

2021 HOUSE EDUCATION

HB 1369

2021 HOUSE STANDING COMMITTEE MINUTES

Education Committee Coteau AB Room, State Capitol

HB 1369
1/25/2021

Relating to the establishment of an education empowerment program; and to provide an appropriation
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Chairman Owens called the hearing to order at 2:30 PM. Roll call: Reps. Owens, Schreiber-Beck, Heinert, Hoverson, D. Johnson, M. Johnson, Longmuir, Marschall, Pyle, Richter, Zubke, and Hager were present. Reps. Guggisberg and Simons were absent.

Discussion Topics:

- New funding for COVID-19 related struggles with schooling
- Finding new and improved methods of teaching
- Tools for parents to help children to excel despite learning disabilities
- Competency-based schooling versus early intervention learning
- Value in private education system
- Finding financial help for student for qualified educational programs
- Student shift from public to private
- Costs differing from public, private and homeschooling

Rep. Kading introduced the bill, #3371, #3372

Rep. Mike Schatz, additional sponsor of bill

Bette Grande, Roughrider Policy Center, #2341

Mark Leingang, #2505

Ken Hall, #3003

Marty Lueken, Fiscal Research and Education Center, EdChoice, #2529

Christopher Dodson, ND Catholic Conference, #3012

Linda Thorson, State Director, CWA of North Dakota, #2308

Mark Jorritsma, Ex. Director, Family Policy Alliance of ND, #2707

ShaneGoettle, State Association of Nonpublic Schools, #3000

Erica Smith, Attorney, Institute for Justice, #2343

Alice Neira, ExcelinEd in Action, #3074

Cara Currie-Hall oral testimony in favor.

Nick Archuleta, ND United, #2836

Aimee Copas, Exec. Director, ND CEL, #3375

Alexis Baxley, ND School Boards Association, #3041

Written testimony:

#3063, #2840

Chairman Owens closed the hearing on HB 1369 at 4:18 PM.

Bev Monroe, Committee Clerk

My name is Tom Kading and I am from District 45 in Fargo. HB 1369 is a bill to create an education empowerment program. The purpose of the program is to help provide options and support for students in North Dakota.

This bill provides the opportunity for those in North Dakota to attend education opportunities other than traditional public education. It provides the opportunity to all, not just those who are wealthy enough to send their children to private education. And it does all this while saving the state money.

The average cost to educate a student in public school costs taxpayers \$16,526. Funding comes from state coffers (the general fund, special funds, etc.) and from the locals. Approximately \$10,036 is the per pupil payment from the state coffers whereas the remainder is from other sources. So, to answer the first question, this bill does not take funds away from schools. What this bill does is provide new funding; new funding for those who are struggling with COVID-19, those wishing to move to private and alternative schooling, thus dealing with bullies, and those who are unsatisfied with what is being taught in public education.

If a child can be sent to alternative education for less than the tax payers cost, the savings to the state becomes exponential and stretches into the hundreds of millions.

This bill provides an amount of funding up to the equivalent of 75% of the per pupil payment (approx. \$7500) for those not attending public education it is up to 20% of the per pupil payment (approx. \$2000) for those attending public education but needing additional educational resources.

This last year we have seen some very concerning things in this country and our constituents are asking for options.

1. First, COVID-19 has had an incredible impact on education. When COVID shut down schools, sports, and other activities this year there was a huge outcry for solutions from parents. Now I am not here to talk about the pros and cons of how the pandemic was handled, rather this is to point out that parents are looking for alternatives. Some parents choose to transition their children to private school, some choose to move to homeschooling, some choose to hire tutors, and some choose to employ a combination. Regardless of parents' decisions, it reflected an apparent reality that public education was not fully equipped to handle the pandemic's catastrophe. By no means is this a slight or an insult against public education, rather it is just a reflection as to the vast impact of COVID-19. I believe DPI and the public education system has worked very hard and have implemented many effective responses.
2. Secondly, this last year we have seen some major socioeconomic changes. We have seen rioting, an economic recession, a crash in oil prices – which effectively fund a huge part of our state budget, and a change in some of the philosophies that are being taught in public education. Across the country, many schools are being told to teach political ideas and concept which not all

who send their children agree. I am going to list a few agendas that have shown up in schools across the country. None of these are reported from North Dakota schools, and again, this is not a slight against the North Dakota school system, it is just a reflection of some of the national trends that are pushing North Dakota parents to look for options outside of public education. Some of the ideas being pushed include things like:

- a. I quote: "embrace and encourage progressive viewpoints and perspectives" This was from an Illinois policy.
- b. Another aim of the Illinois policy was to push quote, traditionally religious and/or conservative teachers are commanded here to affirm against conscience that there are a vast number of genders and highlight that claim in their teaching.
- c. Others have promoted the belief that capitalism is racist.
- d. Some in Minnesota are even pushing to drop World War 1, 2 and the Holocaust curriculum in favor of certain social justice teachings.

The reality is, no matter the curriculum, there is a significant division in our country and public education is not a one size fits all. There are many different religious and political perspectives as to education.

Further, bullying is especially problematic when it comes to such differences.

3. The growth in alternative education and private education has exploded this last year. This may be due to COVID, disagreement with social agendas being taught, or just a general trend towards non-public education. Either way, this is a clear trend that indicates our constituents do not want to be bound to only public education as an option. By not providing for options for all of our children, we are in effect determining that those with less financial means and less resource are bound to public education while those with more financial means have opportunity.

Now the money being used in this bill to fund these opportunities is new money. It is not money that is taken from schools. It is new money. There have been a few conversations with appropriations, and the answer hasn't been no. They said they will take a look if we can get it through this committee. If this committee believes we should provide options for those suffering from COVID, those looking for alternatives, if it believes people with different religious or political backgrounds should be given an option, and that the growth in private and alternative schooling applications indicate a trend from our constituents, pass this bill onto appropriations so that the money can be found.

I want to talk a little bit about how the bill works.

1. The funding for public school children may be up to 20% of the child's per pupil payment.
2. The funding for public school children may be up to the equivalent of 75% of the child's per pupil payment.
3. This amount is a cap it is not the minimum. For example, if there are more students that apply, the payment amount may be less.

4. The 20% amount which is available to those in public education is meant to help with needs that are not fully being met by public education. Things like additional tutoring or additional resources can be purchased with this 20%.
5. My intent was for payments to be made directly to providers of educational resources rather than the parents, but it has been brought to my attention that payments may be needed to be written to the parent and the resource provider. This is due to a recent court ruling.
6. DPI will oversee and implement the program. DPI will set the standards for providers, set the standards for allowable expenses, and generally set policy for the program. DPI is best positioned for this and can best serve our students.
7. Allowable expenses are described in 15.1-39-05. The Qualified expenses have been significantly narrowed to ensure there is little risk of abuse.
8. Means for auditing, suspension of accounts, and referral to the attorney general for fraudulent behavior are included in the bill.
9. To carry out the program, an appropriation of \$200,000 is for DPI to implement. Kirsten Baesler and I have had in depth discussions regarding the bill and the agency would need approximately \$100,000 for three years to set the program up. My intent is to provide for it, but as we all know we can only bind the next 2 years. I would hope the next legislative session would allow for the remaining \$100,000.
10. The second appropriation in the bill is \$5 million for the program itself.

As I previously noted, the answer from appropriations is not a "no." I urge you as a committee to not focus on the appropriation, but rather look at the policy to make sure it is consistent and makes sense. This bill provides for important needs to our students which have become even more apparent given COVID, given various socioeconomic changes, and the trend towards alternative education. There are a few amendments which have been prepared to ensure there are no structural issues with the bill. Please consider them and those who speak behind me will go into any questions regarding them. As you will see in following testimony, this concept has received wide spread support, please consider it favorably. Thank you and I am happy to stand for questions.

21.0211.04002
Title.

Prepared by the Legislative Council staff for
Representative Kading
January 25, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1369

Page 1, line 14, remove "Financial institution" means a bank, credit union, or savings and loan association"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "5."

Page 1, line 19, replace "6." with "5."

Page 1, line 22, replace "7." with "6."

Page 1, line 23, replace "8." with "7."

Page 2, line 1, replace "9." with "8."

Page 2, line 3, after "funds" insert ", from an approved vendor list as determined by the superintendent of public instruction"

Page 2, line 7, replace "each" with "to pay qualified providers on behalf of a"

Page 2, line 8, remove ", who may use the funds in the account only as permitted under"

Page 2, line 9, replace "this chapter" with "who is eligible for the program"

Page 2, line 11, replace "fund the participant's account" with "pay qualified providers on behalf of a program participant who is eligible for the program"

Page 2, line 12, replace "that is" with "up to"

Page 2, line 22, replace "fund the participant's account" with "disburse payments from the account as checks payable to the parents of an eligible student. The superintendent shall mail the checks to the qualifying school at which the eligible student is enrolled. The parent of the eligible student shall endorse the check before the check is deposited. The superintendent shall provide the parents"

Page 2, line 23, replace "that is" with "up to"

Page 3, line 3, remove "A parent who signs an agreement with"

Page 3, remove lines 4 and 5

Page 3, line 8, remove "A parent who signs"

Page 3, remove lines 9 through 11

Page 3, remove lines 22 through 30

Page 4, line 1, replace "15.1-39-05" with "15.1-39-04"

Page 4, remove line 17

Page 4, line 20, remove "A qualified provider shall give a parent a receipt for each qualifying education expense"

Page 4, remove line 21

Page 4, line 22, remove "4."

