

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**FACT FINDER'S REPORT  
AND  
RECOMMENDATION AND AWARD**

In the Matter of

**Board of Education of Akron City Schools**

and

**Akron Education Association**

**Fact Finder:** John (Jack) Buettner

**Date of Hearing:** September 24, 26, 29, and 30 of 2022

**Date Closing Briefs Received:** October 17, 2022

**Date of Award:** November 16, 2022

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### **For the Employer:**

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Ellen McWilliams-Woods	Witness
Rachel Tecca	Assistant Superintendent/Chief of Schools
Ernie Strawser	Witness

### **For the Union:**

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Michael Householder	AEA Vice President
George Niinisto	AEA 2 <sup>nd</sup> Vice President
Christine Milcetic	AEA Secretary/Treasurer
Janell Brown	AEA 2 <sup>nd</sup> Vice President Elementary
Lon Cseplo	Grievance Committee Chair
Alana Treen	Legislative Committee Chair
Bruse Brown	AEA Technology Chair

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### **INTRODUCTION:**

The Akron City School District (hereafter known as the “Employer” or the “District”) is located in the northeastern part of Ohio less than forty (40) miles south of Cleveland in Summit County. It consists of forty-six (46) schools or community learning centers. Over 20,000 students attend Akron City Schools in grades pre-kindergarten through twelve. It is a diverse, urban district and is one of Ohio’s seven largest districts.

The Akron Education Association (hereafter known as the “Union” or “AEA”) is one of the largest independent teacher unions in the country. AEA is the sole representative of the bargaining unit, which includes approximately 1,600 teacher employees.

## **BACKGROUND:**

The Parties began negotiations on April 14, 2022, with an exchange of proposals. They met on April 26, May 9, May 16, and May 23. Four more sessions were scheduled beginning May 31 including a June 28 date with a Federal Mediator. The Union declared impasse, however, on May 30, 2022. Thus, the remaining sessions were cancelled.

No tentative agreements had been reached.

The Parties are currently operating under a master agreement that was in effect from July 1, 2019 through June 30, 2022.

Since the Parties failed to reach an agreement and pursuant to Article XIII, Section 13.01 of the CBA, all unresolved items were submitted to the Fact-Finder. A Fact-Finding hearing was held on September 22, 2022, September 26, 2022, September 29, 2022 and September 30, 2022. The first meeting was held at the AEA offices in Akron, and the subsequent meetings were held at the Akron Board of Education Offices.

During the course of the fact-finding hearing, the following proposals were withdrawn.

<b>ARTICLE/SECTION</b>	<b>APS/AEA</b>	<b>STATUS</b>
Section 3.04 (A) – Lunch Period	APS	Withdrawn
Section 3.04 (D) new – Independent Learning Time	APS	Withdrawn
Section 3.05 (R) – Eight Period Day	APS	Withdrawn
Section 3.05 (W)	AEA	Withdrawn
Section 3.18 (C) - Building Meetings	AEA	Withdrawn
Section 7.02 – New Teacher Luncheon	AEA	Withdrawn
Section 8.07(E) new – Board Pickup of Member Contribution to STRS	AEA	Withdrawn

It was jointly agreed that this was not final offer fact-finding in which the Fact-Finder must accept either the Employer's or the Union's proposal as written. In this case the

Fact-Finder can accept, reject, or modify the Parties' proposals as deemed appropriate after considering the fact-finding criteria.

This Fact Finder must take into consideration the following, pursuant to the Ohio Revised Code, Section 4117.14 (C)(4)(e), which establishes the criteria that is to be used by a Fact-Finder in making a recommendation. The criteria are:

- Past collectively bargained agreements, if any, between the parties;
- Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- The interest and welfare of the public, the ability of the public employer to finance and administer the issue proposed, and the effect of the adjustments on the normal standard of public service;
- The lawful authority of the public employer;
- Any stipulations of the parties;
- Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The Parties agreed to waive service of the Fact-Finder's report via overnight delivery and agreed upon service via email.

## UNRESOLVED ISSUES

The following issues remain unresolved.

SECTION	APS/AEA	CBA PAGE #	STATUS
Section 3.05 – Member Work Load	APS	7-8	UNRESOLVED
Section 3.05(E) – Member Work Load	APS	8	UNRESOLVED
Section 3.06 – School Calendar	APS	14	UNRESOLVED
Section 3.22 – Pupil Adjustment	APS	53-57	UNRESOLVED
Section 3.22(A) – School Discipline Review Committee	APS	54	UNRESOLVED
Section 3.23 – Assault	APS	56-57	UNRESOLVED
Section 3.24 – Threats of Assault	APS	57-58	UNRESOLVED
Section 4.05 – Epidemic or Other Public Calamity	APS	76	UNRESOLVED
Section 4.07 – Absences covered by Sick Days	AEA	77-78	TA ON ALL BUT ELEMENTARY LIBRARY TECHNICIAN PROPOSAL
Section 4.09(D) – Absences other than Sick Days	AEA	82-84	PARTIAL TA; REMAINDER UNRESOLVED
Section 8.01(B) - Salaries	APS CP	113-114	UNRESOLVED
Section 8.01(B) - Salaries	AEA	113-114	UNRESOLVED
Section 8.02 - Longevity Increments	APS COUNTER PROPOSAL	114	UNRESOLVED
Section 8.02 - Longevity Increments	AEA	114	UNRESOLVED
Section 9.01 Medical insurance	APS	133-137	UNRESOLVED
Section 9.01 Medical insurance	AEA	133-137	UNRESOLVED OTHER THAN TA ON ENHANCED DENTAL COVERAGE AND CHANGING FSA TO IRS MAXIMUM
Section 9.02 – Wellness Plan	APA	137	UNRESOLVED
Section 9.02 – Wellness Plan	AEA	137	UNRESOLVED
Section 9.03 – Health Benefits Advisory Committee	APS	137-138	UNRESOLVED

## **Section 3.05 Member Work Load**

### **Employer's Position and Rationale:**

#### **3.05 Member Work Load**

Service related to or sponsored by the employer, other than the days established in the school calendar or in addition to the minutes per day established by this Agreement, shall be voluntary and not a part of the member's work load.

Members shall not be required to supervise or be responsible for supervision of non-instructional programs which the Board may add to the school day without prior consultation between the Superintendent and the AEA.

Elementary art, music, and physical education instructors who are assigned more than twenty-eight (28) periods per week shall not be assigned duty responsibilities.

Members assigned to an elementary school (p.m.) and secondary school (a.m.) shall report to school twenty (20) minutes prior to their first instructional period, and the member shall not be assigned a homeroom or duty. In no case shall such member's work day exceed 450 minutes.

The Board shall, wherever possible, initiate and/or continue state, national, or locally funded programs to provide educational assistants for the performance of non-teaching administrative, clerical and/or supervisory tasks.

Whenever possible members shall not be required to perform record keeping or other clerical duties pertaining to the lunch program. This shall include the collection and accounting of the lunch monies and/or tickets.

Members shall not be required to perform custodial duties.

Members' workloads shall be within the limits established by the State Department of Education.

When the board makes a change in the grade configuration of a current elementary (K-5 or K-6) middle school (6-8), or high school (9-12) the school will be classified as the grade band that represents the majority of grades. If there are equal number of grades in two or more grade bands, the school's classification will follow the higher grade band.

The Employer contends that they have been following a traditional grade configuration for elementary, middle, and high schools. Due to a shrinking population, the age of its



buildings, and its future consideration of educational models, the District needs to rethink its buildings and their grade configurations. Contract language does not address this so each time a building is reconfigured, an MOU must be negotiated to determine the building's working conditions. This has resulted in issues whereby one school has two (2) different bell schedules. There are different start and end times, different lunch periods, different extracurricular opportunities, and different planning periods all within the same building. Further, the District contends that because of the different working conditions, it is difficult to efficiently use staff in both middle and high schools. This leads to operational and educational inefficiencies as well as inconsistencies throughout the district.

The Union contends that the MOU process can be used to address issues as has been done in the past. The process, however, is used on an ad hoc basis with past MOU's having no effect on the negotiations of future MOU's. Thus, the inconsistencies will continue with no clear guidance as to the expected working conditions in a reconfigured building.

#### **Union's Position and Rationale:**

The Union proposes current contract language.

The Union contends that protocols and procedures are already in place within the CBA to resolve any issues which may arise from a non-traditional grade level reconfiguration. Past issues were resolved by negotiating through an MOU (Union Exhibits #3, 4, 5, 6, 7, 8) and the protocols listed in Section 1.01- Board Responsibility and Section 3.17- School Management. Section 1.01 "recognizes the value of Site-Based Management" whereby decisions are made at the building level instead of the district level. Thus, the Union argues these decisions should be made by the building. By allowing the Board to unilaterally make the decisions as to the grade level configurations, members in those buildings would be denied their rights under Sections 3.04 – Work Day, 3.05 – Member Work Load, 3.08 – Pupil-Teacher Ratio (Student Loads), and 3.11 – Reassignment and Transfer.

Further, the examples given about schools with split schedules do not give an accurate picture of what is actually occurring. While the buildings may share one State IRN and one roof, they operate as two separate campuses. They were joined in name only during the District's new building facilities plan in order to secure funding from the State of Ohio for the construction of new school buildings.

**Fact-Finder's Recommendation:**

While Section 1.01 does recognize that efforts will be made to move decisions to a building level, the Union stated in their closing brief that they "recognize the decision to change grade band reconfiguration within any particular building lies with the Board." This language provides a consistent guide for teachers working in a reconfigured building and allows for a more efficient use of staff. With no contract language to address grade band reconfiguration, the District is limited in its ability to engage in long term planning. This Fact-Finder recommends the Employer's Proposal. It would read as follows:

**3.05 Member Work Load**

Service related to or sponsored by the employer, other than the days established in the school calendar or in addition to the minutes per day established by this Agreement, shall be voluntary and not a part of the member's work load.

Members shall not be required to supervise or be responsible for supervision of non-instructional programs which the Board may add to the school day without prior consultation between the Superintendent and the AEA.

Elementary art, music, and physical education instructors who are assigned more than twenty-eight (28) periods per week shall not be assigned duty responsibilities.

Members assigned to an elementary school (p.m.) and secondary school (a.m.) shall report to school twenty (20) minutes prior to their first instructional period, and the member shall not be assigned a homeroom or duty. In no case shall such member's work day exceed 450 minutes.

The Board shall, wherever possible, initiate and/or continue state, national, or locally funded programs to provide educational assistants for the performance of non-teaching administrative, clerical and/or supervisory tasks.

Whenever possible members shall not be required to perform record keeping or other clerical duties pertaining to the lunch program. This shall include the collection and accounting of the lunch monies and/or tickets.

Members shall not be required to perform custodial duties.

Members' workloads shall be within the limits established by the State Department of Education.

When the board makes a change in the grade configuration of a current elementary (K-5 or K-6) middle school (6-8), or high school (9-12) the school will be classified as the grade band that represents the majority of grades. If there are equal number of grades in two or more grade bands, the school's classification will follow the higher grade band.

### **Section 3.05(E) - Member Work Load**

#### **Employer's Position and Rationale:**

E. The nine (9) period day shall be the standard schedule in middle schools. The daily work load for a secondary middle school teacher in the Akron Public Schools is six (6) regular class periods, one (1) period of special duty (study hall), one (1) conference period, and a homeroom assignment.

This is a counterproposal presented after the Employer withdrew proposed changes to Section 3.05(C) and 3.05(R). The District would like to codify that middle schools have a nine (9) period day. There are currently nine (9) middle schools. Employer Exhibit #22 shows that 6 of the 9 middle schools have had a nine-period day since 2011. Hyre CLC went to an eight-period day in 2019. Buchtel/Perkins went from a nine-period day to an eight-period day in 2021 when AEA refused to extend an MOU that would have kept them at nine periods. NIHF Science Tech Engineering originally had eight periods but switched to nine in 2020. Thus, only two middle schools have an eight-period day. The Employer argues that AEA presented no educational or operational rationale for opposing this. The District is merely memorializing the current middle school structure.

**Union’s Position and Rationale:**

The Union proposes maintaining current contract language.

The Union opposes this proposal arguing that they show a long history of negotiations and agreements with the Board regarding the development of the Secondary Workday.

**Fact-Finder’s Recommendation:**

This proposal goes hand in hand with the previous proposal. While the MOU process has been used in the past, the Employer needs to be able to plan for future needs without having to negotiate each change. This language would create a consistent policy for the Employer as well as for teachers employed in the nine (9) middle schools. This Fact-Finder accepts the Employer's proposal. The language would read as follows:

E. The nine (9) period day shall be the standard schedule in middle schools. The daily work load for a middle school teacher in the Akron Public Schools is six (6) regular class periods, one (1) period of special duty (study hall), one (1) conference period, and a homeroom assignment.

**Section 3.06 – School Calendar**

**Employer’s Position and Rationale:**

**3.06 School Calendar**

The Board shall adopt its school calendar two years in advance. The calendar shall designate 1) work days with students; 2) work days without students; 3) paid holidays; 4) non-paid holidays; 5) Parent-Teacher Conference days, and 6) optional in-service days, if applicable.

The School Calendar Committee represents all bargaining units recognized by the Board. The School Calendar Committee shall be composed of one (1) representative for each 500 persons or fraction thereof represented by AEA;

National Conference of Firemen and Oilers, Local 100 (Maintenance, Building, Grounds, Warehouse and Transportation Employees); Akron Association of Classified Personnel, Ohio Education Association; OAPSE Local 689; National Conference of Firemen and Oilers, Local 100 (Child Nutrition Service Employees); and OAPSE Local 778.

