



NDSBA

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HB 1356

Testimony of Amy De Kok

House Education

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Chairman Owens and members of the House Education Committee, my name is Amy De Kok. I am in-house Legal Counsel for the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. I am here today in opposition to HB 1356.

NDSBA has a number of concerns regarding HB 1356, which requires all public schools to allow a youth patriotic society to have access to students during instructional time and on school premises for purposes of recruitment and providing information. A very similar bill was attempted last session—SB 2299. That bill received a unanimous Do Not Pass recommendation from the Senate Education Committee and failed on the floor of the Senate.

By way of background, there is a federal law, the Boy Scouts of America Equal Access Act (Boy Scouts Act), that applies in this context, but is not nearly as broad or burdensome as the proposed bill. The Boy Scouts Act prohibits any public school that has created a designated open forum or a limited public forum and that receives federal funds from denying equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 of the United States Code as a patriotic society, that wishes to meet at the school within that designated open forum or limited public forum. ***Title 36 youth group*** means a group or organization listed in title 36 of the United States Code (as a patriotic society) that is intended to serve young people under the age of 21.

In short, the Boy Scouts Act gives the Boy Scouts and other covered groups equal access or a fair opportunity to meet if a public school designates a place for any outside youth or community groups to meet on campus for reasons other than to provide the school's educational program. Any access under the Act must be on terms that are no less favorable than the most favorable terms provided to one or more outside youth or community groups.

For the purpose of the Act, an elementary school or secondary school has a ***limited public forum*** whenever the school involved grants an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at

the school is compulsory. **Designated open forum** means that a school designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational program.

It's important to consider HB 1356 in light of the Act. HB 1356 essentially requires a public school to create a designated open forum (which is broader than a limited public forum) as defined above. This in turn would require the school to provide the same access to this designated open forum to all other community groups. This would also likely include the same access to students during instructional time as the youth patriotic society groups would get under the bill. HB 1356 removes the individual district's choice of whether to create a designated open forum or limited public forum. In addition, if a designated open forum exists, schools have very limited ability to control the content of speech. HB 1356 may allow for unfettered access to students in terms of content and cause disruption during educational time. Some of our districts have run into this issue already, and have spent significant time researching and adopting policies with extensive legal guidance.

Additionally, HB 1356 is unnecessary as the Boy Scouts Act already includes a requirement to allow access under certain circumstances, but still allows the school to choose whether to create a designated open forum or limited public forum in the first place. We believe this ability to choose is absolutely essential. While many of the organizations that would be included in this legislation have noble causes, the idea that a district would be unable to control access to students during instructional time is ludicrous.

Finally, over the past year, our schools have significantly reduced access to their buildings by the public in order to protect students and staff from the spread of COVID-19. Many schools have just recently returned students to full-time in-person instruction, while others are still in hybrid instruction. A few are still providing education by distance learning. Regardless of their instruction delivery model, most school still have in place significant restrictions on public access during and outside of school hours. The pandemic is ongoing and we are not yet sure what the next year will bring. Passing a law that would essentially open the schoolhouse doors to unfettered access by outside groups is not appropriate at this time.

For all of these reasons, NDSBA stands in opposition to HB 1356, and we urge a DO NOT PASS recommendation. Thank you for your time and I would be happy to stand for any questions.