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**TEACHERS IN TROUBLE: LICENSURE, PROSECUTION AND TERMINATION©**

***Introduction***

Certain situations of teacher misconduct may lead to suspension or revocation of a teacher's license by the State Board of Education ("SBE"), as well as suspension, nonrenewal or termination by a local board of education. *See* Ohio Revised Code 3319.31 and Ohio Revised Code 3319.16.

SBE has a mandatory obligation to revoke a teacher's license where there is a conviction or guilty plea related to certain criminal offenses, noted below. In addition, SBE has discretionary authority to suspend or revoke a teacher's license in other cases of teacher misconduct, noted below.

A local board of education has independent authority to nonrenew, suspend or terminate a teacher's contract for the same misconduct that leads to a license suspension or revocation. *Id.* And, of course, in matters concerning violations of criminal law, law enforcement authorities can and do act independently to bring charges to arrest and, where appropriate, bring charges against and seek convictions of teaching employees for engaging in certain illegal activities. The issue of who acts first, SBE to suspend or revoke the license, the law enforcement authorities to arrest,

indict and then seek a conviction or a local board to suspend or terminate the teacher's contract, is mostly a matter of who has information about the teacher's misconduct first, where the investigations are focused and who acts first.

While a local school board has the obligation to report certain specific teacher misconduct to SBE, it may proceed with its own investigation and initiate the process of suspension, nonrenewal or termination without waiting for SBE (or a prosecutor, in the case of criminal misconduct) to complete its investigation and take action.

1. School Board Action Required Where License Revocation by SBE is Discretionary or Mandatory

1.1. Reporting Teacher Misconduct

1.1.1. Reporting Obligations (How a Local School Board Gets Involved in the SBE Process)

Under Ohio Revised Code 3319.313, a superintendent must report a licensed employee's misconduct to the State Superintendent of Public Instruction if the local school board or superintendent knows that the employee has been convicted of or pleaded guilty to a crime that would disqualify the employee from either employment under Ohio Revised Code 3319.39 or licensure under Ohio Revised Code 3319.31, and so requiring mandatory license revocation. A report is also required if the local school board has initiated termination or nonrenewal proceedings or has terminated or nonrenewed a licensed employee based on a reasonable determination that the employee has committed an act unbecoming to the teaching profession or an offense that would disqualify the employee from employment or licensure. The local superintendent must also file a report if the employee resigns under a threatened termination or nonrenewal, or because of or during the course of an investigation into whether the employee has committed such an act. Ohio Revised Code 3319.313

1.1.2. Reporting Child Abuse

Under Ohio Revised Code 2151.421, a variety of persons whose duties bring them into contact with children are expressly required to report immediately instances of suspected child abuse or neglect, including teachers, school employees and school administrators.

The duty to report arises when any such person “knows or has reasonable cause to suspect based on facts that would cause a reasonable person to suspect” that a child under eighteen or a physically or mentally disabled person under twenty-one “has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect.”

The report of suspected child abuse or neglect must be made immediately by telephone or in person, to be followed up with a written report, to the public children services agency, or a municipal or county peace officer in the county where the child resides or where the abuse or neglect occurred. Persons required to make the report may also arrange for color photographs to be taken of “areas of trauma visible on a child” and, if medically indicated, for x-rays.

Failure of a school employee to make the report is a fourth degree misdemeanor. In addition to possible criminal penalties, a person with a duty to report but who fails to report suspected abuse or neglect is liable for civil compensatory and exemplary damages to the child. Notably, an Ohio appellate court upheld a principal’s termination for failure to report a student on student sexual assault as suspected child abuse. *Crenshaw v. Columbus CSD Board of Education*, 2008 WL 80278 (10<sup>th</sup> Dist. 2008), appeal not allowed, 119 Ohio St. 3d 1446 (2008).

### 1.1.3. Acts Unbecoming to Teachers

The licensure code of professional conduct of Ohio educators adopted by SBE lists a multitude of acts that constitute “conduct unbecoming to the teaching profession” in eight different categories: 1) professional behavior in general, 2) professional relationships with students, 3) accurate reporting of information submitted to government entities or to the board of education (including reasons for leaves of absence), 4) criminal acts, 5) confidentiality violations, 6) drug, alcohol and tobacco-related violations, 7) improper acceptance of compensation for self-

promotion or personal gain, and 8) improper abandonment of or refusal to perform contractual obligations. *See* OAC 3301-73-21(B)

#### 1.1.4. Failure to Report

A superintendent's failure to make a required report is itself grounds for SBE to take action against the superintendent's license. A knowing failure to make a required report is a fourth-degree misdemeanor, rising to first-degree misdemeanor if the basis for requiring that a report be submitted is for child abuse or neglect and additional abuse or neglect occurs after the obligation to report arose. A good faith report to the superintendent of public instruction entitles the reporter to civil immunity while knowingly false reports may lead to civil and criminal penalties. Ohio Revised Code 3319.313

#### 1.15. Filing Requirement

The report should be submitted to the superintendent of public instruction and include the employee's name and social security number and a factual statement regarding the conditions that led to the report. The local school board must maintain, in the employee's personnel file, the reports of any investigation it makes into whether an employee has committed an act requiring a report to the State Department. If after investigation the superintendent of public instruction determines not to initiate any action against the employee's license the report must be removed from the personnel file to a separate public file. Ohio Revised Code 3319.314

#### 1.1.6. Confidentiality and Immunity

A school employee or other person who in good faith reports information about a license holder's misconduct to SBE is entitled to confidentiality and is immune from civil liability that might otherwise be imposed as a result of providing that information. Ohio Revised Code 3319.313.

