

MINUTES OF THE MEETING  
SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES  
MARCH 11, 1981

The Senate Committee on Education and Cultural Resources met Wednesday, March 11, 1981, in Room 402 of the Capitol Building. Senator Bob Brown, Chairman, called the meeting to order at 1:00 p.m.

ROLL CALL

Committee members present were Senators Brown, Smith, Mazurek, McCallum, Severson, Haffey, Hammond, and Blaylock. Senator Thomas was absent.

The committee heard the following bills:   HB 732  
  HB 466  
  HB 819  
  HB 333.

CONSIDERATION OF HOUSE BILL 732

"AN ACT TO DELETE THE REQUIREMENT THAT A SCHOOL TEACHER OR SPECIALIST MUST SUBSCRIBE TO AN OATH AS A QUALIFICATION FOR CERTIFICATION, AMENDING SECTIONS 20-4-104, AND 20-4-201, MCA."

Representative Eudaily, District 100, sponsor of the bill, stated the bill was introduced at the request of the House Education Committee. While discussing House Bill 404, the committee discovered the loyalty oath was still in the law and since it was declared unconstitutional in federal court in Missoula, Montana, December 30, 1971, (see attachment #1) the committee asked for a bill to be drafted to eliminate the unconstitutional provision.

There were no proponents and no opponents to the bill. Representative Eudaily closed.

CONSIDERATION OF HOUSE BILL 466

"AN ACT TO AMEND THE ALLOWABLE COST SCHEDULE FOR SPECIAL EDUCATION TO INCLUDE TRANSPORTATION COSTS FOR SPECIAL EDUCATION PERSONNEL WHO MUST TRAVEL TO IN-STATE CHILD STUDY TEAM AND INDIVIDUALIZED EDUCATION PROGRAM MEETINGS; AMENDING SECTION 20-7-431, MCA."

Representative Ellison, District 73, sponsor of the bill, said the bill allows districts to budget for child study team meetings.

PROPOSERS

Judy Johnson, Director of Special Education, OPI, presented her written testimony to the committee in support of the bill (attachment #2).

There were no further proposers and no opponents to the bill. Representative Ellison closed and the hearing was closed on House Bill 466.

CONSIDERATION OF HOUSE BILL 819

"AN ACT TO REMOVE CONTRACTED AUDIOLOGICAL SERVICES FROM THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTION 20-7-403, MCA."

Representative Bengston, District 59, sponsor of the bill, said the bill eliminates the mandate for OPI to directly contract for audiological services with the local districts and allows for more flexibility in contract costs. She said HB 500 allows for contracting procedures at the rate of \$1,139,000 for the biennium. She said by using this procedure services can be expanded to more people without an increase in the amount of dollars spent.

PROPOSERS

Judy Johnson, Director of Special Education, OPI, presented her testimony in support of the bill to the committee (written attachment #3).

Darrell J. Micken, Director of Audiology, Montana Easter Seal Society, stated he had worked extensively in developing audiological services in Montana and most exist due to multi- and cross-agency funding. Montana now has one of the broadest audiological programs in the nation, he noted. Currently, audiological programs are seeing lots of very young children (18 months - 2 years) and that early treatment is enabling many to avoid special education later on. He supported the bill as an attempt to allow flexibility in costs and service delivery through the contracting process.

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Marilyn Pearson, representing herself as a taxpayer, presented her testimony to the committee in support of the bill (attachment #4).

#### OPPONENTS

Shirley DeVoe, representing the Helena Special Education Cooperative, presented her testimony in opposition to the bill to the committee (written attachment #5).

There being no further opponents, Representative Bengston closed. She said the issue of audiological services is addressed in House Bill 500 (appropriations bill) and that is as good as law.

Senator Blaylock asked Andrea Merrill, Legislative Council Researcher, to draft amendments to clarify the title and authority in the bill.

#### CONSIDERATION OF HOUSE BILL 333

"AN ACT TO DEFINE THE TERM "APPROPRIATE PUBLIC EDUCATION" AS IT RELATES TO THE LAWS GOVERNING THE HABILITATION OF HANDICAPPED PERSONS IN THE STATE OF MONTANA; AMENDING SECTION 20-7-401, MCA."

Representative Marks, District 80, sponsor of the bill, said some of the most objectionable parts of the bill have been stricken. He said the definition of "appropriate public education" has been written to conform to the Section 504, Rehabilitation Act, definition. Representative Marks felt this does the job and noted it passed the House of Representatives with a near unanimous vote.

