

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> DAVID QUOLKE,)	SUPREME COURT CASE
)	NO. 2013-1809
Relator-Appellee,)	
)	CUYAHOGA COUNTY COURT
v.)	OF APPEALS, EIGHTH DISTRICT
)	CASE NO. CA 13 099733
STRONGSVILLE CITY SCHOOL)	
DISTRICT BOARD OF EDUCATION, <i>et al.</i> ,)	
)	
Respondents-Appellants.)	
)	

REPLY BRIEF OF RESPONDENTS-APPELLANTS STRONGSVILLE CITY SCHOOL DISTRICT BOARD OF EDUCATION, SUPERINTENDENT JOHN KRUPINSKI, PRESIDENT DAVID FRAZEE, AND TREASURER DEBORAH HERRMANN

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INTRODUCTION

Relator-Appellee, David Quolke (“Mr. Quolke” or “Appellee”), lacked standing to bring the present action because he failed to inform Respondents-Appellants Strongsville City School District Board of Education (“Board”), Superintendent John Krupinski, Board President David Frazee, and Treasurer Deborah Herrmann (collectively “Appellants”), that he allegedly was acting through a designee. Even if Appellee did have standing, records setting forth the names of the temporary replacement teachers are exempt from disclosure as public records, as such disclosure would violate the replacement teachers’ constitutional right to privacy. Finally, Appellee failed to demonstrate that he was entitled to an award of attorney’s fees. Accordingly, Appellants respectfully request that this Court reverse the judgment of the Eighth District Court of Appeals (“Court of Appeals”).

ARGUMENT

Proposition of Law No. I: A relator lacks standing to bring a writ of mandamus action pursuant to R.C. 149.43 when the relator is not the requester of the public records and the requester does not inform the public entity that a different individual is the true party in interest.

Appellee has no standing to seek the instant writ of mandamus, as he failed to notify Appellants that he allegedly was acting through a designee in making the public records request which is the subject of this litigation. Suzannah Muskovitz (“Ms. Muskovitz”) and William Froehlich (“Mr. Froehlich”), not Appellee, sent the March 5, 2013 and March 20, 2013 letters to Appellants making the public records request at issue. (Supp. 100-111).¹ The letters stated, “we are writing”; “if we do not receive the requested public records”; “provide us with electronic copies”; “we will make arrangements to pick up the records”; and “we look forward to receiving

¹ “Supp.” refers to the Supplement of Respondents-Appellants Strongsville City School District Board of Education, Superintendent John Krupinski, Board President David Frazee, and Treasurer Deborah Herrmann, filed on March 10, 2014 with this Court.

the records requested.” (Emphasis added). (Supp. 100-111). Clearly, there was no way for Appellants to determine, based on these records requests, that Appellee allegedly had designated Ms. Muskovitz and Mr. Froehlich to act as his designees or that they were acting within the scope of such authority. (Supp. 100-111). Thus, Appellee’s argument that he met the notice requirements set forth in State ex rel. Finnerty v. Strongsville Police Dept., 99 Ohio App.3d 569 (8th Dist. 1994) regarding the identification of a public records requester’s designee is incorrect.

Further, contrary to Appellee’s contention, meeting the Finnerty notice requirements would not have required Appellee to disclose his identity in derogation of R.C. 149.43(B)(4). Rather, Finnerty merely requires that where the requester of public records utilizes a designee, the public records request must “clearly and unequivocally identify the designee and state the scope of the designee’s powers and inquiry....” Id. at 573-574. Appellee could have met the Finnerty notice requirement by anonymously informing Appellants in the public records request that Ms. Muskovitz and Mr. Froehlich were acting as his designees, and identifying the scope of their authority. Finnerty does not require the requester to reveal his identity, and Appellants have not contended that Appellee was required to provide his identity.

Contrary to Appellee’s suggestion, the Public Records Act’s exception for incarcerated individuals has no bearing on the present matter. Although Finnerty and State ex rel. Barb v. Cuyahoga Cty. Jury Commer., 124 Ohio St.3d 238, 2010-Ohio-120, both address issues regarding inmates, neither is expressly limited to public records requests made by inmates, as the concerns regarding the use of designees arise regardless of whether the requester is incarcerated. Appellee’s failure to designate Ms. Muskovitz and Mr. Froehlich as his designees leaves him without standing to file the instant action, warranting dismissal of this action by this Court.

Proposition of Law No. II: Records are not public records when their release would violate the subject's constitutional right to privacy.

A. Appellee Cannot Argue that the Nondisclosure of the Temporary Replacement Teachers' Names is Overbroad and Underinclusive for the First Time on Appeal.

Appellee attempts to raise an argument before this Court that he failed to present to the Court of Appeals. It is well settled that “[p]arties cannot raise any new issues for the first time on appeal, and the failure to raise an issue at the trial level waives it on appeal.” Young v. Young, 2011-Ohio-5060, ¶12 (10th Dist.). Accordingly a party “cannot raise new issues or legal theories for the first time on appeal.” Hudson v. P.I.E. Mutual Ins. Co., 2011-Ohio-908, ¶12 (10th Dist.), *quoting* State v. Pilgrim, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶19 (10th Dist.). *See also* City of Cleveland, 8th Dist. No. 35707, 1 (Mar. 31, 1977) (“The appellees also argue that under the facts of this case the issuance of a ‘John Doe’ warrant was improper. This issue was not raised in trial court. A party may not on appeal raise an issue for the first time.”); State v. Morris, 42 Ohio St.2d 307, 311 (1975) (“Where, as here, the [appellee] fails to challenge appellants’ standing... it also waives any right to challenge ‘standing’ on appeal.”)

Appellee did not, at any time during the litigation before the Court of Appeals, argue that the nondisclosure of the temporary replacement teachers’ names was overbroad or underinclusive. Nor did the Court of Appeals discuss this issue in any of its opinions or judgment entries. As a result, the Court of Appeals did not consider Appellee’s argument, and therefore this Court should not, for the first time on appeal, consider whether the nondisclosure of the temporary replacement teachers’ names is overbroad or underinclusive.

To the extent that this Court does consider Appellee’s argument, it will find that the nondisclosure of the temporary replacement teachers’ names is neither underinclusive nor overbroad. “[A] classification that is substantially overinclusive or underinclusive tends to

undercut the governmental claim that the classification serves legitimate political ends.” Cabell v. Chavez-Salido, 454 U.S. 432, 440, 102 S.Ct. 735, 740 (1982). However, in reviewing arguments regarding underinclusiveness or overinclusiveness, the United States Supreme Court has stated that “perfection is by no means required.” Vance v. Bradley, 440 U.S. 93, 108, 99 S.Ct. 939, 948 (1979), *quoting* Phillips Chemical Co. v. Duams School Dist., 361 U.S. 376, 385, 80 S.Ct. 474, 480 (1960); *also* Cabell at 443 (“the classifications used need not be precise; there need only be a substantial fit.”).

Here, the nondisclosure of the names of the temporary replacement teachers is not overinclusive because, given the factual record before this Court demonstrating the significant harm posed to the temporary replacement teachers’ constitutional right to privacy, only the names of the temporary replacement teachers employed by the Strongsville City School District (“District”) during the Strongsville Education Association’s (“SEA”) 2013 labor strike would be exempt from disclosure. *See* Simone & Schuster, Inc. v. Members of New York Crime Victims Bd., 502 U.S. 105, 121 (1991) (Finding statute that prevents persons convicted of crimes from monetary gain related to books, movies, and other accounts of their crimes is overinclusive because it applies to a potentially large number of works regarding accounts of all crimes, even acts of civil disobedience.). Thus, unlike in Simone & Schuster, only a distinct, limited set of names would be exempt from disclosure due to the serious threat of harm to these specific temporary replacement teachers as a group.

