

The evolution of teacher/educator/employee misconduct legislation **by: Michelle Francis, OSBA legislative specialist**

In February 2005, former Rep. **Tom Raga** (R-Mason) introduced House Bill (HB) 79 to address teacher misconduct reporting. Three years, four pieces of legislation and a code of conduct later, the General Assembly is still trying to tackle the issue. Through this short period of time, the issue has even experienced a name change. In the beginning it was referred to as “teacher” misconduct, but as legislation was expanded to include all school employees, it is now referred to as “employee” misconduct. So, pull up a chair and settle in to find out how we got here and what will happen next in the never-ending saga of “employee” misconduct legislation.

HB 79 (126th General Assembly)

HB 79 was passed in December 2006 during the lame-duck session of the 126th General Assembly after sitting in Conference Committee for more than a year. The bill became effective in March 2007 and included several provisions regarding reporting of misconduct, criminal records checks and placement of investigation reports.

The bill primarily required school districts and educational services centers to report misconduct of individuals licensed by the State Board of Education to the Ohio Department of Education (ODE) for further investigation. The legislation required *boards* to report misconduct of licensed individuals in four situations:

- (1) If they know an employee pleaded guilty to, was convicted of, or was found eligible for intervention in lieu of conviction for certain offenses (offenses that are bars to licensure (RC 3319.31(B)(2)); and offenses that are bars to employment (RC 3319.39(B)(1)). See [ODE's Matrix](#) for a list of these offenses.
- (2) If the board or superintendent reasonably determines that the employee either (a) committed any of the listed offenses or (b) committed an act “unbecoming the teaching profession” and the board or superintendent has taken an adverse employment action against the employee (including termination or nonrenewal).
- (3) If an employee resigns under threat of termination or nonrenewal because the board or superintendent reasonably determines the person committed any of the listed offenses or an act “unbecoming the teaching profession.”
- (4) If an employee resigns because of an investigation into whether the employee committed any of the listed offense or an act “unbecoming the teaching profession.”

For more information on misconduct reporting, see OSBA's [Misconduct Reporting FAQ](#).

Even though HB 79 became effective over a year ago, it is still not clear what “conduct unbecoming to the teaching profession” means. The legislation directed the State Board to define the term by administrative rule for purposes of the reporting requirement. However, to date no rules have been filed. Prior to the passage of HB 79, the State Board used the same term “conduct unbecoming” in OAC 3301-73-21 (includes crimes or misconduct that involves minors, school children, academic fraud, or the school community, making false statements on licensing documents, certain crimes and violating a consent agreement). Instead of adopting a clear definition for the term by administrative rule, the State Board adopted a policy statement, the Licensure Code of Professional Conduct for Ohio Educators (LCPCOE), which includes examples of “conduct unbecoming.” At this point, the definition of this term lacks clarity, and therefore it is not clear what should or should not be reported. ODE is currently revising its rules to comply with HB 428, and a new definition may be part of these rules.

The legislation also required districts and education service centers to keep reports of misconduct in the employee's personnel file. If ODE decides not to take action on the individual's license, the report must be taken out of the employee's personnel file and moved to a separate public file. However, it is important to note that regardless of where the report of misconduct is kept, the report of misconduct itself is still a public record.

HB 79 also required criminal records checks for individuals licensed by the State Board prior to renewing an educator license, certificate or permit. It required criminal records checks every five years for any person teaching under a professional teaching certificate or permanent teaching certificate. For more specific information on the criminal records checks, see the OSBA chart [Criminal Records Check Requirements](#) and OSBA's [Criminal Records Check FAQ](#).

Even though HB 79 became effective in March 2007, it wasn't too long before the General Assembly decided to re-visit the issue of misconduct after a series of articles in the *Columbus Dispatch* questioned the effectiveness of the disciplinary system for teachers.

HB 190 (127th General Assembly)

HB 190 was originally introduced in April 2007 by Rep. **Cliff Hite** (R-Findlay) to make changes to elementary achievement testing. Because the bill was moving quickly through the legislative process, several amendments were added to the legislation in the Senate Education Committee to address concerns raised in the series of articles in the *Columbus Dispatch*. The bill became effective in November 2007.

HB 190 extended the criminal records check requirement to all school employees who were not included in HB 79 but licensed by ODE and nonlicensed school employees (excluding van and bus drivers). ODE established Sept. 5, 2008 as the deadline for requesting the initial criminal records checks and the legislation requires additional checks every five years thereafter. For more specific information on the criminal records checks, see the OSBA chart [Criminal Records Check Requirements](#) and OSBA's [Criminal Records Check FAQ](#). HB 190 also directed schools to release from employment those nonlicensed employees who are found to have committed certain offenses. See [RC 3319.39\(B\)\(1\) offenses](#).