Page 4, line 25, replace "15.1-39-06" with "15.1-39-05"

Page 5, line 7, replace "15.1-39-07" with "15.1-39-06"

Page 5, line 23, replace "15.1-39-08" with "15.1-39-07"

Page 5, line 26, remove "for each program"

Page 5, remove lines 27 through 30

Page 6, remove lines 1 through 8

Page 6, line 9, replace "market rates" with "as a qualified provider"

Page 6, line 10, replace "5." with "2."

Page 6, line 10, replace "an" with "the"

Page 6, line 12, replace "15.1-39-09" with "15.1-39-08"

Page 6, line 16, replace "15.1-39-10" with "15.1-39-09"

Page 6, line 17, replace "the account of" with "payment for"

Page 6, line 18, remove "or who"

Page 6, line 19, remove "commits a substantial misuse of program funds"

Page 6, line 20, replace "account" with "payment"

Page 6, line 20, remove "and no further"

Page 6, line 21, remove "transactions are allowed on or disbursements made from the account"

Page 6, line 25, replace "closure of the suspended account and declare the program" with "suspension of payment to the qualified provider for the"

Page 6, line 27, replace "account" with "payment"

Page 6, line 29, replace "account" with "payments"

Page 6, line 30, replace "15.1-39-11" with "15.1-39-10"

Page 7, line 6, replace "15.1-39-12" with "15.1-39-11"

Page 7, line 7, remove "an"

Page 7, line 8, replace "account" with "payments"

Page 7, line 10, replace "15.1-39-13" with "15.1-39-12"

Page 7, line 20, replace "15.1-39-14" with "15.1-39-13"

Page 7, line 26, replace "15.1-39-15" with "15.1-39-14"

Page 8, line 1, replace "15.1-39-16" with "15.1-39-15"

Page 8, line 4, replace "15.1-39-17" with "15.1-39-16"

Renumber accordingly

*Complaining about a problem
without proposing a solution
is called whining.
-Teddy Roosevelt*



Bette B. Grande
President & CEO

January 25, 2021

Testimony regarding HB 1369 - The Education Empowerment Program (EEP)

Chairman Owens and the House Education Committee,

Every child is unique in his or her learning style and one of the most important duties for any parent is to see their child receives the programs, tools and opportunities to realize the education they deserve. Each child learns differently and sometimes a program is needed that goes beyond the traditional classroom in order for the child to progress and keep pace with his or her peers.

Empowering parents to meet the needs of their children has proven itself in normal times, but events of this past year illustrate the need to empower parents even more. Parents, especially those with limited resources, need tools and programs that meet the educational needs of each child in their home. Now is the time for North Dakota to help parents create the educational program that addresses the challenges families face today.

The proposed EEP in this bill is focused on Kindergarten through 5th grade.

An EEP will help parents by:

1. providing resources to secure supplemental educational programs and assistance that best meets the needs of their children; and
2. increasing access to basic education.

The Educational Empowerment Program established by this Bill will be administered by the Department of Public Instruction (DPI).

The EEP accounts established with DPI will cover expenses for instructional or therapeutic needs. DPI will pay qualified providers for expenses incurred by program participants.

There are two types of programs under this Bill:

1. The parents of public-school children may apply to DPI for program funds (up to 20% of the per pupil payment) to be used for qualified educational programs. A non-exhaustive list of the types of programs contemplated is on page 4 of the bill.

Examples: training for dyslexia, additional course offerings otherwise unavailable, educational therapies or services, tutors, etc.

2. Parents wanting a child to be enrolled in a non-public school can apply to DPI for funds (the maximum per child is the amount equivalent to 75% of the per pupil payment cost).

A check payable to the parent will be sent to the qualifying school where the eligible student is enrolled. The parent's endorsement of the check is required. The appropriation amount and number of applicants may determine the amount of participants and payment level.

DPI will handle all transfers of payments for the education programs. This is done through a vendor program already in place at DPI. All programs will be approved by DPI.

This program contemplated in this Bill is constitutional.

The U.S. Supreme Court ruled in 2020 (*Espinoza v Montana Department of Revenue*) that the "Blaine Amendment" provision in Montana's Constitution is unconstitutional under the U.S. Constitution. This case related to a tax credit scholarship policy enacted in 2015. This Supreme Court ruling applies to North Dakota as well and the Blaine Amendment provision to our Constitution no longer prohibits this Bill.

Bette Grande, CEO Roughrider Policy Center

Bette Grande, CEO
bette@roughriderpolicy.org

Jan 24th, 2021

Chairman Owens and members of the House Education Committee

RE: House Bill 1369

Thank you for your time today to hear my thoughts regarding House Bill 1369.

My wife and I made a choice, after much debate, to enroll our children in private school back in 2013. Three of our four children currently attend private school; kindergarten, third and fifth grade, with our fourth set to attend in two years. I am an engineer and my wife is a part time nurse (she works night shifts solely to pay for our children's tuition). We are both lifelong residents of North Dakota, having graduated from local public high schools.

We are not wealthy, rather we're average "middle class" folks. We desire the best learning environment for our children. Our tuition bill is approximately \$20,000 annually. Overall, we will spend over \$400,000 on our children's primary education, before they go to college. This is a burden that the state does not have to bear. And one that I initially balked at, to great length, resulting in several arguments.

I believe parents have ultimate responsibility for their child's academic success and the burden should not fall solely on the state. It's understood that that reality is becoming less and less common, and we need to work to reverse that trend. Ultimately, if you want participation, most will give greater attention to an activity if their personal wealth is tied to it, and it need not be 100%. I believe the proposed amount with parents owning the remaining is an excellent way to engage the public, reduce overall school budgets and foster parental involvement. A win for both parties and our great State of North Dakota.

I believe public/private partnerships can unleash value for both parties. Many of our neighbors whose children attend public school express interest in private education, for various reasons. However, they see the tuition bill in addition to their property taxes and walk away from the freedom to choose. They call us crazy, and perhaps we are. Others we know choose home schooling, which helps keep the cost down versus onsite private education. If the tuition rates could be reduced significantly, as this bill supports, I'm confident many more people would sign up, and actually relieve some of the tuition burden from the state in the process.

I appreciate your support for House Bill 1369 and welcome any questions you may have for me.

Regards,

Mark Leingang
8100 Beacon Loop
Bismarck, ND 58501

Re: draft order for testimony

Monday 1/25/2021

HB 1369

GOOD AFTERNOON, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

MY NAME IS KEN HALL. I am married to Cara Currie-Hall who is in attendance. Our daughter has been in the public education system within North Dakota, and in the private education system.

I am a proud member of the Three Affiliated Tribes. The Mandan, Hidatsa, and Arikara people.

I want to acknowledge that we are here on the Original Territory of the Great MHA Nation.

EDUCATING PEOPLE IS A CHALLENGE. As we evolve as a Community and Nation, we are joining in a shared vision for a thriving country that is building generational leaders.

2020 was an unusual year and it changed everything. What appeared to work in the past no longer exists and our schools had to find new ways to educate our children. Our children had to learn new ways to receive instruction. Parents became an integral part of the team to support the new educating methods and formats. We set up an office with desks, cabinets, chairs and helped create spaces for exercise routines for online Phy Ed classes. We took lunch breaks and time outside [when we were all in lockdown].

AS A TRIBAL LEADER we held our discussions in these legislative processes with you, the Legislators, and together we shared our views on appropriation and designation of tax monies.

As you know, we arrived at an "Agreement" on the sharing of Tax Revenues between the MHA Nation and the State of North Dakota in the current Oil and Gas Tax Agreement.

Chairman Mark Fox provided a State of the Tribal Nations Address on January 6, 2021 in the House Chambers. He shared that back in 1999-2000 that the 5 Tribes of North Dakota generated a Positive Impact to on the state's economy which was two billion dollars. In 2012 the Economic Study, MHA Nation generated more than Three Billion Dollars Annually.

As a parent, former Tribal Leader of the MHA Nation, Land and Mineral Owner, Tax Payer in the State, a return on contribution solution could be us creating an "option". An option of where and how we want our children educated.

The MHA Nation is very fortunate and has a rich natural resource that has greatly benefited our people, our Nation and our State. But not everyone receives a monthly royalty in fact about 70% of our enrolled members of the MHA Nation does not receive a dime from the oil activity unless the Tribe gives out distributions.

While serving on the Tribal Business Council we would receive numerous financial requests for the tribe to assist families with children that wanted to attend non-public schools. Many families could not afford the tuition that was necessary for their children to attend a school of their own selection.

As leaders, we must not limit or restrict opportunities, instead, we must create them.

[A HISTORICAL EXAMPLE of legislating one option for an education is the Native Americans.]

