



# Background checks

## Ohio School Boards Association

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*This fact sheet is designed to address the most frequently asked questions about various components of background checks in Ohio. While background checks may include several components, such as employment and education verification and reference checks, this fact sheet focuses on two specific components: consulting the educator profile database and conducting a Bureau of Criminal Investigation (BCI)/FBI criminal records check. The information is of a general nature. Readers should seek the advice of legal counsel for specific legal problems or questions.*

## State Board of Education (SBOE) Educator Profile database

*What is the "Educator Profile" database?*

SBOE's [Educator Profile database](#) provides current information on the status of an educator's license or licensure applications and any public discipline the educator has received. The database allows teachers, administrators and parents to check the status of an educator's application, review credential history and look at assignment data online in one location.

*Are districts required to consult the Educator Profile database before hiring an individual?*

Yes, Ohio Revised Code [\(RC\) 3319.393](#) requires that districts consult the [Educator Profile database](#) before making any hiring decision.

*Does SBOE have other records that should be reviewed before hiring an individual?*

A district may, but is not required to, further discern the employment, disciplinary or criminal record of an applicant for employment by consulting SBOE's Office for Professional Conduct (OPC). Upon request, OPC must provide the district with the contents of any report of misconduct filed against the applicant under RC Sections [3314.40](#), [3319.313](#), [3326.24](#), [3328.19](#) or [5126.253](#). The district may also request information from OPC about whether the applicant has been the subject of any disciplinary actions conducted by SBOE ([RC 3319.393](#)).

## Criminal records checks

Criminal records check requirements for various roles are listed below.

### *Licensed employees*

Pursuant to [RC 3319.291](#), criminal records checks are required for licensed employees when they initially apply for or renew a certificate, license or permit issued by SBOE unless they have undergone a records check less than five years prior to that time.

The law requires a criminal records check from both BCI and FBI unless the individual can demonstrate that they have been a resident of Ohio for the preceding five years and have previously been subject to a BCI check, in which case only an FBI check is required.

This fact sheet is published as an OSBA membership service

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revised 7/24

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### *Nonlicensed employees*

Pursuant to [RC 3319.391](#), criminal records checks are required upon initial hire for employees in positions that do not require a license or registration issued by SBOE and who are not bus drivers. Subsequent checks are required by Sept. 5 every fifth year thereafter. The law requires a criminal records check from BCI and FBI unless the individual can demonstrate that they have been a resident of Ohio for the preceding five years and have previously been subject to a BCI check, in which case only an FBI check is required.

### *Transportation employees*

Pursuant to [RC 3327.10](#), criminal records checks are required for transportation employees before being hired. Subsequent checks are required every sixth year thereafter. The law requires a criminal records check from BCI and FBI unless the individual can demonstrate that they have been a resident of Ohio for the preceding five years and have previously been subject to a BCI check, in which case only an FBI check is required.

### *Board members*

Ohio law does not require criminal records checks for public school board members or school board candidates. Requiring a public official or candidate to submit to a criminal records check could limit the ability of an individual from serving as a public official and might be viewed as an unconstitutional limitation on the individual's right to political expression. Nothing prohibits an individual board member from voluntarily submitting to a criminal records check.

[RC 2961.01](#) limits the abilities of certain convicted felons to hold a position of honor, trust or profit, which includes being elected to a board of education.

### *Adult education instructors*

Pursuant to [RC 3319.39\(A\)\(1\)](#), adult education instructors must have an initial criminal records check. However, only a BCI check is required if the individual has been a resident of Ohio for the five years prior to the records check and the job will not involve routine interactions with children or, if routine interactions with children will occur, the person's duties are always performed when another school employee is present in the same room or, if outdoors, when another school employee is in visual contact or within a 30-yard radius.

Adult education instructors who are being rehired for short-term employment and whose duties do not involve routine interaction with children are not required to have a records check if they have previously undergone a records check in the same

district in the preceding two-year period.

### *Preschool employees*

[RC 3301.541](#) requires that applicants for preschool positions involving the care, custody or control of a child complete a criminal records check.

If the person can demonstrate that they have been a resident of Ohio for the five years prior to the records check and have been subject to an FBI check during that five-year period, they will only need a BCI check. See [RC 3301.541](#) for the list of disqualifying offenses.

### *Community schools*

Pursuant to [RC 3314.19\(I\)](#) and [RC 3326.23\(G\)](#), the sponsor of each community school must provide annual assurances to SBOE on the school's compliance with certain laws in preparation for the upcoming school year. One required assurance is that the community school has conducted a criminal records check on all employees and governing authority members.

