

MEMORANDUM

TO: ESC Governing Board Members and Superintendents

FROM: Ohio School Boards Association
Ohio ESC Association

DATE: October 6, 2021

RE: Redistricting of ESC Territory and Governance

Introduction

The release of the state of Ohio's decennial census data by the U.S. Census Bureau triggers a requirement for Educational Service Centers and ESC governing boards constituted under section 3311.054 of the Ohio Revised Code to redistrict the ESC's territory.

This joint communication of the Ohio School Boards Association (OSBA) and the Ohio Educational Service Center Association (OESCA) is designed to support our collective memberships in this process by:

- 1) Bringing attention to the statutory requirement that certain ESCs redistrict following the decennial census,
- 2) Clarifying the statutory requirements under 3311.054 of the Ohio Revised Code,
- 3) Providing information about the uncodified language from HB 110 that allows impacted ESCs to delay redistricting, and
- 4) Addressing many of the questions raised by ESC governing board members and superintendents related to this process.

Background

Ohio ESCs, as defined in section 3311.05 of the Ohio Revised Code, are comprised of "the territory within the territorial limits of a county...exclusive of the territory embraced in any city school district or exempted village school district..." As such, ESCs are governed by publicly elected boards of education elected by the voting members of the local school districts' territory.

Amended Substitute House Bill 117 of the 121st General Assembly required ESCs serving only one local district to merge by July 1, 1997, and that all ESCs with an average daily membership (ADM) of less than 8,000 students merge by July 1, 1999. Subsequent legislation postponed the consolidation of certain ESCs to July 1, 2000.

With the resulting mergers, two types of ESC governing boards emerged:

- 1) Five member boards as defined under section 3313.01 of the Ohio Revised Code; and
- 2) Governing boards exceeding 5 members who govern multi-county ESCs resulting from mergers.

Multi-county ESC boards may be created under one of three sections of the Ohio Revised Code: 3311.053(A), 3311.054, and 3311.057. Those multi-county ESC governing boards created under section 3311.054 of the Ohio Revised Code are divided into a number of subdistricts equal to the number of board members serving on the board. It is these governing

boards that are directly impacted by the redistricting requirement outlined in greater detail below and within the attached “toolkit.”

Redistricting Requirement

As indicated previously, the release of the state of Ohio’s decennial census data by the U.S. Census Bureau triggers a requirement for Educational Service Centers and ESC governing boards constituted under section 3311.054 of the Ohio Revised Code to redistrict the ESC’s territory.

In mid-February 2021, the U.S. Census Bureau announced that it would delay the delivery of the census results until September 2021. The Census Bureau indicated that COVID-19 related shifts in data collection and the data processing schedule made it difficult to deliver the data by the existing deadline of March 31, 2021. Absent legislative intervention, this delayed release would have made it impossible for ESCs to comply with the statutory redistricting requirements. However, in section 733.50 of HB 110, the Ohio legislature provided a change in the timeframe to redistrict. Now, an impacted ESC must redistrict prior to July 1, 2022. If a governing board fails to redistrict the territory of its ESC by July 1, 2022, the state superintendent of public instruction must redistrict the service center by August 1, 2022.

The code mandates a new set of board members will be elected from the subdistricts most recently created by the redistricting process. Under HB 110, this election will take place in November 2023. This is true even if the results of the census do not require any changes to be made to the subdistricts and regardless of the number of years the current board members have remaining on their current terms.

A review of the 51 ESC board governance structures suggests this requirement will impact approximately 6 ESCs. These ESCs include:

- ESC of Central Ohio
- Gallia-Vinton ESC
- Midwest Regional ESC
- Northwest Ohio ESC
- Southern Ohio ESC
- Tri County ESC

However, it is strongly suggested that all multi-county, merged ESCs review their governance documents to determine if they are required to undertake the redistricting process.

Questions and Next Steps

As ESCs have become aware of these redistricting requirements and have begun the process of reviewing their existing governance structure several questions have emerged, including the following:

- How does the ESC determine the number of board members?
- What process should the ESC follow to determine new subdistricts?
- In determining subdistricts, is the new configuration based on the population of the electorate or school district student population (ADM)?
- What census numbers should be used (county or school district)?
- If school district numbers are to be used, how are those determined?
- If a non-contiguous school district has annexed to another ESC, how is the annexed territory factored into the new subdistricts? Is it included within the non-contiguous territory or does it constitute its own subdistrict?

The attached OSBA-created FAQ was designed to answer these and related questions and to assist ESC leadership and board members in understanding the statutory requirements and to guide their efforts in working through this complicated process.

OSBA and OESCA will continue to work in partnership to identify outstanding questions and provide guidance and support to ESC governing board members and leadership.

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Educational Service Center Redistricting *Frequently Asked Questions*

Section 3311.054 of the Ohio Revised Code requires certain joint educational service centers to redistrict their territories within 90 days after the official announcement of the federal decennial census. However, due to the delay of the 2020 census, an extension was granted and redistricting now must occur prior to July 1, 2022. After the redistricting occurs, all elected governing board members must stand for reelection from the newly redistricted subdistricts at the next municipal election, which will be November 2023. This memo provides an explanation of the statute and its requirements.