CHIEF DRAGSWOLF, MY GREAT GRANDFATHER WAS A LEADER OF COURAGE AND BRAVERY. At 6 years old he wanted so badly to be a Warrior that he took his bow and arrow and went hunting. He killed a Wolf and then dragged it back to the village and was parading around. The Elders saw that and named him Dragswolf.

Dragswolf did grow up to be a Great Leader who would successfully lobby in Washington D.C. to fund a Day School on the Reservation, so the children could be with their families. It was the Shell Creek Day School.

We believe that all children are sacred and should have an opportunity to receive a quality education.

IN THE BISMARCK PUBLIC SCHOOL SYSTEM one out of four children come from families that live below the poverty line.

There are over three hundred fifty [350] children that are homeless in the Bismarck community.

SPIRIT LAKE NATION has identified over 30 children that are homeless on their reservation.

We can do better. We must do better.

No child should be left behind.

HB 1369 is a starting point to bridge the gap.

I AM HERE TODAY TO SPEAK IN SUPPORT OF THE BILL 1369.

History tells us that Chief Dragswolf led a remarkable life, that he was a Warrior taking part in his first warparty at age 12, and a politician who captured the admiration of President Franklin D. Roosevelt. In 1938 he received a Peace Medal from President Roosevelt.

As his descendent I am here to work together, to find solutions together, for our shared futures.

I support all families to be able to give their children the best possible education and the best opportunity to succeed in a school setting.

They say it takes a village to raise a child and if there ever was a moment for us to work together it is now.

In the Spirit of Partnership and Mutual Respect, let me close with a quote from another great leader, Chief Sitting Bull **“Let put our minds together to see what we can do for our children.”**

I can answer any questions you may have at this time.

Ken Hall



Testimony by Martin Lueken on North Dakota HB 1369

January 25, 2021

My name is Marty Lueken, and I am the director of the Fiscal Research and Education Center at EdChoice. Thank you for inviting me to speak today on the potential fiscal impact of HB 1369.

In general terms, the fiscal impact of an education choice program is the difference between savings accrued from students who use EEP funds to switch from a public school to a private school and the total cost of the program.

Under the Education Empowerment Program, up to \$5 million would be available to provide EEPs for eligible students, plus a \$200,000 allowance for administrative costs. This \$5.2 million to fund the program would not come from any funding allocated for public schools.

The net cost to the state for this program would not exceed \$5.2 million for the 2021-2023 biennium. This cost represents 0.3 percent of total spending for North Dakota public schools.

The fiscal impact on the state would be \$5.2 million for the biennium if all EEPs are given only to students who continue to be enrolled in public schools or students who would have enrolled in a nonpublic school setting even without the program in place.

If any students use an EEP to switch from a public school to a private school, then the net fiscal impact on the state will be lower than \$5.2 million, and under certain conditions the program could generate a net fiscal benefit for the state.

When students use an EEP to switch from public schools to private schools, the state experiences savings because it would no longer have to fund that child's education in the public school system. Thus, these students would offset some or all of the costs of the program, depending on the proportion of EEPs given to this groups of students.

Here's how the state would save money from this program. The cost of the EEP for students to enroll in a private school is 75% of the state's portion of the per-student payment rate, and this implies that the program has a break-even switcher rate of 75%. That is, if at least 75% of the students in the program switch from public schools to private schools, the program will generate a net savings for the state.

This 75% switcher rate is lower than switcher rates observed in education choice program from other states. This means that if the switcher rate with the program under consideration is in line with switcher rates observed in programs in other states, then the program will save state taxpayers money.

The actual switcher rates of these out-of-state choice programs are observed because they have caps on the number of scholarships, many more students apply for the scholarships than the number available, and the scholarships are awarded by a random lottery. Researchers have collected data on families who

apply for, but are not chosen in a random lottery, for a scholarship and recorded whether they enrolled their children in a public or private school after losing the lottery.

Researchers tend to find that around 90% of students who participate in educational choice programs switch from public schools. Therefore, the program under HB 1369 will likely generate net fiscal savings for the state.

An important question is: Can we expect this program to have a negative fiscal impact on North Dakota school districts, and will students be harmed? The answer I believe, based on the long history of experiences of current school choice programs, and informed by the substantial body of rigorous research, is “no.”

First, funding of K-12 public schools in North Dakota is not completely based on students – when students leave a district, the district loses state funds but still retains local funds and most federal funds because only the latter two categories are not enrollment-based. In addition, a part of state funding (about 15 percent of state funding) is also not student based and stays with districts when students leave.

Second, when students leave, it costs less to educate fewer students. Costs go down. Some costs are fixed, and some costs are variable. In the short run, districts have fixed costs such as building maintenance, debt service, and utilities. Variable costs are costs that can be reduced. Variable costs might include textbooks, software licenses, and personnel costs. In the long run, all costs are variable, meaning that over time districts can fully adjust operations to a change in enrollment.

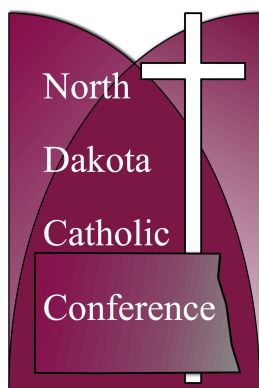
Third, choice programs in states that already have them (including the oldest and largest programs) have not led to an exodus of students, and the public system still remains the dominant provider to this day. Overall, about 2% of K-12 students participate in education choice programs today. And research demonstrates that students benefit from these programs, both those who participate and those who remain in public schools. There are 27 studies that examine the effects of education choice programs on the outcomes of students who remain in public schools. Of these, 25 found positive and modest improvements in learning gains by public school students, 1 documented a negative program effect, and one could not detect any effect. In addition, a recent meta-analysis on the competitive effects of choice programs concluded:

“In general, competition resulting from school-choice policies does have a small positive effect on student achievement. The lack of an overall negative impact on student outcomes might ease critics’ concerns that competition will hurt those students ‘left behind’ due to school-choice policies.” (Jabbar et al., 2019, *Education Policy*)

These programs increase opportunities to make better matches between child and the education they receive. They also result in arrangements that teachers and parents often care about, such as smaller class sizes.

Many people tend to think of school funding as an accounting issue. But I also believe that how we fund education also reflects our values. One of those values is educational opportunity, and the Education Empowerment Program in North Dakota would provide a funding mechanism to promote even more opportunity for North Dakota’s families and children.

Thank you for your time and attention.



*Representing the Diocese of Fargo
and the Diocese of Bismarck*

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To: House Education Committee
From: Christopher Dodson, Executive Director
Subject: House Bill 1369 - Education Empowerment Program
Date: January 25, 2021

The North Dakota Catholic Conference supports HB 1369.

All children have a right to a state-supported education. This right is rooted in who we are as human persons and the obligations of the political community to concretely assist in the development of all children so that they can reach their full potential.

Just as all children have a right to a state-supported education, all parents have a right to choose the best educational setting for their children. Parents are the primary educators of their children and best know what educational setting suits their particular children.

The two rights are not mutually exclusive and treating them such — as our current system does — violates both the child's and the parent's basic human rights.

Why do we continue with this unjust system that, as too often happens, mostly hurts poorer families and children with special needs? One reason is that some opponents of parental choice hold misunderstandings or long-held prejudices about both public and nonpublic schools and the state constitution. Because we have heard them before, allow me to anticipate and address some of those concerns.

Opponents of parental empowerment will often cite portions of the North Dakota Constitution, such as Article VIII, Section 1, which states that “the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control.” The provision is cited as if it prohibits any parental choice program. It does not. It merely says that at a minimum there must be a system of public schools. It does not say that the state cannot do more to help children. HB 1369 is about doing more. It does nothing to impair the state's obligation to public schools or to keep them free from “sectarian control.”¹

The other constitutional provision often cited by opponents of parental choice is Article VIII, Section 5, which states: “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.” Here again, opponents cite the provision as if it should end all discussion about parental choice. HB 1369, however, as it relates to funds that might, as a result of parental choice, end up covering some expenses at a nonpublic school, does not use any funds that were raised for the support of public schools. The money raised for the support of public schools remains untouched.²

Some will argue that any money that does not go to public schools is money taken from the “money raised for the support of the public schools.” If we follow that logic, however, money this body appropriates for roads, human services, law enforcement, or anything else is taken from “money raised for the support of the public schools.” The argument fails. In short, nothing in the North Dakota Constitution prevents the state from expanding opportunities for parents and students like that proposed in HB 1369.

Another argument we can anticipate is that the public schools serve all students and are required to do so while nonpublic schools can be selective. What they do not say is that the nonpublic schools could take more special needs students if the parents could afford the costs and tuition.

In any event, these statements are mere attempts at distraction that have nothing to do with the bill before you. HB 1369 is not about public schools or nonpublic schools or which students they take. This bill is not about the schools at all. It is about parents being empowered to choose the best educational setting for their children. The school is merely incidental to parent’s choice.

