

STATE OF MICHIGAN
IN THE SUPREME COURT

COUNCIL OF ORGANIZATIONS AND OTHERS FOR EDUCATION ABOUT PAROCHIAID (CAP); AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN (ACLU); MICHIGAN PARENTS FOR SCHOOLS; 482FORWARD; MICHIGAN ASSOCIATION OF SCHOOL BOARDS; MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATORS; MICHIGAN ASSOCIATION OF INTERMEDIATE SCHOOL ADMINISTRATORS; MICHIGAN SCHOOL BUSINESS OFFICIALS; MICHIGAN ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS; MIDDLE CITIES EDUCATION ASSOCIATION; MICHIGAN ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS ASSOCIATION; KALAMAZOO PUBLIC SCHOOLS; AND KALAMAZOO PUBLIC SCHOOLS BOARD OF EDUCATION,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN; GRETCHEN WHITMER, Governor, in her official capacity; MICHIGAN DEPARTMENT OF EDUCATION; and DR. MICHAEL F. RICE, Superintendent of Public Instruction, in his official capacity,

Defendants-Appellees.

Supreme Court No. 158751

Court of Appeals No. 343801

Court of Claims No. 17-000068-MB

The appeal involves a ruling that a provision of a statute is invalid.

AMICUS CURIAE BRIEF OF THE MICHIGAN CATHOLIC CONFERENCE AND THE MICHIGAN ASSOCIATION OF NON-PUBLIC SCHOOLS¹

ORAL ARGUMENT REQUESTED

¹ Pursuant to MCR 7.312(H)(4), counsel for Michigan Catholic Conference and Michigan Association of Non-Public Schools attests that they authored the brief in whole and that no counsel or parties made a monetary contribution intended to fund the preparation or submission of the brief.

Lori McAllister (P39501)
Leonard C. Wolfe (P49189)
Courtney F. Kissel (P74179)
Hilary L. Vigil (P82229)
DYKEMA GOSSETT PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9150

*Attorneys for Michigan Catholic Conference
and Michigan Association of Non-Public
Schools*

Dated: December 23, 2019

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JURISDICTIONAL STATEMENT AND AUTHORITY FOR FILING AMICUS BRIEF

The jurisdictional statement in the Defendants-Appellees’ Brief is adopted by the Michigan Catholic Conference (“MCC”) and the Michigan Association of Non-Public Schools (“MANS,” together with MCC, “Amici”). Amici respectfully request that this Court accept this amicus brief pursuant to MCR 7.312(H).

STATEMENT OF QUESTIONS PRESENTED

- I. Given the United States Supreme Court’s evolution on the Free Exercise Clause, including in *Trinity Lutheran Church of Columbia, Inc v Comer*, ___ US ___; 137 S Ct 2012; 198 L Ed 2d 551 (2017), should this Court find that MCL 388.1752b is constitutional because Michigan’s Parochiaid Amendment in Const 1963, art 8, § 2 is unconstitutional?

Appellants’ answer: No.

Appellees’ answer: No.

Amici MCC and MANS answer: Yes.

This Court should answer: Yes.

- II. Even if Michigan’s Parochiaid Amendment is not unconstitutional, did the Court of Appeals correctly find that MCL 388.1752b is not facially unconstitutional under Const 1963, art 8, § 2?

Appellants’ answer: No.

Appellees’ answer: Yes, with respect to transportation costs only.

Amici MCC and MANS answer: Yes.

This Court should answer: Yes.

STATEMENT OF INTEREST OF AMICUS CURIAE

Founded in 1963, MCC serves as the official voice of the Catholic Church in Michigan on matters of public policy. This State's Catholic school presence consists of over 50,000 students attending over 220 schools throughout the entire State. As nonpublic schools, Catholic schools are part of the nonpublic school population that will be affected by a decision on the constitutionality of Section 152b of 2016 PA 249 ("Section 152b").² MCC was publicly supportive of the Legislature's effort to enact Section 152b from the beginning.

MANS is a service provider and public policy voice for nonpublic schools from the Catholic dioceses, Lutheran Church-Missouri Synod, and Christian Schools International in Michigan. Of the roughly 600 nonpublic schools throughout Michigan, over 400 are members of MANS. MANS was formed in 1972 and, since then, has taken steps to ensure that its members and nonpublic school students receive required services relating to health, safety, and general welfare. For instance, MANS contributed to the enactment of the Auxiliary Services Act, MCL 380.1296, which provides health, remedial, and psychological services to nonpublic school students, and has continued to pursue additional services for nonpublic school students since that time. MANS also was publicly supportive of the Legislature's effort to enact Section 152b from the beginning. In short, the members of both MCC and MANS are the schools that are directly impacted by the Court of Appeals's decision as they are the schools that submit for reimbursement under Section 152b. Amici attempted to intervene in the Court of Claims proceedings given their unique perspective and interest in this case; however, the Court of Appeals held that the Court of Claims Act precludes intervening defendants. Even though the Court of Claims denied Amici's motion to intervene because of the language of the Court of

² While this case has been pending, the Legislature amended MCL 388.1752b through 2017 PA 108 and 2018 PA 265.

Claims Act, the Court of Claims did recognize that Amici had an interest in this case that may not be adequately represented and accepted an amicus brief from Amici. The insight and perspective of Amici's members remains valuable and can provide this Court with beneficial information as it considers this case.

The State's new—and frankly, extreme—position in this case (presented for the first time in its Brief on Appeal) could significantly impact the current educational landscape in this State. The State is now taking the position that Const 1963, art 8, § 2 prohibits any non-transportation funding to nonpublic schools—a position that this Court has already rejected. While the State attempts to distinguish shared time and auxiliary services, the logical conclusion of the State's argument is that the State can no longer provide nearly any service or funding to a nonpublic school—even for health, safety, and welfare measures.

Because Amici were prevented from participating in this case as parties,³ there is no longer any party fully defending the statute at issue—or even representing the interests of the entities who are subject to the state mandates involved and who receive the funding implicated by this case—the nonpublic schools. Given the State's new position on the statute at issue—and sweeping statements about article 8, § 2 and its scope—Amici's interest in this case is even more significant.

³ The Court of Appeals in *Council of Organizations and Others for Education About Parochiaid v State*, 321 Mich App 456; 909 NW2d 449 (2017), held that the Court of Claims Act precluded intervening defendants, even those, like Amici, that had an interest in the case that may not be adequately represented. Amici participated in the Court of Claims and Court of Appeals's proceedings by filing amicus briefs, but were not permitted to fully participate. Given that Amici have been left to the sidelines in a case directly implicating their interests and no party to represent such interests, Amici request that this Court allow Amici to participate in oral argument in this case as explained in the motion filed simultaneously with this Brief.

INTRODUCTION

To be clear, this case is *not* about funding teachers’ salaries, paying for textbooks at nonpublic schools, or otherwise operating nonpublic schools. The crux of this case is whether the State can appropriate funds to nonpublic schools to foster compliance with existing health, safety, and general welfare measures and reporting requirements without running afoul of our Constitution. The parties—including the State Defendants—in this case have missed the mark with their analysis of the relevant statute and how this Court’s precedent (and United States Supreme Court precedent) applies. The Plaintiffs and the State would essentially have this Court overrule *Traverse City Sch Dist v Attorney General*, 384 Mich 390; 185 NW2d 9 (1971), and find that the plain language of Const 1963, art 8, § 2 prohibits any non-transportation funding to nonpublic schools. While neither party outright asks for this Court to overrule *Traverse City*, that is the logical conclusion of their arguments. To do so, however, would not only run afoul of the United States Constitution but would also dramatically alter Michigan’s educational landscape (not to mention forsake the State’s obligations to the health, safety, and welfare of students attending nonpublic schools).

The State attempts to distinguish between its position on Section 152b and shared time and auxiliary services under *Traverse City*, but its attempted distinction is fundamentally flawed. The Michigan Attorney General Opinion that was the impetus for *Traverse City* stated that art 8, § 2’s second paragraph (“Proposal C,” or the “Parochial Amendment”) “is phrased in broad terms which provide for the furnishing of transportation to and from any school as its only exception.” OAG, 1970, No. 4715, p 183, at 185 (Nov 3, 1970). Rejecting the Attorney General’s interpretation, this Court found that if it adopted the interpretation advocated in that opinion, “serious constitutional problems would arise.” 384 Mich at 430. “This literal perspective on Proposal C’s mandate of no public funds for nonpublic schools would place the

state in a position where it discriminates against the class of nonpublic school children in violation of the equal protection provisions of the Fourteenth Amendment of the United States Constitution. In the case of parochial or other church-related school children..., proposal C would violate the free exercise of religion clause of the First Amendment to the United States Constitution.” *Id.* And yet, this is precisely the position advocated by the parties in this case.

As this Court noted in *Traverse City*—and the United States Supreme Court found in *Trinity Lutheran Church of Columbia, Inc v Comer*, ___ US ___; 137 S Ct 2012; 198 L Ed 2d 551 (2017), serious constitutional issues arise when a state attempts to prohibit religious institutions from equally participating in programs that provide public benefits. Indeed, considering the common understanding of Michigan’s Parochial Amendment and the United States Supreme Court’s modern approach to such issues, it is clear that the Parochial Amendment violates the Free Exercise Clause, particularly the interpretation advocated for by the parties in this case. Indeed, under *Trinity Lutheran* (which both parties erroneously disregard) and the United States Supreme Court’s evolved Free Exercise doctrine, this Court’s prior review of the constitutionality of the Parochial Amendment must be re-examined. When offered, generally available public benefits *must* be provided on an equal basis to religious and non-religious recipients alike, including educational benefits to public and nonpublic schools. The Parochial Amendment specifically prohibits such benefits from being available to nonpublic schools—which, as the history of the Amendment shows, means that it prohibits such benefits to *religious* schools—and that is precisely what the United States Supreme Court says states cannot do. Under this new framework, the funds provided under Section 152b are not unconstitutional under the Parochial Amendment because such a finding would contravene the modern Free Exercise analysis articulated in *Trinity Lutheran*.

If, however, this Court disagrees that *Trinity Lutheran* requires a new constitutional analysis here, then this Court's decision in *Traverse City* is applicable and dictates that Section 152b is constitutional, as the Court of Appeals held. In *Traverse City*, recognizing that, even prior to *Trinity Lutheran*, a literal interpretation of the Parochiaid Amendment created serious constitutional issues, this Court held that public support may be provided to nonpublic schools if it is for health, safety, and welfare measures, is incidentally related to the operation of education, and does not excessively entangle the State with religion. The small appropriation granted under Section 152b is intended to reimburse nonpublic schools for compliance with a number of State-mandated requirements relating to the health, safety, and general welfare of students. The appropriation does **not** serve as a primary educational tool and cannot be considered an educational equivalent. Contrary to what the parties argue, this appropriation does **not** reimburse salaries of nonpublic school teachers or other personnel, nor does it fund or support any nonpublic school educational programs or provide any public money for nonpublic school materials, equipment, or supplies. Rather its purpose is to ensure that nonpublic schools are in compliance with State law and that nonpublic schools are providing a safe and healthy environment for their students, a responsibility shared by the State for *all* school children.

Simply because the funding under Section 152b would be directly provided to the nonpublic schools does not automatically mean that article 8, § 2 would be violated.⁴ Voluntarily seeking reimbursement for compliance with certain State-mandated requirements is not essential to running a nonpublic school. Indeed, the amount requested and ultimately received is nominal. Section 152b is an example of the Legislature exerting its authority—and obligation—to ensure that Michigan students are learning in safe and healthy environments. In

⁴ Indeed, *Trinity Lutheran* shows that providing direct funding to a religious entity does **not** run afoul of the United States Constitution. See *Trinity Lutheran*, 137 S Ct at 2024.

short, there is no constitutional violation here, and certainly not one that overcomes the strong presumption of constitutionality and the facts presented in this case. The parties' analyses of these issues are oversimplified and misapply the relevant precedent. This Court should hold the Parochiaid Amendment unconstitutional as is consistent with *Trinity Lutheran*, or at least hold Section 152b constitutional under this Court's precedent.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Because no party is fully defending the constitutionality of the statute, Amici provide background not only on the procedural history of this case but also the Michigan's Parochiaid Amendment, Michigan's educational landscape, and Section 152b—all of which are necessary for a full and complete analysis of these issues.

I. THE BLAINE AMENDMENTS AND ANTI-CATHOLIC SENTIMENT

Michigan's version of the Blaine Amendment—the Parochiaid Amendment—is embodied in Const 1963, art 8, § 2. While it was added to Michigan's Constitution in 1970, to understand the Parochiaid Amendment, it is critical to understand the history of Blaine Amendments in the United States. In 1875, then-U.S. Representative James G. Blaine of Maine proposed an amendment to the United States Constitution that purported to prevent states from directing public money or land to religious schools:

[N]o money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

4 Cong Rec 205 (1875); see Steven K. Green, *The Blaine Amendment Reconsidered*, 36 Am J Legal Hist 38, 49-50 (1992). Although this amendment was never adopted at the federal level due in part to federalism concerns, around thirty states adopted their own similar amendments between 1877 and 1917. See 4 Cong Rec 5561-62, 5580-95 (1876); Toby J. Heytens, Note,

School Choice and State Constitutions, 86 Va L Rev 117, 123, 123 n 32, 131-134 (2000) (hereinafter “*School Choice*”). These state constitutional amendments, commonly known as “Blaine Amendments,” have been the source of decades of litigation.

Historically, the Blaine Amendments were enacted as part of “a wave of anti-Catholic hysteria that swept the United States after the Civil War.” *School Choice*, 86 Va L Rev at 134. Anti-Establishment arguments were formulated and espoused as post-hoc justification for laws intended to deny funding to Catholic schools and to suppress growing Catholic influence in society that resulted from increased populations of Roman Catholics in America.⁵ *Id.* at 135-136; Viteritti, *Blaine’s Wake*, 21 Harv JL & Pub Pol’y at 659 (“Strict separationists often point to these local [Blaine] provisions as safeguards of religious freedom, using them to prevent objectionable interaction between governmental and religious institutions. In fact, the Blaine Amendment [was] a remnant of nineteenth-century religious bigotry promulgated by nativist political leaders who were alarmed by the growth of immigrant populations and who had a particular disdain for Catholics.”).

⁵ Proponents of Blaine Amendments assert that they embody a strict anti-Establishment principle that stringently separates church and state, and courts have generally acknowledged that Blaine Amendments go further than the Establishment Clause in building a “wall” between church and state. See, e.g., *Witters v Wash Dep’t of Servs for the Blind*, 474 US 481, 489; 106 S Ct 748; 88 L Ed 2d 846 (1986), reh den 475 US 1091 (1986); Joseph P. Viteritti, *Blaine’s Wake: School Choice, the First Amendment, and State Constitutional Law*, 21 Harv JL & Pub Pol’y 657, 659 (1998) (hereinafter “*Blaine’s Wake*”) (“[T]hese [Blaine] provisions set more rigid standards of separation between church and state than those required by the Supreme Court in its interpretation of the First Amendment.”). Blaine Amendments prohibit state aid to religious and nonpublic schools in absolute terms. In contrast, the Establishment Clause more generally condemns laws “respecting an establishment of religion” and does not explicitly prevent public monies from reaching religious schools. US Const, Am I; *Witters*, 474 US at 489 (holding that the Establishment Clause does not bar a state from issuing a vocational tuition grant to a blind person who wished to use the grant to attend a Christian college and become a pastor, missionary, or youth director).

When Blaine made his proposal, public schools were largely Protestant. Viteritti, *Blaine's Wake*, 21 Harv JL & Pub Pol'y at 666. Unlike the secular public schools of today, “[t]he common-school curriculum promoted a religious orthodoxy of its own that was centered on the teachings of mainstream Protestantism and was intolerant of those who were non-believers.” *Id.* As Catholicism spread, “Catholics formed political alliances with other religious minorities in response to the hostility of the public schools. Their aims were generally two-fold: removing Protestant bias from public institutions and gaining public funding for Catholic institutions.” *School Choice*, 86 Va L Rev at 136. Many responded with anti-Catholic publications, lobbied for “compulsory schooling laws that would require all children to attend public schools,” and fought “to preserve Bible study in public-school curricula and to deny government support to sectarian⁶ institutions.” *Id.* at 137. Ultimately, the Protestant majority’s efforts to prevent Catholics from receiving state aid for schools resulted in Blaine Amendments to state constitutions.⁷

⁶ Denying support to “sectarian” institutions meant denying it specifically to Catholic schools, not to Protestant public schools, which were considered to be “nonsectarian.” *Zelman v Simmons-Harris*, 536 US 639, 721; 122 S Ct 2460; 153 L Ed 2d 604 (2002) (BREYER, J., dissenting) (“Catholics sought equal government support for the education of their children in the form of aid for private Catholic schools. But the ‘Protestant position’ on this matter, scholars report, ‘was that public schools must be “nonsectarian” (which was usually understood to allow Bible reading and other Protestant observances) and public money must not support “sectarian” schools (which in practical terms meant Catholic).’ And this sentiment played a significant role in creating a movement that sought to amend several state constitutions (often successfully), and to amend the United States Constitution (unsuccessfully) to make certain that government would not help pay for ‘sectarian’ (i.e., Catholic) schooling for children.”); *Mitchell v Helms*, 530 US 793, 828; 120 S Ct 2530; 147 L Ed 2d 660 (2000) (plurality opinion) (“Consideration of the [Blaine] amendment arose at a time of pervasive hostility to the Catholic Church and Catholics in general, and it was an open secret that ‘sectarian’ was code for Catholic.”).

⁷ If strictly enforced, the anti-Establishment proscription in Blaine Amendments would prevent religious schools from sharing *in any way* in public monies that would otherwise be available to all students and schools in a state. Courts have been wary about enforcing the plain language of Blaine Amendments, however, because doing so would violate the Free Exercise Clause. See, e.g., *Moses v Ruszkowski*, 2019-NMSC-003, *33; 2018 NM LEXIS 70 (2018);

II. BRIEF OVERVIEW OF ARTICLE 8 OF THE MICHIGAN CONSTITUTION

The experience for Catholics in Michigan was no different from that of Catholics in the rest of the country. Michigan had codified anti-Catholic sentiment in its 1850 Constitution, which stated, “No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.” Const 1850, art 4, § 40. The provision also appeared unchanged in Michigan’s 1908 and 1963 Constitutions. Const 1908, art 2, § 3; Const 1963, art 1, § 4. Anti-Catholic bias persisted into 1970, when the Legislature authorized direct funding to nonpublic schools for educational services in secular subjects: Public Act 100 of 1970 allocated to nonpublic schools up to two percent of the “total expenditures from state and local sources for the support of the public primary and secondary education system in the last preceding fiscal year.” *Advisory Opinion re Constitutionality of PA 1970, No. 100*, 384 Mich 82, 90; 180 NW2d 265 (1970) (“*Advisory Opinion re 1970 PA 100*”). The payments to nonpublic schools were “restricted to certified lay teachers teaching secular subjects from textbooks meeting the criteria required of textbooks used in public schools.” *Id.* The Michigan Supreme Court upheld the validity of 1970 PA 100 against challenges under the Free Exercise and Establishment Clauses of the First Amendment, as well as under Const 1963, art 1, § 4. *Id.*

The anti-Catholic response to these appropriations and this Court’s approval of them was swift. In 1970, Plaintiff Council of Organizations and Others For Education About Parochiaid (“CAP”) established a ballot committee called the “Council Against Parochiaid” to oppose

Traverse City Sch Dist v Attorney General, 384 Mich 390; 185 NW2d 9 (1971) (“When a private school student is denied participation in publicly funded shared time courses or auxiliary services offered at the public school because of his status as a nonpublic school student and he attends a private school out of religious conviction, he also has a burden imposed upon his right to freely exercise his religion.”).

Catholic school funding and succeeded in getting Proposal C on the November 1970 ballot. *Traverse City*, 384 Mich at 403. Proposal C, colloquially called the “Parochiaid Amendment,” was intended to prevent Catholic schools, specifically, from receiving the same state funding as Protestant-influenced public schools. Indeed, the term “Parochiaid” itself is strong evidence of this intent.

“Parochial” is defined as “a. of or relating to a church parish; b. controlled by or supported by, or within the jurisdiction of a church parish.” *Webster’s Third New International Dictionary* (1966). Therefore, “parochiaid” describes public aid to *religious* schools, and the Council Against Parochiaid was established for the specific purpose of preventing religious schools from receiving generally available, public educational aid. CAP’s website recognizes this: “The History of CAP” webpage states, “In 1968, the Michigan chapter of a national organization, the Citizens for Educational Freedom, had organized a letter campaign to legislators encouraging the use of public funds for nonpublic schools, *with most of the funding presumably directed towards religiously based schools, often called parochial schools.*” Exhibit A, CAP Michigan, *The History of CAP*, <<http://www.capmichigan.org/history.html>> (accessed December 22, 2019) (emphasis added). Although CAP often claims to be concerned about funding for all nonpublic schools and although Proposal C applies broadly to “any private, denominational or other *nonpublic*” school, “CAP’s membership has consistently represented a . . . mixture of organizations and individuals, all concerned about the use of *funding private, religiously based education with public dollars.*” *Id.* The focus of CAP’s campaign was and is prohibiting funding for *religious* schools. CAP Michigan also recognizes that the debate surrounding parochiaid began between those who supported public funding for Catholic schools and those who fiercely opposed Catholicism. CAP Michigan recounts that

[i]nitial support [for parochial] seemed to emanate largely out of concerns that Roman Catholic schools needed state support or they would all close. Catholic schools in Michigan, as elsewhere, were transitioning to the use of lay teachers around this time.⁸ The initial legislation introduced to provide public funds for nonpublic schools came from heavily Catholic Bay City”

Id. CAP Michigan’s short “History” webpage uses the word “Catholic” no less than eleven times to recount the origins of CAP’s continued fight against funding to nonpublic—meaning Catholic—schools.

Michigan’s Constitution provides that the State “shall forever” encourage “schools and the means of education[.]”⁹ Const 1963, art 8, § 1. Article 8, § 1 does not limit “schools and the means of education” to only public schools but includes all schools both public and nonpublic. The Constitution, moreover, provides that the Legislature shall maintain and support a free public school system. Const 1963, art 8, § 2. Article 8, § 2, in its entirety, reads as follows:

The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-

⁸ CAP’s note about lay teachers recognizes that Catholic schools were using lay, or non-ecclesiastical, teachers more and more frequently around 1970. This demonstrates that CAP’s alleged concern for maintaining separation between church and state was a post-hoc justification for its prejudicial campaign against Catholics—public funding could have been restricted to use by Catholic schools for secular educational and health, safety, and welfare purposes without raising concerns under the Establishment Clause because classes taught by priests and nuns were becoming the exception rather than the rule.

