

**Testimony of Shiwali Patel  
Education Senior Counsel  
National Women's Law Center**

**Before the  
South Dakota Senate State Affairs Committee**

**February 22, 2019**

Thank you for the opportunity to submit testimony on behalf of the National Women's Law Center (NWLC) in opposition to H.B. 1108. NWLC has been working since 1972 to protect the rights of students to learn free from sex-based discrimination and harassment. NWLC routinely files amicus briefs in Title IX and Title VII court cases in support of transgender students and employees who experience sex-based discrimination. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all students in education and for the rest of their lives. NWLC urges you to oppose H.B. 1108, a bill that has no purpose other than to further sex-based discrimination and harassment and put the safety and opportunities of all students at risk.

Transgender students face higher rates of discrimination and harassment in schools than other students. According to a 2015 study of transgender adults, 77 percent of those who were perceived as transgender while in K-12 faced some form of mistreatment in schools due to their gender identity.<sup>1</sup> This includes verbal harassment (54 percent), physical attacks (24 percent), and sexual assault (13 percent).<sup>2</sup> For Native American transgender students, the experience of mistreatment jumps to an astonishing 92 percent, including 69 percent who were verbally abused, 49 percent who were physically attacked, and 22 percent who were sexually assaulted.<sup>3</sup> Nearly 17 percent of students—and 39 percent of Native American students—who were perceived as transgender left a school because of mistreatment.<sup>4</sup> These experiences often had a lifelong impact: for example, respondents who had been mistreated in school were more likely to have attempted suicide over their lifetimes.<sup>5</sup>

Instead of addressing these serious issues that threaten the safety, well-being, and education of South Dakota students, this bill would exacerbate harassment and unlawful discrimination against students because of their gender identity. H.B. 1108 would not allow teachers to acknowledge the existence of transgender people, meaning they could be prevented from addressing bullying against or providing support for students who are targeted because of their gender identity. This will not stop students from identifying as transgender, or from

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<sup>1</sup> SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 11 (2016).

<sup>2</sup> *Id.*

<sup>3</sup> NAT'L CTR. FOR TRANSGENDER EQUALITY, 2015 U.S. TRANSGENDER SURVEY: REPORT ON THE EXPERIENCES OF AMERICAN INDIAN & ALASKA NATIVE RESPONDENTS 12 (2016).

<sup>4</sup> SANDY E. JAMES ET AL., *supra* note 1, at 12; NAT'L CTR. FOR TRANSGENDER EQUALITY, *supra* note 3, at 12.

<sup>5</sup> SANDY E. JAMES ET AL., *supra* note 1, at 132.

discussing gender identity, but will make them feel unvalued and stigmatized, while rendering them less safe and more vulnerable to harassment and discrimination.

As attorneys representing students who have been harmed by sexual harassment, we know that too often that students who are harassed and seek help are often retaliated against or pushed out of school altogether. Rather than ensuring that fewer students face such experiences and that schools take more effective steps to address sexual harassment, H.B. 1108 would make it more likely that transgender and non-binary student who experience sexual assault and other forms of harassment confront inadequate school responses.

This bill not only threatens the safety and education of transgender students—it also threatens the safety and access to opportunity of all students, including students who do not conform to gender stereotypes. It could prevent teachers from supporting students who depart from gender stereotypes, leaving them more vulnerable to unaddressed harassment and bullying. Research shows that LGBTQ-affirming school policies lead to better mental health outcomes for *all* students, not just LGBTQ students.<sup>6</sup> And when schools and teachers support all of their students, LGBTQ students feel safer and even perform better academically.<sup>7</sup>

All students deserve to feel safe and valued in school and should have access to an education free from all forms of discrimination, harassment, and assault. H.B. 1108 is not only unnecessary and unwanted by teachers and students, it is an attack on these fundamental values in education. If enacted, it is likely to have an even more devastating impact on South Dakota's Native American students, and particularly on girls, who, whether transgender or not, already experience high levels of unaddressed harassment, assault, and discrimination in schools. It is unacceptable to prevent teachers from supporting their students and to prevent students from being supported in their schools. Because we oppose all forms of sex-based discrimination in educational settings, we oppose H.B. 1108 and urge you to vote no.

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<sup>6</sup> RYAN M. KULL ET AL., GLSEN, SUPPORTING SAFE AND HEALTHY SCHOOLS FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER STUDENTS 3 (2019).

<sup>7</sup> *Id.*