Two (2) choices for the distribution of School Calendar days to be negotiated annually by the School Calendar Committee and the Superintendent shall be placed on a referendum ballot.

The School Calendar ~~adopted by~~ recommended to the Board shall be determined by a referendum of all personnel who shall vote on the two (2) choices negotiated by the School Calendar Committee (the composition of which has been defined heretofore) and the Superintendent. The complete results of this balloting shall be posted in each building.

The School Calendar Committee and two (2) representatives designated by the Superintendent will be convened by September 1, 2022 to a) research and recommend options for modified calendars to reduce summer learning loss using the same number of instructional days, b) research and recommend options for modified calendars to reduce summer learning loss with two to four weeks of additional days, and c) recommend procedures for individual schools and the families of students in the schools to request adoption of the modified calendar. The committee will gather input from students, families, staff, and children/youth community providers to inform their recommendations. The committee will submit their findings to the superintendent and the board by June 30, 2023.

The Employer contends that the current language gives total and absolute control to the District's unions in determining the final school calendar, No administrators, board members, or parents are a part of the committee. While two calendars are developed, the one receiving the most votes must be adopted by the Board.

The Employer would like to investigate a different type of calendar that reduces the amount of time students and teachers spend out of the classroom in the summer. The current language does not encourage change but encourages the status quo.

The Employer contends that this proposal maintains many of the original ideas in Section 3.06. There is still a Calendar Committee, it develops two calendar choices, it maintains the negotiations between the Superintendent and the School Calendar Committee, it maintains the Union's right to a referendum vote of the two calendars, and it maintains the right to send the calendar with the most votes to the Board. This

proposal, however, gives the Board the discretion to adopt the recommended calendar or to adopt another. Further, it adds two representatives designated by the Superintendent to the School Calendar Committee with the specific charge to research and recommend modified calendars that will strive to reduce summer learning loss.

The Employer argues that just because this language has been around for fifty-three years doesn't mean it needs to be continued. New options need to be researched.

### **Union's Position and Rationale:**

The Union proposes maintaining current contract language.

The Union opposes this proposal arguing that they show a long history of negotiated school calendars dating back to 1969. When the need has arisen to modify the school calendar within select buildings or programs, the Union has collaborated with the Employer to address that need.

The Employer would like to believe that a non-traditional calendar will remediate the issue of summer learning loss. Union Exhibit 3.06 #10, however, shows nine (9) schools from three (3) comparable districts which follow a non-traditional school calendar. Only one was able to show minimal improvement in student achievement in only three (3) of the six (6) years where the non-traditional calendar was implemented. The remaining eight buildings showed no improvement in student achievement from the inception of the new calendar. Union Exhibit 3.06 #8 also indicates research and data showing that schools with non-traditional calendars and extended school years do not increase student achievement or test scores. Further, even though free summer programming is currently available, families do not send their children.

### **Fact-Finder's Recommendation:**

The Employer would like to investigate alternative calendars that would minimize summer learning loss. The Union, however, showed evidence that such calendars have

not shown significant improvements in student learning. Before making any type of calendar change, the District needs to do its due diligence in studying the feasibility of such a plan and whether or not it would be acceptable to its constituents in the District and community. Thus, the Fact-Finder is recommending the Employer's proposal to add two (2) representatives to the Calendar Committee. They will research options for modified calendars and gather information from all stakeholders. These options can then be considered by the School Calendar Committee. Since the initiation date for this study has already past, the Fact-Finder recommends pushing the study ahead by a year.

This Fact-Finder rejects the Employer's proposal to change "adopted by" to "recommended." Past history has shown that the calendar process as outlined in Section 3.06 has worked. The School Calendar Committee must follow the mandates of state law in scheduling a certain number of days and paid holidays. The Committee is creating two versions of a calendar, each merely a reconfiguration of a set number of days for in-service, conferences, non-paid holidays, etc. The entire staff is able to cast a vote and that voting result should not merely be a recommendation. Therefore, the Fact-Finder accepts the District's proposal in part. Section 3.06 would read as follows:

### **3.06 School Calendar**

The Board shall adopt its school calendar two years in advance. The calendar shall designate 1) work days with students; 2) work days without students; 3) paid holidays; 4) non-paid holidays; 5) Parent-Teacher Conference days, and 6) optional in-service days, if applicable.

The School Calendar Committee represents all bargaining units recognized by the Board. The School Calendar Committee shall be composed of one (1) representative for each 500 persons or fraction thereof represented by AEA; National Conference of Firemen and Oilers, Local 100 (Maintenance, Building, Grounds, Warehouse and Transportation Employees); Akron Association of Classified Personnel, Ohio Education Association; OAPSE Local 689; National Conference of Firemen and Oilers, Local 100 (Child Nutrition Service Employees); and OAPSE Local 778.

Two (2) choices for the distribution of School Calendar days to be negotiated annually by the School Calendar Committee and the Superintendent shall be placed on a referendum ballot.

The School Calendar adopted by the Board shall be determined by a referendum of all personnel who shall vote on the two (2) choices negotiated by the School Calendar Committee (the composition of which has been defined heretofore) and the Superintendent. The complete results of this balloting shall be posted in each building.

The School Calendar Committee and two (2) representatives designated by the Superintendent will be convened by September 1, 2023 to a) research and recommend options for modified calendars to reduce summer learning loss using the same number of instructional days, b) research and recommend options for modified calendars to reduce summer learning loss with two to four weeks of additional days, and c) recommend procedures for individual schools and the families of students in the schools to request adoption of the modified calendar. The committee will gather input from students, families, staff, and children/youth community providers to inform their recommendations. The committee will submit their findings to the Calendar Committee, superintendent and the board by June 30, 2024.

### **Section 3.22 – Pupil Adjustment**

#### **Employer’s Position and Rationale:**

#### **3.22 Pupil Adjustment –**

The Board has adopted pupil adjustment policies and procedures that provide for:

1. The identification of infractions resulting in expulsion from school.
2. The establishment of a psychological referral/support center to provide assessment, diagnosis, and prescription for improving the deportment of students.
3. Those offenses which are listed on the code of student behavior as requiring mandatory suspension will cause a student to be suspended out of school for one to ten days or possibly ~~expelled~~ referred to the Board for expulsion.  
**(Withdrawn – CCL)**

No teacher or class is ever required to tolerate any act of gross misconduct, including flagrant discourtesy, abusive and vile language, acts of violence and/or



deliberate insubordination. Corporal punishment shall not be administered to elementary or secondary students of the Akron Public Schools.

If, in spite of the teacher's best efforts at correction, which should include a teacher-parent conference, a pupil continues to misbehave, the teacher should refer the case to the principal for further action.

If a pupil's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process taking place either in the classroom or elsewhere in the school premises, the teacher may call for (Withdraw – CCL) the pupil from the classroom or activity and must state the reason(s) in writing to the principal as soon as practicable. A conference may take place between the member and the principal before the student is readmitted to class. In extreme cases, where the matter cannot be resolved within twenty-four (24) hours from the time of the student's removal from class and/or activity by the teacher, then the student's procedural due process rights under the law shall apply. The principal may reinstate a pupil removed from class by a teacher by informing the teacher, in writing, the reasons for reinstating the student prior to a hearing.

An official ~~School Office Cumulative Folder~~ digital record in the District's student information system shall be maintained on each student ~~in the school office files~~ and shall be maintained in each school for the use of those members who have a legitimate educational interest.

A member shall be notified of the impending enrollment of a pupil transferred for adjustment reasons. Within a reasonable length of time before the arrival of said transferred student, the Student Services Action Sheet/Summary of Action AT-19 (Tentative Agreement) form stating the reasons for the transfer shall be forwarded to the receiving school and its contents made available to his/her teacher prior to the time he/she reports to class.

A pupil suspected of emotional or social disabilities may be referred by the member to Child Study for further study as provided by Board policy and the student's due process rights under the law. If the student is found to be eligible for special education services, the IEP team will determine the student's appropriate placement. If the student is found not to be eligible for special education services, the pupil shall be returned to a regular classroom.

The Employer's proposal reflects a removal and return to CCL for two original proposals and shows the TA that was reached on another item. The remainder of the proposal reflects a proposed change that is a housekeeping item. Student records are now kept in a digital format in the student information system. Paper files such as the School Office Cumulative Folder are no longer relevant.

The District contends that the Union is trying to muddy the issue by questioning what would be in the digital folders, who would have access, etc. The Employer argues that this proposal is merely a housekeeping issue.

Further, the Union contends that the Board proposed to eliminate a paragraph from Section 3.22. This is not the case. Counsel used what he thought was a final contract to base its proposals. The paragraph does not appear in the current contract and the Union did not propose to add it in.

**Union's Position and Rationale:**

The Union contends that by moving to replace School Office Cumulative Folders with digital versions, this would limit access to members with a legitimate educational interest since the District can electronically block members from said access.

Previously, members had the ability to review the paper folders. The Union objects to this change without language clarifying all information which would be included in a digital format including the following:

- Past records of any and all student transfer from building to building
- Past records of any incoming files for students coming from an outside district
- Student behavior and discipline actions which may impact the student's interactions with the incoming educator and classroom environment
- Any safety concerns for which an incoming educator should be made aware

Also, there needs to be assurances that members with a legitimate educational interest would still maintain access to the records.

Further, the Union would like the Student Services Action Sheet/Summary of Action Form to be listed in the Appendix of the CBA.

### **Fact-Finder's Recommendation:**

This Fact-Finder would agree that this issue is more of a housekeeping item. One of the Union's own witnesses testified that School Office Cumulative Folders are not used and that that all student discipline information is maintained digitally. While the Union questioned the content of the digital folders and the access to them, they proposed no language to address the issue. As to including the Student Services Action Sheet/Summary in the appendix of the contract, this Fact-Finder would disagree. This is the appendix of the teacher contract which includes information directly related to the agreement between the Union and Employer such as insurance information. The language, including the tentative agreement, would read as follows:

#### **3.22 Pupil Adjustment –**

The Board has adopted pupil adjustment policies and procedures that provide for:

1. The identification of infractions resulting in expulsion from school.
2. The establishment of a psychological referral/support center to provide assessment, diagnosis, and prescription for improving the deportment of students.
3. Those offenses which are listed on the code of student behavior as requiring mandatory suspension will cause a student to be suspended out of school for one to ten days or possibly expelled.

No teacher or class is ever required to tolerate any act of gross misconduct, including flagrant discourtesy, abusive and vile language, acts of violence and/or deliberate insubordination. Corporal punishment shall not be administered to elementary or secondary students of the Akron Public Schools.

If, in spite of the teacher's best efforts at correction, which should include a teacher-parent conference, a pupil continues to misbehave, the teacher should refer the case to the principal for further action.

If a pupil's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the educational process taking place either in the classroom or elsewhere in the school premises, the teacher may remove the pupil from the classroom or activity and must state the reason(s) in writing to the principal as soon as practicable. A conference may take place between the member and the principal before the student is readmitted to class. In extreme cases, where the matter cannot be resolved within twenty-four (24) hours from the time of the student's removal from class and/or activity by the teacher, then the

student's procedural due process rights under the law shall apply. The principal may reinstate a pupil removed from class by a teacher by informing the teacher, in writing, the reasons for reinstating the student prior to a hearing.

An official digital record in the District's student information system shall be maintained on each student and shall be maintained in each school for the use of those members who have a legitimate educational interest.

A member shall be notified of the impending enrollment of a pupil transferred for adjustment reasons. Within a reasonable length of time before the arrival of said transferred student, the Student Services Action Sheet/Summary of Action form stating the reasons for the transfer shall be forwarded to the receiving school and its contents made available to his/her teacher prior to the time he/she reports to class.

A pupil suspected of emotional or social disabilities may be referred by the member to Child Study for further study as provided by Board policy and the student's due process rights under the law. If the student is found to be eligible for special education services, the IEP team will determine the student's appropriate placement. If the student is found not to be eligible for special education services, the pupil shall be returned to a regular classroom.

### **section 3.22(A) - School Discipline Review Committee**

#### **Employer's Position and Rationale:**

##### **A. School Discipline Review Committee**

Within thirty (30) days of ratification of this Agreement, and during each September thereafter, each School Faculty Council or Building Leadership Team shall mutually select with the principal a standing discipline review committee which shall include the School Faculty Council or Building Leadership Team (or a subcommittee thereof), representation from the community, other staff members, and, in high schools, the student body. The committee shall review the building's discipline program and with the principals mutually formulate a policy of penalties for the following items:

1. tardiness to school

2. tardiness to class
3. truancy/flicking
4. refusing a member's assigned discipline or punishment
5. violation of the school's rules

Strategies and consequences for #1 - #5 above must comply with the requirements outlined in HB 410 and HB 318 . **(Withdrawn )**

An annual training for principals and School Discipline Review Committee members will be co-designed and co-sponsored by an equal number of representatives identified by the President and Superintendent. **(Withdrawn)**

The committee shall designate those penalties which are to be initially administered by the individual classroom teacher as well as those which are subsequently applied by the building administration. The policy shall also specify the occurrence at which each penalty will apply. Applying the building level penalties is the responsibility of the building administration with the support and cooperation of the staff. Building level penalties may include, but are not limited to, school supervised detention, suspension, etc. These penalties may vary from building to building. The principal has the discretionary authority to go beyond the minimum punishment based on the incident. Each building's policy of penalties shall be filed with the Superintendent annually, and the committee shall meet regularly to review the effectiveness of the policy **to reduce incidents. (Withdrawn – CCL)** The committee shall also file a report of its findings not later than the last day of each school year. The report shall include the policy of penalties for the following school year.

