

Legislative Objective:

To eliminate state regulation of non-public schools by the North Dakota Department of Public Instruction with regard to curriculum and teacher licensure in non-public schools, particularly religious (sectarian) schools, for the purpose of providing parents with the freedom to educate their children according to their religious and philosophical convictions and to empower non-public schools to innovate and improve upon education within their unique models, unencumbered by the public school bureaucracy. Non-public schools currently receive no state funding yet are required to submit to regulations designed for state-funded, non-sectarian schools.

There are four key arguments for this change to the Century Code:

1. **First Amendment Argument.** Regulation is a violation of First Amendment protection afforded to parents and educators to practice their religion without government regulation of their faith. Regulation of non-public schools by the NDDPI often violates the very educational philosophy and religious purpose of religious non-public schools, particularly with regard to teacher licensing. The current progressive model of education taught in teachers' colleges violates the Christian principles of many of our non-public schools through curriculum and pedagogy that run contrary to classical Christian anthropology, metaphysics, and epistemology.
2. **Fourteenth Amendment Argument.** Under the United States Constitution, parents have a fundamental right to direct the education of their children. In 1925 the Supreme Court recognized that "liberty," protected by the Fourteenth Amendment, includes the right to choose a private education. Confronted with an Oregon statute mandating public school attendance, the Supreme Court ruled the statute unconstitutional. *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

A state's excessive regulation may in fact eliminate a parent's right to direct the education of his or her child. In 1923, the Supreme Court struck down a Nebraska statute that prohibited the teaching of German to elementary school age children. The Court determined that the law unreasonably interfered with the power of parents to control their children's education. *Meyer v. State of Nebraska*, 262 U.S. 390 (1923). Similarly, in 1927, the Supreme Court held a Hawaiian law unconstitutional that regulated the teachers, curriculum, and textbooks of private language schools and placed control of the schools in public officers. "Enforcement," the Court said, "would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful." *Farrington v. T. Tokushige*, 273 U.S. 284, 298 (1927).

In 1976, the Ohio Supreme Court applied *Farrington* in a constitutional challenge to the state's "minimum standards" governing nonpublic schools. The state court determined that the standards were "so pervasive and all-encompassing that total compliance with each and every standard by a nonpublic school would effectively eradicate the distinction between public and nonpublic education, and thereby deprive these appellants of their traditional interest as parents to direct the upbringing and education of their children." *Ohio v. Whisner*, 351 N.E.2d 750, 768 (1976).

The challenge to state legislators in regulating private schools, then, is to draft legislation that 1) respects the fundamental right of parents to direct the education of their children, 2) protects the state's interest in an informed citizenry but avoids interference with religious beliefs unless compelling interests are at issue, and then only in the least restrictive manner, and 3) avoids

comprehensive regulation of private education that would deprive parents of any choice in education.

3. **Parental Rights Argument.** Parents choosing non-public schools should be afforded the same freedom and authority as those who choose homeschooling. ND parents with only a high school diploma have the right to homeschool their children in all academic disciplines through graduation, but teachers in non-public schools are nearly always more highly qualified than such parents, holding at least a bachelor's degree and often an advanced degree in a field related to their area of instruction. These non-public schools train their teachers with robust professional development in keeping with their philosophies and religious beliefs and typically get very strong student outcomes in return. It is the parents' responsibility and right to supervise and evaluate the quality of their child's school, just as homeschool parents and public school parents are entitled to do. Parents will not pay tuition for a low quality program. They provide far more accountability than state regulations that do not actually ensure quality in the local non-public school.
4. **The ND Constitution Argument.** The preamble to the ND Constitution states that the Constitution is established with gratitude to God for religious liberty. Article VIII of the ND Constitution establishes in Section 1 that the legislative assembly shall make provision for the establishment and maintenance of a system of public schools free from sectarian control. The Constitution obviously did not establish state funding nor oversight of privately established and funded schools. In fact, the state distances itself from such schools in Section 5 of Article VIII, stating that no money raised for public schools shall be used for sectarian schools. The very time and energy that the NDDPI uses to regulate non-public sectarian schools is a misappropriation of state funds in support of sectarian schools. No state agency should be engaged in non-public, religious education.

Even the name of the Department of Public Instruction plainly states that the Department exists to regulate the public education system rather than the non-public.

1. **The Legal Role of the Superintendent of Public Instruction.** Century Code 15.1-02-04 clearly defines the role of Superintendent of Public Instruction (bullet 1) as that of supervising the provision of education to the students of the state. Since non-public education is provided by private entities and not by public officials, supervision of non-public schools should be provided by those who actually provide non-public education, namely non-public school boards and their funders, the parents and donors. The list of ten duties is clearly penned from a publicly funded perspective and not natural to non-public schools.
 1. Bullet 2 states that the Superintendent shall supervise the establishment and maintenance of schools. The implication is, of course, those schools are funded and maintained by the state and the NDDPI since non-public schools are established and maintained entirely by private citizens and should not logically be supervised by the state's Superintendent of Public (not non-public) Instruction.
 2. Bullet 9 outlines the Superintendent's role in facilitating the strategic vision for ND public schools and specifically identifies this responsibility as pertaining only to those entities that receive state education funds. As non-public schools are clearly not funded by the state, and therefore would not be included in the state's strategic vision for education, it makes little sense that the Superintendent's office would be involved in any official capacity in supervision of non-public schools.

Comparison with Other States

North Dakota is operating out of step with not just conservative states nationally but with liberal states that protect the freedom of parents to educate their children according to their own convictions and leave non-public schools unregulated by the state.

Our neighboring states and most blue states across the country, including Minnesota, Pennsylvania, California, New Jersey, Massachusetts, and Rhode Island, acknowledge these arguments, do not require their non-public schools to hire state-licensed teachers, and do not govern non-public school curriculum requirements.