

Testimony in opposition to Engrossed House Bill 1256
Andrew P. Armacost, President, University of North Dakota

Dear Chair Lee and Members of the Senate Human Services Committee,

Please accept these comments relating to Engrossed House Bill 1256. I urge the committee to vote against this bill for the following reasons:

- Our biggest concern is the chilling effect on victim reporting. Many will not report and seek help out of fear that they will be prosecuted.
- The bill is unnecessary because Title IX regulations and all NDUS institution policies already contain provisions that prohibit false reports and set out a method of dealing with that.
- Current language speaks of a person “making an allegation,” which is vague. An allegation could be discussing an incident with a coworker or friend; making a “report” but asking only for support for themselves, not for formal institutional action; or a “formal complaint,” which is the only way to ask a university/college to take action under Title IX. This broad language furthers the risk of victims deciding not to come forward for help.
- Current language also speaks of cases that “have no basis in fact or law.” Universities do not make determinations on this basis. We are required by Title IX to make a determination, based upon a preponderance of the evidence, whether a policy was violated. A decision maker could determine there was no policy violation, but that does not mean the complaint had no basis in law or fact. It only means the gathered evidence was not sufficient to support a policy violation.
- The bill misstates the law in several respects. The title states “sexual harassment or discrimination,” but later says the penalty will apply in cases of discrimination based on sex, gender, sexual orientation, race, religion, and disability but purports that these protected classes all fall under Title IX. This is incorrect.
 - Title IX covers sex only (courts are currently divided about whether that included sexual orientation and gender identity as the Dept of Ed says it does.)
 - Title VII also prohibits discrimination based on sex, sexual orientation, and gender identity but isn’t mentioned at all.
 - Discrimination/harassment based on disability, race and religion fall under a combination of ADA, Section 504 of the Rehabilitation Act, Title VI and Title VII.
 - There are several protected classes (age, color, national origin, veteran status, etc.) that aren’t even included.

The details above were assembled by UND’s Assistant Vice President for Equal Opportunity and Title IX, Donna Smith. We ask you to consider these facts as you deliberate on this bill, and we urge a “Do Not Pass” from your committee.

With respect,

Andrew P. Armacost
President, University of North Dakota