MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

1232

DESCRIPTION

2005 HOUSE EDUCATION

HB 1232

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1232**

House Education Committee

☐ Conference Committee

Hearing Date **17 Jan 05**

Tape Number	Side A	Side B	Meter #
1		X	860 - 1980
2	X		0 - 700

Committee Clerk Signature Jan Prindle

Minutes:

Chairman Kelsch opened the hearing on HB 1232.

Rep. Froelich, Dist. 31, introduced the bill regarding stipends for student teachers. It is to help school districts to recruit student teachers. These students provide nearly all the same duties as a regular staff member without any compensation. Often they commute long distances and have financial needs. This bill provides minimal support for those students. We need to be creative in recruiting student teachers.

Rep. Hunskor: Have you talked to any school districts about this situation.

Froelich: Yes, and they do have difficulties.

Rep. Herbel: Do we have to change anything in code to make this happen.

Froelich: That's why this has come forward, this changes code.

Chairman Kelsch: Many student teachers are not able to get into home districts, and the receiving district can provide housing.

Rep. Sitte: Does payment of any sort increase the liability for the district in case the student teacher did something really out of context. By paying these students, does the school district have more liability?

Kathy Froelich, Teacher Education Coordinator at Sitting Bull College: All student teachers go through a background check and they also have coverage under NDEA and that covers liability. I am support of this legislation because our paraprofessionals have had to go back to school to get 2-year degrees. A lot of them have opted to get a 4-year degree. There are grants, but they must be employed to get those grants. To student teach, they no longer get those grants because they are no longer employed. This is a good incentive for student teachers and a good recruitment especially for rural schools. It is a hardship when they student teach.

Hearing closed and reopened at 1:30 p.m.

Jack McDonald, Non-Public schools, provided a court opinion regarding student teachers. **(Copy attached.)** Our only concern is that changing policy is that you unbalance the issue of student teachers and student mentors. We may be entering into a bidding war.

Rep. Hunskor: Isn't the student assigned by the college?

McDonald: It's my understanding it is a mutual selection process. It seems it could enter into an element of unfairness if one school pays more than the other.

Chairman Kelsch asked Rep. Horter to explain the process she went through.

Rep. Horter: You need to apply, have the credits needed, 60 hours of field experience usually you hook up with the teacher you worked with in field experience. Some students are fielded to other districts as Grand Forks cannot absorb all the students.

Chairman Kelsch asked Vice Chairman Johnson to have a discussion with the Attorney General to see if this bill is okay and we are not crossing boundaries we should not be crossing.

Chairman Kelsch closed the hearing on HB 1232.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1232**

House Education Committee

☐ Conference Committee

Hearing Date **18 January 05**

Tape Number	Side A	Side B	Meter #
2	x		3900 - end
		x	0 - 200

Committee Clerk Signature Jan Prindle

Minutes:

Chairman Kelsch opened the hearing on HB 1232. Jack McDonald had raised a question about an Attorney General opinion and if this bill was in conflict to that opinion. Rep. Johnson checked with the AG and there is no conflict between this bill and that opinion.

Rep. Norland: I move a **Do Pass.**

Rep. Wall: Second

Rep. Mueller: The only concern I have about this provision is that we have schools that struggle to find teachers and adding stipends to it when we don't have a real teacher in that position so this student teacher becomes the teacher. The supervising teacher may be in a related field but has a full load of his own. Now we have a young person is school who is actually in charge of teaching because we couldn't get a teacher. That's a concern.

Rep. Norland: I don't believe that would ever, ever happen. You cannot put a student where there is no one to monitor that them, that would never happen.

Rep. Haas: Institutions of higher education are particular where they put their students and they never put them where they are not supervised.

Rep. Horter: It's always been my experience that you take over the class of the supervising teacher and they are in the room.

Rep. Herbel: It appears to me this bill was brought in for two reasons, (1) to provide a stipend for the student teacher and (2) as a recruitment tool. I don't think it will help the recruitment at all as there are schools everyone wants to go and some no one wants to go to. To pay the young kids for doing the student work isn't a bad idea.