⁹ This language can be traced back to the Northwest Ordinance, Article the Third, which stated that “schools and the means of education shall forever be encouraged.” This language is not without meaning. In fact, as part of the State’s obligation under article 8, §§ 1 and 2, the State passed compulsory attendance laws, see MCL 380.1561, which requires *all* persons to attend a public school from 6 to 18 years of age unless that person attends a “state approved nonpublic school” or is homeschooled.

elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school[.]¹⁰ . . . The legislature may provide for the transportation of students to and from any school.

Michigan courts have reviewed this constitutional provision in limited circumstances during the past 49 years. See, e.g., *Council of Orgs & Others for Ed About Parochial v Governor*, 455 Mich 557, 587; 566 NW2d 208 (1997) (holding that the Charter Schools Act did not violate Michigan’s Constitution, including art 8, § 2); *Advisory Opinion re Constitutionality of 1974 PA 242*, 394 Mich 41, 49; 228 NW2d 772 (1975) (“*Advisory Opinion re 1974 PA 242*”) (holding that providing textbooks and other supplies violated article 8, § 2 because textbooks and supplies are “essential aids that constitute a ‘primary’ feature of the educational process and a ‘primary’ element required for any school to exist”); *Traverse City*, 384 Mich at 419-20 (finding that shared time, auxiliary services, and other incidental aid was permitted under article 8, § 2, but striking down purchase with public funds of secular educational services from a nonpublic school). These decisions are discussed in more detail below.

III. BRIEF HISTORY OF NONPUBLIC SCHOOL REGULATION IN MICHIGAN

Because this case involves regulation of nonpublic schools and the methods by which the State ensures compliance, a brief history of nonpublic school regulation in Michigan follows. Indeed, the State has long regulated nonpublic schools. In 1921, the Legislature enacted the private, denominational, and parochial schools act, Public Act 302 of 1921, MCL 388.551 *et seq.*

¹⁰ This sentence of paragraph 2 also contains the following language: “or at any location or institution where instruction is offered in whole or in part to such nonpublic school students.” Const 1963, art 8, § 2. The Michigan Supreme Court held, however, that this language violated the United States Constitution’s protections of free exercise of religion and equal protection of laws, and is thus void and unenforceable. *Traverse City*, 384 Mich at 414-15.

(the “Act”). Under the Act, the Superintendent of Public Instruction supervises all private, denominational, and parochial schools, and all nonpublic school teachers must be certified. MCL 388.551; see *Sheridan Rd Baptist Church v Dep’t of Ed*, 426 Mich 462, 486; 396 NW2d 373 (1986) (holding that the Act’s nonpublic school teacher certification requirement is constitutional). As this Court noted in *Advisory Opinion re 1970 PA 100*, 384 Mich at 100-101:

The nonpublic schools have long been subject to state inspection and control over most nonsectarian aspects of their existence. They must meet the same requirements with regard to qualifications of teachers, construction and safety of buildings, sanitary conditions, fire drills and equipment, instruction of handicapped students, selection of textbooks to recognize ethnic-group achievements, and language of instruction as are imposed on public schools. They must periodically file reports with state agencies regarding the attendance and immunization records of their students. Their secular curriculum must be comparable to that of local public schools at the same age and grade level and must include instruction in the Constitutions and history of our state and national governments. They must . . . facilitate inspection of sanitary conditions, enrollment records, courses of study and teacher qualifications. The vast extent of the present supervisory authority of the Department of Education over nonpublic schools is best indicated by the fact that it includes the power to close nonpublic schools for failure to comply with orders enforcing the above requirements.¹¹

Although Michigan’s nonpublic schools are not publicly supported and maintained by the State, the State exerts considerable authority over nonpublic schools.¹² In addition to the general

¹¹ Legal citations to referenced mandates have been omitted, but can be found in the footnotes in the opinion. See 384 Mich at 100-101.

¹² In addition to the State’s considerable authority over nonpublic schools under article 8, §1, article 4, § 51 also provides that “[t]he public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.” In other words, over the history of Michigan’s education system, the State moved from having both public and religious schools and being able to fund both, to a publicly funded, secular school system. Voters, however, have not changed the State’s constitutional obligation to encourage nonpublic schools and ensure that those schools operate in a manner that ensures the health, safety, and welfare of nonpublic school students.

supervision provided by the Superintendent of Public Instruction, the State mandates that nonpublic schools perform certain health, safety, and general welfare functions for the betterment of the State and all children attending nonpublic schools, including (but not limited to) the following:

Attendance Reports (MCL 380.1578). All children from age 6 to age 18 must attend school, whether public, private, or at home. MCL 380.1561. Nonpublic schools must submit attendance reports to the local district's superintendent and maintain daily attendance records to determine whether a student regularly attends. The school must report students who do not regularly attend to the appropriate State attendance officer.

Immunization Statements and Vision Reports (MCL 380.1177). The administrator of a nonpublic school must submit an immunization report to the Department of Community Health for each pupil when first enrolled and a vision report for kindergarteners.

Criminal Background and Records Checks (MCL 380.1230 *et seq.*). Nonpublic schools must run criminal background and record checks on persons offered employment.

Class Requirements (MCL 380.1278). Nonpublic school must offer certain classes, including classes on the United States Constitution, the Michigan Constitution, and the historical and present form of the United States, Michigan and its political subdivisions. State law also requires that all courses, except religion courses, be taught in English.

Chemical Clean-Up (MCL 388.861). Nonpublic schools must ensure that their facilities are asbestos-free and develop a compliance plan if the facility has asbestos. Nonpublic schools must also ensure that they do not purchase, store, or use instruments containing mercury (or purchase or use the instrument with the lowest mercury content available if no mercury-free instrument is reasonably available).

Construction/Fire Safety (MCL 388.851). All school buildings must comply with certain construction and fire safety requirements under Michigan law, including that all plans must be completed by a licensed architect or engineer and all materials used to construct the buildings must be made of fire-resistant materials.

In addition, nonpublic schools must follow certain State-mandated procedures related to employees convicted of certain crimes (MCL 380.1535a, .1539b), providing work permits to students (MCL 409.104), withholding information if a personal protection order is in effect (MCL 380.1137a), and working with students who have inhalers (MCL 380.1179). For additional requirements, see the attached MDE report entitled Nonpublic and Home School

Information (2019-2020), Michigan Department of Education, available at https://www.michigan.gov/documents/mde/updated_18-19_NPS-HS_Info_doc_630631_7.pdf (last accessed on Dec 22, 2019).

IV. SECTION 152b, ITS FRAMEWORK, AND ITS CONSTITUTIONALITY

Public Act 249 of 2016 was the FY 2016-2017 omnibus appropriations act for schools, community colleges, and universities. Section 152b of 2016 PA 249, the section at issue in this case, was codified at MCL 388.1752b and took effect on October 1, 2016. While this case was pending in the Court of Claims, the Legislature amended MCL 388.1752b through 2017 PA 108 for FY 2017-2018 and 2018 PA 265 for FY 2018-2019. Through Section 152b, the State appropriated \$2.5 million in FY 2016-2017 to reimburse nonpublic schools for costs associated with certain State-mandated health, safety, and general welfare measures. For FY 2017-2018, the State again appropriated \$2.5 million. For FY 2018-2019, the State appropriated \$250,000.

Section 152b provides that nonpublic schools may voluntarily seek reimbursement for the cost of compliance with certain State-mandated health, safety, and general welfare requirements. Section 152b requires the Michigan Department of Education (“MDE”) to develop a form annually that identifies mandates that require nonpublic school compliance, which the schools then use to request reimbursement. MCL 388.1752b(2). A school can only request its “actual costs incurred” to perform mandated tasks, which is calculated as a portion of the hourly wage of the lowest-paid employee capable of performing a task (regardless of who actually performs it), excluding fringe benefits and overtime.¹³ MCL 388.1752b(1), (4), (9). The use of the lowest-

¹³ The entire amount reimbursed under Section 152b cannot exceed \$2.5 million for each fiscal year for 2016-2017 and 2017-2018, and \$250,000 for 2018-2019. If the appropriations are insufficient to fully fund schools’ requested reimbursements, MDE is instructed to distribute the available funds on a pro rata or other equitable basis. MCL 388.1752b(5). (See Exhibit B, Affidavit of Brian Broderick) (noting that, in 2018, Amici are aware that at least 163 nonpublic

rate wage is simply a way for the State to calculate costs—in a manner that benefits the State and not the nonpublic school—and the amount reimbursed is only a small portion of the cost actually incurred to perform the task itself. A nonpublic school’s decision to submit the MDE form is voluntary; schools are not eligible unless they submit completed forms developed by MDE. MCL 388.1752b(3).

Section 152b explicitly states that funds appropriated “are for purposes related to education, are considered to be incidental to the operation of a nonpublic school, are noninstructional in character, and are intended for the public purpose of ensuring the health, safety, and welfare of the children in nonpublic schools and to reimburse nonpublic schools for [certain] costs” MCL 388.1752b(7). Section 152b directly addresses any potential issues associated with Const 1963, art 8, § 2 by providing that appropriated funds “are not intended to aid or maintain any nonpublic school, support the attendance of any student at a nonpublic school, [or] employ any person at a nonpublic school” MCL 388.1752b(8).

Prior to signing 2016 PA 249 into law, then-Governor Snyder received correspondence from several groups addressing the constitutionality of Section 152b. Amici, along with other education groups, submitted a letter in support of Section 152b. (Exhibit C). Following his signing of the bill, the Governor requested that this Court exercise its discretion and address whether Section 152b complies with Const 1963, art 8, § 2 in an advisory opinion.¹⁴

schools applied for reimbursement under Section 152b. The total amount requested through the 163 applications was approximately \$1,171,700).

¹⁴ In response, this Court invited briefing on the following questions: (1) whether the Court should exercise its discretion to grant the Governor’s request to issue an advisory opinion; and (2) whether the appropriation to nonpublic schools authorized by Section 152b would violate Const 1963, art 8, § 2. After receiving briefs, including from Amici, this Court denied the request for an advisory opinion, as it was not persuaded that issuing an opinion would be an appropriate exercise of discretion. Then, MDE began implementing Section 152b and developed

V. COURT OF CLAIMS'S DECISION

The Court of Claims's Order and Opinion in this case held that Section 152b is facially unconstitutional under Const 1963, art 8, § 2. (Ct of Claims Ord, pp 10-12). To make this finding, the lower court was required to find that "no set of circumstances exists under which the act would be valid." *Council of Orgs & Others for Ed About Parochial v Governor*, 455 Mich 557, 568; 566 NW2d 208 (1997), quoting *United States v Salerno*, 481 US 739, 745; 107 S Ct 2095; 95 L Ed 2d 697 (1987). Despite this high bar, the Court of Claims held that: (1) reimbursement under Section 152b was prohibited as a direct payment and impermissible employment of nonpublic school employees; (2) the funds reimbursed were under the control of the nonpublic school; and (3) the aid was "more than merely incidental, but . . . touche[d] on some of the primary functions of the nonpublic schools and that, without certifying compliance with these measures, the nonpublic schools could not operate as schools." (Ct of Claims Ord, pp 10-12). The Court of Claims's decision was overturned by the Court of Appeals.

VI. COURT OF APPEALS'S DECISION

On appeal, the Court of Appeals reviewed the Court of Claims's decision *de novo* and found its statutory and constitutional analysis deficient, though Judge Gleicher dissented and would have affirmed the Court of Claims's decision. The Court of Appeals held that Const 1963, art 8, § 2 does *not* prevent the Legislature from allocating public funds to reimburse nonpublic schools for complying with state health, safety, and welfare laws, as provided in Section 152b. (Ct of App Ord & Op, pp 1-2). Although Section 152b allocates public money to reimburse certain costs incurred by nonpublic schools and although art 8, § 2 prohibits appropriations of public money to aid or maintain nonpublic schools, this Court's construction of

a form that identified various mandates for which nonpublic schools could request reimbursement.

art 8, § 2 in *Traverse City* and *Advisory Opinion re 1974 PA 242* renders Section 152b constitutional under the framework articulated in those cases:

[W]ithout offending Const 1963, art 8, § 2, the Legislature may allocate public funds to reimburse nonpublic schools for actual costs incurred in complying with state health, safety, and welfare laws. But the reimbursement may only occur if the action or performance that must be undertaken to comply with a health, safety, or welfare mandate (1) is, at most, merely *incidental* to teaching and providing educational services to nonpublic school students (noninstructional in nature), (2) does not constitute a *primary* function or element necessary for a nonpublic school to exist, operate, and survive, and (3) does not involve or result in excessive religious entanglement.

(Ct of App Ord & Op, pp 1-2). The key to the Court of Appeals’ analysis is that *Traverse City* and *Advisory Opinion re 1974 PA 242* do not interpret art 8, § 2 to prohibit *all* payments to nonpublic schools; rather, the Supreme Court held in those cases that art 8, § 2 prohibits “state funding of purchased *educational services* in the nonpublic school where the hiring and control is in the hands of the nonpublic school, otherwise known as ‘parochiaid.’” (*Id.* at p 8, quoting *Traverse City*, 384 Mich at 435 (emphasis added)).

Other types of services that benefit a nonpublic school—such as shared time and auxiliary health and safety services that are incidentally related to nonpublic instruction—are permissible under art 8, § 2. (*Id.* at 8-9, citing *Traverse City*, 384 Mich at 419-420, 435). As the Court of Appeals summarized, *Traverse City* held that “the bar to allocating public monies to directly or indirectly aid a nonpublic school only serves to preclude such aid if designated for educational or instructional purposes, not health, safety, and welfare purposes that are noninstructional in nature.” (*Id.* at 10). As this Court interprets, art 8, § 2, it “forbids aid that is a ‘primary’ element of the support and maintenance of a private school *but permits aid that is only ‘incidental’ to the private school’s support and maintenance.*” (*Id.* at 11, quoting *Advisory Opinion re 1974 PA 242*, 394 Mich at 48 n2 (emphasis added)).

In contrast to these Supreme Court precedents, the Court of Claims essentially determined that Const 1963, art 8, § 2 prohibits payments authorized by Section 152b under every possible set of circumstances, including payments for general health and safety mandates that are only incidentally related to education and instruction of nonpublic students. Because the Court of Claims failed to examine Section 152b's health and safety mandates in light of *Traverse City* and *Advisory Opinion re 1974 PA 242*, the Court of Appeals reversed the Court of Claims's holding that Section 152b is facially unconstitutional and remanded for examination of each cost reimbursement authorized by Section 152b.¹⁵

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews questions of statutory construction and questions of a statute's constitutionality *de novo*. *Phillips v Mirac, Inc*, 470 Mich 415, 422; 685 NW2d 174 (2004).

II. SUPREME COURT PRECEDENT AND *TRINITY LUTHERAN* DICTATE THAT THE PAROCHIAID AMENDMENT IS UNCONSTITUTIONAL.

On June 24, 2019, this Court granted Plaintiffs–Appellants' application for leave to appeal the Court of Appeals's decision. (6/24/19 Order, p 1). Concurring with this Court's order, Justice Markman requested that the parties and amici brief several key issues on appeal that had previously hovered at the periphery of the dispute over Section 152b. (*Id.* at 1-3). The Court of Appeals held that Section 152b's allocation of public funds to reimburse nonpublic schools is consistent with Const 1963, art 8, § 2 based on this Court's previous decisions. As Justice Markman reminded, however, the issue cannot be decided in a legal vacuum because the

¹⁵ In addition to reversing the Court of Claims's finding regarding the constitutionality of Section 152b under Const 1963, art 8, § 2, the Court of Appeals affirmed the Court of Claims's holding regarding the plaintiffs' standing and directed the Court of Claims to resolve the plaintiffs' claim that Section 152b violates Const 1963, art 4, § 30.

Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution define the permissible contours within which Section 152b and Const 1963, art 8, § 2 must exist. The manner and extent to which these federal constitutional parameters impact the analysis will dictate whether Section 152b is “sustained or nullified.” (*Id.* at 1).¹⁶

Since the early 1970s, the United States Supreme Court’s doctrine concerning the Establishment and Free Exercise Clauses of the First Amendment in the context of “government support for and funding of religious institutions and activities has evolved gradually, but significantly” Richard W. Garnett & Jackson C. Blais, *Religious Freedom and Recycled Tires: The Meaning and Implications of Trinity Lutheran*, *Cato Sup Ct Rev* 105, 106 (2016-17). Until the mid-1980s, the Court espoused a strict interpretation of the relationship between church and state, calling for “‘no aid’ separationism, according to which policies that had the ‘principal or primary effect’ of ‘advanc[ing] . . . religion’ were unconstitutional establishments of religion.” Garnett, *Religious Freedom*, *Cato Sup Ct Rev* at 107, citing *Lemon v Kurtzman*, 403 US 602, 612; 91 S Ct 2105; 29 L Ed 2d 745 (1971). The *Lemon* Court stated, “Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government.” 403 US at 625.

But *Lemon* separationism no longer governs “religion-neutral funding programs with valid public purposes.” Garnett, *Religious Freedom*, *Cato Sup Ct Rev* at 107. Since *Lemon*, the Court has moved away from “no aid” separationism toward neutrality and evenhandedness when governments provide generally available benefits. See, e.g., *Zobrest v Catalina Foothills Sch Dist*, 509 US 1, 8; 113 S Ct 2462; 125 L Ed 2d 1 (1993) (holding that religious institutions are not “disabled by the First Amendment from participating in publicly sponsored social welfare

¹⁶ Justice Markman requested briefing on four specific issues, which are all examined herein.

programs”). In both *Zobrest* and *Zelman v Simmons-Harris*, the Court held that “where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens[,] . . . the program is not readily subject to challenge under the Establishment Clause,” even if religious institutions receive attenuated financial benefits. *Zobrest*, 509 US at 8; *Zelman*, 536 US 639, 652; 122 S Ct 2460; 153 L Ed 2d 604 (2002).

And while the Establishment Clause does not provide a basis to *challenge* religiously neutral, generally available government programs, the Free Exercise Clause provides *protection* against religious discrimination. Under the Free Exercise Clause, the neutrality and general applicability of the law in question are key. *Church of Lukumi Babalu Aye, Inc v City of Hialeah*, 508 US 520, 531; 113 S Ct 2217; 124 L Ed 2d 472 (1993). In *Lukumi*, the Supreme Court held that, for purposes of the neutrality inquiry, facial neutrality is not determinative. *Id.* at 534. “[I]f the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 533. Similarly, concerning general applicability, the “categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice,” and “inequality results when . . . government interests . . . are worthy of being pursued only against conduct with a religious motivation.” *Id.* at 542-543.

Today, the Establishment Clause and the Free Exercise Clause provide that governments may not discriminate on the basis of religion when providing benefits or when imposing burdens, and the United States Supreme Court interprets the clauses to require equal treatment and neutrality under state funding programs directed toward valid public purposes. Garnett, *Religious Freedom*, Cato Sup Ct Rev at 107-108. The Court’s decision in *Trinity Lutheran* exemplifies this interpretation. *Trinity Lutheran* expanded the Free Exercise Clause’s

protections by affirmatively *compelling* a government to make available generally available public benefits to religious institutions.

Under *Trinity Lutheran*, religious individuals and organizations cannot be turned away based on their religious status, and the government must provide benefits on equal terms to all. 137 S Ct at 2024. Contrary to this Court’s interpretation of art 8, §2 in *Traverse City*,¹⁷ the Free Exercise Clause *does not* distinguish between incidental aid to religious schools and direct aid for educational services at religious schools. *Trinity Lutheran* demonstrates that all kinds of public benefits offered by the government must be offered on an equal basis to religious and nonreligious recipients alike, which would include even educational benefits to religious and nonreligious schools—*exactly what the Parochial Aid Amendment prohibits*. In other words, since this Court’s decision in *Traverse City*, United States Supreme Court jurisprudence on the Free Exercise Clause has evolved in the public benefits context and now dictates a different result.¹⁸

Applying *Trinity Lutheran* and *Lukumi* to art 8, § 2 and Section 152b, it is apparent that art 8, § 2 violates the Free Exercise Clause because: (1) it is not neutral but covertly suppresses particular religious beliefs; (2) it is not generally applicable because it effectively applies only to religious schools (given the history of the Parochial Aid Amendment and the fact that the overwhelming majority of nonpublic schools are religious); and (3) there is no compelling state

¹⁷ *Traverse City* is discussed at length herein, but in that case this Court found that a literal interpretation of article 8, § 2 would be in violation of the Equal Protection Clause and Free Exercise Clause. See 384 Mich at 430. To avoid this unconstitutional result, this Court adopted a nonliteral interpretation that permitted public support to be provided to nonpublic schools if it is for health, safety, and welfare measures, is incidentally related to the operation of education, and does not excessively entangle the State with religion. *Id.* at 435.

¹⁸ The Plaintiffs and the State Defendants ignore—or entirely discount—the impact of *Trinity Lutheran* here. Doing so, however, completely disregards the United States Supreme Court’s interpretation of the Free Exercise Clause in that decision, which squarely applies.

interest to justify its prohibition against secular educational aid to religious schools. In short, the outcome advocated for by the parties is untenable in light of *Trinity Lutheran*.

A. *Trinity Lutheran* and the Modern Free Exercise Doctrine

In *Trinity Lutheran*, the United States Supreme Court held that a Missouri agency violated the Free Exercise Clause when it determined that a religious preschool and daycare center was ineligible under Missouri’s Constitution¹⁹ to receive a public grant solely because of its religious character. 137 S Ct at 2024. Missouri offered grants to qualifying nonprofit organizations, including public and private nonprofit schools and daycares, to reimburse the cost of purchasing rubber playground surfaces made from recycled tires. *Id.* at 2017. Although the Trinity Lutheran Church Child Learning Center qualified for a grant under the program’s terms, the state rejected its application because the state believed it “could not provide financial assistance directly to a church” based on art I, § 7 of Missouri’s Constitution. *Id.* at 2018.

