

# Random Notes

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## ***Board Approves Employee Discipline/Conduct Code; AEA Files Unfair Labor Practice Charge***

Superintendent Sylvester Small was the driving force behind the “Employee Discipline Policy/Code of Conduct” approved unanimously by the Board August 27<sup>th</sup>. AEA has responded to the Board’s action by filing an Unfair Labor Practice (ULP) charge with the State Employment Relations Board. A ULP is a claim by a party to a public employee collective bargaining agreement that the other party to the agreement, in this case the Board of Education, violated state labor relations law. Specifically, AEA’s claim is that the board had a duty under Ohio law to bargain the employee discipline code and that it cannot, as it did, unilaterally adopt a code. We’ve recently learned that AACP, the secretaries’ union, has also filed a ULP.

Small was apparently impressed by the broad, open-to-anyone’s-interpretation plan offered by Upslope Solutions, a consulting firm based in Glendale, Arizona. For the past several months, Upslope consultants have been in town, busily working with a corps of administrators to adapt their boilerplate plan to the Akron district, and to train all administrators on implementation. Incredibly, all of this was taking place at the same time we were negotiating contract language regarding member discipline. No effort was made by the Board’s negotiating team to propose any phase of the Upslope plan in those talks.

### ***Board Acts Without a Peep***

Within days following ratification of the contract, the Board voted unanimously to implement the Upslope Plan. We are surprised that not a single Board member sought our opinion or raised any questions regarding the possibility of our filing a ULP. At the very least, we expected Board president Linda Kersker, who is well-versed in public sector bargaining (due in part, at least, to her long and successful experience as former AEA counsel), to ask a question or two. Parts of the plan are so obnoxious and offensive that we wonder if the Board even bothered to read it before voting.

### ***Appropriateness of Expenditures Questioned***

Thus far, Upslope is into the district for more than **\$100,000**. While these dollars are not general fund monies, they are Title IIA. funds. We are seeking the assistance of the U.S. Department of Education to determine the appropriateness of paying for a conduct code with Title IIA. money. According to the fed’s website, IIA. funds are intended for preparing, training and recruiting high quality teachers and principals. Any expenditure of these

funds “must be based on a review of scientifically-based research that shows how such interventions are expected to improve student achievement.” In our opinion, one would have to exhibit extreme creativity to demonstrate a correlation between the Upslope plan and improved student achievement. In Akron, Title II funds are controlled by Bernie Burchett, Executive Director of Staff Development. Not coincidentally, Ms. Burchett appears to be the senior staff “point person” for the employee discipline plan.

### ***Some Elements Routine, Others Intrusive***

Among the 20 offenses listed in the Upslope plan

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### ***District Needs Another Administrator***

It pains us enormously to say this, but the Board needs to hire another central office administrator. General Counsel Steve DeVita left the district last year for a similar post in Cleveland. Since then, the Board has sought legal advice from various local and Cleveland based law firms. During negotiations, three opinions from three different lawyers who know little or nothing about daily operations in the district or about the working relationship between Association and management leaders unnecessarily prolonged negotiations and threatened its successful conclusion. Opinions were written about the “Me-Too” clause, inclusion, and the process to be used by the Health Benefits Committee to identify health care savings. They included inaccurate and/or outrageous claims. One was so convoluted that no one at the table could fully comprehend it. Retaining an in-house attorney and paying him or her an annual salary will likely save money and eliminate the divisive epistles from outside counsel whose billable hours increase as controversy increases.

