

Standards for Licensure and Employment of Individuals with Criminal Convictions (Ohio Administrative Code Rule 3301-20-01)

Licensure and employment of individuals in the teaching profession is governed by various statutes in the Ohio Revised Code and rules in the Ohio Administrative Code. The following information and screening tool is being provided to assist individuals, school district personnel, administrators for higher education institutions and others in the education community in applying the requirements regarding licensure and employment of individuals in the teaching profession.

Disclaimer

This information is not intended to be used as legal advice. It is intended to be used as general information and for guidance as it only provides a limited summary of parts of the statutes and administrative rules regarding licensure and employment for persons with certain criminal convictions. For additional information, consult the Ohio Revised Code and the Ohio Administrative Code as referenced below. If you have a specific legal issue or question, please consult with your legal counsel. For general inquires, you may the contact the Ohio Department of Education's Office of Professional Conduct at 614-466-5638.

Raising the Ethical Standards in Ohio

In September 2005, the State Board of Education adopted a revision to the administrative rule regarding licensure and employment of individuals with certain criminal convictions. (Ohio Administrative Code Rule 3301-20-01) The revised rule raises the ethical standards in Ohio by ensuring individuals entering into the teaching profession meet stringent background requirements. Through the adoption of the rule, the State Board has delineated certain criminal convictions which prohibit individuals from ever obtaining a teaching license or a position in a school district. Further, the rule allows the State Board and school districts to carefully scrutinize other criminal convictions to ensure that the person seeking licensure and/or employment is appropriate to be in the profession and that Ohio's children are being educated by individuals committed to a safe, supportive and healthy school community.

Criminal Background Checks and OAC Rule 3301-20-01

Ohio Revised Code §3319.39 requires public and chartered non-public schools to conduct criminal background checks on individuals applying *for any position that maintains care, custody or control of a child*. Likewise, the State Board of Education (State Board) is mandated by Ohio Revised Code §3319.31 to conduct criminal background checks of *applicants for teacher certification or licensure*.

While the employment statute (ORC 3319.39) mandates that a school district, with limited exception, can not hire an individual who has been convicted of any of the offenses listed in the employment statute, the licensure statute (ORC 3319.31) grants the State Board discretion to issue a license to an individual who has been convicted of any of the offenses listed in the licensure statute or the employment statute. The result was that it was possible for an individual to be granted a teaching certificate/license through the discretion of the State Board, however, the certified/ licensed teacher may not be eligible for employment based on the mandatory list of disqualifying offenses in the employment statute.

With the recently adopted revisions to Ohio Administrative Code Rule 3301-20-01, the State Board solidified the link between eligibility for licensure and eligibility for employment. The rule provides a definitive list of offenses that are an absolute bar for initial licensure and initial employment. If an individual has been convicted of or pled guilty to any of the offenses identified as an absolute bar, he/she cannot obtain an initial teaching credential¹ and cannot be employed by a school district.

¹ The State Board must deny an application in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code which provides due process rights to an applicant, including the right to an administrative hearing to challenge the denial of the application.

For certain other listed offenses, the rule provides rehabilitation criteria which an individual can meet to become eligible for initial licensure and initial employment. For these certain other listed offenses, the State Board may choose to license and an employer may choose to employ an individual, if the individual meets the rehabilitation criteria as set forth in the rule.

The effect of this newly enacted administrative rule is that if an individual applying for an initial teaching license is granted such a license, the individual is then eligible for employment.

The screening tool for initial licensure and initial employment based on OAC Rule 3301-20-01

OAC Rule 3301-20-01 makes a distinction between applicants² who are applying for initial licensure and employment and teachers³ who are already licensed and employed. The screening tool categorizes the offenses that are absolute bars to initial licensure and employment, the offenses that require an applicant to demonstrate rehabilitation before being employed and licensed and the specific rehabilitation criteria. The screening tool is designed to assist individuals and administrators in applying the administrative rule requirements. The tool is comprised of screens for initial licensure and initial employment which categorize the offenses and rehabilitation criteria according to OAC Rule 3301-20-01.

