

HOUSE EDUCATION COMMITTEE

February 4, 1983

The meeting was called to order by Chairman Fritz Daily in room 420 of the Capitol Building at 12:30 p.m., with all members present.

Chairman Daily opened the meeting to a hearing on House Bills: 428, 461, 499, and 519.

HOUSE BILL 461

REPRESENTATIVE TOM ASAY, District 50, Forsyth, opened by saying the primary intent of this bill is to put it in conformity with federal definitions and to keep from confusing the issues. I will turn the presentation over to an expert, Dal Cury.

DAL CURRY Office of Public Instruction, said House Bill 461 is an attempt to bring the Montana Statute in line with the current Montana Special Education federal definition. We are trying to accomplish three things. One is to add two handicap conditions to the list. These conditions are deaf/blind, and multi-handicapped. This has been in practice for years, and it is a matter of bringing the law into conformity with practice. The condition of autism has been moved to the category of other health impairment. We recommend in this bill, similar movement to make it consistent with federal language. It is no longer considered a condition of emotional disturbance. Change the definition of special education by deleting terminology and making another section called related services. We are suggesting this to conform with the regulation and to clarify what is mandatory in educational services, and what are related services provided to assist a child in special education.

JENNIFER HARVEY, Montana Coalition of Handicapped Individuals, said this bill does meet federal regulations. We are wondering who is responsible for comprehensive evaluation. Once the student maintains capability where he is equal with his peers, what is the provision for mainstreaming him back into the regular educational process?

JENNIFER FENCHALL, Handicapped Student Union, University of Montana, said the bill is designed in a manner to allow all citizens to receive the training and education necessary to allow them to compete in society. We agree with allowing deaf and blind to be included. We are concerned with the wording on page 2, line 24, and we request to have a clarification added, indicating who would give the comprehensive evaluation which would identify an emotionally disturbed individual.

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OPPONENTS

JOE ROBERTS, DD/LAC, said we are concerned about the language on page 5, with the new definition of related services and the deletion under the term special education, of services because they are not included in the term special education. I talked with the Office of Public Instruction when the bill came out. They said they were going to have a definition of related services. I am not proposing that you copy all of the federal law. We would feel comfortable if that language which is deleted in this bill concerning special education would be added to related services. Then we would have the specific references to speech pathology, audiology, occupational therapy, and physical therapy. If the language is deleted, those services may not be included in special education. Without that reference maintained in law, this is far from a housekeeping bill.

MARGIE EVANS, said I am the mother of a severely handicapped daughter. She received a great deal of help from these services. I am concerned about what will happen if the money is not there to put into these programs. I would hate to see children who follow in my daughter's footsteps denied these opportunities. Please leave these terms in as a definition.

VICTOR HAGER, Belgrade, said my son Steven is receiving some of the services of OT and PT. I don't want to lose the things we have got right now. We are not covered by insurance because our company does not consider it a qualified program. Steven is in need of these services.

SHARON REHARD, said I have a 15 year old daughter who has been involved in the Montana Center for Handicapped Children. She has made remarkable accomplishments because of these services. It is through these services that they are able to have the benefits they deserve.

Rep. Asay closed by saying my reaction to this is somewhat shocked. I am most anxious to have Dal address these objections. I feel they can be addressed. I can't believe there was any intent to disturb a well done service. If that is happening, I am certain that it will be taken care of. The intent was to make things more easily handled by OPI, not more difficult. These questions will be dealt with and handled to everyone's satisfaction.

Mr. Curry responded by saying the comments raised by the first two ladies are well covered. Comprehensive evaluation conditions already exist in the regulations in existence now. There is no attempt to change the evaluation procedure. It is already a

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laid out, prescribed program, in regard to the inclusion or exclusion of additional definitions and specifications. The federal regulations have been in the process of revision. We do not want to put specific terminology in the statute that would be removed in the federal statutes. We do not feel it is necessary to repeat what is already in statute law.