#### PROPONENTS

Bob Laumeyer, Superintendent of Schools, Boulder, presented his testimony to the committee in support of the bill (written testimony #6).

Judy Johnson, Director of Special Education, OPI, said she supports the bill. She pointed out the Office of Civil Rights uses this definition to prosecute cases and it would be a help to conform.

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OPPONENTS

Ken Rohyans, a parent of a Down's Syndrome daughter, said he was confused as to why the 504 definition is being considered when the excellent law on Education of the Handicapped - Public Law 94-142 - is available.

Marilyn Pearson asked for a clarification of the term "related aids". She expressed some concern as to what all is encompassed and wondered if there needed to be exclusionary language.

There being no further opponents, Representative Marks closed.

ACTION ON HOUSE BILL 466

Senator Severson moved House Bill 466 Be Concurred In. The motion carried unanimously. Senator Severson will carry the bill.

There being no further business, the meeting adjourned to reconvene Friday, March 13, 1981, at 1:00 p.m.



\_\_\_\_\_  
Senator Bob Brown, Chairman

jdr

# ROLL CALL

## SENATE EDUCATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 12/20/81, 1981

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith	✓		
Senator George McCallum	✓		
Senator Elmer Severson	✓		
Senator Swede Hammond	✓		
Senator Chet Blaylock	✓		
Senator Bill Thomas		✓	
Senator Joseph Mazurek	✓		
Senator Jack Haffey	✓		
Senator Bob Brown, Chairman	✓		

Each day attach to minutes.

DATE March 11, 1981

COMMITTEE ON EDUCATION

HOUSE 732  
BILLS NO. 466

819  
333

## VISITOR'S REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES  
BILL SUMMARY  
MARCH 11, 1981

HOUSE BILL 732 - Representative Eudaily, by request of the  
House Education Committee

This bill deletes the requirement that a teacher or specialist must take an oath of allegiance to the government of the United States to be certified as a teacher. Such an oath has been declared unconstitutional. The Office of Public Instruction has not printed the requirement on request forms for certification for the past several years.

HOUSE BILL 466 - Representative Ellison

This bill allows necessary travel to in-state child study team meetings or individualized education program meetings to be an allowable cost under state aid to special education. The fiscal note explains that there would be no increase in state expenditure because there is a cap on special education costs in subsection (6) of this amended section. The costs of such travel would have to be absorbed into a district's special education maximum-budget-without-a-vote (state aid) or become the responsibility of the district.

HOUSE BILL 819 - Representative Bengston

This bill removes the requirement that OPI must contract directly with local schools or special education cooperatives for the delivery of audiological services to children as required by the policies of the Board of Public Education. Currently, some local schools use state funds to contract with a "non-state entity" for delivery of audiological services. This bill would allow OPI the flexibility to contract with such non-state entities or a state agency such as the Department of Health and Environmental Sciences for services to schools. This flexibility would allow OPI to abide by the provisions of HB 500, appropriation bill (for OPI and other agencies) with stipulations on the expenditure of such funds for contracts with non-state agencies.

HOUSE BILL 333 - Representative Marks

This bill attempts to define "appropriate public education" for clarification in deciding placement and individualized education programs for handicapped persons in Montana. The original amendments were struck by the House Education Committee and the new definition was designed in cooperation with the Office of Public Instruction. The wording of the definition follows closely the language in the federal statute (Section 504 -The Rehabilitation Act of 1973).

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

*Bodger*  
*Hastings*

*Filed*  
*Jan 5, 1972*

H. KIRK MCKENZIE,

Plaintiff,

v.

Civil No. 2087

OPINION AND ORDER

DOLORES COLBURG, Superintendent )  
of Public Instruction for the )  
State of Montana, CAROLYN )  
FROJEN, Missoula County )  
Superintendent of Schools, and )  
LAND M. LINDBERGH, Chairman, )  
Trustees of Missoula County )  
School District #30, )  
Defendants. )

It appears from the pleadings in this case that plaintiff was employed as a teacher in School District No. 3, Missoula County. The written contract of employment required that plaintiff hold a valid teacher certificate. R.C.M. 1947 § 75-6004 provides in part as follows:

Any person may be certified as a teacher when he satisfies the following qualifications:

\* \* \*

(6) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

'I solemnly swear (or affirm) that I will support the constitution of the United States of America,




the constitution of the state of Montana, and the laws of the United States and the state of Montana, and will, by precept and example, promote respect for the flag and the institutions of the United States and the state of Montana, reverence for law and order and undivided allegiance to the government of the United States of America.'