#### B. Pre-set Classroom Rules

A teacher ~~may~~ **shall (Tentative Agreement)** establish pre-set classroom rules annually.

Pre-set classroom rules are those which a teacher creates, submits to the building principal for approval, provides to every student and his/her parent/guardian, and posts in the classroom. These rules are set to accommodate the individual style of instruction taking place in his/her classroom. Examples are: follow directions, bring supplies, talk only with permission, no gum chewing, etc.

The building principal and the teacher must mutually agree on the set of classroom rules plan. Both parties shall adhere to the provisions set forth in the plan, once it is agreed upon, including any penalties mandated by the plan to be implemented by the office. Rule violations shall be documented.

Documentation shall be in the form of a contemporaneous record of the rule violation and the penalty imposed or action taken.

**Union's Proposal and Position:**

The Union requested that current contract language be retained.

**Fact-Finder's Recommendation:**

The Board withdrew three (3) of their proposals for this section, and the Parties came to a Tentative Agreement on the change to Section 3.22(B) – Pre-Set Classroom Rules.

The language would read as follows:

A. School Discipline Review Committee

Within thirty (30) days of ratification of this Agreement, and during each September thereafter, each School Faculty Council or Building Leadership Team shall mutually select with the principal a standing discipline review committee which shall include the School Faculty Council or Building Leadership Team (or a subcommittee thereof), representation from the community, other staff members, and, in high schools, the student body. The committee shall review the building's discipline program and with the principals mutually formulate a policy of penalties for the following items:

1. tardiness to school
2. tardiness to class
3. truancy/flicking
4. refusing a member's assigned discipline or punishment
5. violation of the school's rules

The committee shall designate those penalties which are to be initially administered by the individual classroom teacher as well as those which are subsequently applied by the building administration. The policy shall also specify the occurrence at which each penalty will apply. Applying the building level penalties is the responsibility of the building administration with the support and cooperation of the staff. Building level penalties may include, but are not limited to, school supervised detention, suspension, etc.

These penalties may vary from building to building. The principal has the discretionary authority to go beyond the minimum punishment based on the incident. Each building's policy of penalties shall be filed with the Superintendent annually, and the committee shall meet regularly to review the effectiveness of the policy. The committee shall also file a report of its findings not later than the last day of each school year. The report shall include the policy of penalties for the following school year.

B. Pre-set Classroom Rules

A teacher shall establish pre-set classroom rules annually.

Pre-set classroom rules are those which a teacher creates, submits to the building principal for approval, provides to every student and his/her parent/guardian, and posts in the classroom. These rules are set to accommodate the individual style of instruction taking place in his/her classroom. Examples are: follow directions, bring supplies, talk only with permission, no gum chewing, etc.

The building principal and the teacher must mutually agree on the set of classroom rules plan. Both parties shall adhere to the provisions set forth in the plan, once it is agreed upon, including any penalties mandated by the plan to be implemented by the office. Rule violations shall be documented. Documentation shall be in the form of a contemporaneous record of the rule violation and the penalty imposed or action taken.

## **Section 3.23 – Assault**

### **Employer's Position and Rationale:**

#### **3.23 Assault**

##### **Assaults in Grades K-3**

The district will follow Ohio law (HB 318 and HB 410) regarding assault for K-3 students.

##### **Grades 4 – 12 (Withdrawn )**

Any case of assault, verbal or physical, suffered by members shall be reported immediately in writing to the principal. Physical assault is purposely causing or attempting to cause physical ~~contact-injury~~ with a staff member with the intent ~~or potential~~ to harm the staff member ~~or interfere with the staff member's performance of duties.~~ Verbal assault is any threatening ~~or abusive~~ **(Tentative Agreement)** language directed at a member. Threatening language includes an express declaration or the implication of an intention or determination to inflict injury upon a person, upon a member of that person's family, or property.

The principal shall obtain a list of the witnesses to the assault and a written statement of what each witness observed or heard. These statements shall be signed, dated and filed, with true copies given to the AEA Building Representative, and copies sent to the Student Services and Security Department and the Department of Human Resources.

The principal shall conduct a hearing that, in effect, assures the accused student his procedural due process rights. In the event that an assault has occurred, the pupil shall be removed immediately from the class and the school and referred to the Director of Student Support Services and Security for reassignment to another building or expelled. In the case of a physical assault, a recommendation shall be made to the Superintendent for expulsion. In all cases of physical assault, **the member will be notified they may consider filing a report with the Police Department . (Withdrawn – CCL)** Members will cooperate with all appropriate governmental agencies in the prosecution of the assailant(s). In no case shall a member be required to readmit a student to class following an assault. These procedures may, but do not necessarily, apply to students with IEPs. In the case of students with Individual Education Programs (IEPs) or 504 Plans, should the severity of the infraction lead to the potential removal of the student for more than a period of ten (10) days, or a total accumulation of more than ten (10) days removal of the student for the school year, a Manifestation Determination meeting will be held at the building level by the student's IEP team to determine if the infraction is a manifestation of the student's disability. ~~The process and timing of Manifestation Determinations will be determined by mutual agreement of the Board and AEA by June 1, 2018.~~

Before upholding an appeal in any case of physical or verbal assault, Student Support Services and Security shall contact the member and the building principal to discuss the referral. The member and/or the principal may offer additional evidence in support of the referral, and said evidence shall be considered prior to a decision to uphold the appeal.

The principal shall report each such case of employment-related assault on a member to the Director of Student Support Services and Security. The Director shall inform the President and the Superintendent of the assault on a monthly basis.



The Employer proposes several changes, some substantive, one housekeeping, and the correction of an error that occurred when drafting the 2019-2022 contract.

The housekeeping issue would be the removal of the language concerning the timing and process of the Manifestation Determinations. It was to have occurred by June, 2018. Thus, the language is moot.

The error was that the words “or abusive” were not deleted from the section as tentatively agreed to by the Parties on May 29, 2018. (Employer Exhibit #33, p. 354)

The Employer proposes to add a reference to HB 318 and HB 410 on disciplinary actions for students in prekindergarten through third grade.

The Employer also proposes changes to the definition of physical assault, arguing that the current definition is too broad. The CBA requires that in the event of a “physical assault”, the student must be recommended for expulsion and that the principal shall notify the Akron Police Department to enable the member to file a police report. These actions can be too harsh for instances that fall under the current definition of physical assault which reference physical “contact” vs. physical “injury”. The District argues that Ohio’s statutory definition of assault requires a person to knowingly cause or attempt “physical harm”. Other Ohio urban districts, (Columbus City Schools, Toledo City Schools, Dayton City Schools, Canton City Schools, and Cleveland Metropolitan Schools) require some type of injury to be considered physical assault. (Employer Exhibit #34)

Further, a student’s action could be deemed a physical assault if it has the “potential” to harm the staff member or the “potential” to interfere with the member’s performance of duties. There is no way to quantify whether the “potential” existed.

The Employer contends that the proposal still protects teachers’ safety but eliminates unnecessary exclusion of students from the educational process.

### **Union's Proposal and Position:**

The Union rejects all of the Employer's requested changes.

The Union argues that the inclusion of the line, "The district will follow Ohio law (HB 318 and HB 410) regarding assault for K-3 students," is redundant, unnecessary, and overreaching. AEA contends that specific references to HB 318 and HB 410 were not needed since Section 1.06 of the CBA mandates compliance with "any applicable laws". They also argue that this is an attempt to cover the District's non-compliance with State mandates to develop and implement unrelated initiatives.

The Union finds the District's proposal in the first paragraph to be regressive. Further, it is dangerous to all members, staff, and students to alter the language. It requires that a person be physically injured in order to declare it an assault.

Lastly, the Union rejects eliminating the following language from the Agreement: "The process and timing of Manifestation Determinations will be determined by mutual agreement of the Board and AEA by June 1, 2018." AEA contends that this language was never developed nor was there a mutual agreement reached by the Parties.

### **Fact-Finder's Recommendation:**

The Union submitted many exhibits to illustrate the problem of teacher assaults in the District, even including a video showing two scenes where teachers were assaulted. (Union Exhibit 3.23 #8) They, did not, however, offer any counterproposals to the Employer's other than to reject the language.

The Employer's first proposal was to change the definition of physical assault to include physical "injury" instead of physical "contact". Physical contact can be intentional or unintentional as in a student accidentally bumping into a teacher. Assault, however, by its nature and definition is an intentional act that places an individual in reasonable apprehension of bodily harm. The term "contact" is vague and ambiguous; physical injury is more explicit. Part of the current definition in the CBA includes the "potential" to

harm a staff member. This is a very subjective term since it is difficult to determine if a student's actions have the "potential" to do harm. Any action by anyone could have the potential to do harm. The stakes are very high for students who are charged with assault since a recommendation for expulsion is made. The definition, therefore, needs to be clear.

Students are still subject to the Student Code of Behavior and the penalties outlined within it (Union Exhibit 3.23 #3), but expulsion is reserved for the most serious of infractions. The employer has not proposed any other changes to provisions that protect teachers.

This Fact-Finder agrees to the TA eliminating "or abusive".

This Fact-Finder agrees that it is a housekeeping issue and recommends removing the Manifestation Determinations language. The clause is time bound, the time has expired, and it is no longer valid.

Therefore, this Fact-Finder is recommending the Employer's proposal including the TA. It would read as follow:

### **3.23 Assault**

Any case of assault, verbal or physical, suffered by members shall be reported immediately in writing to the principal. Physical assault is purposely causing or attempting to cause physical injury with a staff member with the intent to harm the staff member. Verbal assault is any threatening language directed at a member. Threatening language includes an express declaration or the implication of an intention or determination to inflict injury upon a person, upon a member of that person's family, or property.

The principal shall obtain a list of the witnesses to the assault and a written statement of what each witness observed or heard. These statements shall be signed, dated and filed, with true copies given to the AEA Building Representative, and copies sent to the Student Services and Security Department and the Department of Human Resources.

The principal shall conduct a hearing that, in effect, assures the accused student his procedural due process rights. In the event that an assault has occurred, the pupil shall be removed immediately from the class and the school and referred to

the Director of Student Support Services and Security for reassignment to another building or expelled. In the case of a physical assault, a recommendation shall be made to the Superintendent for expulsion. In all cases of physical assault, the principal shall notify the Akron Police Department to enable the member to file a police report. Members will cooperate with all appropriate governmental agencies in the prosecution of the assailant(s). In no case shall a member be required to readmit a student to class following an assault. These procedures may, but do not necessarily, apply to students with IEPs. In the case of students with Individual Education Programs (IEPs) or 504 Plans, should the severity of the infraction lead to the potential removal of the student for more than a period of ten (10) days, or a total accumulation of more than ten (10) days removal of the student for the school year, a Manifestation Determination meeting will be held at the building level by the student's IEP team to determine if the infraction is a manifestation of the student's disability.

Before upholding an appeal in any case of physical or verbal assault, Student Support Services and Security shall contact the member and the building principal to discuss the referral. The member and/or the principal may offer additional evidence in support of the referral, and said evidence shall be considered prior to a decision to uphold the appeal.

The principal shall report each such case of employment-related assault on a member to the Director of Student Support Services and Security. The Director shall inform the President and the Superintendent of the assault on a monthly basis.

### **Section 3.24 – Threats of Assault**

#### **Employer's Position and Rationale:**

##### **3.24 Threat of Assault**

###### **Assaults in Grades K-3**

The district will follow Ohio law (HB 318 and HB 410) regarding threats of assault for K-3 students.

###### **Grades 4 – 12 (Withdrawn)**

Any member who is threatened with bodily harm by any person(s) on school property shall notify the principal in writing of this threat. The principal shall

acknowledge receipt of such report and shall report this information to the Director of Student Services and the President.

Members shall also inform the building principal of any parent or visitor who threatens or directs foul and/or abusive language at the member. Should a subsequent review indicate that the allegations are correct, the building principal shall notify the parent or visitor, in writing, of the complaint and shall direct the parent or visitor that future visits to the school must take place in the school office with the principal in attendance.

In its position statement, AEA conceded that specific references to HB 318 and HB 410 were unnecessary since Section 1.06 of the CBA mandates compliance with “any applicable laws”. This achieves the Employer’s goal of ensuring discipline complies with statutory mandates. Thus, the District withdraws its proposal.

**Union’s Position and Rationale:**

AEA contends that specific references to HB 318 and HB 410 were unnecessary since Section 1.06 of the CBA mandates compliance with “any applicable laws”.

**Fact-Finder’s Recommendation:**

Since the Employer withdrew their proposal, the following language is recommended:

**3.24 Threat of Assault**

Any member who is threatened with bodily harm by any person(s) on school property shall notify the principal in writing of this threat. The principal shall acknowledge receipt of such report and shall report this information to the Director of Student Services and the President.

Members shall also inform the building principal of any parent or visitor who threatens or directs foul and/or abusive language at the member. Should a subsequent review indicate that the allegations are correct, the building principal shall notify the parent or visitor, in writing, of the complaint and shall direct the parent or visitor that future visits to the school must take place in the school office with the principal in attendance.

## **Section 4.05 – Epidemic or Other Public Calamity**

### **Employer's Position and Rationale:**

#### **4.05 Epidemic or Other Public Calamity**

Members shall be paid for all time lost when schools in which they are employed are closed owing to an epidemic or other public calamity. To be eligible for calamity day payment, a substitute must have worked in the same assignment the work day before the calamity day. ~~Public calamities shall be determined by the State Superintendent of Public Instruction.~~

In the case of absence resulting from travel difficulties between the member's local residence and his place of employment, provided these difficulties are caused by flood, storm or other uncontrollable conditions, the Superintendent shall waive the salary deduction if, in his judgment, the member has made every reasonable effort to get to his place of employment.