1. What does the statute require?

The statute requires that within ninety days after the official announcement of the results of the federal decennial census, certain educational service centers must redistrict their territory to ensure that their subdistricts are as nearly equal in population as possible. Again, the 2020 census was delayed, and the redistricting now must occur prior to July 1, 2022. After redistricting, each subdistrict is renumbered, and all governing board members are reelected from the new subdistricts at the next municipal election, which will be November 2023.

2. Which ESCs are subject to redistricting?

Only joint ESCs that were established under RC 3311.054 are subject to the requirement. In order to form a joint ESC, the merging ESCs were required to adopt identical resolutions and file them with the State Board of Education. At the time of the merger, the joint ESC was required to determine the number of members on its governing board and whether the members would be elected at-large or by subdistrict.

Joint ESCs should review their governing documents to determine how they were established. If the joint ESC decided to elect its board members by subdistrict, then it is governed by RC 3311.054 and is required to redistrict.

3. When is the “official announcement” of the results of the census?

Typically, the U.S. Census Bureau releases state data on a rolling basis throughout February and March. This year, the information will continue rolling out through August and the end of the year.

4. What is the deadline for redistricting?

The statute requires ESCs to redistrict their territories within 90 days after the official announcement of the federal decennial census. However, HB 110 changed the normal timeframe and now requires ESC to be redistricted by July 1, 2022.

5. Are there any standards for redistricting the subdistricts?

The redistricting is subject to the same standards that were in place when the subdistricts were initially created. This list appears in RC 3311.054(B)(2) and includes the following:

- Each subdistrict shall be as nearly equal in population as possible.
- Each subdistrict shall be composed of adjacent and compact territory.
- To the extent possible, each subdistrict shall be composed only of territory located in one county.
- To the extent possible, each subdistrict shall be bounded by corporation lines, streets, alleys, avenues, public grounds, canals, watercourses, ward boundaries, voting precinct boundaries, or school district boundaries.

6. What if we have territory that is not adjacent to any other territory? Can it be combined with nonadjacent territory to ensure that each subdistrict is as equal in population as possible?

Since the statute requires that each subdistrict be composed of adjacent territory, two nonadjacent territories cannot be combined to make a subdistrict. A joint ESC that finds itself in this situation may need to create a separate subdistrict that includes only the territory that is not adjacent to any other territory. The statute requires only that each subdistrict be nearly equal in population as possible. This serves as an example of a situation where it may not be possible to achieve such equality.

7. Can we use the redistricting process to add to or subtract from the number of subdistricts we have?

No. When the joint ESC was established, the governing board was required to divide the ESC territory into a number of subdistricts equal to the number of board members designated by the joint ESC. It does not appear that RC 3311.054 provides a process by which this number may be altered through the redistricting process.

8. Does the current governing board of the joint ESC need to vote to approve the proposed redistricting plan?

Although the statute does not specifically require the board to vote to approve the proposed redistricting plan, a board is empowered to act as a collective unit and perform acts involving judgment and discretion only by action at authorized meetings. As a result, a vote would appear to be required before the redistricting plan is implemented.

If the board is unable to come to an agreement, consensus building may be necessary. If the board continues to disagree and fails to redistrict the territory within the 90-day period, the statute requires the superintendent of public instruction to redistrict the service center.

9. Are we required to submit our new plans to state board of education or to the board of elections?

The statute does not require ESCs to submit their plans to either the state board of education or the board of elections. However, since the resolution creating the joint ESC was initially filed with the superintendent of public instruction, submitting an updated copy of the ESC's plan ensures that ODE has the most updated plan on file. Additionally, since the county boards of election will be integrally involved in subsequent ESC board member elections in November, OSBA recommends that they also receive a copy of the updated plan.

10. What happens to our elected joint ESC board members after the redistricting?

In November 2023, the members of the redistricted subdistricts will elect a new board. This is true even if the results of the census do not require any changes to be made to the subdistricts. Current board members who wish to remain on the board will need to be reelected in November 2023 regardless of the number of years they have remaining on their current term.

Board members elected from even-numbered subdistricts will serve a two-year term, while board members elected from odd-numbered subdistricts will serve for a four-year term. Thereafter, successors shall be elected for four-year terms.

11. How do we determine which subdistricts are even-numbered districts and which subdistricts are odd-numbered districts?

The statute does not require a specific process, so boards have great discretion in determining how its subdistricts are numbered. Boards could attempt to maintain the status quo, draw numbers out of a hat, etc.

12. What happens to our appointed joint ESC board members after the redistricting?

In order to appoint board members to the joint ESC, the elected joint ESC board members were required to pass a resolution outlining a plan for adding the appointed members. That plan was required to provide for the length of terms of the appointed board members. Because RC 3311.054 does not mention anything about appointed joint ESC board members, they do not appear to be immediately impacted by the redistricting requirement and would continue to serve their term as set forth in the board's plan until the expiration of their terms.

13. What happens if the redistricted subdistrict crosses over two counties?

To the extent possible, each subdistrict shall be composed only of territory located in one county. If it is impossible to contain the district in one county, a multi-county election may be held.

14. I have additional questions. Whom should I contact?

If you have general questions about the redistricting process or the requirements of RC 3311.054, please contact either OSBA's legal division at (614) 540-4000 or the Ohio ESC Association at (614) 846-3855. If you have technical questions about the redistricting process, please contact your board counsel.