A school employee, who in good faith reports misconduct to his or her superintendent or designee is also entitled to civil immunity, but the statute does not guaranty confidentiality. However, knowingly making a false report alleging misconduct is a first degree misdemeanor. In addition to criminal sanctions, a knowingly false report can result in civil

liability and the maker of the report may be additionally liable for attorneys' fees and restitution of any attorneys' fees incurred in defending against the false report. *Id.*

## 1.2. Local School Board Action Independent of SBE

As a practical matter, local school boards are usually the first to become aware of teacher misconduct that may lead to license suspension or revocation and may have initiated their own suspension, nonrenewal or termination proceedings even before the SBE investigations begin. Indeed, local school boards must take their own separate action to suspend, nonrenew or terminate a teaching contract if license revocation is an issue, whether before or after SBE action. As noted, local school boards have no obligation to wait for SBE to complete its investigation and take action (or for the criminal process to be completed) if they have facts and evidence to support termination (suspension or nonrenewal) of a teacher's contract.

### 1.2.1. Suspension of Teachers

The Ohio Revised Code does not provide for suspension of a teacher as an ordinary disciplinary measure in the absence of a collective bargaining agreement allowing it. This is in direct contrast to laws governing non-teaching employees which provide for short-term disciplinary suspensions in both civil service and non-civil service districts.

The absence of a provision permitting boards to suspend teachers without pay has led to mixed results in the courts. See *Stewart v. Margaret Local Board of Education*, 1981 WL 5839 (6<sup>th</sup> Dist. 1981) (holding that ORC. 3319.16 provides for suspension only during the pendency of a termination procedure); *Rowland v. Mad River Local School District*, No. C-3-75-125 (S.D. Ohio 1978) (holding that a disciplinary suspension without instigation of termination proceedings is permissible). Suspension of a teacher with pay may likely be used as a disciplinary measure having the same basic effect as the issuance of a reprimand because it does not deprive the teacher of pay or position.

### 1.2.2. Pre-Suspension Hearing (Where Discretionary or Mandatory License Revocation Possible)

However, a local school board may suspend a teacher pending final action to terminate the teacher's contract if in the board's judgment the character of the charges warrants such action under Ohio Revised Code 3319.16. Since the standard under Ohio Revised Code 3319.16 is now "good and just cause," it is likely that any of the events that permit SBE to revoke a license (be they mandatory or discretionary, including conduct unbecoming to a teacher) will meet the "good and just cause" standard as long as there is evidence to support the misconduct. The statutes impose no requirements of notice and reasons in such a suspension action. Ohio Revised Code 3319.40 and Ohio Revised Code 3319.16

However, the U.S. Supreme Court's decision in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487 (1985) requiring a pretermination hearing as a matter of constitutional due process for the discharge of a public employee clearly suggests that a hearing is required before a suspension without pay. The prudent course, accordingly, where a teacher's misconduct is at a level that allows SBE to revoke the license as a discretionary matter and where a local board determines to suspend a contract prior to its own termination hearing, is to provide a pre-suspension hearing, notice of the charges, an explanation of the evidence, and an opportunity to respond. Such action will satisfy the due process requirements, as *Loudermill* does not require a full evidentiary hearing or the appointment of a neutral hearing officer in a pre-disciplinary context.

### 1.2.3. No Pre-Suspension Hearing Required

No pre-suspension hearing is required when the suspension is based on the employee's arrest and charge or indictment for a felony. Ohio Revised Code 3319.40 Nor is there an opportunity for a post-suspension hearing, although such suspension under Ohio Revised Code 3319.40 is intended to simply remove the teacher from student interaction (possibly by re-assignment). If pay is to be withheld, the *Loudermill* rule of pre-suspension hearing notice of the charges, explanation of evidence and an opportunity to respond is strongly recommended.

Disciplinary procedures incorporated in a collective bargaining agreement including procedures for the suspension of teachers as a separate disciplinary action unrelated to

termination of a valid contract, are enforceable by virtue of the contract prevailing over state law provision of Ohio's Collective Bargaining Law, Ohio Revised Code Section 4117.10(A).

### 1.3. Termination

#### 1.3.1. Teacher/Administrator Terminations

Under Ohio Revised Code Section 3319.16, a board of education may terminate the contract of a teacher, a superintendent or other administrator at any time for "good and just cause" regardless of whether the contract is continuing, limited or extended limited. The "good and just cause" standard for teacher terminations prevails over any conflicting standard found in collective bargaining agreements entered into after October 2009. The same statute applies by reference to administrators' contracts. See Ohio Revised Code Sections 3319.01 and 3319.02.

Prior to the change in the law in 2009 (2009 H.B. 1), the teacher termination statute was more explicit in identifying reasons for terminating a teacher's contract, specifying gross inefficiency, immorality, and willful and persistent violations of reasonable board regulations as grounds for termination along with "other good and just cause". Ohio courts decided a number of cases interpreting each of these statutory grounds for termination that may be instructive in coming to understand the reach of the current "other good and just cause" standard. See *Giering v. Parma Board of Education*, 1979 WL 209972 (8<sup>th</sup> Dist. 1979) (gross inefficiency requires proof of serious deficiencies and teaching performance far below that normally and reasonably expected in the district); *Duncan v. Greenhills Forest Park City School District Board of Education*, 1985 WL 9287 (1<sup>st</sup> Dist. 1985) (upholding termination of tenured teacher convicted of crime of public indecency where there was a showing that he conduct involved adversely affects fitness to teach); *Crenshaw v. Columbus CSD Board of Education*, 2008-Ohio-1424, 2008 WL 802708 (10<sup>th</sup> Dist.), discretionary appeal not allowed, 2008-Ohio-4487, 2008 Ohio App. LEXIS 2415 (other good and just cause found for termination of principal who failed to report as child abuse a student-on-student sexual assault).

