

The Detroit News

Mich. judge strikes down state aid to private schools

Detroit News staff and wire reports

Published 5:41 p.m. ET April 26, 2018 | Updated 11:22 p.m. ET April 26, 2018

(Photo: Todd McInturf / The Detroit News)

Lansing — A Michigan judge on Thursday struck down as unconstitutional two state laws that reimburse private schools for the cost of fire drills, inspections and other state requirements.



Court of Claims Judge Cynthia Diane Stephens said the 2016 and 2017 budget laws violate the state constitution's ban regarding direct or indirect aid to non-public schools.

It was a victory for public school groups that challenged \$5 million in appropriations spread over two years. The spending [has been frozen](#) during the lawsuit.

"The constitution is clear that public money should only be used for public schools," said Dan Korobkin, deputy legal director for the [American Civil Liberties Union of Michigan](#), which was involved in the litigation. "Today's ruling sends a message to lawmakers that public dollars cannot fund private interests."

Stephens rejected the state's argument that the money was not for educational purposes but rather health, safety and welfare purposes. She said providing money to offset compliance costs "supports the employment of nonpublic school employees" and cedes a "significant degree of control" to private schools — unlike other allowable expenses such as "shared-time" aid for public schools that enroll private students in non-core elective classes.

The suit [was filed](#) in March 2017 by the Michigan Association of School Boards and groups representing school districts, administrators and parents.

"I don't think from our perspective that we could have asked for a better ruling," said Don Wotruba, executive director of the school board group. "While it may not be a lot of money,

it at least at this level of the courts closes the door on the Legislature trying to move further in this direction.”

A state budget office spokesman declined to comment, saying lawmakers had requested the spending, not Gov. Rick Snyder. In 2016, after he signed a budget with an initial \$2.5 million in aid to help cover private schools’ costs to comply with mandates, the Republican governor sought an advisory opinion from the state Supreme Court on whether the spending was constitutional.

A representative for Snyder also declined comment Thursday night.

The governor has proposed eliminating the \$2.5 million allotment in 2018 and 2019 budgets. But House lawmakers included the controversial funding for the third year running in an early draft of the 2019 budget approved this month.

When the school and parent groups filed the lawsuit last year in state court to block the \$2.5 million that lawmakers put in the state budget in 2017 to fund mandates on non-public schools, they argued the state constitution’s so-called Blaine Amendment, passed by voters in 1970 as “Proposal C,” prevents public dollars from going to non-public schools.

Courts have interpreted the amendment to bar state support for general educational programs unless the main effect is to further a “substantial” governmental purpose.

In 2000, state voters defeated by 69-31 percent a ballot proposal to let parents in some struggling school districts use up to \$3,100 in public money to pay for their child’s tuition at a private or religious school. The effort was led by Grand Rapids area school choice advocate Betsy DeVos, who became President Donald Trump’s education secretary in 2017. Voters overwhelmingly defeated a similar voucher proposal in 1978.

“We all need to be clear on the fact that most people in Michigan want public funds to be used for public schools,” said Steven Norton, executive director of [Michigan Parents for Schools](#), which joined the ACLU’s lawsuit last year.

The move is significant because “the amount of funds available for the public schools in Michigan represents an important policy matter for the state,” said Larry Dubin, a law professor at the University of Detroit Mercy. “There has been a lot of criticism that sufficient funds have not been made available. To that extent, this decision seems to be a step in the direction of alleviating that problem.”

Others are not pleased, though. Some advocates have claimed the appropriation is legally sound because the budget specifies the private school funding is for purposes

“noninstructional in character” and for “ensuring the health, safety and welfare” of students.

“The decision is disappointing. At this point, we will be consulting with legal counsel regarding next steps,” said David Maluchnik, a spokesman for the [Michigan Catholic Conference](#), the official voice of the Catholic Church in Michigan on public policy matters. “We believe that every student in this state, regardless of what school they attend, deserves to be educated in a healthy and safe environment.”

This year, a group that includes a Catholic school in Grand Rapids, parents and GOP lawmakers [sought to invalidate](#) the nearly 50-year-old ban against using state aid for private education, arguing it is “anti-Catholic” and violates the U.S. Constitution. The lawsuit argued the state’s so-called Blaine Amendment was developed in a furor of “anti-Catholic sentiment” and should be disregarded in the debate over the \$2.5 million state allocation for non-public schools.

Some school advocates doubt an appeal to Stephens’ decision would succeed. Another legal expert said Immaculate Heart of Mary and others who filed a lawsuit could face challenges in proving aid should go to non-public schools.

“If the Immaculate Heart of Mary could prove that the state law was motivated by an intent to discriminate against Catholic schools, then this would indeed be problematic under the free exercise clause of the First Amendment,” said Len Niehoff, a University of Michigan law professor who teaches First Amendment law.

“But the school faces serious challenges here. There are legitimate reasons for the government to decide it does not want to fund private schools. And many judges would hesitate to try to read the minds of thousands and thousands of Michigan voters, guessing as to whether they voted out of anti-Catholic bias or for other reasons altogether.”

Staff Writers Mark Hicks and Sarah Rahal contributed.

<https://www.detroitnews.com/story/news/politics/2018/04/26/state-aid-private-schools/34287789/>