The Supreme Court disagreed. Citing its Free Exercise Clause precedents,²⁰ the *Trinity Lutheran* Court found that the state unconstitutionally discriminated against an otherwise eligible recipient by disqualifying it from a public benefit based on its religious status. *Id.* at 2021, 2024. According to the Court, the Free Exercise Clause “protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status.” *Id.* at 2019, quoting *Lukumi*, 508 US at 533. The Court has

¹⁹ Article I, § 7 of Missouri’s Constitution is a Blaine Amendment which states that “no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such” See *Trinity Lutheran*, 137 S Ct at 2017.

²⁰ The parties in *Trinity Lutheran* “agree[d] that the Establishment Clause . . . [did] not prevent Missouri from including Trinity Lutheran” in the grant program. 137 S Ct at 2019. Because “there is ‘play in the joints’ between what the Establishment Clause permits and the Free Exercise Clause compels,” however, the parties disagreed about the impact of the Free Exercise Clause on the state’s decision-making. *Id.*

“repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest ‘of the highest order.’” *Id.*, quoting *McDaniel v Paty*, 435 US 618, 628; 98 S Ct 1322; 55 L Ed 2d 593 (1978) (plurality opinion). Because the state could not justify its discriminatory policy other than by asserting its preference for separating church and state to avoid “religious establishment concerns,” the policy violated the Free Exercise Clause. *Id.* at 2024.

The *Trinity Lutheran* Court emphasized that when addressing free exercise challenges, courts must distinguish laws that are neutral and generally applicable without regard to religion “from those that single out the religious for disfavored treatment.” *Id.* at 2020. In *Trinity Lutheran*, the Court reviewed examples of cases in which it had rejected free exercise challenges to neutral, generally applicable laws.²¹ *Id.* In contrast, in *Lukumi*, the Supreme Court found that three facially neutral laws that outlawed forms of animal slaughter concealed a discriminatory purpose to prohibit sacrificial rituals integral to a certain religion and “were not, in fact, neutral or generally applicable.” *Trinity Lutheran*, 137 S Ct at 2021, citing *Lukumi*, 508 US at 532-533. The laws violated the Free Exercise Clause because they discriminated against religious beliefs and outlawed conduct that was religiously motivated. *Id.* Facially neutral laws that are intended to “single out the religious for disfavored treatment,” to “impose special disabilities on the basis

²¹ For example, in *Lyng v Northwest Indian Cemetery Protective Ass’n*, 485 US 439; 108 S Ct 1319; 99 L Ed 2d 534 (1988), the Court held that the Free Exercise Clause did not prevent timber harvesting or road construction on federal land that was sacred to several Native American Tribes “because the affected individuals were not being ‘coerced by the Government’s action into violating their religious beliefs’” and the government had not “penalize[d] religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.” *Trinity Lutheran*, 137 S Ct at 2020, quoting *Lyng*, 485 US at 449; see also *Employment Div, Dep’t of Human Resources of Or v Smith*, 494 US 872; 110 S Ct 1595; 108 L Ed 2d 876 (1990) (holding that the Free Exercise Clause does not exempt religious observers from general criminal laws, so a state could deny unemployment benefits to members of a Native American church who ingested peyote for sacramental purposes).

of religious status,” or to “discriminat[e] in the distribution of public benefits based upon religious status or sincerity” are not neutral and generally applicable, and are analyzed under “the most exacting scrutiny.” *Id.* at 2020-2021. Based on this precedent, the *Trinity Lutheran* Court found that “Missouri’s policy preference for skating as far as possible from religious establishment concerns” was not a compelling state interest that could justify “denying a qualified religious entity a public benefit solely because of its religious character.” *Id.* at 2024. The policy of excluding churches from receiving the benefits of the tire recycling program violated the Free Exercise Clause.²² *Id.*

The Supreme Court’s decision in *Trinity Lutheran* is significant because it applied *Lukumi*’s free exercise holding in a case that asked whether the Free Exercise Clause may compel governments to provide public, generally available benefits on an equal basis regardless of religious status. Prior to *Trinity Lutheran*, the Supreme Court’s Establishment Clause jurisprudence *permitted* governments to provide neutral, generally available public benefits on an equal basis to religious and nonreligious persons alike, because the Establishment Clause did not and does not provide a basis to challenge such programs.²³ *Zobrest*, 509 US at 8; *Zelman*, 536

²² While the *Trinity Lutheran* Court stated that its decision was limited to the facts of the case before it, see 137 S Ct at 2024 n 3, the underlying analysis can and should be applied in this case. As in *Trinity Lutheran*, here, nonpublic schools are “not claiming any entitlement to a subsidy. [They] instead assert[] a right to participate in a government benefit program without having to disavow [their] religious character.” *Id.* at 2022.

²³ In their brief in this case, the State Defendants–Appellees rely on *Everson v Bd of Ed*, 330 US 1; 67 S Ct 504; 91 L Ed 711 (1947), to support their position that the Free Exercise Clause does not require the State to provide reimbursement to nonpublic schools. *Everson*, however, is inapplicable for two reasons: (1) *Everson* is an Establishment Clause case in which the Court decided only that the Establishment Clause does not *prevent* a state from providing a general benefit (there, the cost of transportation to school) to all school children, including parochial school children, for their safety and welfare; therefore, any statements about the Free Exercise Clause in the decision are dicta; and (2) *Everson* was decided before the Supreme Court’s Free Exercise doctrine evolved to compel states—in cases where the state has decided to

US at 652. Also prior to *Trinity Lutheran*, the Supreme Court’s Free Exercise Clause jurisprudence *prevented* governments from enacting laws that imposed burdens on religious persons’ actions or outlawed religiously motivated conduct. See *Lyng*, 485 US at 439, *Lukumi*, 508 US at 533-534. *Trinity Lutheran* expanded the Free Exercise Clause’s protections by affirmatively *compelling* a government to provide generally available public benefits to a religious institution. In this way, *Trinity Lutheran* narrowed the “play in the joints” between what the Establishment Clause permits and the Free Exercise Clause compels. See *Locke v Davey*, 540 US 712, 718-719; 124 S Ct 1307; 158 L Ed 2d 1 (2004); *Walz v Tax Comm of the City of New York*, 397 US 664, 669; 90 S Ct 1409; 25 L Ed 2d 697 (1970).

Since *Trinity Lutheran*, several state supreme courts and lower federal courts have applied its free exercise holding in other circumstances.²⁴ For example, in *Moses v Ruszkowski*, 2019-NMSC-003, 2018 NM LEXIS 70 (2018), the New Mexico Supreme Court examined a facially neutral provision of the New Mexico Constitution that prohibits public funds from being “used for the support of any sectarian, denominational or private school, college or university.” NM Const, art XII, § 3. Unlike *Trinity Lutheran*, where the Missouri constitutional provision at issue explicitly differentiated between religious and secular organizations, *New Mexico’s provision applies equally to all private schools, regardless of religious status*. *Moses*, 2019-NMSC-003 at *31. Taking up *Trinity Lutheran*’s discussion of facially neutral laws as analyzed

make public benefits generally available to a group of eligible recipients—to provide those benefits on an equal basis without regard to religious status.

²⁴ See also *Taylor v Town of Cabot*, 205 Vt 586, 603; 2017 VT 92; 178 A3d 313 (2017) (applying *Trinity Lutheran* to prevent a state from denying grant funds to preserve a historic church and distinguishing between funding that “is available on a neutral and nondiscriminatory basis to a broad and diverse group of potential recipients in order to promote a squarely secular goal of the broader community” and funding that is “intended to . . . advantage religious organizations or activity, and . . . [to] support worship”). Cf. *Espinoza v Mont Dep’t of Revenue*, 393 Mont 446, 459; 435 P3d 603 (2018), cert gtd 139 S Ct 2777 (2019) (currently pending in the United States Supreme Court and presenting issues similar to those in this case).

in *Lukumi*,²⁵ the New Mexico Supreme Court found that “[a]lthough Article XII, Section 3 is facially neutral toward religion, the Free Exercise Clause may still be implicated if its adoption was motivated by religious animus.” *Id.* at *33. On that basis, the New Mexico Supreme Court held that “[f]acial neutrality is not determinative,” and “[t]he Free Exercise Clause forbids subtle departures from neutrality and covert suppression of particular religious beliefs.” *Id.*, quoting *Lukumi*, 508 US at 533-534 (internal quotation marks omitted) (emphasis added).

To determine whether a particular law or action is neutral or was motivated by religious animus, the Court stated that “[e]volving First Amendment jurisprudence suggests that courts should consider the historical and social context underlying [it].” *Id.* at *34. Relevant factors to neutrality “include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decision-making body.” *Id.*, quoting *Masterpiece Cakeshop, Ltd v Colo Civil Rights Comm*, 138 S Ct 1719, 1731; 201 L Ed 2d 35 (2018). Under this legal standard, the New Mexico Supreme Court analyzed art XII, § 3 in light of the circumstances surrounding its enactment and determined that the motivation for adoption was not neutral. *Id.* at *43. The Court noted that “New Mexico was caught up in the nationwide movement to eliminate Catholic influence from the school system . . .” *Id.*

²⁵ The New Mexico Supreme Court originally held 5-0 that the textbook program at issue violated the New Mexico Blaine Amendment. See *Weinbaum v Skandera*, 2015-NMSC-036, 367 P3d 838, 2015 NM LEXIS 378 (2015). The New Mexico Association of Non-Public Schools appealed that issue to the United States Supreme Court, which granted the writ of certiorari, vacated the New Mexico Supreme Court’s decision, and remanded for further consideration in light of *Trinity Lutheran. New Mexico Ass’n of Non-public Sch v Moses*, 137 S Ct 2325; 198 L Ed 2d 753 (2017). Thus, the New Mexico Supreme Court’s *Trinity Lutheran* analysis was at the express direction of the United States Supreme Court after it vacated the state supreme court’s original decision finding the textbook program unconstitutional under the state’s Blaine Amendment. The 2018 decision was not appealed to the United States Supreme Court.

Thus, the Court held that an interpretation of art XII, § 3 that prohibits expenditure of public funds to support private schools raises concerns under the Free Exercise Clause, *even though the provision is facially neutral*, because it conceals a motive to suppress religion. *Id.* at *32, *44. Rather than striking art XII, § 3 down as a violation the Free Exercise Clause, however, the New Mexico Supreme Court avoided constitutional concerns by “adopt[ing] a construction of [art XII, § 3] that does not implicate the Free Exercise Clause under *Trinity Lutheran*.” *Id.* at *46. Under the Court’s interpretation, art XII, § 3 prohibits public funds from being “used for the support of any sectarian, denominational or private school, college or university” only as necessary to “ensur[e] that the state maintains control over the public education system and that the public schools do not become religious schools.” *Id.* The Court found that the textbook loan program at issue did not violate art XII, § 3 as interpreted because providing books to students at both secular and religious schools “neither divests the state of control over the public schools nor affects the non-religious character of the public schools.” *Id.*

Notably, to avoid violating the Free Exercise Clause, the Court had to interpret art XII, § 3 with a focus on *public schools*—whether the state retains control of the public school system and public schools remain nonreligious. The Court could not interpret art XII, § 3 to prevent funds or textbooks from reaching nonpublic schools (meaning *religious* schools), because that would violate the Free Exercise Clause under *Trinity Lutheran*. The New Mexico Court noted:

In *Trinity Lutheran*, the Supreme Court changed the landscape of First Amendment law. Under *Trinity Lutheran*, if a state permits private schools to participate in a generally available public benefit program, *the state must provide the benefit to religious schools on equal terms*. See 137 S. Ct. at 2022 (“The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant.”). *Trinity Lutheran* was the first Supreme Court opinion to hold that

the Free Exercise Clause required a state to provide public funds directly to a religious institution.

Id. at *29. When applied to a prohibition against public aid to nonpublic schools that conceals a motive to suppress religion, *Trinity Lutheran*'s holding requires that the prohibition be ignored: The public aid must be available to religious and nonreligious schools on an equal basis.

B. The Parochial Amendment Violates the Free Exercise Clause Because It Singles Out Religious Activity for Exclusion from a State Benefit.

As examined above, the Supreme Court's view of the Establishment Clause developed from a position of "no aid" separationism between church and state, see Garnett, *Religious Freedom*, Cato Sup Ct Rev at 107, toward a rule that permits governments to distribute generally available benefits to eligible recipients equally, even if religious institutions are among the beneficiaries. Similarly, the United States Supreme Court's view of the Free Exercise Clause has developed over time. The Court has long held that the Free Exercise Clause provides *protection* against religious discrimination and "subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status." *Trinity Lutheran*, 137 S Ct at 2019, quoting *Lukumi*, 508 US at 533, 542.

Now, religious individuals and organizations cannot be turned away based on their religious status, and the government must make benefits available on equal terms to all. *Id.* at 2024. Unlike the Michigan Supreme Court's interpretation of art 8, § 2 in *Traverse City*, the Free Exercise Clause **does not** distinguish between incidental aid to religious schools and direct aid for educational services at religious schools. *Trinity Lutheran* demonstrates that all kinds of public benefits offered by the government must be available on an equal basis to religious and nonreligious recipients alike, which would include even educational benefits to religious and nonreligious schools—*exactly what the Parochial Amendment prohibits.*

The New Mexico Supreme Court's post-*Trinity Lutheran* decision in *Moses* applied *Trinity Lutheran*'s holding and required the state to allow religious schools to participate equally in a textbook loan program. *Moses, supra* at *2 (2018).²⁶ Its decision illustrates that educational aid to religious schools does not violate the Establishment Clause and may even be compelled by the Free Exercise Clause. *Id.* The facts and laws at issue in *Moses* are strikingly similar to the facts presented by Section 152b. In New Mexico's case, the Legislature established a generally available public benefit to students through a textbook loan program administered by the state's Department of Education. The Court found that New Mexico's Blaine Amendment could not be interpreted to prevent books from reaching private schools without violating the Free Exercise Clause because the Blaine Amendment was adopted to covertly suppress Catholic influence in schools. *Moses*, 2019-NMSC-003 at *43-*46. Because it was motivated by religious animus, New Mexico's Blaine Amendment is not neutral and was subject to exacting scrutiny. Citing *Trinity Lutheran*, the New Mexico Supreme Court stated, "The Supreme Court . . . emphasized that a state's interest in maintaining church-state separation does not justify the withholding of generally available public benefits based on the religious status of the recipient." *Moses*, 2019-NMSC-003 at *22, citing *Trinity Lutheran* at 2024. New Mexico was required to make the textbook loan program available to all schools and students alike.

In this case, the Legislature has appropriated funds to reimburse nonpublic schools for a portion of the costs actually incurred to comply with state-mandated health, safety, and welfare requirements. MCL 388.1752b. These reimbursements are generally available to all nonpublic schools that apply for them; public schools also receive state funding for their operational costs, which means that state funding of health, safety, and welfare measures is generally available to

²⁶ While *Moses* is not binding on this Court, its analysis and application of *Trinity Lutheran* is sound and should be followed by this Court.

all schools in the state—public and nonpublic, religious and nonreligious. But the Parochiaid Amendment prohibits public funds from being used to aid or maintain nonpublic schools. Like New Mexico’s Blaine Amendment, the Parochiaid Amendment is facially neutral with respect to religion; its terms apply to “any private, denominational or other nonpublic . . . school.” The United States Supreme Court holds, however, that facial neutrality is not determinative under the Free Exercise Clause. The New Mexico Supreme Court summarized the analysis applicable to laws that intentionally discriminate against religion:

[T]he Free Exercise Clause may still be implicated if [a law’s] adoption was motivated by religious animus. In *Trinity Lutheran*, the Supreme Court recognized a distinction between laws that “single out the religious for disfavored treatment” and laws that are “neutral and generally applicable without regard to religion.” “[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” But “if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral.” “Facial neutrality is not determinative.” The Free Exercise Clause “forbids subtle departures from neutrality and covert suppression of particular religious beliefs.”

Evolving First Amendment jurisprudence suggests that courts should consider the historical and social context underlying a challenged government action to determine whether the action was neutral or motivated by hostility toward religion. “Factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.”

Moses, 2019-NMSC-003 at *33-*34 (internal citations omitted). Applying *Trinity Lutheran* and *Lukumi* to Const 1963, art 8, § 2 and Section 152b, it becomes apparent that the Parochiaid Amendment violates the Free Exercise Clause because: (1) it is not neutral and was specifically enacted to suppress religious schools (particularly Catholic schools); (2) it is not generally

applicable because it effectively applies only to religious schools; and (3) there is no compelling state interest to justify its prohibition against secular educational aid to religious schools.

1. The Parochiaid Amendment is Not Neutral with Respect to Religion.

As the Parochiaid Amendment's name makes clear, it is not neutral with respect to religion, but was motivated exclusively by a desire to prevent funding to Catholic and other "parochial" schools. The history behind the Parochiaid Amendment demonstrates this fact. See above. Before Proposal C was introduced by the Council Against Parochiaid ("CAP"), Michigan enacted Public Act 100 of 1970, which allocated to nonpublic schools up to two percent of the amount expended to support public schools during the preceding fiscal year. *Advisory Opinion re 1970 PA 100*, 384 Mich 82, 90; 180 NW2d 265 (1970). Payments to nonpublic schools were "restricted to certified lay teachers teaching secular subjects from textbooks meeting the criteria required of textbooks used in public schools." *Id.* No funds were authorized for religious education. *Id.* The Michigan Supreme Court upheld the validity of 1970 PA 100 against challenges under the Free Exercise and Establishment Clauses of the First Amendment, and under the Michigan Constitution. *Id.*

Yet CAP responded with anti-Catholic fervor and petitioned to have Proposal C placed on the ballot. The word "parochiaid" itself describes public aid to *religious* schools, and CAP was established to prevent religious schools from receiving generally available, public educational aid. Indeed, without the Parochiaid Amendment, no *law* would prevent religious schools from receiving state aid for secular education or health, safety, and welfare mandates. The Establishment Clause does not prevent such aid, nor does any other federal or state

constitutional provision.²⁷ See *infra*. CAP itself cannot justify the Parochial Amendment in any other way. See CAP Michigan, *The History of CAP*, <<http://www.capmichigan.org/history.html>> (accessed December 22, 2019) (stating that the problem with public funding for nonpublic schools is that “most of the funding [is] presumably directed towards religiously based schools, often called parochial schools” and the main concern is simply “funding private, religiously based education with public dollars”). Even though the Parochial Amendment was drafted in an attempt to appear facially neutral, “the object of [the] law [was] to infringe upon or restrict practices because of their religious motivation” and, therefore, “the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Lukumi*, 508 US at 533. Because the Parochial Amendment was motivated by religious animus, the Free Exercise Clause subjects it to the strictest scrutiny. *Id.*

2. The Parochial Amendment is Not Generally Applicable.

In addition to being motivated by religious animus, the Parochial Amendment is not generally applicable. For purposes of the general applicability inquiry, the “categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice,” and “inequality results when . . . government interests . . . are worthy of being pursued only against conduct with a religious motivation.” *Lukumi*, 508 US at 542-543. Although the Parochial Amendment applies to a class that includes both religious and nonreligious nonpublic

²⁷ While the Parochial Amendment’s prohibition against aid for religious schools may overlap with the Establishment Clause’s principle of separating church and state in some circumstances (such as to prevent public funding of religious activities like catechesis, religious services, or missions), the Parochial Amendment is broader because it encompasses *all* school functions, whether religious or not. Viteritti, *Blaine’s Wake*, 21 Harv JL & Pub Pol’y at 659 (“[T]hese [Blaine] provisions set more rigid standards of separation between church and state than those required by the Supreme Court in its interpretation of the First Amendment.”).

schools, in reality, nearly all of those nonpublic schools are religious schools and religious schools are most impacted by it. Even the *Traverse City* Court—**which considered the issue contemporaneously with Proposal C’s passage**—noted that the “nonpublic school” classification is essentially the same as a classification of religious schools:

In passing, it may be noted that the Attorney General in his brief . . . pointed out “Proposal C does not deal with religious schools as such but rather with all private schools whether sectarian or non sectarian.” However, the Supreme Court of the United States in matters of racial discrimination looks to the “impact” of the classification. *This same principle should apply to the First Amendment’s protection against religious discrimination and here with 98 percent of the private school students being in church-related schools the “impact” is nearly total.*

Traverse City, 384 Mich at 433-434, citing *Hunter v Erickson*, 393 US 385; 89 S Ct 557; 21 L Ed 2d 616 (1969) (emphasis added). When Proposal C was approved, “some 270,000 of the 274,000 nonpublic school students in Michigan attend[ed] church-related schools” *Id.* at 430. Today, out of the 102,693 students who attend MANS-member nonpublic schools, approximately 75,145 students—or about 73%—attend religious schools. Including nonpublic schools that are not MANS members, the percentage of nonpublic school students in the state who attend religious schools is greater—around 90%. These numbers demonstrate that the Parochiaid Amendment is not generally applicable, but as a practical matter applies to religious schools as a class. Because the law is not generally applicable and “has the incidental effect of burdening religious practice,” *Lukumi*, 508 US at 542-543, there must be a compelling government interest to sustain the law.

3. No Compelling State Interest Justifies the Parochiaid Amendment’s Religious Discrimination.

The Free Exercise Clause “protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on

their religious status.” *Trinity Lutheran*, 137 S Ct at 2019, quoting *Lukumi*, 508 US at 533, 542 (internal quotation marks omitted). To survive strict scrutiny, the law must be narrowly tailored to achieve a compelling state interest. *Id.* In 1971, the Michigan Supreme Court cited two interests promoted by the Parochiaid Amendment: “precluding public expenditures for private schools and preventing state sponsorship of religion or excessive entanglement between church and state.” *Traverse City*, 384 Mich at 432. The Court also recognized in *Traverse City* that if the Amendment were interpreted to prevent nonpublic school students from receiving services at public schools, “there are no compelling state interests advanced by Proposal C which justify the burden placed on the choice of attending a private school out of a religious conviction.” *Traverse City*, 384 Mich at 433. The United States Supreme Court’s *Trinity Lutheran* decision changes the outcome in *Traverse City*, however, through its evolving Free Exercise doctrine.

