

OHIO EDUCATION ASSOCIATION

Bill Analysis – OEA Government Relations

HB 327: Substitute Bill -12

February 16, 2022

Status: Under consideration in the Ohio House State & Local Government Committee.

OEA Position: Oppose

SUMMARY

HB 327 Sub Bill -12 establishes a state government ban on “Divisive Concepts” in School Districts, Charter Schools, Private Schools, State Institutions of Higher Education, State Agencies, State Retirement Systems, Cities, Villages, and Townships. Teachers, administrators, higher education instructors/professors are threatened with formal punishment by the government for violating state prohibitions on “divisive concepts.”

DEFINITIONS

- **National origin, race, color, ethnicity, and religion:** Shall be interpreted as described in the original text of the "Civil Rights Act of 1964."
- **Sex:** Means biological sex.
- **State Institution of Higher Education:** University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and public community colleges.
- **State Agencies:** All departments of the state including the Ohio Department of Education and the Ohio Department of Higher Education. Every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.
- **State Retirement Systems:** State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Public Employees Retirement System (PERS), the Ohio Police and Fire Pension Fund, , and the State Highway Patrol Retirement System.
- **Political subdivisions:** A county, township, city, village, school district, charter school, or any other government body that is responsible for government activities in a geographic area smaller than that of the state
- **Private/nonpublic schools:** Same as current ORC definition.
- **Promote or promotion:**
 - (a) Seeking to advance or encourage support of a partisan philosophy or religion by indoctrination, coercion, compulsion, or teaching an individual or group of individuals to accept a set of beliefs in a one-sided, biased, and uncritical manner; OR
 - (b) 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.

- **Divisive Concepts:** No state agency, school district, charter school, private/nonpublic school, state institution of higher education, political subdivision, administrator, teacher, or other school employee shall compel any individual to affirm, adopt, adhere to, profess, or promote any of the following concepts:

- (1) That individuals of any race, ethnicity, color, sex, religion, or national origin are inherently superior or inferior;
- (2) That individuals should be adversely or advantageously treated, or should treat others disrespectfully, on the basis of their race, ethnicity, color, sex, religion, or national origin;
- (3) That an individual, by virtue of the individual's race, ethnicity, color, sex, religion, or national origin is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- (4) That individuals, by virtue of their race, ethnicity, color, sex, religion, or national origin bear collective guilt and are inherently responsible for actions committed in the past by other members of the same race, ethnicity, color, sex, religion, or national origin;
- (5) That meritocracy or traits such as a hard work ethic are racist or sexist, or were created by individuals of a particular race, ethnicity, color, sex, religion, or national origin to oppress individuals of another race, ethnicity, color, sex, religion, or national origin;
- (6) That any individual cannot succeed or achieve equality because of the individual's race, ethnicity, color, sex, religion, or national origin;
- (7) That an individual's moral character or worth is necessarily determined by the individual's race, ethnicity, color, sex, religion, or national origin;
- (8) Any other concept the promotion of which violates the provisions of any of the concepts described in ORC 3313.6028, 3345.0216, or 4113.35 or Title IV or VI of "The Civil Rights Act of 1964."

PRIMARY AND SECONDARY EDUCATION

"Divisive Concepts" Banned in K-12 Schools

- A school board or charter school shall not select any textbook, instructional material, or academic curriculum that "promotes," or compels adherence to, any "divisive concepts."
- No teacher or school administrator employed by a school district or charter school shall approve for use, make use of, or carry out standards, curricula, lesson plans, textbooks, instructional materials, or instructional practices that serve to inculcate or promote any "divisive concepts."
- No school district or charter school shall include, train, compel adherence to, 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 any of those concepts.
- No school district, charter school, teacher, or state agency (e.g. Ohio Department of Education), shall apply for any federal grants or accept private funding or donated materials 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 that compels individuals to affirm, adopt, adhere to, profess, or promote "divisive concepts" banned by the state.

- No moneys shall be expended in promoting state prohibited “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, or act upon “divisive concepts.”
- No school teacher, administrator, or other school employee shall be compelled or required to complete a curriculum promoting state prohibited “divisive concepts.”
- No school district, charter school, school administration, or state agency shall compel or require a teacher who is employed by a school district or charter school to discuss current events or widely debated and currently controversial issues of public policy or social affairs.
- It is the policy of the state that teachers who choose to discuss current events or widely debated and currently controversial issues of public policy or social affairs shall present each topic in a nonpartisan manner.
- No school teacher shall be required or compelled through a policy of any state agency, school district, charter school, 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.

State Board of Education Banned from Adopting Anything that Violates “Divisive Concepts”

- At no time shall the state board adopt any standards, model curricula, professional development resources, classroom resources, or assessments promoting or compelling compliance with any “divisive concepts.”

