

TO BE RESCINDED

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 with a district for a position that does not require a license and those individuals 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 3319.391 of the Revised Code. (The provisions of this rule do not apply to school bus or school van drivers.)

The rule establishes offenses for which employment and a determination of rehabilitation of a non-licensed individual for a position within a school are expressly forbidden and sets forth conditions under which a determination of rehabilitation is possible.

(A) Definitions:

- (1) "Applicant" means one who is under final consideration for appointment or employment in a position with a district that does not require an educator license.
- (2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code.

For the purposes of this rule, "date of criminal records check" shall mean the date of receipt of the results of a background check requested by a district, which shall be time-stamped by the district on the date of receipt by the district.

- (3) "District" means a school district as described in section 3311.01 of the Revised Code, a municipal school district as described in section 3311.71 of the Revised Code, an educational service center, a community school, a county MR/DD, a chartered non-public school, or a preschool program.
- (4) "Employee" means a current employee of a school district who is not required to be licensed or certificated, but who is subject to the requirements of a background check pursuant to section 3319.391 of the Revised Code.
- (5) "Offense" for the purposes of this rule means an offense in division (B)(1) of section 3319.39 of the Revised Code and includes any municipal ordinance, law of this state, another state, or the United States that is substantially equivalent to one of the offenses referred to in division (B)(1) of section 3319.39 of the Revised Code.

- (6) “Non-rehabilitative offense” means a criminal offense that would prohibit a district from hiring or continuing employment of such an individual, and are the following:
- (a) Sexually-oriented offenses: sections 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), 2907.06 (sexual imposition), 2907.07 (importuning), 2907.21 (compelling prostitution), 2907.22 (promoting prostitution), 2907.23 (procuring), 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code or a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code.
 - (b) Child-related violent offenses: sections 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2919.23 (interference of custody) of the Revised Code that would have been a violation of section 2905.04 (child stealing) of the Revised Code as it existed prior to July 1, 1996, had the violation been committed prior to that date, division (B)(1), (B)(2), (B)(3), or (B)(4) of section 2919.22 (endangering children) of the Revised Code.
 - (c) Violent offenses: sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter) of the Revised Code.
 - (d) “Other violence-related offenses,” which mean a violation of the following sections that occurred either within twenty years prior to the date of the current application for a position with the district or, for a current employee of a district, within twenty years prior to the date of the current criminal records check: 2903.11 (felonious assault), 2903.12 (aggravated assault), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), or 2923.161 (improper discharge firearm at or into habitation; school-related offenses) of the Revised Code; 3716.11 (placing harmful objects in food/confection), 2919.12 (unlawful abortion) of the Revised Code.
 - (e) “Drug offenses,” which mean a violation of the following sections that occurred either within ten years prior to the date of the current application for a position with the district or, for a current employee of a district, within ten years prior to the date of the current criminal records check:

sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.05 (funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids) of the Revised Code.

- (f) "Theft offense," which means a violation of section 2911.12 (burglary) of the Revised Code that occurred either within ten years prior to the date of the current application for a position with the district or, for a current employee of a district, within ten years prior to the date of the current criminal records check.
 - (g) "Other offenses," which mean a violation of the following sections that occurred either within five years prior to the date of the current application for a position with the district, or for a current employee of a district, within five years prior to the date of the current criminal records check: 2903.13 (assault), 2903.16 (failing to provide for a functionally impaired person), 2903.21 (aggravated menacing), 2903.34 (patient use or neglect), 2907.08 (voyeurism), 2907.09 (public indecency), division (A) of section 2919.22 (endangering children), 2919.24 (contributing to unruliness or delinquency of a child), 2919.25 (domestic violence), 2923.12 (carrying concealed weapons), 2923.13 (having weapons while under disability), 2925.11 (possession of a controlled substance that is not a minor drug possession offense) of the Revised Code.
- (B) No district shall employ an applicant upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. In addition, the district shall release an employee from employment upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of a non-rehabilitative offense as listed in paragraph (A)(6) of this rule. Likewise, a district shall release from employment an individual if the results of a criminal records check indicate that, pursuant to this rule, the applicant does not qualify for employment.
- (C) Pursuant to division (B)(2) of section 3319.39 of the Revised Code, a district may employ an applicant conditionally until the criminal records check required by section 3319.39 of the Revised Code is completed and the district receives the results of the criminal records check. If the results of the criminal records check indicate that, pursuant to this rule, the applicant does not qualify for employment, the district shall release the applicant from employment.
- (D) A district maintains the discretion whether to employ or retain in employment an individual who has been deemed rehabilitated pursuant to this rule. A district may

employ an applicant or continue to employ an individual that has previously pled guilty to, been found guilty by a jury or court of, or convicted of an offense listed in division (B)(1) of section 3319.39 of the Revised Code, if all of the following conditions for rehabilitation are met:

- (1) The offense is not a non-rehabilitative offense as listed in paragraph (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 or employee provides written confirmation of his/her efforts at rehabilitation and the results of those efforts. Written confirmation may include a statement by a court, parole officer, probation officer and/or counselor, or another source as approved by the district that the applicant or employee has been rehabilitated.
- (4) A reasonable person would conclude that the applicant's hiring or the retention of the employee would not jeopardize the health, safety, or welfare of the persons served by the district, based upon information pertinent to the following factors:
 - (a) The nature and seriousness of the crime;
 - (b) The extent of the applicant or employee's past criminal activity;
 - (c) The age of the applicant or employee when the crime was committed;
 - (d) The amount of time elapsed since the applicant or employee's last criminal activity;
 - (e) The conduct and work activity of the applicant or employee before and after the criminal activity;
 - (f) Whether the applicant or employee has completed the terms of his probation or deferred adjudication;
 - (g) Evidence of rehabilitation;
 - (h) Whether the applicant fully disclosed the crime to the district;
 - (i) Whether employment could have a negative impact on the local education community;

- (j) Whether employment could have a negative impact on the state-wide education community;
 - (k) Any other factor the district considers relevant.
- (E) It is the applicant or employee's duty to provide written evidence that the conditions specified in paragraph (D) of this rule are met. If the applicant or employee fails to provide such evidence or if the district determines that the proof offered by the applicant or employee is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired or the employee shall be released from employment. Any doubt shall be resolved in favor of protecting the persons served by the district.
- (F) Except as otherwise specified in this rule, the provisions of this rule are also 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.
- (G) A plea of guilty to, a finding of guilt by a jury or court of, or 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 or the retention of an employee if the applicant or employee 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 purposes of this rule, "unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (H) 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.
- (I) 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.
- (J) The decision of the district on whether to employ or continue to employ an individual pursuant to the requirements of this rule can not be appealed to the Ohio department of education or state board of education.

(K) This rule is promulgated under the state board and department of education's rule-making authority under division (E) of section 3319.39 of the Revised Code.

Effective:

Five Year Review (FYR) Dates: 2/5/2020

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