

Sorting out the new rehab rules

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The State Board of Education recently filed new rehabilitation rules for licensed, nonlicensed and transportation employees. These regulations arise from House Bill 190, enacted in 2007, which required all school employees to get criminal record checks (some for the first time) and requires school districts to “release” employees from employment if they have certain convictions. The law also permits schools to continue to employ individuals if they meet rehabilitation criteria established by the State Board.

Each of the rules operates a bit differently. The most notable changes apply to nonlicensed employees. There may be employees who were let go in 2008 who are eligible for rehabilitation and employment in 2009. The most common examples of this are for people with convictions of domestic violence or

assault. Under existing law, these employees are required to be released from employment. The new rules will allow a district to employ someone convicted of these crimes if the offenses occurred more than five years prior to the criminal records check and the district determines they have been rehabilitated.

Nonlicensed applicants and employees (Ohio Administrative Code section (OAC) 3301-20-03)

Ohio Revised Code Section (RC) 3319.39(B)(1) prohibits a school district from hiring individuals convicted of certain offenses. The expansion in 2007 of the people who were subject to this list of offenses led to some long-term employees losing their positions due to old criminal convictions. A nonlicensed

employee hired 20 years ago may not have been required to complete a criminal records check until 2008, and then under the new law, a past crime prohibited the district from continuing to employ the individual.

The change in the law in 2007 directed the State Board to adopt rehabilitation standards for these nonlicensed individuals, but the time lag between the law passing and these new rules being adopted created a situation where nonlicensed individuals were held to a higher standard

than licensed individuals in some circumstances. The new rules strike a balance by adopting time limits for lesser crimes that occurred many years ago, while preserving the right of boards of education to make employment decisions.

Under the new rules, certain offenses are characterized as “non-rehabilitative offenses” that are bars to employment for nonlicensed individuals. They include sexually oriented offenses, child-related violent offenses and other violent offenses. These crimes, such as murder, rape and kidnapping, prevent a

nonlicensed individual from ever being employed in a school.

For the rest of the offenses, the State Board has adopted varying time limits based on the severity of the offense. The rules create a “look-back” period that starts on the date of the current application or the date of the current criminal records check. A person may not be hired if he or she committed certain crimes within that look-back period. The look-back period is 20 years for certain violent offenses. It is 10 years for certain drug offenses, such as drug trafficking. For domestic violence, assault and certain other crimes, the period is five years.

For the full list of offenses, visit OSBA’s Employee Misconduct Tool kit at osba-ohio.org/misconduct.htm and click on OAC 3301-20-03 in the Draft Rules section. The tool kit also offers a number of other resources on employee misconduct and criminal record checks.

Licensed applicants and employees (OAC 3301-20-01)

The rule for licensed individuals has not changed substantially, although a few minor changes have been proposed.



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The new rules remove the attempt, complicity and conspiracy language from the prior rule, which treated these convictions as convictions for the underlying offense. Neither the nonlicensed rule nor the transportation rule includes attempt, complicity or conspiracy convictions.

Under prior law, rehabilitation was not available for licensed individuals who committed two or more prohibited crimes in separate criminal actions. A new exception is created for two or more misdemeanor theft convictions only for licensed employees.

The new rules require the district to maintain “thorough documentation of the district’s proceedings and decision on employment” regarding employment decisions for licensed individuals.

Transportation applicants and employees (OAC 3301-83-23)

The rule for transportation employees has similar provisions from both the other rules. The offenses mirror those of licensed employees. The major difference in the transportation employee rule is that it applies to private contractors. In those circumstances, the private owner determines rehabilitation. If the private owner determines an individual is not rehabilitated, the individual is prohibited from participating in the owner’s contractual obligations with the school district.

How does rehabilitation work?

The principle behind rehabilitation is that a criminal offense from years ago should not affect an individual’s ability to work if that person can demonstrate that he or she has changed, or has been rehabilitated. However, rehabilitation is not an automatic right. The employee has the obligation to provide evidence of rehabilitation. The district makes an employment decision, and if the person is licensed, the Ohio Department of Education (ODE) makes a licensure decision by weighing a list of factors about the individual, the crime and the circumstances.

Eligibility for a rehabilitation decision varies in the new rules based on the type of employee and the crime for which he or she was convicted. For licensed and

transportation employees, the rules are substantially the same. The crime must not have involved minors or students, and must not be a violent, theft, drug abuse or sexually oriented crime. Five years must have passed *or* the individual must have had the offense expunged or sealed. The employee must not have committed two or more prohibited offenses in separate criminal actions. At this point, the licensed employee is eligible for a rehabilitation decision from both the district and ODE.

To be eligible for rehabilitation, a nonlicensed employee must meet the time limits in the law with regard to the conviction. The crime cannot have been a “nonrehabilitative” offense. Rehabilitation is not available if the victim was a minor or a student.

The applicant or employee must provide the district evidence of rehabilitation, including statements from a court, parole officer, probation officer, counselor or other source the district approves. The new rules require the district to provide the employee a meeting, upon the employee’s request, so that he or she may provide evidence of rehabilitation.

Following are the criteria the district must evaluate:

- the nature and seriousness of the crime,
- the extent of the applicant’s or employee’s past criminal activity,
- the age of the applicant or employee when the crime was committed,
- the amount of time elapsed since the applicant’s or employee’s last criminal activity,
- the conduct and work activity of the applicant or employee before and after the criminal activity,
- whether the applicant or employee has completed the terms of probation or deferred adjudication,
- evidence of

rehabilitation,

- whether the applicant fully disclosed the crime to the district,
- whether employment could have a negative impact on the local education community,
- whether employment could have a negative impact on the statewide education community,
- any other factor the district considers relevant.

The law does not require a specific procedure for evaluating requests for rehabilitation determinations. Some districts have created standing committees to evaluate this information, consisting of the superintendent, a human resources professional, the building principal and/or a teacher. In making this determination, the rules require the district to resolve any doubt in favor of “protecting the persons served by the district.”

Satisfying the rehabilitation criteria means an individual is *eligible* for employment; it does not *require* the district to hire the person. It is important to document the decision made, especially in situations where the result is releasing an existing employee. □

“According to law” is designed to provide authoritative general information, sometimes with commentary. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.

Additional criminal records check tips

- Time stamp results when they arrive. The date of receipt by the district may become important if an employment action is taken, and the new rules require time stamps.
- If the results of the criminal records check indicate a conviction in another state, consult with legal counsel to determine if the offense has employment consequences. The rules apply to municipal offenses, offenses in other states and federal crimes.
- Conditional employment is still an option. The district may hire an individual pending receipt of the criminal records check.
- The new rule applies to sealed convictions. The rule does not bar hiring individuals who have received unconditional pardons or conditional pardons where the conditions have been met.