Each screen is a “hurdle” that must be met before initial licensure or initial employment of an applicant is allowed. For example, the first section lists absolute bars to licensure and employment. If an applicant has a conviction or a guilty plea to any of the offenses listed under this first section of absolute bars, the applicant cannot be employed or licensed. However, if the applicant has none of the offenses listed under the first screen, the first hurdle has been met and the individual or administrator may continue to the second screen, and so forth. If all the hurdles are met, the applicant is eligible for licensure and employment.

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² OAC 3301-20-01 defines an applicant as a person “who is under final consideration for appointment or employment in a position with a district as a person responsible for the care, custody, or control of a child” or “a person applying for an initial educator license issued under section 3319.22 or 3319.301 of the Revised Code or a license to teach in a chartered nonpublic school”. An applicant is not a person already employed by a district in a position of care, custody, or control of a child who is under consideration for a different position with the same district.

³ OAC 3301-20-01 defines a teacher as “a person holding any educator license issued under section 3319.22 or 3319.301 of the Revised Code or a license to teach in a chartered nonpublic school”.

I. First Screen for Initial Licensure and Initial Employment

Offenses That Are Absolute Bars (offenses not eligible for rehabilitation)

A district cannot employ and the state board cannot issue an initial teaching license to any applicant, if an applicant has been convicted⁴ of or pled guilty to:

- any of the following offenses;
- attempt, complicity or conspiracy to any of the following offenses; or
- any offense of a municipal ordinance or law of this state, another state or the United States that is substantially equivalent to any of the following offenses.

A check mark for a conviction of or plea of guilty to any one of these offenses permanently disqualifies the applicant for initial licensure or employment. Any sealed or expunged convictions should also be checked.

| ✓ | ORC Section | Offense |
|---|-------------|---|
| | 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 |
| | 2905.04 | Child Stealing (Repealed) |
| | 2905.05 | Criminal Child Enticement |
| | 2905.11 | Extortion |
| | 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 |
| | 2907.12 | Felonious Sexual Penetration (former section) |
| | 2907.21 | Compelling Prostitution |
| | 2907.22 | Promoting Prostitution |
| | 2907.23 | Procuring |
| | 2907.24 | Soliciting; after positive HIV test |
| | 2907.241 | Loitering to Engage in Prostitution; Soliciting 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 |

⁴ OAC 3301-20-01 specifically states that the rule is applicable to records of convictions that have been sealed pursuant to section 2953.32 of the Revised Code when the information contained in those sealed records bears a direct and substantial relationship to the position for which the individual is being considered.

