

# The OSBA

## Legislative LowDown

Legislative implementation assistance from the Ohio School Boards Association

---

### House Bill (HB) 428 127<sup>th</sup> General Assembly

- Brief:** School employee misconduct
- Chief sponsor:** Rep. Arlene Setzer (R-Vandalia)
- Signed by governor:** June 12, 2008
- Effective date:** Sept. 12, 2008
- Revised Code Sections:** Ohio Revised Code Sections (RC): Amends RC 109.57, 2953.33, 3313.31, 3314.03, 3314.19, 3319.01, 3319.20, 3319.291, 3319.302, 3319.304, 3319.31, 3319.311, 3319.313, 3319.314, 3319.39, 3319.391, 3319.52, 3319.99, 3326.11, 3326.23, 3327.10, 5126.253, 5126.254, 5126.99, and 5153.176. Enacts RC 3314.101, 3314.40, 3314.401, 3314.402, 3314.403, 3314.41, 3314.99, 3319.292, 3319.316, 3319.317, 3319.392, 3319.40, 3326.081, 3326.24, 3326.241, 3326.242, 3326.243, 3326.25, 3326.99, and 5153.99.
- Major provisions:** **Criminal records checks**
- Requires the Ohio Department of Education (ODE) to participate in receiving notifications through the Bureau of Criminal Identification and Investigation's (BCII) Retained Applicant Fingerprint Database (“rap back”) of the arrest or conviction of licensed educators. The database 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. See OSBA’s [Criminal Records Check FAQ](#).
- Narrows the requirements for employees of private contractors working in schools to undergo criminal records checks. Under the bill, 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. Click here to see the [Criminal Records Check Requirements](#).
- Designates Sept. 5 each year as the deadline for school districts, educational service centers (ESCs), community schools, and science, technology, engineering and math (STEM) schools to request criminal records checks for their employees

who are due for their regular five-year criminal records check. This only applies to nonlicensed employees who are not bus drivers.

Permits an ESC, upon request, to assist local school districts in its territory in conducting criminal records checks for substitute nonteaching employees of the district. This is in addition to substitute teachers, as in current law.

Eliminates the requirement for adult education instructors who do not have unsupervised access to children to undergo FBI criminal records checks if, within the previous five-year period, they continuously resided in Ohio or had an FBI check.

Requires ODE to inactivate a professional or permanent teaching certificate if the certificate holder fails to submit to a criminal records check.

Eliminates the five-year timeframe for holders of a professional teaching certificate to submit to a criminal records check after the certificate was issued or renewed. The bill simply states that professional certificate holders must submit the documents for a records check by a date to be set by the State Board of Education.

Requires the sponsor of each community school and the governing body of each STEM school to provide annual assurances to ODE that the school has conducted periodic criminal records checks of its employees who are not licensed by the State Board and are not bus drivers.

### **Discipline for criminal activity**

Requires the State Board to automatically revoke or deny an educator license, without an administrative hearing, if the person is convicted of, pleads guilty to, or is found guilty of one of more than 80 criminal offenses. *See the [RC 3319.31\(C\) offenses](#) for automatic revocation.*

Requires schools districts to remove an employee from the classroom if he or she is arrested for certain offenses. The bill specifies that if an employee of a school district, ESC, community school or STEM school is arrested or indicted for any of the offenses; the employee must be suspended from all duties involving the care, custody or control of a child during the criminal action. Even though this requirement applies to all licensed and nonlicensed employees and there is some overlap, the lists of offenses are different for licensed and nonlicensed employees. *See the [RC 3319.31\(C\) offenses](#) for licensed employees. See the [RC 3319.39\(B\)\(1\) offenses](#) for nonlicensed employees.*

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](#).*

Authorizes the State Board to take an action against a licensee or a license applicant based on eligibility for intervention in lieu of conviction or on an agreement for a pre-trial diversion program.

Requires prosecutors to notify the State Board if a licensee or a school employee is eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program.

Requires superintendents (or board of education presidents in certain situations) to report to the superintendent of public instruction when a school employee who is licensed by the State Board is eligible for intervention in lieu of conviction or has agreed to a pre-trial diversion program.

Permits the State Board and ODE to question a licensee or license applicant about an offense committed or alleged to have been committed by that person, the record of which has been sealed or expunged, without demonstrating that the question bears a “direct or substantial relationship” to the person’s license or position.

### **Reporting of employee misconduct**

Changes the description of who is responsible for reporting misconduct of licensed educators to ODE, from entities to individuals and designates the persons responsible for reporting. Currently, the reporting entity is the board of education and the bill would change this by designating the superintendent. If the superintendent or treasurer is the employee who must be reported, the president of the board of education must make the report. *See the [Table of Designated Reporters](#).*

Requires the chief administrator of a community school to report specified misconduct by a licensed educator employed by the school's operator and working in the school.

Establishes criminal penalties (fourth-degree misdemeanor generally and first-degree misdemeanor in some cases) for designated reporters who knowingly fail to file a required report of misconduct by a licensed educator.

Authorizes the State Board of Education to deny, limit, suspend, or revoke the educator license of a designated reporter who fails to file a required report of misconduct by another licensed educator.

Provides civil immunity to people who make good-faith reports about misconduct by school employees.

Makes it a first-degree misdemeanor for a school employee (1) to knowingly make a false report of misconduct by another person employed by the same employer or (2) to knowingly cause certain designated school officials to make a false report of that person's misconduct to ODE or the State Board.

Makes it a first-degree misdemeanor for any person to knowingly make a false report directly to ODE or the State Board alleging misconduct by a school employee.

Requires a person who knowingly makes a false report of misconduct to pay attorney's fees in a successful civil action brought by the subject of the false report or to pay restitution to the subject of the false report if the subject is charged with a crime based on the false report and acquitted.