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Misconduct reporting

This fact sheet is designed to address the most frequently asked questions about misconduct reporting in Ohio. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

What are the new reporting requirements?

House Bill (HB) 79 of the 126th General Assembly required boards of education to report misconduct in four situations (Ohio Revised Code (RC) 3319.313). Under HB 79, the duty was on the board of education and there was no penalty for failure to report. HB 428, effective Sept. 12, 2008, shifted the reporting duty to the superintendent for misconduct involving school employees other than the superintendent or treasurer. The board president must report misconduct of either the superintendent or treasurer. The bill also established new penalties for failure to report and penalties for false reporting, which are detailed below.

What conduct do we have to report?

HB 428 did not change the four situations in which reporting is required. RC 3319.313 requires superintendents (and board presidents if the act is committed by the superintendent or treasurer) to report misconduct in the following circumstances:

- If he or she knows an employee pleaded guilty to, has been found guilty by a jury or a court of, was convicted of, was found eligible for intervention in lieu of conviction, or opted for a pre-trial diversion program for certain offenses listed in RC 3319.31(B)(2) or (C) and RC 3319.39(B)(1).
- If the board or superintendent reasonably determines that the person either committed one of the RC 3319.31(B)(2) or (C) or RC 3319.39(B)(1) offenses or committed an act unbecoming to the teaching profession and the board or superintendent has terminated or nonrenewed the person, or initiated either proceeding.
- If an employee resigned under threat of termination or nonrenewal because the board or superintendent reasonably determined the person committed one of the RC 3319.31(B)(2) or (C) or RC 3319.39(B)(1) offenses or an act unbecoming to the teaching profession.
- If an employee resigned because of or in the course of an investigation into whether the employee committed a RC 3319.31(B)(2) or (C) or RC 3319.39(B)(1) offense or an act unbecoming to the teaching profession.

What information must be reported?

Boards must report the name and social security number of the employee about whom the information is being reported and a factual statement regarding the circumstances why the board is reporting. This should include a citation to the listed offense or the facts and circumstances surrounding the conduct unbecoming to the teaching profession.

To whom do we send the report?

ODE has developed a reporting form that is available on its Web site and is also available on OSBA's Web site. The form contains the address to mail the form: Ohio Department of Education, Office of Professional Conduct, 25 South Front Street, Mail Stop 104, Columbus, OH 43215. The fax number to fax the form to is (614) 995-3752. If you have questions about the form or reporting, contact the

Office of Professional Conduct at (614) 466-5638.

What are the penalties for failure to report?

It is a fourth-degree misdemeanor to knowingly fail to make a required report. The crime is heightened to a first-degree misdemeanor if the required report involved a physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of a child and that, between the date of the failure to report and the subsequent conviction for failure to report, the employee again inflicts on any child any physical or mental wound, injury, disability, or condition of a nature that constitutes abuse or neglect of a child (RC 3319.313(F) and 3319.99(C)).

What if I'm not sure whether or not to report an incident?

It is a crime to fail to report and you have immunity if you report in good faith. It is better to err on the side of caution and report or consult your board's attorney for legal advice on specific situations.

What other reporting obligations do school employees have?

It is a crime to knowingly fail to report that a felony is occurring or has occurred. RC 2921.22 requires any person to report such felony to the authorities. Failure to do so is a misdemeanor of the fourth degree.

It is also a crime to fail to report suspected child abuse for certain mandatory reporters (RC 2151.421). Mandatory reporters include: health care professionals, licensed school psychologists, speech pathologists and audiologists, school teachers, school employees and school authorities. The failure to report can be either a fourth- or first-degree misdemeanor.

Can I find out who made a report about me to ODE?

If a person is not a mandated reporter (the superintendent or the board president), the name of the person who reported in good faith is confidential and will not be released (RC 3319.311(G)). Individuals who make good-faith reports are immune from liability for doing so.

What if a person makes a false report to the superintendent, or his or her designee?

It is a first-degree misdemeanor to knowingly make a false report to the district's superintendent, or his or her designee (RC 3319.317(B)(1)). It is also a first-degree misdemeanor to knowingly cause the superintendent, or his or her designee to make a false report (RC 3319.317(B)(2)). If a person is convicted of making a false report, he or she may be held liable for attorneys' fees and restitution to the victim of the false report.

What happens if someone makes a false report to ODE?

