

3301-20-01

Employment of individuals in positions that require a license and licensure of individuals with certain criminal convictions or other alternative dispositions.

The purpose of this rule is to ensure the safety and well-being of students, and, pursuant to sections 3319.39 and 3319.31 of the Revised Code, establish rehabilitation standards for those individuals with certain criminal convictions and other alternative dispositions seeking employment with a district for a position that requires a license issued by the state board of education, those currently employed by a district in a position that requires a license issued by the state board of education, and those seeking or currently holding licensure by the state board of education. The provisions of this rule apply to teachers, substitutes, educational aides, holders of pupil activity supervisor permits, and any other position which requires a license issued by the state board of education.

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

(1) "Applicant" means one of the following:

(a) One who is under final consideration for appointment or employment in a position that requires a license issued by the state board of education. An "applicant" does not include a person currently employed by a district in a position that requires a license issued by the state board of education who is under consideration for a different position with the same district; or

(b) A person applying for an initial license, certificate, or permit described in Chapter 3319, or in division (B) of section 3301.071 or in section 3301.074 of the Revised Code.

(2) "Educator" means a person holding any license, certificate, or permit described in Chapter 3319, or in division (B) of section 3301.071 or in section 3301.074 of the Revised Code.

(3) "Criminal records check" has the same meaning as section 109.572 of the Revised Code.

(4) "District" means a school district as described in section 3311.01 of the Revised Code, educational service centers, community schools, county MR/DD's, chartered non-public schools and preschool programs.

(5) "State board" means the Ohio state board of education as defined in section 3301.01 of the Revised Code.

(6) "Superintendent" means the superintendent of public instruction and his/her designee as defined in section 3301.13 of the Revised Code.

(7) "Department" means the Ohio department of education as defined in section 3301.13 of the Revised Code.

- (8) "License" means the same as the term license as defined in division (A) of section 3319.31 of the Revised Code.
- (9) "Upon learning" means when first having knowledge of a guilty plea, finding of guilt or conviction that has been verified through certified court or law enforcement records.
- (10) "Non-rehabilitative offense" means any offense listed in division (C) of section 3319.31 of the Revised Code as follows:
- (a) Violent offenses: sections 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.041 (reckless homicide), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.15 (permitting child abuse), 2905.01 (kidnapping), 2905.02 (abduction), 2905.05 (criminal child enticement), 2905.11 (extortion), 2909.02 (aggravated arson), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2917.01 (inciting to violence), 2917.02 (aggravated riot), 2917.03 (riot), 2917.31 (inducing panic), 2921.03 (intimidation), 2921.04 (intimidation of attorney, victim or witness in criminal case), 2921.34 (escape), 2923.122 (illegal conveyance or possession of deadly weapon or dangerous ordnance or illegal possession of an object indistinguishable from a firearm in school safety zone), 2923.123 (illegal conveyance of deadly weapon or dangerous ordnance into courthouse, illegal possession or control in a courthouse), 2923.161 (improperly discharging firearm at or into a habitation; school related offenses), 2923.21 (improperly furnishing firearms to minor), 2923.17 (unlawful possession of dangerous ordnance; illegally manufacturing or processing explosives) of the Revised Code; divisions (B)(1), (2), (3), or (4) of sections 2919.22 (endangering children), 2909.22 (soliciting or providing support for act of terrorism), 2909.23 (making terroristic threat), 2909.24 (terrorism), 2917.33 (unlawful possession or use of a hoax weapon of mass destruction), 2927.24 (contaminating substance for human consumption or use; contamination with hazardous chemical, biological, or radioactive substance; spreading false report), 3716.11 (placing harmful objects in food/confection), 2921.05 (retaliation), 2919.12 (unlawful abortion), 2919.121 (performing or inducing unlawful abortion upon minor), or 2919.13 (abortion manslaughter) of the Revised Code, section 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, or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in this paragraph.

(b) Theft offenses and other offenses against public administration: sections 2911.12 (burglary), 2913.44 (personating an officer), 2921.41 (theft in office), 2921.11 (perjury), or 2921.02 (bribery) of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in this paragraph.

(c) Drug abuse offenses: sections 2925.02 (corrupting another with drugs), 2925.03 (trafficking in drugs), 2925.04 (illegal manufacture of drugs or cultivation of marihuana), 2925.041 (illegal assembly or possession of chemicals for the manufacture of drugs), 2925.05 (funding of drug or marihuana trafficking), 2925.06 (illegal administration or distribution of anabolic steroids), 2925.13 (permitting drug abuse), 2925.22 (deception to obtain a dangerous drug), 2925.23 (illegal possession of drug documents), 2925.24 (tampering with drugs), 2925.32 (trafficking in harmful intoxicants; improperly dispensing or distributing nitrous oxide), 2925.36 (illegal dispensing of drug samples), or 2925.37 (possession of counterfeit controlled substances) of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in this paragraph.

(d) 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), 2907.24 (soliciting; after positive HIV test), 2907.241 (loitering to engage in solicitation; solicitation after positive HIV test) 2907.25 (prostitution; after positive HIV test), 2907.31 (disseminating matter harmful to juveniles), 2907.311 (displaying matter harmful to juveniles), 2907.32 (pandering obscenity), 2907.321 (pandering obscenity involving a minor), 2907.322 (pandering sexually oriented matter involving a minor), 2907.33 (deception to obtain matter harmful to juveniles), 2907.34 (compelling acceptance of objectionable materials), or 2907.323 (illegal use of a minor in nudity-oriented material or performance) of the Revised Code, a violation of former section 2907.12 (felonious sexual penetration) of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in this paragraph.