Rep. Hawken: Perhaps there might be some way to do a tuition payment or a loan payment. There are a number of places in the state where we have internships that are paid. If we are looking at moving education to a more professional scenario, this would be good.

Rep. Herbel: I think we did something last session when we allowed districts to pay a bonus to student teachers who became new teachers.

Chairman Kelsch: I signed on to the bill because I look at people like Rep. Horter who is going to law school instead of teaching. A lot of young students are deciding teaching is not for them. They need to know how much they are appreciated and they will be appreciated as a teacher. It says we're glad you're in education and we hope you stay in the state of ND.

Rep. Wall: In many programs in institutions of higher learning, internships are required to graduate. All internships are paid and many students make 10,000 and up and it's a way for businesses to recruit. They pay a premium and I hope this will work the same way. I know in my instance I shopped around for advantageous benefits.

Rep. Sitte: I agree with what John said, it's another incentive to student teach in ND.

Rep. Norland: If you know a teacher is going to retire that gives you an opportunity to go look at people to student teach who may soon be qualified to teach for you.

Rep. Mueller: We have our opinions but we have no school people talking about it.

Chairman Kelsch: Nobody testified except Rep. Froelich and his wife. I find it interesting that no one came forward the day of the hearing.

Joe Westby, NDEA, shared that NDEA did not feel strongly one way or another. There was a question if school districts had the money to put out additional dollars to these folks. My personal opinion is that we could benefit from training of teachers if they had a period of internship if they were paid a salary. That would enhance the preparation of future teachers.

Rep. Norland: I call for the question.

Yes: 12 **No:** 2 **Absent:** 0 **Motioned passed.**

Rep. Horter will carry the bill.

Date: 18 Jan 05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1232

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Norland Seconded By Wall

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		**Rep. Hanson**		✓
Vice Chairman Johnson	✓		**Rep. Hunskor**	✓	
Rep. Haas	✓		**Rep. Mueller**	✓	
Rep. Hawken	✓		**Rep. Solberg**	✓	
Rep. Herbel		✓			
Rep. Horter	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Wall	✓				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Horter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1232: Education Committee (Rep. R. Kelsch, Chairman) recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1232 was placed on the Eleventh order on the calendar.

2005 SENATE EDUCATION

HB 1232

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1232

Senate Education Committee

❑ Conference Committee

Hearing Date 03/09/05

Tape Number	Side A	Side B	Meter #
1	x		0-1550
2		x	120-230

Committee Clerk Signature Patty Wilkens

Minutes : Relating to stipends for student teachers.

Senator Freborg : Call the meeting to order on **HB 1232**

All members present.

Testimony in favor of the bill :

Representative Froelich : introduced the bill district 31

See attached : written testimony

Senator Flakoll : Will this in any way change the reporting that we get from DPI in terms of compensation for FTE or anything, b/c I understand that the way these teachers would be paid notably less than the average. Will this pull down our data?

Rep. Froelich : I don't believe right now they can paid at anything, maybe someone can help me with this, is it correct?

Senator Flakoll : If we are paying these folks only 2/3 rds of what the average teacher, or even less than even a beginning teacher gets paid. Will this be included in our FTE data that we

received from DPI and before they may not have even been included at all b/c they weren't compensated, and now that they are compensated will they be thrown into the pool of compensated FTE's that are allowable?

Rep. Froelich : Maybe somebody in the audience can answer that.

Senator Freborg : We will find that out.

Senator Flakoll : Would they be eligible or qualify for any of the FTE money that comes from the state? Would they?

Rep. Froelich : I can't really speak to that, this bill is intended that if a school come up with some extra money and wants to give subsistence one way or another, if they could get a grant or get something like that, this bill basically subsidized anything the state, it is not intended to dip into state funding.

Senator Taylor : In your study I was just thinking that there are other professions like medical professions, I know with medical school there is probably some encouragement for those students to go out to rural areas. Have you researched that, do they provide any kind of incentives?

Rep. Froelich : No I haven't. You are absolutely correct, other professions have this, they have something just like this. This isn't a new concept other professions do this. There are grants and loans, available for schools to get them.