Trinity Lutheran further defined the “play in the joints” between what the Establishment Clause permits and the Free Exercise Clause requires when a government offers generally available public benefits, such as aid for education. **Now, a state’s interest in restricting funds for nonpublic schools is no longer a lawful basis for restricting funds for religious schools when the restriction “stem[s] from animosity to religion or distrust of its practices”** *Masterpiece Cakeshop*, 138 S Ct at 1731; see also *Moses*, 2019-NMSC-003 at *44.²⁸ Asserting

²⁸ The New Mexico Supreme Court described the United States Supreme Court’s evolving Free Exercise jurisprudence—and the impact it had on prior New Mexico decisions—as follows: “Prior to *Trinity Lutheran*, this Court’s interpretation of Article XII, Section 3 in *Moses II* fell into the ‘play in the joints’ between what the Establishment Clause permits and what the Free Exercise Clause requires. . . . In other words, in *Moses II* we concluded that New Mexico’s interest in restricting public funding for *private* schools was a lawful basis for restricting funding for *religious* schools. Following *Moses II*, the Supreme Court emphasized that the Free Exercise Clause is implicated by a law that ‘single[s] out the religious for disfavored treatment.’ The Supreme Court has since underscored the state’s constitutional duty to avert religious discrimination. Thus, we conclude that this Court’s previous interpretation of Article XII, Section 3 in *Moses II* raises concerns under the Free Exercise Clause.” *Moses*, 2019-NMSC-003

the state’s interest in precluding public expenditures for private schools is not a compelling interest when “private schools” means “religious schools”—the interest asserted *is* covert suppression of religious freedom. And, in *Trinity Lutheran*, the Supreme Court determined that a preference for separating church and state to avoid “religious establishment concerns” is not a compelling interest when there is clear religious discrimination: “[A] policy preference for skating as far as possible from religious establishment concerns” cannot qualify as compelling “[i]n the face of the clear infringement on free exercise before us” 137 S Ct at 2024. In cases such as these, “the state interest asserted here—in achieving greater separation of church and State than is already ensured under the Establishment Clause of the Federal Constitution—is limited by the Free Exercise Clause.” *Id.* The religious discrimination embodied in the Parochiaid Amendment is not supported by a compelling state interest and, therefore, the Parochiaid Amendment violates the Free Exercise Clause.

C. Section 152b is a Proper Use of Legislative Authority Because the Parochiaid Amendment is Unconstitutional and Cannot Bar Any Payments.

Although wherever possible an interpretation that does not create constitutional invalidity is preferred to one that does, the Parochiaid Amendment is not susceptible to any interpretation that would permit it to be upheld as constitutional. The *Traverse City* Court determined that a literal interpretation of Const 1963, art 8, § 2 to prohibit any and all public funds from reaching nonpublic schools would violate the Free Exercise Clause. *Traverse City*, 384 Mich at 430. To avoid this unconstitutional result, the Court found that certain services and payments to nonpublic schools, including those that are incidental to the support of attendance, employment, or a school’s operation, were permitted under article 8, § 2. But *Trinity Lutheran* has changed

at *44 (internal citations omitted). Similarly, Michigan must now reassess its interpretation of Const 1963, art 8, § 2, as set forth in *Traverse City*, in light of *Trinity Lutheran*.

the legal landscape surrounding the Free Exercise Clause, and *Traverse City*'s holding that the Parochiaid Amendment may prohibit public funds from being used for educational aid at nonpublic schools without violating the Free Exercise Clause is no longer true. This Court's interpretation of the Parochiaid Amendment in *Traverse City* fell within the "play in the joints" between the Establishment Clause and the Free Exercise Clause because it permitted some aid to religious schools, but did not require it. *Trinity Lutheran* eliminated the permissible gap between those clauses in cases where the government provides generally applicable public benefits, including educational benefits to schools. In such cases, religious institutions cannot be singled out for disfavored treatment in order to promote separation between church and state. If the government has appropriated funds that are generally available to schools for health, safety, and welfare measures, or any other valid public purpose, the State cannot prohibit nonpublic schools from participating equally in those benefits.²⁹

The Parochiaid Amendment was intended to prevent nonpublic schools from receiving public funding in order to suppress religious schools in Michigan. The Parochiaid Amendment prohibits exactly what the Free Exercise Clause compels, and there is no interpretation of it that can withstand scrutiny. Given this fact, the Parochiaid Amendment cannot bar any payments authorized by Section 152b, which is a proper use of legislative authority to appropriate funding for the health, safety, and welfare of Michigan students.

²⁹ This does not mean, however, that the State is required to fund nonpublic schools. Rather, it means that denying nonpublic schools the ability to even apply for publicly available benefits may well run afoul of the Free Exercise Clause. Indeed, Amici are **not** arguing that if this Court finds the Parochiaid Amendment is unconstitutional that the State is now required to fully fund nonpublic schools; rather, the State cannot have a blanket prohibition on any and all public funds being provided to nonpublic schools because that runs afoul of the United States Constitution. And although Section 152b provides funds specially for nonpublic schools, the broader analysis applies in a number of situations implicated by this case. See other legislative enactments in footnote 36 on pages 43-44.

D. Section 152b Does Not Violate the Establishment Clause Because the Establishment Clause Does Not Prohibit Direct Aid to Religious Schools.

As discussed above, the United States Supreme Court has moved away from strict “no aid” separationism as the proper interpretation of what the Establishment Clause requires. Under modern Supreme Court precedent, the Establishment Clause does not provide a basis for challenge “where a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens” *Zelman*, 536 US at 652. Religious institutions are equally entitled to receive general government benefits and participate in publicly sponsored social welfare programs as nonreligious institutions. *Zobrest*, 509 US at 8 (ultimately permitting a local school district to provide a publicly employed interpreter for a deaf student who attended parochial school). The Supreme Court has noted the otherwise absurd result that would arise: “[I]f the Establishment Clause did bar religious groups from receiving general government benefits, then ‘a church could not be protected by the police and fire departments, or have its public sidewalk kept in repair.’” *Id.*, quoting *Widmar v Vincent*, 454 US 263, 274-275; 102 S Ct 269; 70 L Ed 2d 440 (1981). Similarly, the Establishment Clause does not prohibit incidental aid to religious schools for general health, safety, and welfare benefits. Even if “sectarian institutions . . . receive an attenuated financial benefit,” “government programs offering general educational assistance” do not violate the Establishment Clause because it does not require strict church–state separation. *Id.*, citing *Mueller v Allen*, 463 US 388; 103 S Ct 3062; 77 L Ed 2d 721 (1983) and *Witters v Wash Dep’t of Servs for the Blind*, 474 US 481; see also *Locke v Davey*, 540 US 712 (finding that the state could give scholarship money to recipients pursuing a degree in theology without violating the Establishment Clause).

Under these cases, reimbursement to nonpublic schools authorized by Section 152b for costs incurred in complying with state health, safety, and welfare mandates are permitted under

the Establishment Clause. All schools in Michigan are required to comply with the mandates, and nonpublic schools—unlike public schools, which are entirely publicly funded—would be required to bear the costs of compliance if reimbursement was not permitted. Therefore, the government aid program under Section 152b that reimburses nonpublic schools is neutral with respect to religion, and it “provides assistance directly to a broad class,” that is, it ensures that all schools meet general health, safety, and welfare mandates for the benefit of all students in the state, regardless of whether they attend a public, secular nonpublic, or religious school. See *Zelman*, 536 US at 652; *Zobrest*, 509 US at 8. The Establishment Clause does not prohibit direct aid to nonpublic or religious schools; Section 152b does not violate the Establishment Clause.

In short, the Establishment Clause does not prohibit direct aid to nonpublic schools but the Free Exercise does prohibit a State from discriminating against such schools in the manner done by the Parochial Amendment.

III. EVEN IF THE COURT DOES NOT AGREE THAT THE PAROCHIAL AMENDMENT IS UNCONSTITUTIONAL, THE COURT OF APPEALS CORRECTLY FOUND THAT SECTION 152b IS CONSISTENT WITH ARTICLE 8, § 2 AND THIS COURT’S PRECEDENT.

If this Court does not agree that the Parochial Amendment violates the Free Exercise Clause, then Amici ask that the Court affirm the Court of Appeals’s holding that Const 1963, art 8, § 2 does not prevent the Legislature from authorizing reimbursement of actual costs incurred by nonpublic schools in complying with state health, safety, and welfare laws, as provided for in Section 152b. (Ct of App Ord & Op, pp 1-2). The Court of Appeals determined that, “[o]n the strength of the Michigan Supreme Court’s construction of Const 1963, art 8, § 2, in *Traverse City* . . . and *Advisory Opinion re [] 1974 PA 242*, . . . reimbursement may occur if the action or performance that must be undertaken to comply with a health, safety, or welfare mandate” meets three conditions: (1) the action is incidental to teaching and noninstructional in nature; (2) the

action is not a primary function of a nonpublic school necessary for it to exist, operate, and survive; and (3) the action does not involve or result in excessive religious entanglement. The Court of Appeals correctly determined that, contrary to the lower court’s holdings, art 8, § 2 does not prohibit all direct payments to nonpublic schools; Section 152b does not reimburse wages for nonpublic school employees; the State is clearly in control as required under *Traverse City*; and the funds at issue are incidental, at best, to aiding or maintaining a nonpublic school. In short, Section 152b simply does not violate Const 1963, art 8, § 2 as interpreted by this Court.

A. Section 152b is Not Facially Unconstitutional Because Article 8, § 2 Does Not Prohibit All Direct Payments to Nonpublic Schools.

To begin, art 8, § 2 does not say that “no public monies shall be appropriated to a nonpublic school.” To impose such an interpretation on art 8, § 2 requires this Court to overturn Michigan’s long-standing precedent in *Traverse City* and to ignore the United States Supreme Court’s recent ruling in *Trinity Lutheran*. The first relevant sentence of art 8, § 2 states:

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state **directly or indirectly to aid or maintain** any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school.

(Emphasis added). The following sentence of art 8, § 2 states:

No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, **directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school**[.]

(Emphasis added). The first sentence of art 8, § 2 prohibits appropriation or payment “directly or indirectly to aid or maintain any” nonpublic school. The prohibition is qualified; it limits the

types of appropriations that are prohibited to those that aid or maintain nonpublic schools. Indeed, this Court made this clear in its analysis in *Traverse City*.³⁰

Reviewing both the common understanding of Proposal C when passed and its language, the *Traverse City* Court found that a literal interpretation of art 8, § 2's second paragraph as prohibiting any and all public funds from reaching nonpublic schools would violate the United States Constitution, including the "free exercise of religion and other enumerated rights guaranteed by the First Amendment" 384 Mich at 430. The Court explained:

This literal perspective on Proposal C's mandate of no public funds for nonpublic schools would place the state in a position where it discriminates against the class of nonpublic school children in violation of the equal protection provisions³¹ of the Fourteenth Amendment of the United States Constitution. In the case of parochial or other church-related school children (and some 270,000 of the 274,000 nonpublic school students in Michigan attend church-related schools), Proposal C would violate the free exercise of religion clause of the First Amendment to the United States Constitution. . . .

Id. Expounding upon this, the Court stated that "[t]he constitutionally protected right of the free exercise of religion is violated when a legal classification has a coercive effect upon the practice of religion without being justified by a compelling state interest." *Id.* at 433, citing *Sherbert v Verner*, 374 US 398; 83 S Ct 1790; 10 L Ed 2d 965 (1963) and *Engel v Vitale*, 370 US 421; 82 S Ct 1261; 8 L Ed 2d 601 (1962). The Court did not consider "precluding public expenditures for

³⁰ *Traverse City* made clear that questions involving art 8, § 2 do not generally have simple black-or-white answers. An analysis under art 8, § 2 *requires* application to specific facts. Unlike the Court of Claims, which made broad assertions and misapplied the applicable standards, the Court of Appeals relied on *Traverse City*, including its distinction between incidental and primary aid.

³¹ The Equal Protection Clause is implicated because "Proposal C involves the fundamental right, protected by the Fourteenth Amendment, of a parent to send his child to the school of his choice if it meets state quality and curriculum standards." *Traverse City*, 384 Mich at 431, citing *Pierce v Society of Sisters*, 268 US 510; 45 S Ct 571 (1925). The *Traverse City* Court found that the burden imposed by a literal interpretation of Proposal C was not necessary to achieve a compelling state interest, and thus violative of equal protection. *Id.* at 431-432.

private schools” or “preventing state sponsorship of religion or excessive entanglement between church and state” to be compelling state interests that justified the “burden placed on the choice of attending a private school out of a religious conviction.” 384 Mich at 432-433. To avoid this unconstitutional result, this Court adopted a nonliteral interpretation that permitted public support to be provided to nonpublic schools if it is for health, safety, and welfare measures (i.e., non-educational in nature), is incidentally related to the operation of education, and does not excessively entangle the State with religion. *Id.* at 435.

The *Traverse City* Court reasoned that “shared time” under the control of a public school provided only incidental aid, if any, to a nonpublic school and only incidental support to the attendance of a nonpublic school student at a nonpublic school. *Id.* at 416. The Court also held that art 8, § 2 did not prohibit the provision of auxiliary services, which are general health, safety, and welfare measures, to nonpublic schools.³² *Id.* at 417, 419. The Court held that Proposal C had no impact on auxiliary services because such services have “only an incidental relation to the instruction of private school children.” *Id.* at 419. Importantly, Proposal C was “keyed into prohibiting the passage of public funds into private school hands for purposes of *running the private school operation.*” *Id.* at 419-20 (emphasis added). The *Traverse City* Court’s interpretation left the heart of art 8, § 2 intact: “Proposal C above all else prohibits state funding of *purchased educational services* in the nonpublic school where the hiring and control is in the hands of the nonpublic school, otherwise known as ‘parochiaid.’” *Id.* at 435 (emphasis added). The State attempts to distinguish *Traverse City*’s holding with respect to shared time

³² The Court tied the definition of auxiliary services to those used in MCL 380.1296, which currently includes: “health and nursing services and examinations; street crossing guards services; national defense education act testing services; teacher of speech and language services; school social work services; school psychological services; teacher consultant services for students with a disability and other ancillary services for students with a disability; remedial reading; and other services determined by the legislature.”

and auxiliary services (see State Brief, p 19), but *Traverse City*'s reasoning applies equally to the issues in this case. There is simply no basis to make such a distinction. The very same constitutional issues apply to the reimbursement here as to shared time and auxiliary services.

In this case, the parties argue that the mere act of appropriating funds violates art 8, § 2. To so find, this Court must ignore its own analysis of this provision in *Traverse City* and its discussion of "incidental" aid because *any* appropriation or payment would be a violation in the parties' views. What the *Traverse City* Court did, however, was recognize that art 8, § 2 does not prohibit all appropriations or payments. Instead, it provided that the proper analysis requires a determination about whether the proposed aid is merely incidental to the operation of educating private school children or of primary significance to running a nonpublic school.³³

Indeed, this Court found that a literal interpretation of art 8, § 2's second paragraph would violate the United States Constitution. *Traverse City*, 384 Mich at 430. As noted above, to avoid this unconstitutional result, this Court found that certain services and payments to nonpublic schools, including those that are incidental to the support of attendance, employment, or a school's operation, were permitted under art 8, § 2. The logic of the Supreme Court's decision in *Traverse City* is easily applied to Section 152b. The Court of Appeals properly applied *Traverse City* and found that, "without offending Const 1963, art 8, § 2, the Legislature may allocate public funds to reimburse nonpublic schools for actual costs incurred in complying with state health, safety, or welfare laws" if: (1) compliance is incidental to teaching and providing educational services; (2) compliance does not constitute a primary function of the nonpublic school for it to exist, operate, and survive; and (3) compliance does not involve or result in excessive religious entanglement. (Ct of App Op & Ord, p 2).

³³ Again, as explained above, *Trinity Lutheran* dictates a different result, but to the extent this Court disagrees, *Traverse City* is still applicable and should be applied here.

The Court of Appeals articulated the correct legal standard under *Traverse City* and *Advisory Opinion re 1974 PA 242*. The fact that the reimbursements under Section 152b for health, safety, and welfare mandates are paid directly to nonpublic schools is not legally significant here. Although the *Traverse City* Court emphasized that “differences in control are legally significant” when it examined whether shared time instruction provided by public schools to nonpublic students violates Const 1963, art 8, § 2, (see *Traverse City*, 384 Mich at 414), the nonpublic schools do not have any discretion or “control” over how Section 152b funds are used. The money received under Section 152b is reimbursement for specific, mandatory, ministerial acts of compliance. In *Traverse City*, the examples of questionable “control” that the Court cited include the nonpublic schools’ ability to choose subjects taught and teachers employed. *Id.* at 413-414. In contrast, the mandates for which costs are reimbursed under Section 152b are mandatory safety, health, and welfare measures that can only be completed one way. Moreover, the program in Section 152b is voluntary—the schools need to apply to be eligible for any funds; the State dictates the mandates, the forms, the reimbursement amount, and the process.

Like the aid analyzed in *Traverse City*, the aid here is related to general health, safety and welfare measures and is incidental, at best. In finding that funding of auxiliary services did not violate art 8, § 2, the Supreme Court focused on the fact that such services are “general health and safety measures” rather than instructional measures. *Id.* at 418-19 (“[Such services] are related to educational instruction only in that by design and purpose they seek to provide for the physical health and safety of school children . . .”). The same analysis applies to Section 152b. The State has long been able to utilize its police powers to regulate education. See *Advisory Opinion re 1970 PA 100*, 384 Mich 82, 97; 180 NW2d 265 (1970) (noting that the State has a proper interest, based on its police powers, in the manner in which private schools perform their

secular education function). The purpose of Section 152b is to promote compliance with State law and to ensure that *all* Michigan students are able to attend healthy and safe nonpublic schools. In other words, the purpose of the appropriation is *not* to educate students or fund the operation of a nonpublic school, but rather to ensure that the State is effecting its duty under art 8, § 1 and art 4, § 51 by encouraging nonpublic schools to ensure that their schools are healthy and safe for students and that the environment created is conducive to learning.^{34 35}

In addition to Section 152b and the health, safety, and welfare measures included therein, the Legislature has also appropriated other funds for grants for education and safety measures that were disbursed without bias to nonpublic schools, including grants to support enhanced 9-1-1 abilities, emergency alert software, physical deterrents, and other training and equipment. See Section 708(1) of 2014 PA 252.³⁶ Under the parties' interpretation of art 8, § 2, the State could not provide such funding.

³⁴ For the reasons stated herein, remand to the Court of Claims is simply unnecessary. The reimbursement program, in its entirety, is constitutional. None of the reimbursable mandates are for paying teacher salaries, textbooks, or otherwise generally aiding the nonpublic schools.

³⁵ For this reason, it is clear that the Legislature did not violate art 4, § 30 (which the Court of Appeals did not decide but could have). Michigan courts recognize the Legislature's broad power to determine what constitutes a public purpose. See *Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10)*, 396 Mich 465, 499; 242 NW2d 3 (1976). In addition, unquestionably, society at large has an interest in having Michigan students—regardless of the type of school—attend safe and healthy learning environments. The end result of the reimbursement is safer, healthier schools and students. Given that the Legislature must not only encourage schools (all schools, not just public schools) and the means of education (all education, not just public education), and that the public health and general welfare are matters of primary concern, the fact that the Legislature appropriated a small amount of money so that nonpublic schools may seek partial reimbursement for their compliance (on a voluntary basis) with certain State laws related to the health, safety, and general welfare of their schools and students is without question permissible. Any doubts certainly cannot overcome the presumption of constitutionality. *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 6; 658 NW2d 127 (2003).

³⁶ See also, e.g., 2016 PA 268 (appropriating \$2,000,000 to the Department of State Police for competitive school safety grants “to *public or nonpublic schools*, school districts, and intermediate school districts to purchase technology and equipment and to conduct assessments

B. To Find That All Payments Are Prohibited Would: (1) Be Contrary To This Court's Precedent And (2) Violate The United States Constitution.

The natural extension of Plaintiffs' (and State Defendants') argument is that essentially no funds may be appropriated to nonpublic schools under art 8, § 2, particularly without any individual analysis of the specific mandates to be reimbursed. Such an interpretation is contrary, however, to this Court's decision in *Traverse City*. See also *Advisory Opinion re 1974 PA 242*, 394 Mich 41. Such a bright-line rule, however, would not only be contrary to this Court's prior rulings³⁷ but would also create chaos in Michigan's education landscape. The parties attempt to carve out shared time and auxiliary services from their analysis—but under their argument, those programs and services would be subject to the same prohibition. There is nothing specifically unique (in a federal constitutional sense) about shared time and auxiliary services that make those two programs/services exempt from the parties' position. The parties are essentially asking this Court to overrule *Traverse City*, which would result in a complete change in how Michigan's education system has been operating for nearly 50 years.

Moreover, to accept that Section 152b violates art 8, § 2 on its face requires a finding that would itself violate the United States Constitution. This Court has already determined that finding that no public funds may be paid to nonpublic schools would violate the First Amendment and the Fourteenth Amendment of the United States Constitution. *Traverse City*, 384 Mich at 430. To argue that the Legislature—in exercising its constitutional obligations to

to improve the safety and security of school buildings, students, and staff.”); 2018 PA 207, (appropriating \$25,000,000 to the Department of State Police for competitive school safety grants, and public and nonpublic schools were eligible recipients). The State has also provided robotics grants to which nonpublic schools were eligible recipients.

³⁷ As this Court is aware, it does not lightly overrule precedent, particularly when doing so would create undue hardships on reliance interests and defy practical workability. *Pohutski v City of Allen Park*, 465 Mich 675, 693-694; 641 NW2d 219 (2002). Plaintiffs and the State Defendants do not address these issues because they do not directly ask this Court to overrule *Traverse City*, but this Court would be required to do so under the logic of those parties' briefs.

ensure the health, safety, and welfare of the State’s citizenry, as well as to encourage the means of education—cannot appropriate public monies to nonpublic schools, including the portion of such schools that are religious schools, would certainly represent hostility, not neutrality, toward religion, which is guarded against under the United States Constitution. See *McDaniel v Paty*, 435 US 618; 98 S Ct 1322; 55 L Ed 2d 593 (1978); *Bd of Ed of Kiryas Joel Village Sch Dist v Grumet*, 512 US 687, 696; 114 S Ct 2481; 129 L Ed 2d 546 (1994) (“A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of ‘neutrality’ toward religion”). In short, for this Court to overturn the Court of Appeals’s decision, this Court must determine that it is unacceptable for the State to provide nonpublic schools with payment for health, safety, and welfare measures simply because those payments are going to a nonpublic school even though the payment would be incidental—at best—to the operation of the nonpublic school or education of students or employment of persons at the schools. Such a result is not possible under *Traverse City*.