However, the older rulings do not provide an iron-clad guarantee that termination based on similar acts or omissions will be upheld in the future. Teacher and administrator terminations are decided on a case by case basis. Decisions often turn on the reliability of the

evidence that specific conduct occurred rather than on the nature of the conduct itself. Moreover, termination cases often involve multiple derelictions rather than a single act, and in such cases, the decisions typically do not indicate whether any one dereliction by itself would justify termination.

Presumably, situations that require mandatory license revocation will rise to the level of “good and just cause”. Such situations should lead a local board of education to immediately meet its reporting requirements and initiate termination proceedings.

Similarly, situations that lead to discretionary license revocation will likely meet the “good and just cause” standard. Once a license is revoked or suspended, it seems that an attempt by a board to ruin employment of the teacher by termination or nonrenewal should prove successful.

In addition, Ohio Revised Code Section 3319.16 expressly states that the commission of sexual battery in violation of Ohio Revised Code Section 2907.03(A)(7) is grounds for termination of a teacher’s contract.

#### 1.4. Termination Procedure

The termination of a teacher or administrator for cause is a serious matter and the statutes mandate various procedural safeguards including a requirement for specific written charges, a hearing and an opportunity for the employee to appear in her or his defense. The procedure is provided in Ohio Revised Code Sections 3319.16 and 3319.161.

One Ohio court held that the due-process procedures need not be followed where a teacher has a disqualifying criminal conviction and the State has revoked his license. *Huntsman v. Perry Local School District Board of Education*, 2005-Ohio-3294, 2005 WL 1519344 (5<sup>th</sup> Dist.) discretionary appeal not allowed, 107 Ohio St. 3d 1424, 2005-Ohio-6124, 837 N.E. 2d 1209

##### 1.4.1. Teacher and Administrator Terminations/Summary of Steps

The following steps must be followed to terminate a continuing, extended limited or limited contract and term:



1.4.1.1. Person receives informal hearing before administrator prior to any action on termination by Board if contract is to be suspended while the termination is pending. That informal hearing should be preceded by a sharing with the affected employee of at least a summary of the evidence against her/him and an opportunity, during the informal hearing, for the employee to explain why the evidence is without substantiation or insufficient to support the proposed suspension,

1.4.1.2. If the termination concerns conviction of a statutorily specified crime or conduct unbecoming to the teaching profession, the Superintendent (or in some circumstances, the Board President), must notify SBE,

1.4.1.3. After enacting resolution Board sends written notice to person of intent to consider termination. Such notice shall contain the full specification of the grounds for such consideration,

1.4.1.4. Within 10 days after receipt of notice, person may file with Treasurer written demand for a hearing before the Board or a Referee,

1.4.1.5. If a person does not request a hearing 10 days after person's receipt of notice from the Board, Board may formally votes to terminate by vote of majority, and

1.4.1.6. If person does request a hearing, Board sets time frame for hearing which must be within 30 days of Board's receipt of person's demand for hearing and must give the person and state superintendent 20 days' notice of hearing, provided such day is not during the summer vacation.

#### 1.5. Nonrenewal of Teacher (Administrator/Contracts)

Nonrenewal of teachers (administrators) for the same reasons as discussed, offers timing challenges. First, a teacher (or administrator) has the right to serve out the term of his or her contract before a nonrenewal is effective. Depending on the conduct and how much time will lapse before the current contract term expires, this may not be acceptable to the local board. Also, nonrenewals are, by law, tied to performance evaluations which, now, must be completed by May 1 and reports issued by May 10. (Ohio Revised Code 3319.11 and 3319.111) Further,

evaluations are required by law to contain performance expectations and specific recommendations for improvement, a process that may be moot where the conduct may lead to license revocation. (Ohio Revised Code 3319.111) Nevertheless, the advantage of proceeding with a nonrenewal is that a hearing is not required prior to the Board acting on the nonrenewal. However, unless a different result has been reached through collective bargaining, the affected teacher is entitled to a post-nonrenewal hearing in front of the same board that accepted the recommendation for nonrenewal.

If a local board determines to nonrenew a teacher's contract for conduct that may lead to license revocation, it is required to follow all of the statutory requirements for a nonrenewal, including completing proper timely evaluations, submitting reports and giving notice of such nonrenewal prior to June 1. (Ohio Revised Code. 3319.11)

## 2. Specific Details About License Revocation by SBE (Discretionary and Mandatory)

### 2.1. Discretionary Revocation or Suspension of Certificate or License, Generally (Non-Criminal Behavior)

Under Ohio Revised Code 3319.31, SBE may refuse to issue or may limit, suspend, or revoke an educator license, whether the license is current or expired, for behavior that does not rise to the level of criminal behavior. Such behavior includes engaging in an immoral act, incompetence, negligence or conduct unbecoming to the person's position. Conduct that is unbecoming to the person's position is described in rules adopted by SBE. *See* Section 1.1.2 above.

Several courts have required a showing of a nexus between the teacher's conduct and duties before terminating a teacher's contract or revoking a teaching license. *See Freisthler v. State Board of Ed.* (3rd Dist., 2002) 2002 WL 31114955, unreported; *Winters v. State Bd. of Ed.*, (7<sup>th</sup> Dist. 1995); *Duncan v. Greenhills Forest Park City School District Board of Education*, 1985 WL 9287 (1<sup>st</sup> Dist. 1985). *Wells v. Madison LSD Board of Education*, 1985 WL 7682 (12<sup>th</sup> Dist. 1985).

