



LEGAL BRIEFS

by Julia A. Bauer, staff attorney

New laws clarify requirements for criminal record checks

Substitute House Bill (HB) 190 and Substitute HB 428, both enacted within the last year, have changed the way school districts operate with regard to criminal record checks and employee misconduct. Implementing these changes has led to many questions.

As a resource for our members, OSBA developed a tool kit that

includes links to the bills, analysis, FAQs, reporting forms and other items that will help your district sort out its responsibilities under the new laws. Below are a few frequently asked questions about criminal record checks. More questions and answers are available on the OSBA Web site at www.osba-ohio.org/misconduct.htm.

What if we still don't have a criminal record check back from BCII?

Ohio Revised Code section (RC) 3319.391 directed school districts and ESCs to "request a criminal record check" by Sept. 5, 2008, for nonlicensed employees hired before Nov. 14, 2007. The statute did not mandate that a completed report from the Bureau of Criminal Identification and Investigation (BCII) and FBI be in hand by Sept. 5.

I know we can hire employees while a background check is pending, but can we pay them?

Yes. RC 3319.39(E) permits districts to employ individuals while a background check is pending. This authority allows you to pay the employee.

One of our custodians was hired in the 1980s, before criminal record checks were required. His background check came back with a conviction for drug trafficking under RC 2925.03. What do I do?

RC 3319.391 requires districts to release employees from employment who have been convicted of offenses listed in RC 3319.39(B)(1), unless the person

Administrative salary analysis

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- compensation/classification system design
- job description creation/modification
- performance evaluation system design

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meets the rehabilitation criteria adopted by the State Board of Education.

Drug trafficking is a disqualifying offense under RC 3319.39(B)(1). The current rehabilitation criteria, listed in Ohio Administrative Code section (OAC) 3301-20-01, do not apply to a person convicted of drug trafficking. Therefore, the employee must be released from employment. Before acting to release such an employee, boards should consult with board counsel to ensure the information in the report is correct and determine how to properly release the employee.

May we require criminal record checks of volunteers?

Ohio law does not require

criminal record checks for most volunteers. However, school boards may require them by policy. If the volunteer will have unsupervised access to a child on a regular basis, the district is required to notify the volunteer that fingerprints and a criminal record check may be conducted at any time (RC 109.575).

If the school district does conduct a criminal record check on volunteers, it must determine whether the volunteer was convicted of, or pleaded guilty to, an offense listed in RC 109.572(A)(1). If the volunteer was convicted or pleaded guilty and the district decides to accept or retain the volunteer, the district must notify parents that the person has a conviction listed in the statute, but will still be

accepted or retained as a volunteer (RC 109.576).

Do volunteer coaches need criminal record checks?

As explained in the previous question, Ohio law does not require volunteers to obtain criminal record checks.

However, the Ohio High School Athletic Association requires volunteer coaches to hold pupil activity permits (Bylaw 6-1-2). The Ohio Department of Education requires pupil activity permit applicants to submit to a criminal record check (RC 3319.303; OAC 3301-27-01). Therefore, if the volunteer coaches in your district have pupil activity permits, they need to have criminal record checks prior to obtaining or renewing the permit.