

Testimony- School Choice Bills- 2025
North Dakota Legislature, 69th Legislative Session

Honorable Chair and Members of the Committee,

I strongly oppose SB2400 and HB1540 due to serious constitutional, financial, and accountability concerns. These bills divert public funds to private schools without oversight, weakening public education and exacerbating existing inequities. Below, I share my personal experience, key concerns, and recommendations for a more effective and equitable approach to education policy.

Issue One: Public Funding and Constitutional Concerns

Advocates for these bills argue that our state constitution is out of compliance with law. Proponents quote several supreme court rulings as the reason why this is true. If we dive deeper into these arguments, we can see things more clearly.

North Dakota’s Constitution clearly prohibits using public funds for sectarian schools:

“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.”
(Article VIII, Section 5)

Despite this, SB2400 and similar bills propose diverting taxpayer dollars through education savings accounts (ESAs) to private religious schools. The proposed **\$50 million ESA allocation to the department of instruction budget** challenges the intent of this constitutional measure.

When funds show that they are being allocated to a **pot of money** that directly fund **public schools**, would this align to the ND constitution? *School choice legal advocates* caution policy makes on implementing an ESA program in North Dakota without explicit constitutional amendments would invite **legal challenges** and create unnecessary **fiscal risk**.

The U.S. Supreme Court’s *Carson v. Makin* ruling, authored by Chief Justice John Roberts in 2022, further complicates this issue. In his majority opinion, Roberts stated that when a state decides to create a program that is used as a vehicle, in this case an ESA, to provide public funds to private schools, it cannot exclude certain religious schools from participation.

A key question for North Dakota taxpayers and lawmakers is whether they are comfortable with public funds being directed toward **private schools of any religious belief system**, including Hindu, Islam, Fundamental Christianity, Buddhism, or Wicca, should they decide to participate in the ESA program. This scenario has already played out in New York, Arizona, and Florida, where ESA programs had to allow funding for schools aligned with a variety of religious ideologies, leading to unintended consequences and legal disputes.

Issue Two: Fiscal Mismanagement in ESA Programs

ESA programs in other states have led to **financial mismanagement and fraud**:

- **Arizona:** ESA funds were spent on amusement parks, luxury vacations, and personal expenses.
- **Florida:** Parents misused funds for non-educational expenses like religious conferences.
- **Louisiana:** Audits exposed ESA dollars being spent on unauthorized personal purchases.

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To prevent misuse, ESA programs must include **strict reporting, third-party audits, fraud penalties, and annual public expenditure reports and presentations.**

Another **major flaw** is these bills also fail to prevent “**scholarship stacking,**” allowing some families to receive excessive financial benefits while others remain underserved.

Issue Three: True Costs of ESAs – Estimated Fiscal Impact

The fiscal impact of SB2400 appears significantly underestimated. Using *DPI's reports* and the *US Census* data, it appears that the **two-year cost** is more in the **\$117 million** range, including **\$42.6 million in lost public school funding.** If allocated to public schools, what would \$117 million provide?

- **1,410 teachers** to reduce class sizes.
- **3 new elementary schools** to address overcrowding.
- **234,000 updated textbooks** for quality education.
- **936 school buses** for safer transportation.
- **Increased special education funding** (\$11,153 per student) to drastically better serve some of the most vulnerable population.

SB2400 disproportionately benefits higher-income families, allowing a family of three earning up to **\$133,250 (500% of the federal poverty level)** to receive ESA funds—favoring private school families over expanding access for low-income students.

Another mechanism to **ensure fiscal responsibility** is to have program funding caps. Just as what is being discussed for property tax reform, caps will allow a managed growth of the program and ensure that funding does not go over appropriations.

Other suggestions would be to pro rate student scholarships. This allows for a more transparent, predictable, and fair process. It will also guarantee that the state will be able to stay within program allocations. There should still be a priority on students whose family income levels meet the federal free and reduced lunch limits, giving those with greatest the need, the best opportunity for educational choice, without cost being a barrier.

Issue Four: Negative Impact on Rural Communities

ESA programs harm rural communities, where private schools and specialized providers **do not exist.** Public schools are the **only option,** meaning ESAs will drain essential funds. This could lead to:

- **School closures and longer bus routes** for students.
- **Elimination of extracurricular activities.**
- **Fewer special education services** in already underserved areas.

Public schools are more than education providers in rural areas—they are **community hubs,** workforce training centers, and youth development spaces. Redirecting funding away from them will widen rural-urban education gaps.

Issue Five: Public Schools Face Persistent Funding Shortfalls

Federal laws such as the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 require public schools to provide equitable education to students with disabilities through very strict policy, but only **14-16% of costs are covered**, forcing districts to shift funds meant to be equal for all students to a more unequitable funding model.

Public School districts absorb the high cost of underfunded federal mandates by subsidizing the revenue for students without additional needs, allows for these funds to be redistributed to cover the higher cost of students who require additional services.