Case law suggests a nexus exists where, for example, there is evidence of public indecency, *Hoffman v. State Board of Ed.* (8<sup>th</sup> Dist., 2001), 145 Ohio App. 3d 3992, 763 N.E. 2d

210; a fraud or misrepresentation, *Hayman v. Ohio State Board of Education*, 2011-Ohio-6499 (6<sup>th</sup> Dist.); accessing nude images on a school computer, *Robinson v. Ohio Department of Education*, 2012-Ohio-1982, 971 N.E. 2d 977 (2d Dist.); inappropriate email messages on a school computer, *Williams v. Ohio Department of Education*, 2011 Ohio App. 3d 6615 (4<sup>th</sup> Dist.); failure to appropriately supervise students and violent behavior, *Kellough v. Ohio State Board of Education*, 2011-Ohio-431 (10<sup>th</sup> Dist.)

#### 2.1.1. Duty of State Board

Before acting under Ohio Revised Code 3319.31, SBE must notify the person of the charges and provide an opportunity for a hearing under Ohio Revised Code Chapter 119. In assessing the level of discipline, SBE is required to give considerable deference to the findings and recommendations of the hearing officer. The superintendent of public instruction on behalf of SBE may enter into a consent agreement with any person against whom action is being taken under 3319.31. No surrender of a license is effective until accepted by SBE unless the surrender is pursuant to a consent decree.

A court reviewing an SBE order must review the record and determine if SBE's order is based on reliable, probative and substantial evidence. If so, the court must defer and not simply substitute its judgment for that of the board. However, a court may reverse SBE's order if it contradicts the manifest weight of evidence in the record.

#### 2.1.3. Other Reasons for SBE to Revoke a License (Or for a Local Board to take Action)

##### 2.1.3.1 Disclosure of Test Questions by Teacher to Students

Under Ohio Revised Code 3319.151, on finding after an investigation that a licensed employee revealed to a student any specific question known to be part of a state required achievement assessment or otherwise assisting a student to cheat on such a test, SBE must suspend the license for one year.

## 2.2. Discretionary License Revocation by SBE for Certain Types of Criminal Behavior

SBE has the discretion to initiate a license suspension or revocation or limitation for any felony offense, offense of violence, theft offense or drug offense other than a minor misdemeanor that is not listed as an event on the mandatory revocation list. As with the mandatory revocations eligibility for “intervention in lieu of conviction” or a pretrial diversion program for any specified crime also triggers SBE’s discretion to initiate proceedings. If SBE decides to take action based on a crime giving it discretionary license revocation authority, the usual due process procedures under Ohio Revised Code 3319.311 apply, *i.e.*, notice and an opportunity for a hearing.

A variety of reporting requirements ensure that SBE will receive notification of a license holder’s criminal conduct including mandatory reports from the school’s chief administrator and the prosecutor on the case and from the Bureau of Criminal Identification and Investigation.

## 2.3. Mandatory License Revocation by SBE for Specific Criminal Conduct

SBE is required, under Ohio Revised Code 3319.31, to revoke a teacher’s existing or expired license and refuse to issue or renew a license on application, for any person who has been convicted of or found guilty by a court or a jury or pled guilty to a number of specified crimes. Mandatory revocation and refusal to issue or renew a license also applies to a teacher who has been found eligible for “intervention in lieu of conviction” or a pretrial diversion program for any of the specified crimes. SBE may designate the revocation authority to the superintendent of public instruction. Local school board action to terminate a contract is still required and may occur before or after SBE action.

### 2.3.1. List of Offenses Requiring a Mandatory Revocation

The list of offenses requiring mandatory license revocation or nonissuance is extensive and includes: murder, manslaughter, reckless homicide, felonious and aggravated assault, kidnapping, abduction, extortion, various weapon offenses, various child abuse and endangerment offenses, arson, extortion, terrorism-related offenses, various theft offenses,

several incitement and riot offenses, unlawful abortion, intimidation, retaliation, escape, a panoply of sexually oriented offenses and a wide variety of drug trafficking offenses. Practitioners should consult Ohio Revised Code 3319.31 for the exact list of crimes. SBE action is required for substantially similar crimes that have been committed in jurisdictions outside Ohio.

### 2.3.2. Effective Immediately

License revocation for the specified offenses noted above is mandatory, does not require investigation and is effective immediately. The teacher has no rights to administrative hearing and SBE's action is not subject to appeal. If the conviction, guilty plea or finding of guilt is subsequently overturned, SBE must initiate proceedings to reconsider the license revocation or denial within 30 days after receiving notification of the reversal. SBE must determine whether, notwithstanding the overturned conviction, the person committed the criminal act in question. SBE must offer the former license holder or applicant an adjudication hearing but need not apply criminal procedures at the hearing. Instead, SBE may base its decision on the grounds and evidentiary standards it employs for other licensure adjudications. The former license holder or applicant may appeal SBE's decision to court.

## 3. Suspension of License by SBE

### 3.1. Child Support Payments in Default

The suspension of an educator's license may be required when the holder of the license has been determined to be in default of his or her legal obligation to pay child support. When a court or child support agency has made a final determination to such effect, it must notify the license holder and inform him or her of the potential loss of licensure which may result from continued nonpayment. If the court or enforcement agency notifies SBE of such nonpayment (which it may do at any time), SBE must suspend all licenses held by the individual and refuse any application for new licenses or renewals. The educator's licensure privileges will be reinstated when SBE receives notification from the court or enforcement agency indicating that the teacher has made the required payments that the arrearage is being collected through

wage withholding, or that a new or modified child support order is in effect and the teacher is in compliance with such order.