Rep. Eudaily asked Mr. Curry what would be the harm of leaving in the language. The response was it would have no practical impact now or in the foreseeable future.

Rep. Eudaily asked what the reason was for striking it. Mr. Curry said we didn't really strike it, we took it out of special education, we did not feel it was necessary to add it to related services to ensure the provision.

Rep. Eudaily asked Mr. Curry if he thinks that people who have children that fall in these categories might be more comfortable if it were left in, even though it might not be in the right place. The response was if it were left, I think it should be moved under related services. With regard to line 15 and physical therapy, there have been instances where a football injury was included in physical therapy under the costs of special education. That was one of the reasons given for removing that language.

Rep. Peck commented that would be in clear violation of the definition of special education.

Rep. Hannah said page 5, lines 4, 5, 6, and 7, fairly clearly mention the fact that there are federal regulations providing for services. This is a very emotional issue, do you feel the terminology on lines 13, 14, and 15 are covered in the new language? Mr. Roberts replied I think the definition of related services is general language that implies those kinds of services. It has been alluded to that on the federal level there has been talk of changing this, and so there are a lot of parents and other groups who are very concerned about what those changes might be. It is probably appropriate to refer to those in the definition of related services rather than of special education.

Rep. Sands commented if this bill were to be amended as it has been proposed, anybody having questions could simply come back to the minutes which would clearly explain the intent of this committee.

Rep. Peck remarked I think there is a possibility that this could be used as an escape if the terminology is left out. I share the parental concern. If you leave it general, you may end up in a court case.

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Chairman Daily closed the hearing on House Bill 461 at 1:00 p.m.

HOUSE BILL 428

REPRESENTATIVE ORVAL ELLISON, District 73, McLeod, said the amendments to this bill deal with one section which was inadvertently left out. This section deals with the consolidation of high school districts within two or more counties. This is a simple, straight forward bill to address the consolidation of high school districts, to coincide with the way elementary districts are consolidated or annexed.

PROPOSERS

BOB STOCKTON, Office of Public Instruction, said last year, Superintendent Argenbright appointed a rural education committee. The content of this bill is one of their strongest recommendations. They disliked the way high school boundaries were established. This puts the decision back into the hands of the electorate, and parallels the elementary provisions. The amendment is an inadvertent one. We got all the language in and didn't realize that the specific section of law that allows joining districts across county lines was left out. This makes it possible to form joint districts across county lines.

There were no opponents to House Bill 428.

Rep. Ellison closed by saying this is a more democratic way to set boundaries that are across county lines.

Questions from committee. Rep. Peck said currently, if you are planning to redistrict, where is this decision made? Mr. Stockton replied it goes to what is called the high school boundary commission, which is composed of the county commissioners and the county superintendent of schools. Under the old law, the only way that you can even petition that committee into being is by the other group of high school trustees, then the committee comes together and they can redesign the whole county.

Chairman Daily closed the hearing on House Bill 428 at 1:10 p.m.

HOUSE BILL 499

REPRESENTATIVE ORVAL ELLISON, District 73, McLeod, submitted written copies of his testimony to committee members. (see exhibit 1)

PROPOSERS

RICK BARTOS, Office of Public Instruction, said the whole legal issue is a problem for the State of Montana. About the only way

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to solve it is to ask people in this state not to sue, which is impossible because we live in a litigated society. The conflict of interest is a reality that county attorneys have to face on a daily basis. School issues have become so complex and so specialized that county attorneys now resort to the Office of Public Instruction for opinions. Many times these attorneys don't have time to spend on the school district problems. The only problem I see with this bill is the exclusive nature of the bill. It seems to exclude county attorneys from all school district business in terms of legal opinions and legal advice for those districts. Approximately 2/3 of the school districts in the state cannot afford an attorney, and we see the reflection of that with 1,300 calls in 12 to 16 months that have come into this office. County attorneys are busy people. Many times school districts call the county attorney, but a good number of them do not respond back. The priority ranking of the school district is last, prosecution of criminals and county business is always first. The result is the school district has to call the Office of Public Instruction or a private attorney. This bill would provide the county attorney the option to get out of a conflict of interest situation, and also provide the school districts the ability to get to the county attorney in terms of the legal advice they need on these critical issues.

