



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

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on this subject,  
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Division of Legal  
Services

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# Reporting educator misconduct

*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 that a superintendent report misconduct to the State Board of Education's (SBOE) Office of Professional Conduct 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 pretrial 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 or retirement due to threat of nonrenewal or termination: If a licensed employee resigned or retired 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 or retirement due to investigation: If a licensed employee resigned or retired 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.
- Removal from the list of eligible substitute teachers: If the board of education has removed the employee from the list of eligible substitute teachers for the district or ESC because the board has reasonably determined that the employee has committed an act that is 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 SBOE.

## What is "conduct unbecoming the teaching profession"?

SBOE uses the term "conduct unbecoming," in [Ohio Administrative Code \(OAC\) 3301-73-21](#), which includes crimes or misconduct that involves minors or schoolchildren, academic fraud or the school community; making false statements on licensing documents; certain crimes; and violating a consent agreement. The Educator Standards Board has also developed the Licensure Code of Professional Conduct, which has been adopted by SBOE and provides numerous examples of actions and behaviors that may be deemed "conduct unbecoming" to the teaching profession. Mandatory reporters of educator misconduct are advised to err on the side of reporting when unsure about what action to take or to consult board counsel for specific advice.

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

SBOE has developed a [reporting form](#), which is available on its website. The form requests information about the employee about whom the information is being reported and a factual statement concerning the incident. The form should be faxed to SBOE at (614) 995-3752 or mailed or emailed to SBOE'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](#) the items listed in response to the first question, 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 consult 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: (1) 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 (2) between the date of the failure to report and the subsequent conviction for failure to report, the employee whose conduct should have been reported 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 SBOE or cause a false report to be made ([RC 3319.317\(B\)](#)). If a person is convicted of making a false report, they 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, the superintendent of public instruction 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 SBOE takes some licensure action, the report may remain in the employee's personnel 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 ODEW, is confidential and should not be released ([RC 3319.311\(G\)](#)).

Reports of misconduct kept by SBOE may also be disclosed in certain circumstances. The appointing or hiring officer of a district or school may request from SBOE any report of misconduct it has received regarding an individual who is under consideration for employment by the district or school ([RC 3319.319](#)). If SBOE has received a report regarding the individual, SBOE must provide the contents of the report to the requester. The requester should treat the received information as confidential and should not disseminate it to any other person or entity.

### **If we report misconduct of a licensed employee, can we wait for SBOE 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.

The law does not specifically provide for the employment consequence of a licensure revocation. However, for those individuals who are licensed, revocation of their license presumably will allow the district to terminate them, since having a valid license is typically an express or implied condition of the contract an educator has with their board of education.

### **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 ([RC 3319.315](#)).

### **Educator code of conduct**

What is the educator's code of conduct?

The [Licensure Code of Professional Conduct for Ohio Educators \(LCPCOE\)](#) provides the framework for professional conduct for Ohio educators. This includes any person who holds a license through SBOE. It sets out the behaviors and acts that could subject an educator to discipline by SBOE 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 provides that it is "conduct unbecoming" if an educator knowingly fails to "notify the superintendent or designee upon becoming aware that an educator's ability to function in their position has been substantially impaired or of 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 that educators report to "the superintendent or 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 the superintendent of public instruction would be in the [RC 3319.313](#) situations.

LCPCOE also provides that it is "conduct unbecoming" if an educator intentionally fails to make a report mandated by state or federal law.

***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.***