



MID-OHIO EDUCATIONAL SERVICE CENTER  
RELENTLESS ACCOUNTABILITY ADMINISTRATIVE CONFERENCE

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“A Review of Bargaining in 2021 and a Look Forward to 2022”

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I. Introduction

II. OTES 2.0

A. For upcoming negotiations, these are some things to look for. These items have been included in local association initial proposals regarding OTES 2.0.

1. Packing the Evaluation Committee: Keep the size of the committee manageable and keep good administrators on the committee who understand language that can harm the ability to maintain a good evaluation program that does not exceed the law.
2. Paid release time for committee work.
3. Multi-year averaging for purposes of final outcomes and RIFs.
4. Requirements that Improvement Plans be agreed to by both the teacher and evaluator.
5. Requirement of money, time and material sufficient to realize improvement plan goals.

6. Authority for the committee to create subcommittees for completion of the tasks.
7. Giving the committee the sole authority for the creation of the evaluation process and scope including Board Policy.
8. Requirement to provide secretarial assistance to the committee.
9. Giving skilled and or accomplished teachers the right to select their evaluator.
10. Naming an evaluator and then not being able to change the evaluator without teacher's consent.
11. Establishing a specific funding amount for professional development and training.
12. No performance evidence shall be gathered by video or audio.
13. Notice prior to walkthroughs.
14. Piloting of vendor assessment with committee decision on maintaining or changing.
15. No evaluation factor shall be impacted by student achievement of any kind.
16. Basing Summative Evaluations on a legal standard called preponderance of evidence.
17. Adding due process requirements to the evaluation process with automatic re-employment.

### III. Leaves and Holidays

#### A. Possible Bargaining Issues.

1. Juneteenth – What is required and to whom it will apply.
2. The shifting school year and how it can impact Memorial Day and Labor Day in collective bargaining agreements.
3. Calendar committee rules and how holiday issues can complicate deciding on a school year calendar.

4. Negotiating Memorandums of Understanding – Did you accidentally agree to extra leave in an MOU?
5. In the absence of an agreement to the contrary, when FFCRA leave expired, employees and employers were required to revert back to working within existing leave entitlements for issues related to the pandemic unless the District agreed to a contrary MOU.

B. Absenteeism’s Impact.

1. Based upon statistics from the United States Department of Education’s Office for Civil Rights, in the 2015-16 school year, nearly 29 percent of teachers were considered chronically absent (missing 10 or more school days).
2. High employee attendance is important to the effective and efficient operation of a school district.
3. Teacher absenteeism adversely affects the continuity of education and the amount of teacher/student contact time.
4. Each day of absence for a nine-month employee is over one-half percent of the annual work hours for the employee.
5. Districts have spent several years exploring ways to incentivize employees not to use various leaves.
6. Incentives, coupled with a pragmatic approach to employee leave requests, can help reduce employee absenteeism and ensure continuity of education for the students whom districts serve.

IV. Critical Race Theory and Political Speech

- A. Several state legislatures, including Ohio, have proposed legislation that prohibits the teaching of critical race theory, including discussions on sex, gender discrimination, and LGBTQ identity.
- B. Some of the proposed legislation includes penalties of up to \$5,000 if a teacher violates the prohibition.
- C. Due to the broadly written nature of several of the proposed laws, discussions on the following subjects could be prohibited, or at a minimum, cause teachers and school districts to decide not to teach for fear of violating the prohibitions:
  1. Racism and slavery.

2. Discussions on bullying or gender discrimination.
3. One piece of proposed legislation prohibits anyone from making a student at school feel “discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex.”
4. Ohio’s proposed legislation is included. See attachment.

D. Academic freedom provision examples:

1. The parties recognize the faculty and students’ rights concerning academic freedom. The teacher is recognized as an expert in the classroom and has the right to vary preparations and presentations so long as the course of study guidelines, as determined by the Administration, are followed.
2. A professional staff should seek to educate people in the democratic tradition, to foster a recognition of individual freedom and social responsibility, and it is recognized that these democratic values can be best transmitted in an atmosphere which is free from censorship.
3. In educating young people, the parties seek to inspire in them an inquiring mind and respect for truth, a recognition of individual freedom, social responsibility and the democratic tradition, an understanding and respect for the Constitution, Bill of Rights, and the law, and an appreciation of individual personality.

