

### ORC Ann. 3319.39

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 105 (SB 81), except for file 96 (HB 87).

*Page's Ohio Revised Code Annotated* > **Title 33: Education — Libraries (Chs. 3301 — 3385)** > **Chapter 3319: Schools — Superintendent; Teachers; Employees (§§ 3319.01 — 3319.99)** > **School Reports (§§ 3319.32 — 3319.58)**

## **§ 3319.39 Criminal records check of applicants for employment; employment of certain offenders prohibited.**

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(A)

(1) Except as provided in division (F)(2)(b) of [section 109.57 of the Revised Code](#), the appointing or hiring officer of the board of education of a school district, the governing board of an educational service center, or of a chartered nonpublic school shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to any applicant who has applied to the school district, educational service center, or school for employment in any position. The appointing or hiring officer shall request that the superintendent include information from the federal bureau of investigation in the criminal records check, unless all of the following apply to the applicant:

(a) The applicant is applying to be an instructor of adult education.

(b) The duties of the position for which the applicant is applying do not involve routine interaction with a child or regular responsibility for the care, custody, or control of a child or, if the duties do involve such interaction or responsibility, during any period of time in which the applicant, if hired, has such interaction or responsibility, another employee of the school district, educational service center, or chartered nonpublic school will be present in the same room with the child or, if outdoors, will be within a thirty-yard radius of the child or have visual contact with the child.

(c) The applicant presents proof that the applicant has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested or provides evidence that within that five-year period the superintendent has requested information about the applicant from the federal bureau of investigation in a criminal records check.

(2) A person required by division (A)(1) of this section to request a criminal records check shall provide to each applicant a copy of the form prescribed pursuant to division (C)(1) of [section 109.572 of the Revised Code](#), provide to each applicant a standard impression sheet to obtain fingerprint impressions prescribed pursuant to division (C)(2) of [section 109.572 of the Revised Code](#), obtain the completed form and impression sheet from each applicant, and forward the completed form and impression sheet to the superintendent of the bureau of criminal identification and investigation at the time the person requests a criminal records check pursuant to division (A)(1) of this section.

(3) An applicant who receives pursuant to division (A)(2) of this section a copy of the form prescribed pursuant to division (C)(1) of [section 109.572 of the Revised Code](#) and a copy of an impression sheet prescribed pursuant to division (C)(2) of that section and who is requested to complete the form and provide a set of fingerprint impressions shall complete the form or provide all the information necessary to complete the form and shall provide the impression sheet with the impressions of the

applicant's fingerprints. If an applicant, upon request, fails to provide the information necessary to complete the form or fails to provide impressions of the applicant's fingerprints, the board of education of a school district, governing board of an educational service center, or governing authority of a chartered nonpublic school shall not employ that applicant for any position.

(4) Notwithstanding any provision of this section to the contrary, an applicant who meets the conditions prescribed in divisions (A)(1)(a) and (b) of this section and who, within the two-year period prior to the date of application, was the subject of a criminal records check under this section prior to being hired for short-term employment with the school district, educational service center, or chartered nonpublic school to which application is being made shall not be required to undergo a criminal records check prior to the applicant's rehiring by that district, service center, or school.

**(B)**

(1) Except as provided in rules adopted by the department of education in accordance with division (E) of this section and as provided in division (B)(3) of this section, no board of education of a school district, no governing board of an educational service center, and no governing authority of a chartered nonpublic school shall employ a person if the person previously has been convicted of or pleaded guilty to any of the following:

(a) A violation of [section 2903.01](#), [2903.02](#), [2903.03](#), [2903.04](#), [2903.11](#), [2903.12](#), [2903.13](#), [2903.16](#), [2903.21](#), [2903.34](#), [2905.01](#), [2905.02](#), [2905.05](#), [2907.02](#), [2907.03](#), [2907.04](#), [2907.05](#), [2907.06](#), [2907.07](#), [2907.08](#), [2907.09](#), [2907.21](#), [2907.22](#), [2907.23](#), [2907.25](#), [2907.31](#), [2907.32](#), [2907.321](#), [2907.322](#), [2907.323](#), [2911.01](#), [2911.02](#), [2911.11](#), [2911.12](#), [2919.12](#), [2919.22](#), [2919.24](#), [2919.25](#), [2923.12](#), [2923.13](#), [2923.161](#), [2925.02](#), [2925.03](#), [2925.04](#), [2925.05](#), [2925.06](#), or [3716.11 of the Revised Code](#), a violation of [section 2905.04 of the Revised Code](#) as it existed prior to July 1, 1996, a violation of [section 2919.23 of the Revised Code](#) that would have been a violation of [section 2905.04 of the Revised Code](#) as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of [section 2925.11 of the Revised Code](#) that is not a minor drug possession offense, or felonious sexual penetration in violation of former [section 2907.12 of the Revised Code](#);