| ✓ | ORC Section | Offense |
|---|-------------|---|
| | 2907.32 | Pandering Obscenity |
| | 2907.321 | Pandering Obscenity Involving a Minor |
| | 2907.322 | Pandering Sexually Oriented Matter Involving a Minor |
| | 2907.323 | Illegal Use of Minor In Nudity-Oriented Material or Performance |
| | 2907.33 | Deception to Obtain Matter Harmful to Juveniles |
| | 2907.34 | Compelling Acceptance of Objectionable Materials |
| | 2909.02 | Aggravated Arson |
| | 2909.22 | Soliciting or Providing Support for Acts of Terrorism |
| | 2909.23 | Making Terroristic Threat |
| | 2909.24 | Terrorism |
| | 2911.01 | Aggravated Robbery |
| | 2911.02 | Robbery |
| | 2911.11 | Aggravated Burglary |
| | 2911.12 | Burglary |
| | 2913.44 | Personating an Officer |
| | 2917.01 | Inciting to Violence |
| | 2917.02 | Aggravated Riot |
| | 2917.03 | Riot |
| | 2917.31 | Inducing Panic |
| | 2917.33 | Unlawful Possession or Use of Hoax Weapon of Mass Destruction |
| | 2919.12 | Unlawful Abortion |
| | 2919.121 | Performing or Inducing Unlawful Abortion Upon a Minor |
| | 2919.13 | Abortion Manslaughter |
| | 2919.22 | Endangering Children (if division (B)(1), (2), (3) or (4) is violated) |
| | 2919.23 | Interference of Custody - if a violation of this statute (R.C. §2919.23) would have been a violation of R.C. §2905.04 (child stealing) before 7/1/96. |
| | 2921.02 | Bribery |
| | 2921.03 | Intimidation |
| | 2921.04 | Intimidation of Attorney, Victim or Witness in Criminal Case |
| | 2921.05 | Retaliation |
| | 2921.11 | Perjury |
| | 2921.34 | Escape |
| | 2921.41 | Theft in Office |
| | 2923.122 | Illegal Conveyance or Possession of Deadly Weapon or Dangerous Ordinance or Illegal Possession of Object Indistinguishable from Firearm in School Safety Zone |
| | 2923.123 | Illegal Conveyance of Deadly Weapon or Dangerous Ordinance into Courthouse; Illegal Possession or Control in Courthouse |
| | 2923.161 | Improper Discharge Firearm at or into Habitation; School-related Offenses |
| | 2923.17 | Unlawful Possession of Dangerous Ordinance; Illegally Manufacturing or Processing Explosives |
| | 2923.21 | Improperly Furnishing Weapons to a Minor |
| | 2925.02 | Corrupting Another With Drugs |
| | 2925.03 | Trafficking in Drugs |
| | 2925.04 | Illegal Manufacturing of Drugs or Cultivation of Marijuana |
| | 2925.041 | Illegal Assembly or Possession of Chemicals for the Manufacture of |

| ✓ | ORC Section | Offense |
|---|-------------|--|
| | | 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 |
| | 2925.37 | Possession of Counterfeit Controlled Substances |
| | 2927.24 | Contaminating Substance for Human Consumption or Use or Contamination with Hazardous Chemical, Biological, or radioactive Substance; Spreading false report |
| | 3716.11 | Placing Harmful Objects in Food/Confection |
| | | Attempt, complicity or conspiracy conviction or guilty plea to any of the offenses listed above. |
| | | A conviction of or guilty plea to a violation of any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to any of the offenses listed above. |

This ends the first screen. If the applicant does not pass the above screen, the state board cannot issue an initial teaching license to and the district cannot employ an applicant. (Note: the State Board must deny an application for licensure in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code which provides due process rights to an applicant, including the right to an administrative hearing to challenge the denial of the application.)

If the applicant passes the above screen, continue to the next section.

II. The Second Screen for Initial Licensure and Initial Employment

Offenses Eligible for Rehabilitation

An applicant must meet the rehabilitation criteria listed in O.A.C. Rule 3301-20-01 before the state board can issue an initial license or a district can employ if he/she has been convicted of or pled guilty to:

- any of the following offenses;
- attempt, complicity or conspiracy to any of the following offenses; or
- any offense of a municipal ordinance or law of this state, another state or the United States that is substantially equivalent to any of the following offenses.

A check mark for a conviction of or a guilty plea to any one of these offenses disqualifies the applicant for initial licensure or employment unless the applicant meets the rehabilitation criteria listed in OAC 3301-20-01. Any sealed or expunged convictions should also be checked.