Other than accepted standards of professional behavior and responsibility, as set forth as part of the Board of Education’s evaluation procedure and the competent fulfillment of the Board’s approved curriculum guides, there shall be no limitations on teachers or students with respect to their study, investigation, presentation or interpretation of facts or ideas concerning man, society, government, the arts or sciences, the physical and biological world, or other areas of learning, and teachers and students shall be guaranteed freedom of individual conscience, association and expression.

The parties recognize that the above can best be accomplished in, and will work together to create and preserve, an atmosphere which is free from censorship and artificial restraint, and in which academic freedom for teacher and student is guaranteed. Further, the teaching about controversial issues, suitable to the age level, is approved as preparation of students for intelligent and conscientious participation in our democratic social order. The maintenance of the intellectual atmosphere which is implied here will necessarily depend upon the discretion of the administration and the objectively and wisdom of the teaching staff.

V. Finances, ESSER Payments and the New Funding Formula

A. Unions see the money as there for them. ESSER funds could impact your negotiations. According to the U.S. Department of Education, all three phases of ESSER funds can be used for expenditures in the following categories:

1. Any activity authorized by the ESEA.
2. Any activity authorized by the Individuals with Disabilities Education Act (IDEA).
3. Any activity authorized by the Adult Education and Family Literacy Act (AEFLA).
4. Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006.
5. Any activity authorized by subtitle B of title VII of the McKinney-Vento Homeless Assistance Act.
6. Coordinating preparedness and response efforts of public schools with public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to COVID-19 including variants.
7. Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.
8. Activities to address the unique needs of low-income children or students, students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, including how outreach and service delivery will meet the needs of each population.
9. Developing and implementing procedures and systems to improve the preparedness and response efforts.
10. Training and professional development for staff of the public school on sanitation and minimizing the spread of infectious diseases.
11. Purchasing supplies to sanitize and clean the facilities of the public school, including buildings operated by such school.
12. Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing

technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring other education services can continue to be provided consistent with all Federal, State, and local requirements.

13. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the public school that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
14. Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.
15. Planning and implementing activities related to summer learning and enrichment and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children and youth in foster care.
16. Addressing the academic impact of lost instructional time among a public school's students, including low-income students, students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, including by –
  - a. Administering and using high-quality assessments that are valid and reliable to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.
  - b. Implementing evidence-based activities to meet the comprehensive needs of students.
  - c. Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.
  - d. Tracking student attendance and improving student engagement in distance education.
17. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

18. Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
19. Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the CDC for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.
20. Other activities that are necessary to maintain the operation of and continuity of services in the public school and continuing to employ existing staff of the public school.

B. The impact of the new funding formula on District finances should be relatively neutral. It gives and takes equally.

#### VI. Health Care Costs and Wages

A. Expectation of a slight increase going forward.

According to a report from Price Waterhouse Cooper in July of 2021, health care costs will trend up due to:

1. Delayed treatment for non-pandemic related illnesses and conditions.
2. Increased mental health issues.
3. Decline in overall health due to increases in obesity, alcohol, tobacco, and drug abuse during the pandemic.

B. State Employment Relations Board 2020 health insurance report.

1. The statewide family premium employee percent share for all governmental employees went from 13.2 percent in 2010 to 13.5 percent in 2020.
2. The statewide average annual network deductible amount for school districts was \$1,521 for a single plan and \$3,009 for a family plan, which is a reflection of the large number of high deductible plans being negotiated in the State.

3. The statewide average in-network out-of-pocket maximums for school districts was \$2,949 for a single plan and \$5,875 for a family plan.