HB 1369 does not negate the state’s obligations to public schools in any way. It does not violate the state constitution. It furthers, rather than, inhibits the state’s obligations to serve all students, especially those with special needs. In short, it is about doing more and better because our children and their parents deserve it.

The North Dakota Catholic Conference respectfully requests a **Do Pass** recommendation on HB 1369.

¹ As well-documented by the U.S. Supreme Court, “[I]t was an open secret that ‘sectarian’ was code for ‘Catholic.’” and provisions like Art. VIII, sec. 5 were “born of bigotry” and “arose at a time of pervasive hostility to the Catholic Church and to Catholics in general.” *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2259 (2020).

² In short, on its face, Art. VIII, sec. 5 of the North Dakota Constitution would not apply, but even if HB 1369 was interpreted to use money raised for the public schools, the recent decision by the U.S. Supreme Court in *Espinoza v. Montana Dept. of Revenue* (140 S. Ct. 2246 (2020)) would make Art. VIII, sec. 5 unconstitutional.

CONCERNED
WOMEN *for* AMERICA
OF NORTH DAKOTA

January 25, 2021
House Education Committee
Testimony in Support of HB1369

Chairman Mark Owen and members of the Committee, my name is Linda Thorson. I am a former educator of 26 years and am the State Director for Concerned Women for America (CWA) of North Dakota. I am here today on behalf of our North Dakota members in support of HB1369.

As our state's largest public policy women's organization, CWA of North Dakota has seven core issues, education being one of them. We strongly support the provisions in HB1369.

HB1369 meets Concerned Women for America's goal of providing quality of education to a level of excellence in academic achievement. This legislation helps parents or other individuals with legal authority acting on behalf of the program participant (K-5th grade child) to effectively use multiple resources to enhance the student's academic skills and learning environment.

It was both a privilege and a challenge to work with struggling learners in my career as a Speech Language Pathologist in the public school. My role was to develop effective strategies to help young elementary-age children laboring to reach grade level academic skills in reading and language. Some children needed more time and practice; others benefited directly from extra professional help and support to achieve gains in grade level skills.

Learning environments play a significant role in student success. This legislation provides the financial support needed for parents to choose an educational pathway that best fits their child's needs, through a variety of ways, such as through additional instructional material, the hiring of an educational service provider or through the learning environment of a non-public school setting.

Best practices in education involves enhancing a child's academic skills. At a critical time in a child's educational life, 1369 provides a direct benefit to elementary aged children, allowing care givers to choose a pathway that best fits their student's educational needs.

Again, the goal of providing quality of education to a level of excellence in academic achievement, is achieved in this legislation. As the state director for CWA of North Dakota, I urge a "do pass" on HB 1369.



Testimony in favor of House Bill 1369

**Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
January 25, 2021**

Good morning Chairman Owens and honorable members of the House Education Committee. My name is Mark Jorritsma, Executive Director of Family Policy Alliance of North Dakota. I am testifying in favor of House Bill 1369, with suggested amendments, and respectfully request that you recommend a "DO PASS" on this bill.

Family Policy Alliance of North Dakota believes that parents have a God-given responsibility and right to direct the upbringing and education of their children. Toward this end, the Education Empowerment Program (EEP) described in this bill is more than just another school choice mechanism. The EEP allows parents to fully tailor their child's entire educational experience. Family Policy Alliance of North Dakota believes this bill will help launch children to success, something we all want.

Families know best what type of educational experience their children need to succeed, and an EEP give families the keys to unlock that experience for their children. We want to see every child succeed, and helping them access the education they need to become their best lays a critical foundation. When a child is impeded because he or she isn't able to get the education they need, we have work to do on our system of education.

Almost 30 empirical studies have showed again and again that increased school choice improves academic outcomes for participants and public schools, saves taxpayers money, moves students into more integrated classrooms, and strengthens their shared civic values (*A Win Win Solution: The Empirical Evidence on School Choice* – Greg Forster, May 2016).

Let me close on a personal note. Our son was diagnosed in second grade with a condition that makes it difficult for him to focus on his studies. We tried all types of school environments for him, but finally placed him in a private school where he seemed to thrive. Unfortunately, the cost of this school was prohibitive. We then decided to homeschool him. It worked better than our wildest dreams. I am now very happy to report that he graduated Magna Cum Laude from the University of Mary, was on the Dean's list, and is now employed as a software engineer at a highly respected company. In retrospect, the choices we made were very difficult, but thankfully, appear to have been the right ones.

However, during this entire time of his school career, we were never able to find the help he needed. As a result, we spent an enormous amount to get him the educational assistance he needed to succeed. My wife gave up her successful career as a CPA, we had to sell a vehicle to make ends meet, take out a second mortgage on our home, and things like vacations and other common "niceties" were completely out of the question for many years. I do not believe I am overstating the case when I say it was a period of significant financial hardship for our family. That said, I'd do it again in a heartbeat.

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UNLEASHING CITIZENSHIP

FamilyPolicyAlliance.com/NorthDakota

The thing that bothers me are the families that may not have sufficient income, a second car to sell, or may not be able to take out a second mortgage on their home. These are the people I am speaking for today. So I ask you, please give them the resources to let their children thrive. Please vote House Bill 1369 out of committee with a “DO PASS” recommendation.

Thank you for the opportunity to testify, and I will stand for any questions you may have.

House Education Committee
Chairman Mark Owens
January 25, 2021

Testimony of Shane Goettle
Lobbyist for the State Association of Nonpublic Schools
sgoettle@odney.com
701-426-0576

HB 1369

Chairman Owens and members of the House Education Committee, my name is Shane Goettle, and I am here today as a lobbyist for the State Association of Nonpublic Schools.

The nonpublic schools in North Dakota are a vital component to the education framework in our state. Very often, public and nonpublic schools work together very well. We have experienced that in many ways, such as through North Dakota high school activities and, more recently, in the distribution of CARES ACT dollars to meet the challenges both public and nonpublic school experienced from the threat posed by COVID-19.

When a family chooses a nonpublic school option for their child, it does generate public savings. In the 2019-20 school year, for example, with 6,770 students, the nonpublic schools saved North Dakota taxpayers in excess of \$160 million dollars* per biennium. These dollars are then available for other public purposes.

With regard to HB 1369 which you have before you today, the State Association of Nonpublic Schools supports any effort to empower parents in the education of their children. In HB 1369, that includes two things: giving parents the tools they need to assist and enhance their child's education and allowing parents to select the education environment that suits their family and their child the best.

On behalf of 6,770 students in nonpublic schools in North Dakota and their parents we ask for your support of HB 1369. Thank You.

**NDDPI School Finance Facts (Fall 2019) Non-Public enrollment of 6,770 students X average cost of education per pupil \$12,435.*



INSTITUTE FOR JUSTICE

Testimony by Erica Smith in Support of HB 1369

January 25, 2021

My name is Erica Smith, and I am a senior attorney at the Institute for Justice. Thank you for inviting me to speak.

I was asked to speak about HB 1369's constitutionality because the bill allows families to choose to spend their account funds on religious schools and other religious options. I can testify that there are no constitutional problems with this. This is true under both the North Dakota Constitution and the U.S. Constitution. In fact, the U.S. Supreme Court just issued a new opinion on this issue in *Espinoza v. Montana Department of Revenue* last summer.

Before I address constitutionality, let me first give you some background on my law firm and my expertise. The Institute for Justice, also known as "IJ," is a national nonprofit firm that protects constitutional rights. One of our areas of expertise is educational choice. We are the leading legal experts on this issue. I am a member of IJ's educational choice team, and I have litigated choice issues for over a decade. For example, I was co-counsel on the *Espinoza* case.

There is no constitutional problem with students using their account funds to attend a religious school or pay for any other religious option. Article VIII, Section 5 of North Dakota's Constitution 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." This provision is also known as North Dakota's Blaine Amendment. The Blaine Amendment does not apply to the proposed program for two reasons. First, the program uses money from the general fund for the accounts, not funds raised for public schools. Second, the program does not appropriate money to sectarian schools or support those schools. Instead, the program gives money to families, to support those families. Any benefit to religious schools is incidental.

In addition, to the extent that the Blaine Amendment does bar sectarian schools from participating in the proposed program (or any other educational choice program), the Blaine Amendment would be unconstitutional under the U.S. Constitution. In *Espinoza*, the Supreme Court held that state constitutions could not be interpreted to bar religious options in educational choice programs. In fact, the *Espinoza* case involved a Blaine Amendment similar to North Dakota's.

Let me discuss the facts of *Espinoza*. In 2015, the Montana Legislature had passed an educational choice program. Like most choice programs, Montana's program allowed families to use scholarships to attend the school of their choice, whether that school was religious or nonreligious. But immediately after the legislature passed the program, things took a wrong turn. The state agency that was in charge of administering the program promulgated a rule. And that rule said that kids could only use scholarships at

nonreligious schools. We believed this rule was unconstitutional under the federal Constitution.

So, we paired up with Montana families and sued the agency. We argued that the rule violated the Religion Clauses in the federal Constitution, including the Free Exercise Clause. We also argued that to the extent that Montana's Blaine Amendment required the rule, the Blaine Amendment was itself unconstitutional.

