

**Senate Education Committee**  
**Chairman Jay Elkin**  
**March 14, 2023**

**Testimony**  
**Shane Goettle**  
**Lobbyist for State Association of Nonpublic Schools (SANS)**

### **HB 1532**

Chairman Elkin and members of the Senate Education Committee, my name is Shane Goettle and I am here as the registered lobbyist for the State Association of Nonpublic Schools (SANS).

This bill is about empowering parents and giving them the freedom to choose the educational environment they believe is best for their child.

### **The North Dakota Constitution**

Let me start with the North Dakota Constitution. I am sure you are familiar with Article VIII, Section 5, which reads, in part:

*“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.”*

*N.D. Const. art. VIII, § 5.*

This provision is called the “Blaine Amendment” and in 1889 when North Dakota became a state, this provision was required of states desiring to enter the Union. So, this policy was really decided in Washington, D.C., and not by the people of North Dakota.

On November 29, 2022, Attorney General Drew Wrigley interpreted this section of our state constitution to conclude, in accordance with U.S. Supreme Court precedent cited in his opinion, that:

*“...the Blaine Amendment cannot be enforced in any situation where doing so would disadvantage a sectarian school as compared to a non-religious private school simply because of the school’s sectarian nature.”*

*Letter Opinion 2022-L-07 (Attached)*

The Attorney’s General opinion is binding and governs the actions of public officials unless a court decides otherwise. So, the takeaway here is that you are serving in the first legislative session that can fully consider a proposal such as the one before you without concern that it violates the Blaine Amendment.

But let me point out one the lesser cited sections of Article VIII, namely Section 4:

*“Section 4. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements.” N.D. Const. art VIII, § 4. [Emphasis added]*

With the Blaine Amendment dead, Section 4 charges the legislative assembly to take such steps as may be necessary to promote education of our people. What you have before you is a proposal to do just that.

### **House Bill 1532**

I want to draw the committee’s attention to a few things in the bill. First, on Page 1, lines 19-20 you will see the definition of “qualified school.” The definition limits “qualified schools” to schools inside the state of North Dakota, and does not include homes schools. I think that is important so that you know this program will apply only to qualified expenses a parent might incur at nonpublic schools that are approved as such by the Superintendent of Public Instruction under NDCC § 15.1-06-06.1.<sup>1</sup>

On page 2, lines 2-3, you can see the whole process proposed in this bill starts with a “parent” (defined in the bill) requesting a program form from a qualified school for the upcoming school year. Now, while a parent initiates this process with a particular nonpublic school of their choice, this bill is not designed as a traditional school choice voucher bill. The parents don’t handle the funds, nor do they receive any kind of redeemable certificate.

Rather, on page 2, lines 4-5, the qualified school receives the request from the parent, certifies enrollment at that school, and then requests program funds for the child’s qualified educational expenses. In short, the dollars are handled between DPI and the qualified school.

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<sup>1</sup> Approval is mandatory:

- The superintendent of public instruction must approve all nonpublic schools offering elementary or secondary education. *N.D. Cent. Code* §15.1-06-06.1.
- For those nonpublic schools that are not in compliance with the requirements for approval and do not then receive a certificate of approval, the superintendent of public instruction is to notify those nonpublic school students' parents that they may be in violation of the compulsory attendance requirements. *N.D. Cent. Code* §15.1-06-06.1.
- The superintendent of public instruction may not approve a school unless each teacher is licensed or approved to teach by the education standards and practices board; teacher is teaching courses only in fields in which he or she is licensed or for which he or she has received an exception under section 15.1-09-57; students are offered all subjects required by law; the school is in compliance with all local and state health, fire, and safety laws; and the school has conducted criminal history record checks on employees who have unsupervised contact with children. *N.D. Cent. Code* §§15.1-06-06 and 15.1-06-06.1.
- The superintendent of public instruction may approve a nonpublic secondary school with enrollment of fifty students or fewer if the school provides courses in all subjects required by law, complies with statutes regarding the length of the school year, and meets all health, fire, and safety standards. Curricular programs offered by schools that deliver courses by telecommunications or other electronic means must be prepared by individuals holding at least baccalaureate degrees and delivered by those with a North Dakota professional teaching license or who at least meet the average cutoff scores of states that have normed the national teacher's examination. The school must have at least one state-licensed high school teacher for each twenty-five students. *N.D. Cent. Code* §15.1-06-07.

The school, then credits that received amount, back to the parent on their invoice, reducing the amount the parent would otherwise pay the school.

The appropriated dollars for this program are found in Section 3, on page 4 of the bill. It is \$24m for the biennium from the general fund. Note: this is a new appropriation. It is NOT being taken from public school funding. It is NOT decreasing the amount going to any school in this state, rural or urban. In fact, based on other bills you are voting on this session, public schools stand to gain more money from this legislative session. Note the \$24m equates to \$12m per school year. That is what House Appropriations intended in the amendments they took up and added to the bill. One sentence was missed on page 3, line 30. I understand Representative Keith Kempenich has prepared an amendment for you to strike that sentence so that it comports with what the House intended.

You can also note on page 2, lines 10-11, no matter the appropriation level or participation level in the program, no more than 30% of the state's per-student payment rate may be paid out per student. This is further limited as an offset against only the qualified education expenses the parent might otherwise have paid. In summary, once the qualified school receives the funds, the parent would see this a credit on the invoice the qualified school sends to the parents for that family, but never more than qualified expenses or 30% of the state's per-student payment rate, whichever is less.

You will note on page 3 that HB 1532 has accountability, including the power to suspend a school from the program if there is any abuse. It also has protections for the schools that participate in that no other additional requirements may be imposed through rulemaking. Nor does a school need to alter its creeds, practices, admissions policies, or curriculum to participate as a qualified school.

Mr. Chairman and members of the committee, I have with me today Gerald Vetter, the President of the State Association of Nonpublic Schools, who will follow me if you any questions for the qualified nonpublic schools.

I will also gladly stand for any question myself that help this committee get to a "do pass" recommendation!