VII. Remote and Online Instruction Issues

A. Some local Associations are including remote/online instruction restrictions in their initial proposals.

1. Resist Association regulations that hinder the District's ability to manage online learning.
2. Make sure MOUs signed regarding remote instruction do not apply generally to online instruction.
3. Do not agree to teachers being insulated from the new participation documentation requirements.
4. Consider the evaluation process in the online arena.

B. Online Learning.

1. Effective date: September 30, 2021.
2. Online learning is not remote learning.
  - a. "Remote learning" was:
    - (1) Temporary in response to COVID and applied solely to the 2020-2021 school year.
    - (2) Undefined and flexible, in that districts had flexibility to decide what remote learning meant for them (and find creative solutions) utilizing their remote learning plans.
    - (3) Not subject to approval by ODE. Rather, districts simply submitted their board-approved plans to ODE.
  - b. Online learning is different, in part because it is more highly regulated. Online learning is:
    - (1) Not temporary or restricted to a particular school year, and is codified (rather than temporary/uncodified).



- (2) Defined as “students work primarily from their residences on assignments delivered via an internet- or other computer-based instructional method.”
    - (3) Subject to approval by the Superintendent of Public Instruction.
- 3. State funding for “online learning” students will be tied to documented participation.
  - a. ECOT decision. ODE clawed back millions of dollars from ECOT because ECOT could not produce participation logs for time spent online learning. As a result, ECOT and all e-schools community schools were now subject to funding on a “documented completion” basis. The school had to document every hour of learning. If a student only completed 50% of learning, the student only got 50% of funding.
  - b. The Budget Bill codifies [conditional] funding model for online learning at school districts.
    - (1) The district’s learning management software must track online learning participation.
    - (2) Offline learning must include time logs. All participation records must be “checked and approved by the teacher of record.”

## VIII. Masks and Vaccines

- A. CDC guidance for COVID-19 prevention in K-12 schools.
  - 1. According to the latest interim public health recommendations for fully vaccinated people dated July 27, 2021:
    - a. Masks indoors for fully vaccinated persons in locations of the United States where there are 50 or more cases per 100,000 persons per 7 days.
    - b. As of July 28, 2021, 23 counties in Ohio meet this standard.
    - c. The CDC recommends universal indoor masking for all teachers, staff, students, and school visitors regardless of vaccination status.

d. Follow the CDC updates for more information as we continue toward the Fall and the traditional flu season.

2. The updated CDC guidance provides the following:

a. Schools should maintain at least 3 feet of physical distance between students within classrooms, combined with indoor mask wearing by people who are not fully vaccinated, to reduce transmission risk.

b. Students, teachers, and staff should stay home when they have signs of any infectious illness and be referred to their healthcare provider for testing and care.

c. People who are fully vaccinated and do not have COVID-19 symptoms do not need to quarantine or get tested after an exposure to someone with COVID-19.

d. Schools can routinely test student athletes, participants, coaches, and trainers, and other people (such as adult volunteers) who are not fully vaccinated and could come into close contact with others during these activities.

e. Schools can implement screening testing of participants who are not fully vaccinated up to 24 hours before sporting, competition, or extracurricular events.

B. On July 13, 2021, S.B. 209 was introduced in the Ohio Senate which provides, in part, that school districts shall not require any individual, including students, teachers, or other school employees, and visitors, to wear a facial covering to attend or participate in in-person instruction, school-sponsored athletics, or another school-sponsored extracurricular activity, or in any other place on school premises.

H.B. 209 was just introduced and will go through several revisions before it gets passed, if it ever does. It is unknown whether this language will ever become effective.

C. Prohibiting mandatory vaccinations and discrimination.

1. H.B. 244 enacted R.C. 3792.04 effective October 13, 2021, which prohibits a public school (which includes community schools) from requiring an individual to receive a vaccine for which the U.S. Food and Drug Administration has not granted full approval.

2. The Bill also prohibits discrimination against an individual who has not received a vaccine described above.
3. The prohibition includes requiring an individual to engage in or refrain from engaging in activities or precautions that differ from others who have received the vaccine.