In case of absence due to damage or serious and immediate threat of damage to the member's residence resulting from flood, storm or other uncontrollable conditions, the Superintendent shall waive the salary deduction if, in his judgment, such absence was imperative to the protection of property and personal safety of the member and his immediate family.

The Superintendent has the authority, under highly unusual circumstances, to declare schools closed. When the Superintendent exercises this authority, the following conditions shall prevail:

- A.** In the event schools are closed because of weather conditions, members are not expected to report to work. Members will be paid for time lost in accordance with State law.
- B.** In the event schools are closed because of public calamity (e.g., flood, tornado, storm or epidemic), members are not expected to report to work. Members will be paid for time lost in accordance with State law.
- C.** In the event schools are closed because of an energy shortage, members are not expected to report to work; such days are not considered work days, and a modification of the school calendar will be determined by the Board following consultation by the Superintendent with the AEA. A member is assured of his annual contract salary, with no increase in the number of annual days worked.

- D. If for any reason, an entire student body is released after the school day commences, the faculty shall also be released for duty within thirty (30) minutes of the students' departure.

The Superintendent can declare remote days in lieu of calamity days where members will be responsible for posting asynchronous lessons on day 1 and synchronous lessons following the regular school schedule for any subsequent days.

The Employer proposes deleting language that public calamities are determined by the State Superintendent of Public Schools. That is legally incorrect since Akron's Superintendent has the statutory authority to determine when schools are to be closed due to an epidemic or calamity.

The second change proposed by the District gives the Superintendent the right to declare remote learning days in lieu of calamity days. This concept follows the guidelines of the Department of Education and aims to provide ongoing learning opportunities, remotely, to all students in case of calamity.

The Union contends that the District should use remote learning days only if the District, due to closings, can no longer meet the statutory minimum number of hours. The District argues that this is unacceptable. Minimum hours for grades K-6 are different than minimum hours for 7-12 so some grades would go remote while others didn't. Learning opportunities would be lost before the remote days went into effect. Further, teachers get compensated for calamity days so they should be able to provide remote learning.

### **Union's Position and Rationale:**

The Union contends that since Ohio Revised Code allows school districts to use a certain number of calamity hours before requiring make-up time, those hours should be used first before requiring remote learning days. Also, the District has never exhausted the State's required instructional hours for students in the past.

Yet another issue is that the APS Joint Calendar Committee annually develops and adopts an "alternate School Calendar" provisional plan should the District ever override

the maximum number of hours it utilizes during a school year. The Union contends that if the Employer imposes remote learning days in replacement of legally approved public calamity days, they would be overriding ODE guidelines and be in violation of the contractual rights under Section 3.06 - School Calendar since they would not be implementing the approved provisional plan.

**Fact-Finder's Recommendation:**

Since public calamities are not determined by the State Superintendent of Public Instruction, this Fact-Finder recommends deleting the language.

While loss of learning is a concern on calamity days, this Fact-Finder recognizes that the switch from a calamity day to a remote learning day may be a last-minute judgement. This creates problems for teachers as well as students and families. School districts are permitted to miss a certain number of days before they are required to make them up, but exhausting those days before moving to remote learning could have an impact on student learning if the days are consecutive. Chunks of learning are lost. Therefore, it is recommended that the Superintendent can declare a remote day on the second consecutive day that is missed. Lessons would be asynchronous on that day and synchronous every consecutive day thereafter. The Section would read as follows:

**4.05 Epidemic or Other Public Calamity**

Members shall be paid for all time lost when schools in which they are employed are closed owing to an epidemic or other public calamity. To be eligible for calamity day payment, a substitute must have worked in the same assignment the work day before the calamity day.

In the case of absence resulting from travel difficulties between the member's local residence and his place of employment, provided these difficulties are caused by flood, storm or other uncontrollable conditions, the Superintendent shall waive the salary deduction if, in his judgment, the member has made every reasonable effort to get to his place of employment.

In case of absence due to damage or serious and immediate threat of damage to the member's residence resulting from flood, storm or other uncontrollable



conditions, the Superintendent shall waive the salary deduction if, in his judgment, such absence was imperative to the protection of property and personal safety of the member and his immediate family.

The Superintendent has the authority, under highly unusual circumstances, to declare schools closed. When the Superintendent exercises this authority, the following conditions shall prevail:

- A.** In the event schools are closed because of weather conditions, members are not expected to report to work. Members will be paid for time lost in accordance with State law.
- B.** In the event schools are closed because of public calamity (e.g., flood, tornado, storm or epidemic), members are not expected to report to work. Members will be paid for time lost in accordance with State law.
- C.** In the event schools are closed because of an energy shortage, members are not expected to report to work; such days are not considered work days, and a modification of the school calendar will be determined by the Board following consultation by the Superintendent with the AEA. A member is assured of his annual contract salary, with no increase in the number of annual days worked.
- D.** If for any reason, an entire student body is released after the school day commences, the faculty shall also be released for duty within thirty (30) minutes of the students' departure.

The Superintendent can declare remote days in lieu of calamity days where members will be responsible for posting asynchronous lessons on the second continuous calamity day and synchronous lessons following the regular school schedule for any subsequent continuous days.

### **Section 4.07 – Absence Covered by Sick Days**

#### **Employer's Position and Rationale:**

The Employer rejects the inclusion of the elementary library technician in the first paragraph. The elementary library technician is not a part of this bargaining unit, and

AEA is not their representative. The “provisions of this section” which include exhausting the substitute list do not pertain to the elementary library technicians since they are not covered under this agreement. Further, the substitute list referenced in Section 4.07 is for bargaining unit members. The technicians are not part of the bargaining unit, and substitutes are not part of their contract, OAPSE 689, so there is no list to exhaust.

The District agrees to the housekeeping change in the second paragraph. Tentative agreements were reached on all other parts,

### **Union’s Position and Rationale:**

#### **7. Absence Covered by Sick Days**

A substitute shall be provided for any member who is a teacher, ~~or~~ librarian, or elementary library technician, absent under the provisions of this section, unless the substitute list has been exhausted.

All members shall be paid regular compensation for time lost due to illness or other causes encompassed by this Agreement for not less ~~then~~ than ten (10) days annually. This minimum benefit often (10) days shall become effective and available to use annually on the first day of the contract year in which the member is assigned to duty.

After a member has used the full amount of sick day credit provided either by regulations of the Board or earned by such member on the basis of service at the rate of one and one fourth (1 ¼) days for each month of service, such member may not be lawfully paid for further absence because of illness.

#### **8. Accumulation**

Maximum annual accumulation of any employee shall be fifteen (15) days. Job sharers shall accumulate sick days at the rate of 7.5 days annually. Upon use of sick days, job sharers shall have one-half day deducted from their accumulated sick day total per day of use, and shall be paid at their half-time rate per day of use.

(The maximum accumulation of unused sick days shall be 420, effective July 1, 2007, and 425 effective July 1, 2008.

Sick day credit may be retained during a leave of absence for military service. Additional sick day credit may not be earned during a leave of

absence for military service except in the case of temporary military service, said service not to exceed thirty-one (31) days in any one (1) calendar year.

Within twenty (20) workdays after a member submits the proper test results to Human Resources and prior to any determination of Unrestricted Absence days earned as outlined in 4.09.E, up to five (5) sick days shall be reinstated for members that have tested positive for any COVID infection, variant or subvariant.

At the written request of either party, the provisions listed above shall be reopened for possible review and revision if health experts such as the World Health Organization, the Center for Disease Control, the Ohio Department of Health, or the local county health department have determined a pandemic or epidemic is present in the community. (Tentative Agreement)

**B. Transfer**

A member who transfers from one public agency in Ohio to another shall be credited with the unused balance of his accumulated sick days. This provision applies to any member who accumulated sick days while employed by an Ohio Charter School recognized by the Ohio Department of Education. To receive such credit, a new member shall present to the Treasurer a certification from the public agency in Ohio for which he most recently worked, stating the number of days of unused sick days credited to him at the time of the termination of employment.

**C. Use**

Members shall be granted sick days as follows:

1. Personal illness or injury, physical disability, emergency dental care, childbirth, adoption, to grieve the death of a close friend (limited to one day only), disability and/or complications due to pregnancy, or exposure to contagious disease which could be communicated to other employees or to school children: no limit. However, a member on sick days for these or other causes shall be paid only for the number of sick days credited to or earned by such member. Before salary payment can be made for absence because of personal illness or injury, physical disability, emergency dental care, childbirth, adoption, to grieve the death of a close friend (limited to one (1) day only), pregnancy, or exposure to contagious disease, the member shall submit the appropriate forms to the building principal. Absence of more than five (5) consecutive work days for the above reasons shall require the filing of the Certificate of Health form. A member who adopts a child shall be entitled to use sick days

for up to six (6) weeks following the date of adoption. In the event of childbirth, the non-birth parent may ~~use ten (10) days~~ be entitled to use of sick days for up to six (6) weeks following the date of childbirth. **(Tentative agreement)**

2. A member shall be entitled to complete usage of accumulated sick days for serious illness or disability in the immediate family. Before payment can be made for such absence, the member shall submit the appropriate form to the building principal or his designate. If such absence extends beyond five (5) consecutive work days, the member shall also submit a Statement of Necessity for Absence (Form S-2f) stating that the member's absence from duty is required.

3. In the event a member uses all accumulated sick days, he or she shall have the option of applying for leave under the provision of Section 4.09 of this Agreement.

The Union is aware that the elementary library technicians are not a part of the bargaining unit, however, their absence impacts bargaining unit members. Members are provided four (4) planning or conference periods per week. These are provided when students attend "special subject" classes: physical education, music, art, and library. If no substitute is secured for the library technician, members lose their planning time since they must then supervise the students. Workday rights within the Agreement are violated.

#### **Fact-Finder's Recommendation:**

While this Fact-Finder recognizes the issue when substitutes are not secured for elementary library technicians, the inclusion of the proposed language is rejected. AEA refers to a substitute list that does not exist within the OAPSE 689 agreement, and the list used for the Union does not cover the technicians. The elementary library technicians are not a part of this bargaining unit or covered under this CBA. Therefore, this Fact-finder rejects the Union's proposal but accepts the typographical change and the tentative agreements. The language will read as follows:

## **7. Absence Covered by Sick Days**

A substitute shall be provided for any member who is a teacher or librarian, absent under the provisions of this section, unless the substitute list has been exhausted.

All members shall be paid regular compensation for time lost due to illness or other causes encompassed by this Agreement for not less than ten (10) days annually. This minimum benefit often (10) days shall become effective and available to use annually on the first day of the contract year in which the member is assigned to duty.

After a member has used the full amount of sick day credit provided either by regulations of the Board or earned by such member on the basis of service at the rate of one and one fourth ( $1 \frac{1}{4}$ ) days for each month of service, such member may not be lawfully paid for further absence because of illness.

## **8. Accumulation**

Maximum annual accumulation of any employee shall be fifteen (15) days. Job sharers shall accumulate sick days at the rate of 7.5 days annually. Upon use of sick days, job sharers shall have one-half day deducted from their accumulated sick day total per day of use, and shall be paid at their half-time rate per day of use.

(The maximum accumulation of unused sick days shall be 420, effective July 1, 2007, and 425 effective July 1, 2008.

Sick day credit may be retained during a leave of absence for military service. Additional sick day credit may not be earned during a leave of absence for military service except in the case of temporary military service, said service not to exceed thirty-one (31) days in any one (1) calendar year.

Within twenty (20) workdays after a member submits the proper test results to Human Resources and prior to any determination of Unrestricted Absence days earned as outlined in 4.09.E, up to five (5) sick days shall be reinstated for members that have tested positive for any COVID infection, variant or subvariant.

At the written request of either party, the provisions listed above shall be reopened for possible review and revision if health experts such as the World Health Organization, the Center for Disease Control, the Ohio Department of Health, or the local county health department have determined a pandemic or epidemic is present in the community.

**B. Transfer**

A member who transfers from one public agency in Ohio to another shall be credited with the unused balance of his accumulated sick days. This provision applies to any member who accumulated sick days while employed by an Ohio Charter School recognized by the Ohio Department of Education. To receive such credit, a new member shall present to the Treasurer a certification from the public agency in Ohio for which he most recently worked, stating the number of days of unused sick days credited to him at the time of the termination of employment.

**C. Use**

Members shall be granted sick days as follows:

1. Personal illness or injury, physical disability, emergency dental care, childbirth, adoption, to grieve the death of a close friend (limited to one day only), disability and/or complications due to pregnancy, or exposure to contagious disease which could be communicated to other employees or to school children: no limit. However, a member on sick days for these or other causes shall be paid only for the number of sick days credited to or earned by such member. Before salary payment can be made for absence because of personal illness or injury, physical disability, emergency dental care, childbirth, adoption, to grieve the death of a close friend (limited to one (1) day only), pregnancy, or exposure to contagious disease, the member shall submit the appropriate forms to the building principal. Absence of more than five (5) consecutive work days for the above reasons shall require the filing of the Certificate of Health form. A member who adopts a child shall be entitled to use sick days for up to six (6) weeks following the date of adoption. In the event of childbirth, the non-birth parent may be entitled to use of sick days for up to six (6) weeks following the date of childbirth.

2 A member shall be entitled to complete usage of accumulated sick days for serious illness or disability in the immediate family. Before payment can be made for such absence, the member shall submit the appropriate form to the building principal or his designate. If such absence extends beyond five (5) consecutive work days, the member shall also submit a Statement of Necessity for Absence (Form S-2f) stating that the member's absence from duty is required.