### ***Board Approves Discipline Plan***

are many common offenses for which APS employees have been disciplined in the past, such as tardiness or violating Board policy. However, there are a host of offenses we consider vaguely and arbitrarily defined. For example, Offense # 7, “Off-Duty Misconduct,” is defined as “any incident or activity in which the employee is engaged that has occurred either **off district property or outside of the established contract day** which can be demonstrated to have either an actual **or a potential negative impact** upon the employee’s job performance. Offense #6, “Inappropriate, Abusive or Offensive Conduct (Non-criminal),” is defined exactly the same way. Offense # 9, “Alcohol & Drug-Related Infractions” is defined in part as, “An employee’s possession, consumption, or being under the influence of alcohol....while in a duty status, on district property, or while attending a district-sponsored **or sanctioned event**.... About a year ago, the district hosted an election day victory celebration at a local club. We are not being facetious in suggesting that large numbers of board members, administrators, teachers and union officials could have faced disciplinary action ranging all the way up to termination for excessively celebrating **off district property or outside of the established contract day at a district-sanctioned event** in a manner that could have had **a potential negative impact upon the employee’s job performance** (a little under the weather the next day).

We’re not the only ones who feel the plan may be a little vague and intrusive. In a document presented to the district by Upslope, the company writes: “Although on the surface many of the grounds for discipline may be far removed from the classroom, it is important for the Akron Public School District School Board to note that upon closer inspection, all offenses have the potential for some degree of negative impact on student achievement.”

### ***“Code Applies to Everyone”***

The superintendent is quick to claim that the Upslope plan applies to all employees, including administrators. History has taught us that the administration is loath to discipline its own, as evidenced most blatantly by their failure over the term of three superintendents to do anything yielding any visible results about a principal who was more often late to work than on time. There are countless examples of similar inaction, but belaboring them here is pointless. The real question is how 3 building supervisors can position themselves to oversee in excess of 50 building administrators and their subordinates. The answer, of course, is they can’t. The question then becomes how will misconduct by building administrators be reported and investigated? We don’t have an answer for that, and we’re not holding our breath in anticipation of a credible response from the superintendent.

We’d be more inclined to believe the superintendent’s assertion that the code applies to everyone except for

Offense #18, “Improper Planning and/or Delivery of Instruction.” We’re not aware of too many district employees other than teachers who plan for and deliver instruction.

The Association does not oppose disciplining employees for just cause. Provisions for doing so have been a part of the Agreement for over 35 years. If the Upslope plan survives our legal challenges, we don’t expect problems in the vast majority of buildings whose principals are effective leaders and are too busy to invest the huge amount of time required to implement the plan and who do not want to alienate their faculties. Our concern is with the few principals who have no leadership skills and who will use the plan to threaten and intimidate members. We will update you on our ULP and related issues in future editions of the *Notes*.

### ***KeyBank Customers Beware!***

Members whose pay is automatically deposited to a KeyBank account are advised to contact the bank to request a new account number.

KeyBank recently discovered that some account numbers have been used to create counterfeit checks that have been cashed and posted to the account. This fraudulent activity has affected retired members who maintained the KeyBank account they held while still teaching as well as active account holders. We are aware of checks having been cashed in California. The matter has not been solved and remains under investigation.

KeyBank has been making an effort to contact account holders by phone and/or mail in order to assign new account numbers. Bank officials are strongly recommending that account holders actively monitor all credit reports and bank statements.

To secure a new account number, members may visit a KeyBank branch or call Executive Client Relations M-F, 8:00 a.m. to 5:00 p.m. at 1-800-625-3256.

### **FYI**

● **AEA Recognition Dinner for Retired Teachers: Monday, Nov. 12, 6:00 p.m. at Guy’s Party Centre, \$25. Reservation forms and a list of retired teachers will be in the buildings next week.**

● **AEA Children’s Christmas Party: Saturday, December 8, 10:00 a.m. till noon at North High School. Look for reservation forms in your building in November!**

● **Our Classifieds are regularly updated on our website, [www.akronteach.org](http://www.akronteach.org). If you wish to place an ad, email it to [mike@akronteach.org](mailto:mike@akronteach.org).**

**PLEASE SUPPORT ISSUE 20, THE AEA-ENDORSED SUMMIT COUNTY ADM LEVY (REPLACEMENT AND DECREASE) ON NOVEMBER 6.**