When a license is suspended for default on child support payments, a local school may suspend the teacher's contract, but notice and a hearing is required if such suspension is to be without pay (See *Loudermill*,) 470 U.S. 532, 105 S.Ct 1487 (1985).

### 3.2. Willful Misreporting of Data

SBE is authorized but not required to suspend or revoke the license of any educator found to have willfully reported erroneous, inaccurate or incomplete data for use by the Education Management Information System (EMIS) under Ohio Revised Code 3301.0714(N).

### 3.3. Termination of Contract by Teacher

Any teacher, who without the consent of the local board of education, terminates his or her contract with such board after July 10 of any school year, or during the school year, may have his or her educator's license suspended for not more than one year upon complaint by the employing board and investigation by SBE. If a teacher wishes to voluntarily terminate his or her contract, he or she must provide five (5) days' written notice to the employing board; and the failure to provide such notice may also result in a one year suspension of the teacher's license.

## 4. SBE Investigations Related to License Revocation

SBE, or superintendent of public instruction on its behalf, is authorized by ORC 3319.311 to investigate any information about a person that reasonably appears to be a basis for action under ORC 3319.31. Any information obtained during an investigation is confidential and expressly not a public record under ORC 149.43. If no action is taken within two years after completion of an investigation, all records of the investigation must be expunged.

The superintendent of public instruction is to review the results of each investigation and determine, on behalf of SBE, whether action under ORC 3319.31 is warranted. He is to advise SBE of his determination at a meeting of the board. Within fourteen days of the

next meeting of the board, any board member may ask that the question of initiating action under ORC 3319.31 be placed on the board's agenda for that next meeting. Prior to initiating such action against a person, the person's name and any other personally identifiable information must remain confidential.

Before acting under ORC 3319.31, the State Superintendent of Public Instruction must notify the person of the charges and provide an opportunity for hearing.

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# Licensure Code of Professional Conduct for Ohio Educators



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Adopted March 11, 2008, State Board of Education

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## Licensure Code of Professional Conduct for Ohio Educators

Educators are entrusted by the public with the responsibility of providing a high-quality education to every student. Through various roles, these professionals devote themselves to providing a safe and nurturing environment in which all students can learn. In alignment with the *Standards for Ohio Educators* and the *Ohio Academic Content Standards for Students*, our state's educators strive for excellence through high expectations that they hold for themselves and their students. The professional conduct of every educator affects attitudes toward the profession. Educators are trustees of the profession and share with the broader community the responsibility of providing high-quality public education.

Aware of the importance of maintaining the confidence and trust of students, parents, colleagues, and the public, Ohio educators maintain the highest degree of professional conduct for themselves and their peers. The *Licensure Code of Professional Conduct for Ohio Educators* serves as the basis for decisions on issues pertaining to licensure that are consistent with applicable law, and provides a guide for conduct in situations that have professional implications for all individuals licensed by the State Board of Education, such as teachers, principals, superintendents, and other persons serving schools (e.g., school nurses, coaches, substitute teachers).

Ohio is nationally known as a state that produces high-quality educators and recognizes that its 250,000 practicing educators hold the fundamental beliefs defined in the following eight principles:

1. Educators behave in a professional manner, realizing that one's actions reflect directly on the status and substance of the profession.
2. Educators maintain a professional relationship with all students at all times, both in and outside the classroom.
3. Educators accurately report information required by the local board of education or governing board, state education agency, federal agency or state or federal law.
4. Educators adhere to federal, state and local laws and statutes regarding criminal activity.
5. Educators comply with state and federal laws related to maintaining confidential information.
6. Educators serve as positive role models and do not use, possess or unlawfully distribute illegal or unauthorized drugs.
7. Educators ensure that school property, public funds or fees paid by students or the community are used in the best interest of students and not for personal gain.
8. Educators fulfill all of the terms and obligations in their employment contract.

As education is a public trust, the Ohio Department of Education pursues allegations of unprofessional conduct. By law, educators are entitled to all due process rights, with each circumstance considered on a case-by-case basis to determine appropriate action. The *Licensure Code of Professional Conduct for Ohio Educators* includes the presumptive range of applicable disciplinary actions involving any individual licensed by the State Board of Education.

## 1. Professional Behavior

Educators shall behave as professionals realizing that their actions reflect directly on the status and substance of the education profession.

*An educator serves as a positive role model to both students and adults and is responsible for preserving the dignity and integrity of the teaching profession and for practicing the profession according to the highest ethical standards.*

**Conduct unbecoming** to the profession includes, but is not limited to, the following actions:

- a) Failing to adhere to the *Licensure Code of Professional Conduct for Ohio Educators*.
- b) Committing any violation of state or federal laws, statutes, or rules, although the conduct may not have resulted in a criminal charge, indictment, prosecution or conviction. (This does not include traffic violations.)
- c) Disparaging a colleague, peer or other school personnel while working in a professional setting (e.g., teaching, coaching, supervising, or conferencing) on the basis of race or ethnicity, socioeconomic status, gender, national origin, sexual orientation, political or religious affiliation, physical characteristics, age, disability or English language proficiency.
- d) Failing to complete a criminal background check as required by state or federal law.
- e) Violating local, state or federal procedures related to the security of standardized tests, test supplies or resources.
- f) Being disciplined by another state educational entity or other professional licensing board or entity for unethical conduct.
- g) Using technology to intentionally host or post improper or inappropriate material that could reasonably be accessed by the school community.

