Testimony on House Bill 1540
Presented by Shane Goettle on Behalf of the State Association of Nonpublic Schools
March 16, 2025

HB 1540

Mr. Chairman and members of Senate Education Committee, my name is Shane Goettle, and I am here today representing the State Association of Nonpublic Schools. I appreciate the opportunity to provide testimony on House Bill 1540, a bill that proposes a significant step toward ensuring educational opportunity and equity for all North Dakota students.

This legislation establishes an education savings account (ESA) program, providing families with greater flexibility in choosing the best educational environment for their children. The ESA model empowers parents by offering financial support that can be directed toward tuition, educational services, and other qualified expenses. This approach is not only consistent with national trends but aligns with North Dakota's long-standing commitment to parental rights and educational excellence.

Strengthening Educational Choice and Parental Rights

As we consider the future of education in North Dakota, HB 1540 represents a meaningful and necessary advancement in how we support students and families. It recognizes that while public schools serve many students well, there are circumstances where alternative educational pathways better meet individual learning needs.

A recent statewide poll confirms that a substantial majority of North Dakotans support school choice policies, including the use of taxpayer dollars to assist public, private, and homeschooled students. Specifically, 64% of likely voters expressed support for such initiatives, with 43% indicating strong support. This data underscores a significant public endorsement for ESAs, which empower parents to allocate funds toward educational environments that best suit their children's unique needs. Implementing ESAs would provide families with the flexibility to choose appropriate educational settings, thereby enhancing educational outcomes across the state.

The constitutional framework of our state provides the legislature with the authority to develop policies that enhance educational access beyond the traditional public school system. HB 1540 does exactly that. By directing state resources toward student-centered funding, the bill ensures that parents, not bureaucratic systems, are the ultimate decision-makers in their child's education.

Constitutional Argument for Funding Choice in Education

The opponents of funding for choice in education frequently invoke North Dakota's constitutional provisions to argue against funding for nonpublic schools. However, these arguments are legally outdated and no longer hold merit.

- **Full Context of Article VIII of the North Dakota Constitution:**

    - **Section 1:** Establishes the requirement for a system of public, emphasizing the importance of public education as a foundation for democracy.
    - **Section 2:** Mandates a uniform system of free public schools, extending through higher education, but explicitly allows for tuition, fees, and service charges to assist in financing higher education.
    - **Section 3:** Requires that all schools provide instruction on civic virtues such as truthfulness, public spirit, and respect for labor.
    - **Section 4:** Grants the legislature broad authority beyond public schools, stating that it must take additional steps to prevent illiteracy, ensure uniformity in education, and promote industrial, scientific, and agricultural improvements.
    - **Section 5:** Limits funding raised specifically for public schools from being allocated to sectarian schools but does not apply to general state funding.

- **Section 4 and Its Legislative Authority Beyond Public Schools:**

    - Sections 1, 2, and 3 focus exclusively on public education, specifically the establishment, maintenance, and governance of the public school system, ensuring free public education and directing state resources toward public schools.
    - However, Section 4 shifts the focus from public schools alone to broader educational responsibilities, instructing the legislature to take any necessary steps to improve literacy, standardize education, and support scientific, industrial, and agricultural progress.
    - This section does not limit legislative action to public schools alone but rather affirms the Legislature's responsibility to improve education as a whole, including through nonpublic schools.
    - This section grants the legislature the authority to promote education broadly, including funding initiatives beyond public schools, such as parental choice programs, nonpublic school support, and specialized learning initiatives.
    - By authorizing the legislature to address educational needs beyond the strict confines of the public school system, Section 4 provides clear constitutional justification for policies like the Bill you have before you.

- **Article VIII, Section 5, and the Limits of Its Application:**

    - This section states that *"No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school."*
    - However, it is critical to recognize that this applies only to funds specifically raised for public schools, such as local property taxes and state-allocated funds ("school lands") earmarked for public education.
    - General state funds, such as the general fund, strategic investment and improvement funds, or legacy fund earnings, are not subject to this restriction and may be lawfully allocated to support parental choice initiatives.