| ✓ | ORC Section | Offense |
|---|-------------|---|
| | 2903.08 | Aggravated Vehicular Assault; Vehicular Assault |
| | 2903.13 | Assault |

| ✓ | ORC Section | Offense |
|---|-------------|--|
| | 2903.16 | Failing to Provide for a Functionally Impaired Person |
| | 2903.21 | Aggravated Menacing |
| | 2903.211 | Menacing By Stalking |
| | 2907.08 | Voyeurism |
| | 2907.09 | Public Indecency |
| | 2909.03 | Arson |
| | 2909.04 | Disrupting Public Services |
| | 2909.05 | Vandalism |
| | 2911.13 | Breaking and Entering |
| | 2911.31 | Safe Cracking |
| | 2911.32 | Tampering With Coin Machines |
| | 2913.02 | Theft |
| | 2913.03 | Unauthorized Use of Vehicle |
| | 2913.04 | Unauthorized Use of Property; Computer, Cable or Telecommunication Property or Service |
| | 2913.041 | Possession or Sale of Unauthorized Cable Television Device |
| | 2913.05 | Telecommunications Fraud |
| | 2913.06 | Unlawful Use of Telecommunications Device |
| | 2913.11 | Passing Bad Checks |
| | 2913.21 | Misuse of Credit Cards |
| | 2913.31 | Forgery; Identification Card Offenses |
| | 2913.32 | Criminal Simulation |
| | 2913.33 | Making or Using Slugs |
| | 2913.34 | Trademark Counterfeiting |
| | 2913.40 | Medicaid Fraud |
| | 2913.42 | Tampering with Records |
| | 2913.43 | Securing Witnesses by Deception |
| | 2913.45 | Defrauding Creditors |
| | 2913.46 | Illegal Use of Food Stamps or WIC Program Benefits |
| | 2913.47 | Insurance Fraud |
| | 2913.48 | Worker's Compensation Fraud |
| | 2913.51 | Receiving Stolen Property |
| | 2915.05 | Cheating; Corrupting Sports |
| | 2915.07 | Conducting Illegal Bingo |
| | 2917.47 | Improperly Handling Infectious Agents |
| | 2919.151 | Partial Birth Feticide |
| | 2919.17 | Terminating or Attempting to Terminate Human Pregnancy After Viability |
| | 2919.22 | Endangering Children (except for violations of (B)(1), (2), (3) and (4)) |
| | 2919.24 | Contributing to Unruliness or Delinquency of a Minor |
| | 2919.25 | Domestic Violence |
| | 2921.12 | Tampering With Evidence |
| | 2921.35 | Aiding Escape or Resistance to Authority |
| | 2921.38 | Harassment by Inmate |
| | 2923.121 | Illegal Possession of Firearm in Liquor Permit Premises |
| | 2923.13 | Having Weapon While Under Disability |
| | 2923.32 | Engaging in a Pattern of Corrupt Activity |
| | 2923.42 | Participating in Criminal Gang |

| ✓ | ORC Section | Offense |
|---|-------------|--|
| | 2925.09 | Offense Involving Unapproved Drugs: Dangerous Drug Offense Involving Livestock |
| | 2925.11 | Possession of Drugs – any violation that isn't a minor misdemeanor |
| | 2925.12 | Possession of Drug Abuse Instruments |
| | 2925.31 | Abusing Harmful Intoxicants |
| | 2927.13 | Selling or Donating Contaminated Blood |
| | | Attempt, complicity or conspiracy conviction or guilty plea to any of the offenses listed above. |
| | | A conviction of or guilty plea to a violation of any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to any of the offenses listed above. |

Please check whether the applicant has been convicted of or pled guilty to any other felony offense which has not been previously listed. A check mark for a conviction of or guilty plea to any other felony offense disqualifies the applicant for initial licensure or employment unless the applicant meets the rehabilitation criteria listed in OAC 3301-20-01. Any sealed or expunged convictions should also be checked.

| ✓ | Criminal Code Section | Offense |
|---|-----------------------|--|
| | | Any felony offense not listed previously. |
| | | Attempt, complicity or conspiracy conviction or guilty plea to any felony offense not listed previously. |
| | | A conviction of or guilty plea to a violation of any municipal ordinance or law of this state, another state, or the United States that is substantially equivalent to any felony offense not listed previously. |

This ends the second screen. If no offenses are checked, the state board can issue an initial license to and the district can employ the applicant.

