

**January 25, 2023**  
**House Education Committee**  
**HB 1149**

Chairman Heinert and Committee Members:

My name is Matthew Fetsch. I am the Executive Director of the North Dakota High School Activities Association (The Association). My Board of Directors has asked that I provide testimony opposing House Bill 1149, along with some background information. This information is provided in order of this bill's review list items 2a-2c.

The Association is a non-profit organization comprised of 171 public and non-public member high schools. Membership in the Association is voluntary, with no membership dues paid by schools. The Association sponsors region and state tournaments, contests, and festivals for 22 sports and fine arts activities.

2a. The Association's Board of Directors is comprised of 11 members, 9 of whom are elected representatives. The elected officials represent school administrators from three Class A and four Class B geographic regions across the state, as well as the North Dakota Association of Secondary School Principals and the North Dakota Athletic Administrators Association. The other two board positions include the Superintendent of the North Dakota Department of Public Instruction and the Executive Director of the North Dakota School Boards Association. To summarize in legislative terms, the superintendents, principals, and athletic directors of the 171 member schools represent the Association's constituency. These constituents have the opportunity to provide input and direction from on behalf of their school districts and the school board who employ him. They also may propose amendments to the organization's Constitution and By-Laws, including those referencing Board of Directors representation and eligibility rules.

2b. The Association and its member schools' governing document is the NDHSAA Constitution & By-Laws. The Constitution was created and has been amended by member schools since January of 1908. The process to amend the NDHSAA Constitution is similar to the Legislative process, as any member school administrator may propose amendments. Any proposed amendments are voted on annually at the NDHSAA General Assembly in October, or at the annual Membership meeting in January.

The current NDHSAA transfer by-law does not allow students who transfer from one high school to another to participate on a school's varsity team until they have attended the new school for one calendar year. There are twelve (12) exceptions to this rule, the most common of which is when an entire family makes a lock, stock, and barrel move into a new school district that corresponds with a transfer of schools. Another common exception is when a student begins ninth grade, they are immediately eligible to represent their new school, regardless of where they reside, where they attended school the previous year, and etc. Other examples of exceptions to the transfer rule include a student who is placed with a family by a local Human Services agency, transfers between schools who are cooped, foreign exchange students who are placed in a member school by an approved Council on Standards for International Educational Travel program, students who are legal adopted, students returning from National Guard training, students who were attending a high school at the time it closed, as well as a student who transfers to be with a parent, who is a state legislator, during the legislative session.

Member schools have utilized the amendment process numerous times to make changes to the NDHSAA transfer rule. Prior to 2006, the ineligibility period for transfer students was 90 school days, or approximately one semester. At the time member schools felt the transfer rule was being abused and a large number of students were transferring schools for athletically motivated reasons, not educational reasons as intended when open enrollment laws were developed. For example, the 90-school day period of varsity ineligibility allowed students to transfer immediately after their basketball season was complete and to be immediately eligible at their new school when the next season began. An amendment was proposed, and member schools voted 106-43 (over 71%) to change the ineligibility period to 180 school days, at the time the equivalent of one school year.

Less than three years later, member schools felt another exception of the transfer rule which allowed students to re-transfer to their home school district and be immediately varsity eligible was being abused (for unintended reasons). In January of 2009 an amendment to eliminate the re-transfer rule was passed by a 114-3 (over 97%) vote of the member schools.

In January of 2016 the transfer by-law was again amended to change the 180-school day period of varsity ineligibility to one calendar year to help with consistency of enforcement amongst all member schools. In the past five years(s), exceptions to the transfer rule have been approved for English Language Learners placed in a new school by their local Board of Education, for students who participated in a United States Congressional Page Program, and most recently this past December for students who complete a study abroad and maintain all academic requirements.

2c. The Association's comparison to a quasi-governmental body in years past was largely based on the fact the Association was supported by public funds. This fact has changed in recent years, as the Association no longer charges membership dues, therefore no public funds are used to fund the NDHSAA. An overwhelming majority of the Association's annual revenue comes from region and state tournaments sponsored by the Association. Another rationale in past years for the Association's quasi-governmental function was due to several staff members being allowed to participate in the North Dakota Teachers Fund for Retirement, or TFFR. This is no longer an option, and no Association staff member has participated in TFFR since 2012.

In closing, the Association's Board of Directors requests NDHSAA by-laws and polices be left to their member schools with which they correspond regularly and were elected to represent.

Thank you for your time today, and I will do my best to answer any questions that you may have.