IX. Conclusion



**Excerpts from H.B. 322 Regarding Critical Race Issues**

**Sec. 3313.6028.**

(A) No state agency, school district, or school shall teach, instruct, or train any administrator, teacher, staff, member, or employee to adopt or believe any of the following concepts:

- (1) One race or sex is inherently superior to another race or sex;
- (2) An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race;
- (4) Members of one race cannot or should not attempt to treat others without respect to race;
- (5) An individual's moral standing or worth is necessarily determined by the individual's race or sex;
- (6) An individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
- (7) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual's race or sex;
- (8) Meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race or sex to oppress members of another race or sex;
- (9) Fault, blame, or bias should be assigned to a race or sex or to members of that race or sex because of their race or sex;
- (10) The advent of slavery in the territory that is now the United States constituted the true founding of the United States;
- (11) With respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality.

(B) No teacher or school administrator employed by a school district or employee of a state agency shall approve for use, make use of, or carry out standards, curricula, lesson plans, textbooks, instructional materials, or instructional practices that serve to inculcate the concepts described in divisions (A)(1) to (11) of this section.

(C) If a student completes a course that includes any of the concepts described in divisions (A)(1) to (11) of this section, that course shall not count towards the requirements for high school graduation specified in section 3313.603 of the Revised Code.

**Sec. 3313.6029.**

No teacher shall be required by a policy of any state agency, school district, or school administration to affirm a belief in the systemic nature of racism, or like ideas, or in the multiplicity or fluidity of gender identities, or like ideas, against the teacher's sincerely held religious or philosophical convictions.

## **Excerpts from H.B. 327 Regarding Critical Race Theory**

### **Sec. 3313.6027.**

(A) As used in this section:

(1) “Divisive concepts” means the concepts that:

- (a) One nationality, color, ethnicity, race, or sex is inherently superior to another nationality, color, ethnicity, race, or sex.
- (b) The United States is fundamentally racist or sexist.
- (c) An individual, by virtue of the individual’s nationality, color, ethnicity, race, or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- (d) An individual should be discriminated against or receive adverse treatment solely or partly because of the individual’s nationality, color, ethnicity, race, or sex.
- (e) Members of one nationality, color, ethnicity, race, or sex cannot and should not attempt to treat others without respect to nationality, color, ethnicity, race, or sex.
- (f) An individual’s moral character is necessarily determined by the individual’s nationality, color, ethnicity, race, or sex.
- (g) An individual, by virtue of the individual’s nationality, color, ethnicity, race, or sex, bears responsibility for actions committed in the past by other members of the same nationality, color, ethnicity, race, or sex.
- (h) Meritocracy or traits such as a hard work ethic are racist or sexist or were created by a particular nationality, color, ethnicity, race, or sex to oppress another nationality, color, ethnicity, race, or sex.
- (i) Any other form of race or sex stereotyping or any other form of race or sex scapegoating.

(2) “Race or sex stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a nationality, color, ethnicity, race, or sex or to an individual because of the individual’s nationality, color, ethnicity, race, or sex.

(3) “Race or sex scapegoating” means assigning fault, blame, or bias to a nationality, color, ethnicity, race, or sex or to members of a nationality, color, ethnicity, race, or sex because of their nationality, color, ethnicity, race, or sex. It also includes any claim that consciously or unconsciously, and by virtue of their nationality, color, ethnicity, race, or sex, members of any nationality, color, ethnicity, or race are inherently racist or are inherently inclined to oppress others or members of a sex are inherently sexist or are inherently inclined to oppress others.

(B) (1) No school district shall teach, instruct, or train any divisive concepts, nor shall any school district require a student to advocate for or against a specific topic or point of view to receive credit for any coursework.

(2) No school district shall accept private funding for the purpose of developing a curriculum, purchasing or selecting course materials, or providing teacher training or professional development for a course promoting divisive concepts.

(C) If the superintendent of public instruction determines that any school district knowingly violates the prohibitions prescribed in division (B) of this section, the department of education shall withhold state funding from the district in the amount determined by the department until such time as the department determines the district no longer is in violation of that division.

