

*****DRAFT - NOT FOR FILING*****

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 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 who has never held or who is 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 or having previously held 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 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) "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.

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(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 either official results of a criminal background check or a guilty plea, finding of guilt or conviction that has been verified through certified court or law enforcement records.

(10) "Absolute bar offense" means any offense listed in division (C) of section [3319.31](#) of the Revised Code.

(11) "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.

(12) For the purposes of this rule, the term "conviction" or "convicted" includes any determination of guilt resulting from a plea of guilty to or a finding of guilt by a jury or court of any violation of an offense.

~~(B) Unless otherwise permitted by law, no district may **shall** employ, the state board will **shall** not issue a license to, and the superintendent will **shall** not enter into a consent agreement with an **applicant or** educator upon learning that **he/she-the** educator has been convicted of any absolute bar offense, if the conviction occurred after the issuance of the educator's initial license.~~

Commented [DM1]: Updated to allow for schools or districts to employ a person who has been licensed under the standards listed in 9.79 but has an absolute bar conviction that would otherwise disqualify the educator from employment.

~~(C) Division (C) of section 3319.31 of the Revised Code requires t**he** state board to **shall** revoke an educator's license upon learning that **the educator he/she** has been convicted of any violation of any absolute bar offense. If the state board intends to deny or revoke a license the state board will **shall** act in accordance with division (C) of sections [3319.31](#) and [3319.311](#) of the Revised Code and Chapter 3301-73 of the Administrative Code.~~

Commented [DM2]: Changes made throughout the rule according to SB 9, 134th GA, to remove restrictive regulatory language.

~~(D) If an educator has been convicted of any offense, other than an absolute bar offense, 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 Revised Code, whether occurring before or after the effective date of the consent agreement or state board adopted resolution.~~

Commented [DM3]: Prior provision is not in compliance with Revised Code section 9.79.

~~(D) The following only applies to convictions of guilty pleas to an offense that occurred after an educator's initial license. If an educator has been convicted of any offense, the state board will act in accordance with sections 3319.31 and 3319.311 of the Revised Code and Chapter 3301-73 of the Administrative Code. An educator is deemed rehabilitated regarding the conviction of guilty plea to any offense that is listed in Revised Code 3319.39, that is not an absolute bar offense, when the educator's license is in good standing and the educator:~~

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~~(1) Signs and returns a letter of admonishment from the department listing the specific offense;~~

~~(2) Executes a consent agreement with the department listing the specific offense;~~

~~(3) Receives a board resolution listing the specific offense.~~

An educator is employable regarding the conviction or guilty plea to an offense listed in 3319.39, that is not an absolute bar offense, in the absence of a disciplinary action if the educator has a license in good standing or is otherwise employable pursuant to section 119.06 of the Revised Code.

~~(E) No district may shall employ, the state board shall not issue an initial license to, and the superintendent shall not enter into a consent agreement to issue the license of an applicant who has previously been convicted of an offense listed in division (B)(1) of section 3319.39 of the Revised Code or section 3319.31 of the Revised Code unless all of the following conditions are met if that offense is also contained on the list published on the department's website in accordance with division (B)(1) of section 9.79 of the Revised Code until the applicant has obtained an initial license from the state board.~~

~~(1) The conviction is not one of the absolute bar offenses defined in paragraph (A)(10) 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 the division (B)(1) of section 3319.39 of the Revised Code or section 3319.31 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:~~

Commented [DM4]: Creates a new standard for the employment of an educator when the individual has a conviction referenced in Revised Code 3319.39 and the conviction occurred after the individual received their initial license. This change provides for flexibility for a school or district and provides for the new first time applicant standard created in Revised Code 9.79.

Commented [DM5]: Revisions made to comply with 9.79.

Commented [DM6]: This section is being removed as it is not in compliance with Revised Code section 9.79.

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- ~~(i) A sealed or expunged conviction shall not be counted;~~
 - ~~(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; and~~
 - ~~(ii) Convictions 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 shall be counted as one conviction.~~
- ~~(d) Upon the request by the department or 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 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/her probation or deferred adjudication;~~
 - ~~(vii) Evidence of rehabilitation;~~
 - ~~(viii) Whether the applicant fully disclosed the crime to the state board, the department and the hiring school district;~~

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~~(ix) Whether employment of licensure will negatively impact the health and safety or welfare of the school community and/or state-wide education community;~~

~~(x) Whether the educator has previously been disciplined by any other licensing entity, including but not limited to, out of state licensing entities; 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 C 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 the state board intends to deny a license based on the criteria specified in paragraph (E) of this rule not being met, the state board, through the superintendent, shall notify the applicant and afford the applicant the opportunity to request an administrative hearing under 3319.31 and Chapter 119 of the Revised Code.~~

(F 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. For purposes of this rule, a sealed conviction includes a conviction that has been expunged pursuant to a court order.

(G H) A conviction of an offense listed in division (B)(1) of section [3319.39](#) of the Revised Code or section [3319.31](#) of the Revised Code ~~shall~~ does not prevent an applicant's licensure or 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.

(H 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 will ~~shall~~ act in accordance with sections [3319.31](#), ~~and~~ [3319.311](#), and [9.79](#), if applicable, of the Revised Code and Chapter 3301-73 of the Administrative Code.

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(I ~~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.

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