

## SB 1096 (Parental Rights)

March 4, 2015

1. Mr. Chairman, members of the Committee, my name is Paul Stark. I am the General Counsel for the Idaho Education Association and I was asked to testify on behalf of the IEA in opposition to Senate Bill 1096.
2. It is not entirely clear what problems actually exist that this bill would address. Currently any parent can approach a school district about curriculum, request accommodations, and/or opt out of certain instruction, such as sex education for example. Not knowing what the actual problem this bill is attempting to address, here are our concerns with the bill.
3. First, the bill's language is overly broad and ambiguous, which will certainly create fertile grounds for litigation. The bill allows a parent to disrupt the educational process when learning materials or activities are "harmful."
4. Harmful is not defined, and indeed would be very difficult to define because it means differing things to differing people. For example, I have a son in the West Ada School District that would certainly say his senior project is harmful. In some respects, I wouldn't disagree. He has been in a bad mood the whole time and my wife and I get to listen to it. It is, in a sense, harmful to me and my family to have a grumpy teenager in the home. Potentially under this statute we could ask to opt out of his senior project. I readily agree that this scenario is a little unrealistic, however it does illustrate the point that the loose language in this bill could be taken to absurd extremes.
5. To the extent any action could be taken against an individual because they violated this statute, there is also a legal doctrine of Void for Vagueness under the 14<sup>th</sup> Amendment that would be applicable. I feel confident in such a situation that the term "harmful" is unconstitutionally vague.
6. In short, if passed this bill will create a new type of Individualized Education Program (or IEP) for each student depending on their beliefs and practices and what they may consider harmful. Each teacher, support personnel, and

administrator will need to be aware and versed on the details of each student's individualized restrictions. Failure to adhere to a plan will open the door for litigation under this statute.

7. There are several other potential problems that this bill will create that will inevitably cost school districts time and money:
  - a. Beliefs and practices are often ambiguous and difficult to define. For example, a parent could object to any curriculum that objectifies women. Or shows men in a bad light. Or shows one sex as being stronger or dominate over the other. Of course, each of these will be different for each parent, so the variation are endless.
  - b. If the activities or materials goes against an objection, then there will need to be a systematic protocol developed in the School District to know when to pull one set of students out, while leaving the others in. When you individualize pulling students out of class to the infinite and endless ways something could be considered "harmful" (because each one will be a little different) the outcome is not good.
  - c. At best there is constant disruption. At worst there is complete chaos and threats of lawsuits for violating this statute.
  - d. All of this contemplates that at the beginning of the year there is a curriculum presented to the parents, objections are lodged, and then the school district goes through the laborious task of comparative analysis of each belief, practice, or harmful topic and activity, against each and every portion of each class curriculum.
  - e. It is also a moving target as what is considered harmful, along with beliefs and practices, can change. So this is not a one-time analysis. How will districts with limited resources deal with this new burden?
  - f. Further, it means that once the curriculum is decided upon, a teacher can never deviate from the script for fear of offending someone. It will kill what it termed "the learning moment." That is where an event happens and the teacher takes that moment to teach in real time an important concept. For example, Israeli Benjamin Netanyahu addressing Congress, or the terror attacks on 9/11. The ability to take these events as teaching moments would be killed.

How would any teacher teach current events when what happens in the world is so varying and there are so many ways to inadvertently offend someone.

- g. Indeed, it is possible that an different individuals with different opinions on the middle east could single handedly destroy a current events class. Further, it is not hard to imagine how a civics class or a U.S. History class could get disrupted based upon individual beliefs.
  - h. If a student is periodically pulled from such a class, how is the teacher to assess what grade to give the student. Those pull out students will still need to be taught. Will there be a secondary curriculum need to be developed that is white-washed of any political, moral, or religious intonations for these pull out students? Or will all curriculums on the whole trend this way so that we don't offend anyone that might claim portions of the curriculum are "harmful."
  - i. It is also important to note that parents are not always in agreement. In a divorce situation you can have one parent that is a Christian and another that is Jewish. Both can object to an activity or materials being harmful, but different parts of the materials.
  - j. Lastly, the way this bill is written, a school district cannot refuse any accommodation no matter how absurd or unreasonable it is. If it is asserted that it is "harmful" then it must be accommodated. There is no process for resolving disagreements.
8. In conclusion, this bill opens a Pandora box of vague mandates, entirely unworkable conditions, and a vehicle for lawsuits. There is far more to be lost than gained by this legislation. For these reasons, we urge the Committee to vote against this bill.
9. I will now stand for any questions the committee might have.