

# **OHIO EDUCATION ASSOCIATION**

## **Substitute HB 327 – Bill Analysis**

**November 5, 2021**

*Status: Pending consideration in the Ohio House State and Local Government Committee.*

*OEA Position: Oppose*

### **OVERVIEW**

HB 327 prohibits K-12 schools, state institutions of higher education, state agencies, and political subdivisions from teaching, instructing, providing training in or “promoting” “divisive concepts” (see definitions below). Penalties for violations include loss of graduation credit for students, denial of state funding for schools, admonishment/suspension/revocation of educator licenses, exposure to civil lawsuits brought by parents, and/or higher education student grievances.

### **DEFINITIONS**

- “Divisive concepts” are defined as concepts stating that:
  - One nationality, race, color, ethnicity, religion, or sex is inherently superior to another nationality, race, color, ethnicity, religion, or sex as described in the "Civil Rights Act of 1964."
  - The United States is fundamentally racist or sexist.
  - An individual, by virtue of the individual's nationality, race, color, ethnicity, religion, or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
  - An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's nationality, race, color, ethnicity, religion, or sex.
  - Members of one nationality, race, color, ethnicity, religion, or sex attempt to treat others disrespectfully based upon nationality, race, color, ethnicity, religion, or sex.
  - An individual's moral character is necessarily determined by the individual's nationality, race, color, ethnicity, religion, or sex.
  - An individual, by virtue of the individual's nationality, race, color, ethnicity, religion, or sex, bears responsibility for actions committed in the past by other members of the same nationality, race, color, ethnicity, religion, or sex.
  - Meritocracy or traits such as a hard work ethic are racist or sexist or were created by a particular nationality, race, color, ethnicity, religion, or sex to oppress another nationality, race, color, ethnicity, religion, or sex.
  - Any other form of race or sex stereotyping or any other form of race or sex scapegoating.
- "Promote" or "promotion" means either of the following processes:

- Seeking to advance or encourage support of a partisan philosophy or religion by indoctrination, coercion, or furthering “divisive concepts” by teaching an individual or group of individuals to accept a set of beliefs in a one-sided, biased, and uncritical manner;
- Inculcating ideas, attitudes, beliefs, and cognitive strategies during the transfer of cultural traditions from one generation to the next with the expectation that such traditions will not be questioned but practiced in the future.
- "Race or sex stereotyping" means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a nationality, race, color, ethnicity, religion, or sex or to an individual because of the individual's nationality, race, color, ethnicity, religion, or sex.
- "Race or sex scapegoating" means assigning fault, blame, or bias to a nationality, race, color, ethnicity, religion, or sex or to members of a nationality, race, color, ethnicity, religion, or sex because of their nationality, race, color, ethnicity, religion, or sex. It also includes any claim that consciously or unconsciously, and by virtue of their nationality, race, color, ethnicity, religion, or sex, members of any nationality, race, color, ethnicity, or religion 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.

## **K-12 EDUCATION**

### **Prohibitions:**

- No school district, school building or charter school shall teach, instruct, train, or “promote” professional development in any “divisive concepts.”
- No student's grade shall be negatively affected by the student's refusal to express belief in or support of a “divisive concept.”
- No school district (or charter school) shall elect any textbook, instructional material, or academic curriculum that “promote” any “divisive concept” listed in HB 327.
- No nonpublic school that enrolls students who are participating in a state scholarship program shall use state moneys to “promote” “divisive concepts.” This provision shall not be construed to prohibit any nonpublic school from promoting the school's closely held religious beliefs or specifying that the school's religion is superior to other religions.
- No state agency, school district, school building, or teacher shall apply for any federal grants or accept private funding for the purpose of developing a curriculum, purchasing or selecting a curriculum or course materials, or providing teacher training or professional development for a course promoting “divisive concepts.” No moneys shall be expended in promoting “divisive concepts.”
- No school teacher, administrator, or other school employee shall face any penalty or discrimination on account of the school teacher's, administrator's, or other school employee's refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to “divisive concepts.” No school teacher, administrator, or other school employee shall be

required to complete a curriculum promoting “divisive concepts” as a condition or prerequisite of employment.