Senator Flakoll : Do we have any #'s or how many people this may affect on an annual basis?

Rep. Froelich : No, I can't answer that.

Senator G. Lee : How do you see this working in your area in your particular case, down where you are, how would this help you and would you see that it was an expense kind of

reimbursement or living or would you see it as a stipend for like, here is 5 dollars for being a student teacher?

Rep. Froelich : If I could get the right person up here I could give you the right answer.

Senator Freborg : We will allow someone to come up and answer the questions a little later, but don't let these people intimidate you b/c they don't know the answer either.

Rep. Froelich : To my knowledge, with very little knowledge of it, there was some grant money available to pay the teachers at the district school and when they got to checking it out. ESPB and DPI said, no, no, you can't do that. The money was available, and they were going to give them a little cash for housing allowance or travel expense or something, and under the current situation they were able to do it. The money was there, I think it was through a BIA grant. Their hands were tied, there all kinds of different funds out there, I am not saying a school district needs to set aside some money, I won't go down that road. I am just saying that when you get into these small schools, they could always use some help.

Senator Freborg : You may ask one person from the audience to come and answer any questions.

Kathy Froelich : Teacher Education coordinator at the Sitting Bull College.

Senator G. Lee : How would this help you in terms of this, would you be paying expenses in terms of the housing, travel, money or would there be a per diem that would be offered to them?

Kathy Froelich : Colleges can apply for grant money to help support students through out their 4 or 5 yrs. experience, and then student teaching is the last stage. With more and more non traditional students entering college, meaning they have already had full time jobs, with the way the law is now, they have to leave their jobs to do student teaching, which is a full time job in

itself. So what this would do would just be providing them some additional expenses for living expenses maybe, that would be up to the school board how they want to do that. It isn't a salary that should be tied to any contract that they have. It is just to help them during that time, right now I know a student at Mary University and of course at our college in particular they take classes, they work full time in the schools as paraprofessionals, taking classes nights and weekends. In order for them to do their student teaching, they have to leave their jobs to do it. We are talking about people who already have families, bills, expenses, so what this would do is to give a little extra to help them, with housing or whatever. This could be up to the school district, and I know there is an argument on how some rural school teach. I think it would be a good improvement tool as it says in your document for our rural school districts, to provide some additional incentives.

Senator Flakoll : Do you have a handle on how many people would qualify for this or would apply to, you know there are a lot of institutions across the state?

Kathy Froelich : I don't, I really don't, someone said that we have about 700 right now that are enrolled in NDEA. If you are looking at how does this fit into everything will we know about alternative certification? If you think of it this way, it is another form of alternative that falls under the idea of alternative certification. We do look at recruiting people who may be in other career fields as well, so this would be an incentive for them.

Testimony in opposition of this bill :

Representative Arsvold : District 20, I am here today to express a concern about HB 1232 . My testimony will not as colorful as my predecessor. My basis for my opposition, some of the experiences that I bring are dated, I have been a cooperating teacher with student teachers, and

have been a supervisor of teachers, and also served on a school board where we have had student teachers experience that part of their education. As of late I have been in contact with some folks who are in teacher ed programs and also are part of the cooperating school network that work with those student teachers. I'd like to express some concerns with you on this bill, first of all there is some concern about a competitiveness that this might well develop or lead into between school districts. They would then compete for student teachers conceivably by virtue of the stipend that they would offer. Speaking with superintendents and principles who have been providing a cooperating experience for those student teachers, they say that some of them will not be able to afford a stipend as a consequence of this bill should it pass. There is some concern about licenser as well in other states, whether or not the other states will recognize a compensated experience as a legitimate student teaching experience. I am not well based on that particular point and there are others here that I think that could perhaps address that. In response to Senator Taylor about other professions and interns, the difference I see between the education and the other professions, is that those are generally for profit kinds of enterprises, where they can pass the intern cost onto customers that they have. This is not the case with education, they do not have that opportunity to raise the cost of their service, to offset that stipend that they would be offering. Student teachers are of course are allowed to continue to receive their scholarships and grants that they might receive. They of course may not have some on campus costs that they would traditionally would have, room and board VS campus, they would not financial obligation to contend with.