Punishment for “Divisive Concept” Violations - Teachers, Principals, Superintendents, Treasurers

- The state board of education shall adopt rules to govern implementation of and monitor compliance with the provisions of this section.
- The state board of education shall investigate any report from a student, parent, teacher, or community member alleging that a teacher, school administrator, or school district superintendent knowingly or recklessly violates “divisive concept” prohibitions.
- The state board shall afford the teacher, school administrator, or school district superintendent an opportunity for a hearing in accordance with ORC Chapter 119.
- If the state board finds that the teacher, school administrator, or school district superintendent knowingly or recklessly violated “divisive concept” prohibitions, the state board shall issue an adjudication order in accordance with ORC Chapter 119 taking the following action:
 - (a) For a FIRST OFFENSE, issue an official licensure admonishment;
 - (b) 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;
 - (c) For a THIRD OFFENSE or subsequent offense, revoke the teacher's, principal's, or superintendent's licensure for a period of time that is not less than one year, as determined by the state board based upon the severity and circumstances of the offense that led to the suspension.

- Any 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. If an individual is teaching multiple sections or different sections, each section or class shall be considered a separate offense.

Parents Can Sue Teachers, Principals, Superintendents, Treasurers, School Districts, Charter Schools, and Private Schools for “Injunctive Relief”

- The parent, guardian, or custodian of any student who is compelled to adhere to, or is subjected to indoctrination through use of any of the “divisive concepts” in order to receive a class grade or graduation credit, may bring an action for injunctive relief against the charter school, private/nonpublic school, school district, or school employee responsible for the violation.

What is “not prohibited” for K-12 schools?

- Nothing in the bill shall be construed to prohibit any of the following:
 - (1) Discussing or using supplemental instructional materials, as part of a larger course of academic instruction, to teach about any “divisive concepts” in an objective manner and without endorsement. Such materials may include the following:
 - The history of an ethnic group, as described in textbooks and instructional materials that do not violate state prohibitions on “divisive concepts”;
 - The nonpartisan discussion of controversial aspects of history;
 - The nonpartisan instruction on the historical oppression or treatment of a particular group of people based on national origin, race, color, ethnicity, religion, sex, class, or geographic region;
 - Historical documents permitted under statutory law, including, but not limited to, the national motto, the national anthem, the Ohio Constitution, the U.S. Constitution, the Ohio Revised Code, federal law, and United States Supreme Court decisions;
 - Nonpartisan questions posed by a teacher are meant to promote discussion between students if teacher does not promote adherence to any of the “divisive concepts.”
 - Student research, practice, public speaking, other assigned tasks, and questions, including advocacy of a student's own perspectives or volunteering;
 - The promotion of American nationalism;
 - The objective teaching of the American civil rights movement.
 - (2) The discussion of any state prohibited “divisive concept” by any employee of a state agency, school district, or public elementary or secondary school if the employee is acting in the employee's individual capacity and not within the scope of employment.
 - (3) Voluntary engagement in or observation of a politically nonpartisan discussion of public policy issues or other issues by a student, school administrator, teacher, or other school employee, even if others may find the topic of discussion unwelcome, disagreeable, or offensive.
 - (4) 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 one or more “divisive concepts.”

- (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 any state prohibited "divisive concept."
- (c) Respectful student-to-student discussion or debate, notwithstanding the fact it may address any of the state prohibited "divisive concepts."

K-12 Licensure Code of Professional Conduct Must Prohibit "Divisive Concepts"

- The state board of education shall amend the licensure code of professional conduct for Ohio educators, or any other equivalent standards of conduct for professional licensure, to include the following as conduct unbecoming actions:
 - (1) Promoting a teacher's personal political or ideological belief or position;
 - (2) Failing to fairly present both sides of a political or ideological belief or position;
 - (3) Unfairly evaluating a student's work because it does not reflect the teacher's political or ideological belief or position.

Approved K-12 Lists of "Balanced and Non-Partisan Activities"

- Each school district and charter school shall annually adopt a policy approving a list of balanced partisan and nonpartisan activities that are consistent with the provisions of the updated Educator Licensure Code of Professional Conduct (which prohibits "divisive concepts").
- A school district, charter school, or teacher may require a student to participate in a political campaign, lobbying effort, or practicum involving social or public policy, provided the student selects from the list of opportunities from the "approved list" of balanced partisan and nonpartisan activities.

Private/Nonpublic Schools – Prohibits Use of State Money for "Divisive Concepts"

- No private/nonpublic school shall use either of the following to promote or compel compliance with "divisive concepts":
 - (i) Funds paid directly to the chartered nonpublic school for auxiliary services.
 - (ii) Reimbursement of the actual mandated service administrative and clerical costs incurred by a chartered nonpublic school under ORC 3317.063.