Plaintiff did not hold a Montana certificate at the time of his appointment but did apply for certification in December

1971. He qualified for the certificate in all respects except that he refused to sign the oath required by the statute.

On that ground the defendant Superintendent of Public Instruction refused to issue the certificate and the defendant school board then terminated his employment effective January 1, 1972, because of the lack of a certificate. No reason other than the failure to sign the oath justifies the denial of the teacher certificate and the termination of employment.

 The Supreme Court of the United States in the case of Baggett v. Bullitt, 377 U.S. 360 (1964), considered a law of the State of Washington requiring that as a condition of employment teachers subscribe to an oath with a meaning identical to that of the Montana oath.<sup>1/</sup> The Supreme Court held

<sup>1/</sup> The wording of the oaths is identical except that in the Washington oath the language appears "constitution and laws of the United States of America and of the State of Washington" in place of the Montana language "constitution of the United States of America, the constitution of the state of Montana, and the laws of the United States and the state of Montana," and in the Washington oath in one place the words "United States" appear in place of the Montana words "United States America."

that the Washington oath and the statutory provision on which it was based were unconstitutionally vague. That decision, reaffirmed in McKay v. Rafferty, 321 F.Supp. 1177 (N.D. Cal. 1970), aff'd 400 U.S. 954 (1970), controls here. That portion of R.C.M. 1947 § 75-6004 quoted here is void, the act of the state superintendent of schools in refusing certification for plaintiff's noncompliance with said section is illegal and that illegality taints the action of the Board of Trustees of School District No. 30 in terminating plaintiff's contract.

This court's jurisdiction is found in 28 U.S.C. § 1343(3).

Any claim that R.C.M. 1947 § 74-6004(6) is constitutional would be clearly frivolous and the action of a three-judge court is not required. Bailey v. Patterson, 369 U.S. 31 (1962).

Plaintiff's motion for judgment on the pleadings is granted.

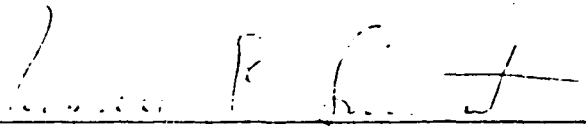
IT IS ORDERED, ADJUDGED, and DECREED, and this does ORDER, ADJUDGE, and DECREE:

1. That R.C.M. 1947 § 75-6004(6) is void under the Constitution of the United States; and

2. That the defendant Dolores Colburg, Superintendent of Public Instruction for the State of Montana, issue to the plaintiff a teacher certificate and that the Board of Trustees of School District No. 30 rescind its order terminating

plaintiff's employment and restore him to such rights as he enjoyed under his contract of employment.

DATED this 30th day of December, 1971.

  
\_\_\_\_\_  
Russell E. Smith  
United States District Judge



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL  
HELENA, MONTANA 59601  
(406) 449-3095

Ed Argenbright  
Superintendent

March 11, 1981

To: Members of the Senate Education Committee  
From: Judith A. Johnson, Director Special Education (449-5660)  
Re: HB 466  
"An act to amend the allowable cost schedules for special education to include transportation costs for special education personnel who must travel to in state child study team and individualized education program meetings; amending section 20-7-431, MCA."

Because the resident district is responsible for the out-of-district placement (see attachment) this amendment will allow the local districts to budget for travel if they so desire. The regulations were superceded by the law when it was rewritten in 1977 and was probably an oversight as we reviewed the 1977 special education laws.

Currently we have 101 children in out-of-district placement.

JAJ/vgv

#### 7.10 Out-of-District Services (10.16.1310)

(1) If a school district is unable to provide services for its resident handicapped students or unable to provide services through cooperative services, the school district may have to use out-of-district placement. The decision to place a child out-of-district must be recommended by the resident district child study team and approved by the resident district board of trustees. Placement made independently of the public school by the parents and/or other agencies relieves the public school of all financial obligations.

(2) When a child is handicapped to such a degree that a totally controlled environment is needed, residential school placement may be essential. Room and board and tuition costs are considered allowable costs in the district's special education budget. The public school is only responsible for room and board and educational costs. Other services such as psychiatric therapy and/or medical treatment must be deleted from the special education costs and assumed by parents and/or other agencies. An out-of-district placement must be approved by the superintendent of public instruction. (See Rule 10.16.2001(1).)

(3) A district must first make a reasonable attempt to secure and utilize in-state resources before out-of-state placement will be approved.