Senator Taylor : A couple words that struck me when you said they could still receive scholarships and grants b/c they are students and they are getting credits for their student teaching

experience. Could a school district, rather than call it a stipend, say they award a scholarship to a student that may come into their district for that semester?

Representative Arsvold : I would suppose that would be possible, they would have to set a scholarship fund, I don't know what the intricacies of that back on the campus. That would be possible that a school district could put a scholarship in place at a campus, that would be a whole different sort of thing as opposed to a stipend for services rendered.

Senator Freborg : Representative Arsvold, did you testify in the House?

Representative Arsvold : I did not, the bill snuck up on me and I was not aware of it being in committee.

Senator Freborg closed the hearing on HB 1232

Senator Freborg opened meeting back up

Senator Erbele moved for a **Do Pass on HB 1489**

Senator Taylor second the motion.

Discussion on motion.

Senator Taylor : There are maybe one or two unanswered questions. There are gonna be people that will want to use the authority and I think it will work well, I don't think it will cause any harm beyond that.

Senator Seymour : I just wanted to add they do it in SD.

No further discussion

Hearing None, Clerk took roll: Vote 6 Yea 0 Nay 0 Absent

Senator Erbele will carry this bill.

Date: 3/9/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1232

Senate SENATE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Erbele Seconded By Taylor

Senators	Yes	No	Senators	Yes	No
CH- SENATOR FREBORG	✓		SENATOR SEYMOUR	✓	
V-CH- SENATOR G. LEE	✓		SENATOR TAYLOR	✓	
SENATOR ERBELE	✓				
SENATOR FLAKOLL	✓				

Total (Yes) 6 No 0

Absent

Floor Assignment Erbele

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1232: Education Committee (Sen. Freborg, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1232 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1232

HB ~~1358~~
1232
17 Jan

FORMAL OPINION
2002-F-05

DATE ISSUED: March 28, 2002

REQUESTED BY: Senator Terry M. Wanzek

QUESTION PRESENTED

Whether it violates the United States Constitution for North Dakota state institutions of higher education to place student teachers in parochial schools.

ATTORNEY GENERAL'S OPINION

It is my opinion that it does not violate the United States Constitution for North Dakota state institutions of higher education to place student teachers in parochial schools if the placement is made pursuant to an appropriate placement policy.

ANALYSIS

In 1986, the Eighth Circuit Court of Appeals held that a state university may not place student teachers in parochial schools to meet student teaching requirements. Stark v. St. Cloud State Univ., 802 F.2d 1046 (8th Cir. 1986). However, the principal United States Supreme Court opinions relied upon by the court in Stark have been modified or overruled by the Supreme Court in the intervening years. While the issue has not yet been decided, it is likely that a court presented with a similar issue today would decide that such a program is constitutional based on these subsequent developments.

The court in Stark principally relied on opinions in two companion cases issued by the Supreme Court in 1985. In School Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985), overruled by Agostini v. Felton, 521 U.S. 203 (1997), the Court found unconstitutional two remedial and enhancement programs in which a school district provided, at public expense, classes to private school children in classrooms located in and leased from the local private schools. In reaching its decision, the Court applied the three-part test first articulated in Lemon v. Kurtzman, 403 U.S. 602 (1971). Under the Lemon test, the policy or program must have a secular legislative purpose; the primary or principal effect of the policy or program must be one that neither advances nor inhibits religion; and the policy or program cannot foster an excessive entanglement of the state with religion. Id.

at 612-13. Summarizing its decision, the Court said that the challenged programs had the effect of promoting religion in three ways:

> The state-paid instructors, influenced by the pervasively sectarian nature of the religious schools in which they work, may subtly or overtly indoctrinate the students in particular religious tenets at public expense. The symbolic union of church and state inherent in the provision of secular, state-provided instruction in the religious school buildings threatens to convey a message of state support for religion to students and to the general public. Finally, the programs in effect subsidize the religious functions of the parochial schools by taking over a substantial portion of their responsibility for teaching secular subjects.

Ball, 473 U.S. at 397.