### *Volunteers*

Ohio law does not require criminal records checks for most volunteers. However, school boards may require them by policy. If a criminal records check is conducted on a volunteer and reveals that the individual was convicted of or pleaded guilty to an offense listed in [RC 109.572\(A\)\(1\)](#), the district may no longer use the volunteer in a position involving unsupervised access to children on a regular basis unless a notice is sent to parents ([RC 109.576](#)). The notice must name the volunteer and indicate that they have been convicted of or entered a guilty plea to one or more of the prohibited violations. The notice may not identify the specific offense(s).

Additionally, if the volunteer will have "unsupervised access" to a child on a regular basis, [RC 109.575](#) requires that districts notify the volunteer that fingerprints and a criminal records check may be conducted at any time. "Unsupervised access" means that no other person 18 years of age or older is present in the same room with the child, or if outdoors, no other person 18 years of age or older is within a 30-yard radius of the child or has visual contact with the child ([RC 109.574](#)).

### *Contractors*

Pursuant to [RC 3319.391](#) and [RC 3319.392](#), criminal records checks are required for individuals hired by a contractor engaged in providing services that may involve routine interaction with a child or regular responsibility for the care, custody or control

of a child. Subsequent checks are required by Sept. 5 every fifth year thereafter.

To comply with this requirement, private companies may request criminal records checks through BCI. The law requires a criminal records check from both BCI and FBI, unless the individual can demonstrate that they have been a resident of Ohio for the preceding five years and have previously been subject to a BCI check, in which case only an FBI check is required.

### **May a district require additional background checks other than the criminal records check authorized or required above?**

Yes, in addition to the criminal records checks authorized or required above, a district may require additional background checks under [RC 3319.393](#) for any applicant for employment or potential volunteer.

A district may conditionally employ an individual pending the receipt of information from these additional background checks. If the information reveals that the individual has engaged in conduct unbecoming to the teaching profession or has committed an offense that prevents, limits or otherwise affects the applicant's employment with the district, the district may release the individual from employment.

### **If I have multiple certificates, licenses or permits, do I have to get a criminal records check each time I renew one of them?**

Pursuant to [RC 3319.291](#), if a person holds more than one certificate, license or permit, the following applies:

*If the certificates, licenses or permits are of different durations* – The holder will only have to get a criminal records check when renewing the certificate, license or permit with the longest duration. Prior to renewing a certificate, license or permit of a shorter duration, SBOE will check for information on the applicant in Ohio's Retained Applicant Fingerprint Database.

*If the licenses, certificates or permits expire in the same year* – SBOE will only require one criminal records check.

*If the licenses, certificates or permits are of the same duration but do not expire in the same year* – The person must designate one certificate as their "primary" certificate, license or permit, and notify SBOE of that designation. The person will only need to get a criminal records check when renewing the primary certificate, license or permit. SBOE will check for information on the applicant for renewal in the retained applicant fingerprint database prior to renewing any license, certificate or permit that is not the primary.

### **How long does it take to receive the criminal records check from BCI?**

BCI is required by statute to return a report within 30 days of the request ([RC 109.57\(F\)\(2\)\(a\)](#)).

### **Where can applicants or employees complete their background check requirements?**

Several districts or educational service centers serve as WebCheck locations and complete background checks for applicants or employees. Alternatively, employees can check with their local law enforcement agency or use the [Ohio Attorney General's website](#) to find a convenient location.

### **Who pays for the criminal records checks?**

Payment is a local decision. [RC 3319.39](#) allows school districts to charge a fee to applicants for a criminal records check, not to exceed the amount charged by BCI and FBI. [RC 109.572\(C\)\(2\)](#) authorizes entities making fingerprint impressions to charge a reasonable fee for that service.

### **May we hire an employee "conditionally" pending a successful criminal records check?**

[RC 3319.39\(B\)\(2\)](#) states that a school board may employ an applicant conditionally until the criminal records check is completed and the board receives the results of the check. If the results of the criminal records check indicate that the applicant does not qualify for employment, the board must release the applicant from employment. [Ohio Administrative Code \(OAC\) 3301-83-06](#) requires that school bus and van drivers, bus aides, on-the-bus instructors and transportation directors and supervisors have a satisfactory criminal background report before being hired by the district.

### **May a board of education accept a copy of an individual's prior criminal records check?**

Yes. A board of education may accept a certified copy of a criminal records check that was issued by BCI for up to one year after the date of its issuance ([RC 109.57\(F\)\(2\)\(b\)](#)). When a certified copy is presented, the district should make a copy of the criminal records check for their records and return the certified copy to the applicant.