The case wound its way through the court system. And finally, it made its way to the US Supreme Court. The Court issued its decision in June 2020. In its decision, the Court held that Montana's Blaine Amendment could *not* be interpreted to exclude religious options from a choice program. To do so would violate the Federal Free Exercise Clause's protections for religious liberty. As the Court said, "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious." This was a 5-4 decision written by Chief Justice Roberts.

The *Espinoza* ruling is a landmark decision and forever changes the legal landscape for choice programs, including in North Dakota. After *Espinoza*, North Dakota's Blaine Amendment can no longer be interpreted to bar religious options in a choice program. That includes in HB 1369. And to the extent that North Dakota's Blaine requires a religious bar, it is unconstitutional under the U.S. Constitution. The protections in the U.S. Constitution *always* trumps state constitutions.

Finally, I will note that *Espinoza* applies regardless of the type of choice program. Whether the program is a tax credit, a voucher, or an education savings account like in HB 1369, it does not matter. Religious options can and must be included alongside nonreligious options.

Thus, if the North Dakota Legislature wishes to enact HB 1369, they can rest assured that the Blaine Amendment in North Dakota Constitution is not an obstacle.

Thank you for your time.



Honorable Members of the House Education Committee,

My name is Alice Neira, and I am the Senior Legislative Affairs Associate for ExcelinEd in Action.

ExcelinEd in Action is the 501(c)(4) sister organization to the Foundation for Excellence in Education, founded by Governor Jeb Bush. ExcelinEd in Action works with state lawmakers and partner organizations to pass legislation that empowers families with educational choice, prepares students for college and career, prioritizes early literacy, expands innovation and strengthens school performance.

I come before you today to express our support of House Bill 1369. This legislation creates the Education Empowerment Account program, which would give families with K-5 students access to support services for qualified educational programs as well as the option to enroll in a non-public school that works best for them. In short, this bill recognizes that educational opportunity is a priority and empowers families to customize schooling as they see fit.

We appreciate that public schools work well for many children, but every student deserves access to a quality education, and each student is unique. School choice does not hurt public education, and in fact strengthens it by refocusing on what ultimately matters: Students.

Programs like this are the future of school choice and are already working for students in Arizona, Florida, Mississippi, North Carolina and Tennessee. Regional competitors like Minnesota, Iowa and Missouri are considering similar legislation as well.

Lastly, education scholarship accounts are not only good policy, they are also popular with voters. A new national survey from Democratic pollster Beck Research finds support for school choice policies remains remarkably high. Sixty-five percent of K-12 parents back school choice, including 66 percent of public-school parents. School choice also continues to enjoy bipartisan support from Republicans, Independents and Democrats.

Today marks the kick-off of the 11th Annual National School Choice Week, where thousands of families across the nation, including North Dakota, are both celebrating existing school choice programs and shining light on the need for more options. On this notable day, I urge you to support House Bill 1369 and give North Dakotan families the educational opportunities they need— and deserve.

Thank you for your leadership,

Alice Neira
Senior Legislative Affairs Associate
ExcelinEd in Action



Great Public Schools

Great Public Service

**Testimony on HB 1369
House Education Committee
January 25, 2021**

Good afternoon, Chairman Owens, and members of the Committee. For the record, my name is Nick Archuleta, and I am the president of North Dakota United. ND United is a union of 11,500 professionals, including K-12 teachers, dedicated to public service. On behalf of our members, I rise today in opposition to HB 1369 and to urge a DO NOT PASS recommendation for this bill.

Mr. Chairman, North Dakotans have long valued the principle of a high-quality public school system. In fact, our Founders so valued that principle that they embedded it in our State Constitution. Section 1 of Article VIII states:

"A high degree of intelligence, patriotism, integrity, and morality on the part of every voter in a government by the people being necessary in order to ensure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota."

Section 5 of Article VIII of our Constitution further states:

"All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. 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."

Mr. Chairman, North Dakota United has a long history of opposing voucher proposals that take monies raised for public education and divert them to non-public entities.

Unfortunately, HB 1369 is one such proposal.

Vouchers come in many forms, often hiding behind euphemisms such as, "Opportunity Scholarships," "Tax Credit Scholarships," "Education Savings Accounts," "Tuition Tax Credits," and, as in this case, "Education Empowerment Programs." Regardless of the euphemistic titles, they all have the same effect of diverting public funds, intended for public schools, to private schools, private entities, or those educating their children at home.



Great Public Schools

Great Public Service

Chairman Owens and Members of the Committee, North Dakota's public schools have the responsibility of educating every student that walks, runs, rolls, or is carried through our schoolhouse doors. To that list we must now add students who, due to the COVID-19 pandemic, are in hybrid or distance learning protocols. This is a responsibility unique to public schools and we embrace it whole heartedly because we agree with the principles enshrined in the North Dakota State Constitution.

Private schools, private tutors, and parochial schools do not share that responsibility. They do not have an obligation to educate every student. They alone determine who will and will not attend their schools or avail themselves of their services. An example of this is that most private schools do not accept students based on ability because the financial costs of educating students with cognitive impairments are quite high. As a result, and with great pride, public schools educate these students.

Furthermore, Mr. Chairman, diverting public funds to private schools, or tutors, undermines the principle of accountability. Dollars that are allocated to North Dakota's public schools are managed by locally elected school boards which are held responsible for ensuring that the money is spent for the purposes for which they are intended. There is no public accountability for the money once it is diverted to a private school or to private tutors. These entities have nearly complete autonomy regarding how they operate, what they teach, and how they manage funds in their control. Around the country, we have seen many cases of waste, fraud, and abuse in voucher programs specifically because there is an absence of public accountability.

I want to clarify something: ND United has no problem with school choice and never has. We just believe, like the framers of the ND State Constitution believed, that the choice to educate one's children in a non-public school or with a private tutor, should not be subsidized by the taxpayers of North Dakota.

Finally, Chairman Owens, the ND United member poll released last week indicates revealed something interesting. Eighty three percent of teachers surveyed began their careers in education with the intention of retiring as a teacher. That number is now down to just 50%, largely due to stress and burnout. Legislation that weakens the profession or diverts public resources to non-public schools or tutors only adds to the stress teachers feel. Such legislation is bad for teachers, students, and the communities they serve.

Mr. Chairman and Members of the Committee, I strongly and respectfully urge a DO NOT PASS recommendation for HB 1369.

My testimony is concluded, and I am happy to answer any questions you may have.



**HB1369 – Educational Empowerment Program – (Education Savings Accounts/Vouchers)
 Testimony in Opposition
 North Dakota Council of Educational Leaders – Dr. Aimee Copas
 January 25, 2021**

Good day Chair Owens, Vice Chair Schreiber-Beck and members of the House Education Committee. For the record, my name is Aimee Copas and I serve as the Executive Director for the ND Council of Educational Leaders.

I stand before you today representing your school leaders recommending to you that take pause before considering this bill to be the solution to education some of you may be searching for. For the past 3 sessions we've come together to discuss various versions of this bill. In addition to this, we continue to have the debate about whether our students are graduating from high school - college, career, and life ready. We discuss remediation rates and techniques by which we are attempting to help our students succeed. We discuss the perceived stagnant growth of public education. I propose the idea that reinvesting dollars into concepts that currently exist in North Dakota that have not shown markedly different results academically may not be the best way to approach the problem. I propose that we look at real innovation to be the beginning of the solution. Rethinking how we look at the educational day, space, and pace may be a more fruitful conversation for the public, private, and home school environments.

On its face there are issues with this bill that cannot be reconciled. I could spend the better part of an hour digging into the many issues that I can see in this bill, but I will focus on the fiscal side. The reality is that this bill will cost our state an enormous amount of money...perhaps not in the first year, but certainly in the not so distant future. It creates disparities in funding and disparities in equity based on the rural vs. urban application of much of the opportunity. Please allow me to explain the fiscal piece further.

Currently we provide a per pupil payment to our schools for our approximately 113,000. That number does not include the approximately 7500 private school children and approximately 5000 home school children. 90% of all students in North Dakota attend school at a public institution.

NDCEL is the strongest unifying voice representing and supporting administrators and educational leaders in pursuit of quality education for all students in North Dakota.

Executive Director: Aimee Copas-----Assistant Director: Russ Ziegler



The investment into these savings accounts would not appropriately account for the true cost of education and diverges from this state's tradition of funding public schools. While I appreciate that this bill attempts to diverge funds into the hands of public school parents as well – it sets up a system of funding that is not only unaffordable, but sets up a very real system of inequalities regarding accountability.

Let's just discuss fiscal notes. The appropriation under Section 3 of this bill we believe is understated. Understanding this seems to target students in grades K-5, let's talk numbers.

Public school direct funding would be reduced by 20%. That funding would then be diverted to parents. This funding is targeted at the elementary school level which accounts for about 50% of our kids. Local districts which have been prohibited by law to charge for services would either need to challenge current court precedent which has been executed and long standing (Example: Cardiff v. Bismarck Public Schools (1978). Or they would need to distinctly cut services performed – cuts typically are staff and program cuts. When special needs students are already underfunded by 50%, that cut to funding and inability to recoup revenue would be ghastly detrimental. Furthermore, the many times our state has been in litigation over equity in public school funding would be again called into question.