STATE INSTITUTIONS OF HIGHER EDUCATION

Prohibits "Divisive Concepts" in Higher Education

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

- 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” as a condition or prerequisite of employment.
- No state institution of higher education shall do either of the following:
 - (a) Include as part of new student or freshman orientation teaching, instruction, or training promoting or compelling adherence to “divisive concepts” banned by the state;
 - (b) Require any student to complete any course that contains instruction on any “divisive concepts” as a condition of selecting a particular major in any undergraduate program. However, this provision shall not be construed to prohibit a student from voluntarily taking additional courses that focus on, or incorporate, any “divisive concepts.”

Establishes Process for Students to Accuse Professors of Violating “Divisive Concepts”

- A student enrolled in a state institution of higher education who believes they have been discriminated against or penalized by failure to adhere to any “divisive concepts” or whose grade is negatively impacted by refusal to express belief in or support of “divisive concepts” 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 of “divisive concepts” has occurred within fourteen days of the receipt of the complaint.

Tenure Qualifications for Higher Education Must Include “Divisive Concept” Prohibitions

- The board of trustees of each state institution of higher education shall update the institution's policy on faculty tenure to reflect the principles contained in this section.

Each Board of Trustees Responsible for Enforcing “Divisive Concept” Prohibitions

- The board of trustees of each state institution of higher education shall do the following:
 - (1) 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 or compel adherence to any “divisive concepts.”
 - (2) Review all training programs for employees relating to diversity, equity, or inclusion to ensure the programs comply with the requirements of this section. If a training program provided by a contracted entity relates to diversity, equity or inclusion that advocates or promotes or compels adherence to any “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.
 - (3) Ensure that “divisive concepts” prohibited by the state 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;

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

(5) Issue to all employees the policy on “divisive concepts” prohibited by the state and 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.

(6) At least one employee of the state institution of higher education shall be responsible for ensuring compliance with the requirements of the state ban on “divisive concepts.”

Chancellor of Higher Education Shall Withhold Funds For “Divisive Concept” Violations

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.

- (1) If the chancellor overrules the determination made by the state institution, the institution shall be considered to have violated “divisive concepts” prohibitions.
 - In this case, 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.
- (2) If a state institution complies with correcting “divisive concept” violations within thirty days after the date the violation occurred, the chancellor shall restore the full amount of funds withheld.
 - If a state institution does not comply within thirty days, the state institution shall forfeit those moneys, and the chancellor shall credit them to the general revenue fund.
- (3) If the state institution receives monthly payments, the funds shall be withheld over the semester following the violation. If the state institution receives annual payments, a lump sum shall be withheld annually for any semesters with a violation.

Additional Penalties for State Institutions of Higher Education

- The state institution shall do all of the following if it is found to have violated the state prohibition on “divisive concepts”:
 - (1) Redact any grade the student received associated with the class for which the student filed a complaint;
 - (2) Modify the student's transcript to reflect the grade redaction;
 - (3) Refund and credit the tuition associated with that class to the individual or entity who paid that tuition.

Chancellor of Higher Education – Enforcement Duties

- (1) Develop a policy that complies with the requirements of this section 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 national origin, race, color,

ethnicity, religion, sex, or any other characteristic protected by federal or state law. To the extent that it is appropriate for use by state institutions of higher education, the policy shall be substantially similar to the policy developed by the department of administrative services required under the bill.

- (2) Establish rules in accordance with ORC Chapter 119 for the implementation and enforcement of the policy;
- (3) Prepare a biennial report regarding adoption and enforcement of “divisive concept” prohibitions and submit the report to the Ohio General Assembly. The report shall provide members of the Ohio General Assembly detailed information for each violation found.

Topics “Not Prohibited” for State Institutions of Higher Education

- (1) 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) History of an ethnic group, as described in textbooks and instructional materials selected in accordance with the textbook selection policy (ORC 3345.025);
 - (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, national origin, 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.
- (2) The promotion of American nationalism;
- (3) The objective teaching of the American civil rights movement.
- (4) The discussion of any “divisive concepts” by any employee of a state institution of higher education, provided the employee is acting in the employee's individual capacity and not within the scope of employment.
- (5) 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 compel or promote adherence to any of those concepts;
 - (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 any “divisive concepts”;

(c) Questions posed by a professor meant to promote discussion between students, if the professor does not compel or promote adherence to “divisive concepts”;

(d) Respectful student to student discussion or debate, notwithstanding the fact it may address any of “divisive concepts,” provided the professor does not participate except to enforce classroom decorum or rules of the state institution of higher education;

(e) Student research, practice, public speaking, other assigned tasks, and questions, including advocacy of a student's own perspectives or volunteering.

Declaration of State Policy for Institutions of Higher Education

- Declares that the founding principle of the United States of America is freedom of speech and of thought; that it is the fundamental purpose of this section to protect those rights.
- Declares that academic freedom involves protecting the student's right to inquiry without compelled adherence to, or indoctrination toward, any particular philosophy or religion, especially through the coercion of grades, class status, and opportunities.