- **Legal Precedents Supporting the Constitutionality of Parental Choice:**

- The language prohibiting certain public funds from finding their way to a "sectarian school" has has it origin in the series of "Blaine Amendments" which were state constitutional language required of several states who entered the Union in the late 1800s.
- The federal Blaine Amendment, a late 19th-century provision, was introduced as an effort to prohibit public funds from being used for religious education. Though this attempt at a federal constitutional amendment failed, many states, including North Dakota, incorporated similar provisions into their constitutions. These provisions were largely driven by religious discrimination rather than neutral funding policies. Over time, legal challenges have significantly weakened the enforceability of these amendments.
- The U.S. Supreme Court has ruled that excluding religious schools from generally available public benefits violates the Free Exercise Clause of the First Amendment.
- ***Espinoza v. Montana Department of Revenue*** **(2020):** The U.S. Supreme Court ruled that a state cannot exclude religious schools from generally available public benefits simply because they are religious in nature. Montana's attempt to prohibit religious schools from receiving funds under a tax credit scholarship program was deemed unconstitutional under the Free Exercise Clause of the First Amendment.
- **Carson v. Makin (2022):** The Court expanded on *Espinoza*, ruling that if a state provides a public benefit program that includes private education options, it cannot prohibit funds from being used for religious schools solely based on their religious identity.
- ***Pierce v. Society of Sisters*** **(1925):** This landmark case affirmed that parents, not the state, have the fundamental right to direct the education of their children, reinforcing the validity of school choice initiatives.
- **North Dakota Attorney General's Opinion 2022-L-07** made it clear that the Blaine Amendment language in the North Dakota's constitution is unenforceable under federal law. The opinion affirmed that state policies must align with U.S. Supreme Court rulings, which have struck down state attempts to exclude religious schools from generally available public benefits. While the opinion addressed teacher support grants, its broader legal implication is that state restrictions based on religious affiliation cannot be upheld where they contradict federal constitutional protections.

Accountability of Nonpublic Schools

Another concern often raised regarding choice in education is whether nonpublic schools operate without sufficient oversight. This is simply not true.

- **North Dakota has some of the strictest nonpublic school regulations in the country**:
  - North Dakota is one of only two states in the nation where nonpublic schools must meet approval requirements identical to public schools.
  - It is the only state that requires all nonpublic schoolteachers to be state-certified, ensuring that students receive high-quality instruction.

- ***SOURCE****: See attached "Regulation of Nonpublic Schools" and "How does North Dakota rank in its treatment of nonpublic schools?"*

- **Nonpublic schools must adhere to extensive state regulations**, including:
  - Approval by the North Dakota Department of Public Instruction to operate any elementary or secondary nonpublic school. *N.D. Cent. Code §15.1-06-06.*
  - Mandatory teacher certification. N.D. Cent. Code §15.1-18-07, -08, & -09.
  - Same length of school year and days. *N.D. Cent. Code §15.1-06-04 (sections 3 and 6).*
  - Meet state curriculum standards. *N.D. Cent. Code §§15.1-21-01 & -02, 15.1-21-02, §15.1-21-24*
  - Compliance with health and safety codes applicable to all educational institutions. *N.D. Cent. Code §§15.1-06-10, 23-07-16, 15.1-06-12, 15.1-18.2-04, 15.1-19-22.3.*

- **Nonpublic schools are directly accountable to parents**. Unlike public schools, which assign students based on geography, nonpublic schools must continuously earn parental trust and enrollment through academic quality, transparency, and student success.

Conclusion

HB 1540 is a forward-thinking piece of legislation that builds on North Dakota's commitment to educational opportunity, parental rights, and student success. By establishing education savings accounts, this bill expands access, empowers families, and strengthens educational outcomes across the state**.**

I urge the committee to support the idea of ESAs, recognizing its constitutional foundation, legal soundness, and its role in fostering a more dynamic and student-centered education system in North Dakota.

Thank you for your time and consideration.