Additionally, the nondisclosure of these temporary replacement teachers’ names serves Appellants’ duty to protect the temporary replacement teachers from harm and prevent the violation of their constitutional right to privacy, because the threats to the temporary replacement teachers are aimed at the group generally. In this regard, the temporary replacement teachers

were subjected to verbal abuse and obscenities when they applied for work at the start of the strike. (Supp. 42, 55, 65). Some of the temporary replacement teachers discovered intimidating and harassing notes left in their classrooms, generally addressed for any temporary replacement teacher who worked in that classroom during the strike. (Supp. 66). The SEA's "Wall of Shame" harassed and intimidated the temporary replacement teachers by humiliating them and threatening them as group, such as by stating that "[t]hey don't even realize how this is gonna follow **them** for their entire career." (Emphasis added.) (Supp. 58-63). In addition, two of the violent incidents were aimed solely at the vehicles transporting temporary replacement teachers. (Supp. 3-4, 16-28, 43-54, 67-88). Simply put, it is clear the violence and threats directed toward the temporary replacement teachers was due to their status as temporary replacement teachers for the SEA teachers on strike. Therefore, the names of all of the temporary replacement teachers are not subject to disclosure because the serious threats of harm were directed at the temporary replacement teachers as a group, rather than to specific individuals.

In addition, the nondisclosure of the temporary replacement teachers' names is narrowly tailored to the group of individuals who are the subject of the serious threat of harm, and thus is not overbroad. Such an exemption is consistent with this Court's decision in State ex rel. McCleary v. Roberts, 88 Ohio St.3d 365, 370-371 (2000), where this Court determined that personally identifiable information regarding children who used the City of Columbus's recreational facilities was not subject to disclosure, in part due to the threat of harm to that group of children. Similarly here, the names of the replacement teachers, which are the group of teachers subjected to the serious threat of harm, would not be subject to disclosure.

Nor is the nondisclosure of the names of the temporary replacement teachers underinclusive. The United States Supreme Court has stated that "[u]nderinclusiveness raises

serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.” Brown v. Ent. Merchants Assn., 131 S.Ct. 2729, 2749 (2011). Here, the nondisclosure of the temporary replacement teachers’ names clearly supports Appellants’ interest in protecting the temporary replacement teachers from the serious threat of harm and preventing a violation of their constitutional right to privacy. Appellee has not provided any evidence that the nondisclosure of the temporary replacement teachers’ names would favor or disfavor a particular group. Rather, the only evidence before this Court, and the only logical explanation for Appellants’ nondisclosure of the temporary replacement teachers’ names, is Appellants’ desire to protect the temporary replacement teachers from the very real threats to their persons and property which would result from disclosure of their personally identifiable information. As such, the nondisclosure of records setting forth the temporary replacement teachers’ names is narrowly tailored to protect the constitutional rights of these individuals, and is neither overbroad nor underinclusive.

B. The Fact that the Records are Available From Another Source Does Not Invalidate the Constitutional Right to Privacy Exemption.

The fact that some of the names of the temporary replacement teachers are available from another source does not have any bearing on whether their constitutional right to privacy precludes Appellants from disclosing their names in response to the the public records request made by Ms. Muskovitz and Mr. Froehlich. The temporary replacement teachers have a reasonable expectation of privacy in their names, regardless of whether their names may be publicly available from another source. As this Court has stated, “[a]n individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.” State ex rel. Dispatch Printing Co. v. Johnson, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶38, quoting United States Dept.

of Defense v. Federal Relations Authority, 510 U.S. 487, 500 (1994). For example, in Johnson, the Court noted that the fact that public employees' addresses were available through other public records "does not extinguish state employees' privacy interests in those addresses." Id. This Court thus has dismissed the argument Appellee now attempts to present, that, e.g., the fact that information regarding the temporary replacement teachers is publicly available elsewhere somehow means the information should be disclosed here.

In this regard, the inquiry regarding the temporary replacement teachers' constitutional right to privacy is a different question from whether the names are available elsewhere. The fact that the names may be part of the Connected Ohio Records for Educators ("CORE") system, or that certain temporary replacement teachers' names are available in police records,² has no bearing on whether they are exempt from disclosure in this case. Rather, that analysis is based on the threat of harm to the temporary replacement teachers were Appellants compelled to disclose their names. As such, and based on this Court's analysis in Johnson, the fact that the temporary replacement teachers' names may be available through other public records, such as through the CORE system or certain police reports, does not mean the temporary replacement teachers forfeit their constitutional right to privacy and must be exposed to a substantial risk of harm.

The issue before this Court is whether Appellants correctly determined that the threat of harm to the temporary replacement teachers prevented Appellants from disclosing their names, not whether an enterprising individual could find some information about a few of the temporary replacement teachers from another source. Clearly, if Appellants are compelled to provide a list of the names of the temporary replacement teachers in response to a public records request, it

² Police records, it should be noted, which were created as a result of alleged criminal acts committed against the temporary replacement teachers during their employment by Appellants.

would more easily enable retaliation against the temporary replacement teachers. As such, the availability of records from other sources does not impact the analysis of the threat of harm to the temporary replacement teachers in this case, and is irrelevant in determining if such records are exempt from disclosure under the public records law.

C. Appellee Cannot Now Challenge the Court of Appeals' Factual Findings as He Has Waived Such Arguments.

Appellee has waived his ability to challenge the Court of Appeals' factual findings as he never challenged these factual determinations before the Court of Appeals, nor raised them as assignments of error before this Court. It is well-settled that this Court will not address issues a party failed to present before the court below. State v. Tipka, 12 Ohio St.3d 258, 261 (1984). In that regard, this Court has rejected an appellee's objections regarding evidence in the hearings below when such arguments were not presented to that court, stating "[t]hese questions were not raised in the Court of Appeals, and therefore, we do not choose to entertain those collateral matters...." O'Daniel v. Ohio State Racing Comm., 37 Ohio St.3d 87, 94 (1974). Appellee did not raise the evidentiary arguments that he now presents to this Court to the Court of Appeals, nor did he appeal the Court of Appeals' factual findings. Accordingly, Appellee has waived the arguments he raises in his Merit Brief regarding the weight of the evidence that he now seeks to assert before this Court.

The Court of Appeals made the necessary factual findings regarding the threat of harm to the temporary replacement teachers, stating:

[t]he Union members had assembled outside the city of Strongsville's council chambers, where the Board was accepting and processing applications, and jeered and cursed the applicants as they entered. Throughout the eight-week strike, there were several violent incidents, as evidenced by police reports. A teacher driving a pickup truck 'cut off' a van transporting replacement teachers; the driver of the van avoided collision by immediately

braking. Another time someone yelled ‘scab’ and threw a rock at a replacement teacher’s car window while the replacement teacher was driving on I-71. Someone also slashed the tires on a van used to transport replacement teachers. There was also evidence of leaflets decrying the replacement teachers being distributed in those teachers’ neighborhoods and derogatory remarks posted on the Union’s website.

State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn., et al., 8th Dist. No. CA 13 99733, ¶2 (Aug. 21, 2013). The Court of Appeals further stated that Appellants “based their argument upon the multiple occurrences of threats and acts against the replacement teachers during the strike.” *Id.* at ¶12. Finally, the Court of Appeals found that Appellants “substantiated this position with evidence of threats and violent acts against the replacement teachers during the strike.” State ex rel. Quolke v. Strongsville City School Dist. Bd. of Edn., et al., 8th Dist. No. CA 13 099733 (Oct. 7, 2013).

Neither party has appealed the Court of Appeals’ factual findings, as Appellants’ assignments of error all challenge the Court of Appeals’ legal analysis, not its factual findings, and Appellee did not file a cross-appeal. As such, Appellee’s current challenge to the Court of Appeals’ factual findings is not properly before this Court and should not be considered.

Moreover, even if this Court were to consider Appellee’s arguments, it would find that the Court of Appeals correctly found that Appellants substantiated their claims. Appellants filed affidavits, news articles, police reports, and other documents where the threats to the temporary replacement teachers were recorded. (Supp. 1-99). As demonstrated by the affidavits, these documents accurately reflect the incidents that were regularly reported to Appellants at the time that Appellee sought disclosure of the temporary replacement teachers’ names. (Supp. 1-99). Thus, Appellants had reports from multiple sources of the threats of harm to the temporary replacement teachers and of the serious nature of those threats. Accordingly, the Court of

Appeals correctly determined that Appellants substantiated the threats of harm to the temporary replacement teachers.

D. The Cases Set Forth in Appellants' Merit Brief Demonstrate that the Temporary Replacement Teachers' Constitutional Right to Privacy Prevents Disclosure of Their Names Pursuant to R.C. §149.43(A)(1)(v).