Beyond that the cost to the state to deposit the funds into public school families accounts would be at the cost of \$106,239,089. While this is a divergence of already spent funds, the end result would be a huge loss of services to about 50% of our ND elementary children.

If you calculate the number of private school students and the number of home school students and multiply that number by the 75% of the per pupil payment that will be given to them (that is currently not given to them at this time) the **NEW investment** by our state could be as high as (considering about 50% of the approximately 12500 private/home school students)

- **\$94,087,500 per biennium (\$47,043,750 per year)**
 - (7500 private school children + 5000 home school children / 2 = about 6250 students x \$7527 (75% of the current \$10036 per pupil payment)). This is considering the minimum amount. If there were a consideration of the funding of a special needs child – that amount would get higher with a question in place whether the services could be provided at venues outside of our public-school



systems that would meet the ADA and IDEA requirements. Currently even our public schools are significantly underfunded in the areas of special education (only about 50% funded currently) making entities that have no programs in place as a near impossibility to be executed in the best interest of the child.

- Cost for administration of approximately 60,000 new parent accounts
- NDDPI cost for FTE to administer the program & randomly audit the accounts or contract with the state auditor to do so @\$80 per hour.

Then coming into question is accountability. While there is a section asking for a nationally normed referenced test, at any time any parent can opt their student out of such testing. This body could potentially have little oversight over their over \$94M additional investment and with our workforce demands in our state, reducing support to 90% of our students in North Dakota would not readily answer to that demand. Furthermore, if opt out rates at the public level supersede federal allowances, we'd risk losing federal funding to our schools. The US Department of Ed estimates the federal funding accounts for nearly 8% of our overall school funding – this is not counting the significant relieve our schools received during COVID. That risk poses additional detriment.

The cost to operate our public schools would not change. They would simply have less dollars to do so which will hurt the opportunity for the overwhelming majority of our students. Our state is constitutionally obligated to provide a free public education – this is one that all of our students are able to take advantage of. Rather than take on a myriad of constitutional challenges (Is this upholding our state constitution? Is this an inappropriate mix of church and state? There is little to no compelling evidence to show students will have a better outcome in a voucher system – is an investment in something that hasn't proven it worth a good decision?) I would ask you to consider other avenues and opportunities to provide flexibly within our own current system of education.

We ask for a DO NOT PASS of HB 1369.



NDSBA
NORTH DAKOTA SCHOOL
BOARDS ASSOCIATION

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HB 1369
Testimony of Alexis Baxley
House Education Committee
January 25, 2021

Chairman Owens and members of the House Education Committee, my name is Alexis Baxley. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 178 North Dakota public school districts and their boards. NDSBA stands in opposition to HB 1369 to the extent it seeks to divert public monies used for funding public education and divert them to non-public education entities and individuals.

Our state constitution very specifically states that the Legislative Assembly shall provide for a uniform system of free public schools throughout the state, and does not provide for the financial support of private or home education. In fact, it explicitly states that no money raised for the support of public schools of the state shall be appropriated or used for the support of any sectarian school. While I suppose we could argue that HB 1369 has found a loophole in providing the money directly to the parents or students, even that act's constitutionality is questionable. We believe North Dakota's constitution did not provide for funding non-public education for good reason.

Continuously, public school districts, their administrators and their staff are asked to do more with less. Costs associated with behavioral health, safety, staff benefits, social services, etc. continue to rise. So much so that we spent this interim studying our state's education funding formula – trying to understand how we could better provide for our public-school system with the same amount of money.

One way I am certain we cannot achieve that goal is to divert those dollars outside of the formula. While a parent certainly has the right to choose where and how they want their children educated, that choice does not and should not entitle them to the dollars provided for public education. If we begin parceling off portions of our public dollars to those who opt out of the system, we will fall short of our constitutional obligation to effectively and efficiently provide for the delivery of public education.

NDSBA urges a Do Not Pass recommendation on HB 1369, and I would be happy to stand for any questions. Thank you.

It's National Make a Friend Day

Be my friend

Support Early Childhood Experiences

My Name

My District

My Age

My Parents

My Early Childhood Experiences

HB 1369

Neutral

Chairman Owens and Committee Members,

My name is Theresa Deckert. I serve as the Office Administrator for the North Dakota Home School Association and am also on the board of directors. I submit testimony today on the behalf of our board.

The North Dakota Home School Association Board of Directors supports the right of parents to choose the best educational option for their children. Our position on HB 1369 in its current form is neutral.

We offer neutral testimony simply to add to the public record that we see the need for an educational empowerment program to remain **separate and distinct** from private, parent directed, parent funded, home education. We support the creating of a new chapter in the Century Code to define and implement such a program as **distinct** from current educational choices in North Dakota.

Thank you,

Theresa Deckert
4631 76th AVE NE
Devils Lake, ND
701-662-4790
District 15

2021 HOUSE STANDING COMMITTEE MINUTES

Education Committee Coteau AB Room, State Capitol

HB 1369
2/3/2021

Relating to the establishment of an education empowerment program and to provide an appropriation

Chairman Owens opened the meeting at 9:39 AM. Roll call: Reps. Owens, Schreiber-Beck, Heinert, Hoverson, D. Johnson, M. Johnson, Longmuir, Marschall, Pyle, Richter, Simons, Zubke, Guggisberg and Hager present.

Rep. Kading presented Amendment .04003, #5176

10:10 AM Recess while waiting for member to return

10:32 AM **Rep. Marschall** moved Amendment .04003, seconded by Rep. Hoverson
Voice Vote motion carried

Rep. Marschall moved a **Do Pass as Amended** and **Rereferred to Appropriations**, seconded by Rep. Hoverson

Roll call vote:

Representatives	Vote
Representative Mark S. Owens	N
Representative Cynthia Schreiber-Beck	N
Representative Ron Guggisberg	N
Representative LaurieBeth Hager	N
Representative Pat D. Heinert	N
Representative Jeff A. Hoverson	Y
Representative Dennis Johnson	N
Representative Mary Johnson	N
Representative Donald Longmuir	N
Representative Andrew Marschall	Y
Representative Brandy Pyle	N
Representative David Richter	N
Representative Luke Simons	Y
Representative Denton Zubke	N

Motion failed 3-11-0

Rep. Pyle moved a **Do Not Pass**, Seconded by **Rep. Zubke**

Roll call vote:

Representatives	Vote
Representative Mark S. Owens	Y
Representative Cynthia Schreiber-Beck	Y
Representative Ron Guggisberg	Y
Representative LaurieBeth Hager	Y
Representative Pat D. Heinert	Y
Representative Jeff A. Hoverson	N
Representative Dennis Johnson	Y
Representative Mary Johnson	Y
Representative Donald Longmuir	Y
Representative Andrew Marschall	N
Representative Brandy Pyle	Y
Representative David Richter	Y
Representative Luke Simons	N
Representative Denton Zubke	Y

Motion carried 11-3-0 **Rep. Longmuir** is the carrier.

Chairman Owens closed the meeting at 10:49 AM.

Bev Monroe, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1369

Page 1, line 14, remove ""Financial institution" means a bank, credit union, or savings and loan association"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "5."

Page 1, line 19, replace "6." with "5."

Page 1, line 22, replace "7." with "6."

Page 1, line 23, replace "8." with "7."

Page 2, line 1, replace "9." with "8."

Page 2, line 3, after "funds" insert ", from an approved vendor list as determined by the superintendent of public instruction"

Page 2, line 7, replace "each" with "to pay qualified providers on behalf of a"

Page 2, line 8, remove ", who may use the funds in the account only as permitted under"

Page 2, line 9, replace "this chapter" with "who is eligible for the program"

Page 2, line 10, remove "For each year of program participation by a program participant enrolled in public"

Page 2, remove lines 11 through 20

Page 2, line 21, remove "4."

Page 2, line 21, after "in" insert "public or"

Page 2, line 22, replace "fund the participant's account" with "disburse payments from the account as checks payable to the parents of an eligible student. The superintendent shall mail the checks to the qualifying school at which the eligible student is enrolled. The parent of the eligible student shall endorse the check before the check is deposited. The superintendent shall provide the parents"

Page 2, line 23, replace "that is" with "up to"

Page 2, line 24, replace "Seventy-five" with "Fifty"

Page 2, line 27, replace "Seventy-five" with "Fifty"

Page 3, line 1, replace "5." with "4."

Page 3, line 2, after "including" insert "nonpublic school."

Page 3, line 3, remove "A parent who signs an agreement with"

Page 3, remove lines 4 through 11

Page 3, line 12, replace "7." with "5."

Page 3, line 15, replace "8." with "6."

Page 3, remove lines 22 through 30

Page 4, line 1, replace "15.1-39-05" with "15.1-39-04"

Page 4, remove line 17

Page 4, line 20, remove "A qualified provider shall give a parent a receipt for each qualifying education expense"

Page 4, remove line 21

Page 4, line 22, remove "4."