(b) A violation of an existing or former law of this state, another state, or the United States that is substantially equivalent to any of the offenses or violations described in division (B)(1)(a) of this section.

(2) A board, governing board of an educational service center, or a governing authority of a chartered nonpublic school may employ an applicant conditionally until the criminal records check required by this section is completed and the board or governing authority receives the results of the criminal records check. If the results of the criminal records check indicate that, pursuant to division (B)(1) of this section, the applicant does not qualify for employment, the board or governing authority shall release the applicant from employment.

(3) No board and no governing authority of a chartered nonpublic school shall employ a teacher who previously has been convicted of or pleaded guilty to any of the offenses listed in [section 3319.31 of the Revised Code](#).

**(C)**

(1) Each board and each governing authority of a chartered nonpublic school shall pay to the bureau of criminal identification and investigation the fee prescribed pursuant to division (C)(3) of [section 109.572 of the Revised Code](#) for each criminal records check conducted in accordance with that section upon the request pursuant to division (A)(1) of this section of the appointing or hiring officer of the board or governing authority.

(2)A board and the governing authority of a chartered nonpublic school may charge an applicant a fee for the costs it incurs in obtaining a criminal records check under this section. A fee charged under this division shall not exceed the amount of fees the board or governing authority pays under division (C)(1) of this section. If a fee is charged under this division, the board or governing authority shall notify the applicant at the time of the applicant's initial application for employment of the amount of the fee and that, unless the fee is paid, the board or governing authority will not consider the applicant for employment.

(D)The report of any criminal records check conducted by the bureau of criminal identification and investigation in accordance with *section 109.572 of the Revised Code* and pursuant to a request under division (A)(1) of this section is not a public record for the purposes of *section 149.43 of the Revised Code* and shall not be made available to any person other than the applicant who is the subject of the criminal records check or the applicant's representative, the board or governing authority requesting the criminal records check or its representative, and any court, hearing officer, or other necessary individual involved in a case dealing with the denial of employment to the applicant.

(E)The department of education shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which the board or governing authority may hire a person who has been convicted of an offense listed in division (B)(1) or (3) of this section but who meets standards in regard to rehabilitation set by the department.

The department shall amend rule [\*3301-83-23 of the Ohio Administrative Code\*](#) that took effect August 27, 2009, and that specifies the offenses that disqualify a person for employment as a school bus or school van driver and establishes rehabilitation standards for school bus and school van drivers.

(F)Any person required by division (A)(1) of this section to request a criminal records check shall inform each person, at the time of the person's initial application for employment, of the requirement to provide a set of fingerprint impressions and that a criminal records check is required to be conducted and satisfactorily completed in accordance with *section 109.572 of the Revised Code* if the person comes under final consideration for appointment or employment as a precondition to employment for the school district, educational service center, or school for that position.

(G)As used in this section:

(1)"Applicant" means a person who is under final consideration for appointment or employment in a position with a board of education, governing board of an educational service center, or a chartered nonpublic school, except that "applicant" does not include a person already employed by a board or chartered nonpublic school who is under consideration for a different position with such board or school.

(2)"Teacher" means a person holding an educator license or permit issued under *section 3319.22* or [\*3319.301 of the Revised Code\*](#) and teachers in a chartered nonpublic school.

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

(4)"Minor drug possession offense" has the same meaning as in *section 2925.01 of the Revised Code*.

(H)If the board of education of a local school district adopts a resolution requesting the assistance of the educational service center in which the local district has territory in conducting criminal records checks of substitute teachers and substitutes for other district employees under this section, the appointing or hiring officer of such educational service center shall serve for purposes of this section as the appointing or hiring officer of the local board in the case of hiring substitute teachers and other substitute employees for the local district.