(4) It is the resident district's responsibility to convene the child study team and set the time and place for conducting a review of the child's needs and educational placement. The receiving district is responsible for providing program monitoring and assisting the resident program and progress. The receiving district shall provide pertinent data regarding the child's program and progress to the resident district and parents.

(5) The resident district and receiving district should form a joint child study team to consider the evaluation data and explore program options.

(6) Travel funds to facilitate this process must be approved by the office of public instruction prior to the two districts convening a joint child study team.

(7) A regional service staff may provide supportive services when such services are not available through the local district. Please refer to Rule 10.16.1204, Composition of a Core Child Study Team.

(8) The resident school district is required to budget for room and board costs (0555-Transportation) in its special education budget. Budget approval does not mean the school district has authorization to send a specific child out of district. Approval shall also be obtained from the school district or agency which is providing the services. Program evaluation is the responsibility of both the resident school district and the providing school district or agency.

(9) If a handicapped child is placed out-of-state, tuition charges are covered under Contracted Services 01-01-0280.

(10) It is the responsibility of the resident school district to ensure that an out-of-district living facility is an appropriately licensed facility. An inquiry should be made to the local social and rehabilitation services division to secure appropriate facilities. The local division can provide the school district with a list of homes which are licensed and/or procedures by which a home can be licensed. Payment schedules should follow rates set by social and rehabilitation services division. Any deviation from that schedule should be based on severity of handicap and shall receive concurrence from social and rehabilitation services and approval from the superintendent of public instruction.

(History: Secs. 20-7-403, 20-7-421, 20-7-422, 20-7-423, MCA; IMP, Secs. 20-7-403(2), 20-7-403(7), MCA; SEN, 1977 MAR p. 306, Eff. 3/26/77.)



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL  
HELENA, MONTANA 59601  
(406) 449-3095

Ed Argenbright  
Superintendent

March 11, 1981

To: Members of the Senate Education Committee

From: Judith A. Johnson, Director Special Education (449-5660)

Re: HB 819  
A bill for an act entitled: "An act to remove contracted audiological services from the Office of the Superintendent of Public Instruction; amending Section 20-7-403, MCA."

The Office of Public Instruction recommends the committee give this bill a Do Pass consideration. As you know, we are making every effort to get control of Special Education costs. By passing HB 819, you will be giving the office more flexibility in contracting for this service which is currently serving children from 0-21 with screening and evaluations. Last year 75,000 children were screened by 14 different contracted services at a cost from \$1.56 a child to \$7.06 a child. We feel with more flexibility we should be able to control this cost factor as well as eliminate some duplication of service.

JAJ/vgv

NAME: Darrell J. Micken DATE: Mar 11, 81

ADDRESS: 911 S. Church, Baymen wt

PHONE: 587-8517

REPRESENTING WHOM? Montana Public Seal Society

APPEARING ON WHICH PROPOSAL: HB 819

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: This bill allows the Office of Public  
Administration broad authority to seek out and develop  
the most cost effective and accountable audio-visual  
system available to them and encourage interagency  
development cooperation & multiphasic service

#4

NAME: William Pearson DATE: 3-11-81

ADDRESS: 5000 Green Mountain Dr. Helena, MT

PHONE: 459-5731

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 219

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: From a taxpayer's point of view  
I would like to see this bill passed.  
I believe the Office of Public Trustee  
is qualified to administer the  
biological resources on the least  
expensive yet quality manner it  
should have. It continues to  
allow local control but also  
allows the OPT to contract  
and then decide if it can be  
less expensive, efficient and of  
quality. The Office of Public Trustee  
should not have to look back to contract  
and local time as was done in the



NAME: Shirley McVee DATE: \_\_\_\_\_

ADDRESS: Helena Schools 55 So Rodney

PHONE: Work 442-6440

REPRESENTING WHOM? Helena Special Education  
Helena Sp. Ed Cooperative

APPEARING ON WHICH PROPOSAL: HB 819

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: Note a lot of misunderstanding  
relative to bill and its implications and  
possible elimination of local district  
control.

March 11, 1981

HB 819  
Senate Education Committee

The Helena Special Education Program and Helena Special Education Cooperative would like to go on record as supporting the audiological program as it currently exists.

We have found that contracting with the Office of Public Instruction has been a positive approach for providing audiological services. We support control and supervision by the local school district and/or cooperative.

