

House File 568 - Introduced

HOUSE FILE 568

BY BODEN

A BILL FOR

1 An Act relating to speech and expression at school districts
2 and providing for remedies.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 256.9, Code 2021, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 63. Ensure that each school district has
4 adopted a policy that meets the requirements of section 279.73,
5 subsection 2.

6 Sec. 2. NEW SECTION. 279.73 **Speech and expression —**
7 **policies — remedies.**

8 1. *Definitions.* As used in this section, unless the context
9 otherwise requires:

10 a. *"Benefit"* with respect to a student organization at a
11 school district means any of the following:

12 (1) Recognition.

13 (2) Registration.

14 (3) Use of facilities for meetings or speaking purposes.

15 (4) Use of channels of communication.

16 (5) Access to funding sources that are otherwise available
17 to other student groups.

18 b. *"Materially and substantially disrupts"* means when
19 a person, with the intent to or with knowledge of doing
20 so, engages in violent or other disorderly conduct that
21 significantly hinders a previously scheduled or reserved
22 activity occurring on school grounds or in school buildings and
23 facilities. *"Materially and substantially disrupts"* does not
24 include conduct that is protected under the first amendment
25 to the Constitution of the United States, including but not
26 limited to lawful protests and counterprotests.

27 c. *"Outdoor areas"* means the generally accessible outside
28 areas on property owned or leased, or lease-purchased by the
29 school district where students, administrators, and staff at
30 a school district are commonly allowed, such as grassy areas,
31 walkways, or other similar common areas and does not include
32 a facility or outdoor area used by the school district's
33 athletics programs or teams, or other outdoor areas where
34 access is restricted to a majority of the school community.

35 d. *"School community"* means students, administrators, and

1 staff of a school district and guests invited to a school
2 district by the school district's students, administrators, or
3 staff.

4 *e. "School district"* means a public school district
5 described in chapter 274 and includes public school attendance
6 centers operated by a school district for instructional
7 purposes for elementary, middle, or secondary school students.

8 *f. "Student"* means an individual who is enrolled in the
9 school district.

10 *g. "Student organization"* means an organized and supervised
11 athletic program or school-sponsored extracurricular activity.

12 2. *Policy adoption.* The board of directors of each
13 school district shall adopt a policy that includes all of the
14 following statements:

15 *a.* That the primary function of a school district is the
16 discovery, improvement, transmission, and dissemination of
17 knowledge by means of research, teaching, discussion, and
18 debate. This statement shall provide that, to fulfill this
19 function, the school district must strive to ensure the fullest
20 degree of intellectual freedom and free expression allowed
21 under the first amendment to the Constitution of the United
22 States.

23 *b. (1)* That it is not the proper role of a school district
24 to shield individuals from speech protected by the first
25 amendment to the Constitution of the United States, which may
26 include ideas and opinions the individual finds unwelcome,
27 disagreeable, or even offensive.

28 *(2)* That it is the proper role of a school district to
29 encourage diversity of thoughts, ideas, and opinions and to
30 encourage, within the bounds of the first amendment to the
31 Constitution of the United States, the peaceful, respectful,
32 and safe exercise of first amendment rights.

33 *c.* That students and staff have the freedom to discuss
34 any problem that presents itself, assemble, and engage in
35 spontaneous expressive activity on school grounds, within the

1 bounds of established principles of the first amendment to the
2 Constitution of the United States, and subject to reasonable
3 time, place, and manner restrictions that are consistent with
4 established first amendment principles.

5 *d.* That the outdoor areas of a school district and public
6 school attendance areas are public forums, open on the same
7 terms to any invited speaker subject to reasonable time, place,
8 and manner restrictions that are consistent with established
9 principles of the first amendment to the Constitution of the
10 United States.