3. In the event a member uses all accumulated sick days, he or she shall have the option of applying for leave under the provision of Section 4.09 of this Agreement.

## **Section 4.09 (D) – Absences Other than Sick Days**

### **Employer's Position and Rationale:**

The Employer rejects the Union's language and proposes to maintain current contract language except in those areas where a tentative agreement has been reached. Currently, full-time employees generally receive three (3) justifiable absence days per schoolyear for personal business. In addition, they get one unrestricted day per year. Members also get another unrestricted day if they have accumulated more than 100 sick leave days. They can get yet another unrestricted day if they have no greater than five absences in the prior year. Therefore, members are guaranteed four (4) personal days a year and can earn an additional two days depending on their sick leave accrual and attendance. The Union is asking for two more days.

The norm, as indicated by other urban districts (Canton, Cincinnati, Cleveland, Columbus, and Toledo), is three days. Three days is also the norm in Summit County (Employer Exhibit # 42). AEA has more guaranteed personal leave days than virtually any school district in Ohio, and they have the ability, through sick leave accrual and attendance, to earn another two days. The Employer sees no need to add two more personal leave days.

### **Union's Position and Rationale:**

#### **D. Justifiable Absence**

All full-time members shall be granted days of absence for personal business during each calendar year without loss of pay or deduction from sick days. Part-time members shall be granted a maximum of two (2) such days per year, unless both days are taken for the purpose of observing religious holidays in which case a third day of justifiable absence for the observance of a religious holiday can be requested and will be granted. Personal business is an obligation or emergency over which the member has no control and which requires immediate attention. Generally, these are limited to one (1) day per occurrence, and three (3) days per school year. When five (5) hours or more of travel time are required, additional time shall be granted.

Notice of such absence shall be given as far in advance as possible.

In giving such notice, or upon return to school, if the justifiable absence was for an emergency, the member shall submit the appropriate form which shall require only a check mark for items listed below.

In the case of all disputes concerning justifiable absences as to decisions made by the Personnel Office, the following special procedure shall apply. Two (2) members designated by the AEA and two (2) members designated by the Superintendent shall constitute a panel. From the panel three (3) names shall be drawn through a blind selection procedure. Those three (3) members shall decide the matter of justification for absence under this provision by a majority vote.

## **1. Emergencies**

Accidents in the immediate family or affecting family property.

Travel conditions which make it impossible to report for work.

## **2. Obligations**

Observance of religious holidays.

Attendance at graduation exercises beyond high school involving a member or a member of his immediate family.

Physical examination for induction for military service.

A member of the immediate family in the armed forces, National Guard, the Defense Corps, the Naval Militia, or other reserve components of the armed forces of United States being mobilized or deployed from their home base for a State, National Emergency, or any type of contingency of national protection or war. A member of the immediate family departing for service outside the continental United States, or returning from such service.

Attending a wedding involving the member or a member of his immediate family.

Court appearances as litigant or witness.

Receiving an adopted child.

The Superintendent may authorize Justifiable Absence for other reasons. The reason for such request shall be included in writing and submitted to the Human Resources Department for the Superintendent's review. . Denial of such requests shall be made, in writing, to the member within five (5) workdays after the written request is submitted by the member to the



Human Resource Department. Any disputes concerning denials of such requests shall follow the procedures listed above. Any requests for which the member does not receive a written response within the above listed five (5) workday timeframe shall be deemed approved by the Superintendent.  
**(Withdrawn by the AEA on 9/23/22)**

### **Unrestricted Absence**

Use of a day of unrestricted absence is prohibited on Parent-Teacher Conference Days and Open House except that a member may make use of a day of unrestricted absence on a Parent-Teacher Conference Day if the member has fulfilled his/her conference obligations by making eight (8) home visits before Parent-Teacher Conference Day and before requesting the day as a day of unrestricted absence. The use of a day of unrestricted absence is further limited during the month of June to a maximum per day of two (2) members per building or 10% of the total building staff, whichever is greater.

The number of members taking unrestricted absence on any one (1) day shall not exceed fifty (50). Unrestricted absence days are to be taken at a time other than immediately prior to or after a scheduled holiday and/or vacation period. To qualify for the one-hundred (100) day benefit in paragraph one (1) below, the member must first complete one (1) year of service with the Akron Public Schools.

1. For more than one hundred (100) accumulated sick days: authorization of one (1) day unrestricted absence shall be given any member with an accumulation of one hundred (100) or more sick days as of the member's first work day each school year.

2. For absence of not more than five (5) days for the previous school year: authorization of one (1) day unrestricted absence during the current school year shall be given any member whose absence was not greater than five (5) days for the previous school year.

3. ~~One (1)~~ Three (3) Personal Days.

In lieu of the day(s) of unrestricted absence in 1, 2, and 3 above, a member may elect:

- a) Payment of \$100.00 for one earned but unused day
- b) Payment of \$300.00 for two (2) earned but unused days
- c) Payment of \$500.00 for three (3) earned but unused days
- d) Payment of \$700.00 for four (4) earned but unused days

e) Payment of \$900.00 for five (5) earned but unused days

The unused days referenced in paragraphs 1, 2, and 3 above will be paid automatically, prior to August 1<sup>st</sup>, to any member who is eligible and who worked any portion of the school year. Members shall be prohibited from taking the Personal Day during the months of May and June.

For any member opting for payment in lieu of the use of any day(s) of unrestricted absence listed in paragraphs 1, 2, and 3, and for which the member does not receive payment prior to the August 1<sup>st</sup> deadline listed above, a \$50.00/day late payment compensation will be made in addition to the payment owed for any unused unrestricted days, for each day beyond July 31<sup>st</sup> until the member receives payment. The total late payment shall be made within the same payroll period as the unrestricted bonus payment is made. **(Withdrawn per the AEA's pre-hearing brief dated September 23, 2022, Section 4.09(E) next to the last paragraph but see p. 55 below)**

Absence for unrestricted absence, jury duty, vacation, **COVID approved reinstated days** and professional development (Modification of Worksite) shall not be counted when determining a member's eligibility for the options based on absence of no more than five (5) days in the previous school year. Extended absences for personal illness (more than twenty (20) workdays in succession) shall be counted as one (1) absence. Modification of worksite is not considered an absence. **(Tentative Agreement on this paragraph)**

**Absence for Death**

For death in the member's immediate family, three (3) days will be provided, and for death of any other relative, two (2) days will be provided, except that the Superintendent may increase the number of such days in the event circumstances justify authorization of additional days of absence with pay. When five (5) hours or more of travel time are required to attend funeral services for which absence is authorized, an additional paid day, without deduction from accumulated sick days, shall be granted.

**Absence Due to Assault**

Members shall be granted paid days of absence due to injury resulting from a physical assault by any person when performing his/her official duties.

The member shall be paid regular compensation for time lost due to an assault. If the absence extends beyond fifteen (15) days, the member may be required to submit to an examination by a Board-appointed physician. The examination will be conducted at Board expense. Additional time beyond the fifteen (15) days may be authorized by the Superintendent after consultation with Board-appointed physician.

To qualify for absence due to assault, the member must follow procedures outlined in Section 3.23 Assault and if medical attention is required, or if the absence extends beyond ~~fifteen (15)~~ **(Tentative Agreement - the parties agreed to five days)** work days, submit a written physician's statement describing the nature and anticipated duration of the disability.

Paid days granted due to assault shall not be deducted from the member's accumulated sick days.

### **For Other Causes**

Absence caused by unusual and abnormal circumstances shall be authorized by the Superintendent, if such absence is in the best interest of the member and the schools.

The Union argues that there is a distinction between justifiable absences and unrestricted absences. While members can use three days of justifiable leave, these days may only be used for a limited number of reasons. They must be accompanied by supporting documentation and may be denied by Human Resources. Requests for college visits, graduations, moving to a new home, attendance at the birth of a grandchild, and school functions of a child are all deemed ineligible under Section D. The Union is, therefore, requesting two additional days of unrestricted leave.

In comparison to other urban districts, Canton and Cincinnati have three unrestricted days. Columbus, Dayton and Toledo have two unrestricted days.

### **Fact-Finder's Recommendation:**

This Fact-Finder recommends all the tentative agreements and accepts the withdrawals of language.

The Union is proposing to add an additional two personal days and that these personal days would be unrestricted. They currently have one (1) unrestricted day but they also have three (3) days for a justifiable absence. The Union argues that teachers can be denied the justifiable absence days if they do not fit the criteria listed in the CBA. This Fact-Finder, however, finds the list of acceptable obligations to be fairly broad. Further,

language allows the Superintendent to “authorize Justifiable Absences for other reasons.”

The Union cited other districts with two or more unrestricted days but a look at the comparables show that Akron has more personal leave, restricted plus unrestricted, than most districts in a Ohio. Three of the four days are restricted, but AEA still has more total personal leave. Additionally, members have the ability to earn an extra unrestricted day by having five or fewer absences per year and can earn yet another unrestricted day by accumulating 100 days of sick leave. Thus, AEA members may have up to six days of personal leave, three of which would be unrestricted.

This number of personal leave days is significantly higher than the number of days for other districts. Three personal days is the norm for the Big Five districts, Canton City Schools, and Summit County Districts (Employer Exhibit #42). Thus, this Fact-Finder rejects the Union proposal but accepts all tentative agreements. The following language is recommended:

#### **D. Justifiable Absence**

All full-time members shall be granted days of absence for personal business during each calendar year without loss of pay or deduction from sick days. Part-time members shall be granted a maximum of two (2) such days per year, unless both days are taken for the purpose of observing religious holidays in which case a third day of justifiable absence for the observance of a religious holiday can be requested and will be granted. Personal business is an obligation or emergency over which the member has no control and which requires immediate attention. Generally, these are limited to one (1) day per occurrence, and three (3) days per school year. When five (5) hours or more of travel time are required, additional time shall be granted.

Notice of such absence shall be given as far in advance as possible.

In giving such notice, or upon return to school, if the justifiable absence was for an emergency, the member shall submit the appropriate form which shall require only a check mark for items listed below.

In the case of all disputes concerning justifiable absences as to decisions made by the Personnel Office, the following special procedure shall apply. Two (2) members designated by the AEA and two (2) members designated

by the Superintendent shall constitute a panel. From the panel three (3) names shall be drawn through a blind selection procedure. Those three (3) members shall decide the matter of justification for absence under this provision by a majority vote.

### **Emergencies**

Accidents in the immediate family or affecting family property.

Travel conditions which make it impossible to report for work.

### **Obligations**

Observance of religious holidays.

Attendance at graduation exercises beyond high school involving a member or a member of his immediate family.

Physical examination for induction for military service.

A member of the immediate family in the armed forces, National Guard, the Defense Corps, the Naval Militia, or other reserve components of the armed forces of United States being mobilized or deployed from their home base for a State, National Emergency, or any type of contingency of national protection or war. A member of the immediate family departing for service outside the continental United States, or returning from such service.

Attending a wedding involving the member or a member of his immediate family.

Court appearances as litigant or witness.

Receiving an adopted child.

The Superintendent may authorize Justifiable Absence for other reasons. The reason for such request shall be included in writing

### **E. Unrestricted Absence**

Use of a day of unrestricted absence is prohibited on Parent-Teacher Conference Days and Open House except that a member may make use of a day of unrestricted absence on a Parent-Teacher Conference Day if the member has fulfilled his/her conference obligations by making eight (8) home visits before Parent-Teacher Conference Day and before requesting the day as a day of unrestricted absence. The use of a day of unrestricted absence is further limited during the month of June to a maximum per day of two (2) members per building or 10% of the total building staff, whichever is greater.

The number of members taking unrestricted absence on any one (1) day shall not exceed fifty (50). Unrestricted absence days are to be taken at a time other than immediately prior to or after a scheduled holiday and/or vacation period. To qualify for the one-hundred (100) day benefit in paragraph one (1) below, the member must first complete one (1) year of service with the Akron Public Schools.

1. For more than one hundred (100) accumulated sick days: authorization of one (1) day unrestricted absence shall be given any member with an accumulation of one hundred (100) or more sick days as of the member's first work day each school year.

2. For absence of not more than five (5) days for the previous school year: authorization of one (1) day unrestricted absence during the current school year shall be given any member whose absence was not greater than five (5) days for the previous school year.

3. One (1) Personal Day

In lieu of the day(s) of unrestricted absence in 1, 2, and 3 above, a member may elect:

a) Payment of \$100.00 for one earned but unused day

b) Payment of \$300.00 for two (2) earned but unused days

c) Payment of \$500.00 for three (3) earned but unused days

The unused days referenced in paragraphs 1, 2, and 3 above will be paid automatically, prior to August 1<sup>st</sup>, to any member who is eligible and who worked any portion of the school year. Members shall be prohibited from taking the Personal Day during the months of May and June.

Absence for unrestricted absence, jury duty, vacation, COVID approved reinstated days and professional development (Modification of Worksite) shall not be counted when determining a member's eligibility for the options based on absence of no more than five (5) days in the previous school year. Extended absences for personal illness (more than twenty (20) workdays in succession) shall be counted as one (1) absence. Modification of worksite is not considered an absence.

## **F. Absence for Death**

For death in the member's immediate family, three (3) days will be provided, and for death of any other relative, two (2) days will be provided, except that the Superintendent may increase the number of such days in the event circumstances justify authorization of additional days of absence with pay. When five (5) hours or more of travel time are required to attend funeral

services for which absence is authorized, an additional paid day, without deduction from accumulated sick days, shall be granted.