In Aguilar v. Felton, 473 U.S. 402 (1985), overruled by Agostini v. Felton, 521 U.S. 203 (1997), the Court held that the Establishment Clause barred the city of New York from sending public school teachers into parochial schools to provide remedial education to disadvantaged children. The defendants attempted to distinguish Ball because in Aguilar the city had adopted a system for monitoring the religious content of the publicly funded classes in a religious school. Id. at 409. The Court rejected that distinction, stating that the monitoring would inevitably result in the excessive entanglement of church and state. Id. The Court stated that the "scope and duration" of the city's program "would require a permanent and pervasive state presence in the sectarian schools receiving aid." Id. at 412-13.

A year after the Supreme Court decided Ball and Aguilar, the Eighth Circuit Court of Appeals issued its decision in Stark, 802 F.2d 1046. In reaching its holding that a state university may not place student teachers in parochial schools, the Eighth Circuit cited and heavily relied upon the Supreme Court's analysis in Ball. Id. at 1049-52. As the Supreme Court did in Ball, the Eighth Circuit utilized the Lemon test to determine whether the university's placement policy violated the Establishment Clause. Id. at 1049.

With regard to the first prong, the placement policy serving a secular purpose, the university had asserted that it adopted its placement policy to provide for its students' education by increasing the number of available student teaching sites. Id. Although the court questioned whether the university actually adopted the policy for that reason, the court accepted the university's avowed purpose and held that the stated purpose constituted a valid secular purpose. Id.

Addressing the second prong of the Lemon test, the court found the primary effect of the university's policy was to advance religion. The court found the parochial schools

were pervasively sectarian schools, and that "[t]eachers play an essential role in providing th[e] integrated secular and religious education, instructing 'in Christian values in a formal way through classroom instruction, but also by example.'" Id. at 1050. Accordingly, the court concluded that "[t]he placement of state University students in these institutions . . . can benefit religion even though the students teach secular courses. The secular education that these institutions provide 'goes hand in hand with the religious mission that is the only reason for the schools' existence. Within the institution[s], the two are inextricably intertwined.'" Id. (quoting Lemon, 403 U.S. at 657).

The court further wrote:

> Given that the parochial schools serving as student teaching sites are pervasively sectarian, we are forced to conclude that the University's policy impermissibly advances religion by creating a perception that the state endorses the institutions' religious mission. The first amendment rests on the belief that "a union of government and religion tends to destroy government and to degrade religion." When a state program fosters the appearance of such a union, the state places its imprimatur on the religion and thereby "promotes religion as effectively * * * as when it attempts to inculcate specific religious doctrines."

Id. (citations omitted).

The court found that the student placements give the parochial schools the benefits of evaluating the student teachers for future employment and that the schools receive state funds "with no strings attached" due to the placements. Id. Furthermore, "the University's program creates the perception of a symbolic union between church and state in the minds of the parochial schools' students. . . . By creating the perception in the minds of the parochial school students that the state supports the religious school and its message, the state thereby promotes the religious mission of the institution." Id. at 1051.

The court concluded that "the University's policy confers the state's blessing and its funding on the pervasively sectarian institutions at which the University students teach. . . . [The] policy communicates the state's approval of the schools' religious message. Because such state endorsement has the primary effect of advancing religion, the policy violates the Establishment Clause." Id. at 1052 (citations omitted).[1]

[1] Stark is a two-one decision. Judge Bowman dissented, stating "the student teacher training program at issue in this case neither has the primary effect of advancing religion nor does it tend excessively to entangle the state with religion." Id. at 1052.

The holding of the Stark case is clear. What is unclear is whether Stark is good law based upon subsequent United States Supreme Court decisions. Since Stark, the Supreme Court has modified the Lemon test. In 1997 the Supreme Court overruled Ball and Aguilar, cases relied upon heavily in Stark. Thus, it is necessary in this opinion to address the constitutional question in light of recent Supreme Court decisions, not just the Stark opinion.

In Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993), the Supreme Court addressed whether the Establishment Clause prohibited a school district from using funds under the Individuals with Disabilities Act (IDEA) to provide a sign-language interpreter to accompany a deaf student to classes at a Roman Catholic high school. The Court did not mention the Lemon test, except to explain the court of appeals' decision. Id. at 5. Rather, the Court considered whether the government program was operated neutrally without reference to religion. "[W]e have consistently held that government programs that neutrally provide benefits to a broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit." Id. at 8.

Applying that principle to the case at hand, the Court explained that the parents selected the school of their choice, ensuring that "a government-paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents." Id. at 10. Because the program did not create a "financial incentive" for parents to choose a sectarian school, the interpreter's presence at the school could not "be attributed to state decisionmaking." Id. According to the Court, "[w]hen the government offers a neutral service on the premises of a sectarian school as part of a general program that 'is in no way skewed towards religion,' it follows under our prior decisions that provision of that service does not offend the Establishment Clause." Id. (citation omitted).

The Court emphasized that providing the interpreter did not relieve the school of an expense that it would have otherwise assumed in educating its students, and that any attenuated financial benefits that the parochial school did ultimately receive were attributable to "the private choices of individual parents." Id. at 12 (quoting Mueller v. Allen, 463 U.S. 388, 400 (1983)). The Court specifically rejected the argument that merely placing a public employee in a religious school creates an impermissible symbolic union between church and state. "Such a flat rule, smacking of antiquated notions of 'taint,' would indeed exalt form over substance." Id. at 13.

The Court concluded:

> The IDEA creates a neutral government program dispensing aid not to schools but to individual handicapped children. If a handicapped child

> chooses to enroll in a sectarian school, we hold that the Establishment Clause does not prevent the school district from furnishing him with a sign-language interpreter there in order to facilitate his education.

Id. at 13-14.

The Supreme Court appeared to move even further away from the Lemon test in Agostini v. Felton, 521 U.S. 203 (1997). In Agostini, the Court specifically overruled Ball and Aguilar. Id. at 236. "Distilled to essentials," according to the Court, the Ball decision "rested on three assumptions: (i) any public employee who works on the premises of a religious school is presumed to inculcate religion in her work; (ii) the presence of public employees on private school premises creates a symbolic union between church and state; and (iii) any and all public aid that directly aids the educational function of religious schools impermissibly finances religious indoctrination, even if the aid reaches such schools as a consequence of private decisionmaking." Id. at 222. The Court explained that Aguilar also relied on a fourth assumption: "that New York City's Title I program necessitated an excessive government entanglement with religion because public employees who teach on the premises of religious schools must be closely monitored to ensure that they do not inculcate religion." Id. The Court then stated that its "more recent cases have undermined the assumptions upon which Ball and Aguilar relied." Id.

The Court explained that Zobrest "expressly disavow[ed] the notion that 'the Establishment Clause [laid] down [an] absolute bar to the placing of a public employee in a sectarian school.'" Id. at 223 (quoting Zobrest, 509 U.S. at 13). Furthermore, Zobrest "expressly rejected" the notion that, "solely because of her presence on private school property, a public employee will be presumed to inculcate religion in the students." Id. at 224. According to the Court, Zobrest also "implicitly repudiated" the presumption that the presence of a public employee on parochial school grounds "creates an impermissible 'symbolic link' between government and religion." Id.

Applying Zobrest to the pending issue, the Court stated "there is no reason to presume that, simply because she enters a parochial school classroom, a full-time public employee ... will depart from her assigned duties and instructions and embark on religious indoctrination ...." Id. at 226. Furthermore, the presence of a public teacher in a parochial school classroom does not, without more, "create the impression of a 'symbolic union' between church and state." Id. at 227. Finally, the Court wrote that "placing full-time public employees on parochial campuses to provide Title I instruction would [not] impermissibly finance religious indoctrination." Id. at 228. Title I services are provided to students whether they choose to attend a public or a parochial school. Id. Furthermore, "Title I services are by law supplemental to the regular curricula. These services do not, therefore, 'reliev[e] sectarian schools of costs they otherwise would have borne in educating their students.'" Id. (citations omitted).

