

3301-20-03**Employment of non-licensed individuals with certain criminal convictions.**

The purpose of this rule is to provide for the safety and well-being of students, and pursuant to sections 3319.39 and 3319.391 of the Revised Code, set rehabilitation standards for those individuals with certain criminal convictions seeking employment or currently employed by a district in a position that does not require a license but who are subject to the requirements of a criminal records check pursuant to section 3319.39 of the Revised Code. (The provisions of this rule do not apply to school bus or school van drivers).

(A) The following terms are defined as they are used in the rule:

- (1) "Applicant" means one who is under final consideration for appointment or employment with a district in a position that does not require an educator license issued by the State Board of Education under Chapter 3319 of the Revised Code.
- (2) "Employee" means a current employee of a district who is not required to be licensed or certified, but who is subject to the requirements of a background check pursuant to section 3319.391 of the Revised Code.
- (3) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.
- (4) "District" means a school district as described in Chapter 3311 of the Revised Code, educational service centers, community schools, STEM schools, college preparatory boarding schools, county boards of DD, chartered non-public schools, preschool programs, and any other future school chartered by the department.
- (5) "Offense" means a violation of a criminal section of the Revised Code, or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to a violation of a criminal section of the Revised Code.
- (6) "Absolute bar offense" means any offense in violation of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code; a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, or 2925.06 of the Revised Code; a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, a violation of section 2919.23 of the Revised Code that would have been a violation of 2905.04 of the Revised

Code as it existed prior to July 1, 1996, had the violation been committed prior to that date; felonious sexual penetration in violation of former section 2907.12 of the Revised Code.

- (7) For the purposes of this rule, the term "conviction" includes any determination of guilt resulting from a plea of guilty to or finding of guilt by a jury or court of any violation of an offense.
- (8) "Upon learning" means when first having knowledge of either official results of a criminal records check or a guilty plea, finding of guilt or conviction that has been verified through certified court or law enforcement records.
- (B) No district shall hire an applicant upon learning that he/she has been convicted of an absolute bar offense.
- (C) A district shall release an employee from employment upon learning that he/she has been convicted of an absolute bar offense. This division shall not apply to any convictions that the district learned about prior to the effective date of this rule.
- (D) No district shall hire an applicant who has been convicted of an offense listed in division (B)(1) of section 3319.39 of the Revised Code unless all of the following conditions are met:
- (1) The offense is not one of the absolute bar offenses defined in division (A)(6) of this rule.
 - (2) At the time of the offense, the victim of the offense was not a person under eighteen years of age or enrolled as a student in a district;
 - (3) The applicant can demonstrate rehabilitation by meeting the following rehabilitation criteria:
 - (a) If the offense was a felony, at least five years have elapsed since the applicant was fully discharged from imprisonment, probation, or parole or the applicant has had the record of his/her conviction sealed or expunged pursuant to section 2953.32 of the Revised Code or any municipal ordinance or law of this state, another state or the United States that is substantially equivalent to section 2953.32 of the Revised Code.
 - (b) If the offense was a misdemeanor, at least five years have elapsed since the date of conviction or the applicant has had the record of his/her conviction sealed or expunged pursuant to section 2953.32 of the Revised Code or any municipal ordinance or law of this state, another state or the United

States that is substantially equivalent to section 2953.32 of the Revised Code.

(c) The applicant is not a repeat offender. A repeat offender is an applicant who has been convicted of any of the offenses listed in division (B) (1) of Section 3319.39 of the Revised Code two or more times in separate criminal actions. The following factors shall be considered when determining an applicant's repeat offender status:

(i) A sealed or expunged conviction shall not be counted; and

(ii) Convictions resulting from or connected with the same act, or resulting from offenses committed at the same time shall be counted as one conviction.

(d) Upon the request of the hiring school district, the applicant shall provide written confirmation of his/her efforts at rehabilitation, the results of those efforts, and whether the terms of his/her probation, parole or deferred adjudication have been completed. Written confirmation may include a statement by a court, parole officer, probation officer, treatment provider and/or counselor that the applicant has been rehabilitated. Such written confirmation will not be conclusive evidence that the applicant has met the other rehabilitation criteria listed in this rule.

(e) A reasonable person would conclude that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the district. Evidence that the applicant's hiring or licensure will not jeopardize the health, safety, or welfare of the persons served by the district shall include, but not be limited to the following factors:

(i) The nature and seriousness of the crime;

(ii) The extent of the applicant's past criminal history;

(iii) The age of the applicant when the crime was committed;

(iv) The amount of time that has elapsed since the applicant's last criminal activity;

(v) The conduct and work history of the applicant before and after the criminal activity;

(vi) Whether the applicant has completed the terms of his/her probation or deferred adjudication;

(vii) Evidence of rehabilitation;

(viii) Whether the applicant fully disclosed the crime to the hiring school district;

(ix) Whether employment or licensure will negatively impact the health, safety, or welfare of the school community;

(x) Any other factors the district considers relevant.

(E) It is the applicant's duty to provide written evidence upon applicant for employment that the conditions specified in paragraph (C) of this rule are met. If the applicant fails to provide such evidence or if the district determines that the proof offered is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired. Any doubt shall be resolved in favor of protecting the persons served by the district.

(F) This rule is applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to section 2953.32 of the Revised Code. For the purposes of this rule, a sealed conviction includes a conviction that has been expunged pursuant to a court order.

(G) A conviction of an offense listed in division (B)(1) of section 3319.39 of the Revised Code shall not prevent an applicant's hiring if the applicant has been granted an unconditional pardon for the offense pursuant to Chapter 2967 of the Revised Code or the conviction or guilty plea has been set aside pursuant to law. For the purposes of this rule, unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired.

(H) A district maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to this rule.

(I) As a condition of initial or continued employment pursuant to the requirements of this rule, the district may request the applicant or employee to be evaluated by a licensed provider (e.g. physician, psychologist, psychiatrist, independent social worker, professional counselor, chemical dependency counselor, etc.) and/or successfully complete a recognized and/or certified treatment program relevant to the nature of the conviction. (Unless otherwise specified in an employee contract, labor agreement, or other similar agreement, the employee or applicant shall bear all direct and associated costs of the evaluation and treatment program.) Failure on the part of an applicant or employee to comply with the district's request pursuant to this paragraph may be considered by the district as a factor against initial or continued employment.

(J) Prior to rendering a decision on employment, the district shall provide an opportunity for a meeting to an employee, if requested by the individual, so that he/she may provide evidence of rehabilitation pursuant to the requirements of this rule.

(K) Thorough documentation of the district's proceedings and decision on employment shall be maintained in the district's files.

(L) The decision of the district on whether to employ or continue to employ an individual pursuant to the requirements of this rule cannot be appealed to the Ohio department of education or state board of education.

Replaces: 3301-20-03

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3301.07, 3319.39, 3319.391
Rule Amplifies: 3319.31, 3319.311, 3319.39, 3319.391
Prior Effective Dates: 08/27/2009