(D) Nothing in this section shall be construed to prohibit discussing or using supplemental instructional materials, as part of a larger course of academic instruction, to teach divisive concepts in an objective manner and without endorsement. Such materials may include the following:

(1) The history of an ethnic group, as described in textbooks and instructional materials adopted in accordance with the Revised Code concerning textbooks and instructional materials;

(2) The impartial discussion of controversial aspects of history;

(3) The impartial instruction on the historical oppression of a particular group of people based on race, ethnicity, class, nationality, religion, or geographic region;

(4) Historical documents permitted under statutory law, such as the national motto, the national anthem, the Ohio Constitution, the United States Constitution, the Revised Code, federal law, and United States Supreme Court decisions.

(E) The state board of education may adopt rules regarding the implementation of and monitoring compliance with the provisions of this section.

#### Sec. 4113.35.

(A) As used in this section:

(1) “Divisive concept” has the same meaning as in section 3313.6027 of the Revised Code.

(2) “State agency” means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government and includes a state institution of higher education, the public employees retirement system, the Ohio police and fire pension fund, the state teachers retirement system, the school employees retirement system, and the state highway patrol retirement system.

(3) “State institution of higher education” has the same meaning as in section 3345.011 of the Revised Code.

(B) (1) No state agency shall offer teaching, instruction, or training on divisive concepts to any employees, contractors, staff members, or any other individual or group or require them to adopt or believe in divisive concepts.

(2) No state employee shall face any penalty or discrimination on account of the employee’s refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to divisive concepts. No state employee shall be required to complete a curriculum including divisive concepts as a condition or prerequisite of employment.

(3) No state agency shall accept private funding for the purpose of developing curriculum, purchasing or selecting course materials, or providing training or professional development for a course that promotes divisive concepts.

(C) The administrative head of each state agency shall do the following:

(1) Review the agency’s respective grant programs to identify which programs may require grant recipients, as a condition of receiving a grant from the agency, to certify that the recipient shall not use grant funds to promote divisive concepts.

(2) Review all training programs for agency employees relating to diversity or inclusion to ensure the programs comply with the requirements of division (B) of this section. If a training program provided by a contracted entity relates to diversity or inclusion that teaches, advocates, or promotes divisive concepts and violates the applicable contract, the agency head shall evaluate whether to pursue debarment of the contractor, consistent with applicable law and regulation.

(3) Ensure that divisive concepts are not taught, advocated, acted upon, or promoted by the agency, the agency's employees during work hours, or any contractor hired by the agency to provide training, workshops, forums, or similar programming to the agency's employees;

(4) Encourage agency employees not to judge each other by their color, race, ethnicity, sex, or any other characteristic protected by federal or state law;

(5) Issue to all agency employees the policy developed under division (D) of this section, annually review and assess the agency's compliance with the policy, and submit a report to the department of administrative services regarding the agency's compliance. At least one employee of the agency shall be responsible for ensuring compliance with the requirements of the policy.

(D) The department of administrative services shall develop a policy that complies with the requirements of this section and incorporates the requirements of diversity and inclusion efforts and encourages state employees not to judge each other by their color, race, ethnicity, sex, or any other characteristic protected by federal or state law. The department shall establish rules in accordance with Chapter 119. of the Revised Code for the implementation and enforcement of the policy.

(E) Nothing in this section shall be construed to prohibit discussing or using supplemental instructional materials, as part of a larger course of academic instruction or training, to teach divisive concepts in an objective manner and without endorsement. Such materials may include the following:

(1) The history of an ethnic group, as described in textbooks and instructional materials adopted in accordance with statutory law concerning textbooks and instructional materials;

(2) The impartial discussion of controversial aspects of history;

(3) The impartial instruction on the historical oppression of a particular group of people based on race, ethnicity, class, nationality, religion, or geographic region;

(4) Historical documents permitted under statutory law, such as the national motto, the national anthem, the Ohio Constitution, the United States Constitution, the Revised Code, federal law, and United States Supreme Court decisions.