If any offense listed is checked, the state board cannot issue an initial teaching license to and the district cannot employ the applicant unless the applicant meets the rehabilitation criteria listed in OAC 3301-20-01. Continue to the next screen for the rehabilitation criteria.

III. The Third Screen for Initial Licensure and Initial Employment – (Rehabilitation)

O.A.C. Rule 3301-20-01 lists the rehabilitation criteria an applicant must show to be eligible for initial licensure and employment. All rehabilitation criteria must be met by the applicant. Further, it is the applicant's duty to provide written evidence upon application for licensure or employment that the rehabilitation criteria 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 license shall not be issued and the applicant shall not be hired. Any doubt shall be resolved in favor of protecting the persons served by the district.

If an answer to any of the rehabilitation criteria is “no”, the applicant has not demonstrated sufficient evidence of rehabilitation to become eligible for initial licensure or employment.

| Yes/No | Rehabilitation Criteria |
|--|--|
| | At the time of the offense, was the victim a person eighteen (18) years of age or older? |
| | At the time of the offense, the victim was not a student enrolled in a district? |
| | If the offense is a felony, have at least five years have elapsed since the applicant was fully discharged from imprisonment, probation or parole OR the applicant has had his criminal conviction sealed or expunged pursuant to section 2953.32 of the Revised Code? |
| | If the offense is a misdemeanor, have at least five years have elapsed since the date of conviction OR the applicant has had his criminal conviction sealed or expunged pursuant to section 2953.32 of the Revised Code? |
| | The applicant is not a repeat offender? The applicant has not been convicted of or pled guilty to the commission of any of the offenses listed in Screen 2 (Parts I and II) two or more times in separate criminal convictions. 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 rule. A sealed or expunged conviction shall not be counted for the purpose of determining whether the applicant is a repeat offender. |
| | Did the applicant provide 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 a counselor that the applicant has been rehabilitated. |
| This criterion is not included for field placement approval, but is likely to be used for licensure decisions by the Ohio Department of Education. | <p>Would a reasonable person 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 limited to the following factors:</p> <ul style="list-style-type: none"> 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. |

This ends the third screen.

If all the answers to the rehabilitation criteria are “yes”, the applicant has demonstrated sufficient evidence of rehabilitation and the state board can issue an initial license to and a district can employ the applicant. However, a district still maintains the discretion whether to offer employment to an applicant who has met the required rehabilitation criteria.

If any of the answers to the rehabilitation criteria is a “no”, the applicant has not demonstrated sufficient evidence of rehabilitation and the state board cannot issue an initial license to and a district cannot employ the applicant. (Note: the State Board must deny an application for licensure in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code which provides due process rights to an applicant, including the right to an administrative hearing to challenge the denial of the application.)

Impact of OAC Rule 3301-20-01 on Teachers Previously Licensed and Employed by a District

As previously stated, OAC Rule 3301-20-01 makes a distinction between individuals who are applying for initial licensure and employment and teachers who are already licensed and employed. If a teacher employed by a district is convicted of or pleads guilty to any of the offenses referred to in the rule, the district can pursue the same disciplinary/termination options that were available prior to the revision of the rule.

If a licensed teacher is convicted of or pleads guilty to any of the offenses referred to in the rule, the state board can pursue the same disciplinary actions against the teacher’s license that were available prior to the revision of the rule. Any disciplinary action against a teacher’s license must be in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code.

In keeping with the intent to link licensure and employment, the new rule addresses rehabilitation for teachers who are convicted of or pled guilty to any of the offenses in the rule. The new rule specifies that if a teacher satisfies all the terms and conditions of a consent agreement or a state board adopted resolution pertaining to the teacher, he/she shall be deemed rehabilitated with regard to the specific offense addressed in the consent agreement or resolution for purposes of future licensure or employment. However, a district maintains the discretion whether to employ a teacher who has been rehabilitated through satisfying the terms and conditions of a consent agreement or state board adopted resolution.