The Court emphasized that the Title I program does not have "the effect of advancing religion by creating a financial incentive to undertake religious indoctrination." Id. at 231. Programs are appropriate if "the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis." Id. The Court also rejected the argument that administering the Title I program would create an excessive entanglement between state and religion. Id. at 233-34.

In Mitchell v. Helms, 530 U.S. 793 (2000), a plurality of the Supreme Court further simplified the test to be applied when evaluating whether aid to parochial schools violates the First Amendment. Mitchell involves the constitutionality of a program that distributed federal funds to state and local governmental agencies, which in turn lent education materials and equipment to public and private schools. The plurality noted agreement that the program has a secular purpose, it does not define its recipients by religion, nor does it create an excessive entanglement between government and religious organizations. Id. at 808. Therefore, the plurality explained that the ultimate question before the court in Mitchell is "whether any religious indoctrination that occurs in those schools could reasonably be attributed to governmental action." Id. at 809. "[T]he answer to the question of indoctrination will resolve the question whether a program of educational aid 'subsidizes' religion, as our religion cases use that term." Id. The plurality then emphasized the importance of neutrality:

> In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality, upholding aid that is offered to a broad range of groups or persons without regard to their religion. If the religious, irreligious, and areligious are all alike eligible for governmental aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of a government. . . . [I]f the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose, then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose. The government, in crafting such an aid program, has had to conclude that a given level of aid is necessary to further that purpose among secular recipients and has provided no more than that same level to religious recipients.

Id. at 810-11 (citation omitted).

According to the plurality, to assure neutrality, the Court considers whether any governmental aid that goes to a religious institution does so "only as a result of the genuinely independent and private choices of individuals." Id. (quoting Agostini, 521

U.S. at 226). "[T]he private choices help[] to ensure neutrality, and neutrality and private choices together eliminate[] any possible attribution to the government . . . ." Id. at 811.

A second important factor is whether the program "'define[s] its recipients by reference to religion.'" Id. at 813 (quoting Agostini, 521 U.S. at 234). In other words, the criteria for allocating the aid cannot create a financial incentive to undertake religious indoctrination. Id.

Justice O'Connor, in her concurring opinion joined by Justice Breyer, said that the plurality opinion announces a rule of "unprecedented breadth." Id. at 837. Agreeing with the dissent, she said that the plurality opinion appears to make evenhandedness neutrality a single and sufficient test. Id. at 838. She did agree, however, "that neutrality is an important reason for upholding government-aid programs against Establishment Clause challenges." Id.

Unlike the plurality opinion, the concurring opinion recognized a distinction between per-capita-aid programs and private-choice programs. The concurring opinion explained that the proper test is whether the government acted with a purpose of advancing or inhibiting religion and whether the aid has the effect of advancing or inhibiting religion. Id. at 845. The primary criteria used to determine whether a government-aid program impermissibly advances religion are: "(1) whether the aid results in governmental indoctrination, (2) whether the aid program defines its recipients by reference to religion, and (3) whether the aid creates an excessive entanglement between government and religion." Id. Those same criteria are examined, according to the concurring opinion, to determine whether a government-aid program constitutes an endorsement of religion. Id.

Applying the above test, the concurring opinion found the program constitutional because the "aid is allocated on the basis of neutral, secular criteria; the aid must be supplementary and cannot supplant non-Federal funds; no Chapter 2 funds ever reach the coffers of religious schools; the aid must be secular; any evidence of actual diversion is de minimis; and the program includes adequate safeguards." Id. at 867. Although those factors may not be "constitutional requirements, they are surely sufficient to find that the program at issue here does not have the impermissible effect of advancing religion." Id.

It is evident that the underpinnings of Stark have been eroded by the Supreme Court's decisions in Zobrest, Agostini, and Mitchell. In fact, the Stark court relied heavily on the Supreme Court's decision in Ball, which was overruled by Agostini. The Eighth Circuit's decision in Stark rested on the assumptions (1) that student teachers who work on the premises of a religious school will inculcate religion in their work; (2) that the presence of student teachers, placed by a state institution, on private religious school premises

creates a symbolic union between church and state; (3) the placement of student teachers improperly benefits religious schools because they receive state funds with no strings attached; and (4) that state supervision of a student teacher creates an excessive entanglement between church and state. Stark, 802 F.2d at 1050-52. These assumptions were specifically or impliedly rejected in Zobrest, Agostini, and Mitchell.