11 3. *Protected activities.*

12 *a.* Noncommercial expressive activities protected under the
13 provisions of this section include but are not limited to any
14 lawful oral or written means by which members of the school
15 community may communicate ideas to one another, including
16 but not limited to all forms of peaceful assembly, protests,
17 speeches including by invited speakers, distribution of
18 literature, circulating petitions, and publishing, including
19 publishing or streaming on an internet site, or audio or video
20 recorded in outdoor areas.

21 *b.* A member of the school community who wishes to engage
22 in noncommercial expressive activity in outdoor areas shall be
23 permitted to do so freely, subject to reasonable time, place,
24 and manner restrictions, and as long as the member's conduct
25 is not unlawful, does not impede others' access to a facility
26 or use of walkways, and does not disrupt the functioning of
27 the school district, subject to the protections of paragraph
28 "a". The school district may designate other areas of the
29 school grounds available for use by the school community
30 according to school district policy, but in all cases access
31 to designated areas of the school grounds must be granted on
32 a viewpoint-neutral basis within the bounds of established
33 principles of the first amendment to the Constitution of the
34 United States.

35 *c.* A school district shall not deny benefits or privileges

1 available to student organizations based on the viewpoint of
2 a student organization or the expression of the viewpoint of
3 a student organization by the student organization or its
4 members protected by the first amendment to the Constitution of
5 the United States. In addition, a school district shall not
6 deny any benefit or privilege to a student organization based
7 on the student organization's requirement that the leaders
8 of the student organization agree to and support the student
9 organization's beliefs, as those beliefs are interpreted
10 and applied by the organization, and to further the student
11 organization's mission.

12 *d.* This subsection shall not be interpreted as limiting
13 the right of student expression in a counter demonstration
14 held in an outdoor area as long as the conduct at the counter
15 demonstration is not unlawful, does not materially and
16 substantially prohibit the free expression rights of others
17 in an outdoor area or disrupt the functioning of the school
18 district, and does not impede others' access to a facility or
19 use of walkways, subject to reasonable time, place, and manner
20 restrictions that are consistent with established principles of
21 the first amendment to the Constitution of the United States.

22 *e.* This section shall not be interpreted as preventing
23 school districts from prohibiting, limiting, or restricting
24 expression that the first amendment to the Constitution of the
25 United States does not protect, including but not limited to
26 a threat of serious harm and expression directed or likely
27 directed to provoke imminent unlawful actions; or from
28 prohibiting harassment, including but not limited to expression
29 which is so severe, pervasive, and subjectively and objectively
30 offensive that the expression unreasonably interferes with an
31 individual's access to educational opportunities or benefits
32 provided by a school district.

33 *4. Public forums — freedom of association.*

34 *a.* The outdoor areas of school districts in this state shall
35 be deemed public forums. School districts may maintain and

1 enforce clear, published, reasonable viewpoint-neutral time,
2 place, and manner restrictions that are narrowly tailored in
3 furtherance of a significant institutional interest, but shall
4 allow members of the school community to engage in spontaneous
5 expressive activity and to distribute literature. Restrictions
6 instituted by a school district under this subsection shall
7 provide for ample alternative means of expression.

8 *b.* Except as provided in this section, and subject to
9 reasonable time, place, and manner restrictions, a school
10 district shall not designate any area of the school grounds
11 a free-speech zone or otherwise create policies restricting
12 expressive activities to a particular outdoor area.

13 *c.* Nothing in this section shall be construed to grant
14 individuals the right to engage in conduct that intentionally,
15 materially, and substantially disrupts the expressive activity
16 of a person or student organization if the school district has
17 reserved space in an outdoor area for activity by the person or
18 student organization in accordance with this section.

19 5. *Remedies — statute of limitations — immunity.*

20 *a.* A member of the school community aggrieved by a violation
21 of this section may file a complaint with the board of
22 directors of the school district.

23 *b.* A member of the school community aggrieved by a violation
24 of this section may assert such violation as a defense
25 or counterclaim in a disciplinary action or in a civil or
26 administrative proceeding brought against the member of the
27 school community.

