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# When to remove an employee from the classroom

*by Julia A. Bauer  
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Substitute House Bill (HB) 428, effective Sept. 12, 2008, obligates districts to suspend employees from duties that involve the care, custody or control of children when the employees are arrested, summoned or indicted for certain offenses (Ohio Revised Code Section (RC) 3319.40). For employees who are licensed, the offenses are those that are bars to licensure, listed in RC 3319.31(C). For employees not licensed by the Ohio Department of Education (ODE), the offenses are those that are bars to employment for all school employees, listed in RC 3319.39(B)(1). The two lists of offenses do overlap to some extent, although they are not identical. A chart on the OSBA Web Site ([www.osba-ohio.org/misconduct.htm](http://www.osba-ohio.org/misconduct.htm)) details which offenses require suspension. Districts are required to notify ODE of the suspension of a licensed employee under the new law.

## Notification of an arrest

ODE is now a participating agency in the retained applicant fingerprint database.

The retained applicant fingerprint database is compiled and maintained by the Ohio Bureau of Criminal Identification and Investigation (BCII) and is sometimes referred to as "rap back" (RC 109.5721). It contains the fingerprints of everyone for whom BCII has conducted a criminal record check. This database enables BCII to cross-reference arrest reports with fingerprints in the database. HB 428 authorized the State Board of Education

to participate in the database and receive notice from BCII if any of its licensees are arrested or convicted (RC 3319.316). Presumably, the State Board will notify the local district when it receives such information.

For nonlicensed individuals, the arresting entity may notify the school district of the arrest or indictment, or the district may find out from members of the community. Schools may choose to participate in the retained applicant fingerprint database for their nonlicensed employees by paying a \$5 initial fee per person and an additional \$5 per person per year (Ohio Administrative Code (OAC) 109:5-1-03).

## Suspension

The law requires the district to suspend an employee from duties that involve the care, custody or control of children when the employee is arrested, summoned or indicted for certain crimes. The suspension lasts as long as the criminal action is pending. The law does not discuss whether the person should be assigned to alternative duties, placed on paid administrative leave or suspended from his or her position without pay. The way the district should handle such a suspension will be based on the facts of the situation, including the type of employee, the offense charged and the district's labor agreement. Districts are advised to consult with board counsel to make a determination on how to suspend a specific employee.

## Upon conviction

For licensed employees, a conviction of an

RC 3319.31(C) offense will lead to automatic revocation of the individual's license by ODE. A conviction, plea of guilty to, or eligibility for pre-trial diversion or intervention in lieu of conviction must be reported to ODE under RC 3319.313 by the superintendent or by the board president if the offender is the superintendent or treasurer. If the licensed employee is nonrenewed, terminated or resigns because of the misconduct or an investigation into such misconduct, the superintendent or board president may have to report the misconduct *even if* the individual is not

convicted. The standard for reporting is whether the board or superintendent "reasonably determined" the individual committed the act. ODE may take action to suspend, limit or revoke an educator's license for committing certain acts *even if* the person is not convicted.

RC 3319.39(B)(3) prohibits a district from employing a teacher who has been convicted of, or pleaded guilty to, an offense listed in RC 3319.31. Whereas the statute specifically authorizes the district to "release" nonlicensed employees who are convicted of certain crimes, no such explicit authority exists for licensed employees. Districts may

have to use applicable termination procedures.

A district may no longer employ a person who is not licensed by ODE if he or she is convicted of, or pleaded guilty to, an RC 3319.39(B)(1) offense. RC 3319.391 authorizes the district to release the individual from employment, unless the offense is eligible for rehabilitation under ODE rules (See OAC 3301-20-01).

For more information on employee misconduct, please consult OSBA's Employee Misconduct Tool kit, available on our Web site at [www.osba-ohio.org/misconduct.htm](http://www.osba-ohio.org/misconduct.htm).



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