The Establishment Clause does not require a literal reading of the Parochial Amendment prohibiting all public aid to nonpublic schools. The two constitutional provisions are not coextensive—if interpreted to prohibit all payments, the Parochial Amendment would embody an anti-Establishment principle in the Michigan Constitution that goes farther than the Establishment Clause of the United States Constitution and reaches so far as to raise concerns under the Free Exercise Clause because religious schools would be denied public health, safety, and welfare benefits because of their religious nature. And, because this interpretation would raise questions under the Free Exercise Clause, art 8, § 2 must be interpreted so as to avoid constitutional infirmity, allowing nonpublic schools to receive Section 152b public benefits.

C. Section 152b is Consistent with *Traverse City*.

1. Section 152b Does Not Contain Wage Reimbursement for Nonpublic School Employees.

The fact that the calculation of “actual cost” includes a relatively miniscule portion of the wage of the lowest compensated employee capable of performing the task (irrespective of who actually performs the task) is irrelevant. The funds being provided to the nonpublic school are not going to support an employee’s employment but rather to ensure compliance with these health, safety, and welfare measures mandated by the State. *These funds are not paying any employee’s wages*—certainly not for instruction or construction, as suggested by the Court of Appeals’s dissent. The use of wages (irrespective of the person performing the task, as mentioned above) is a calculation method used to benefit the State (and not the nonpublic school) as the amount reimbursed is only a small portion of the cost actually incurred by the nonpublic school in performing the task itself.³⁸ In reality, none of the aid received will do anything other than reimburse schools for a small fraction of costs already incurred and paid. The total amount paid is nominal and cannot be seriously viewed as necessary to maintaining the operations of a nonpublic school. Any suggestion to the contrary is simply incorrect.

2. The State Maintains Control Required Under *Traverse City*.

Moreover, the Section 152b appropriation, like shared time or the auxiliary services explored in *Traverse City*, is under the control of the State. See 384 Mich at 420. Contrary to the Plaintiffs’ analysis, the State controls the content of the required form, the administration of the appropriation, and the ability to review records to validate compliance if so desired. Indeed,

³⁸ Indeed, the statute uses wages even for many mandates that carry compliance costs outside of salaries like obtaining certifications or procuring building inspections. All nonpublic school employees are paid by the nonpublic school—not by the State. Any reimbursement is for performing state-mandated tasks or services. The use of such a mechanism to calculate reimbursement does not render the statute unconstitutional.

the State has the ultimate control in this case—control over what tasks a nonpublic school may be reimbursed for by the State. In fact, a simple review of the State’s reimbursement form from 2018 (Exhibit D) makes this clear. The State form has several categories and over 40 statutory and administrative mandates that are eligible for reimbursement. (*Id.*) There are clearly more than 40 State mandates in State law, but not every mandate is eligible for reimbursement. MDE controls the form, funds, and reimbursement. A school can only receive reimbursement if it voluntarily applies for it through a process developed and controlled by the State.

3. The Funds Under Section 152b Are Incidental, At Best, to Aid or Maintain Nonpublic Schools.

The parties contend that Section 152b’s funding is primary in nature. This assertion does not correspond with the reality of this case. The reality here is that: no money is paid to fund constitutional or State government classes at the school; no money is paid to reimburse the nonpublic school for teachers that instruct in such classes; and no money is used to pay for any materials, textbooks or supplies used in the classroom. Nonpublic schools that chose to apply are seeking reimbursement for compiling the required information and online submissions to MDE through the Michigan Education Information System as well as for compiling and submitting information required under SM-4325. They are not being reimbursed for instruction, as the parties suggest.³⁹ Moreover, the appropriation is designed to ensure safety and compliance with State law—it is not designed to educate nonpublic school students, pay teachers’ salaries, buy textbooks, or generally aid or maintain nonpublic schools. The funds are not for the

³⁹ The parties’ suggestions that these schools could not operate without certifying compliance and, therefore, that reimbursement for compliance is unconstitutional, are red herrings. Nonpublic schools operate now without any reimbursement for compliance with these mandates. Schools that voluntarily elect not to seek reimbursement, or that choose not to certify their compliance with the reimbursement process, will not be entitled to reimbursement. Getting a reimbursement has no bearing on whether a nonpublic school can operate in this state.

operation or education of private school children in any way. And if they were, any aid is incidental at best.⁴⁰

For these same reasons, Section 152b is unlike instances where Michigan courts or the Michigan Attorney General have found State funding to be in violation of article 8, § 2. The clearest distinction is probably found in *Advisory Opinion re 1974 PA 242*, 394 Mich 41; 228 NW2d 772 (1975). In that case, this Court held that the provision of textbooks or other supplies to a nonpublic school violates art 8, § 2 because textbooks and supplies are “essential aids that constitute a ‘primary’ feature of the educational process and a ‘primary’ element required for any school to exist.” *Id.* at 49. Section 152b funds cannot be described in this manner. Nonpublic schools exist without such funds; they are not necessary to the nonpublic “school’s survival as an educational institution.” *Id.* at 49. Such funds cannot be considered a “primary element” of nonpublic school education.

Section 152b appropriates funds to reimburse nonpublic schools for compliance with pre-existing State mandates. As has been well-documented, although certain health, safety, and general welfare measures exist to ensure the same standards for all Michigan students, many schools fail to comply with the required measures. (Exhibit G, mLive News Article). The schools are not being reimbursed to aid or maintain the school—and frankly, the amount at issue is so nominal that no one could seriously argue that such funds are aiding or maintaining a nonpublic school. The school can ask for reimbursement for the applicable mandates at a rate

⁴⁰ To illustrate this point, Amici provide two affidavits submitted to the Court of Appeals in this case from two schools. St. Mary School Westphalia’s total budget for 2016-17 was \$1,219,120.04. (see Exhibit E, Affidavit of Darren Thelen). It estimated its reimbursement request to be \$7,405.04. (*Id.*) In other words, if fully reimbursed, then St. Mary’s would receive 0.61% of its budget through this reimbursement program. Grand Rapids Christian Schools’ budget for 2016-2017 was \$23.78 million. It estimated its reimbursement request to be approximately \$104,150. (Exhibit F, Affidavit of Thomas DeJonge). Thus, if fully reimbursed for that amount, that school’s reimbursement would approximate 0.44% of its total budget.

that is substantially lower than the actual cost to ensure compliance. The funds appropriated—as expressly stated in Section 152b—“are intended for the public purpose of ensuring the health, safety, and general welfare of the children in nonpublic schools and to reimburse nonpublic schools for costs described in this section.” MCL 388.1752b. They are not intended to (and will not) aid or maintain a nonpublic school in violation of Const 1963, art 8, § 2.

The appropriation reimburses the nonpublic school for complying with State-mandated health, safety, and welfare measures—that is all. To argue otherwise is simply an attempt to read an art 8, § 2 issue into Section 152b when no such issue exists. The funds allocated in Section 152b will help nonpublic schools ensure that the health, safety, and general welfare of their students remain a top priority—any “aid” to the school itself is, at best, incidental even if the mandate or requirement is related to or is of an educational nature.

Indeed, “[i]t has always been the policy of this State, as indicated by the provisions of the Constitution and a long line of legislative enactments, to encourage the cause of education.” *Sheridan Road*, 426 Mich at 480, quoting *Michigan Female Seminary v Secretary of State*, 115 Mich 118, 120; 73 NW 131 (1897). This Court also acknowledged that this “strong state interest” extends to private schools as well as public schools:

[N]o question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

Sheridan Road, 426 Mich at 478, citing *Pierce v Society of Sisters*, 268 US 510, 534; 45 S Ct 571 (1925) (emphasis added). This Court then stated that subsequent case law has only confirmed that States have a “proper interest in the manner in which [private] schools perform

their secular educational function.” *Id.* at 479, citing *Central Dist No 1 Bd of Ed v Allen*, 392 US 236, 245-247; 88 S Ct 1923; 20 L Ed 2d 1060 (1968). This interest includes compulsory attendance laws, minimum hours of instruction, teacher qualifications, and subjects of instructions. *Id.* Certifying compliance with health, safety, and general welfare measures—like in Section 152b—is entirely in line with such reasoning; and this Court should find that Section 152b does not violate art 8, § 2.⁴¹

CONCLUSION

For the reasons stated herein, the Michigan Catholic Conference and Michigan Association of Non-Public Schools respectfully request that this Court strike down the Parochiaid Amendment to Const 1963, art 8, § 2 as a violation of the Free Exercise Clause and uphold Section 152b. In the alternative, Amici respectfully request that this Court affirm the Court of Appeals’s decision that Section 152b is constitutional as to Const 1963, art 8, § 2 under *Traverse City* and vacate the Court of Appeals’s order to remand for further proceedings.

Respectfully submitted,

Dated: December 23, 2019

By: /s/ Lori McAllister

Lori McAllister (P39501)
Leonard C. Wolfe (P49189)
Courtney F. Kissel (P74179)
Hilary L. Vigil (P82229)
DYKEMA GOSSETT PLLC
Attorneys for Amici MCC and MANS
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9150

086165.000002 4822-0686-2505.12

⁴¹ In the event that the Court were to find any portion of Section 152b in violation of article 8, § 2, the Court would need to determine whether that part is severable from the remainder of Section 152b that is constitutional. MCL 8.5.

CAP Michigan

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The History of CAP

The Council About Parochiaid (CAP)-legally, the Council of Organizations and Others for Education About Parochiaid-organized in the late 1960's in response to efforts to allocate state money to support non-public schools. In 1968, the Michigan chapter of a national organization, the Citizens for Educational Freedom, had organized a letter campaign to legislators encouraging the use of public funds for nonpublic schools, with most of the funding presumably directed towards religiously based schools, often called parochial schools. The use of public dollars for private education is call "parochiaid".

At that time CAP was comprised of a mixture of school, labor, and civil liberties organizations, as well as religious groups such as the Methodist Church Conference, concerned about the impact of public dollars on religious practice and on public education. Although its exact membership has varied over time, CAP's membership has consistently represented a similar mixture of organizations and individuals, all concerned about the use of funding private, religiously based education with public dollars, although sometimes for somewhat different reasons.

CAP has been fortunate to be headed over the years by strong leaders who have included State Board of Education member Kathleen Straus, representing the Michigan Association of School Boards at the time of her presidency; Georgene Campbell, out of the Michigan Parent Teachers Association, who went on to be the co-chair of the anti-voucher campaign, All Kids First!, Judy Rosenberg of the National Council of Jewish Women (NCJW), Barbara Bonsignore of the American Association of University Women (AAUW) of Michigan, Sandra York, Executive Director of Michigan PTA and now, Lois Lofton Doniver representing AFT-MI. However, the true strength of CAP over the years has been its consistency as a coalition in opposing the use of public funds for non-public schools.



Arguments for parochiaid and its causes of political popularity over the years have, on the other hand, been less consistent. Initial support seemed to emanate largely out of concerns that Roman Catholic schools needed state support or they would all close. Catholic schools in Michigan, as elsewhere, were transitioning to the use of lay teachers around this time. The initial legislation introduced to provide public funds for nonpublic schools came from heavily Catholic Bay City and was sponsored by then State Representative Bob Traxler.

Although the Legislature was not successful, it caught the eye of Governor William G. Milliken, who was facing his first statewide election after having assumed office when Governor Romney joined the Nixon administration. Perhaps seeking support from Catholic Democrats for his election, the Governor proposed appropriating \$22 million for each of two years to pay part of the salaries of private school lay teachers teaching secular subjects; in the third year, the funding was to be increased to cover 75% of their costs.

Despite having the support of the House Speaker, William Ryan, a Detroit Democrat with strong ties to both the Catholic Church and urban areas where parochial schools were more numerous, Governor Milliken's proposal ended up being more

controversial than anticipated. CAP responded by starting a petition drive on behalf of a constitutional amendment to ban the use of public funds for non public schools. CAP was successful in getting signatures for the petitions and in passing the constitutional provisions in the General Elections held in 1970. Of the nearly 2.5 million votes cast, the anti-parochiaid amendment was adopted with a margin of 338,098 votes.

The new constitutional language that remains in the current state constitution reads as follows:

State Constitution: Article VIII Education (excerpt)

§ 2 Free public elementary and secondary schools; discrimination. Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin. No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any schools.

The campaign has not been easy. CAP's efforts had been opposed by the Michigan Catholic Conference, the Michigan Association for Non-Public Schools, the Christian Reformed Schools, and the Michigan Federation of the Council for Educational Freedom. The Michigan Catholic Conference issued a pre-election news release predicting that most of the state's over 500 Catholic schools would close if Proposal C were approved. Attorney General Frank Kelley claimed that the petitions were flawed but then was overruled by the Michigan Court of Appeals. Kelley also issued opinions for the State Board of Education holding that shared time and auxiliary services would be eliminated if the measure passed. Both Governor Milliken and State Superintendent of Public Instruction John Porter issued statements claiming that the proposed amendment would do such things as end drivers' education for non-public schools, jeopardize the property tax exemption for nonpublic schools and possibly even preclude private schools from getting police and fire protection.



The campaign even played into the gubernatorial campaign between Milliken and Democratic State Senator Sander Levin. When Levin, like Milliken, announced his opposition for the anti-parochiaid ban, some analysts believe it may have decreased the ardor of Levin's supporters, including the Michigan Education Association. Meanwhile, the State Supreme Court ruled that the use of \$22 million for parochial schoolteachers' salaries was constitutional in a four to two decision; this decision was reversed in 1971, with the court then holding that the people had decided the issue when Proposal C was approved. At this point, less than half of the \$22 million had been appropriated.

CAP's next big test came in 1978. At this time, support for parochiaid came from a slightly different angle, the perspective of parental choice, in contrast to support in the 1960's which had come in part from concerns that non-public schools would close en masse and that closing nonpublic schools would result in overcrowding of public schools. Voucher supporters claimed that their proposal did not violate the First Amendment since the tax benefits adhered to the parents of the non-public school children, not to the school itself. CAP's response to this argument was that the impact of the aid, as expressed by the U.S Supreme Court decision in *Committee for Public Education and Religious Liberty v. Nyquist* (413 U.S. 756, 1973) was "unmistakably to provide desired financial support for non-public, sectarian institutions."

CAP and its 21 member organizations at this time vigorously and successfully opposed this proposal, known as "Proposal H". Proposal H was resoundingly defeated at the polls by a vote of 2,075,583 to 718,440. The proposal did not prevail in a single Michigan county, despite the fact that the Catholic Conference strongly supported the proposal, and more than a few counties had populations of 70% or greater from the Roman Catholic community. This particular election was a contentious one for supporters of public schools, given that several other controversial ballot proposals with an impact on property taxes, then the major source of public school funding, were also on the ballot at the time. The most recent electoral challenge to CAP's chief goal came with the Proposal 00-1 Ballot proposal in the General Election of 2000. Proponents of Proposal 00-1 attempted to sell their proposal as "pro-child" as the name "Kids First! Yes!" suggested. While the early efforts to pass parochiaid appeared mostly driven by institutions that were seeking funding to sustain their current mission, the driving support for "Kids First! Yes!" seemed more ideological in nature. Possibly for that reason, the campaign fared far less well in urban areas than anticipated by many political commentators. For instance, in Detroit, with numerous Catholic Schools, the vote was 48,024 for Proposal 00-1 and 219,862 against it with a total of 267,886 people voting. The final outcome was again a success for supporters of separation of church and state, with only 1,235,533 votes for the measure statewide, and 2,767,320 against from the 4,002,853 votes cast. CAP's role in the measure was to be the base from which the campaign began. The leadership of CAP provided core leadership for the campaign organization, which benefited enormously from the support of a long-standing coalition of individuals and organizations. The anti-Proposal 00-1 Campaign was a separate organization, seeking to defeat the proposition on behalf of "All Kids First."

As the history indicates, CAP has had certain time periods in which opponents of public funds for private education face serious challenges. During the "down" times, however, members of CAP continue to meet to monitor legislation, lawsuits, and the political scene. CAP had, for example, initiated related litigation against the Noah Webster Charter Academy in 1994-5. CAP firmly believes it is in the interest of its cause to maintain an ongoing coalition that can quickly spring into action whenever challenges arise, even though the nature of the challenges may vary over time.

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AFFIDAVIT OF BRIAN D. BRODERICK

State of Michigan)
)ss
County of Ingham

I, Brian D. Broderick, being first duly sworn, deposes and states:

1. I have personal knowledge of the matters set forth herein and am competent to so testify.

2. I am submitting this Affidavit in support of the Michigan Associations of Non-Public Schools' ("MANS") and Michigan Catholic Conference's ("MCC") amicus curiae brief, which argues that Const 1963, art 8, § 2 is unconstitutional and Section 152b is constitutional.

3. I am currently the Executive Director of MANS. As Executive Director, I am the person responsible for overseeing the day-to-day operations of MANS.

4. MANS is a service provider and public policy voice for nonpublic schools from the Catholic dioceses, Lutheran Church-Missouri Synod, and Christian Schools International in Michigan. MANS was formed in 1972 and, since then, has taken steps to ensure that its members and nonpublic school students receive required services relating to health, safety, and general welfare.

5. The Michigan Department of Education has reported that there are approximately 102,693 total nonpublic school students in the State of Michigan, who are educated at over 600 nonpublic schools. During the 2018-2019 academic year, of those 102,693 total nonpublic school students, 75,145 students were educated at the 350 nonpublic schools that were members of MANS. Thus, over 73% of Michigan's nonpublic school students are educated at nonpublic schools that are members of MANS.

6. Of the 350 nonpublic schools that are members of MANS, 284 schools are Pre-K through 8th Grade, 11 schools are Pre-K through 12th Grade, and 55 schools are Grades 9

through 12 (traditional high schools). In addition to the 350 members of MANS, 73 Pre-K schools are members.

7. Of the 350 nonpublic schools that are members of MANS, 207 are Catholic schools (44,317 total students), 75 are Lutheran Church Missouri Synod schools (14,317 total students), and 68 are Christian Schools International schools (16,511 total students).

8. Upon personal knowledge, approximately 80-85% of nonpublic schools that are members of MANS utilize shared time to some degree.

9. Upon personal knowledge, almost all of MANS' member schools have students receiving auxiliary services. Examples of these services include health and nursing, speech correction, remedial reading, visiting teacher services for delinquent students, and crossing guard students.

10. Upon personal knowledge, approximately 75% of MANS' 350 member schools utilize public school transportation.

11. In 2019, 66 nonpublic schools received over \$2,000,000 in school safety grants administered by the Michigan State Police. In 2017, 24 nonpublic schools received over \$500,000 in school safety grants administered by the Michigan State Police. In 2015, 15 nonpublic schools received \$634,000 in school safety grants administered by the Michigan State Police.

12. For fiscal years 2017-2018 and 2018-2019, nonpublic schools were eligible to receive grants in an amount not to exceed \$300,000 each year to fund student participation in robotics programs.

13. In 2017, MANS is aware that at least 190 nonpublic schools applied for reimbursement under MCL 388.1752b. MANS understands that the total requested amount

related to those applications was approximately \$1,294,225. MANS reviewed copies of applications for many schools where requested amounts ranged anywhere from \$700 to \$40,000, but the vast majority of applications requested under \$10,000.

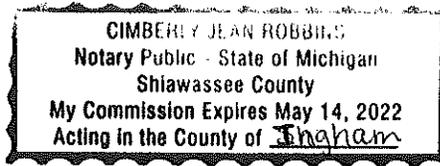
14. In 2018, MANS is aware that at least 163 nonpublic schools applied for reimbursement under MCL 388.1752b. MANS understands that the total requested amount related to those applications was approximately \$1,171,700. MANS reviewed copies of applications for some schools where requested amounts ranged anywhere from \$2,000 to \$15,000, with the average requested about \$8,000.

Further affiant sayeth not.

Brian D Broderick
Brian D. Broderick

Sworn to before me this
day of December, 2019.

Cimberly Jean Robbens
Cimberly Jean Robbens, Notary Public
My commission expires: *May 14, 2022*





June 27, 2016

Governor Richard Snyder
 PO Box 30013
 Lansing, MI 48909

Re: Nonpublic School Reimbursement for Mandated Reporting Requirements

Dear Governor Snyder:

We are writing to you to encourage you to sign Senate Bill 801 (the "Bill") into law with the inclusion of Section 152B. See attached Tab A for Section 152B. Section 152B of the Bill provides that nonpublic schools may seek reimbursement of their costs for complying with certain state mandated reporting requirements relating to the health, safety and welfare of their students. Specifically, section 152B incorporates the Michigan Department of Education ("MDE") NonPublic Mandate Report, dated November 25, 2014 ("Report"), which identifies requirements nonpublic schools must comply with under applicable state law. Section 152B also requires MDE to identify additional statutes requiring deliverables from nonpublic schools based on state laws enacted after the issuance of the Report. A requesting school can only receive an amount that is the school's "actual cost" to comply with the requirements under the statute, which is limited under Section 152B to the hourly wage of the lowest-paid employee capable of performing the reported task(s) excluding their benefits and any overtime pay. Section 152B also makes explicitly clear that the funds that are to be appropriated under this section are for purposes related to education,

are considered to be incidental to the operation of a nonpublic school, are non-instructional in character, and are intended for the public purpose of ensuring the health, safety, and welfare of the children in nonpublic schools.

We understand that some groups may have expressed concerns to your office over Section 152B's constitutionality, particularly under Article 8, § 2. We, along with our legal counsel, have reviewed Section 152B and believe that it is entirely within the Michigan Constitution's strictures and encourage you to sign it into law.

As you are aware, Article 8, § 2 provides that the Legislature shall support and maintain a free public school system but that public monies shall not directly, or indirectly, aid or maintain any nonpublic school. Despite what some contend, the restrictions placed in Article 8, § 2 do not completely bar any public money from being provided to nonpublic schools. This is evident by the plain language of the Constitution as well the Michigan Supreme Court's interpretation of the provision.