#### **G. Absence Due to Assault**

Members shall be granted paid days of absence due to injury resulting from a physical assault by any person when performing his/her official duties.

The member shall be paid regular compensation for time lost due to an assault. If the absence extends beyond fifteen (15) days, the member may be required to submit to an examination by a Board-appointed physician. The examination will be conducted at Board expense. Additional time beyond the fifteen (15) days may be authorized by the Superintendent after consultation with Board-appointed physician.

To qualify for absence due to assault, the member must follow procedures outlined in Section 3.23 Assault and if medical attention is required, or if the absence extends beyond five (5) work days, submit a written physician's statement describing the nature and anticipated duration of the disability.

Paid days granted due to assault shall not be deducted from the member's accumulated sick days.

#### **H. For Other Causes**

Absence caused by unusual and abnormal circumstances shall be authorized by the Superintendent, if such absence is in the best interest of the member and the schools.

### **Section 8.01 (B) – Salaries**

#### **Employer's Proposal and Rationale:**

##### **8.01 Salary Schedule and Index**

**A.** The Salary Schedule and Index currently in effect and approved by the Board in the Schedule of Salaries is available from the Department of Human Resources.

**B.** The Akron Board of Education agrees to the following condition of settlement with the Akron Education Association effective July 1, ~~2019~~ 2022 through June 30, ~~2022~~ 2025.

1. July 1, ~~2019~~ 2022

A ~~two and one tenth~~ one point ninety-five percent (2.1 1.95%) BA-0 base salary increase, including a ~~two and one tenth~~ one point ninety-five percent (2.1 1.95%) increase in all hourly and daily rates of job codes represented by the bargaining unit.

2. July 1, ~~2020~~ 2023

A one point ninety-five ~~two and three tenths~~ percent (~~2.3~~ 1.95%) BA-0 base salary increase, including a one point ninety-five ~~two and three tenths~~ percent (~~2.3~~ 1.95%) in all hourly and daily rates of job codes represented by the bargaining unit.

3. July 1, ~~2021~~ 2024

A two and ~~one half~~ one tenth percent (~~2.5~~ 2.1%) BA-0 base salary increase, including a two and ~~one half~~ one tenth percent (~~2.5~~ 2.1%) in all hourly and daily rates of job codes represented by the bargaining unit.

In addition, all AEA members employed as of the date of ratification of the agreement shall receive a one-time \$500.00 stipend to be paid within 60 work days of ratification.

The District contends that its base wage proposal is fair, reasonable, and sustainable when measured by the District's prior settlements with AEA, by comparable districts, and by Summit County settlements.

Employer Exhibit #85 shows the history of wage proposals that AEA has negotiated since 2013. Final wage agreements have ranged from 1.5% to 2.85% with a three-year average of 2.56%. The three-year average, excluding the stipend in the District's proposal, is 2%. The Employer contends that this is within the average yearly increases negotiated over the past nine years.

The Employer further contends that their proposal is consistent with comparable urban districts whose three-year averages range from 1.5% in Toledo plus stipends to a 4% in



Columbus which is inflated due to a strike settlement. Summit County comparables show three-year averages ranging from 1.75% in Barberton to 2.8% in Copley-Fairlawn. No comparable district is showing a 5% increase in any year or is close to a three-year average of 5% as the Union is proposing.

Moreover, the Ohio Department of Education's Cupp Data show that Akron spends a greater percentage of its operating revenue on salary and fringe benefits than any other comparable urban district (Employer Exhibit #94). Almost 88% of the District's operating expenses goes toward employee wages and benefits, leaving only 12% to run the District.

The District is also proposing a one-time \$500 stipend in the first year that is equal to a 1.2% increase on the current base and a .71% increase at a salary of \$70,000. The SERB 2021 wage study (Employer Exhibit #96) shows that 79% of the contracts that went into effect in 2021 had a one-time lump sum payment in addition to the base wage increase.

The Union argues that the District has a projected Cash Balance that will support their proposal. Using the Cash Balance to fund a wage increase, however, is not sustainable. The Employer states that the increase is due to savings that occurred during the pandemic. A one-time infusion of ESSER funds also helps to offset expenses. The ESSER funds, however, cannot fund a permanent wage increase and must be used by September of 2024. The District Treasurer testified that "ESSER funding is enabling the district to push spending lower than revenue **for the short term.**" The District faces a sustainability problem and even with modest wage increases it will be in fiscal caution under ODE benchmarks by 2026.

The May 2020 Five Year forecast (Employer Exhibit # 51) shows that expenses are outpacing revenue in every year. The District will need to put a levy on the ballot. Unfortunately, levies have not generally passed in Akron. Of the thirteen operating levies placed on the ballot since 1985 only six have passed (Employer Exhibit # 47) and

only two of those passed on the first attempt. The Employer argues that the Union's offer cannot be permanently sustained since those funds are not ongoing. The Employer concludes that they cannot afford AEA's proposal. It would put the District into deficit spending that would necessitate, in the absence of substantial new money through a levy, massive layoffs and/or program cuts.

## Union's Proposal and Rationale:

### 8.01 Salary Schedule and Index

- A. The Salary Schedule and Index currently in effect and approved by the Board in the Schedule of Salaries is available from the Department of Human Resources.
- B. The Akron Board of Education agrees to the following condition of settlement with the Akron Education Association effective July 1, ~~2019~~ 2022 through June 30, ~~2022~~ 2025.
1. July 1, ~~2019~~ 2022  
A ~~two and one tenth five~~ percent (~~2.1~~ 5.0%) BA-0 base salary increase, including a ~~two and one tenth five~~ percent (~~2.1~~ 5.0%) increase in all hourly and daily rates of job codes represented by the bargaining unit.
  2. July 1, ~~2020~~ 2023  
A ~~two and three tenths five~~ percent (~~2.3~~ 5.0%) BA-0 base salary increase, including a ~~two and three tenths five~~ percent (~~2.3~~ 5.0%) in all hourly and daily rates of job codes represented by the bargaining unit.
  3. July 1, ~~2021~~ 2024  
A ~~two and one half five~~ percent (~~2.5~~ 5.0%) BA-0 base salary increase, including a ~~two and one half five~~ percent (~~2.5~~ 5.0%) in all hourly and daily rates of job codes represented by the bargaining unit.

This proposal represents a modification from the original proposal of 7%, 7%, and 6.25% in each year. The change to a 5% increase each year was done via a telephone call on Monday, October 3, 2022.

The Union argues that the District is in the best financial position it has ever been having received \$150,000,000 in ESSER funds as well as additional revenue of \$33,000,000 after adoption of the Fair School Funding. Union Exhibit 8.01 #20 shows that the Employer can apply an annual 5% increase to the salary schedule for the next three (3) years and still have an ending cash balance which satisfies their Board Policy (Union Exhibit 8.01 #20). The District's Five-Year Forecast from May of 2022 predicts a cash balance of over \$52,000,000 ending in Fiscal Year 2026 (Union Exhibit 8.01 #2).

The Union also points out the salary difference between District administrators and Union members as well as in comparable districts. Comparable districts have seen an average 1.18% increase in administrative salaries while the District administrative salaries have increased 33.38% during the same period. Comparable districts raised teacher salaries 12.64% from 2017 to 2021 while the District has made an 8.07% increase.

The Union argues that their proposal is fair and reasonable in light of the District's finances.

#### **Fact-Finder's Recommendation:**

The Parties presented, through testimony and documentation, information supporting their wage proposal. Numerous exhibits were presented regarding the budget, five-year forecasts, and comparables across the state and in the county.

Negotiations have been complicated over the last three (3) years due to an influx of state and federal stimulus monies. These funds are temporary yet they show a short-term increase in district budgets. They also have sunset dates by which the funds must be used. In the District's case, the funds must be used by September of 2024. These factors have created an inflated cash balance that will disappear in the coming years.

AEA states that the cash balance is excessive and that they have received clouded answers when they have questioned it. An increase in State funding and a reduction in

tuition costs associated with the New Fair School Funding Plan contributed \$21,000,000 to the cash balance, and ESSER stimulus funding contributed another \$12,000,000. Further, the Union argues that even with a 5% increase over the next three years, the District will still have an ending cash balance that satisfies Board Policy 6234 which outlines minimum cash reserve requirements.

The District, on the other hand, argues that using the cash balance to fund a wage increase is not sustainable. Stimulus monies and ESSER funds were a one-time infusion of money, and ESSER funds must be used by September, 2024. Ernie Strawer, Senior Analytics Advisor for Frontline Education, testified that the District's May 2022 forecast shows a declining cash balance and that the decline accelerates in 2025 when ESSER funding is depleted. The Treasurer testified that the District faces a sustainability problem and that even with a modest wage increase the District will be under ODE benchmarks by 2026.

In looking at comparables, the Union took exception with the Board using the average yearly increases negotiated within the District since the 2013-2014 contract year. Even then, the three-year average was 2.26%. The three-year average for the District's current proposal is 2%.

Comparables for the Big Five districts and Canton show the following:

- Canton - Three-year average: 2.92%
- Cincinnati - Three-year average: 2.67%
- Cleveland - Three-year average: 2.67%
- Columbus - Three-year average: 4%
- Dayton – Negotiations ongoing
- Toledo – Three-year average: 1.5%

The District's current proposal is 2%.

Summit County comparables are more in line with the District's proposal. Of the sixteen (16) school districts, two (2) are below a 2% average. Five (5) have a 2% average and the other nine (9) are over 2%.

SERB data provides information on the average wage increase negotiated in labor contracts over the past ten (10) years, 2012-2021.

Statewide – 2.33%  
Akron/Canton – 2.25%  
School District – 2.23%  
Teacher (BOE) – 2.24%

In all the comparables, the District's proposal seems to be on the low side. The Union's proposal, however, is higher than any number seen including Columbus. No district is showing 5% increases.

The SERB 2021 wage study shows that the average one-time bonus in 2022 was \$1046 while the average one-time bonus in 2023 was \$1017. Again, the District's offer seems low.

In considering the current state of the District's finances, comparables across the state and county as well as SERB data, This Fact-Finder is recommending the following for AEA bargaining unit members:

Effective 7/1/2022, a salary increase of 2.25% and a one-time stipend of \$1000 for members employed as of the date of ratification.

Effective 7/1/2023, a salary increase of 2.25%. (Longevity steps at 32.5 and 33.0 years of service begin.)

Effective 7/1/2024, a salary increase of 2.5%.

The language would read as follows:

### **Salary Schedule and Index**

**A.** The Salary Schedule and Index currently in effect and approved by the Board in the Schedule of Salaries is available from the Department of Human Resources.

**B.** The Akron Board of Education agrees to the following condition of settlement with the Akron Education Association effective July 1, 2022 through June 30, 2025.

1. July 1, 2022

A two point twenty-five percent (2.25%) BA-0 base salary increase, including a two point twenty-five percent (2.25%) increase in all hourly and daily rates of job codes represented by the bargaining unit.

2. July 1, 2023

A two point twenty-five percent (2.25%) BA-0 base salary increase, including a two point twenty-five percent (2.25%) in all hourly and daily rates of job codes represented by the bargaining unit.

3. July 1, 2024

A two and one half percent (2.5%) BA-0 base salary increase, including a two and one half percent (2.5%) in all hourly and daily rates of job codes represented by the bargaining unit.

In addition, all AEA members employed as of the date of ratification of the agreement shall receive a one-time \$1000.00 stipend to be paid within 60 work days of ratification.

## Section 8.02– Longevity

### Employer’s Proposal and Rationale:

#### 8.02 Longevity Increments

Years of Service For Salary Purpose	Amount Effective 07/01/05
15.5	9.0%
16.0	10.0%
19.5	10.5%
20.0	11.0%

23.5	11.5%
24.0	12.0%
26.5	12.5%
27.0	13.0%
29.5	13.5%
30.0	14.0%
	<u>Effective 7-1-23</u>
<u>32.5</u>	<u>14.5%</u>
<u>33.0</u>	<u>15.0%</u>

The Employer is proposing to add two longevity steps to the current step schedule to provide steps to members who had been previously capped at 30 years. The steps would have a 0.5% increase at years 32.5 and 33. The Employer contends that this proposal maintains the step cadence already established by the Parties. There is a two-and-a-half-year interval beginning in Step 24 which created the next Step of 26.5 years. Then a half-year increment follows. The next increment after Step 27 is Step 29.5, a two-and-a-half-year increment and then a half-year increment. Since the years of the service scale currently ends at 30, the next step would be 32.5 followed by a half year increment establishing a step at 33 years.

The Union proposes adding five full steps and one-half step with a 1% longevity payment at each full step. This is not comparable to other similar districts. Employer Exhibit # 107 shows that of the Big Five districts and Canton, four (4) have no longevity steps, Dayton offers a lump sum for years 15-19 and for 20 or more years, and Canton offers only one step above 30 years.

The District further argues that their proposal is consistent with other Summit County schools. Employer Exhibit #106 shows that ten of the districts have no longevity steps. Two have lump sum payments at various steps and only one has a step over 30 years.

The Union also proposes extending longevity to “all salary schedules, hourly schedules, and daily rates of all job codes represented by the AEA bargaining unit.” Under the current contract, the longevity steps in Section 8.02 only apply to nine (9) job codes of the forty-six (46) listed in the recognition clause. None of the other thirty-eight job codes have any contractual longevity increments. AEA offered no proposals as to how this

expansion would work for these other groups (substitute teachers, for example.) The Employer contends the proposal is impractical and unworkable.