*The disciplinary actions for violations of Principle 1 can be found on Page 8.*

## 2. Professional Relationship with Students

Educators shall maintain a professional relationship with all students at all times, both in and out of the classroom.

*An educator's responsibility includes nurturing the intellectual, physical, emotional, social, and civic potential of all students and providing a safe environment free from harassment, intimidation and criminal activity. An educator creates, supports, and maintains an appropriate learning environment for all students and fulfills the roles of trusted confidante, mentor and advocate for students' rights. An educator must serve as a champion against child abuse and be cognizant of student behaviors that suggest abuse or neglect.*

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) Committing any act of sexual abuse of a student or minor or engaging in inappropriate sexual conduct with a student or minor.
- b) Committing an act of cruelty to children or an act of child endangerment (e.g., physical abuse, mental injury, or emotional abuse).
- c) Soliciting, encouraging, engaging or consummating an inappropriate relationship with a student or minor.
- d) Disparaging a student on the basis of race or ethnicity, socioeconomic status, gender, national origin, sexual orientation, political or religious affiliation, physical characteristics, academic or athletic performance, disability or English language proficiency.
- e) Using inappropriate language, gestures or signs at any school-related activity such as racial slurs, biased, lewd or lascivious expressions.
- f) Provoking an altercation between students, or provoking or engaging in a physical altercation with students, that is not for the

purpose of ensuring the health, safety, and welfare of students.

- g) Failing to provide appropriate supervision of students, within the scope of the educator's official capacity, which risks the health, safety, and welfare of students or others in the school community.
- h) Knowingly contributing to or knowingly failing to intervene in the harassment, intimidation or bullying of a student.
- i) Using technology to promote inappropriate communications with students.

*The disciplinary action for violations of Principle 2 can be found on Page 8.*

### 3. Accurate Reporting

**Educators shall accurately report information required by the local board of education or governing board, state education agency, federal agency or state or federal law.**

***An educator communicates appropriate representation of facts concerning qualifications for professional practice, student information, school board policy, and other educational matters. 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.***

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) Falsifying, intentionally misrepresenting, willfully omitting or being negligent in reporting information submitted to federal, state, and other governmental agencies such as professional qualifications, criminal history and information submitted in the course of an official inquiry or investigation,

college or professional development credit and/or degrees, academic awards, and employment history when applying for employment and/or licensure, or when recommending an individual for employment, promotion or licensure.

- b) Falsifying, intentionally misrepresenting, willfully omitting or being negligent in reporting reasons for absences or leaves.
- c) Falsifying, intentionally misrepresenting, willfully omitting or being negligent in reporting information regarding the evaluation of students and/or personnel.
- d) Intentionally failing to report to superintendent or designee 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.
- e) Intentionally failing to make a mandated report of any violation of state or federal law.

*The disciplinary actions for violations of Principle 3 can be found on Page 8.*

### 4. Criminal Acts

**Educators shall adhere to federal, state and local laws and statutes.**

***An educator shall not engage in criminal activity as evidenced by a criminal conviction, guilty plea, finding of guilt, or participation in a court-ordered diversion or treatment in lieu of conviction program.***

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) A criminal offense that is an offense of violence, theft, drug abuse, or sexually-oriented offense as defined in Ohio Administrative Rule 3301-20-01 (e.g., murder, rape, drug trafficking, kidnapping, robbery, felonious assault).

- b) A criminal offense that requires an educator to meet the rehabilitation standards as defined in Ohio Administrative Code Rule 3301-20-01 (e.g., assault, passing bad checks, fraud, domestic violence, possession of drugs).
- c) A criminal offense that is not identified as an absolute bar offense or offense requiring rehabilitation pursuant to Ohio Administrative Code Rule 3301-20-01, and the offense involves a student, a minor or an offense involving a school district or school personnel.
- d) Conveying or possessing a deadly weapon or dangerous ordnance in a school safety zone, on school premises or at a school-related activity, unless authorized by state or federal law.
- e) A criminal offense that is not identified as an absolute bar offense or offense requiring rehabilitation pursuant to Ohio Administrative Code Rule 3301-20-01, and the offense does not involve a student, a minor, a school district or school personnel. (This does not include traffic violations.)

*The disciplinary actions for violations of Principle 4 can be found on Page 8 and 9.*

## 5. Confidentiality

**Educators shall comply with state and federal laws related to maintaining confidential information.**

***An educator is entrusted with information that could be misused to embarrass or damage a student's reputation or relationship with others. Therefore, the educator has the responsibility to keep information about students confidential unless disclosure serves professional purposes, affects the health, safety, and welfare of students and others, is required by law, or parental permission has been given. An educator maintains the security of confidential information such as academic and disciplinary records, personal confidences, photographs, health and medical information, family status and/or income.***

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) Willfully or knowingly violating any student confidentiality required by federal or state laws, including publishing, providing access to, or altering confidential student information on district or public Web sites such as grades, personal information, photographs, disciplinary actions, or individual educational plans (IEPs) without parental consent or consent of students 18 years of age and older.
- b) Using confidential student, family, or school-related information in a non-professional way (e.g., gossip, malicious talk or disparagement).

*The disciplinary actions for violations of Principle 5 can be found on Page 9.*

## 6. Use, Possession, or Unlawful Distribution of Alcohol, Drugs and Tobacco

Educators shall not use, possess or unlawfully distribute illegal or unauthorized drugs. Educators shall not use alcohol during any school activity involving students, minors or underage persons. Educators shall not use tobacco during any school activity except in a designated area. Educators shall not furnish, provide or encourage students or underage persons to use, possess or unlawfully distribute alcohol, tobacco, illegal or unauthorized drugs.