Case Study: Dickinson Public Schools

In 2023-24, Dickinson Public Schools' **total special education costs** were just shy of **\$11 million**. After receiving federal and state allocations, DPS still faced a **\$6 million special education funding gap**.

When funding gaps like this exist, they force districts to make **difficult budget decisions** such as:

- **Increase class sizes** due to fewer teachers.
- **Cut transportation and after-school programs** both are critical to student success
- **Hold off on building maintenance projects** creating much higher costs in repairs
- **Raise local property taxes** to offset funding losses.

ESA programs would **further reduce funding**, putting schools at risk of noncompliance with **IDEA and Section 504** mandates, leading to potential legal consequences.

Issue Six: Lack of Investments in Education

North Dakota has **168 school districts**, yet **90 are underfunded** based on state aid formulas. Instead of diverting funds to private institutions, the legislature should consider:

1. **Increase funding for special education and low-income students** Increasing school funding weighting factor for these targeted groups would create a more equitable education system for all students.
 2. **Invest in public school innovation**, Expanding STEM programs, career training, and early childhood education to improve student outcomes.
 3. **Expand rural education access**, including transportation and alternative learning opportunities.
 4. **Offer targeted tax relief**, Offering property and income tax relief will allow more household funds for families to use on many things, including educational choice if they so choose.
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Issue Seven: Public Schools Are Not Failing

Claims that North Dakota's public schools are failing are **not supported by data**. The state's students outperform national averages in standardized testing.

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Key achievements:

- **Ranked #2 nationwide in mathematics** and above the national average in three out of four NAEP categories.
- **First state education agency to earn national accreditation.**
- **Frank Newman Award for Innovation**, recognizing graduation pathways.

Additionally, legislation such as **HB 1478 and HB 1388** have expanded student opportunities through **internships, career training, and digital learning**. These initiatives directly prepare students for post-secondary success. These celebrations make school choice proposals based on alleged public-school failures extremely misleading.

Findings of Florida's ESA Program:

In contrast to the celebrations above, it appears that ESA programs have not seen as much academic success as our North Dakota public schools have. According to the **2023 Florida Family Empowerment Scholarship (FES) Program Report**, students who used FES vouchers to leave public schools, later returned significantly academically struggling and were unprepared for grade-level expectations compared to their peers. The report found that these returning students were behind in key subjects, particularly math and reading, due to inconsistencies in private school curricula and lower academic standards.

Meanwhile, students who remained in private schools under the FES program also faced challenges, with evidence showing that a large percentage failed to meet proficiency benchmarks. These findings highlight the risks of diverting public funds to private institutions that lack oversight, curriculum accountability, and most importantly, comprehensive student support systems.

Issue Eight: Public vs. Private Schools – A Personal Perspective

In 2020, my husband and I enrolled our first grader in a private school that was outside of the catholic school options, as we are not Catholic. We were drawn to its small class sizes and values we felt it would provide the best support and structure. We invested heavily in his education, purchasing learning aides and hiring an occupational therapist as recommended by the school. By third grade his new teacher was frequently reprimanding him in front of his peers and demanding he apologize to them for distracting them by asking too many questions. Soon after he was isolated for most of the school day to learn alone in a conference room with a stack of workbooks. Once we learned about this, by mutual agreement it was decided this education environment was not successful for him. On his last day there, he was told he could return when he could be "good." For a month or so after he transitioned to the public school, he would ask repeatedly if he was "good enough" to go back.

He was made to believe he was bad, noisy, disrespectful, and a distraction. Unbeknownst to us, his struggles were due to an undiagnosed disability—one that, with proper **support and collaboration**, could have been managed effectively. No child should ever feel unworthy of an education simply because they learn differently, especially in an education environment their parents chose.

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Public school was a turning point. Instead of being seen as a problem, he was recognized as a student with potential, and best of all they saw him for what he **truly is, a "good" kid.** From day one they held his hand through a supported learning plan, where we finally felt in control as parents and understood more about our son than we ever did before.

I hope that this tells the story of the educators, specialist, and administrators in our public-schools that work diligently each day to assist kids like mine, by encouraging them, lifting them up, and holding them accountable for strong academic success. **It's astonishing how they move the needle despite teaching a classroom of twenty-eight students.** They show up with a smile each day more eager to help each child without ever thinking twice about helping due to a student's abilities, demographics, income level, behavior issues, religious beliefs, living situation, or anything else that would put a child in a box, all while being underpaid and underappreciated.

Conclusion

SB2400 and HB1540, as written, pose a direct threat to North Dakota's public education system. By diverting funds to private schools with little accountability, they disproportionately benefit higher-income families while leaving underserved students behind.

Public schools serve all students, including those with disabilities, language barriers, and financial hardships. Instead of weakening the public system, the legislature should focus on strengthening educational opportunities within it—ensuring equitable access, improving student outcomes, and maintaining fiscal responsibility.

If meaningful amendments such are not made to address these concerns, I strongly urge all legislators to vote **NO** on these bills.

Thank you for your time and consideration.

Stephanie Hunter

References:

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