1. Appellee Has Failed to Cite Any Case Law Demonstrating That the Totality of the Circumstances Test is Appropriate in a Public Records Case.

Appellee has failed to cite any case where the Court of Appeals, or any other court, applied the totality of the circumstances test to determine whether to issue a writ of mandamus compelling disclosure of a record without first determining whether the record at issue was a public record. Instead, Appellee cites irrelevant case law in support of the proposition that the Court of Appeals “has long-considered the facts and circumstances at the time the decision is issued.” (App. Brief, p. 32.)³ As discussed in Appellant’s merit brief, the totality of the circumstances test is used in public records cases to determine whether the court should issue a writ of mandamus after it has determined that the respondents had a clear legal duty to perform the requested act. Therefore, the Court of Appeals was required to determine whether the temporary replacement teachers’ names were a public record that Appellants had a clear legal duty to release before it evaluated the totality of the circumstances to decide whether to issue the writ of mandamus.

Appellee relies on three criminal cases, none of which is relevant to a writ of mandamus stemming from a public records request. In this regard, the cases relied on by Appellee all stand for the proposition that mandamus is not an appropriate remedy for a criminal seeking to challenge his sentence or pending charges when the criminal has an adequate remedy at law. *See*

³ “App. Brief” refers to Relator Appellee Quolke’s Merit Brief, filed on April 29, 2014 in this Court.

State ex rel. Rodriguez v. Boyle, 2006-Ohio-3494 (8th Dist.) (Denying an inmate's request for a writ of mandamus to compel the trial judge to resentence him because the inmate had an adequate remedy at law through appeal); State ex rel. Gilliam v. Cuyahoga Cty. Court of Common Pleas, 8th Dist. No 79791 (Feb. 20, 1997) (Denying an inmate's request for a writ of mandamus for release from prison because the inmate had an adequate remedy at law through appeal); State ex rel. Sliman v. Linndale Police Dept., 8th Dist. No. 71865, 1 (Feb. 20, 1997) (Denying a writ of mandamus to dismiss pending charges because the defendant had not complied with R.C. §2941.401, noting that "mandamus is not be issued in doubtful cases or when the law is not clear."). None of these cases stand for the proposition that the totality of the circumstances test should be applied in determining whether to issue a writ of mandamus in a public records case, when the court has not even determined whether the records at issue are public records.

Therefore, it is evident that the Court of Appeals engaged in the incorrect analysis when it applied the totality of the circumstances test regarding the issuance of a writ of mandamus prior to determining whether the records at issue were public records, requiring reversal of the Court of Appeals's decision in this matter.

2. Appellee Relies on Case Law That Supports the Nondisclosure of the Temporary Replacement Teachers' Names in This Case.

Appellee relies on Barber v. Overton, 496 F.3d 449 (6th Cir. 2007) to support his argument that the names of the temporary replacement teachers should be disclosed in this case. However, contrary to Appellee's argument, Overton demonstrates that the temporary replacement teachers' names should not be disclosed due to the threat of harm to the teachers, and that in fact Appellants could be liable in damages to the temporary replacement teachers for such disclosure.

In Overton, two prisoners accused several corrections officers of assaulting them. Id. at 450. The Michigan Department of Corrections (“Department of Corrects”) conducted an investigation and held a hearing, which resulted in a finding that the prisoners were guilty of misconduct for their false accusations. Id. at 451. Following the hearing, the prisoners requested the officer statements that were the basis of the ruling. Id. The caption for each of the officers’ statements contained the officer’s name, birth date, and social security number, which the Department of Corrections erroneously failed to redact before providing the statements to the prisoners. Id. The Sixth Circuit stated that, “[i]f noticed, this information would be exempt from release and would not have been given to prisoners....” Id. Thus, the disclosure of this information was inadvertent and was not information that typically would have been disclosed to the prisoners. After the Department of Corrections disclosed the officers’ personal information, the “prisoners began to torment the officers.” Id.

The officers subsequently commenced a 42 U.S.C. §1983 claim against the Department of Corrections pursuant to the “state created danger doctrine.” Id. at 453-454. In order to commence an action for relief under the state created danger doctrine, the injured party must show that there was, “an affirmative act that creates or increases the risk, a special danger to the victim as distinguished from the public at large, and the requisite degree of state culpability.” Id. at 454, *quoting* McQueen v. Beecher Community Schools, 433 F.3d 460, 464 (6th Cir. 2006).

The Sixth Circuit held that the Department of Corrections was not liable under the state created danger doctrine for inadvertently releasing the officers’ personal information because the prisoners already had access to much of the information, such as their names, approximate ages, and general whereabouts. Id. at 456. The Sixth Circuit noted that, “[t]he plaintiffs do not allege that this information allowed the prisoners to discover information that they would have been

unable to otherwise. Therefore, this information does not rise to the level of sensitivity we found constitutionally significant in Kallstrom.” Id. at 456-457. Importantly, the Sixth Circuit stated that “[o]ur opinion does not mean that we attach little significance to the right of privacy, or that there is no constitutional right to nondisclosure of private information.... Our opinion simply holds that not all rights of privacy or interests in nondisclosure of private information are of constitutional dimension....” Id. at 457, *quoting* J.P. v. DeSanti, 653 F.2d 1080, 1090-1091 (6th Cir. 1981). As such, Overton stands for the proposition that the inadvertent disclosure of officers’ personal information to prisoners, when the prisoners already had access to much of the released information, did not create liability pursuant to the state created danger doctrine.

Unlike Overton, if the Appellants had provided records setting forth the temporary replacement teachers’ names in response to the public records request by Ms. Muskovitz and Mr. Froehlich, the disclosure of the temporary replacement teachers’ names in the present matter would be intentional, and thus would result in greater potential liability. Moreover, unlike Overton, the parties in the present matter agree that the release of the temporary replacement teachers’ names would enable others to access information regarding the temporary replacement teachers that they otherwise would be unable to obtain. Accordingly, Overton demonstrates that Appellants properly determined that the replacement teachers’ names are not subject to disclosure due to the threat of harm to the temporary replacement teachers, as Appellants could be found liable pursuant to the state created danger doctrine for releasing the relevant records.

3. The Case Law From Ohio and Other Jurisdictions Demonstrates the Temporary Replacement Teachers’ Names are Not Subject to Disclosure Due to the Serious Threat of Harm to the Temporary Replacement Teachers.

Ohio courts have held that a public entity cannot disclose records when the release of such records would violate the subject’s constitutional right to privacy in situations such as the

one before this Court. *See* State ex rel. Cincinnati Enquirer v. Craig, 132 Ohio St.3d 68, 2012-Ohio-1999; Kallstrom v. City of Columbus, 136 F.3d 1055 (6th Cir. 1998); State ex rel. Keller v. Cox, 85 Ohio St.3d 279 (1999), *overruled, in part, by* State ex rel. Cincinnati Enquirer v. Jones-Kelley, 118 Ohio St.3d 81, 2008-Ohio-1770 (affirmed constitutional right to privacy as basis for exemption); McCleary, 88 Ohio St.3d 365. In Kallstrom, the Sixth Circuit Court of Appeals held the disclosure of information that created a threat to the security and bodily integrity of the officers and their families violated their constitutional right to privacy. Kallstrom at 1063. In McCleary, this Court likewise held that information should not be disclosed when it placed the subjects of the records at risk of irreparable harm. McCleary at 371. Most recently, this Court held that personal information regarding police officers was not subject to disclosure when it would place them at the risk of serious bodily harm, and any disclosure of the information was not narrowly tailored to achieve the public purpose of examining the police's performance.⁴ Craig at ¶22.

Courts from other jurisdictions also have found that personal information should not be disclosed due to the threat of harm to the subject. In this regard, the Sixth and Ninth Circuit Courts of Appeals have applied the constitutional right to privacy exemption to adult entertainers. *See* Déjà vu of Nashville, Inc. v. Metro. Govt. of Nashville and Davidson Cty., Tenn., 274 F.3d 377 (6th Cir. 2001); Dream Palace v. Cty. of Maricopa, 384 F.3d 990 (9th Cir. 2003). The Texas Supreme Court has applied similar reasoning to documents regarding the governor's travel. *See* Tex. Dept. of Public Safety v. Cox Tex. Newspapers, L.P., 343 S.W.3d 112, 120 (Tex. 2011). In addition, courts have found that investigative information is not subject

⁴ As set forth in Appellant's Merit Brief, these cases demonstrate that records are exempt from disclosure when there is a serious threat of harm to the subjects of the records. Amici Curiae thus incorrectly apply a higher standard on page 7 of their brief, where they state the threats must be "immediate," "mortal," and "murderous."

to disclosure. See News-Journal Co. v. Billingsley, 6 Del.J. Corp. L. 343 (Del.Ch. 1980); Evans v. Dept. of Transp., 446 F.2d 821 (5th Cir. 1971), *cert. den.*, 405 U.S. 918 (1971).

