



# Reporting educator misconduct

Ohio School Boards  
Association  
8050 N. High St.  
Suite 100  
Columbus, Ohio  
43235-6481  
(614) 540-4000  
legal hotline  
(855) OSBA-LAW  
fax (614) 540-4100  
www.ohioschoolboards.org

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

## What is required to be reported?

[Ohio Revised Code \(RC\) Section 3319.313](#) requires a superintendent to report misconduct to the Ohio Department of Education (ODE) in the following circumstances:

- A guilty plea or conviction. If the superintendent knows a licensed 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\(B\)\(1\)](#).
- Termination or nonrenewal of misconduct. If the board of education reasonably determines that a licensed employee either committed an offense found in [RC 3319.31\(B\)\(2\) or \(C\)](#) or [RC 3319.39\(B\)\(1\)](#) or committed an act unbecoming to the teaching profession and the board has initiated termination or nonrenewal proceedings, terminated or nonrenewed the person.
- Resignation due to threat of nonrenewal or termination. If a licensed employee resigned under threat of termination or nonrenewal because the board reasonably determined the person committed one of the offenses found in [RC 3319.31\(B\)\(2\) or \(C\)](#) or [RC 3319.39\(B\)\(1\)](#) or an act unbecoming the teaching profession.
- Resignation due to investigation. If a licensed employee resigned because of or in the course of an investigation into whether the employee committed an offense found in [RC 3319.31\(B\)\(2\) or \(C\)](#) or [RC 3319.39\(B\)\(1\)](#) or an act unbecoming to the teaching profession.

If the licensed employee is either the superintendent or treasurer, the board president is required to make the report to ODE.

Additionally, school teachers, employees and authorities must report suspected child abuse to the county public children services agency or a peace officer ([RC 2151.421](#)). Any suspected felonies occurring or that have occurred must be reported to law enforcement authorities ([RC 2921.22](#)). These reports are outside the scope of this fact sheet and should be discussed with legal counsel.

## 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 [RC 3319.313](#) have been filed. The State Board uses the same term, “conduct unbecoming,” in [Ohio Administrative Code \(OAC\) 3301-73-21](#) (which 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). Mandatory reporters are advised to err on the side of reporting when unsure about what action to take or to consult board counsel for specific advice.

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For more information on this subject, please contact OSBA’s Division of Legal Services

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### **How do I file a report?**

ODE has developed a [reporting form](#) that is available on its website. The form requests information about the employee about whom the information is being reported, as well as a factual statement concerning the incident. The form should be faxed to ODE at (614) 995-3752 or mailed to ODE's Office of Professional Conduct.

### **What if I'm not sure if I should file a report?**

It is a crime to fail to report, and you have immunity if you report in good faith ([RC 3319.313\(G\)](#)). This immunity applies to the mandatory reporter (ordinarily, the superintendent) and to other school district personnel who report misconduct of other employees to the superintendent ([RC 3319.317\(C\)](#)). When allegations are made of activities that fall into gray areas, mandatory reporters should seek the counsel of the board's attorney to determine if they have a duty to report the misconduct and what the report should contain.

### **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 elevated 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 are the penalties for making a false report?**

It is a first-degree misdemeanor to knowingly make a false report to ODE or for causing a false report to be made ([RC 3319.317\(B\)](#)). 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.

### **Are reports of misconduct public records?**

The reports of any investigation by a board of education on whether an employee has committed an act or offense for which the superintendent or board president is required to make a report must be kept in the employee's personnel file. If, after an investigation, ODE determines that the results of the investigation don't warrant initiating action, the board must move such reports from the employee's personnel file to a separate public file ([RC 3319.314](#)). 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.

The name of any person who is not required to report information, but who in good faith provides information to ODE, is confidential and will not be released ([RC 3319.311\(G\)](#)).

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

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 his or her 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.

## Educator code of conduct

### What is the educator's code of conduct?

The [Licensure Code of Professional Conduct for Ohio Educators \(LCPCOE\)](#) applies to all persons licensed by ODE, including coaches, aides, teachers (including substitutes), principals, superintendents and other licensed individuals serving schools, such as school nurses, counselors and treasurers. It sets out the behaviors and acts that could subject an educator to discipline by ODE in nine areas:

- professional behavior;
- professional relationships with students;
- accurate reporting;
- criminal acts;
- confidentiality;
- use, possession or unlawful distribution of alcohol, drugs and tobacco;
- financial management and improper compensation for personal gain;
- commitment to contract;
- appropriate and responsible use of technology.

LCPCOE also outlines the range of disciplinary actions available for a violation, ranging from a letter of admonishment to a permanent revocation of an educator's license.

### Does LCPCOE require reporting of misconduct?

It depends. 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 if 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 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 LCPCOE. The LCPCOE "substantially impairs" standard is broader than the four situations. The penalty for failure to report under LCPCOE is possible discipline by ODE of the educator who failed to report.

### Can we change the reporting requirements through collective bargaining?

No. These reporting requirements and the status of reports as public records prevail over any conflicting provisions of a collective bargaining agreement. Collective bargaining agreements that contain limitations on the district's ability to make the required reports or retain them as public records cannot be enforced.

*The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*