Educators” includes the following language in Section 3, titled “Accurate Reporting”:

“An educator must report, to the superintendent or designee, conduct by a licensed educator that substantially impairs his or her ability to function professionally or any conduct that is detrimental to the health, safety, and welfare of students.”

Since educators will be required to make mandatory reports of misconduct to their superintendent or designee, this line of reporting should receive the same civil immunity protections that exist for other lines of reporting alleged misconduct.

**Specific Technical Changes to HB 190**

We suggest that SB 270 amend Ohio Revised Code (ORC) section 3319.39 (H) to allow districts to request assistance in conducting criminal records checks under the new provisions for all substitute employees, not just substitute teachers. Also, ORC 3319.391(A) should be amended to include a specific date of the year for subsequent criminal records checks.

**ODE Website Clarifications**

While it may not be necessary to address this issue with legislation, school districts have reported problems with the ODE website that provides information to the public about school employee misconduct offenses. For example, our organizations believe the current web-based listing of licensed individuals who have committed offenses misrepresents which districts, if any, actually employed the individual at the time of the offense or subsequent to the offense. Our position document outlines the problems we have encountered and changes to the website we think are necessary.

The next set of issues deals with **Recommendations from ODE staff with which we DO NOT concur**. They are:

**Provide statutory permission that certain sealed convictions are a matter of public record and that the sealing/expungement of conviction records shall have no effect on disciplinary actions.**

We do not oppose the portion of this recommendation that clarifies ODE's authority to review sealed or expunged records when disciplining an educator. However, we strongly object to the request that the State Board's deliberation records that disclose information in the court's previously expunged or sealed conviction records become public information.

Additionally, SB 270 as currently written, expands this section of law allowing ODE to review and take action on anything in the expunged record, whether the information in the record is related to the position or not. We do not support this expansion of authority.

**Give the Department of Education access to the Ohio Law Enforcement Gateway (OLEG).**

We have concerns about this recommendation and are aware of the fact that amendment language has been drafted to change this provision in the as introduced version of SB 270. If adopted, we believe that access should be restricted to the Office of Professional Conduct, and that there should be penalties for abuse of access to this information.

**Provide statutory permission for the State Board of Education to impose disciplinary actions based upon a judicial finding that a person holding a license is eligible for intervention in lieu of conviction program, diversion program, or a first time offender's program.**

Adding this provision calls into question the fair treatment of an individual in these circumstances, raising the question of whether or not our legal system really does value the principle of "innocent until proven guilty."

If this provision were to be adopted, we have concerns about the as-introduced version of SB 270 that states that the state board may take action against a license upon a finding of "eligibility for intervention in lieu of conviction" (3319.31(B)(3)). This language is too broad and should be changed to require that an individual "agree to participate in an intervention in lieu program," not just become eligible to participate. The individual may choose not to participate and opt for letting the court process play out.

This position does not preclude school districts from taking action to remove an individual from the classroom as under current law.

This concludes our formal testimony. Tom Ash from the Buckeye Association of School Administrator, Matt Dotson from the Ohio Education Association and Darold Johnson from the Ohio Federation of Teachers will make brief comments, and then we are prepared to address your questions.

We appreciate your work on this important issue and we thank you for considering our recommendations.