We wish to go on record as being opposed to HB 819 *if it eliminates this option*

*Shirley DeVoe*

Shirley DeVoe  
Manager, Speech Hearing and Language Programs  
Helena Schools  
Coordinator, Helena Special Education Cooperative

NAME: Robert L. Laumeyer DATE: March 11, 1981

ADDRESS: Box 176

PHONE: 225 3316

REPRESENTING WHOM? Boulder Public Schools

APPEARING ON WHICH PROPOSAL: H.B. 333

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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# Boulder Public Schools

ROBERT L. LAUMEYER, Superintendent

Boulder, Montana 59632

JEFFERSON HIGH SCHOOL  
Ron Fuller, Principal  
Phone 225-3317

BOULDER ELEMENTARY SCHOOL  
Barbara Konesky, Principal  
Phone 225-3316

Clerk of Jefferson High and  
Boulder Elementary School

Stella Upman  
225-3740

I wish to support House Bill 333 on the grounds that it provides a very necessary definition in our state special education laws.

This session of the legislature will be appropriating about fifty million dollars to fund special education in the state for the next two years.

By both state and federal law, a school district must provide an appropriate public education to those people that qualify for special education. State law does not presently give any definition to what a school district must provide to fulfill the requirement of appropriate education. Some parents and some organizations have adopted the idea that appropriate means an optimum education regardless of cost.

The federal government, in public law 504, does define an appropriate education as a special education designed to meet individual education needs of the handicapped persons as adequately as the needs of nonhandicapped are met. The self evaluation manual that the Office of Civil Rights distributes, and that all schools who were recipients of federal money were required to have filled out by June 3, 1978, is attached.

The reason I believe that it is very important to have the same definition of appropriate public education in state law as in federal law is that special education cases are being heard in both state and federal courts. By using the federal definition in state law, as H.B. 333 would do, if a school does go to federal court and proves to the courts satisfaction that they are providing an appropriate public education as defined by the federal government, the district could not then be challenged that they are not providing an appropriate public education as required by state law.

*Robert L. Laumeyer*  
Robert L. Laumeyer  
Superintendent

Attachment - Subpart D

following taken from - CIVIL RIGHTS - HANDICAPPED PERSONS<sup>87</sup>  
and EDUCATION No. 501 - SELF-EVALUATION GUIDE -  
PRESCHOOL, ELEMENTARY, SECONDARY, AND ADULT EDUCATION

SUBPART D  
PRESCHOOL, ELEMENTARY, SECONDARY, and ADULT EDUCATION

	<u>Yes</u>	<u>No</u>	<u>Intent &amp; Practices</u>
FREE APPROPRIATE PUBLIC EDUCATION			
<u>Appropriate Education</u>			
1. Are all handicapped persons provided regular or special education and related aids and services that are designed to meet their individual needs as adequately as the needs of nonhandicapped persons are met? [Section 84.33(b)(1)(i)]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	p. 59
2. Are all handicapped persons provided regular or special education and related aids and services that are based upon adherence to procedures that satisfy the requirements of:			
a. Section 84.34?	<input type="checkbox"/>	<input type="checkbox"/>	p. 62
b. Section 84.35?	<input type="checkbox"/>	<input type="checkbox"/>	p. 62
c. Section 84.36? [Section 84.33(b)(1)(ii)]	<input type="checkbox"/>	<input type="checkbox"/>	p. 62
3. If a handicapped person is placed in, or referred to, a program not operated by you,* have you maintained responsibility for ensuring that the requirements of Subpart D are met with respect to this handicapped person? [Section 84.33(b)(3)]	<input type="checkbox"/>	<input type="checkbox"/>	p. 62

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\* The word "you" in this section refers to the recipient, that is, public and private educational institutions receiving Federal financial assistance.

# STANDING COMMITTEE REPORT

..... March 11, ..... 19 81 .....

MR. PRESIDENT .....

We, your committee on EDUCATION AND CULTURAL RESOURCES .....

having had under consideration HOUSE ..... Bill No. 732 .....

**Eudaily (Mazurek)**

Respectfully report as follows: That HOUSE ..... Bill No. 732 .....

**BE CONCURRED IN**

**DO PASS**

*PA*

# STANDING COMMITTEE REPORT

..... March 11, ..... 19 81 .....

MR. .... PRESIDENT .....

We, your committee on ..... EDUCATION AND CULTURAL RESOURCES .....

having had under consideration ..... HOUSE ..... Bill No. 466 .....

Respectfully report as follows: That ..... HOUSE ..... Bill No. 466 .....

Ellison (Severson)

BE CONCURRED IN

~~DEPAXX~~

*P.A.*