28 *c.* A member of the school community shall bring a claim for
29 violation of this section pursuant to this subsection not later
30 than one year after the day the cause of action accrues.

31 *d.* This subsection shall not be interpreted to limit any
32 other remedies available to a member of the school community.

33 *e.* Nothing in this subsection shall be construed to make any
34 administrator, officer, employee, or agent of a school district
35 personally liable for acts taken pursuant to the individual's

1 official duties.

2

EXPLANATION

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The inclusion of this explanation does not constitute agreement with
4 the explanation's substance by the members of the general assembly.

5

This bill relates to public forums, freedom of expression,
6 and freedom of association at school districts.

7

DEFINITIONS. The bill defines "benefit", "materially and
8 substantially disrupts", "outdoor areas", "school community",
9 "school districts", "student", and "student organization" for
10 purposes of new Code section 279.73 established by the bill.

11

POLICY ADOPTION. The bill requires the board of directors of
12 each school district to adopt a policy that includes statements
13 describing the functions and roles of institutions with regard
14 to knowledge; protected speech; the freedom to discuss within
15 the bounds of the established principles of the first amendment
16 to the United States Constitution; freedom to assemble
17 and engage in spontaneous expressive activities subject to
18 reasonable time, place, and manner restrictions; and outdoor
19 areas as public forums. The bill requires the director of the
20 department of education to ensure that each school board has
21 adopted such a policy.

22

PROTECTED ACTIVITIES. Protected activities include
23 noncommercial expressive activities including but not limited
24 to oral or written means to communicate ideas, including but
25 not limited to all forms of peaceful assembly, protests,
26 speeches including by invited speakers, distribution of
27 literature, and circulating petitions. A member of the school
28 community who wishes to engage in noncommercial expressive
29 activity in outdoor areas shall be permitted to do so freely
30 subject to reasonable time, place, and manner restrictions.
31 However, nothing in the provision shall be interpreted as
32 preventing school districts from prohibiting, limiting, or
33 restricting unprotected expression.

34

A school district shall not deny a student organization
35 any benefit or privilege available to any other student

1 organization. The provisions of the bill shall not be
2 interpreted as limiting the right of student expression in a
3 counter demonstration held in an outdoor area so long as the
4 conduct at the counter demonstration is not unlawful, does
5 not materially and substantially prohibit the free expression
6 rights of others or disrupt the functioning of the institution,
7 and does not impede others' access to a facility or walkway.

8 PUBLIC FORUMS — FREEDOM OF ASSOCIATION. The outdoor
9 areas of school districts, which include public school
10 attendance centers operated by the school district, must be
11 deemed public forums. School districts may maintain and
12 enforce clear, published, reasonable viewpoint-neutral time,
13 place, and manner restrictions that are narrowly tailored in
14 furtherance of a significant institutional interest, shall
15 allow members of the school community to engage in spontaneous
16 expressive activity and to distribute literature, shall provide
17 for ample alternative means of expression, and, subject to
18 reasonable time, place, and manner restrictions, shall not
19 designate any area of the school grounds a free-speech zone or
20 otherwise create policies restricting expressive activities
21 to a particular outdoor area. Such provisions shall not
22 be construed to grant individuals the right to disrupt the
23 expressive activity of a person or student organization if
24 the institution has reserved space in an outdoor area for the
25 person's or organization's activity. An institution shall not
26 deny any benefit or privilege to a student organization based
27 on the organization's requirement that its leaders agree to and
28 support the organization's beliefs.

29 REMEDIES, STATUTE OF LIMITATIONS, AND IMMUNITY PROVISIONS.
30 A member of the school community aggrieved by a violation
31 of the provisions of the bill may file a complaint with the
32 board of directors of the school district and may assert such
33 violation as a defense or counterclaim. Such person has one
34 year after the day the cause of action accrues to bring a claim
35 for violation of the Code section. However, nothing in the

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1 bill shall be interpreted to limit any other available remedies
2 to a member of the school community.