**Union’s Proposal and Rationale:**

**8.02 Longevity Increments**

Years of Service For Salary Purpose	Amount Effective 07/01/05
15.5	9.0%
16.0	10.0%
19.5	10.5%
20.0	11.0%
23.5	11.5%
24.0	12.0%
26.5	12.5%
27.0	13.0%
29.5	13.5%
30.0	14.0%
<u>Amount Eff. 7/1/22</u>	
<u>30.5</u>	<u>14.5%</u>
<u>31.0</u>	<u>15.0%</u>
<u>31.5</u>	<u>15.5%</u>
<u>32.0</u>	<u>16.0%</u>

**Fact-Finder’s Recommendation:**

This Fact-Finder rejects the Union’s proposal in its entirety and accepts the District’s proposal. The District is following an established pattern to add two additional steps to the longevity scale. This is in alignment with comparable large urban districts throughout Ohio as well as other districts within the county. As for extending the longevity to all job codes, this Fact-Finder agrees that no details were even given as to how this might be feasible. The following language is recommended with an effective date of July 1, 2023:



## 8.02 Longevity Increments

Years of Service For Salary Purpose	Amount Effective 07/01/05
15.5	9.0%
16.0	10.0%
19.5	10.5%
20.0	11.0%
23.5	11.5%
24.0	12.0%
26.5	12.5%
27.0	13.0%
29.5	13.5%
30.0	14.0%
32.5	Effective 7-1-23 14.5%
33.0	15.0%

## Section 9.01 (A) – Hospital, Surgical and Major Medical Insurance

### Employer’s Proposal and Rationale:

~~Hospital, Surgical and Major Medical Insurance shall be provided with the wellness participant member of the Paladina participant member paying eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and ten percent (10%) of the monthly premium per month for non-wellness participant coverage in which he or she is enrolled effective March 1, 2020.~~ Hospital, Surgical and Major Medical Insurance shall be provided with the ~~wellness participant member and the Paladina participant~~ member paying the following premium rates for the coverage in which he or she in enrolled (single/family). ~~Eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and thirteen percent (13%) of the premium equivalent per month for the non-wellness participant coverage in which he or she is enrolled for the 2020-2021 and 2021-2022 school years.~~ The premium equivalent paid by member for the ~~2020-2021 and 2021-2022~~ 2020-2022-2021-2023, 2023-2024 and 2024-2022-2025 school years shall noy apply to an increase in the Board’s premium equivalent for that year in excess of twelve percent (12%).

2022-2023 School Year  
Wellness Participant: 8%  
Non-Wellness: 13%

2023-2024 School Year  
Wellness Participant: 9%  
Non-Wellness: 14%

2024-2025 School Year  
Wellness Participant: 10%  
Non-Wellness: 15%

To be included as a wellness participant, the qualifying member must meet the wellness program requirements as defined in Section 9.02.

~~The parties shall form a committee to determine how additional members may become Paladina participants during the 2019-2020 school year.~~

Member deductibles for major medical insurance shall be as follows:

In Network		Out of Network	
Single	Family	Single	Family
\$300	\$600	\$600	\$1200

The Employer is not proposing any benefit design changes in Section 9.01(A) for the three years of the contract. Further, they have proposed no increase in the employee contribution in the first year of the contract. In years two and three, there is a 1% increase each year.

The District argues that their health care coverage is among the best. SERB data (Employer Exhibit #112) shows In-Network deductibles for both single and family and In-Network Out of Pocket Maximums to be substantially less than school districts, Public employees with more than 1000 employees, and for public employees in the Akron/Canton region. SERB data also shows the average single employee percentage PPO contribution for a district comparable to Akron is 16.2% while the family percentage is 17.1% In comparison, Akron's single and family wellness employee

contribution is 8%, while non-wellness is 13%. Even with the 1% increase in succeeding years, the percentage PPO contribution for the District is below the SERB average.

The Employer further argues that the Union's claim that healthcare costs only went up 1.3% is incorrect. The Treasurer testified that this figure did not include monies paid from sources other than the general fund. The District, being self-insured, has an outside consultant who makes recommendations based upon industry standards and other data. The Employer has traditionally not increased rates by the full amount recommended by the consultant.

The average employee is only paying 1.89% of his/her salary for wellness coverage and is paying less than comparable districts (Employer Exhibits # 4-19, 99, 101-105). The Employer contends that the Union is paying well below market value for its employee contributions for excellent healthcare.

#### **Union's Proposal and Rationale:**

~~Hospital, Surgical and Major Medical Insurance shall be provided with the wellness participant member of the Paladina participant member paying eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and ten percent (10%) of the monthly premium per month for non-wellness participant coverage in which he or she is enrolled effective March 1, 2020. Hospital, Surgical and Major Medical Insurance shall be provided with the wellness participant member and the Paladina participant member paying the following premium rates for the coverage in which he or she is enrolled (single/family). Eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and thirteen percent (13%) of the premium equivalent per month for the non-wellness participant coverage in which he or she is enrolled for the 2020-2021 and 2021-2022 school years. The premium equivalent paid by member for the 2020-2021 and 2021-2022 school years shall not apply to an increase in the Board's premium equivalent for that year in excess of twelve percent (12%).~~

Member monthly premium contributions shall be as follows for the period of July 1, 2022 through June 30, 2025:

For Wellness Participant		For Non-Participant	
Single	Family	Single	Family
\$66	\$167	\$108	\$271

To be included as a wellness participant, the qualifying member must meet the wellness program requirements as defined in Section 9.02.

~~The parties shall form a committee to determine how additional members may become Paladina participants during the 2019-2020 school year.~~

Member deductibles for major medical insurance shall be as follows:

In Network		Out of Network	
Single	Family	Single	Family
\$300	\$600	\$600	\$1200

The Union is proposing to freeze current premium rates. AEA argues that the premium rates are disproportionate to the actual cost of insurance. Union Exhibit 9.01 #3 shows a steady decline in the cost of insurance with a one-year increase in 2022 due to Covid. From 2017 to 2022, healthcare costs increased by 1.3% resulting in almost a \$4.5 million savings to the District. Conversely, employee premiums over the same period of time increased by 122.7%. Thus, the Union feels a temporary freeze on member premiums is justified, reasonable, and equitable.

The Union is further proposing that the District move from a percentage to a flat rate for premiums.

**Fact-Finder’s Recommendation:**

The Union contends that the District has sufficient funds to freeze the cost of member premiums. Financial data (Union Exhibit 9.01 #3) has shown a decrease in the cost of

health care with the exception of 2022. Increases in costs for that year are attributed to COVID. The Union also highlighted the higher rate of increase in member premiums which occurred even though costs went down.

The Employer refutes the Union's calculations. Healthcare costs were artificially low in 2017 as the District transitioned from a flat rate to a percentage-based contribution. The Employer further contends that increases in 2020 and beyond are reflective of healthcare cost increases and employee contribution increases recommended by the Fact-Finder in 2019.

In reviewing the data presented, this Fact-Finder accepts the Union's proposal to freeze the cost of member premiums for the duration of the contract.

The Union is proposing to move the premium cost calculation to a dollar amount versus a percentage which is what the CBA currently has. This Fact-Finder does not recommend the change. The Parties agreed to move from a flat employee contribution to a percentage basis during the 2016-2019 contract negotiations. The Union made the same proposal in 2019, and it was one of the issues it took to fact finding. Fact-Finder Millstone rejected this proposal as a part of his fact-finding recommendations (Employer Exhibit #138, p 25). This Fact-Finder does not recommend undoing what was previously negotiated.

This Fact-Finder recommends current contract language with changes to eliminate language referring to Paladina participants since that program no longer exists and by updating the dates. The language would read as follows:

Hospital, Surgical and Major Medical Insurance shall be provided with the wellness participant member paying eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and ten percent (10%) of the monthly premium per month for non-wellness participant coverage in which he or she is enrolled effective the 2022-2023 school year. Hospital, Surgical and Major Medical Insurance shall be provided with the wellness participant member paying eight percent (8%) of the premium equivalent (funding rate) per month for the coverage in which he or she is enrolled (single or family) and thirteen percent

(13%) of the premium equivalent per month for the non-wellness participant coverage in which he or she is enrolled effective the 2022-2023 school year. The premium equivalent paid by member for the 2022-2023, 2023-2024, and 2024-2025 school years shall not apply to an increase in the Board's premium equivalent for that year in excess of twelve percent (12%).

To be included as a wellness participant, the qualifying member must meet the wellness program requirements as defined in Section 9.02.

Member deductibles for major medical insurance shall be as follows:

In Network		Out of Network	
Single	Family	Single	Family
\$300	\$600	\$600	\$1200

## Section 9.01 (B)– Medical Insurance

### Employer's Proposal and Rationale:

#### B. Preferred Provider Organizations

The Board shall provide a PPO Program. The Board may implement a PPO plan with different deductibles and/or co-insurance levels in addition to the plan as outlined in Section 9.01(A). The employee contributions for any additional PPO plans offered to employees will be at the same percentage levels as outlined in Section 9.01(A). The Board shall make any additional PPO plans available to eligible members during an Open Enrollment period.

The employer is proposing to expand PPO options beyond just a single option. These plans may have different deductibles or co-pays but will be offered at the same

employee percentage contribution amounts. The proposed language allows employees to choose a plan/option that more suits their needs.

The Employer has rejected the Union's proposal to add language that prior to signing a PPO provider contract a complete report must be provided to the District Health Benefits Advisory Committee. AEA is only one of the unions on the Committee and identical committee language is contained in each union's CBA. Further, this language would change the scope and mission of the committee.

### **Union's Proposal and Rationale:**

#### **B. Preferred Provider Organizations**

The Board shall provide a PPO Program. Thirty (30) working days prior to the signing of a PPO provider contract, the Board and/or consultant shall provide the District Health Benefits Advisory Committee, as outlined on Section 9.03, a complete report containing a cost and comparable analysis that supports the selection and retention of the provider of the PPO program and the PPO program itself. Full disclosure of any financial gains provided to the consulting organization by any provider shall be included in such reports.

No rationale was contained in the pre- or post-hearing briefs.

### **Fact-Finder's Recommendation:**

This Fact-Finder accepts the Employer's proposal. The Union's proposal provides for a single PPO plan and seems to tie the hands of the District to explore more options. Employees should have options in selecting healthcare as each person's needs vary. This could also save members money as they select a less expensive option that is still tailored to their situation.

This Fact-Finder rejects the Union's language about submitting a complete report to the Health Benefits Advisory Committee. The District uses an outside consultant to make recommendations and to get bids on products. This consultant has a seat on the

Committee. It would seem that if there were particular concerns, the Committee could talk directly with the consultant. The Union also requested full disclosure of any financial gains provided to the consulting organization by any provider. It seems the Union is implying some sort of malfeasance has occurred that has warranted this language, but no evidence was offered. Further, the Union's proposal changes the scope and mission of the Health Benefits Advisory Committee as outlined in Section 9.03 which states its purpose as "joint consultation on matters concerning hospitalization, major medical, prescription, dental, vision, and term life insurance coverage."

## **Section 9.01 (C) – Spousal Enrollment**

### **Employer's Proposal and Rationale:**

If an employee's spouse is eligible to participate, as a current employee or retiree in group health insurance and/or prescription drug insurance available at the spouse's workplace or sponsored by his/her employer or any public retirement plan, the spouse must enroll in such workplace or employer (or public retirement plan) sponsored group insurance coverage(s).

~~For the 2019-2020 school year, this requirement does not apply to any spouse who is required to pay more than five percent (25%) of the single premium to participate in his/her workplace or employer's group health insurance coverage and/or prescription drug insurance coverage. Thereafter, the twenty five percent (25%) waiver described in this paragraph no longer applies.~~ This requirement **also** does not apply to any spouse who is a retiree under a public retirement plan and enrolled in Medicare coverage.

Upon the spouse's enrollment in any such workplace or employer (or public retirement plan) sponsored group insurance coverage, that coverage will become the primary payor of benefits, and the coverage sponsored by the Board of Education will become the secondary payor of benefits.

*Any spouse who fails to enroll in any group insurance coverage sponsored by his/her workplace or employer or any public retirement plan, as required by this Section, shall be ineligible for benefits under such group insurance coverage sponsored by the Board of Education.*

*Every employee whose spouse participates in the Board of Education's group health insurance coverage and/or prescription drug insurance coverage shall*



*complete and submit to the Board of Education, upon request, a written certification verifying whether his/her spouse is eligible to participate in group health insurance coverage and/or prescription drug insurance coverage sponsored by the spouse's workplace or employer or any public retirement plan. If any employee fails to complete and submit the certification form by the required date, such employee's spouse will be removed immediately from all health and prescription drug insurance coverages sponsored by the Board of Education. Additional documentation may be required.*

*If the employee submits false information the employee may be subject to disciplinary action by the Board, up to and including termination of employment.*

*\*Premium is defined as Funding Rates*

Both Parties have proposed the elimination of the redlined paragraph. AEA did not include the italicized language from above nor did they show it as a strikeout. The Employer proposes to maintain that language. It clearly sets forth expectations for spousal enrollment as well as providing a clear definition of "premium."

### **Union's Proposal and Rationale:**

If an employee's spouse is eligible to participate, as a current employee or retiree in group health insurance and/or prescription drug insurance available at the spouse's workplace or sponsored by his/her employer or any public retirement plan, the spouse must enroll in such workplace or employer (or public retirement plan) sponsored group insurance coverage(s).

~~For the 2019-2020 school year, this requirement does not apply to any spouse who is required to pay more than five percent (25%) of the single premium to participate in his/her workplace or employer's group health insurance coverage and/or prescription drug insurance coverage. Thereafter, the twenty five percent (25%) waiver described in this paragraph no longer applies.~~ This requirement ~~also~~ does not apply to any spouse who is a retiree under a public retirement plan and enrolled in Medicare coverage.

