



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

P.O. Box 7128
Bismarck ND 58507-7128
1-800-932-8791 • (701)255-4127
www.ndsba.org

HB 1144

**Testimony of KrisAn Norby-Jahner
House Human Services
January 27, 2025**

Chair Ruby and members of the House Human Services Committee, for the record my name is KrisAnn Norby-Jahner. I am in-house legal counsel for the North Dakota School Boards Association. The NDSBA represents all 168 North Dakota public school districts and their boards. I am here today in opposition to HB 1144.

HB 1144 seeks to add a new section to N.D.C.C. § 15.1-06-21 that would require schools to designate a “restroom or shower room on schools grounds, which is accessible by multiple individuals at one time,” as exclusively for males or exclusively for females “and may be used only by members of the designated sex.” The new law would also prohibit “multi-stall gender neutral restrooms and shower rooms.” This proposed law is in conflict with current federal legislation (Title IX of the Education Amendments of 1972), as interpreted by the U.S. Department of Education and several federal courts.

In 2020, the U.S. Supreme Court held that taking adverse action against an individual based on “sex” includes a ban on sex discrimination based on sexual orientation and transgender status. See [Bostock v. Clayton County](#), 590 U.S. 644 (2020) (holding “it’s impossible to discriminate against a person because of their sexual orientation or gender identity without discriminating against that individual based on sex”). Although the *Bostock* decision was decided under Title VII of the Civil Rights Act of 1964 (a federal law that applies to workplace discrimination), a number of federal courts have applied *Bostock* when examining discrimination against students based on sex. Courts have concluded that sex-based discrimination against students includes discrimination based on sexual orientation or gender identity under Title IX. On June 16, 2021, the U.S. Department of Education issued a key [Notice of Interpretation](#), finding that the Department will enforce Title IX’s prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. Title IX prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance. The Department’s [Notice of Interpretation](#) has not been vacated in North Dakota and remains effective. This means that students who are banned from using a restroom or shower room on school grounds based on their sexual orientation or

gender identity may file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR) or in a federal court of law. HB 1144, without question, places school districts in a position of legal liability if they must enforce the unlawful restrictions that the bill contains. Issues regarding bathroom usage (including the availability of gender-neutral facilities or private facilities) remain best addressed quietly, privately, and on an individual basis between each school district and the student and his/her family.

HB 1144 also seeks to add a provision to N.D.C.C. § 15.1-06-21 that would require investigation and enforcement from the Attorney General, including bringing a court action against a school district where a civil penalty may be sought up to \$2,500 for each alleged violation. While accountability and adherence to the law are important, this bill introduces concerning mechanisms that may have negative consequences for local school governance and educational autonomy. It also imposes an undue burden on the Attorney General's office that current staffing and resources are unlikely to support effectively. It also duplicates existing internal complaint and investigation procedures that already exist in school districts and may be utilized by any patron who has concerns. It is administration that is in the best position to understand the individual needs of its students and the school board that is in the best position to understand the needs of the school district as a whole. This provision of the bill undermines local control and the ability of school districts to investigate, respond, and make decisions at a local level. The bill also fails to establish any clear parameters to prevent frivolous or politically-motivated complaints or to prevent individual students from being subject to scrutiny from the Attorney General who will need to review their private information and conduct an analysis into their sexual orientation and gender identity. This type of investigation would lead to violations at the State level under the Family Educational Rights and Privacy Act (FERPA) and Title IX.

Based on the foregoing reasons, NDSBA asks this Committee to issue a **do not pass** recommendation on HB 1144. Thank you for your time.