Page 4, line 25, replace "15.1-39-06" with "15.1-39-05"

Page 5, line 7, replace "15.1-39-07" with "15.1-39-06"

Page 5, line 23, replace "15.1-39-08" with "15.1-39-07"

Page 5, line 26, remove "for each program"

Page 5, remove lines 27 through 30

Page 6, remove lines 1 through 8

Page 6, line 9, replace "market rates" with "as a qualified provider"

Page 6, line 10, replace "5." with "2."

Page 6, line 10, replace "an" with "the"

Page 6, line 12, replace "15.1-39-09" with "15.1-39-08"

Page 6, line 14, replace "shall" with "may"

Page 6, line 15, replace "chosen randomly" with ", as determined by the superintendent of public instruction. An audit may include verification of account information and a review of student attendance records"

Page 6, line 16, replace "15.1-39-10" with "15.1-39-09"

Page 6, line 17, replace "the account of" with "payment for"

Page 6, line 18, remove "or who"

Page 6, line 19, remove "commits a substantial misuse of program funds"

Page 6, line 20, replace "account" with "payment"

Page 6, line 20, remove "and no further"

Page 6, line 21, remove "transactions are allowed on or disbursements made from the account"

Page 6, line 25, replace "closure of the suspended account and declare the program" with "suspension of payment to the qualified provider for the"

Page 6, line 27, replace "account" with "payment"

Page 6, line 29, replace "account" with "payments"

Page 6, line 30, replace "15.1-39-11" with "15.1-39-10"

Page 7, line 6, replace "15.1-39-12" with "15.1-39-11"

Page 7, line 7, remove "an"

Page 7, line 8, replace "account" with "payments"

Page 7, line 10, replace "15.1-39-13" with "15.1-39-12"

Page 7, line 20, replace "15.1-39-14" with "15.1-39-13"

Page 7, line 26, replace "15.1-39-15" with "15.1-39-14"

Page 8, line 1, replace "15.1-39-16" with "15.1-39-15"

Page 8, line 4, replace "15.1-39-17" with "15.1-39-16"

Page 8, line 14, replace "accounts of nonpublic school" with "program"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1369: Education Committee (Rep. Owens, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1369 was placed on the Eleventh order on the calendar.

21.0211.04003
Title.

Prepared by the Legislative Council staff for
Representative Kading
January 28, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1369

Page 1, line 14, remove ""Financial institution" means a bank, credit union, or savings and loan association"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "5."

Page 1, line 19, replace "6." with "5."

Page 1, line 22, replace "7." with "6."

Page 1, line 23, replace "8." with "7."

Page 2, line 1, replace "9." with "8."

Page 2, line 3, after "funds" insert ", from an approved vendor list as determined by the superintendent of public instruction"

Page 2, line 7, replace "each" with "to pay qualified providers on behalf of a"

Page 2, line 8, remove ", who may use the funds in the account only as permitted under"

Page 2, line 9, replace "this chapter" with "who is eligible for the program"

Page 2, line 10, remove "For each year of program participation by a program participant enrolled in public"

Page 2, remove lines 11 through 20

Page 2, line 21, remove "4."

Page 2, line 21, after "in" insert "public or"

Page 2, line 22, replace "fund the participant's account" with "disburse payments from the account as checks payable to the parents of an eligible student. The superintendent shall mail the checks to the qualifying school at which the eligible student is enrolled. The parent of the eligible student shall endorse the check before the check is deposited. The superintendent shall provide the parents"

Page 2, line 23, replace "that is" with "up to"

Page 2, line 24, replace "Seventy-five" with "Fifty"

Page 2, line 27, replace "Seventy-five" with "Fifty"

Page 3, line 1, replace "5." with "4."

Page 3, line 2, after "including" insert "nonpublic school."

Page 3, line 3, remove "A parent who signs an agreement with"

Page 3, remove lines 4 through 11

Page 3, line 12, replace "7." with "5."

Page 3, line 15, replace "8." with "6."

Page 3, remove lines 22 through 30

Page 4, line 1, replace "15.1-39-05" with "15.1-39-04"

Page 4, remove line 17

Page 4, line 20, remove "A qualified provider shall give a parent a receipt for each qualifying education expense"

Page 4, remove line 21

Page 4, line 22, remove "4."

Page 4, line 25, replace "15.1-39-06" with "15.1-39-05"

Page 5, line 7, replace "15.1-39-07" with "15.1-39-06"

Page 5, line 23, replace "15.1-39-08" with "15.1-39-07"

Page 5, line 26, remove "for each program"

Page 5, remove lines 27 through 30

Page 6, remove lines 1 through 8

Page 6, line 9, replace "market rates" with "as a qualified provider"

Page 6, line 10, replace "5." with "2."

Page 6, line 10, replace "an" with "the"

Page 6, line 12, replace "15.1-39-09" with "15.1-39-08"

Page 6, line 14, replace "shall" with "may"

Page 6, line 15, replace "chosen randomly" with ", as determined by the superintendent of public instruction. An audit may include verification of account information and a review of student attendance records"

Page 6, line 16, replace "15.1-39-10" with "15.1-39-09"

Page 6, line 17, replace "the account of" with "payment for"

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Page 6, line 19, remove "commits a substantial misuse of program funds"

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Page 8, line 14, replace "accounts of nonpublic school" with "program"

Renumber accordingly

Introduced by

Representatives Kading, Louser, Meier, Schatz, Strinden

Senators Dwyer, Larson, Myrdal

1 A BILL for an Act to create and enact chapter 15.1-39 of the North Dakota Century Code,
2 relating to the establishment of an education empowerment program; and to provide an
3 appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as
6 follows:

7 **15.1-39-01. Definitions.**

8 For purposes of this chapter, unless the context otherwise requires:

- 9 1. "Account" means an education empowerment account established under the program.
10 2. "Course documentation" means records from a qualified provider or school indicating
11 course completion.
12 3. "Curriculum" means a complete course of study for a particular content area or grade
13 level.
14 4. ~~"Financial institution" means a bank, credit union, or savings and loan association~~
15 ~~organized under state or federal law which has its main office or a branch office in this~~
16 ~~state.~~
17 ~~5. "Instructional material" means any supplemental materials required to administer a~~
18 ~~curriculum.~~
19 ~~6-5. "Parent" means a resident of this state who is a parent, conservator, legal guardian,~~
20 ~~custodian, or other individual with legal authority to act on behalf of a program~~
21 ~~participant.~~
22 ~~7-6. "Program" means the education empowerment program created under this chapter.~~
23 ~~8-7. "Program participant" means a child participating in the program.~~

1 9.8. "Qualified provider" means an educational service provider or vendor, including a
2 nonpublic school or a tutor, licensed or accredited by a state, regional, or national
3 accrediting organization if applicable, which accepts education empowerment funds,
4 from an approved vendor list as determined by the superintendent of public
5 instruction.

6 **15.1-39-02. Program and account establishment and management.**

- 7 1. The superintendent of public instruction shall establish and administer the program to
8 provide funds for qualified education expenses of program participants.
- 9 2. The superintendent of public instruction shall create and fund an account for ~~each~~to
10 pay qualified providers on behalf of a program participant, ~~who may use the funds in~~
11 the account only as permitted under this chapter who is eligible for the program.
- 12 3. ~~For each year of program participation by a program participant enrolled in public~~
13 ~~school, the superintendent of public instruction shall fund the participant's account with~~
14 ~~an amount that is:~~
- 15 ~~a. Twenty percent of the per student payment rate reduced by the state average~~
16 ~~percentage of local revenue required to be subtracted to determine state aid~~
17 ~~payments under section 15.1-27-04.1 for the prior fiscal year; or~~
- 18 ~~b. Twenty percent of the per student payment rate reduced by the state average~~
19 ~~percentage of local revenue required to be subtracted to determine state aid~~
20 ~~payments under section 15.1-27-04.1 for the prior fiscal year weighted to the~~
21 ~~state's funding formula, if the participant has an active individualized education~~
22 ~~plan.~~
- 23 ~~4.~~ For each year of program participation by a program participant enrolled in public or
24 nonpublic school, the superintendent of public instruction shall fund the participant's
25 account disburse payments from the account as checks payable to the parents of an
26 eligible student. The superintendent shall mail the checks to the qualifying school at
27 which the eligible student is enrolled. The parent of the eligible student shall endorse
28 the check before the check is deposited. The superintendent shall provide the parents
29 with an amount that is up to:

- 1 a. ~~Seventy-five~~Fifty percent of the per-student payment rate reduced by the state
2 average percentage of local revenue required to be subtracted to determine state
3 aid payments under section 15.1-27-04.1 for the prior fiscal year; or
4 b. ~~Seventy-five~~Fifty percent of the per-student payment rate reduced by the state
5 average percentage of local revenue required to be subtracted to determine state
6 aid payments under section 15.1-27-04.1 for the prior fiscal year weighted to the
7 state's funding formula, if the participant has an active individualized education
8 plan.