*An educator is entrusted with protecting the health, safety, and welfare of students at any school event. The use of alcohol, illegal or unauthorized drugs causes impairment of professional judgment that may potentially harm others. A professional educator must serve as a positive role model and refrain from the illegal use of tobacco on any school grounds or at any school activity.*

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) Being under the influence of, possessing, using or consuming illegal or unauthorized drugs.
- b) Being on school premises in an official capacity (e.g., teaching, coaching, supervising, or conferencing) or at any school activity involving students, minors or underage persons while under the influence, possessing, or consuming alcoholic beverages.
- c) Furnishing or providing tobacco, alcohol or illegal/unauthorized drugs to any student, minor or underage person.
- d) Being on school premises or at any school activity involving students, minors or underage persons while using tobacco except in a designated area.

- e) Promoting the use of steroids, stimulants, or nutritional supplements to accelerate physical growth or contribute to the control of weight loss or weight gain to enhance physical performance.

*The disciplinary actions for violations of Principle 6 can be found on Page 9.*

## 7. Accepting Compensation for Self Promotion or Personal Gain

Educators shall ensure that school property, public funds or fees paid by students or the community are not used for personal gain. Educators shall not make decisions based upon gifts, gratuities, favors or the socioeconomic status of parents, family members, community members or businesses.

*An educator is entrusted with public funds and school property in the course of performing job duties and maintains a high level of honesty, accuracy and accountability to ensure that institutional privileges are not used for personal gain. An educator maintains integrity with students, colleagues, parents, families, community or businesses when accepting gifts, gratuities or favors. To avoid bias or prejudice, an educator needs to ensure that decisions made about students or school policy are not negatively influenced by the socioeconomic status of parents, family members, community members or businesses.*

**Conduct unbecoming** includes, but is not limited to, the following actions:

- a) Soliciting students or parents of students to purchase equipment, supplies, or services or to participate in activities that financially benefit the educator without notifying the superintendent or designee and/or not in accordance with local board policy.

- b) Accepting gifts from vendors or potential vendors for personal use or gain exceeding \$25.00 in value.
- c) Tutoring students in one's district for profit without notifying the superintendent or designee and/or not in accordance with local board policy.
- d) Coaching and/or promoting athletic or artistic camps, off-season leagues, etc. in one's district for profit without notifying the superintendent or designee and/or not in accordance with local board policy.
- e) Failing to account for funds related to school activities collected from students, parents, family members, community members, staff or peers in accordance with local board policy.
- f) Co-mingling public or school-related funds with personal funds or checking accounts.
- g) Submitting fraudulent requests for reimbursement of expenses.

*The disciplinary actions for violations of Principle 7 can be found on Page 9.*

## 8. Commitment to Contract

**Educators shall fulfill all of the terms and obligations detailed in their employment contract with the local board of education or educational agency for the duration of the contract.**

***An educator knows and understands the rights and responsibilities as outlined in the employment contract and adheres to the terms and conditions of the agreement by fulfilling responsibilities and duties required of the position.***

Conduct unbecoming includes, but is not limited to, the following actions:

- a) Abandoning the contractual agreement for professional services without prior release from the contract by the Board of Education or designee according to Ohio Revised Code 3319.15.
- b) Willfully refusing to perform services and duties required by the contract except as outlined in the Ohio Revised Code Chapter 4117.
- c) Violating or interfering with due process as outlined in the contractual agreement.

*The disciplinary actions for violations of Principle 8 can be found on Page 9.*

## DISCIPLINARY/DUE PROCESS

The State Board of Education has the authority to suspend, limit, revoke or deny licenses; issue a letter of admonishment; or enter into a consent agreement with an applicant or licensed educator, to administer the educator discipline process in accordance with Chapter 33 and Chapter 119 of the Ohio Revised Code and Chapter 3301 of the Ohio Administrative Code. When an educator is reported to the Ohio Department of Education (ODE) for an allegation of unprofessional conduct made by a principal, parent, teacher, student, superintendent, or community member, the department will determine whether the State Board of Education has jurisdiction to investigate the matter pursuant to Section 3319.311 of the Ohio Revised Code.

If it is determined that an investigation is warranted, a thorough investigation would be conducted pursuant to Section 3319.311 of the Ohio Revised Code at which time **all mitigating circumstances will be fully examined to determine whether the allegation can be substantiated**. If an allegation is reported and it turns out to be a false allegation or unsubstantiated, all the information obtained in the case file will be sealed two years after the investigation is concluded in accordance with Section 3319.311 of the Ohio Revised Code. If the results of an investigation warrant initiating an action under Section 3319.31 of the Ohio Revised Code, **an educator is entitled to all due process rights** afforded pursuant to Chapter 33 and Chapter 119 of the Ohio Revised Code and Chapter 3301 of the Ohio Administrative Code.

## DISCIPLINARY GUIDELINES

Upon a determination that the results of an investigation warrant the State Board of Education to impose a disciplinary action pursuant to Section 3319.31 of the Ohio Revised Code, the State Board may impose an appropriate penalty within the presumptive range on a **case by case basis** as set forth in these disciplinary guidelines unless the aggravating and mitigating factors in an individual case warrant a penalty outside the presumptive range.

The range of disciplinary actions are presumptions and may include a letter of admonishment, consent agreement, limitation of a license, suspension of a license, revocation of a license, or denial of a license. The terms “suspension,” “revocation,” and “denial” shall mean any length of suspension, revocation or denial, including permanent revocation or permanent denial. A license may be suspended or limited pursuant to a consent agreement or State Board resolution. A complete explanation of the types of disciplinary actions can be accessed through the Department of Education’s Web site, [education.ohio.gov](http://education.ohio.gov), search keywords *disciplinary actions*.