The case law from Ohio courts and from other jurisdictions demonstrates that the threat of harm to the temporary replacement teachers is sufficient to prevent the disclosure of their names, and that such a ruling is consistent with the level of harm barring disclosure in other cases. If the identity of adult entertainers is protected due to safety and harassment concerns, it is reasonable that the individuals who ensure children continue to receive an education while their regular teachers are on strike would have the same expectation of privacy. Furthermore, as with those cases where this Court has applied the constitutional right to privacy exemption, and as evidenced by the ample record developed before the Court of Appeals, the release of the temporary replacement teachers' names would threaten their security and bodily integrity as such information would create the potential of increased threats, harassment, and acts of violence towards the temporary replacement teachers. Accordingly, this Court should reverse the judgment of the Court of Appeals and determine that records containing the temporary replacement teachers' names are not public records.

E. Appellee has Failed to Demonstrate that Access to the Temporary Replacement Teachers' Information on the CORE Database Outweighs the Temporary Replacement Teachers' Constitutional Right to Privacy.

Appellee incorrectly argues that, without disclosure of the temporary replacement teachers' names, there will be a lack of oversight of the Board's use of teaching personnel. As an initial matter, the Ohio legislature has entrusted school districts with making the appropriate determinations regarding an individual's qualifications to teach in Ohio's schools, and further has prohibited a board of education from paying a teacher until the teacher has provided the board of education with the required background checks and licensure information. R.C.

3319.35. However, a board of education's authority to manage its school district is not without oversight. The Ohio State Board of Education ("State Board") has the general authority to oversee and regulate the school districts within the state of Ohio, and to provide the appropriate licensure to Ohio's teachers. R.C. 3301.07. The State Board may require boards of education to provide any reports that the State Board deems are necessary and desirable, such that a board of education's staffing decisions are subject to review by the State Board. R.C. 3301.07(I). Any superintendent or treasurer who fails to provide a required report can be found personally liable. R.C. 3319.35.

As such, the Board was required to ensure all of the temporary replacement teachers met the appropriate standards, and would risk losing its charter for failure to adhere to regulations promulgated by the State Board. R.C. 3301.16. Therefore, Appellee's argument regarding access to the CORE system lacks merit as the Ohio legislature has delegated supervision of boards of education to the State Board, and thus a board of education's management of its school district, including its hiring decisions, is subject to "meaningful review." *See* (App. Brief, p. 22.)

Furthermore, as evidenced by Appellee's own CORE report, the CORE database reveals limited information regarding Ohio's teachers. *See* (App. Supp. 38-41.)⁵ In fact, that database does not actually indicate whether a teacher's background check revealed any criminal convictions as R.C. 3319.39(D) prevents the disclosure of such information. In fact, background checks completed by the Bureau of Criminal Investigation are not public records, and any information a government entity obtains through a background check is confidential. R.C. 109.57(D) and (H). As a result, the CORE database cannot be used for the purpose of determining whether a teacher has any criminal convictions. *See* (App. Supp. 41.) Therefore,

⁵ "App. Supp." refers to the Supplement of Relator-Appellee Quolke, filed on April 29, 2014 with this Court.

the fact that limited information regarding Ohio's teachers is available on the CORE system does not mean that the temporary replacement teachers forfeited their constitutional right to privacy in the present matter, as the CORE system does not provide a meaningful review of a board of education's hiring decisions.

Moreover, Appellee has not provided any evidence demonstrating that parents of District students were unable to obtain any relevant information regarding the temporary replacement teachers' qualifications. No District parents are party to this action, and Appellee has not provided any affidavits, newspaper articles, or any other documents that would demonstrate that District parents lacked information regarding the credentials of the temporary replacement teachers who were educating their children while the District's regular teachers were on strike. Therefore, access to the limited information available on the CORE database was not necessary for parents who had daily access to the District's schools and staff, and Appellee thus has failed to demonstrate that access to the temporary replacement teachers' personally identifiable information on the CORE database is necessary for the public to obtain information regarding the Board's management of the District.

F. The Application of R.C. 149.43(A)(1)(v) is the Same as Any Other Exception Contained in the Public Records Act.

The administration of the exception contained in R.C. 149.43(A)(1)(v) regarding the release of records that are prohibited by state or federal law is the same as any other exception contained in the Public Records Act. As with other exceptions found under the Public Records Act, the public body must make the initial determination regarding whether the record meets the exception, a determination that inherently requires the public body to exercise a level of discretion. For example, confidential law enforcement investigatory records are exempt from disclosure pursuant to R.C. 149.43(A)(1)(h) when the information "would reasonably tend to

disclose the source's or witness's identity" or when the information "would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source." As such, the public body responding to the public records request must make the initial determination regarding whether the record at issue meets these requirements.

However, as is clear from the present case, such discretion is subject to review. R.C. §149.43(C)(1) permits a requester to commence a mandamus action against the public body if the requester believes the public body has violated the Public Records Act. Thus, any decision by a public body regarding whether a record is exempt from disclosure due to the serious threat of harm to the subject may be reviewed by a court, and the public body may be responsible for the costs associated with that review.

As such, there is no basis for the dramatic conclusions Appellee and *Amici Curiae* draw regarding the application of the exception in this case. Public bodies could not possibly "wait for an intervening event to deny a public records requests [sic]" as Appellee contends, as Appellee has not offered any evidence that working for a public body is an especially dangerous profession where there is a consistent threat of serious harm to the subjects of public records.⁶ (App. Brief, p. 36.) Nor does the case law support this proposition, as the scant case law addressing records exempted pursuant to R.C. 149.43(A)(1)(v) demonstrates that public bodies have applied this exception in limited circumstances. Thus, it is clear that no "veil of secrecy" regarding the public's access to public entities' records has lowered over such records in the sixteen years since the Sixth Circuit Court of Appeals' decision in Kallstrom, nor is there any

⁶ The relevant issue before this Court is whether the serious threat of harm to the temporary replacement teachers prevents the disclosure of their names in this case, not whether *Amici Curiae* can concoct a convincing hypothetical.

evidence that such a “veil of secrecy” will descend in the future. *See* (Am. Cur. Brief, p. 3.)⁷ Therefore, there is no basis for Appellee’s argument that the application of the constitutional right to privacy exemption in this case will lead to abuse of the exception and secrecy regarding public bodies’ activities.

Proposition of Law No. III: A relator is not entitled to attorney’s fees when the relator has not demonstrated that he is personally responsible for paying such fees.

Appellee has failed to meet his burden of demonstrating that he personally has paid, or is obligated to pay, any attorney’s fees associated with the present litigation. In his Merit Brief before this Court, Appellee all but concedes that he has not paid any attorney’s fees related to this case, stating that he “may seek financial support to pay for ongoing litigation.” (App. Brief, p. 30). However, Appellee has not offered any evidence to demonstrate that he was ever personally responsible for paying the costs of this litigation, or that he commenced the present action in his personally capacity.

