

**TESTIMONY ON HB #1540
SENATE EDUCATION COMMITTEE**

March 17, 2025

By: Ross Roemmich, Management Information Systems Director

701-328-2189

North Dakota Department of Public Instruction

Chairman Beard and Members of the Committee:

My name is Ross Roemmich, and I am the Management Information Systems Director with the Department of Public Instruction. I am here to provide information and request clarification of some terms in House Bill 1540.

DPI appreciates the intent of this bill, but unfortunately, the Department was not asked to help develop its language. We'd like to address some points of concern and confusion, as well as areas that make this bill difficult, if not impossible, to implement.

First, we need clear and consistent definitions and uniform terminology to avoid misunderstanding and to ensure the bill's intent is carried out:

- In the definitions on Page 1, the bill language states that "administrator means an organization registered by the secretary of state to do business in North Dakota and designated by the Bank of North Dakota to assist in the

implementation of this chapter.” However, the Department of Public Instruction is also named as the administrator on Page 7, Line 4.

- Accountability: A definition of accountability needs to be added because it is not defined in Century Code, and it is specifically referenced on Page 7, Line 23, as a reason for which a participating school or education service provider can be barred from participating in the ESA program.
- Nonpublic school: While the bill language implies that tribal Bureau of Indian Education schools would be precluded from participation, it can also be surmised that BIE students would still be eligible to participate in the ESA for other, non-tuition purposes. Is this the intent of the bill?
- The terms “scholarship” and “grant” are used interchangeably to describe the ESA funds. We suggest using one term, although ESA funds are not necessarily considered scholarships or grants.
- The terms “grammar” and “language arts” are both used within the bill. We recommend using “English Language Arts” or “ELA” consistently to align with the name used for North Dakota content standards.

The additional questions/needs for clarification are in document order within the bill language.

- We have concerns about the vetting/approval process for private tutors, which is an allowable expense under this bill. It does not delegate this duty. What is the definition of “qualified” and who will conduct vetting and approval processes? (Page 2, Lines 8-9).
- “Priority access” for the ESA program is outlined on Page 2, Lines 15-16. This implies that there may not be enough funding for all eligible students. What guidance should be used to create a priority access list (first come, first served; lowest income; number of family members enrolled; etc.)? Does anyone have guaranteed enrollment?
- Page 2, Lines 22-23 states that home-educated children are not eligible to receive ESA funds. However, Page 4, lines 4-6 state that a student may transfer to home school and retain the funds in the ESA. This is contradictory. Also, there is no minimum timeframe for which an eligible student must maintain enrollment in any one school. This offers an opportunity for abuse. A student could be enrolled in a nonpublic school until they receive their first allotment of funds, purchase a computer, and then transfer to a home education setting. That would be legal under the bill as it is now written.
- As pointed out previously, both the Bank of North Dakota and the Department of Public Instruction are identified as administrators in this bill.

This bill also requires that each entity write administrative rules, but there is no direction given about which agency should write which rules for which topics.

- We have questions about the determination and approval of qualifying expenses outlined on Page 3. Specifically, private tutoring (as mentioned earlier), national norm-referenced examinations (there are a plethora to choose from), and the approval of appropriate technological devices. Furthermore, the language on Page 3, Lines 14-17 states that hardware purchased with ESA funds may not be resold within a year of purchase. A state agency cannot track and verify this for each eligible student without being intrusive. This provision will require an annual audit of all equipment purchased, and without it being physically inventoried in person, it will only provide a false assurance of compliance.
- Page 4, Lines 14-16, states that the Bank of North Dakota can make a parent of an eligible student ineligible for the ESA if the parent “substantially” misuses funds. This should be more clearly defined to ensure compliance and enforcement. We don’t speak for the Bank of North Dakota, but it appears this provision would turn the bank into a police agency of sorts.