The State Board may determine that a penalty outside the range of the disciplinary guidelines is more appropriate in an individual case based upon aggravating and mitigating factors as outlined in Sections 3301-73-21 (A) (B) and Section 3301-20-01 (E) of the Ohio Administrative Code, or any other factors the State Board, district or educational entity, or superintendent consider relevant. Further, the State Board may determine not to impose a disciplinary action involving an educator’s licensure or application for licensure based upon a local school district or educational entity appropriately addressing the violation of the *Licensure Code of Professional Conduct for Ohio Educators* at the district or building level.

**The *Licensure Code of Professional Conduct for Ohio Educators* applies to all individuals licensed by the Ohio Department of Education.** The presumptive ranges are only applicable for disciplinary actions involving an educator's licensure or application for licensure. The presumptive ranges are not applicable for any discipline imposed at the local level. Possible discipline at the local level must follow all local contractual provisions, including but not limited to due process, progressive discipline, and just cause. However, an educator who violates one or more of the principles may be subject to discipline at both the state level and local level.

Following are the disciplinary actions, including a presumptive range of penalties, that shall apply to violations of the *Licensure Code of Professional Conduct for Ohio Educators*.

## **DISCIPLINARY ACTIONS**

### **1. Professional Behavior**

**Educators shall behave as professionals realizing that their actions reflect directly on the status and substance of the education profession.**

**If an educator violates Principle 1,** the presumption for the appropriate range of disciplinary action is the following:

- i. Suspension (1 day to 1 year) of a license depending upon the violation of the testing procedure;
- ii. Suspension of a license until the educator comes into compliance with the required background checks;
- iii. Letter of admonishment up to revocation/denial of a license for other acts unbecoming to the professional conduct of educators.

### **2. Professional Relationship with Students**

**Educators shall maintain a professional relationship with all students at all times, both in and out of the classroom.**

**If an educator violates Principle 2,** the presumption for the appropriate range of disciplinary action is the following:

- i. Revocation/denial of a license for sexual/physical abuse;
- ii. Suspension (1 day to 5 years) of a license up to revocation/denial of a license for psychological, verbal or emotional abuse; to solicit, encourage, engage, or consummate an inappropriate written, verbal, psychological, emotional or physical relationship with a student or minor; or inappropriate use of technology with a student;
- iii. Suspension (1 day to 5 years) of a license for disparagement, inappropriate language, physical altercations, inappropriate supervision or harassment.

### **3. Accurate Reporting**

**Educators shall accurately report information required by the local board of education or governing board, state education agency, federal agency or state or federal law.**

**If an educator violates Principle 3,** the presumption for the appropriate range of disciplinary action is suspension (1 day to 1 year) of a license.

### **4. Criminal Acts**

**Educators shall adhere to federal, state or local laws or statutes.**

**If an educator violates Principle 4,** the presumption for the appropriate range of disciplinary action is the following:



- i. Revocation/denial of a license for a criminal offense that is an offense of violence, theft offense, drug abuse offense or sexually oriented offense as defined in Ohio Administrative Code Rule 3301-20-01;
- ii. Revocation/denial of a license for a criminal offense involving the school community or where the victim is a student or a minor;
- iii. Suspension (1 day to 5 years) of a license up to revocation/denial of a license for all other felony criminal acts;
- iv. Letter of admonishment up to revocation/denial of a license for all other misdemeanor criminal acts. (e.g., disorderly conduct, trespass, assault, passing bad checks, fraud, domestic violence, possession of drugs).

## 5. Confidentiality

**Educators shall comply with state and federal laws related to maintaining confidential information.**

**If an educator violates Principle 5**, the presumption for the appropriate range of disciplinary action is suspension (1 day to 2 years) of a license.

## 6. Use, Possession, or Unlawful Distribution of Alcohol, Drugs and Tobacco

**Educators shall not use, possess or unlawfully distribute illegal or unauthorized drugs. Educators shall not use alcohol during any school activity involving students, minors or underage persons. Educators shall not use tobacco during any school activity except in a designated area. Educators shall not furnish, provide or encourage students or underage persons to use, possess or unlawfully distribute alcohol, tobacco, illegal or unauthorized drugs.**

**If an educator violates Principle 6**, the presumption for the appropriate range of disciplinary action is the following:

- i. Suspension (1 year to 5 years) of a license up to revocation/denial of a license for violations dealing with students, minors, or underage persons or school activities;
- ii. Suspension (1 day to 5 years) of a license for misuses unrelated to students, minors, or underage persons or *school* activities.

## 7. Accepting Compensation for Self Promotion or Personal Gain

**Educators shall ensure that school property, public funds or fees paid by students or the community are not used for personal gain. Educators shall not make decisions based upon gifts, gratuities, favors or the socioeconomic status of parents, family members, community members or businesses.**

**If an educator violates Principle 7**, the presumption for the appropriate range of disciplinary action is the following:

- i. Suspension (2 years to 5 years) up to revocation/denial of a license for theft of school property or school funds;
- ii. Letter of admonishment up to suspension (1 day to 1 year) of a license for using one's position for personal gain.

## 8. Commitment to Contract

**Educators shall fulfill all of the terms and obligations detailed in their employment contract with the local board of education or educational agency for the duration of the contract.**

**If an educator violates Principle 8**, the presumption for the appropriate range of disciplinary action is suspension (1 day to 1 year) of a license.



## **Ohio Department of Education**

### **Office of Professional Conduct**

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