During the course of this litigation, Appellee has acted in his capacity as the President of the Cleveland Teachers Union (“CTU”). In his June 20, 2013 affidavit, Appellee identifies himself as the President of CTU and further states that CTU “is a member and affiliated with the Ohio Federation of Teachers, the American Federation of Teachers, and the AFL-CIO.” (App. Supp. 1). Moreover, Appellee has failed to provide any evidence that he ever was obligated to pay the attorney’s fees for the present litigation. Ms. Muskovitz’s statement that certain fees were “charged to” Appellee does not meet the burden of demonstrating that Appellee was obligated to pay such fees. The fact that Ms. Muskovitz notified Appellee, who is CTU’s President, of the amount due, does not demonstrate that Appellee was obligated to pay that

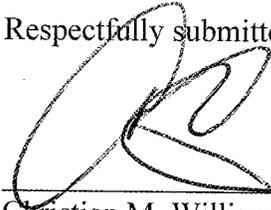
⁷ “Am. Cur. Brief” refers to the Brief of Amici Curiae Ohio Coalition for Open Government and Ohio Employment Lawyers Association filed on April 29, 2014 in this Court.

amount or actually paid such amount. Importantly, Appellee failed to submit actual invoices sent to Appellee's personal address rather than business address, an affidavit from Appellee stating that he was obligated to pay the invoices, or any other direct evidence in this regard. As such, Appellee failed to prove that he paid, or was personally obligated to pay, the attorney's fees associated with this litigation. Accordingly, Appellants request that this Court reverse the order of the Court of Appeals awarding Appellee \$7,972.50 in attorney's fees.

CONCLUSION

Based on the foregoing, Appellants request that this Court reverse the judgment of the Court of Appeals and hold that Appellee lacked standing to bring the present action, that the names of the temporary replacement teachers are not a public record, and that Appellee is not entitled to attorney's fees.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Respondents-Appellants Strongsville City School District Board of Education, Superintendent John Krupinski, President David Frazee, and Treasurer Deborah Herrmann, has been sent by electronic and regular U.S. mail, postage prepaid, on this 6th day of June, 2014, to the following parties:

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APPENDIX

Baldwin's Ohio Revised Code Annotated
Title I. State Government
Chapter 109. Attorney General (Refs & Annos)
Bureau of Criminal Identification and Investigation

R.C. § 109.57

109.57 Duties of superintendent of bureau

Effective: January 1, 2014
Currentness

(A)(1) The superintendent of the bureau of criminal identification and investigation shall procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within this state a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a), (A)(5)(a), or (A)(7)(a) of section 109.572 of the Revised Code, of all children under eighteen years of age who have been adjudicated delinquent children for committing within this state an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of or pleaded guilty to committing within this state a felony or an offense of violence, and of all well-known and habitual criminals. The person in charge of any county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and the person in charge of any state institution having custody of a person suspected of having committed a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in division (A)(1)(a), (A)(5)(a), or (A)(7)(a) of section 109.572 of the Revised Code or having custody of a child under eighteen years of age with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall furnish such material to the superintendent of the bureau. Fingerprints, photographs, or other descriptive information of a child who is under eighteen years of age, has not been arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence who is not in any other category of child specified in this division, if committed by an adult, has not been adjudicated a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, has not been convicted of or pleaded guilty to committing a felony or an offense of violence, and is not a child with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult shall not be procured by the superintendent or furnished by any person in charge of any county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution, except as authorized in section 2151.313 of the Revised Code.

(2) Every clerk of a court of record in this state, other than the supreme court or a court of appeals, shall send to the superintendent of the bureau a weekly report containing a summary of each case involving a felony, involving any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, involving a misdemeanor described in division (A)(1)(a), (A)(5)(a), or (A)(7)(a) of section 109.572 of the Revised Code, or involving an adjudication in a case in which a child under eighteen years of age was alleged to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult. The clerk of the court of common pleas shall include in the report and summary the clerk sends under this division all information described in divisions (A)(2)(a) to (f) of this section regarding a case before the court of appeals that is served by that clerk. The summary shall be written on the standard forms furnished by the superintendent pursuant to division (B) of this section and shall include the following information:

- (a) The incident tracking number contained on the standard forms furnished by the superintendent pursuant to division (B) of this section;
- (b) The style and number of the case;
- (c) The date of arrest, offense, summons, or arraignment;
- (d) The date that the person was convicted of or pleaded guilty to the offense, adjudicated a delinquent child for committing the act that would be a felony or an offense of violence if committed by an adult, found not guilty of the offense, or found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult, the date of an entry dismissing the charge, an entry declaring a mistrial of the offense in which the person is discharged, an entry finding that the person or child is not competent to stand trial, or an entry of a nolle prosequi, or the date of any other determination that constitutes final resolution of the case;
- (e) A statement of the original charge with the section of the Revised Code that was alleged to be violated;
- (f) If the person or child was convicted, pleaded guilty, or was adjudicated a delinquent child, the sentence or terms of probation imposed or any other disposition of the offender or the delinquent child.

If the offense involved the disarming of a law enforcement officer or an attempt to disarm a law enforcement officer, the clerk shall clearly state that fact in the summary, and the superintendent shall ensure that a clear statement of that fact is placed in the bureau's records.

(3) The superintendent shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested on a charge of a felony, any crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or a misdemeanor described in division (A)(1)(a), (A)(5)(a), or (A)(7)(a) of section 109.572 of the Revised Code and of all children under eighteen years of age arrested or otherwise taken into custody for committing an act that would be a felony or an offense of violence if committed by an adult. The superintendent also shall file for record the fingerprint impressions of all persons confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution for the violation of state laws and of all children under eighteen years of age who are confined in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution or in any facility for delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, and any other information that the superintendent may receive from law enforcement officials of the state and its political subdivisions.

(4) The superintendent shall carry out Chapter 2950. of the Revised Code with respect to the registration of persons who are convicted of or plead guilty to a sexually oriented offense or a child-victim oriented offense and with respect to all other duties imposed on the bureau under that chapter.

(5) The bureau shall perform centralized recordkeeping functions for criminal history records and services in this state for purposes of the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code and is

the criminal history record repository as defined in that section for purposes of that compact. The superintendent or the superintendent's designee is the compact officer for purposes of that compact and shall carry out the responsibilities of the compact officer specified in that compact.

(B) The superintendent shall prepare and furnish to every county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, community-based correctional facility, halfway house, alternative residential facility, or state correctional institution and to every clerk of a court in this state specified in division (A)(2) of this section standard forms for reporting the information required under division (A) of this section. The standard forms that the superintendent prepares pursuant to this division may be in a tangible format, in an electronic format, or in both tangible formats and electronic formats.

(C)(1) The superintendent may operate a center for electronic, automated, or other data processing for the storage and retrieval of information, data, and statistics pertaining to criminals and to children under eighteen years of age who are adjudicated delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, criminal activity, crime prevention, law enforcement, and criminal justice, and may establish and operate a statewide communications network to be known as the Ohio law enforcement gateway to gather and disseminate information, data, and statistics for the use of law enforcement agencies and for other uses specified in this division. The superintendent may gather, store, retrieve, and disseminate information, data, and statistics that pertain to children who are under eighteen years of age and that are gathered pursuant to sections 109.57 to 109.61 of the Revised Code together with information, data, and statistics that pertain to adults and that are gathered pursuant to those sections.

(2) The superintendent or the superintendent's designee shall gather information of the nature described in division (C)(1) of this section that pertains to the offense and delinquency history of a person who has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense for inclusion in the state registry of sex offenders and child-victim offenders maintained pursuant to division (A)(1) of section 2950.13 of the Revised Code and in the internet database operated pursuant to division (A)(13) of that section and for possible inclusion in the internet database operated pursuant to division (A)(11) of that section.

(3) In addition to any other authorized use of information, data, and statistics of the nature described in division (C)(1) of this section, the superintendent or the superintendent's designee may provide and exchange the information, data, and statistics pursuant to the national crime prevention and privacy compact as described in division (A)(5) of this section.

(4) The attorney general may adopt rules under Chapter 119. of the Revised Code establishing guidelines for the operation of and participation in the Ohio law enforcement gateway. The rules may include criteria for granting and restricting access to information gathered and disseminated through the Ohio law enforcement gateway. The attorney general shall permit the state medical board and board of nursing to access and view, but not alter, information gathered and disseminated through the Ohio law enforcement gateway.

The attorney general may appoint a steering committee to advise the attorney general in the operation of the Ohio law enforcement gateway that is comprised of persons who are representatives of the criminal justice agencies in this state that use the Ohio law enforcement gateway and is chaired by the superintendent or the superintendent's designee.

(D)(1) The following are not public records under section 149.43 of the Revised Code:

(a) Information and materials furnished to the superintendent pursuant to division (A) of this section;

(b) Information, data, and statistics gathered or disseminated through the Ohio law enforcement gateway pursuant to division (C)(1) of this section;

(c) Information and materials furnished to any board or person under division (F) or (G) of this section.