Accordingly, it is my opinion that "development of constitutional law since [Stark] was decided has implicitly or explicitly left [Stark] behind as a mere survivor of obsolete constitutional thinking." Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 857 (1992). Because of the significant change in the Establishment Clause jurisprudence since 1985, in my opinion, it is doubtful that the Supreme Court and Eighth Circuit Court of Appeals would reach the same conclusion if the issue were decided today.

In my opinion, a policy could be drafted in a manner to permit students of state institutions to perform their student teaching at parochial schools without violating the Establishment Clause. The purpose of this opinion is not to draft such a policy. In my opinion, however, incorporation of the following provisions would help ensure that the policy complies with the United States Constitution. Although all of the following provisions may not be "constitutional requirements," they increase the likelihood a policy will be found not to have the impermissible effect of advancing religion.

> What schools are permitted to host student teachers must be based on neutral, secular criteria. Because the North Dakota Department of Public Instruction accredits public and private schools, one neutral, secular criterion could be that only schools accredited by the Department of Public Instruction can host student teachers.
>
> Approval of supervising teachers in schools must be based upon secular rather than religious criteria.
>
> The decision that a student will perform student teaching in a religious school cannot be made by the state institution. For example, a policy could provide that a student will only be placed in a religious school if the student requests such a placement and a religious school placement is appropriate based upon the secular criteria for choosing the host school and supervising teacher.
>
> The policy cannot provide incentives or benefits to a student for choosing to perform student teaching at a religious school.

All services provided by student teachers at a religious school must be secular. Student teachers may not participate in any duties as a student teacher involving religious indoctrination, practice, or instruction.

Supervision and evaluation of student teachers at religious schools must be based upon the same secular standards or secular criteria as supervision and evaluation of student teachers in non-religious schools.

Any funds (honorarium) paid must be paid directly to the supervising teacher rather than to the school. [Based upon the plurality decision in Mitchell, it is not clear whether this criterion is required. Incorporating this criterion into policy, however, in my opinion, will strengthen the policy against a constitutional challenge.][2]

Based upon the analysis currently used by the Supreme Court when evaluating whether the state's involvement with parochial schools violates the Establishment Clause, it is my opinion that a state institution could adopt a placement policy incorporating the above provisions and not violate the Establishment Clause.

EFFECT

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.[3]

Wayne Stenehjem
Attorney General

Assisted by: Douglas A. Bahr
Assistant Attorney General

[2] A university's student teaching policy does not necessarily direct state funds to parochial schools. Unlike in Stark, where the University paid the participating school for each student teacher, 802 F.2d at 1047, many universities pay no funds to participating schools. Some universities do pay supervising teachers an honorarium.
[3] See Johnson v. Baker, 21 N.W.2d 355 (1946).

Floor Speech HB 1232

Senator Freborg
Senate Education Committee

From: Rep. Rod Froelich, Dist 31

The final phase of a teacher's preparation is the student teaching experience. It can range anywhere from 10-15 weeks of on-the-job-training. If a pre-service student is majoring in two areas, then the experience can include additional weeks of the experience.

During this time students spend every day working in a school setting supervised by a cooperating teacher, administrator, and college faculty. These students perform almost all of the same duties as a regular staff member with very little if any compensation. Many students must commute long distances or leave their home setting to complete this experience. They continue to have financial needs and established living expenses, making this time a hardship varying from individual to individual.

This legislation is intended to provide minimal support for these future teachers as seen appropriate by a school board. The stipend of honorarium would help ease the financial hardship for student teachers.

For rural districts, it could be seen as a recruitment tool that would provide a win-win situation for both the school and pre-service teacher. Many times student teachers completing their experience in a school will develop long-lasting relationships with the school personnel, and many are offered contracts upon completion of their academic requirements.

We need to be creative in recruiting and retaining our future teachers, especially in light of NCLB requirements.