It is a first-degree misdemeanor for a person to knowingly make a false report to ODE alleging misconduct by an employee of a public school. If a person makes a false report and is convicted of doing so, they may be held responsible for attorneys' fees and may be ordered to pay restitution to the person on whom they reported (RC 3319.311(H)).

How can I avoid a defamation claim when I'm reporting?

Remember, the truth is always a defense to a defamation claim. If you stick to the facts, and report in good faith, you should be fine. RC 3319.313(G) grants civil immunity to a reporter who acts in good faith. Reporting officials should ensure that they are reporting in an accurate manner. Where allegations are made of activities that fall into gray areas, where no crime has been committed or no credible witnesses are available, officials should seek the counsel of their board's attorney to determine whether they have a duty to report the misconduct and what the report should contain.

If we report misconduct of a licensed employee, can we wait for ODE to revoke their license rather than initiate termination proceedings locally?

Perhaps. Districts are encouraged to handle disciplinary matters at the local level. Any reporting requirements must be fulfilled, and licensure discipline may occur, but it should be viewed as a process parallel to local discipline, not instead of local discipline.

If an individual commits an automatic revocation offense, the State Board must revoke their license. For those individuals who are licensed, revocation of their license presumably will allow the district to terminate them. The law does not specifically provide for the employment consequence of automatic licensure revocation.

What is "conduct unbecoming the teaching profession"?

The law explicitly requires the State Board of Education to define "conduct unbecoming the teaching profession." To date, no rules implementing 3319.313 have been filed. The State Board uses the same term "conduct unbecoming" in OAC 3301-73-21 (includes crimes or misconduct that involves minors or school children, academic fraud, or the school community, making false statements on licensing documents, certain crimes and violating a consent agreement). The term also is used in the State Board's policy statement, The Licensure Code of Professional Conduct for Educators (LCPCOE). At this point, it is not clear what should or should not be reported. Boards

are advised to err on the side of reporting when unsure about what action to take, or to consult board counsel for specific advice.

Are reports of misconduct public records?

The law regarding the placement of misconduct reports perpetuates a myth that the location of a record determines its status with regard to the Ohio Public Records Act. RC 3319.314 requires that a copy of the report filed with ODE be placed in the employee's personnel file. After the investigation, 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.

Presumably, if ODE takes some licensure action, the report may remain in the employee's file. The important thing to understand is that a report of misconduct is a public record, regardless of where the file is kept.

What is the educator's code of conduct?

HB 190 charged the Educator Standards Board with recommending a code of conduct for educators to the State Board of Education. The directive required the Educator Standards Board to describe inappropriate conduct and the disciplinary actions that will be taken as a result of violating the code. The board was given only three months to come up with the code.

The LCPCOE applies to all persons licensed by ODE, including coaches, substitutes, administrators, treasurers and teachers. It sets out the behaviors and acts that could subject an educator to discipline by ODE, and the range of disciplinary actions available for a violation, ranging from a letter of admonishment to a permanent revocation of an educator's license.

Do we have to report things in it?

It depends. The LCPCOE requires reporting of: "conduct that substantially impairs an educator's ability to function professionally in his or her position, or any conduct that is detrimental to the health,

safety, and welfare of students." Educators will have to use their best judgment to determine whether the misconduct they witness meets this standard.

The LCPCOE standard requires educators to report "to the superintendent or his or her designee" any conduct that they witness that meets this standard. The Office of Professional Conduct has taken the position that this means reporting to the district superintendent, not the superintendent of public instruction. Under this interpretation, the only time an educator must report directly to ODE would be in the RC 3319.313 situations.

It is a violation of the LCPCOE to fail to make a report mandated by state or federal law, including reporting misconduct under RC 3319.313.

What is the difference between misconduct reporting under RC 3319.313 and LCPCOE reporting?

The reporting requirement in RC 3319.313 applies only when certain employment action is taken because of misconduct or an employee is convicted of certain crimes. Failure to report any of the four statutory situations can result in criminal penalties and is also an offense under the LCPCOE. The LCPCOE "substantially impairs" standard is broader than the four situations. The penalty for failure to report under the LCPCOE is possible discipline by ODE of the educator who failed to report's license.

Can we change the reporting requirements by collective bargaining?

No. The reporting requirements and the status of reports as public records prevail over any conflicting provisions of a collective bargaining agreement entered into after the effective date of HB 79, March 30, 2007 (RC 3319.315). Future collective bargaining agreements that contain limitations on the district's ability to make the required reports cannot be enforced. Districts also may not bargain away their duty to obtain criminal records checks on their employees.