In *In re Matter of Executive Message of Governor v Kelley* ("In re Proposal C"), 384 Mich 390, 403; 185 NW2d 9 (1971), the Traverse City School District challenged the Michigan Attorney General's Opinion that Proposal C (i.e., the proposal that the relevant restrictive language in Article 8, § 2) forbid public money to be dispensed for "shared time"¹ and auxiliary services as related to nonpublic schools in addition to several other claims. In reaching the conclusion that the new language did not forbid "shared time," the *In re Proposal C* Court reasoned that "shared time," under the control of a public school, provided only **incidental aid**, if any, to a nonpublic school and only **incidental support** to the attendance of a nonpublic school. 384 Mich at 416. The Court also held that Article 8, § 2 did not prohibit the provision of auxiliary services to nonpublic schools.² *Id.* at 417. The Court held that Proposal C had no impact on auxiliary services because such services have "only an incidental relation to the instruction of private school children." *Id.* Important to the Court's decision was that Proposal C was "keyed into prohibiting the passage of public funds into private school hands for purposes of running the private school operation." *Id.* at 419-20. Proposal C's intent, then, was not applicable to auxiliary services because they "only incidentally involve the operation of educating private school children." *Id.* at 419-20. Of course, the Court noted that its holding would differ if there was evidence of excessive entanglement between the state and religion. *Id.* at 417.

What is clear from the Court's opinion in *In re Proposal C* is that Proposal C, now Article 8, § 2, did not place a complete bar on any and all public funding to nonpublic schools. Aid that is merely incidental to the operation of educating private school children is permitted.

¹ "Shared time" means an arrangement for pupils enrolled in nonpublic schools to attend public schools for instruction on certain subjects. *In re Proposal C*, 384 Mich at fn 3.

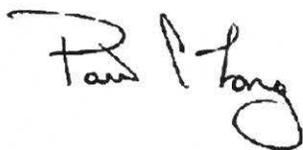
² The Court defined auxiliary services, as used in MCL 380.1296, which includes: "health and nursing services and examinations; street crossing guards services; national defense education act testing services; teacher of speech and language services; school social work services; school psychological services; teacher consultant services for students with a disability and other ancillary services for students with a disability; remedial reading; and other services determined by the legislature."

Section 152B firmly fits within Article 8, § 2's restrictions as well as the Supreme Court's interpretation of the provision. Section 152B provides that a nonpublic school *may* seek (not required to) reimbursement for compliance with certain state-mandated reporting requirements, such as fire drills and other health, safety and welfare measures by submitting a form to the Department evidencing the school's compliance with the state-mandated tasks. Different than shared time and auxiliary services, the funds used under Section 152B are even further removed from instruction or educational programming. Section 152B funds are to ensure that certain health, safety and welfare requirements under state law are being followed. The reimbursement amounts are minimal and certainly incidental to any instruction or attendance of nonpublic school students. In fact, this appropriation is akin to another legislative appropriation made recently for the Competitive School Safety Grant Program, which permitted the Michigan State Police to provide grant funding to public and nonpublic schools for certain school safety programs. See Tab B.

In summary, Section 152B does not violate Article 8, § 2. These funds are not used to educate nonpublic school children, pay nonpublic school teachers or run nonpublic schools. More importantly, however, the funds allocated in Section 152B will help the State ensure that the health, safety and welfare of nonpublic school students remains a top priority.

For these reasons, the below-signed organizations urge you to sign the Bill into law with inclusion of Section 152B.

Sincerely,



Paul A. Long
President and CEO
Michigan Catholic Conference



Rabbi A. D. Motzen
National Director of State Relations
Agudath Israel of America



Brian D. Broderick
Executive Director
Michigan Association of Non-Public Schools



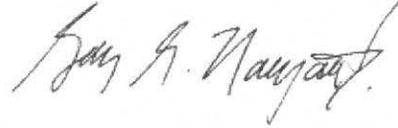
Joel Westa
President/CEO
Christian Schools International



Bruce Braun
Assistant to the President - Superintendent of Schools
Michigan District Office of the Lutheran Church-Missouri Synod



Daniel L. Quisenberry
President
Michigan Association of Public School Academies



Gary G. Naeyaert
Executive Director
Great Lakes Education Project

C: Mr. Dick Posthumus
Mr. John Roberts
Mr. Paul Smith
Mr. Darin Ackerman
Enclosures

SEC. 152B. (1) FROM THE GENERAL FUND MONEY APPROPRIATED UNDER
10 SECTION 11, THERE IS ALLOCATED AN AMOUNT NOT TO EXCEED
11 \$2,500,000.00 FOR 2016-2017 TO REIMBURSE COSTS INCURRED BY
12 NONPUBLIC SCHOOLS AS IDENTIFIED IN THE NONPUBLIC SCHOOL MANDATE
13 REPORT PUBLISHED BY THE DEPARTMENT ON NOVEMBER 25, 2014 AND
UNDER

14 SUBSECTION (2).

15 (2) BY JANUARY 1, 2017, THE DEPARTMENT SHALL PUBLISH A FORM
16 CONTAINING THE REQUIREMENTS IDENTIFIED IN THE REPORT UNDER
17 SUBSECTION (1). THE DEPARTMENT SHALL INCLUDE OTHER REQUIREMENTS
ON

18 THE FORM THAT WERE ENACTED INTO LAW AFTER PUBLICATION OF THE
19 REPORT. THE FORM SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE IN
20 ELECTRONIC FORM.

21 (3) BY JUNE 15, 2017, A NONPUBLIC SCHOOL SEEKING REIMBURSEMENT
22 UNDER SUBSECTION (1) OF COSTS INCURRED DURING THE 2016-2017 SCHOOL
23 YEAR SHALL SUBMIT THE FORM DESCRIBED IN SUBSECTION (2) TO THE
24 DEPARTMENT. THIS SECTION DOES NOT REQUIRE A NONPUBLIC SCHOOL TO
25 SUBMIT A FORM DESCRIBED IN SUBSECTION (2). A NONPUBLIC SCHOOL IS
26 NOT ELIGIBLE FOR REIMBURSEMENT UNDER THIS SECTION UNLESS THE
27 NONPUBLIC SCHOOL SUBMITS THE FORM DESCRIBED IN SUBSECTION (2) IN A
300

S04992'16 (S-2) CR-1 * TAV

1 TIMELY MANNER.

2 (4) BY AUGUST 15, 2017, THE DEPARTMENT SHALL DISTRIBUTE FUNDS
3 TO NONPUBLIC SCHOOLS THAT SUBMIT A COMPLETED FORM DESCRIBED
UNDER

4 SUBSECTION (2) IN A TIMELY MANNER. THE SUPERINTENDENT SHALL
5 DETERMINE THE AMOUNT OF FUNDS TO BE PAID TO EACH NONPUBLIC SCHOOL
6 IN AN AMOUNT THAT DOES NOT EXCEED THE NONPUBLIC SCHOOL'S ACTUAL
7 COST TO COMPLY WITH REQUIREMENTS UNDER SUBSECTIONS (1) AND (2). THE
8 SUPERINTENDENT SHALL CALCULATE A NONPUBLIC SCHOOL'S ACTUAL COST
IN

9 ACCORDANCE WITH THIS SECTION.

10 (5) IF THE FUNDS ALLOCATED UNDER THIS SECTION ARE INSUFFICIENT
11 TO FULLY FUND PAYMENTS AS OTHERWISE CALCULATED UNDER THIS
SECTION,

12 THE DEPARTMENT SHALL DISTRIBUTE FUNDS UNDER THIS SECTION ON A
13 PRORATED OR OTHER EQUITABLE BASIS AS DETERMINED BY THE
14 SUPERINTENDENT.

15 (6) THE DEPARTMENT HAS THE AUTHORITY TO REVIEW THE RECORDS OF
16 A NONPUBLIC SCHOOL SUBMITTING A FORM DESCRIBED IN SUBSECTION (2)
17 ONLY FOR THE LIMITED PURPOSE OF VERIFYING THE NONPUBLIC SCHOOL'S

18 COMPLIANCE WITH THIS SECTION. IF A NONPUBLIC SCHOOL DOES NOT
ALLOW
19 THE DEPARTMENT TO REVIEW RECORDS UNDER THIS SUBSECTION FOR THIS
20 LIMITED PURPOSE, THE NONPUBLIC SCHOOL IS NOT ELIGIBLE FOR
21 REIMBURSEMENT UNDER THIS SECTION.

22 (7) THE FUNDS APPROPRIATED UNDER THIS SECTION ARE FOR PURPOSES
23 RELATED TO EDUCATION, ARE CONSIDERED TO BE INCIDENTAL TO THE
24 OPERATION OF A NONPUBLIC SCHOOL, ARE NONINSTRUCTIONAL IN
CHARACTER,
25 AND ARE INTENDED FOR THE PUBLIC PURPOSE OF ENSURING THE HEALTH,
26 SAFETY, AND WELFARE OF THE CHILDREN IN NONPUBLIC SCHOOLS AND TO
27 REIMBURSE NONPUBLIC SCHOOLS FOR COSTS DESCRIBED IN THIS SECTION.
301

S04992'16 (S-2) CR-1 * TAV

1 (8) FUNDS ALLOCATED UNDER THIS SECTION ARE NOT INTENDED TO AID
2 OR MAINTAIN ANY NONPUBLIC SCHOOL, SUPPORT THE ATTENDANCE OF ANY
3 STUDENT AT A NONPUBLIC SCHOOL, EMPLOY ANY PERSON AT A NONPUBLIC
4 SCHOOL, SUPPORT THE ATTENDANCE OF ANY STUDENT AT ANY LOCATION
WHERE

5 INSTRUCTION IS OFFERED TO A NONPUBLIC SCHOOL STUDENT, OR SUPPORT
6 THE EMPLOYMENT OF ANY PERSON AT ANY LOCATION WHERE INSTRUCTION
IS

7 OFFERED TO A NONPUBLIC SCHOOL STUDENT.

8 (9) FOR PURPOSES OF THIS SECTION, "ACTUAL COST" MEANS THE
9 HOURLY WAGE FOR THE EMPLOYEE OR EMPLOYEES PERFORMING THE
REPORTED

10 TASK OR TASKS AND IS TO BE CALCULATED IN ACCORDANCE WITH THE
FORM

11 PUBLISHED BY THE DEPARTMENT UNDER SUBSECTION (2), WHICH SHALL
12 INCLUDE A DETAILED ITEMIZATION OF COST. THE NONPUBLIC SCHOOL
SHALL

13 NOT CHARGE MORE THAN THE HOURLY WAGE OF ITS LOWEST-PAID
EMPLOYEE

14 CAPABLE OF PERFORMING THE REPORTED TASK REGARDLESS OF WHETHER
THAT

15 INDIVIDUAL IS AVAILABLE AND REGARDLESS OF WHO ACTUALLY PERFORMS
THE

16 REPORTED TASK. LABOR COSTS UNDER THIS SUBSECTION SHALL BE
ESTIMATED

17 AND CHARGED IN INCREMENTS OF 15 MINUTES OR MORE, WITH ALL PARTIAL
18 TIME INCREMENTS ROUNDED DOWN. WHEN CALCULATING COSTS UNDER
19 SUBSECTION (4), FEE COMPONENTS SHALL BE ITEMIZED IN A MANNER THAT

20 EXPRESSES BOTH THE HOURLY WAGE AND THE NUMBER OF HOURS
CHARGED. THE
21 NONPUBLIC SCHOOL MAY NOT CHARGE ANY APPLICABLE LABOR CHARGE
AMOUNT
22 TO COVER OR PARTIALLY COVER THE COST OF HEALTH OR FRINGE BENEFITS.
23 A NONPUBLIC SCHOOL SHALL NOT CHARGE ANY OVERTIME WAGES IN THE
24 CALCULATION OF LABOR COSTS.



NEWS RELEASE

MICHIGAN STATE POLICE

\$4 Million in State Grant Funding Awarded to Support School Safety Initiatives in Michigan

FOR IMMEDIATE RELEASE

March 20, 2015

LANSING, MICH. The Michigan State Police (MSP) today announced that 56 public school districts, 15 private schools, 11 charter schools and five sheriff's departments will receive \$4 million in state grants to purchase equipment and/or technology to improve the safety and security of school buildings, students and staff. Over 217,500 students will benefit from these safety improvements.

"The safety of our students and educators is of paramount importance," said MSP Director Col. Kriste Kibbey Etue. "This Competitive School Safety Grant Program will help schools to make improvements that will provide a safer and more secure learning environment."

A complete list of award recipients is available at www.michigan.gov/cjgrants. Grant recipients have until Sept. 15, 2015, to spend their awards.

There were 289 applications received, totaling over \$46 million in requests. Of the \$4 million appropriated for the Competitive School Safety Grant Program, 80 percent was required to be awarded to K-12 schools and 20 percent to sheriff's departments. No state agencies received funding under this program.

Grant applications were reviewed by a committee that included representatives from the MSP, Michigan Department of Education, Michigan Sheriffs' Association, Michigan Association of Chiefs of Police, Michigan Association of Nonpublic Schools and the Executive Office of the Governor. The review committee gave priority to proposals that sought to secure access points at school buildings, as this is one of the best and most cost effective ways to improve school safety and security.

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MEDIA CONTACT: Ms. Nancy Becker Bennett, MSP Grants and Community Services Division,
(517) 898-9496 or BeckerN@michigan.gov

EXHIBIT C

Applicant Name	City	Zip	School District/Alone	School District Population	Participating Schools Population	AWARDED Participating Schools Population	Project Director Name	Project Description	Total Request	Request Amount - Four Selected Program Areas	Award Amount	Program Area	Safety Equipment/ Window Film	Access Control	Security Doors	Panic Button
Leelanau County Sheriffs Office	Suttons Bay	49682	Multiple	21,747	5,066	5,066	Mike Borkovich	Purchase of the Boot Door Lock Device for each school building in Leelanau County	\$ 133,250.00		\$ 128,750.00	The Boot systems				
Leslie Public Schools	Leslie	49251	Leslie Public Schools	1,388	1,388	1,388	Jeff Mantel	Install door access systems including key card access at three buildings.	\$ 199,255.00	\$ 72,567.00	\$ 72,567.00	access control		\$ 72,567.00		
Ludington Area Schools	Ludington	49431	Ludington Area Schools	2,265	2,136	2,136	Andrea Large	Install Panic button systems at five schools.	\$ 57,900.00	\$ 15,000.00	\$ 15,000.00	panic button systems				\$ 15,000.00
Marquette Area Public Schools	Marquette	49855	Marquette Area Public Schools	3,250	3,250	3,250	William Saunders	Installation of panic button system.	\$ 55,118.00	\$ 55,118.00	\$ 55,118.00	panic button systems				\$ 55,118.00
Marysville Public School District	Marysville	48040	Marysville Public School District	14,338	2,732	2,732	Rebecca McFarla	Purchase and install access control systems.	\$ 254,808.00	\$ 12,500.00	\$ 12,500.00	access control		\$ 12,500.00		
Mason County Eastern Schools	Custer	49405	Mason County Eastern Schools	8,055	500	500	Paul Shoup	Install entry door systems to three schools.	\$ 57,058.00	\$ 1,000.00	\$ 1,000.00	access control		\$ 1,000.00		
Metro Charter Academy	Romulus	48174	Charter School	743	743	743	Shelli Wildfong	Purchase and install door security systems, keyless entry systems, and window film for	\$ 35,575.00	\$ 23,500.00	\$ 23,500.00	access control and security window film	\$ 4,500.00	\$ 19,000.00		
Montmorency County Sheriff Department	Atlanta	49709	Atlanta, Hillman, Johannesburg-Lewiston	12,053	1,510	1,510	Mallory Nelsen	Purchase spin key releases, vests and an air soft training kit as well as send department	\$ 21,337.00		\$ 15,325.00	training equipment				
Muskegon Public Schools	Muskegon	49440	Muskegon Public Schools	4,132	1,667	1,667	Sam Wiltheis	Enhance physical security of middle and high school with cameras, security doors	\$ 1,081,580.00	\$ 766,000.00	\$ 80,000.00	access control and security doors	\$ -	\$ 86,000.00	\$ 680,000.00	\$ -
Nexus Academy of Grand Rapids	Grand Rapids	49504	Charter School	160	160	160	Daniel McMinn	Purchase and install keyless access and door control system.	\$ 30,000.00	\$ 10,000.00	\$ 10,000.00	access control	\$ -	\$ 10,000.00		
NorthPointe Christian School	Grand Rapids	49525	Private School	1,956	807	807	Rusty Brewster	Enhance physical safety with the installation of controlled access system and	\$ 84,268.71	\$ 10,783.83	\$ 7,784.00	access control and security window film	\$ 7,783.83	\$ 3,000.00		
Oakland County Sheriff's Department	Pontiac	48341	City of Pontiac Schools	4,453	4,453	4,453	Robert Smith	curriculum development, training, evaluation, supplies and materials	\$ 21,933.78		\$ 7,500.00	training				
Oholei Yosef Yitzchak Lubavitch	Oak Park	48237	Private School	1.2 Million	233	233	Mendel Stein	Purchase and install card access systems and window film in three schools.	\$ 283,460.00	\$ 107,560.00	\$ 109,260.00	access control and security window film	\$ 21,560.00	\$ 86,000.00		
Okemos Public Schools	Okemos	48864	Okemos Public Schools	4,112	4,112	4,112	Bob Bullock	Purchase and install panic button and locking systems in seven schools.	\$ 142,850.00	\$ 49,050.00	\$ 22,350.00	access control and panic button systems	\$ -	\$ 47,800.00		\$ 1,250.00
Onaway Area Community School	Onaway	49765	Onaway Area Community Schools	663	663	663	Rod Fullerton	Purchase and install access control systems.	\$ 16,977.00	\$ 8,477.00	\$ 8,477.00	access control		\$ 8,477.00		
Oscoda Area Schools	Oscoda	48750	Oscoda Area Schools	1,205	1,205	644	Scott Moore	Purchase and install security card system, cameras, upgrade telephone software and	\$ 39,800.00	\$ 13,945.00	\$ 13,945.00	access control		\$ 13,945.00		
Our Savior Evangelical Lutheran School	Hartland	48353	Private School	56	56	56	Andrea Johnson	Install door access control systems with intercom and window film.	\$ 109,065.88	\$ 48,368.86	\$ 48,369.00	access control and security window film	\$ 9,775.00	\$ 38,593.86		
Perry Public Schools	Perry	48872	Perry Public Schools	2,850	1,042	682	Zach Garner	Install access control systems in three schools.	\$ 89,050.00	\$ 3,600.00	\$ 3,600.00	access control		\$ 3,600.00		
Pickford Public School	Pickford	49774	Pickford Public School	397	397	397	Angela Nettleton	Purchase and install access control and key card systems.	\$ 20,522.07	\$ 20,522.07	\$ 19,626.00	access control		\$ 20,522.07		
Portland Public Schools	Portland	48875	Portland Public Schools	2,044	2,044	2,044	Paul Dinka	Enhance physical security with exterior keyless door entry system for rear entry at	\$ 80,700.13	\$ 34,000.00	\$ 34,675.00	access control	\$ -	\$ 34,000.00	\$ -	\$ -
Reading Community Schools	Reading	49274	Reading Community Schools	787	787	787	Charles North	Purchase and install card reader system and replacement doors.	\$ 42,186.60	\$ 10,036.00	\$ 10,036.00	access control	\$ -	\$ 10,036.00		
Riverview Community School District	Riverview	48193	Riverview Community Schools	3,074	3,074	3,074	Gary Kennedy	Install window security film at six school buildings.	\$ 195,132.00	\$ 48,176.00	\$ 48,176.00	security window film	\$ 48,176.00			
Shepherd of the Lakes Lutheran school	Brighton	48114	Private School	207	207	207	Juli VanDeven	Install door access system.	\$ 43,000.00	\$ 18,000.00	\$ 18,000.00	access control		\$ 18,000.00		
South Christian High School	Grand Rapids	49548	Private School	50,000	633	633	Jim Peterson	Installation of door access system with video intercom communication.	\$ 39,185.00	\$ 39,185.00	\$ 39,185.00	access control		\$ 39,185.00		
Sparta Area Schools	Sparta	49345	Sparta Area Schools	2,632	2,707	2,707	Terry Johnson	Install panic button systems and window film at five schools.	\$ 80,475.00	\$ 44,475.00	\$ 44,475.00	panic button systems and security window film	\$ 19,480.00		\$ 24,995.00	
Springport Public Schools	Springport	49284	Springport Public Schools	952	952	952	James Acker	Purchase and installation of access control system.	\$ 200,734.00	\$ 27,496.00	\$ 27,496.00	access control		\$ 27,496.00		
St. Joseph School	Howell	48843	Private School	169	169	169	Susan Doyle	Install access control systems including key card access and panic button system, ONLY	\$ 120,851.00	\$ 82,980.00	\$ 12,740.00	access control and panic button systems	\$ 80,480.00		\$ 2,500.00	
St. Peter Lutheran Schools	Hemlock	48626	Private School	109	109	109	Eric Hagenow	Enhance physical security with interior and exterior keyless door entry system for one	\$ 75,600.00	\$ 75,600.00	\$ 35,000.00	access control	\$ -	\$ 75,600.00	\$ -	\$ -
Standish-Sterling Community School District	Standish	48658	Standish-Sterling School District	1,600	1,600	1,600	Darren Kroczaleski	Installation of visitor management systems at four buildings.	\$ 119,963.15	\$ 32,932.00	\$ 32,932.00	access control		\$ 32,932.00		
Stanton Township Public Schools	Atlantic Mine	49905	Stanton Township Public Schools	182	182	182	James Rautiola	Door Security/Card Access System, Upgrade Phone System to meet E-911	\$ 6,200.00	\$ 6,173.00	\$ 6,173.00	access control		\$ 6,173.00		
Sturgis Public Schools	Sturgis	49091	Sturgis Public Schools	17,108	2,513	2,513	David Northrop	Enhance physical security with card access system, visitor management system	\$ 112,223.75	\$ 59,280.00	\$ 42,500.00	access control	\$ -	\$ 59,280.00	\$ -	\$ -
Timberland Charter Academy	Muskegon	49442	Charter School	709	709	709	Angela Coleman	Purchase and install door security systems, key card systems and window film for	\$ 35,575.00	\$ 23,500.00	\$ 23,500.00	access control and security window film	\$ 4,500.00	\$ 19,000.00		
Traverse Bay ISD	Traverse City	49684	Traverse Bay Intermediate School District	21,783	21,783	21,783	Jason Jeffrey	Purchase of DNA Fusion Software (50 licenses) that will enhance door security in	\$ 519,540.00	\$ 95,540.00	\$ 95,540.00	access control		\$ 95,540.00		
Trinity Lutheran School (Ottawa County)	Conklin	49403	Private School	28	28	28	Jack Link	Purchase and install camera system for access control.	\$ 13,200.00	\$ 11,200.00	\$ 11,200.00	access control		\$ 11,200.00		
Vista Charter Academy	Grand Rapids	49548	Charter School	765	765	765	Heather Guerra	Purchase and install door security systems, keyless entry systems, and window film for	\$ 36,075.00	\$ 24,000.00	\$ 24,000.00	access control and security window film	\$ 5,000.00	\$ 19,000.00		
Walker Charter Academy	Walker	49544	Charter School	774	774	774	Steve Bagley	Purchase and install door security system, keyless access system and window film for	\$ 37,075.00	\$ 25,000.00	\$ 25,000.00	access control and security window film	\$ 6,000.00	\$ 19,000.00		
Walton Charter Academy	Pontiac	48340	Charter School	802	802	802	Mona Boersma	Purchase and install door security systems, keyless entry systems, and window film for	\$ 35,575.00	\$ 23,500.00	\$ 23,500.00	access control and security window film	\$ 4,500.00	\$ 19,000.00		
Washtenaw ISD	Ann Arbor	48106	Washtenaw ISD	46,396	46,396	46,396	Sarena Shivers	Install entry door access systems and window film.	\$ 2,224,513.33	\$ 566,244.02	\$ 566,244.00	access control and security window film	\$ 241,744.02	\$ 324,500.00		
West Catholic/Grand Rapids Catholic	Grand Rapids	49504	Private School	440	440	440	Daniel Rohn	Replacing exterior doors and construction costs involved.	\$ 151,598.32	\$ 84,800.00	\$ 84,800.00	security doors			\$ 84,800.00	
Windemere Park Charter Academy	Lansing	48917	Charter School	724	724	724	Tyvonne Thomas	Purchase and install keyless entry system, and window film for exterior doors.	\$ 22,825.00	\$ 10,750.00	\$ 10,750.00	access control and security window film	\$ 4,750.00	\$ 6,000.00		
Wyandotte Public School	Wyandotte	48192	Wyandotte Public Schools	4,664	4,763	3,005	Catherine Cost	Install key card systems at nine schools and secured entrances at five schools.	\$ 3,186,610.55	\$ 2,025,055.80	\$ 148,736.00	access control and security doors	\$ 1,740,291.20	\$ 284,764.60		

