



HB 1489

March 26th, 2023

Celeste McCash, North Dakota Student Association

701-270-2419 | Konrad.mccash@ndus.edu

Chairwoman Larson and Members of the Committee: My name is Celeste McCash, and I am the Head Delegate for Lake Region State College with the North Dakota Student Association. I am here today in opposition to HB 1333.

The North Dakota Student Association is dedicated to ensuring that students have a voice at the table in policy that affects higher education. We consist of delegates from each of the 11 public North Dakota University System (NDUS) institutions, meeting monthly to engage students in discussions about North Dakota higher education policy. Since 1969, our mission has been to empower students, create collaboration between the North Dakota public universities' student bodies, and provide a student perspective on higher education policy.

The NDSA has historically supported protecting LGBTQIA2S+ students across the NDUS, and this bill erodes the culture of acceptance within the state. In 2022, the NDSA passed resolution [NDSA-09-2223](https://ndsa.ndus.edu/wp-content/uploads/sites/5/2022/11/NDSA-09-2223-.pdf)¹, which looked at the NDSA's legislative priorities going into the 23-25 biennium. One of the six legislative priorities passed with this resolution was protecting the rights of NDUS LGBTQIA2S+ students. In addition, NDSA passed resolution [NDSA-14-2223](https://ndsa.ndus.edu/wp-content/uploads/sites/5/2023/01/NDSA-14-2223.pdf),² which expressed our support for gender-diverse students in higher education, and [NDSA-23-2021](https://ndsa.ndus.edu/wp-content/uploads/sites/5/2021/03/NDSA-23-2021.pdf),³ which explicitly opposes excluding gender-diverse people from participating amongst their preferred gender. The documents mentioned above are why NDSA is seeking a **Do Not Pass** recommendation on HB 1489.

¹ <https://ndsa.ndus.edu/wp-content/uploads/sites/5/2022/11/NDSA-09-2223-.pdf>

² <https://ndsa.ndus.edu/wp-content/uploads/sites/5/2023/01/NDSA-14-2223.pdf>

³ <https://ndsa.ndus.edu/wp-content/uploads/sites/5/2021/03/NDSA-23-2021.pdf>

This bill seeks to alienate gender-diverse individuals in higher education by restricting which athletic activities and teams they can participate in. The presence of gender-diverse individuals in collegiate athletic events has not been an issue for any of the NDUS institutions. The standard policies for collegiate athletic events already mitigate potential problems arising from gender-diverse people. During their 2021 summit, The International Olympic Committee updated its guidelines for [gender-diverse participation policies](#).⁴ The new policies seek to reduce the harm caused by their prior testosterone-based policies that disqualified many women with naturally high testosterone. The 2021 policies encourage individual sports institutions to determine eligibility for gender-diverse individuals providing them with a suggested framework to operate under that encourages the inclusion of gender-diverse people.

Despite broad-sweeping implications, HB 1489 does not provide any prerequisites to who can seek action against institutional violations of the bill. As per the bill's text, in 15-19.6-04, subsection 1, line 10, "A student who is deprived of an athletic opportunity or who suffers direct or indirect harm as a result of an institution knowingly violating this chapter has a private cause of action for injunctive relief, damages, and any other relief available under the law against the institution." Can a student seek action if they suspect another student of being gender-diverse and participating with their preferred gender? Can a student pursue action against another student from a separate institution? Are institutions mandated to medically validate the sex of all students participating in a non-coed sport?

HB 1489 only has one outcome for North Dakota: economic losses. Individuals that are in the gender-diverse community, and their families, will not consider moving to or continuing to live in our state. The bill will exacerbate the issue of retaining students after completing their higher education, with many seeking a welcoming environment elsewhere. Many athletes will not want to be subjected to invasive medical evaluation for their sex and the possibility of being disqualified from financial aid if they are removed from their sport.

This bill attempts to solve a non-existent problem; it creates countless more, including, but not limited to, defying common standards for gender-diverse people, denying equal access for gender-diverse individuals, unpractical enforcement of HB 1489, violation of medical privacy,

⁴<https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf>

and furthering retention of students in-state. This is why NDSA seeks a **Do Not Pass** recommendation on HB 1489.