- Page 4, Lines 23-25, states that upon the student's graduation from high school, the superintendent of public instruction shall close the student's account and transfer any remaining money in the account to the general fund in the state treasury. However, the bill does not give the superintendent direct access to student ESA accounts or transfer authority. This doesn't seem to be necessary or realistic if the ESAs will be managed by the Bank of North Dakota and/or a contracted vendor. Additionally, due to a lack of a mandated reporting method, we have concerns about how and if high school graduation will be accurately reported.
- Page 5, Lines 6-17, outline a school's responsibility, but are there expectations for eligible students who attend a NON-participating school and who use their funds for qualified expenses? Are there deadlines for the use of funds? Who conducts the verification and approval process for eligible expenses?
- There are significant concerns about the testing language and expectations outlined in this bill. First, the term "state achievement tests" should be "state assessment." North Dakota uses the state assessment to measure student achievement via levels of proficiency, not state "achievement."
 - There are numerous assessments built to measure different standards. Without students using the same assessment—and in this

case, using the same assessment public school students are using—there is no way to compare performance. Furthermore, there is no measure of student achievement when it comes to looking at North Dakota Content Standards. This is the primary reason the state summative exists, which is to measure student achievement via North Dakota State content standards and allow a comparison/standardized measure. DPI will simply not be able to determine the performance of students using this program and will not be able to make comparisons to public school students, or any other comparison. The bill calls for measuring “the achievements of the education savings account program.” Without the use of the State Student Information Systems and the state summative, DPI will not be able to do this.

- Page 5, Lines 26-27, states the results of tests are provided to the department or an organization “chosen by the state” on an annual basis. Which entity is allowed to choose the organization that can receive testing information?
- Because families can choose which tests they take for this annual requirement, the expectation is that the parent will work directly with test vendors. If the vendor doesn’t collect the aggregate data by

grade level, gender, family income level, and race, families will need to provide that information to the state with their test results. What is the method for that reporting? What happens if families do not provide the required information? Is there a consequence?

- Page 5, Lines 30-31, addresses graduation reporting. Who verifies high school graduation, and how is it verified if nonpublic schools are not required to (and choose not to) provide that information to the state?
- Page 6, Line 2, states that the department will collect all test results. This bill does not provide any automation or standardization method for doing this. The department will be responsible for collecting thousands of test results via potentially dozens of different test vendors—which will come with a cost of manpower and resources—but there will be no way to refine and translate the data.
- Page 6, Lines 9-11, outline the requirement to highlight high school graduation rates, college attendance, and college graduation. It is impossible to provide high school graduation rates without a denominator. What is the timeframe for which the department will track post-secondary activities? How will the reporting of those

activities be mandated and tied to the distribution of ESA funds? If students and families choose not to share post-secondary information, must they repay all the ESA funds they received and used as elementary and high school students? How is this repayment accomplished and enforced?

- Page 7, Line 1, states that participating nonpublic schools and education service providers must have the freedom to provide for the educational needs of the school's students without government control. This statement negates all other requirements in this bill.
- Page 7 outlines the department's duties.
 - Does the department have the authority to collect documentation proving residency, income level/tax brackets, etc. to determine student eligibility and to market the ESA to specified income levels?
 - Why would DPI be responsible for providing the web and phone-based support system for accounts managed by the Bank of North Dakota?
 - Lines 20-26 describe when the agency can bar a participating school or service provider from the ESA program. What is the definition of "routinely" for entities that fail to comply with accountability standards? Again, the bill also lacks a definition for "accountability."

- Lines 27-30 describe a situation in which the agency notifies eligible students if their participating school becomes ineligible. There is no way to verify enrollment in these schools or to obtain the lists of eligible students along with their contact information.
- To put it bluntly, if participating families and schools don't use the state's existing data system, there is no way to ensure proper execution of several of the requirements outlined in this bill.

We appreciate the bill's intent to provide more educational options for North Dakota students and their families, but this bill, as written, needs some significant improvements to ensure that it can be effectively executed. Our primary concerns lie in information collection, vetting and verification processes, the expectations for data reporting, and the time and cost required for the Bank and the Department of Public Instruction to implement this bill.

Robust verification mechanisms and clear accountability standards must be included to ensure proper fund use and accurate reporting.

Chairman Beard and Members of the Committee, that concludes my prepared testimony, and I will stand for any questions that you may have.