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	A	B	C	D	E	F	G
1	Section 152b Reimbursement Form						
2							
3	SCHOOL NAME:						
4	ENTITY CODE:						
5	ENROLLMENT:						
6	FORM PREPARED BY:						
7							
					HOURLY RATE, LEAST	TRAINING FEES	INSPECTION FEES
8	<u>MCL RULE</u>	<u>SHORT DESCRIPTION</u>	<u>CATEGORY</u>	TOTAL HOURS TO COMPLETE MANDATE	EMPLOYEE		
9	29.5p	Hazardous Chemicals – Employee Right to Know	Student/Staff Safety				
10	29.19	Fire/Tornado/Lockdown/Shelter in Place	Student/Staff Safety				
11	257.715a	State Police Inspection 12+ passenger motor vehicle	Student/Staff Safety				
12	257.1807-1873	(Pupil Transportation Act) Meet/Exceed standards	Student/Staff Safety				
13	289.1101-8111	Food Law	Student/Staff Safety				
14	324.8316	Notice of pesticide application	Student/Staff Safety				
15	333.9155-9156	Concussion Education	Student Health				
16	333.9208	Immunizations	Student Health				
17	333.17609	Licensure of School Speech Pathologist	Student Health				
18	380.1137a	Release of student information to parent (PPO)	Accountability				
19	380.1177-1177a	Immunization statements and vision screening	Student Health				
20	380.1179-1179a	Possession/Use of inhalers/epinephrine auto injector	Student Health				
21	380.1230-1230h	Required criminal background check	Student/Staff Safety				
22	380.1233	Teaching or Counseling as noncertified teacher; permit	Educational Req.				
23	380.1274b	Products containing mercury; prohibit in schools	Student/Staff Safety				
24	380.1531-1538	Teacher certification and administrator certificates	Educational Req.				
25	380.1539b	Conviction of person holding board approval	Student/Staff Safety				
26	380.1561	Compulsory school attendance	Educational Req.				
27	380.1578	Attendance Records	Accountability				
28	388.514	Postsecondary Enrollment options	Educational Req.				
29	388.519-520	Postsecondary Enrollment Act information/counseling	Educational Req.				

/2019 2:14:15 PM

	A	B	C	D	E	F	G
1	Section 152b Reimbursement Form						
2							
3	SCHOOL NAME:						
4	ENTITY CODE:						
5	ENROLLMENT:						
6	FORM PREPARED BY:						
7							
					HOURLY RATE, LEAST	TRAINING FEES	INSPECTION FEES
8	<u>MCL RULE</u>	SHORT DESCRIPTION	CATEGORY	TOTAL HOURS TO COMPLETE MANDATE	EMPLOYEE		
30	388.551-557	Private, Denominational & Parochial Schools Act	School Operations				
31	388.851-855b	Construction of School Buildings	Building Safety				
32	388.863	Compliance with Federal asbestos building regulation	Building Safety				
33	388.1904	Career & Technical prep program; enrollment; records	Educational Req.				
34	388.1909-1910	Career & Technical prep information and counseling	Educational Req.				
35	408.681-687	Playground Equipment Safety Act	Student/Staff Safety				
36	409.104-106	Youth Employment Standards Act; Work Permits	School Operations				
37	722.115c	Child Care organization criminal history; background	Student/Staff Safety				
38	722.621-638	Child Protection Law	Student/Staff Safety				
39	R257.955	Annual School Bus inspections	Student/Staff Safety				
40	R285.637	Pesticide use	Student/Staff Safety				
41	R289.570.1-570.6	Food Establishment manager certification	School Operations				
42	R325.70001-70018	Bloodborne Pathogens	Student/Staff Safety				
43	R340.484	Boarding School requirements	School Operations				
44	R390.1145	Permits in Emergency situations	Educational Req.				
45	R390.1146	Mentor teachers for noncertified instructors	Educational Req.				
46	R390.1147	Certification of School Counselors	Educational Req.				
47							
48							TOTAL

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	H	I	J
1			
2			
3			
4			
5			
6			
7			
8	CRIMINAL BACKGROUND CHECK FEES	EPI PEN(S) PURCHASE	TOTAL COST
9			0.00
10			0.00
11			0.00
12			0.00
13			0.00
14			0.00
15			0.00
16			0.00
17			0.00
18			0.00
19			0.00
20			0.00
21			0.00
22			0.00
23			0.00
24			0.00
25			0.00
26			0.00
27			0.00
28			0.00
29			0.00

	H	I	J
1			
2			
3			
4			
5			
6			
7			
8	CRIMINAL BACKGROUND CHECK FEES	EPI PEN(S) PURCHASE	TOTAL COST
30			0.00
31			0.00
32			0.00
33			0.00
34			0.00
35			0.00
36			0.00
37			0.00
38			0.00
39			0.00
40			0.00
41			0.00
42			0.00
43			0.00
44			0.00
45			0.00
46			0.00
47			0.00
48	REIMBURSEMENT REQUEST:	\$	-

- 1) Access and login at [MEGS+ website - https://mdoe.state.mi.us/megsplus/](https://mdoe.state.mi.us/megsplus/).



Michigan Electronic Grant System Plus - MEGS+
Michigan Department of Education

Michigan.gov

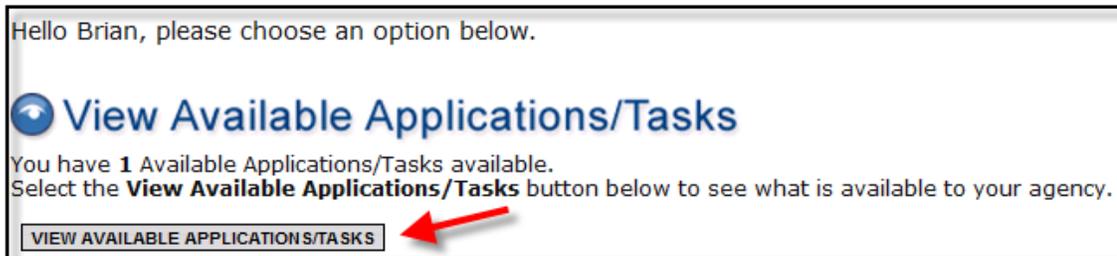
[IntelliGrants Home](#) | [Grant Portal Home](#)

Welcome to the **Michigan Electronic Grants System, MEGS+**.

This system allows Michigan's schools to create, manage, submit, track, and amend their grant applications. Please type your **Username** and **Password** in the text boxes and click the "Login" button to begin using MEGS+.

If you forgot your **password** or **username**, please visit:
cepi.state.mi.us/MEIS/Login.aspx

- 2) The **Nonpublic School Level 5, Authorized Official**, initiates the application by clicking the **View Available Applications/Tasks** button.



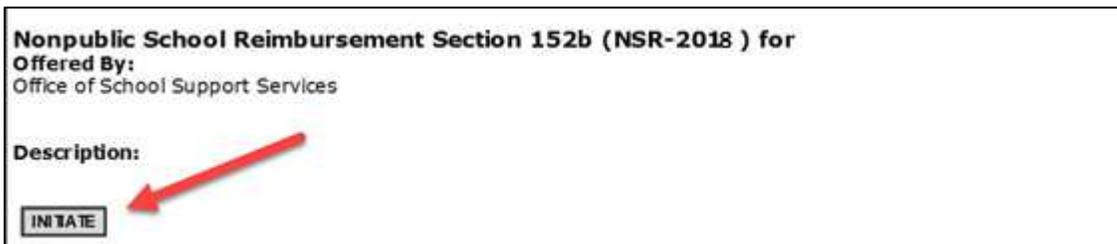
Hello Brian, please choose an option below.

View Available Applications/Tasks

You have **1** Available Applications/Tasks available.
Select the **View Available Applications/Tasks** button below to see what is available to your agency.

VIEW AVAILABLE APPLICATIONS/TASKS

- 3) Click the **Initiate** button for 2018 Nonpublic School Reimbursement Section 152b.



Nonpublic School Reimbursement Section 152b (NSR-2018) for
Offered By:
Office of School Support Services

Description:

INITIATE

3a) Click the **I Agree** button.

Application Agreement

Please make a selection below to continue.

Confirm that this application/task should be initiated

4) Click on **Management Tools** in the *Quick Links* line.

The screenshot shows the Michigan Electronic Grant System Plus (MEGS+) QA - UAT interface. The header includes the Michigan Department of Education logo and navigation links: Michigan.gov, Reports, Administration, Training Materials, Agencies, Home, Quick Search, Welcome, [User], and Logout. Below the header are buttons for GLOBAL ERRORS, REVIEW COMMENTS, and SHOW HELP. The main menu path is Main Menu > Application Menu > View/Edit. The Quick Links section contains links for View/Edit, Change Status, Management Tools, Examine Related Items, and View Comments. The application details at the bottom indicate: Application: FY 2018 - Nonpublic School Reimbursement Section 152b | Status: Application In Progress | Security Level: MEGS+: Level 5 Authorized Official. A red arrow points to the 'Management Tools' link in the Quick Links section.

4a) Click on **Add/Edit People**.

Management Tools

 **CREATE FULL PRINT VERSION**
Select the link above to create a printable version of the document.

 **ADD/EDIT PEOPLE** →
Select the link above to perform actions such as adding people, changing a security role, or altering people's active dates on this document.

 **STATUS HISTORY**
Select the link above to view the status history of this document.

 **CHECK FOR ERRORS**
Select the link above to check the entire document for errors.

4b) Scroll down to **Current People Assigned**. Select Main Contact in **Grant Contact Type** dropdown box. Click **Save** at top right of page.

Current People Assigned

Search
Active Status: Active ▾
Partial Name:
Agency: ▾

Sort By: Name ▾

<input type="checkbox"/>	Person	Agency	Role	Grant Contact Type	Active Dates	Last Modified	Last Modified Date
<input checked="" type="checkbox"/>			MEGS+: Level 5 Authorized Official	<input type="text"/>	<input type="text"/>		

5) Click the **View/Edit** button to access and complete the application.

Main Menu > Application Menu

Quick Links: [View/Edit](#) | [Change Status](#) | [Management Tools](#) | [Examine Related Items](#) | [View Comments](#)

Application: FY 2018 - Nonpublic School Reimbursement Section 152b | **Status:** Application In Progress | **Security Level:** MEGS+: Level 5 Authorized Official

6) Click on the **Cover Page**.

Please complete all required forms below.

Forms

Status	Page Name	Comments	Created By	Last Modified By
	Cover Page			
	Assurances And Certifications			
Program Information				
	Nonpublic School Reimbursement Section 152b Form			
	Worksheet Reimbursement			
Budget Pages				
	Nonpublic School Reimbursement Section 152b			

6a) Check the information on the cover page for accuracy.

COVER PAGE	
APPLICANT	Applicant Name District Code
	Address
	City Zip Code
	Telephone Fax
CONTACT PERSON	Contact Name
	Address
	City Zip Code
	Telephone Fax
	Email Address

7) Click on **View/Edit** above the cover page in the *Main Menu* row.

PRINT VERSION ADD NOTE GLOBAL ERRORS
Main Menu > Application Menu > View/Edit > Cover Page

8) Click the **Assurances and Certifications**.

Please complete all required forms below.

Status	Page Name	Comments	Created By	Last Modified By
	Cover Page			
	Assurances And Certifications			
Program Information				
	Nonpublic School Reimbursement Section 152b Form			
	Worksheet Reimbursement			
Budget Pages				
	Nonpublic School Reimbursement Section 152b		4/28/2018 10:15:57 AM	

9) After reviewing the Assurance and Certificaitons page, click on **View/Edit**.

Page Information
The information has been saved.

Quick Links: [View/Edit](#) | [Change Status](#) | [Management Tools](#) | [Examine Related Items](#) | [View Comments](#)

Application: FY 2018 - Nonpublic School Reimbursement Section 152b | Status: Application In Progress | Security Level: MEGS+: Level 5 Authorized Official

ASSURANCES AND CERTIFICATIONS

SECTION III: ASSURANCES AND CERTIFICATIONS — ASSURANCES FOR STATE AID GRANTS — ASSURANCE REGARDING SANCTIONS AGAINST IRAN-LINKED BUSINESSES The applicant assures that, for any request for proposals or contract renewal for work performed under this grant, it will collect a certification from each bidder that the bidder is not an Iran-Linked Business. An Iran-linked business is not eligible to submit a bid on a request for proposal with a public entity. Recipients must comply with all

10) Click on **Nonpublic School Reimbursement Section 152b Form** under Program Information.

Assurances And Certifications 5/1/2018 10:24:59 AM

Program Information

[Nonpublic School Reimbursement Section 152b Form](#)

[Worksheet Reimbursement](#)

Budget Pages

10a) **Open and Save the excel Nonpublic School Reimbursement Section 152b Form** to your computer desktop.

- Enter the school name, entity code, school enrollment number, and who the form is being prepared by at the top of the form.
- For each item listed that your nonpublic school has complied with for the 2017-18 school year, enter the labor costs as described below. The costs charged are for reporting compliance with the Michigan Compiled Law listed. Only one Form may be submitted.
 - Actual cost means the hourly wage for the employee(s) performing the reported task(s).
 - Labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.
 - Nonpublic schools shall not charge more than the hourly wage of its lowest-paid employee capable of performing the reported task regardless if this individual performs the task.
 - Health, fringe benefits, and overtime are not included in the costs charged.
 - Once the Hours and Rate column have been completed, totals will show up in the Cost column as well as at the bottom.
- The Michigan Department of Education (MDE) has the authority to review the records submitted for the limited purpose of verifying compliance. If the nonpublic school does not allow the MDE to review records, the nonpublic school is not eligible for reimbursement.

10b) **Save and Close the Nonpublic School Reimbursement Section 152b Form.**

11) Click on the Worksheet Reimbursement under Program Information.

The screenshot shows a navigation menu with the following items:

- [Assurances And Certifications](#)
- Program Information**
 - [Nonpublic School Reimbursement Section 152b Form](#)
 - [Worksheet Reimbursement](#) (highlighted with a red arrow)
- Budget Pages**
 - [Nonpublic School Reimbursement Section 152b](#)

11a) Follow the instructions listed for the Worksheet Reimbursement. **Both the Title and Document Source** are required. Save the page.

WORKSHEET REIMBURSEMENT

Instructions: (highlighted with a red arrow)

- 1) Type in a descriptive title for the document that will be uploaded.
- 2) Click the **Browse** button and search for your document on your computer.
- 3) Once selected, the path to your file will appear in the Document Source field.
- 4) Click on the **Save** button.

NOTE: When the file is named to be uploaded, **DO NOT** leave any spaces, place a period between the words OR use any special characters (/ , % , & , etc.) or place periods between words and numbers. Attachment must be EXCEL format. The maximum file upload size is 15MB per files uploaded on each page. The descriptive title entered does not have to be the same as the file name, and it can include spaces.

*Title:

*Document Source:

12) Click on View/Edit.

Main Menu > Application Menu > View/Edit > Worksheet Reimbursement

-

Quick Links: [View/Edit](#) | [Change Status](#) | [Management Tools](#) | [Examine Related Items](#) | [View Comments](#)

Application: | **Status:** | **Security Level:**

13) Click on **Nonpublic School Reimbursement Section 152b** under Budget Pages.

Forms

Status	Page Name	Comments	Created By	Last Modified By
	Cover Page		4/28/2018 10:30:59 AM	
	Assurances And Certifications		5/1/2018 10:24:59 AM	
Program Information				
	Nonpublic School Reimbursement Section 152b Form			
	Worksheet Reimbursement			
Budget Pages				
	Nonpublic School Reimbursement Section 152b			

13a) Scroll to the **bottom of the page** and complete the Contact Information. The contacts may be the same person. Click on **Save Budget Contacts** at the top of the page. (You will get a **Page Error(s)**; continue on with adding a budget item).

• Add the name of your business and program representatives with phone numbers and emails and click **Save**.

Recipient Code	Grant Number	Project Number	CFDA Number	Starting Date	Ending Date	Fiscal Year
	178995	17		07/01/2017	06/15/2018	2018
Nonpublic School Reimbursement Section 152b for						

[Budget Summary](#) | [Budget Detail](#)

Function Codes	Function Titles	Salaries 1000	Total
280	Support Services - Central		\$0
	SUBTOTAL		\$0
	TOTAL		\$0

CONTACT INFORMATION

Business Office Representative:

*Name: *Phone: Ext: *Email:

Project Contact Person:

*Name: *Phone: Ext: *Email:

13b) Click on **Add Budget Item** at the top of the page.

SAVE BUDGET CONTACTS | **ADD BUDGET ITEM** | PRINT VERSION | GLOBAL ERRORS | REVIEW COMMENTS

Instructions:

- To add a budget item, click the **Add Budget Item**.
- To view the budget detail, click the **Budget Detail**.
- Add the name of your business and program representatives with phone numbers and emails and click **Save**.

Recipient Code	Grant Number	Project Number	CFDA Number	Starting Date	Ending Date	Fiscal Year
	178995	17		07/01/2017	06/15/2018	2018
Nonpublic School Reimbursement Section 152b for						

[Budget Summary](#) | [Budget Detail](#)

13c) Complete the **Budget Item** page.

- Click on the **dropdown** for the Function Code, and select 289: Other Central Services or 213: Medical Services (This is for **EPIPEN ONLY**).
- Costs incurred for purchasing replacement EpiPens should be entered as total cost (not hourly) and only in the 380.1179-1179a row.**
- Type a specific description for the budget item.
- Enter the total costs to be reimbursed from the spreadsheet.
- Enter the total hours from the spreadsheet.

[Budget Summary](#) | [Budget Detail](#)

*Select the appropriate Function Code for this budget item:

←

*Provide a specific description for this budget item. Do not repeat the Function Code description selected in the drop down menu or the heading(s) of the box(es) used below:

←

Enter the dollar amount associated with the budget item. Enter an amount in only one box unless the item is Personnel. Personnel must have both Salaries and Benefits.

Salaries (1000)

\$ ←

Hours ←

13d). Click on **Save Budget Item** at the top of the page.

SAVE BUDGET ITEM ADD BUDGET ITEM DELETE GLOBAL ERRORS REVIEW COMMENTS

Nonpublic School Reimbursement Section 152b for

[Budget Summary](#) | [Budget Detail](#)

*Select the appropriate Function Code for this budget item:
 289: Other Central Services ▾

*Provide a specific description for this budget item. Do not repeat the Function Code description selected in the drop down menu or the heading(s) of the box(es) used below:
 (description) ▾

Enter the dollar amount associated with the budget item. Enter an amount in only one box unless the item is Personnel. Personnel must have both Salaries and Benefits.

Salaries (1000)
 \$

Hours

14) Click on **Global Errors**.

SAVE BUDGET ITEM ADD BUDGET ITEM DELETE GLOBAL ERRORS REVIEW COMMENTS

Nonpublic School Reimbursement Section 152b for

[Budget Summary](#) | [Budget Detail](#)

*Select the appropriate Function Code for this budget item:
 289: Other Central Services ▾

*Provide a specific description for this budget item. Do not repeat the Function Code description selected in the drop down menu or the heading(s) of the box(es) used below:
 (description) ▾

Enter the dollar amount associated with the budget item. Enter an amount in only one box unless the item is Personnel. Personnel must have both Salaries and Benefits.

Salaries (1000)
 \$

Hours

14a) Correct possible errors.

- **To correct errors, click on the Application Menu number link** and correct the errors on the appropriate pages. **Click the Save button** after correcting each page.
- You will not be able to submit application with errors showing. Screen shot below is what you should see after errors are corrected.

When there are no errors found, click on **Change Status** to submit the application.

Quick Links: [View/Edit](#) | [Change Status](#) | [Management Tools](#) | [Examine Related Items](#) | [View Comments](#)

Application: FY 2018 - Nonpublic School Reimbursement Section 152b | Status: Application In Progress | Security Level: MEGS+: Level 5 Authorized Official

No errors have been detected. To change status, return to the Application Menu, click "Change Status".

No General errors have been found.

No Narrative Page errors have been found.

No Budget errors have been found.

No Individual Budget Item errors have been found.

15) Click **Submit Application**.