**Not-Prohibited:**

Nothing in HB 327 shall be construed to prohibit any of the following:

- Discussing or using supplemental instructional materials, as part of a larger course of academic instruction, to teach about “divisive concepts” in an objective manner and without endorsement. Such materials may include the following: (a) The history of an ethnic group, as described in textbooks and instructional materials selected by each school district; (b) The nonpartisan discussion of controversial aspects of history; (c) The nonpartisan instruction on the historical oppression of a particular group of people based on nationality, race, color, ethnicity, religion, sex, class, or geographic region; (d) 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.
- In a course of instruction on public speaking, speech, formal debate, or substantially similar subject matter, any of the following: (a) The assignment of research, topics of debate, public speaking prompts, or other tasks that are controversial or address a “divisive concept,” provided the teacher does not “promote” adherence to “divisive concept”; (b) The assignment of a grade or score for completion or partial completion of research, debate, public speaking, or other task, provided the grade or score is calculated using ordinary academic standards of substance and relevance, including any legitimate pedagogical concerns. No student's grade shall be negatively affected by the student's refusal to express belief in or support for a “divisive concept.” (c) Nonpartisan questions posed by a teacher that are meant to “promote” discussion between students, provided the teacher does not “promote” adherence to “divisive concepts”; (d) Respectful student-to-student discussion or debate, notwithstanding the fact it may address “divisive concepts”; (e) Student research, practice, public speaking, other assigned tasks, and questions, including advocacy of a student's own perspectives or volunteering; (f) The promotion of American nationalism.

**Penalties:**

**Loss of state school funding**

- If the superintendent of public instruction determines through a confirmed report from a student, parent, teacher, or community member that any school district knowingly or recklessly violates the prohibitions in HB 327, ODE shall withhold state funding from the district or school in the following amounts:
  - For a first offense, twenty-five per cent;
  - For a second offense, fifty per cent;
  - For a third offense, one hundred per cent.

- The withholding of funds shall be effective immediately and shall remain in effect until such time as the state superintendent confirms the district or school no longer is in violation.
- The superintendent shall restore withheld funds as follows:
  - For a school district that corrects a violation within ten school days after the date the report is confirmed, one hundred per cent;
  - For a school district that corrects a violation within not less than eleven but not more than thirty school days after the date the report is confirmed, fifty per cent. The superintendent shall not restore any withheld funds to a school district that does not correct a violation within thirty days after the date the report is confirmed.

**Admonishment/suspension/revocation of educator and administrator licenses**

- If the state board of education determines through a confirmed report from a student, parent, teacher, or community member that a teacher, principal, or school district superintendent knowingly or recklessly violates the prohibitions in HB 327, the state board shall take the following action:
  - For a first offense, issue an official licensure admonishment;
  - For a second offense, suspend the teacher's, principal's, or superintendent's licensure for a period of time determined by the state board based upon the severity and circumstances of the offense that led to the suspension;
  - For a third offense, revoke the teacher's, principal's, or superintendent's licensure for a period of time determined by the state board based upon the severity and circumstances of the offense that led to the suspension.
- Any confirmed report regarding a single classroom shall be considered one offense, regardless of the number of reports submitted regarding that classroom. If an individual subject to this division teaches multiple classes or in multiple buildings, each classroom or building for which a report has been confirmed shall be considered a separate offense.

**Civil actions by parents**

- The parent, guardian, or custodian of any student who, by way of a violation of HB 327, is subjected to indoctrination of “divisive concepts” in order to receive a class grade or graduation credit, may bring a civil action against the school, school district, or school employee responsible for the violation. A school, school district, or school employee is not immune from liability in damages in a civil action.

**STATE INSTITUTIONS OF HIGHER EDUCATION**

**Prohibitions:**

- No state moneys shall be expended by any state institution of higher education in support or “promotion” of any “divisive concept.”

- No state institution of higher education shall include as part of new student or freshman orientation teaching, instruction, or training promoting “divisive concepts.”
- No state institution of higher education shall require any student to complete any course that contains instruction on “divisive concepts” as a condition of selecting a particular major in any undergraduate program. This provision shall not be construed to prohibit a student from voluntarily taking additional courses that focus on, or incorporate, “divisive concepts.”
- No employee shall be required to complete a curriculum promoting “divisive concepts” as a condition or prerequisite of employment.
- No employee of a state institution of higher education 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.”

