

**REPRESENTING OFT MEMBERS  
UNDER LICENSURE CODE OF  
CONDUCT AND RELATED STATUTES  
AND REGULATIONS**



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- House Bill 79 was enacted in March 2007, and requires individuals teaching under a professional teaching certificate to undergo a criminal background check by September 5, 2008.

- House Bill 190 went into effect in November, 2007. Under HB 190, the ODE requires applicants for any license or permit that it issues to complete both an Ohio criminal background check and an FBI criminal background check, conducted by BCI. This law applies to all non-licensed school employees.

- The law is not entirely new. SB 38 has been in effect since 1993. However, HB 79 and HB 190 have greatly expanded the scope of the restrictions upon teachers and non-teaching support staff in Ohio.

- There are a number of different statutes and administrative codes that apply to the implementation of these new laws. The primary statutes that are affected include ORC 3319.31 (which affects licensure); ORC 3319.39 (which affects the criminal records check); and ORC 3319.313 (which affects reporting requirements).

- Under ORC 3319.31, the DOE has the authority to refuse to issue a license to an applicant, to limit a license, or to suspend, revoke or limit a license that has already been issued, primarily for two reasons.

- First, if the person is found to have engaged in an immoral act, incompetence, negligence, or conduct that is unbecoming to the applicant's or person's position. This is called a (B)(1) violation.

- Second, if the person has pled guilty to, or there is a finding of guilt to a number of crimes, including: any felony, any offense of violence, any theft offence, or any drug offense. This is called a (B)(2) violation.

- With respect to the first provision of ORC 3319.31 (the (B)(1) violations), the Educators Standards Board has been required to develop a Licensure Code of Professional Conduct for Ohio Educators. It was adopted by the State Board of Education on March 11, 2008.

- The ODE has promulgated rules to apply when the State Board of Education considers licensure issues under Section (B)(1). These rules can be found at OAC 3301-73-21.

- For Section (B)(2) violations, there are some offenses that prohibit the State Board from issuing an initial license to individuals who have been convicted of certain offenses. However, the State Board may issue a license to and enter into a consent agreement with an applicant on other offenses. These rules can be found at OAC 3301-20-01.

- Under OAC 3301-20-01, there is a more narrow definition of certain terms, including an “offense of violence,” a “theft offense,” a “drug abuse offense,” and a “sexually-oriented offense.”

- If the offense is not one of the more narrowly listed offenses, even if the offense is a felony, then the State Board may enter into a consent agreement with the applicant or license holder, assuming other criteria are met. These other criteria are also listed in Section (E)(2) of OAC 3301-20-01.

- Under this regulation, if the individual satisfies the terms of the consent agreement or the State Board adopted resolution pertaining to the individual, he or she “shall be deemed rehabilitated” with regard to the specific offense.

- The regulation also states “A district maintains the discretion whether to employ a teacher who has been deemed rehabilitated under this paragraph.”

- What does it mean that a school district maintains discretion? In my opinion, it means that the discipline language in the Collective Bargaining Agreement applies. If the Collective Bargaining Agreement is silent, then the normal statutory protections for teachers apply.



- How is this affected by ORC 3319.39? A literal reading of the statute provides that a school district is prohibited from employing a person who has pled guilty or been convicted of certain crimes, including the offenses listed in ORC 3319.31. However, in my opinion, the rehabilitation provisions in OAC 3301-20-01 still apply.

- What offenses are school districts required to report to ODE?

■ OAC 3319.313 provides that the only things that must be reported are:

1. offenses listed in ORC 3319.31 or ORC 3319.39;

2. any time the school district has either initiated termination proceedings or non-renewal proceedings on the basis that the board of education, governing board or chief administrator has “reasonably determined that the employee has committed an act that is unbecoming to the teaching profession or has committed an offense listed in ORC 3319.31 or ORC 3319.39;

3. the employee has resigned under threat of termination or non-renewal, as outlined above;  
or
4. the employee has resigned because of or in the course of an investigation, as outlined above.

- School districts are not required to report violations of the Licensure Code of Professional Conduct for Ohio Educators. However, school districts may report these violations. By the same token, anyone (including teachers) may report violations against any license holder, including principals.

- Once a violation is reported, it goes through a triage process at the ODE, Office of Professional Conduct. There is no requirement, either in any statute or regulation, that ODE notify the individual who is the subject of the investigation, that they are the subject of an investigation.

- If the ODE decides to issue charges against an individual, the individual is entitled to full due process rights, including notice of the charges, a hearing before a neutral administrative law judge, and the right to counsel.

## **Proposed changes to the Administrative Rules**

- The OFT and the OEA proposed one change in the Administrative Rules and objected to two proposed changes in the Administrative Rules.

- The OFT and OEA proposed a change to the ODE's policy of preventing the teacher, who is the subject of the investigation, from obtaining access to the information in the possession of the ODE. The OFT and OEA were not successful in changing this rule.

- The OFT and OEA objected to the proposed change to allow for the release of the hearing officer's report to the board of education (where the teacher is employed) before the ODE makes a ruling. The OFT and OEA were *successful* in preventing this change.

- Third, the OFT and OEA objected to the proposed change, under which the Licensure Code was specifically referenced in the Administrative Code. This was the most dangerous of the proposed changes. Luckily, the OFT and OEA were *successful* in preventing this change to the Administrative Code.

- How might this process affect collective bargaining rights?

- Are there any aspects of this process that involve mandatory subjects of bargaining? Do they involve wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision in your Collective Bargaining Agreement?

- Language can be negotiated into a Collective Bargaining Agreement that requires the school district to notify the individual and/or the Local Union when the district reports a violation to the ODE.

- Language can be negotiated into a Collective Bargaining Agreement regarding what occurs when the ODE files charges against a teacher or other license holder. For example, is the school district going to solely rely on the ODE process? Is the school district going to proceed independently from the ODE process?



- What occurs when a teacher has a license suspended for a finite period of time? (For example 30, 60 or 90 days.)

- What is the Local Union's duty to represent bargaining unit members in licensure issues?

- Does the licensure issue implicate language in the Collective Bargaining Agreement?

- Does the Local Union have a “point person” to address licensure issues?

- What is the Local Union's policy on providing representation to bargaining unit members external to the Collective Bargaining Agreement?

- For example, what is the Local Union's policy regarding issues involving licensure (that do not involve allegations of misconduct); applications for disability retirement under STRS or SERS; workers' compensation issues; employment discrimination issues involving either the EEOC, OCRC or the courts; or FMLA issues?

- It is important for all Local OFT Unions to provide information to the OFT in order to help them affect legislation. The OFT is considered one of the major “stake holders” in the field of education. In order for the OFT to affect legislation, they need data on how these laws are affecting teachers and other license holders in their classrooms.