Regulation of Nonpublic Schools

Eight States Require All Nonpublic Schools to be Approved by the State

Maine
Maryland
Massachusetts
Michigan
New Hampshire
North Dakota
Rhode Island
Washington

In Only Two of those States are the Approval Requirements for Nonpublic Schools Identical to the Requirements for Public Schools

Massachusetts
North Dakota

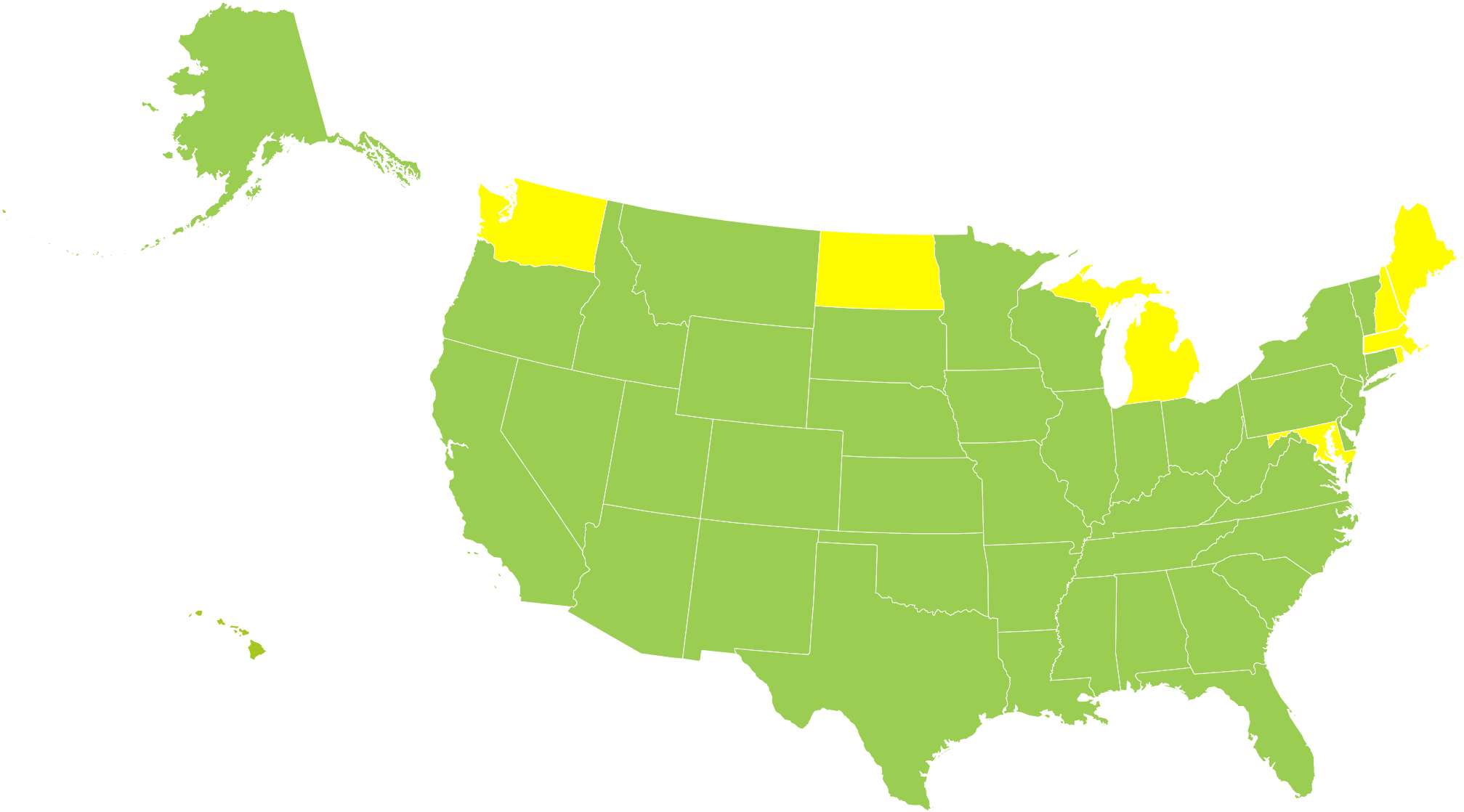
Only one of those Two States Requires Nonpublic School Teachers to be Licensed by the State