**Not-Prohibited:**

- Discussing or using supplemental instructional materials, as part of a larger course of academic instruction, to teach about “divisive concepts” in an objective manner and without endorsement. Such materials may include the following: (a) The history of an ethnic group, as described in textbooks and instructional materials selected in accordance with the textbook selection policy; (b) The discussion of controversial aspects of history; (c) The instruction on the historical oppression of a particular group of people based on race, ethnicity, class, nationality, religion, or geographic region; (d) 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.
- In a course of instruction on public speaking, speech, formal debate, or substantially similar subject matter, any of the following: (a) The assignment of research, topics of debate, public speaking prompts, or other tasks that are controversial or addresses a “divisive concept,” provided the professor does not “promote” adherence to any “divisive concept”; (b) The assignment of a grade or score for completion or partial completion of research, debate, public speaking, or other task, provided the grade or score is calculated using ordinary academic standards of substance and relevance, including any legitimate pedagogical concerns. No student's grade shall be negatively affected by the student's refusal to express belief or support for a “divisive concept.”
- Questions posed by a professor that are meant to “promote” discussion between students, provided the professor does not “promote” adherence to “divisive concepts”;
- Respectful student to student discussion or debate, notwithstanding the fact it may address “divisive concepts,” provided the professor does not participate except to enforce classroom decorum or rules of the state institution of higher education;
- Student research, practice, public speaking, other assigned tasks, and questions, including advocacy of a student's own perspectives or volunteering.
- States that a founding principle of the United States of America is freedom of speech and of thought and the fundamental purpose of HB 327 to protect those rights.

- States that academic freedom involves protecting the student's right to inquiry without indoctrination toward any preferred philosophy or religion, especially through the coercion of grades, class status, and opportunities.

**Penalties:**

**Higher ed student grievance procedure - possible funding deductions**

- Provides that a student enrolled in a state institution of higher education who believes the student has been discriminated against or penalized by failure to adhere to a “divisive concept,” or whose grade is negatively impacted by refusal to express belief in or support for a “divisive concept,” may file a grievance using the state institution's standard student grievance process, provided that process affords the student a due process hearing during which the student and the professor being accused have the opportunity to be heard and present testimony.
- The state institution shall determine whether a violation has occurred within fourteen days of the receipt of the complaint.
  - If the student's complaint is denied by the state institution, the student may appeal to the chancellor of higher education. The chancellor shall review the appeal within fourteen days of the filing of the appeal.
  - The chancellor shall either affirm or overrule the state institution's decision based on HB 327 and Ohio Revised Code 3345.0215 (non-commercial expressive activities on campus).
  - If the chancellor overrules the determination made by the state institution, the chancellor shall withhold the institution's state share of instruction in proportion to the total number of students enrolled in the class for which the student filed a complaint.
    - Withheld funds are forfeited unless the state institution redacts the student’s grade and refunds/credits the tuition associated with the violation within thirty days after the date of the determination a violation occurred.

**Board of Trustees:**

The board of trustees of each state institution of higher education shall do the following:

- Update the institution's policy on faculty tenure to reflect the principles contained in HB 327.
- Review the institution's respective grant and scholarship programs to identify which programs may require grant or scholarship recipients, as a condition of receiving a grant or scholarship from the institution, to certify that the recipient shall not use grant or scholarship funds to “promote” “divisive concepts”;
- Review all training programs for employees relating to diversity, equity, or inclusion to ensure the programs comply with the requirements of HB 327. If a training program provided by a contracted entity relates to diversity, equity or inclusion that advocates or “promotes” “divisive concepts” and violates the applicable contract, the board of trustees shall evaluate whether to pursue debarment of the contractor, consistent with applicable law and regulation.

- Ensure that “divisive concepts” are not advocated, acted upon, or “promoted” by the state institution, the institution's employees during work hours, or any contractor hired by the institution to provide training, workshops, forums, or similar programming to the institution's employees;
- Encourage employees not to judge each other by their nationality, race, color, ethnicity, sex, or any other characteristic protected by federal or state law;
- Issue policies to all employees, annually review and assess the institution's compliance with the policy, and submit a report to the department of higher education regarding the institution's compliance. At least one employee of the institution shall be responsible for ensuring compliance with the requirements of the policy.

**Chancellor of Higher Education:**

The chancellor of higher education shall do all of the following:

- Develop a policy that complies with the requirements of HB 327 and incorporates the requirements of diversity, equity, and inclusion efforts and encourages employees of state institutions of higher education not to judge each other by their nationality, race, color, ethnicity, religion, sex, or any other characteristic protected by federal or state law.
- Establish administrative rules for the implementation and enforcement;
- Prepare a biennial report regarding adoption and enforcement of HB 327 and submit the report to the general assembly.