Upon the spouse's enrollment in any such workplace or employer (or public retirement plan) sponsored group insurance coverage, that coverage will become the primary payor of benefits, and the coverage sponsored by the Board of Education will become the secondary payor of benefits.

Any spouse who fails to enroll in any group insurance coverage sponsored by his/her workplace or employer or any public retirement plan, as required by this

Section, shall be ineligible for benefits under such group insurance coverage sponsored by the Board of Education.

**Fact-Finder's Recommendation:**

This Fact-Finder recommends the Employer's language. Both Parties already proposed the elimination of the red-lined paragraph. This Fact-Finder agrees that the language should remain. The language would read as follows:

If an employee's spouse is eligible to participate, as a current employee or retiree in group health insurance and/or prescription drug insurance available at the spouse's workplace or sponsored by his/her employer or any public retirement plan, the spouse must enroll in such workplace or employer (or public retirement plan) sponsored group insurance coverage(s).

This requirement does not apply to any spouse who is a retiree under a public retirement plan and enrolled in Medicare coverage.

Upon the spouse's enrollment in any such workplace or employer (or public retirement plan) sponsored group insurance coverage, that coverage will become the primary payor of benefits, and the coverage sponsored by the Board of Education will become the secondary payor of benefits.

Any spouse who fails to enroll in any group insurance coverage sponsored by his/her workplace or employer or any public retirement plan, as required by this Section, shall be ineligible for benefits under such group insurance coverage sponsored by the Board of Education.

Every employee whose spouse participates in the Board of Education's group health insurance coverage and/or prescription drug insurance coverage shall complete and submit to the Board of Education, upon request, a written certification verifying whether his/her spouse is eligible to participate in group health insurance coverage and/or prescription drug insurance coverage sponsored by the spouse's workplace or employer or any public retirement plan. If any employee fails to complete and submit the certification form by the required date, such employee's spouse will be removed immediately from all health and prescription drug insurance coverages sponsored by the Board of Education. Additional documentation may be required.

If the employee submits false information the employee may be subject to disciplinary action by the Board, up to and including termination of employment.

\*Premium is defined as Funding Rates

## Section 9.01(D) – Prescription Insurance

### Employer’s Proposal and Rationale:

The Board shall provide a Family Coverage program of prescription insurance based upon the following table of deductibles and out-of-pocket maximums:

	Retail	Home Delivery (90-day supply)
Generic	\$10	\$20
Formulary	\$30	\$60
Non-Formulary*	\$60	\$120
Specialty <del>(Eff. 3/1/2020)</del>	\$100	\$200

Step Therapy, Preferred Specialty Management, and Prior Authorization with additions shall be in effect.

The prescription insurance annual out-of-pocket maximum shall be Five Thousand Dollars (\$5,000.00).

The Employer proposes a housekeeping change by eliminating the effective date.

On March 1, 2020, a Fact-Finder recommended that specialty drugs would have a deductible of \$100 retail and \$200 for a 90-day Home Delivery. The Employer had previously proposed deductibles of \$150 and \$300. They are now proposing to maintain current contract language.

While the Union proposes to eliminate Specialty Drugs, the District argues that they are by far the most expensive. Employer Exhibit #119 shows the total pharmacy expense for 2021 as approximately \$10.2 million and of that amount, specialty drugs accounted for 44.9% of the total. Only 173 members or 2.6% of the covered members are utilizing specialty drugs. The specialty expense for 2021 was approximately \$4.6 million or \$26,589 per member using specialty drugs. The Employer feels the deductibles are fair.

### Union’s Proposal and Rationale:

The Board shall provide a Family Coverage program of prescription insurance based upon the following table of deductibles and out-of-pocket maximums:

	Retail	Home Delivery (90 day supply)
Generic	\$10	\$20
Formulary	\$30	\$60
Non-formulary*	\$60	\$120
Specialty (Eff. 3/1/2020)	\$100	\$200

Step Therapy, Preferred Specialty Management, and Prior Authorization with additions shall be in effect.

The prescription insurance annual out-of-pocket maximum shall be Five Thousand Dollars (\$5,000.00).

### Fact-Finder's Recommendation

Having a Specialty Drug tier in a prescription plan is common as recognized by Fact-Finder Millstone in his previous decision. Further, the Employer has shown the high cost incurred by these drugs for a small number of people. Specialty Drug users are paying a fraction of the actual cost and are protected by the clause that sets the out-of-pocket maximum at \$5000. The following language is recommended:

The Board shall provide a Family Coverage program of prescription insurance based upon the following table of deductibles and out-of-pocket maximums:

	Retail	Home Delivery (90-day supply)
Generic	\$10	\$20
Formulary	\$30	\$60
Non-Formulary*	\$60	\$120
Specialty	\$100	\$200

Step Therapy, Preferred Specialty Management, and Prior Authorization with additions shall be in effect.

The prescription insurance annual out-of-pocket maximum shall be Five Thousand Dollars (\$5,000.00).

## Section 9.02 – Wellness Plan

### Employer’s Proposal and Rationale:

#### 9.02 Wellness Plan

The District will provide a Wellness Program designed to improve the health of the District employees and to have an impact in both short-term and long-term projected savings in health insurance costs.

~~Employees who fully participate by completing biometric testing and a health risk assessment annually in a wellness program shall pay reduced monthly premiums as included in Section 9.01(A). In order for an employee to qualify for the Wellness Program reduced monthly premiums for calendar year 2023, he/she must fully participate by completing biometric testing and a health risk assessment questionnaire. Employees may also earn the Wellness Program discount by voluntary participation in the Everside program. An employee electing Everside membership must remain a participant in good standing in order to continue Wellness Program reduced monthly premiums.~~

~~The Health Benefits Advisory Committee shall make recommendations to the Superintendent for continued and/or additional programs offered to employees as part of the Wellness Program for the 2024 and 2025 calendar year.~~

Premium is defined as Funding Rates.

The Employer proposes that for 2023, employees would have two ways to qualify for the wellness discount. The first way is to complete biometric testing and a health risk assessment questionnaire. The second way is to participate in the Everside program and remain in good standing for that calendar year. Thus, employees have two options, both voluntary, in which they can participate to reduce their insurance premiums. Further, the District proposes that the Health Benefits Advisory Committee shall investigate other programs and options for the 2024 and 2025 calendar years.

### Union’s Proposal and Rationale:

#### 9.02 Wellness Plan

The District will provide a Wellness Program designed to improve the health of the District employees and to have an impact in both short-term and long-term projected savings in health insurance costs

Employees who fully participate by completing biometric testing and a health risk assessment annually in a wellness program shall pay reduced monthly premiums as included in Section 9.01(A).

~~Premium is defined as Funding Rates.~~

The Union is proposing no change as to how an employee qualifies for the wellness discount option, and proposes to eliminate the language that defines a premium as the funding rate.

### **Fact-Finder's Recommendation:**

This Fact Finder recommends the Employer's language. To begin, any wellness program is optional. The fact that the District is offering not one but two options provides employees choices as to which program suits them best and to what level they want to participate— if at all. The end result is a reduced monthly premium for the employee. In an effort to offer even more options, the District has added language that allows the Health Benefits Advisory Committee, comprised of representatives from all unions, to investigate current and/or additional programs for future years. The District is being proactive in pursuing initiatives that could benefit the health of its employees while providing opportunities to lower the monthly premium,

This Fact Finder disagrees with eliminating the language defining a premium. This definition adds clarity to the term, and the Union proposes no other definition to replace it. The language would read as follows:

#### **9.02 Wellness Plan**

The District will provide a Wellness Program designed to improve the health of the District employees and to have an impact in both short-term and long-term projected savings in health insurance costs.

In order for an employee to qualify for the Wellness Program reduced monthly premiums for calendar year 2023, he/she must fully participate by completing biometric testing and a health risk assessment questionnaire. Employees may also earn the Wellness Program discount by voluntary participation in the Everside program. An employee electing Everside membership must remain a participant in good standing in order to continue Wellness Program reduced monthly premiums.

The Health Benefits Advisory Committee shall make recommendations to the Superintendent for continued and/or additional programs offered to employees as part of the Wellness Program for the 2024 and 2025 calendar year.

Premium is defined as Funding Rates.

## **Section 9.03 – Wellness Plan**

### **Employer’s Proposal and Rationale:**

#### **9.03 Health Benefits Advisory Committee**

The Superintendent shall maintain a Health Benefits Advisory Committee. The composition of the Committee shall include: five (5) members of the administrative staff appointed by the Superintendent; the President or his designee; and bargaining unit members appointed by the respective unit presidents on the basis of one (1) member for every five hundred (500) members or fraction thereof represented by the bargaining unit.

The purpose of the committee is to allow joint consultation on matters concerning wellness program initiatives, hospitalization, major medical, prescription, dental, vision, and term life insurance coverage.

Any Health Benefits Advisory Committee member organization may retain, at its own cost and for its own purposes, a health care consultant who may attend Committee meetings.

Such consultation shall include, but is not limited to: monthly monitoring of all plan costs, including claims; quarterly reviews to insure effective and efficient fringe benefit expenditures; quarterly reviews of plan performance objectives; and, annual reviews of coverage options and utilization studies and claim audits.

The committee shall determine its own meeting schedule, and shall make annual recommendations to the Superintendent regarding any aspect of the fringe benefits package.

Information on new classifications of drugs shall be shared with the committee within thirty (30) days.

The Health Benefits Advisory Committee shall meet regularly during the term of this Agreement. It will have the authority to review data in one or a combination of the following areas: prescription co-pays, mandatory mail-in for maintenance drugs, office visit co-pays, single and family annual deductibles and monthly

premiums (in dollar amounts). The Committee, by consensus, may expand the list of areas. The Board's health care consultant shall participate in the meetings and shall provide estimates of cost savings to the Committee based on possible changes to the plan. The consultant shall provide the committee with data supporting the estimated savings as well as other information s/he may be expected to routinely keep in her/his capacity as the Board's health care consultant.

The Employer is proposing language that would allow the Health Benefits Advisory Committee to explore wellness benefits initiatives and to make recommendations to the Superintendent for continued or additional programs to be offered in subsequent years. The Committee is comprised of members from the District's other unions, and this language is being proposed to them also. The Employer's goal is to continue to offer initiatives that will enhance and improve health outcomes for members and their families while providing savings.

#### **Union's Proposal and Rationale:**

AEA did not address this proposal nor did it present any written documentation of its position.

#### **Fact-Finder's Recommendation:**

This Fact-Finder is recommending the Employer's proposal. Wellness initiatives benefit all Parties in terms of mental and physical health as well as offering options for reducing the cost of insurance. The language would read as follows:

#### **9.03 Health Benefits Advisory Committee**

The Superintendent shall maintain a Health Benefits Advisory Committee. The composition of the Committee shall include: five (5) members of the administrative staff appointed by the Superintendent; the President or his designee; and bargaining unit members appointed by the respective unit presidents on the basis of one (1) member for every five hundred (500) members or fraction thereof represented by the bargaining unit.

The purpose of the committee is to allow joint consultation on matters concerning wellness program initiatives, hospitalization, major medical, prescription, dental, vision, and term life insurance coverage.



Any Health Benefits Advisory Committee member organization may retain, at its own cost and for its own purposes, a health care consultant who may attend Committee meetings.

Such consultation shall include, but is not limited to: monthly monitoring of all plan costs, including claims; quarterly reviews to insure effective and efficient fringe benefit expenditures; quarterly reviews of plan performance objectives; and, annual reviews of coverage options and utilization studies and claim audits.

The committee shall determine its own meeting schedule, and shall make annual recommendations to the Superintendent regarding any aspect of the fringe benefits package.

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## Tentative Agreements

Tentative agreements were reached on the following proposals.

<b>ARTICLE/SECTION</b>	<b>APS/AEA</b>	<b>STATUS</b>
Section 3.05 (H) – Member Work Load	AEA	Tentative Agreement
Section 3.05 (Q) - Submission of Grades	APS	Tentative Agreement
Section 3.05 (T) – Member Work Load	AEA	Tentative Agreement
Section 3.05 (V) – Daily Lesson Plans	APA	Tentative Agreement
Section 3.18 – Staff and Other Meetings	APA	Tentative Agreement
Section 4.07 – Absences covered by Sick Days	AEA	TA on all but Elementary Library Technician Proposal
Section 4.09(D) – Absences other than Sick Days	AEA	Partial TA; Remainder unresolved
Section 8.04 – Substitute Teachers	AEA	Tentative Agreement
Section 8.05 – Extra Pay for Extra Duties	AEA/APA	Tentative Agreement
Section 8.15 – IEP Day/Supply Allowance Option	AEA	Tentative Agreement
Section 9.01 Medical Insurance	AEA	Unresolved other than TA on enhanced Dental coverage and changing FSA to IRS maximum
Section 9.08 – Early Retirement Announcement	AEA	Tentative Agreement
Section 11.01 – Initiation of Negotiations	APA	Tentative Agreement
Section 14.02 - Duration	APS	Tentative Agreement
OTES 2.0 Forms	APA	Tentative Agreement

All tentative agreements as entered into should be incorporated into the collective bargaining agreement. To the extent existing CBA language has not been modified by either tentative agreement or Fact-Finder recommendation, it should be included unchanged in the successor collective bargaining agreement.

## **CERTIFICATE OF SERVICE**

The foregoing report was delivered via email on this the  
16th day of November, 2022, to

Michael Hanna, Esq.

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and

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*Jack Buettner*

Jack Buettner