(2) The superintendent or the superintendent's designee shall gather and retain information so furnished under division (A) of this section that pertains to the offense and delinquency history of a person who has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense for the purposes described in division (C)(2) of this section.

(E)(1) The attorney general shall adopt rules, in accordance with Chapter 119. of the Revised Code and subject to division (E)(2) of this section, setting forth the procedure by which a person may receive or release information gathered by the superintendent pursuant to division (A) of this section. A reasonable fee may be charged for this service. If a temporary employment service submits a request for a determination of whether a person the service plans to refer to an employment position has been convicted of or pleaded guilty to an offense listed or described in division (A)(1), (2), or (3) of section 109.572 of the Revised Code, the request shall be treated as a single request and only one fee shall be charged.

(2) Except as otherwise provided in this division, a rule adopted under division (E)(1) of this section may provide only for the release of information gathered pursuant to division (A) of this section that relates to the conviction of a person, or a person's plea of guilty to, a criminal offense. The superintendent shall not release, and the attorney general shall not adopt any rule under division (E)(1) of this section that permits the release of, any information gathered pursuant to division (A) of this section that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under eighteen years of age if the person's case was transferred back to a juvenile court under division (B)(2) or (3) of section 2152.121 of the Revised Code and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, unless either of the following applies with respect to the adjudication or conviction:

(a) The adjudication or conviction was for a violation of section 2903.01 or 2903.02 of the Revised Code.

(b) The adjudication or conviction was for a sexually oriented offense, the juvenile court was required to classify the child a juvenile offender registrant for that offense under section 2152.82, 2152.83, or 2152.86 of the Revised Code, and that classification has not been removed.

(F)(1) As used in division (F)(2) of this section, "head start agency" means an entity in this state that has been approved to be an agency for purposes of subchapter II of the "Community Economic Development Act," 95 Stat. 489 (1981), 42 U.S.C.A. 9831, as amended.

(2)(a) In addition to or in conjunction with any request that is required to be made under section 109.572, 2151.86, 3301.32,¹ 3301.541, division (C) of section 3310.58, or section 3319.39, 3319.391, 3327.10, 3701.881, 5104.012, 5104.013, 5123.081, or 5153.111 of the Revised Code or that is made under section 3314.41, 3319.392, 3326.25, or 3328.20 of the Revised Code, the board of education of any school district; the director of developmental disabilities; any county board of developmental disabilities; any provider or subcontractor as defined in section 5123.081 of the Revised Code; the chief administrator of any

chartered nonpublic school; the chief administrator of a registered private provider that is not also a chartered nonpublic school; the chief administrator of any home health agency; the chief administrator of or person operating any child day-care center, type A family day-care home, or type B family day-care home licensed under Chapter 5104. of the Revised Code; the chief administrator of any head start agency; the executive director of a public children services agency; a private company described in section 3314.41, 3319.392, 3326.25, or 3328.20 of the Revised Code; or an employer described in division (J)(2) of section 3327.10 of the Revised Code may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied for employment in any position after October 2, 1989, or any individual wishing to apply for employment with a board of education may request, with regard to the individual, whether the bureau has any information gathered under division (A) of this section that pertains to that individual. On receipt of the request, subject to division (E)(2) of this section, the superintendent shall determine whether that information exists and, upon request of the person, board, or entity requesting information, also shall request from the federal bureau of investigation any criminal records it has pertaining to that individual. The superintendent or the superintendent's designee also may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code. Within thirty days of the date that the superintendent receives a request, subject to division (E)(2) of this section, the superintendent shall send to the board, entity, or person a report of any information that the superintendent determines exists, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, subject to division (E)(2) of this section, shall send the board, entity, or person a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(b) When a board of education or a registered private provider is required to receive information under this section as a prerequisite to employment of an individual pursuant to division (C) of section 3310.58 or section 3319.39 of the Revised Code, it may accept a certified copy of records that were issued by the bureau of criminal identification and investigation and that are presented by an individual applying for employment with the district in lieu of requesting that information itself. In such a case, the board shall accept the certified copy issued by the bureau in order to make a photocopy of it for that individual's employment application documents and shall return the certified copy to the individual. In a case of that nature, a district or provider only shall accept a certified copy of records of that nature within one year after the date of their issuance by the bureau.

(c) Notwithstanding division (F)(2)(a) of this section, in the case of a request under section 3319.39, 3319.391, or 3327.10 of the Revised Code only for criminal records maintained by the federal bureau of investigation, the superintendent shall not determine whether any information gathered under division (A) of this section exists on the person for whom the request is made.

(3) The state board of education may request, with respect to any individual who has applied for employment after October 2, 1989, in any position with the state board or the department of education, any information that a school district board of education is authorized to request under division (F)(2) of this section, and the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2) of this section.

(4) When the superintendent of the bureau receives a request for information under section 3319.291 of the Revised Code, the superintendent shall proceed as if the request has been received from a school district board of education and shall comply with divisions (F)(2)(a) and (c) of this section.

(5) When a recipient of a classroom reading improvement grant paid under section 3301.86 of the Revised Code requests, with respect to any individual who applies to participate in providing any program or service funded in whole or in part by the grant, the information that a school district board of education is authorized to request under division (F)(2)(a) of this section, the superintendent of the bureau shall proceed as if the request has been received from a school district board of education under division (F)(2)(a) of this section.

(G) In addition to or in conjunction with any request that is required to be made under section 3701.881, 3712.09, or 3721.121 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing direct care to an older adult or adult resident, the chief administrator of a home health agency, hospice care program, home licensed under Chapter 3721. of the Revised Code, or adult day-care program operated pursuant to rules adopted under section 3721.04 of the Revised Code may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied after January 27, 1997, for employment in a position that does not involve providing direct care to an older adult or adult resident, whether the bureau has any information gathered under division (A) of this section that pertains to that individual.

In addition to or in conjunction with any request that is required to be made under section 173.27 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing ombudsman services to residents of long-term care facilities or recipients of community-based long-term care services, the state long-term care ombudsman, the director of aging, a regional long-term care ombudsman program, or the designee of the ombudsman, director, or program may request that the superintendent investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing such ombudsman services, whether the bureau has any information gathered under division (A) of this section that pertains to that applicant.

In addition to or in conjunction with any request that is required to be made under section 173.38 of the Revised Code with respect to an individual who has applied for employment in a direct-care position, the chief administrator of a provider, as defined in section 173.39 of the Revised Code, may request that the superintendent investigate and determine, with respect to any individual who has applied for employment in a position that is not a direct-care position, whether the bureau has any information gathered under division (A) of this section that pertains to that applicant.

In addition to or in conjunction with any request that is required to be made under section 3712.09 of the Revised Code with respect to an individual who has applied for employment in a position that involves providing direct care to a pediatric respite care patient, the chief administrator of a pediatric respite care program may request that the superintendent of the bureau investigate and determine, with respect to any individual who has applied for employment in a position that does not involve providing direct care to a pediatric respite care patient, whether the bureau has any information gathered under division (A) of this section that pertains to that individual.

On receipt of a request under this division, the superintendent shall determine whether that information exists and, on request of the individual requesting information, shall also request from the federal bureau of investigation any criminal records it has pertaining to the applicant. The superintendent or the superintendent's designee also may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in section 109.571 of the Revised Code. Within thirty days of the date a request is received, subject to division (E)(2) of this section, the superintendent shall send to the requester a report of any information determined to exist, including information contained in records that have been sealed under section 2953.32 of the Revised Code, and, within thirty days of its receipt, shall send the requester a report of any information received from the federal bureau of investigation, other than information the dissemination of which is prohibited by federal law.

(H) Information obtained by a government entity or person under this section is confidential and shall not be released or disseminated.

(I) The superintendent may charge a reasonable fee for providing information or criminal records under division (F)(2) or (G) of this section.

(J) As used in this section:

(1) “Pediatric respite care program” and “pediatric care patient” have the same meanings as in section 3712.01 of the Revised Code.

(2) “Sexually oriented offense” and “child-victim oriented offense” have the same meanings as in section 2950.01 of the Revised Code.

(3) “Registered private provider” means a nonpublic school or entity registered with the superintendent of public instruction under section 3310.41 of the Revised Code to participate in the autism scholarship program or section 3310.58 of the Revised Code to participate in the Jon Peterson special needs scholarship program.