### **Are criminal records checks subject to the Ohio Public Records Laws?**

No. [RC 3319.39\(D\)](#) states that criminal records checks are not public records under the Ohio Public Records Laws. Not only are they not public records, but they also may not be released to any person but the applicant, the applicant's representative, the board requesting the criminal records check or a court, hearing officer or other necessary individual involved in a case dealing with the denial

of employment to the applicant.

### **How long must districts keep criminal records check reports?**

Ohio law does not set a specific period for which criminal records checks must be retained, except for bus drivers. [OAC 3301-83-06](#) requires that districts retain records of bus driver criminal records checks for six years.

Because districts must obtain criminal records checks for certain employees every five years, it is recommended that the district retain those checks for a minimum of six years. For applicants who are never hired, it is suggested that their criminal records checks be retained until the end of the fiscal year in which the job was open. Remember, even when placed in an employee's personnel file, criminal records checks are not public records ([RC 3319.39\(D\)](#)).

### **What offenses disqualify an individual from obtaining a license?**

[RC 9.79](#) requires that each license-issuing agency in the state establish a list of criminal offenses for which a conviction, guilty plea or judicial finding of guilt may disqualify an applicant from receiving an *initial* license. SBOE maintains a list of these disqualifying offenses on its website. Disqualification may be overcome by holding a [certificate of qualification for employment \(CQE\)](#) or a [certificate of achievement and employability \(CAE\)](#).

Individuals who are *already licensed* by SBOE may lose their licenses if they have pleaded guilty to or been convicted of any of the offenses set forth in [RC 3319.31\(B\)](#). SBOE is required to revoke a license if the individual has pleaded guilty to or been convicted of any of the automatic revocation offenses set forth in [RC 3319.31\(C\)](#).

### **What offenses disqualify an individual from working in the district?**

No board of education may hire a person who has been convicted of or pleaded guilty to any of the offenses listed in [RC 3319.39\(B\)\(1\)\(a\)](#). This prohibition applies to all employees, including *licensed, nonlicensed and transportation employees*.

[RC 3319.39\(B\)\(3\)](#) prohibits a district from employing a *teacher* who has been convicted of or pleaded guilty to any offenses listed in [RC 3319.31](#). "Teacher" includes anyone who holds an educator license or permit under [RC 3319.22](#) or [3319.301](#).

*Bus drivers* may not be hired if they have pleaded guilty to or been convicted of an offense listed in [OAC 3301-83-23\(A\)\(6\)](#) ([RC 3327.10\(K\)](#)).

Many of the offenses that are bars to

employment are subject to rehabilitation criteria established by SBOE. The criteria are set forth in [OAC 3301-20-01](#) (licensed employees), [3301-20-03](#) (nonlicensed employees) and [3301-83-23](#) (transportation employees), and allow individuals with certain criminal convictions to be hired if they satisfy the rehabilitation criteria. Disqualification may also be overcome by holding a [CQE](#) or [CAE](#).

When district administrators are made aware of an individual's guilty plea or conviction, they should work with legal counsel to determine whether the offense disqualifies the individual from working in the district, whether the individual has met the rehabilitation criteria and whether disqualification may be overcome pursuant to a CQE or CAE.

### **What if an offense was sealed or expunged?**

Sealed and expunged offenses may appear on the BCI criminal records check ([RC 109.57\(F\)\(2\)\(a\)](#)). If a sealed or expunged offense is a disqualifying offense and is not eligible for rehabilitation, a district may not employ the individual.

### **Rapback**

#### *What is the Retained Applicant Fingerprint Database?*

The Retained Applicant Fingerprint Database is compiled and maintained by BCI and is sometimes referred to as "Rapback" ([RC 109.5721](#)). It contains fingerprints captured as part of the criminal records check process. SBOE is statutorily required to enroll the following individuals in Rapback: licensed educators, pupil transportation drivers, nonlicensed employees and contractors providing services that may involve routine interaction with a child or regular responsibility for the care, custody or control of a child ([RC 3319.316](#), [RC 3319.391](#) and [RC 3327.10](#)).

Rapback searches the fingerprints in its database against new criminal prints and prints submitted to BCI as part of a court disposition process. When a match is found, BCI provides rap sheet information back to SBOE, which provides notice about criminal arrests or convictions to the school districts or employers where the employees or contractors are employed.

*The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*