Quick Links: [View/Edit](#) | [Change Status](#) | [Management Tools](#) | [Examine Related Items](#) | [View Comments](#)

Application: FY 2018 - Nonpublic School Reimbursement Section 152b | Status: Application In Progress | Security Level: MEGS+: Level 5 Authorized Official

Select a button below to execute the appropriate status push.

Possible Statuses

[Submit Application](#)

[Cancel Application](#)

15a) Click the **I Agree** box to submit the application.

Application Agreement

Please make a selection below to continue.

In order to submit your application you must first agree to the following conditions.

I, _____ certify that...

- * The information submitted in this application is true and correct to the best of my knowledge; and
- * _____ School will comply with the Assurances and Certifications (available on the View/Edit Forms menu) of this application; and
- * The budget was prepared cooperatively by individuals from both the Program and Business Office.

If you are not _____ you should return to the Main Menu.

If you would like to include notes about this status change, please supply them below.

0 of 2000

15b) Application is submitted, note Status in Application information.

Quick Links: View/Edit Change Status Management Tools Examine Related Items View Comments
Application: FY 2018 - Nonpublic School Reimbursement Section 152b Status: Application Submitted Security Level: MEGS+: Level 5 Authorized Official
Please select from an option below. For detailed instruction about each option, select the SHOW HELP button.

Select the View/Edit button below to view, edit, and complete the application/task.

The person submitting the application will receive a confirming email from MEGS@michigan.gov of their submission.

To print/save your submitted application:

- Click on [Management Tools](#).
- Click on [Create Full Print Version](#) and open the pdf.
- Print or Save to your computer.

For assistance with Cash Management System (CMS), contact the Office of Financial Management at 517-335-0534 or MDE-CMS@michigan.gov.

For assistance with the MEGS+ application, contact the Grants Office at 517-373-1806 until May 22, 2018, or MEGS@michigan.gov. After May 22 please contact the Grants Office at 517-241-5386, or MEGS@michigan.gov.

AFFIDAVIT OF DARREN THELEN

State of Michigan)
)ss
County of Clinton)

I, Darren Thelen, being first duly sworn, deposes and states:

1. I have personal knowledge of the matters set forth herein and am competent to so testify.

2. I am submitting this Affidavit in support of the Michigan Associations of Non-Public Schools (“MANS”) and Michigan Catholic Conference’s (“MCC”) motion for summary disposition, which argues that Section 152b is constitutional.

3. I am currently the Principal of St. Mary School in Westphalia, Michigan. As Principal, I am the person responsible for the day to day operations of St. Mary School.

4. St. Mary educates a total of 266 students in grades K-6.

5. St. Mary’s total 2016-2017 budget is \$1,219,120.04. This amount includes \$977,069.94 in wages and benefits, \$157,050.10 in instruction and activities, and \$85,000 in operating expenses.

6. St. Mary has been tracking its estimated cost of compliance with State health and safety mandates during the 2016-2017 year. The calculated costs do not include benefit and payroll expenses, are based on a combination of either the cost to verify or cost to fully execute the mandates, and are calculated using the lowest paid employee capable of completing the task irrespective of the person(s) who actually complete the task(s).

7. St. Mary estimates that its cost of compliance with state health and safety mandates during the 2016-2017 school year will be \$7,405.04.

8. If St. Mary receives reimbursement in the full amount of its cost of compliance with the state health and safety mandates, that reimbursement will amount to approximately 0.61% of its 2016-2017 budget.

Further affiant sayeth not.

Darren Thelen
Darren Thelen

Sworn to before me this
26th day of April, 2017.

Beth A. Markel
Beth A. Markel, Notary Public
My commission expires: 7-17-2017

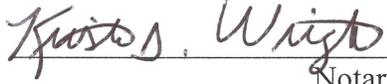
BETHA. MARKEL, Notary Public
State of Michigan
County of Clinton
My Commission Expires 07/17/2017
Acting in the County of Clinton

8. If Grand Rapids Christian Schools receives reimbursement in the full amount of its cost of compliance with the state health and safety mandates, that reimbursement will amount to approximately 0.44% of its 2016-2017 budget.

Further affiant sayeth not.


Thomas DeJonge

Sworn to before me this
day of April, 2017.


_____, Notary Public
My commission expires: 10/1/2022



Michigan school safety flaws: MLive investigation finds corners cut and laws made to be broken

School safety drill.JPG

Fire drills, lockdown drills and tornado drills like this one in an eastern Michigan high school are required in all Michigan K-12 schools. But an MLive investigation shows numerous flaws in how they are done, if done at all. (Photo by MLive File Photo)

John Barnes | jbarnes1@mlive.com By John Barnes | jbarnes1@mlive.com

on March 11, 2013 at 6:30 AM, updated March 14, 2013 at 1:58 PM

Related: See how well your schools conduct emergency drills.

Many Michigan schools are flunking their most important test – protecting students from danger.

Disaster drills are not being done, or are not done enough times, or are done too late in the year to be of much help. Corners are cut and laws are broken, an MLive Media Group investigation found.

No one – especially the state – knows how pervasive the problem is. And there is fear that whatever schools do, it's not enough.

"A determined evil is tough to stop," said Tom Livezey, superintendent of Oakridge Public Schools in Muskegon County.

Still, schools are required to try. But Michigan laws meant to reduce danger are routinely ignored, the two-month MLive investigation found.

Mandatory records were not fully completed, or were missing. Many principals and superintendents were ignorant of the laws' requirements, or found them inconvenient. In at least one case, documents appear falsified.

Nationally known school-security expert Kenneth Trump has seen it before, but he was stunned at specifics of MLive's findings. His reaction was a low mumble, and succinct.

"Oh my god."



Gov. Rick Snyder has ordered a school-safety review in Michigan in the wake of December's shootings at Sandy Hook Elementary in Newtown, Conn.

AP file photo

CODE RED: MICHIGAN'S SCHOOL SAFETY FLAWS

An MLive investigation into how well schools are prepared for emergencies.

Monday: Corners cut, laws broken
 ● **How is your school performing?**
 ● **Fewer fire drills and more lockdowns?**

● **Local reports: Ann Arbor, Bay City, Detroit, Flint, Grand Rapids, Jackson,**

The findings give lawmakers plenty to consider as they await results of a school-safety review Gov. Rick Snyder ordered after December's slayings in Newtown, Conn.

"It ought to be discussed what's occurring here, so there is some way we perform the oversight that we are expected to do as part of being elected," said state Sen. Roger Kahn, R-Saginaw Township, who co-sponsored a law requiring lockdown drills.

Sometimes called "code reds," the drills show students and teachers what to do and where to hide in the event of an armed invader – if they are done.

The findings

Michigan requirements on school disaster drills are fairly direct. Some call it the 6-2-2 rule, for the various drills required for all K-12 schools: six fire drills, two lockdown drills and two tornado drills.

At least some of the 10 drills must be done during recess, lunch, room change or another time when most students are not in class.

But the laws, hailed as a model for the nation when passed in 2006, are weak in practice.

Schools must document the drills, but don't have to send the information anywhere. The state doesn't check for compliance, and local emergency coordinators don't have to either.

So 13 MLive reporters did what the state has not: Examined thousands of documents at more than 400 schools across Michigan to sample whether they followed the laws the past two years. The findings:

- Some schools could not document they did all the drills, or any of them. Three elementaries in Kent County's Cedar Springs Public schools did no code red drills last year, and the fourth could not document any drills.
- Many waited until the year was almost over to do the bulk of their drills. Lansing Charter Academy did seven in June. Ann Arbor's Haisley Elementary did six in June, including both lockdowns.

Kalamazoo, Lansing, Muskegon, Saginaw.

• **How the investigation was done; story summaries**

• **Full coverage: All stories in one place**

Tuesday: Campus confusion

- **How public are drill records?**
- **Schools or forts? Best practices**

Wednesday: Do more guns equal safer schools?

Thursday: Mental health: What can be done

- **How would you improve safety?**

Evaluating your child's school

The infographic features a central image of a 'School Emergency Drills Documentation Form'. Several callouts provide key information:

- State law requires all K-12 schools to document 10 disaster drills per academic year.** Here's what to look for. This non-mandatory form is recommended by the Michigan State Police. Some schools also use spreadsheets or list all drills on a single document.
- The 6-2-2 rule applies:** Six fire drills, two lockdown drills and two tornado drills are mandatory.
- Watch for multiple drills on the same date, or many drills late in the school year.** Spacing drills out prepares students year-long, and should reinforce and improve procedures.
- Drills should vary in the morning and afternoon,** experts say.
- Note the number of drills.** (The law requires four fire drills in the fall.)
- Some drills must be when many students are not in class.** This section is frequently blank, or all drills are marked "standstill."
- On-site observation is not required,** but schools must consult with the local emergency coordinator and local law enforcement or the fire chief. This section is frequently blank.

View full size

Find out how to **check drills records at your local schools.**

NO DRILLS, NO RECORDS

K-12 schools must do 10 drills a year: six fire, two lockdown and two tornado drills. Examples of those that did not in 2011-12:

- Other schools appeared more interested in meeting technical compliance than spreading drills out. Muskegon County's Ravenna Middle School did eight drills in one day. Walton Charter Academy in Pontiac did four in 30 minutes.

- Most commonly, schools failed to record whether drills were done when most students were not in class, a critical exercise, experts say.

In all, at least one school – and sometimes all schools – were checked in 100 districts, charter companies and private-school groups. Two out of three of the districts and groups had schools exhibiting one or more of the shortcomings - not counting those that did not document drills outside of class. With those, the percentage would be higher.

One district with a particularly poor record epitomized the findings. North Muskegon Public Schools did not do any lockdown drills one year, or most other drills. The next year it did eight in May. It did not document any drills during breaks.

Its board is headed by the No. 2 officer in the Muskegon County Sheriff's Department.

"I'm not aware of what was done and what was not done," said Capt. Michael Poulin, who consults regularly with schools on how to perform lockdown drills.

At first, he thought the information was wrong, then said the missing drills are "an issue, of course."

A time warp

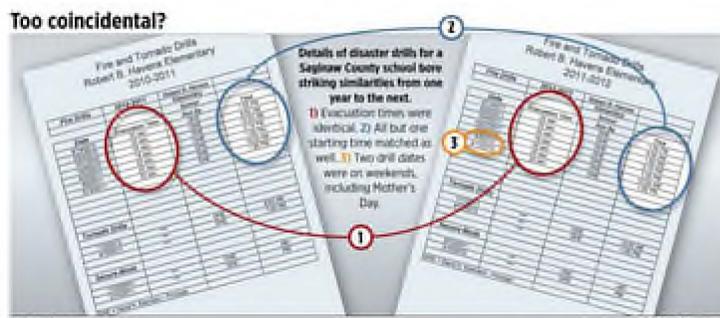
Sometimes it's hard even to tell when a school did a drill.

Schools in Grand Rapids, Midland and elsewhere reported doing drills on Saturdays or Sundays. A Flint high school recorded doing one during spring break. Royal Oak Middle School submitted a drill record for a date that had not yet occurred, also a Saturday. It said 1,092 students participated in the future.

Officials at each blamed clerical errors. But the superintendent at Swan Valley School District in Saginaw County had no answer for questionable details in reports it submitted.

Officials recorded three drills on weekends. One elementary listed nearly identical dates and starting times from one year to the next. And most unlikely, its evacuation times for seven fire drills matched - to the second, in chronological order – seven more drills the next year.

- Cedar Springs Public Schools: No lockdowns or record of them in all four elementaries.
- Saginaw High School: Did just one of 10 drills last year, none the year before.
- Jackson County's Napoleon Community Schools: No lockdowns the past two years at Eby Elementary and Ackerson Lake High; missing multiple other drills.
- Buena Vista High School in Saginaw County: Could not locate records.
- Ypsilanti Middle School: No lockdown drills last year or the year before.



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How could that be?

‘I’d like to be able to answer that for you, except for my principal is deceased,’ said Superintendent Dave Moore, on the death last fall of Havens Elementary School’s David Essmann.

“The records are the records.”

A warning to superintendents

One countywide school official was so concerned about compliance he warned public and private school superintendents in three counties of MLive’s investigation.

“I’m providing this information because (the emergency coordinator) said reporting is spotty across the region,” emailed Ron Koehler, an assistant superintendent with the Kent Intermediate School District, to administrators in Kent, Ottawa and Muskegon counties.

“You may want to validate your drill procedures, check to see if your buildings file the report or not, and be prepared to document your safety procedures should you be contacted by the press.”

Koehler, the district’s communications manager, said he was not trying to interfere with the effort. “We just give them a heads-up,” he said. “To me, it’s sort of a common courtesy.”

Part of the problem is lawmakers did not include any oversight when they passed two laws adding lockdown drills and drills during breaks. Though documentation is mandatory, that is not always done.

Hamtramck High School in Wayne County could not produce drill documents. Neither could Bullock Creek Schools in Midland for its high school, middle school, and three elementaries.

“That’s not something we have to turn in to anyone,” Superintendent Charles Schwedler said.

Non-compliance is a misdemeanor punishable by up to 90 days in jail, according to a 2007 bulletin by the state Bureau of Fire Services. But it’s not enforced unless a complaint is made, said Brian Williams, a bureau supervisor. He cannot recall that happening.

WEEKENDS AND HOLIDAYS

Officials blamed clerical errors or could not explain these unique drill dates in 2011-12.

- Grandville’s Cummings Elementary: Fire drill on Oct. 8, a Saturday.
- Grand Rapids’ Congress Elementary: Fire drill on Saturday, Jan. 21.
- Swan Valley’s R.B. Havens Elementary: Fire drills on Saturday, May 5, and Sunday, May 13, Mother’s Day.
- Flint Northwestern High School: Tornado drill on Sunday, Oct. 16, and fire drill on Monday, April 2, Spring Break week.
- Midland’s Adams Elementary: Fire drill on Saturday, Dec. 4; also a lockdown drill at Carpenter Elementary on Saturday, Nov. 6, 2010.



Muskegon County Sheriff's Capt. Michael Poulin evaluates a lockdown drill at Holton Elementary School. Poulin, president of North Muskegon Public Schools, did not know his district had not done similar drills. Jon Garcia | MLive.com

Even local emergency coordinators, who are charged with drill oversight, have little power. Kent County's coordinator said he requests drill documents every year.

The request is largely ignored, MLive found through a Freedom of Information Act request. More than two-thirds of schools did not submit reports last year.

Lt. Jack Stewart, the emergency coordinator, was surprised. If he didn't have the documents, the schools should, he said. "As far as I'm concerned, if they don't, they didn't do it."

A day of drills

It was a nice day for a fire drill at Frankenmuth High School in Saginaw County. Temperatures were in the low 70s and students just back to school.

So at the beginning of each class period, the bell rang and students evacuated, completing all six fire drills for the year. Its middle school did the same thing a month later.

High School Principal JoLynn Clark said the multiple drills ensure students know the exit plan, wherever they are. "It's great at the beginning of the year to get a comfort feeling with, 'This is what we do. I know what the plan is,'" Clark said.

It's also against the law. The state requires two fire drills be done in the year's second half, to ensure they're spread out. Worse, bunching up drills minimizes their importance, one safety expert said.

"That's just trying to appease the state and making it a mockery," said Rick Crepas, president of Emergency School Safety Systems in Kalamazoo. "We need to practice. We need to spread them out."

Multi-drill days were among the findings that led Ken Trump to mutter, "Oh my god."

"If your intent is to accelerate checking off little boxes on the state form, then shame on you ... And certainly anyone who does six in a day is pulling a numbers game," said Trump, president of National School Safety and Security Services in Cleveland, whose clients have included the Michigan State Police and Michigan Association of School Boards.

Frankenmuth was not alone, however. MLive found examples of multiple drills per day in schools sampled by reporters from all 10 news hubs across the state.

The summer rush

Summer break was approaching, and students at Lansing Charter Academy had done just three state-mandated disaster drills in the previous nine months.

ONE MORE TIME ...

Examples of schools doing multiple drills in one day in 2011-12:

- Muskegon County's Ravenna Middle School: Eight on Sept. 12.
- Frankenmuth High School: Six fire drills on Sept. 13, both tornado drills on April 20.
- Wyoming's Jackson Park Intermediate: Five on Oct. 11; four on March 16.
- Muskegon County's Reeths-Puffer High School: Five fire drills on Sept. 21.
- Walton Charter Academy in Pontiac: Four from 2-2:30 p.m. on Feb. 24, plus one the day before and after.

So the second week in June, administrators put their students through the paces: seven drills from June 8 to June 15. Reach Charter Academy in Roseville did five from June 6 to June 14, including both lockdown drills. East Arbor Academy in Ypsilanti also did five drills from June 4 to June 11.

Each is operated by National Heritage Academies. A spokesman for Michigan's largest charter operator, with 46 schools, said the company is reviewing its safety procedures "and the timing in which they take place in the school year."

"All NHA schools are currently undergoing a thorough review of all procedures in order to ensure a more evenly balanced approach to this very important part of our overall school safety approach," spokesman Mark Meyer said.

But the schools were not alone. Bangor Central Elementary in Bay County did six of its 2010-11 drills within minutes of each other on three separate days in June.

Thirteen of 33 schools in the Ann Arbor district did half or more of their drills last year with just two months to go.

In Flint Community Schools, 15 out of 16 elementaries did half or more of their drills with just two months to go in 2010-11, or did not finish the required number. Last year, three elementaries drilled students on the last day of class.

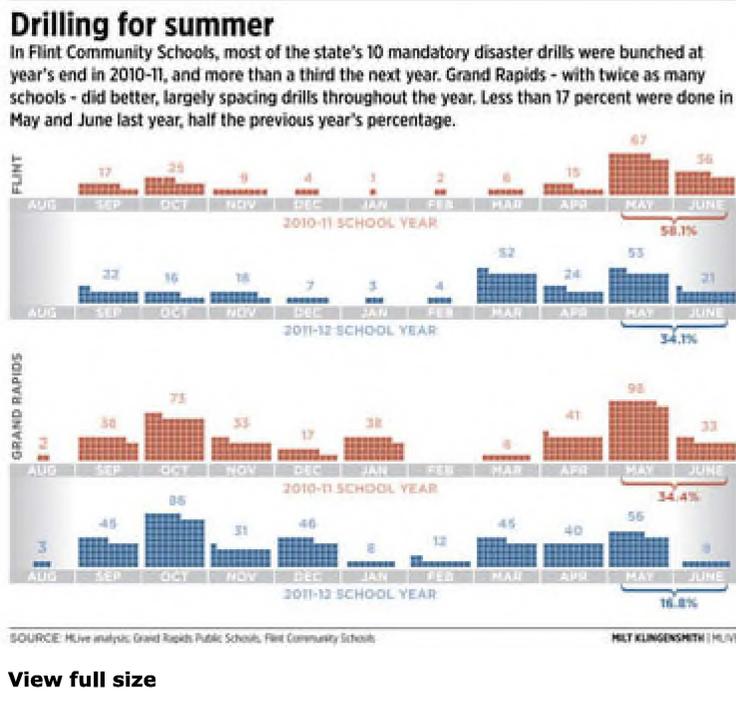
"Overall, we need to do a better job of spreading the drills throughout the school year," acknowledged Interim Superintendent Larry Watkins, who previously was the district's director of school safety and security.

Tom Mynsberge and other school safety experts said the drills violate the spirit of the law.

"If it's in the last week or month of a school year, that means my students have been vulnerable an entire year," said Mynsberge, president of Critical Incident Management Inc., which monitors safety compliance for most of Saginaw County's public schools and others.

"The purpose is so they can react from memory, not make them well-versed for summer vacation."

By contrast, the Grand Rapids district was a model for near-perfect execution. Just two of 22 elementaries did a final drill in June last year.



GETTING READY FOR SUMMER

Examples of schools doing most of the 10 drills at the end of last year:

- Lansing Charter Academy: Seven from June 8-15.
- Ann Arbor's Haisley Elementary: Six from June 5-14; 13 other schools did half or more from mid-April to mid-June.
- Flint's Dort Elementary: Nine in May and June; Potter Elementary did four the last three days of school.
- North Muskegon Public Schools: Eight in May, including both lockdowns.
- Jackson's McCullough Elementary: Eight in the last week of school in 2010-11; five

The rest finished in April and May, with the drills largely spaced throughout the year. Two schools missed one drill; Brookside Elementary missed three.

in May and June last year.

It might have been more in the past, said Larry Johnson, executive director of public safety and security.

"We took over the drills maybe seven years ago. Prior to that it was just a hit or miss system of checking. We had no accountability system in place," he said, calling it a problem statewide.

"There is no one guy going out to make sure people are doing it, and in many cases people are getting behind and their drills are not getting done."

What can be done?

Most schools appeared to be doing the required number of drills - significant execution issues aside - and some were very diligent.

East Jackson Community Schools regularly did more fire drills than required, spaced drills throughout the year, never did more than one drill per day in two years, and routinely finished all drills before June.

But it's impossible to know how many are not as diligent. One district absent from MLive's review: Detroit Public Schools, the state's largest.

After early delays by a school spokeswoman, the district's risk manager said on Feb. 28 that records for the years requested would be ready within days. On Friday, they still were not available, possibly destroyed in keeping with state and local document retention policies.

"When I talked to them, they we're having a hard time finding the older years' stuff," said Douglas Gniewek, executive officer of risk management.

Gov. Snyder has asked the departments of community health, education, and community services - plus court and law enforcement agencies - for recommendations to address safety gaps in Michigan. The review is to include "best practices and policies of safe school plans across Michigan."

On March 27, Michigan State Police officials will meet to begin reviewing what to recommend. "I'm sure this is one of the topics they will look at," spokeswoman Shanon Banner said.

Ken Trump, who muttered his dismay at Michigan's school-security shortcomings, said any recommendation should address the lack of accountability for laws the state created.

"The school administrators who are pulling these bad moves really know there are no carrots and absolutely no sticks, no consequences, if they get caught," said Trump, a presenter May 1 at the Great Lakes Homeland Security Training Conference & Expo in Grand Rapids.

"After Sandy Hook, we've heard off-the-wall calls for everything from arming teachers to teaching kids how to throw pencils and iPads. And I've said all along, we don't need to throw out the playbook on best practices. We need to focus on fundamentals."

Reporters Lynn Moore, Lindsay Knake, Heather Jordan, Alex Mitchell, Blake Thorne, Kyle Feldscher and Gus Burns contributed to this report.

-- Email statewide projects coordinator John Barnes at jbarnes1@mlive.com or follow him on **Twitter**.

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