(B) No district shall employ, the state board shall not issue a license to, and the superintendent shall not enter into a consent agreement with an applicant or educator upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of any of the offenses listed in division (C)

of section 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in division (C) of section 3319.31 of the Revised Code. The state board shall revoke an educator's license upon learning that he/she has pled guilty to, been found guilty by a jury or court of, or convicted of any violation of any of the offenses listed in division (C) of section 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in section division (C) of section 3319.31 of the Revised Code. If the state board intends to deny or revoke a license pursuant to this paragraph, the state board shall act in accordance with division (C) of section 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code.

(C) If an educator has pled guilty to, been found guilty by a jury or court of, or convicted of any offense, other than the offenses referred to in division (C) of section 3319.31 of the Revised Code, the state board shall act in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code. If the educator satisfies all terms and conditions of a consent agreement or state board adopted resolution pertaining to the educator, he/she shall be deemed rehabilitated with regard to the specific offense addressed in the consent agreement or resolution for purposes of future employment. A district maintains the discretion whether to employ an educator who has been deemed rehabilitated under this paragraph and the state board reserves the right to institute further formal proceedings based upon other violations of section 3319.31 of the Revised Code, whether occurring before or after the effective date of the consent agreement or a state board adopted resolution.

(D) 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 sections 3319.291 and 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 or licensure, the district shall release the applicant from employment.

(E) A district may employ, the state board may issue an initial license to and the superintendent may enter into a consent agreement with an applicant who 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 and section 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code if all of the following conditions are met:

(1) The conviction was not one of the non-rehabilitative offenses defined in paragraph (A)(10) of this rule.

(2) If the conviction is not listed in paragraph (A)(10) of this rule, the following rehabilitation criteria shall apply:

(a) 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.

(b) 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 guilty plea, finding of guilt or 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. 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 guilty plea, finding of guilt or 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 has not pled guilty to, been found guilty by a jury or court of or convicted of the commission of any of the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 of the Revised Code two or more times in separate criminal actions, with the exception of two or more misdemeanor theft related convictions as defined in sections 2913.02, 2913.03, 2913.04, 2913.11 and 2913.51 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in sections 2913.02, 2913.03, 2913.04, 2913.11 and 2913.51 of the Revised Code. Convictions or guilty pleas resulting from or connected with the same act, or resulting from offenses committed at the same time, shall be counted as one conviction or guilty plea for purposes of this paragraph. A sealed or expunged conviction shall not be counted for purposes of this paragraph.

(d) The applicant 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 that the applicant has been rehabilitated.

(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 activity;
- (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 activity of the applicant before and after the criminal activity;
- (vi) Whether the applicant has completed the terms of his probation or deferred adjudication;
- (vii) Evidence of rehabilitation;
- (viii) Whether the applicant fully disclosed the crime to the state board, the department and the district;
- (ix) Whether employment or licensure will have a negative impact on the local education community;
- (x) Whether employment or licensure will have a negative impact on the state-wide education community; and
- (xi) Any other factors the state board, district, or superintendent considers relevant.

(F) It is the applicant's duty to provide written evidence upon application for employment or licensure that the conditions specified in paragraph (E) of this rule are met. If the applicant fails to provide such evidence or if the district or the state board determines that the proof offered by the applicant is inconclusive or does not establish proof of rehabilitation, the applicant shall not be hired and the license shall not be issued. Any doubt shall be resolved in favor of protecting the persons served by the district. If licensure is denied, the state board, through the superintendent, shall notify the applicant and afford the applicant the opportunity to request an administrative hearing under section 3319.31 and Chapter 119. of the Revised Code.

(G) 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.

- (H) 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 and 3319.31 of the Revised Code or any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to the offenses listed in division (B)(1) of section 3319.39 of the Revised Code and section 3319.31 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 purposes of this rule, unconditional pardon includes a conditional pardon with respect to which all conditions have been performed or have transpired.
- (I) If an applicant or educator has been granted a judicial finding of eligibility for intervention in lieu of conviction under section 2951.041 of the Revised Code, or has agreed to participate in a pre-trial diversion program under section 2935.36 of the Revised Code, or a similar diversion program under rules of a court, for any offense listed in division (B)(2) of section 3319.31 or division (C) of 3319.31 of the Revised Code, the state board shall act in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code.
- (J) This rule is promulgated under the state board and department of education's rule-making authority under section 3319.31, division (E) of section 3319.311, and section 3319.39 of the Revised Code.
- (K) Thorough documentation of the district's proceedings and decision on employment shall be maintained in the district's files.

Replaces: 3301-20-01
Effective: 08/27/2009
R.C. 119.032 review dates: 08/27/2014

CERTIFIED ELECTRONICALLY

Certification

08/17/2009

Date

Promulgated Under: 119.03
Statutory Authority: 3301.07, 3319.31, 3319.39
Rule Amplifies: 3319.291, 3319.31, 3319.311, 3319.39
Prior Effective Dates: 10/1/94; 2/9/04