CREDIT(S)

(2013 H 59, § 110.20, eff. 1-1-14; 2012 H 303, § 6, eff. 1-1-14 (See Historical and Statutory Notes); 2012 S 316, § 120.01, eff. 1-1-14; 2013 H 59, § 101.01, eff. 9-29-13; 2012 H 303, § 1, eff. 3-20-13; 2012 S 337, eff. 9-28-12; 2012 H 487, eff. 9-10-12 (Provisions subject to different effective dates); 2011 H 153, eff. 7-1-11 (Provisions subject to different effective dates); 2011 H 93, eff. 5-20-11; 2010 H 10, eff. 6-17-10; 2009 H 1, eff. 10-16-09 (Provisions subject to different effective dates); 2009 S 79, eff. 10-6-09; 2008 H 428, eff. 9-12-08; 2008 S 163, eff. 8-14-08; 2007 S 10, eff. 1-1-08; 2007 H 190, eff. 11-14-07; 2006 S 238, eff. 9-21-06; 2006 H 530, eff. 6-30-06; 2005 H 66, eff. 6-30-05; 2004 H 106, eff. 9-16-04; 2003 S 53, eff. 4-7-04; 2003 S 5, eff. 7-31-03; 2003 H 95, eff. 9-26-03; 2000 H 538, eff. 9-22-00; 1999 H 3, eff. 11-22-99; 1999 H 282, eff. 9-28-99; 1999 H 1, eff. 3-30-99; 1998 H 2, eff. 1-1-99; 1997 H 342, eff. 12-31-97; 1997 H 151, eff. 9-16-97; 1996 H 124, § 4, eff. 7-1-97; 1996 H 124, § 1, eff. 3-31-97; 1996 H 180, eff. 7-1-97; 1996 S 160, eff. 1-27-97; 1995 H 1, eff. 1-1-96; 1995 H 223, eff. 11-15-95; 1994 H 694, eff. 11-11-94; 1994 H 571, eff. 10-6-94; 1993 S 38, eff. 10-29-93; 1993 H 152, eff. 7-1-93; 1993 H 162, eff. 10-1-93; 1989 S 140; 1984 H 235; 1980 H 736; 1977 H 1; 1970 H 956; 130 v S 160, H 263)

Footnotes

1 Prior and current versions differ. 2009 H 1 added “or” after “3301.32,” in division (F)(2)(a), but subsequent laws have not included “or”, although that language was not indicated as deleted text.

R.C. § 109.57, OH ST § 109.57

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3301. Department of Education (Refs & Annos)
State Board of Education

R.C. § 3301.07

3301.07 Powers of state board

Effective: September 29, 2013
Currentness

The state board of education shall exercise under the acts of the general assembly general supervision of the system of public education in the state. In addition to the powers otherwise imposed on the state board under the provisions of law, the board shall have the powers described in this section.

(A) The state board shall exercise policy forming, planning, and evaluative functions for the public schools of the state except as otherwise provided by law.

(B)(1) The state board shall exercise leadership in the improvement of public education in this state, and administer the educational policies of this state relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, and finance and organization of school districts, educational service centers, and territory. Consultative and advisory services in such matters shall be provided by the board to school districts and educational service centers of this state.

(2) The state board also shall develop a standard of financial reporting which shall be used by each school district board of education and each governing board of an educational service center, each governing authority of a community school established under Chapter 3314., each governing body of a STEM school established under Chapter 3328., and each board of trustees of a college-preparatory boarding school established under Chapter 3328. of the Revised Code to make its financial information and annual budgets for each school building under its control available to the public in a format understandable by the average citizen. The format shall show, both at the district and at the school building level, revenue by source; expenditures for salaries, wages, and benefits of employees, showing such amounts separately for classroom teachers, other employees required to hold licenses issued pursuant to sections 3319.22 to 3319.31 of the Revised Code, and all other employees; expenditures other than for personnel, by category, including utilities, textbooks and other educational materials, equipment, permanent improvements, pupil transportation, extracurricular athletics, and other extracurricular activities; and per pupil expenditures. The format shall also include information on total revenue and expenditures, per pupil revenue, and expenditures for both classroom and nonclassroom purposes, as defined by the standards adopted under section 3302.20 of the Revised Code in the aggregate and for each subgroup of students, as defined by section 3317.40 of the Revised Code, that receives services provided for by state or federal funding.

(3) Each school district board, governing authority, governing body, or board of trustees, or its respective designee, shall annually report, to the department of education, all financial information required by the standards for financial reporting, as prescribed by division (B)(2) of this section and adopted by the state board. The department shall make all reports submitted pursuant to this division available in such a way that allows for comparison between financial information included in these

reports and financial information included in reports produced prior to July 1, 2013. The department shall post these reports in a prominent location on its web site and shall notify each school when reports are made available.

(C) The state board shall administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function. It may require county auditors and treasurers, boards of education, educational service center governing boards, treasurers of such boards, teachers, and other school officers and employees, or other public officers or employees, to file with it such reports as it may prescribe relating to such funds, or to the management and condition of such funds.

(D)(1) Wherever in Titles IX, XXIII, XXIX, XXXIII, XXXVII, XLVII, and LI of the Revised Code a reference is made to standards prescribed under this section or division (D) of this section, that reference shall be construed to refer to the standards prescribed under division (D)(2) of this section, unless the context specifically indicates a different meaning or intent.

(2) The state board shall formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of providing children access to a general education of high quality according to the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient students, and students identified as gifted. Such standards shall provide adequately for: the licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment, including library facilities; the proper organization, administration, and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; the provision of safe buildings, grounds, health and sanitary facilities and services; admission of pupils, and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation; and such other factors as the board finds necessary.

The state board shall base any standards governing the promotion of students or requirements for graduation on the ability of students, at any grade level, to earn credits or advance upon demonstration of mastery of knowledge and skills through competency-based learning models. Credits of grade level advancement shall not require a minimum number of days or hours in a classroom.

The state board shall base any standards governing the assignment of staff on ensuring each school has a sufficient number of teachers to ensure a student has an appropriate level of interaction to meet each student's personal learning goals.

In the formulation and administration of such standards for nonpublic schools the board shall also consider the particular needs, methods and objectives of those schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed.

(3) In addition to the minimum standards required by division (D)(2) of this section, the state board may formulate and prescribe the following additional minimum operating standards for school districts:

(a) Standards for the effective and efficient organization, administration, and supervision of each school district with a commitment to high expectations for every student based on the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient students, and students identified as gifted, and commitment to closing the achievement gap without suppressing the achievement levels of higher achieving students so that all students achieve core knowledge and skills in accordance with the statewide academic standards adopted under section 3301.079 of the Revised Code;

- (b) Standards for the establishment of business advisory councils under section 3313.82 of the Revised Code;
- (c) Standards for school district buildings that may require the effective and efficient organization, administration, and supervision of each school district building with a commitment to high expectations for every student based on the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient students, and students identified as gifted, and commitment to closing the achievement gap without suppressing the achievement levels of higher achieving students so that all students achieve core knowledge and skills in accordance with the statewide academic standards adopted under section 3301.079 of the Revised Code.
- (E) The state board may require as part of the health curriculum information developed under section 2108.34 of the Revised Code promoting the donation of anatomical gifts pursuant to Chapter 2108. of the Revised Code and may provide the information to high schools, educational service centers, and joint vocational school district boards of education;
- (F) The state board shall prepare and submit annually to the governor and the general assembly a report on the status, needs, and major problems of the public schools of the state, with recommendations for necessary legislative action and a ten-year projection of the state's public and nonpublic school enrollment, by year and by grade level.
- (G) The state board shall prepare and submit to the director of budget and management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state.
- (H) The state board shall cooperate with federal, state, and local agencies concerned with the health and welfare of children and youth of the state.
- (I) The state board shall require such reports from school districts and educational service centers, school officers, and employees as are necessary and desirable. The superintendents and treasurers of school districts and educational service centers shall certify as to the accuracy of all reports required by law or state board or state department of education rules to be submitted by the district or educational service center and which contain information necessary for calculation of state funding. Any superintendent who knowingly falsifies such report shall be subject to license revocation pursuant to section 3319.31 of the Revised Code.
- (J) In accordance with Chapter 119. of the Revised Code, the state board shall adopt procedures, standards, and guidelines for the education of children with disabilities pursuant to Chapter 3323. of the Revised Code, including procedures, standards, and guidelines governing programs and services operated by county boards of developmental disabilities pursuant to section 3323.09 of the Revised Code.
- (K) For the purpose of encouraging the development of special programs of education for academically gifted children, the state board shall employ competent persons to analyze and publish data, promote research, advise and counsel with boards of education, and encourage the training of teachers in the special instruction of gifted children. The board may provide financial assistance out of any funds appropriated for this purpose to boards of education and educational service center governing boards for developing and conducting programs of education for academically gifted children.