9 5.4. A parent of a program participant under subsection 3 may choose any education
10 method, including nonpublic school, private tutor, online learning, or other qualified
11 provider, which best serves the needs of the program participant. ~~A parent who signs~~
12 ~~an agreement with the superintendent of public instruction under section 15.1-39-04 is~~
13 ~~deemed to have satisfied the requirements of chapter 15.1-20 with regard to the~~
14 ~~program participant.~~

15 ~~6. A parent of a program participant under subsection 4 may choose any education~~
16 ~~method, including nonpublic school, private tutor, online learning, or other qualified~~
17 ~~provider, which best serves the needs of the program participant. A parent who signs~~
18 ~~an agreement with the superintendent of public instruction under section 15.1-39-04 is~~
19 ~~deemed to have satisfied the requirements of chapter 15.1-20 with regard to the~~
20 ~~program participant.~~

22 7.5. The superintendent of public instruction may contract with a third party to administer
23 the program and manage accounts for the program. The superintendent of public
24 instruction shall oversee and audit the contractor.

25 8.6. The superintendent of public instruction shall provide information regarding the
26 program to the public, including through the superintendent of public instruction's
27 website. The superintendent of public instruction shall ensure parents of children who
28 have disabilities or educational disadvantages are aware of the program.

29 **15.1-39-03. Program eligibility.**

30 A child is eligible for the program if the child is eligible to attend kindergarten through grade
31 five at a public school in this state.

~~15.1-39-04. Agreement required.~~

~~Before a program participant may receive funding under this chapter, a parent must agree in writing to:~~

- ~~1. Spend program funds only on qualified education expenses as provided under section 15.1-39-05.~~
- ~~2. Notify the superintendent of public instruction immediately if the program participant enrolls in a public or nonpublic school.~~
- ~~3. Provide course documentation to the superintendent of public instruction to prove the program participant's fulfillment of state graduation requirements.~~

~~15.1-39-05~~ **15.1-39-04. Qualified education expenses.**

1. Program funds may be used to pay the following qualified education expenses:

- a. Tuition, books, instructional materials, and fees at an accredited nonpublic school.
- b. Textbook purchases.
- c. Curriculum purchases.
- d. Computer and any other hardware purchases that may be approved by the program administrator every three years.
- e. Instructional material purchases.
- f. Professional fees of a private tutor or teaching services.
- g. Professional fees of a practitioner or provider of educational therapies or services.
- h. Fees for a nationally standardized, norm-referenced achievement test or examination.
- i. Educational services purchased from a public school, but which do not qualify the participant to be counted in daily attendance at the school.
- ~~j. Professional fees of a financial institution that manages the participant's account.~~

2. Program funds may not be used for the purchase of food or child care provided before or after school hours or during holidays and vacations.

3. ~~A qualified provider shall give a parent a receipt for each qualifying education expense charged by the qualified provider.~~

~~4.~~ This section does not limit the ability of a program participant to pay a qualified provider with funds other than program funds for educational courses, materials, supplies, or services not covered by the program.

~~15.1-39-06~~ **15.1-39-05. Application for program.**

1. A parent may enroll an eligible child in the program for the next school year at any time during a calendar year.
2. The superintendent of public instruction shall use a standardized enrollment form to determine a child's eligibility for the program. The superintendent of public instruction shall make the enrollment form readily available through various sources, including the superintendent of public instruction's website, fax, and mail.
3. The superintendent of public instruction shall provide to each applicant and annually to each program participant information that describes the operation of the program including the list of qualified education expenses; expense reporting requirements; a list of qualified providers, including nonpublic schools participating in the program; and a description of the responsibilities of program participants and the superintendent of public instruction.

~~15.1-39-07~~ **15.1-39-06. Achievement testing.**

1. A parent shall arrange for the program participant to be administered a nationally recognized norm-referenced achievement test each year unless the program participant is attending a nonpublic school and the school administers the program participant a national norm-referenced assessment.
2. The parent shall report the results of the assessment to an independent researcher selected by the superintendent of public instruction through procurement practices, including a request for proposals. The independent researcher shall aggregate the test scores for all program participants and produce an annual report containing the aggregated results. Each report of the independent researcher must document changes in assessment scores of program participants. The first report must be produced three years after the program commences.
3. The requirements of subsection 1 do not apply if the parent notifies the school district in which the program participant resides, and the independent researcher selected by

the superintendent of public instruction, that the parent has a philosophical, moral, or religious objection to the use of norm-referenced achievement tests.

~~15.1-39-08~~ **15.1-39-07. Administration of accounts.**

1. The superintendent of public instruction shall issue a request for proposals if the superintendent of public instruction chooses to hire a contractor to manage accounts under the program. The contractor shall establish an account ~~for each program participant. A program participant may pay qualified expenses with program funds by using debit cards, online payment services, or other methods.~~

~~2. Program funds must be transferred to each program participant's account in quarterly installments of equal amounts to be made by September fifteenth, December fifteenth, March fifteenth, and June fifteenth, unless a parent negotiates a different schedule with the superintendent of public instruction.~~

~~3. The superintendent of public instruction may deduct from each quarterly transfer of funds an amount not to exceed three percent of the transferred funds to cover the superintendent of public instruction's cost of overseeing accounts and administering the program.~~

~~4. The superintendent of public instruction shall approve reasonable fees a contractor may charge for managing accounts under the program. The fees must be based on market rates as a qualified provider.~~

~~5.2.~~ Any funds remaining in ~~an~~the account at the end of a school year revert to the state general fund.

~~15.1-39-09~~ **15.1-39-08. Auditing of accounts.**

To ensure compliance with applicable law and the requirements of the program, the superintendent of public instruction annually ~~shall~~may audit a sufficient number of program accounts ~~chosen randomly, as determined by the superintendent of public instruction. An audit may include verification of account information and a review of student attendance records.~~

~~15.1-39-10~~ **15.1-39-09. Suspension of accounts.**

The superintendent of public instruction shall suspend ~~the account of~~payment for any program participant who fails to comply with applicable law or the requirements of the program ~~or who commits a substantial misuse of program funds.~~ The superintendent of public instruction shall notify the program participant in writing the ~~account~~payment has been suspended ~~and no~~

~~further transactions are allowed on or disbursements made from the account.~~ The notification must specify the grounds for the suspension and state the program participant has ten business days to respond and take any corrective action ordered by the superintendent of public instruction. Following the expiration of the ten-day period, the superintendent of public instruction shall:

1. Order permanent ~~closure of the suspended account and declare the~~ ~~program~~ suspension of payment to the qualified provider for the participant ineligible for the program;
2. Order temporary reinstatement of the ~~account~~ payment, conditioned on the performance of specified action by the program participant; or
3. Order full reinstatement of the ~~account~~ payments.

~~15.1-39-11~~ **15.1-39-10. Rates and rebates - Restrictions.**

A qualified provider may not:

1. Charge a program participant an amount greater than the standard rate charged to nonparticipants for the item or service provided.
2. Share with or refund, credit, or rebate to a parent or program participant, or any person on behalf of a parent or program participant, any program funds paid or owed by the program participant to the qualified provider.

~~15.1-39-12~~ **15.1-39-11. Referral to the attorney general.**

If the superintendent of public instruction obtains evidence of any fraudulent use of ~~an~~ ~~account~~ payments, the superintendent of public instruction shall refer the matter to the attorney general for investigation and prosecution.

~~15.1-39-13~~ **15.1-39-12. Limitation on regulation of qualified providers.**

1. The program does not expand the regulatory authority of the superintendent of public instruction, or any school district to impose additional regulations on a qualified provider under the program beyond what is necessary by the superintendent of public instruction to enforce the financial and administrative requirements of the program. The superintendent of public instruction and school districts may not regulate the educational program of a qualified provider under the program.

2. A qualified provider may not be required to alter its creed, practices, admissions policy, or curriculum to accept a student whose parent pays tuition or fees from an education empowerment account or to participate as a qualified provider.

~~15.1-39-14~~ **15.1-39-13. Student records.**

Upon request, a school district a program participant otherwise would attend shall provide the parent or the participating nonpublic school the program participant attends a complete copy of the program participant's school records. This section does not require or authorize the release of information except in conformity with the Family Educational Rights and Privacy Act of 1974 [20 U.S.C. 1232g].

~~15.1-39-15~~ **15.1-39-14. Annual survey.**

The superintendent of public instruction annually may request a parent to complete a written survey that solicits the parent's overall satisfaction with the program and opinion on specified topics and issues relevant to the effectiveness of the program.

~~15.1-39-16~~ **15.1-39-15. Rules.**

The superintendent of public instruction shall adopt rules, procedures, and forms necessary to implement the program.

~~15.1-39-17~~ **15.1-39-16. Applicability.**

Funds must be available to program participants starting with the 2022-23 school year.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of providing salaries for temporary administrators of the program under section 1 of this Act, for the biennium beginning July 1, 2021, and ending June 30, 2023.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the department of public instruction for the purpose of funding ~~accounts of nonpublic school~~ **program** participants of the education empowerment program under subsection 4 of section 15.1-39-02, for the biennium beginning July 1, 2021, and ending June 30, 2023.