North Dakota

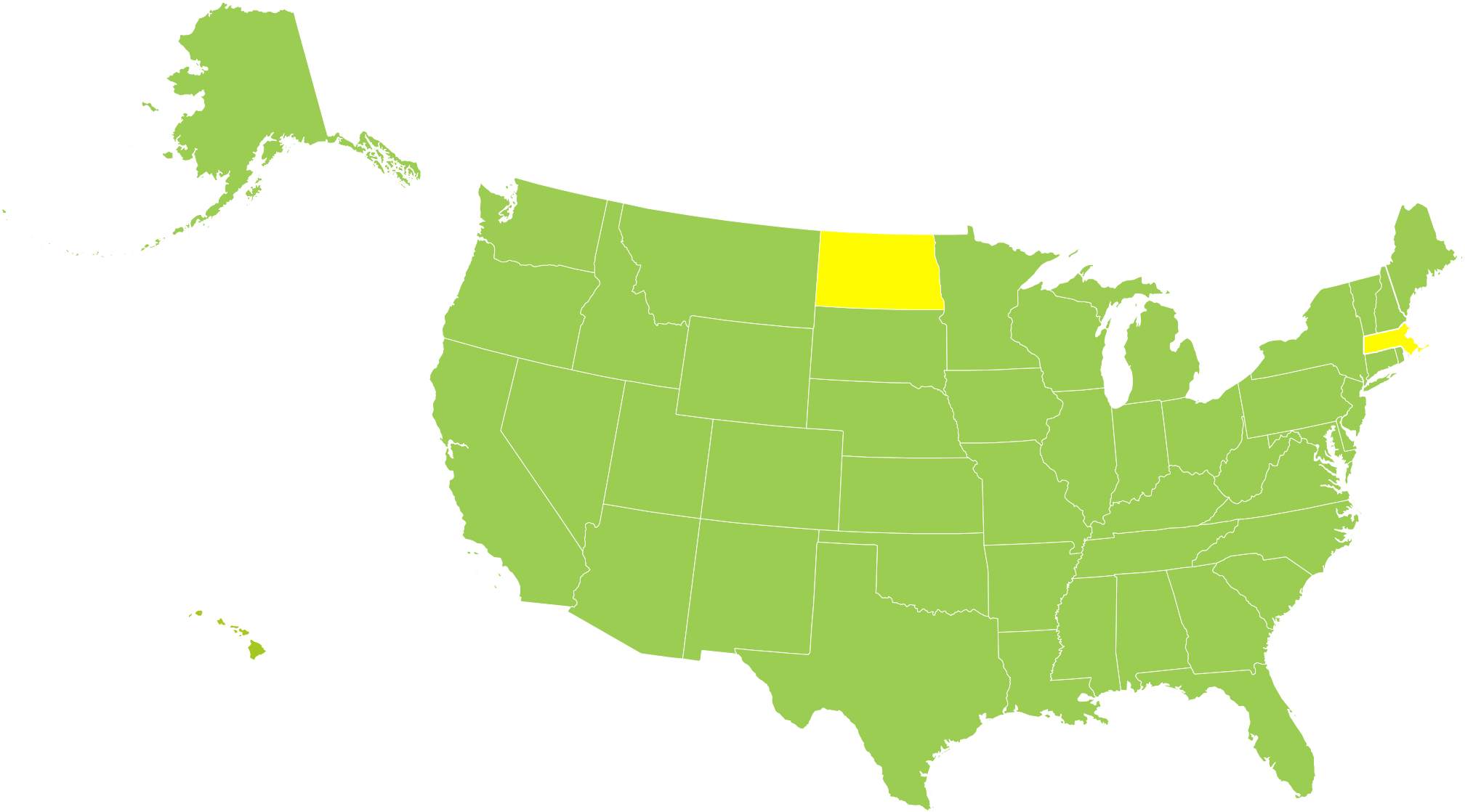
This leaves North Dakota as the only state in the nation that mandates both state approval for nonpublic schools identical to that for public schools and state licensed teachers in nonpublic schools.

SOURCES: STATE REGULATION OF PRIVATE AND HOME SCHOOLS, U.S. DEPARTMENT OF EDUCATION, 2025; SPECIFIC STATE LAWS.