(L) The state board shall require that all public schools emphasize and encourage, within existing units of study, the teaching of energy and resource conservation as recommended to each district board of education by leading business persons involved in energy production and conservation, beginning in the primary grades.

(M) The state board shall formulate and prescribe minimum standards requiring the use of phonics as a technique in the teaching of reading in grades kindergarten through three. In addition, the state board shall provide in-service training programs for teachers on the use of phonics as a technique in the teaching of reading in grades kindergarten through three.

(N) The state board may adopt rules necessary for carrying out any function imposed on it by law, and may provide rules as are necessary for its government and the government of its employees, and may delegate to the superintendent of public instruction the management and administration of any function imposed on it by law. It may provide for the appointment of board members to serve on temporary committees established by the board for such purposes as are necessary. Permanent or standing committees shall not be created.

(O) Upon application from the board of education of a school district, the superintendent of public instruction may issue a waiver exempting the district from compliance with the standards adopted under divisions (B)(2) and (D) of this section, as they relate to the operation of a school operated by the district. The state board shall adopt standards for the approval or disapproval of waivers under this division. The state superintendent shall consider every application for a waiver, and shall determine whether to grant or deny a waiver in accordance with the state board's standards. For each waiver granted, the state superintendent shall specify the period of time during which the waiver is in effect, which shall not exceed five years. A district board may apply to renew a waiver.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2011 H 30, eff. 7-1-11; 2011 H 153, eff. 6-30-11 (See Historical and Statutory Notes); 2009 S 79, eff. 10-6-09; 2009 H 1, eff. 7-17-09 (Provisions subject to different effective dates); 2008 H 529, eff. 4-7-09; 2007 H 119, eff. 9-29-07; 2002 H 407, eff. 10-11-02; 2001 S 1, eff. 9-11-01; 2000 S 188, eff. 12-13-00; 1997 S 35, eff. 1-1-99; 1996 S 230, eff. 10-29-96; 1995 H 117, eff. 9-29-95; 1994 S 20, eff. 10-20-94; 1993 H 152, eff. 7-1-93; 1992 S 98, S 30; 1989 S 140; 1988 S 155; 1983 H 291; 1981 H 694, H 73; 1979 S 59, H 1; 1978 H 419; 1977 S 221; 1976 H 455; 1975 S 170, H 1; 1973 S 174, H 274; 1972 H 81; 1971 H 475; 132 v H 380; 126 v 655; 1953 H 1; GC 154-50)

Notes of Decisions (37)

R.C. § 3301.07, OH ST § 3301.07

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3301. Department of Education (Refs & Annos)
Department of Education

R.C. § 3301.16

3301.16 Classifying and chartering districts and schools

Effective: September 29, 2013
Currentness

Pursuant to standards prescribed by the state board of education as provided in division (D) of section 3301.07 of the Revised Code, the state board shall classify and charter school districts and individual schools within each district except that no charter shall be granted to a nonpublic school unless the school complies with division (K)(1)(a) of section 3301.0711, if applicable, and section 3313.612 of the Revised Code.

In the course of considering the charter of a new school district created under section 3311.26 or 3311.38 of the Revised Code, the state board shall require the party proposing creation of the district to submit to the board a map, certified by the county auditor of the county in which the proposed new district is located, showing the boundaries of the proposed new district. In the case of a proposed new district located in more than one county, the map shall be certified by the county auditor of each county in which the proposed district is located.

The state board shall revoke the charter of any school district or school which fails to meet the standards for elementary and high schools as prescribed by the board. The state board shall also revoke the charter of any nonpublic school that does not comply with division (K)(1)(a) of section 3301.0711, if applicable, and section 3313.612 of the Revised Code.

In the issuance and revocation of school district or school charters, the state board shall be governed by the provisions of Chapter 119. of the Revised Code.

No school district, or individual school operated by a school district, shall operate without a charter issued by the state board under this section.

In case a school district charter is revoked pursuant to this section, the state board may dissolve the school district and transfer its territory to one or more adjacent districts. An equitable division of the funds, property, and indebtedness of the school district shall be made by the state board among the receiving districts. The board of education of a receiving district shall accept such territory pursuant to the order of the state board. Prior to dissolving the school district, the state board shall notify the appropriate educational service center governing board and all adjacent school district boards of education of its intention to do so. Boards so notified may make recommendations to the state board regarding the proposed dissolution and subsequent transfer of territory. Except as provided in section 3301.161 of the Revised Code, the transfer ordered by the state board shall become effective on the date specified by the state board, but the date shall be at least thirty days following the date of issuance of the order.

A high school is one of higher grade than an elementary school, in which instruction and training are given in accordance with sections 3301.07 and 3313.60 of the Revised Code and which also offers other subjects of study more advanced than those taught in the elementary schools and such other subjects as may be approved by the state board of education.

An elementary school is one in which instruction and training are given in accordance with sections 3301.07 and 3313.60 of the Revised Code and which offers such other subjects as may be approved by the state board of education. In districts wherein

a junior high school is maintained, the elementary schools in that district may be considered to include only the work of the first six school years inclusive, plus the kindergarten year.

CREDIT(S)

(2013 H 59, eff. 9-29-13; 2011 H 30, eff. 7-1-11; 2011 H 153, eff. 6-30-11 (See Historical and Statutory Notes); 2009 H 1, eff. 10-16-09; 2005 H 66, eff. 9-29-05; 1995 H 117, eff. 9-29-95; 1993 H 152, eff. 7-1-93; 1973 H 159; 1970 S 197; 132 v S 350; 126 v 655)

Notes of Decisions (24)

R.C. § 3301.16, OH ST § 3301.16

Current through Files 1 to 95 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3319. Schools--Superintendent; Teachers; Employees (Refs & Annos)
Records and Reports

R.C. § 3319.35

3319.35 Failure of superintendent or treasurer of board to make reports

Currentness

If the superintendent or treasurer of any school district or educational service center fails to prepare any required report, that superintendent shall be liable in the sum of three hundred dollars, to be recovered by a civil action. In the case of reports required to be submitted to the superintendent, such action shall be instituted in the name of the governing board of the service center upon the complaint of the service center superintendent and the amount collected shall be paid into the service center's general fund. In the case of reports to be submitted to the state board of education, the action shall be instituted in the name of the state on complaint of the board and the amount collected shall be paid into the general revenue fund.

CREDIT(S)

(1995 H 117, eff. 9-29-95; 1979 H 1, eff. 5-16-79; 126 v 655; 1953 H 1; GC 4843-4)

R.C. § 3319.35, OH ST § 3319.35

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3319. Schools--Superintendent; Teachers; Employees (Refs & Annos)
Records and Reports

R.C. § 3319.39

3319.39 Criminal records check; disqualification from employment

Effective: June 30, 2011

Currentness

(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.

CREDIT(S)

(2011 H 153, eff. 6-30-11; 2009 H 19, eff. 3-29-10; 2008 H 428, eff. 9-12-08; 2007 H 190, eff. 11-14-07; 2007 S 97, eff. 7-1-07; 2004 S 2, eff. 6-9-04; 1996 S 230, eff. 10-29-96; 1996 S 269, eff. 7-1-96; 1996 H 445, eff. 9-3-96; 1995 S 2, eff. 7-1-96; 1995 H 223, eff. 11-15-95; 1995 H 117, eff. 9-29-95; 1994 H 694, eff. 11-11-94; 1994 H 715, eff. 7-22-94; 1993 S 38, eff. 10-29-93)

Notes of Decisions (8)

R.C. § 3319.39, OH ST § 3319.39

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