The bill also required private contractors hired by districts to complete criminal records checks on their employees who work in schools. There was much debate over this provision and its overly broad application. Language to clarify this provision was included in HB 428, the most recent piece of employee misconduct legislation and will be discussed later.

HB 190 also directed the Educator Standards Board to recommend a code of conduct for educators and disciplinary actions for inappropriate conduct to the State Board. As mentioned earlier, the State Board adopted the LCPCOE in March as a policy statement. Click to view a copy of the [LCPCOE](#) and the [ODE Professional Conduct FAQ](#).

HB 428 (127th General Assembly)

Even though the General Assembly just passed HB 190 in November 2007, additional legislation to address employee misconduct was introduced in January 2008 in both the House and the Senate: HB 428, sponsored by Rep. **Arlene Setzer** (R-Vandalia), and Senate Bill (SB) 270, sponsored by Sen. **Gary Cates** (R-West Chester). Even though the bills were identical, the legislature chose HB 428 as the vehicle for the latest round of employee misconduct changes. The bill was signed by the governor on June 12 and will become effective Sept. 12.

HB 428 requires the State Board to deny or automatically revoke the license of any educator who commits one of more than 80 offenses. The bill also will require school districts to remove an employee from the classroom if he or she is arrested for certain offenses. While there is some overlap, the offenses are different for licensed and nonlicensed employees. It also permanently bars school bus drivers from employment if they plead guilty to or are convicted of the same disqualifying offenses as licensed employees, regardless of rehabilitation

standards. See the [RC 3319.31\(C\) offenses](#) for licensed employees and bus drivers. See the [RC 3319.39\(B\)\(1\) offenses](#) for nonlicensed employees.

Under the bill, the ODE will have access to the Retained Applicant Fingerprint Database. The database is compiled and maintained by the Ohio Bureau of Criminal Identification and Investigation (BCII) and is sometimes referred to as “rap back”. It contains the fingerprints of individuals on whom BCII has conducted criminal records checks. This enables BCII to cross-reference arrests with fingerprints in the database. BCII will notify ODE if licensed educators are arrested or convicted. Presumably, ODE will then notify the school district when it receives such information.

The legislation also includes corrective language regarding criminal records checks for private contractors. Under HB 428, only contractors who are providing essential school services, as defined by the school’s superintendent, and who are routinely interacting with or have regular responsibility for children, will be required to have criminal records checks. An alternative to the criminal records check requirement for these contractors would be to have a school employee in the same room as the children, or if outdoors, within a 30-yard radius of the children.

HB 428 also sets an annual deadline of Sept. 5 for employers to *initiate* criminal records checks for their employees who are due for their regular five-year check. This provision only applies to nonlicensed employees who are not bus drivers. The bill also removes the five-year timeframe, established in HB 79, for criminal records checks for professional certificate holders so that now the records check must be submitted by a date to be set by the State Board.

HB 428 also changes who is responsible for reporting misconduct to ODE and includes penalties for failing to report the misconduct. Under HB 79, as mentioned earlier, the duty to report was on the board of education and there was no penalty for failure to report. However, HB 428, shifts the duty to report to the superintendent for school employees other than the superintendent or treasurer. The board president must report misconduct of either the superintendent or treasurer. Under HB 428, the new penalties for failing to report can be anywhere from a fourth degree misdemeanor for knowingly failing to make a required report, to as high as a first-degree misdemeanor under certain circumstances.

The act provides civil immunity for individuals who make good-faith reports about licensed educators, but also establishes civil and criminal penalties for individuals who knowingly make false reports of alleged misconduct. For more information on misconduct reporting, see OSBA’s [Misconduct Reporting FAQ](#). For more detailed information on HB 428, please see the [HB 428 Legislative LowDown](#).

OSBA was at the table in the beginning in 2005 when the misconduct discussion originally began with former Rep. Raga and we were still at the table when the latest round of employee misconduct legislation was passed. Throughout the entire process, we participated in interested-party meetings, met with legislators and presented joint testimony with other education organizations. We advocated for the safety and well-being of students at all times, while balancing the need for due process rights for school employees who may be falsely accused of misconduct. We also ensured that accountability measures for school leaders and others responsible for reporting are appropriate, fair and reasonable.

After three years, four pieces of legislation and a code of conduct later, its understandable to be confused as to the obligations under the new employee misconduct laws. However, it is more important now than ever that schools and administrators understand their obligations.

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