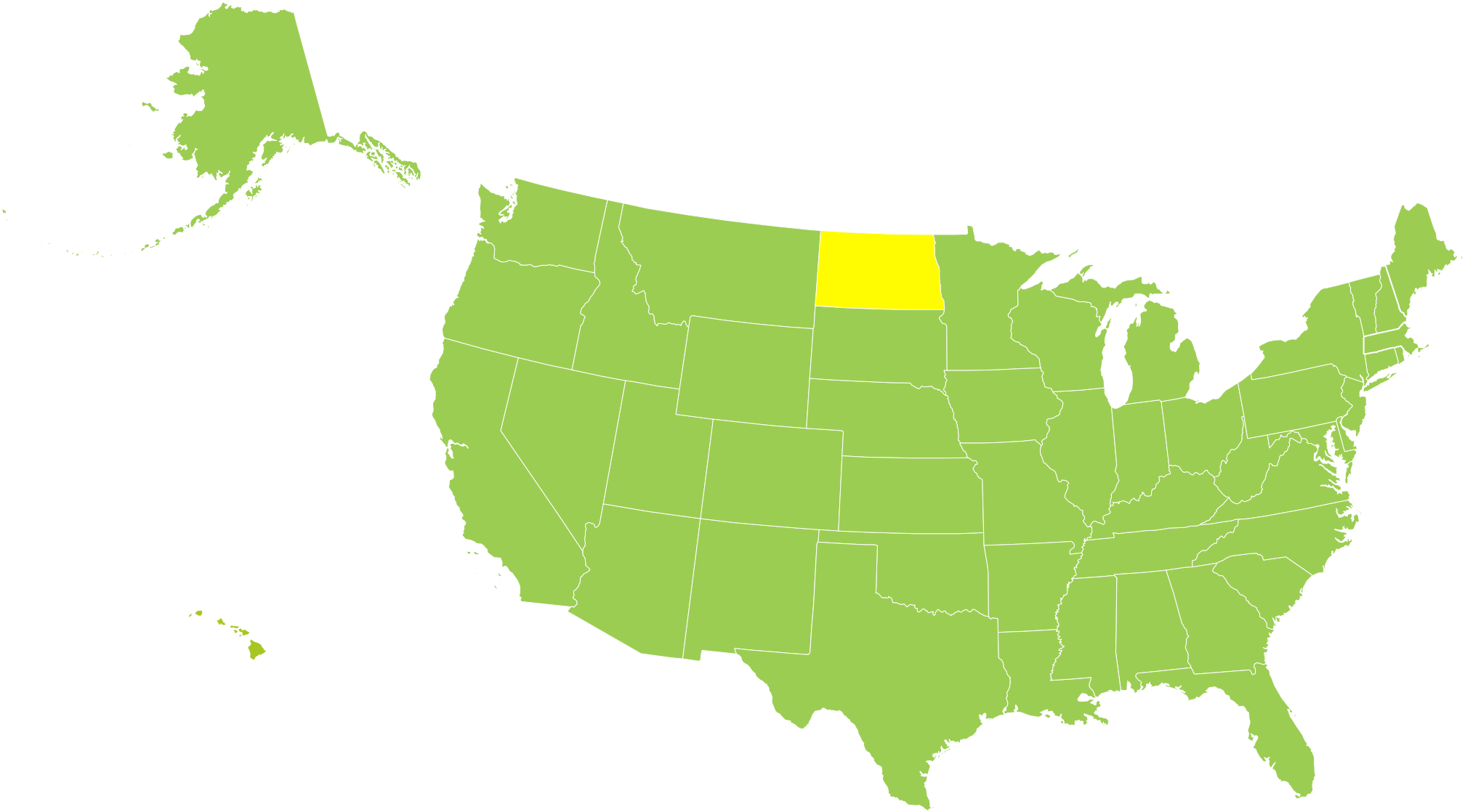
How does North Dakota rank in its treatment of nonpublic schools?



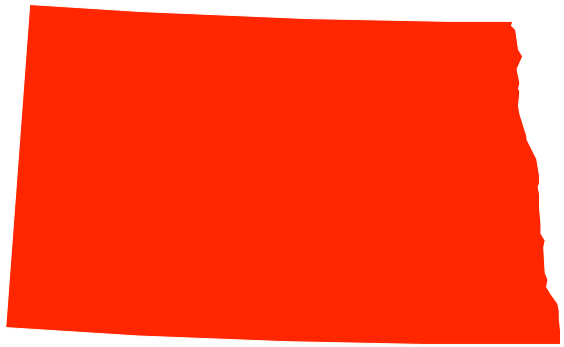
Only eight states require state approval of all nonpublic schools.



In only two of those states are the approval requirements identical to public schools.



Of those two states, only one requires classes to be taught by certified teachers.



This leaves North Dakota as the only state that mandates both state approval identical to public schools and state certified teachers.

Sources: State Regulation of Private and Home Schools, U.S. Department of Education, 2025; specific state laws.