## History

[145 v S 38](#) (Eff 10-29-93); [145 v H 715](#) (Eff 7-22-94); [145 v H 694](#) (Eff 11-11-94); [146 v H 117](#) (Eff 9-29-95); [146 v H 223](#) (Eff 11-15-95); [146 v S 2](#) (Eff 7-1-96); [146 v S 269](#) (Eff 7-1-96); [146 v H 445](#) (Eff 9-3-96); [146 v S 230](#). Eff 10-29-96; [150 v S 2](#), § 1, eff. 6-9-04; [152 v S 97](#), § 1, eff. 7-1-07; [152 v H 190](#), § 1, eff. 11-14-07; [152 v H 428](#), § 1, eff. 9-12-08; [153 v H 19](#), § 1, eff. 3-29-10; [2011 HB 153](#), § 101.01, eff. June 30, 2011.

Annotations

## Notes

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### Editor's Notes

The provisions of § 22 of S.B. 2 (150 v —) read as follows:

SECTION 22. [Section 3319.39 of the Revised Code](#) is presented in this act as a composite of the section as amended by Am. Sub. H.B. 445, Am. Sub. S.B. 269, and Am. Sub. S.B. 230 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of [section 1.52 of the Revised Code](#) that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

### Amendment Notes

The 2011 amendment added (A)(4).

153 v H 19, effective March 29, 2010, added the last paragraph of (E).

152 v H 428, effective September 12, 2008, added “unless all of the following apply to the applicant” to the end of the introductory language of (A)(1); added (A)(1)(a) through (c); in (H), inserted “substitutes for other district employees”, and substituted “and other substitute employees for” for “for employment in”; and corrected internal references.

152 v H 190, effective November 14, 2007, in (A)(1), deleted language from the end of the first sentence pertaining to proof of residency in regards to criminal records checks; in (A)(3), deleted “for which a criminal records check is required pursuant to division (A)(1) of this section” from the end; in the introductory language of (B)(1), deleted “as a person responsible for the care, custody, or control of a child” following “employ a person”; and, in (G)(1), deleted “as a person responsible for the care, custody, or control of a child” following each instance “nonpublic school”.

152 v S 97, effective July 1, 2007, in (A)(1), added the exception to the beginning of the second and third sentences, and added the last sentence.

## Notes to Decisions

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**Authority**

**Criminal conviction**

## Elementary school custodian

### Authority

Municipal civil service commission had the authority to order the reinstatement of an employee by a school district board of education because its decision was not rendered illegal by [R.C. 3319.391](#) as the employee was not statutorily unemployable by the board due to the employee's earlier conviction for assault. [Akron City Sch. Dist. Bd. of Educ. v. Civil Serv. Comm'n, 2012-Ohio-1618, 2012 Ohio App. LEXIS 1419 \(Ohio Ct. App., Summit County 2012\)](#).

### Criminal conviction

Summary judgment for a board of education was affirmed as, in light of a teacher's conviction of contributing to the unruliness or the delinquency of a child, which precluded the teacher's employment as a teacher under [R.C. 3319.39\(B\)](#), and the revocation of the teacher's certificates for teaching, requiring the board to conduct a hearing under [R.C. 3319.16](#) would be mandating a futile act. [Huntsman v. Perry Local Sch. Dist. Bd. of Educ., 2005-Ohio-3294, 2005 Ohio App. LEXIS 3072 \(Ohio Ct. App., Stark County 2005\)](#).

### Elementary school custodian

An elementary school custodian who has contact with children is subject to [R.C. 3319.39: Prete v. Akron City Sch. Dist. Bd. of Educ., 106 Ohio App. 3d 761, 667 N.E.2d 73, 1995 Ohio App. LEXIS 4619 \(Ohio Ct. App., Summit County 1995\)](#).

## Research References & Practice Aids

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### Cross-References to Related Sections

Alternative disciplinary schools, RC § [3313.533](#).

Criminal records check and fingerprinting of certain persons having frequent contact with children, RC § [109.572](#).

Duties of the superintendent of the bureau of criminal identification and investigation, RC § [109.57](#).

Terms of contract between sponsor and governing authority; comprehensive plan, RC § [3314.03](#).

Utilization of work experience program participants, RC § [3319.089](#).

### Ohio Administrative Code

Standards for employment of individuals with certain criminal convictions. **3 Ohio Sch. Law:** [OAC ch. 3301-20](#).