BILL LANNON, said it is difficult to say whether I am in favor of or in opposition to this bill, but it impacts the community college. Existing statutes allow the community colleges to go to the county attorney for legal advice. Our office in Helena provides legal assistance in cases involving the educational communities. The community college does not have to come to our office or go to an attorney in every case. The cases which have been described with the conflict of interest don't exist with the community colleges. My recommendations would be to try to work with the sponsor of the bill and the legislative council to propose amendments which would not delete community college trustees from seeking assistance from county attorneys.

OPPONENTS

REPRESENTATIVE EARL LORY, District 99, Missoula, said everything that has been proposed is already being done under present law. The trustees may, at their discretion hire an outside attorney. Rep. Lory read a letter written by C. Ed Laws, Stillwater County Attorney, a copy is attached. (see exhibit 2)

WAYNE BUCHANAN, Montana School Boards Association, said conflict of interest has come up over the years, and I think it has been

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pretty well resolved. Two sessions ago we managed to get a bill passed that would allow school districts to get their own legal advice. County attorneys provide school districts with good legal advice.

CHIP ERDMANN, Montana School Board Association, said we are in the process of setting up a legal library and have offered services to school districts. We will tell them where to find available law on the problem. We are attempting to solve some of the problems that have been mentioned here today. The county attorney opinions carry legal weight in that county. It is safer to go to the county attorney for advice. We recommend a DO NOT PASS on this bill.

REPRESENTATIVE RON MILLER, District 42, Great Falls, stated he wished to be recorded as an opponent to House Bill 499.

JESS LONG, School Administrators of Montana, said we oppose the bill and would suggest the possibility of establishing a priority if there is a conflict of interests. Take a look at the cost factor associated with this bill.

Rep. Ellison closed by saying the problem with the conflict of interest is the fact that the county attorney usually contacts the school board first, then if it goes to the county superintendent, he is automatically disqualified from both sides. The problem is more acute in the smaller counties because the larger counties have a larger staff in the county attorney's office. With the increased litigation we have had in recent years, you are going to hire that attorney one way or another. I do think this is a situation that warrants consideration.

Questions from committee. Rep. Eudaily asked Mr. Bartos if he had done any fiscal impact work on this bill, to see what the cost would be to the school district. The answer was no.

Rep. Eudaily said I imagine the figures in the letter may be high, but let's say it were one million dollars statewide. I am wondering why the Office of Public Instruction would be willing to have the schools take one million dollars out of the school budgets. Mr. Bartos replied we were talking about the exclusive matter of the bill. If there is a conflict of interest, this should be resolved. This does not mean excluding county attorneys entirely in the business of the schools. We would want to make sure that the county attorney is involved. The county attorney is not familiar with school law, so he calls our office. The intent of our testimony was to bring to the attention of the committee, the danger of excluding county attorneys from dealing with school districts.

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Rep. Eudaily said I am lost as to why you are a proponent of this bill. Mr. Bartos replied we are a proponent of the concept of the conflict of interest, but not of keeping county attorneys out of school business.

Chairman Daily closed the hearing at 1:30 p.m.

HOUSE BILL 519

REPRESENTATIVE RAY PECK, District 8, Havre, said this is a business manager, clerk bill. It deals with the contingency funds that a school district may secure from the Office of Public Instruction once the budger has been established.

PROPONENTS

JOHN CAMPBELL, MASBO, Helena, said this bill would resolve an accounting problem school districts have with special education contingency financing. Special education has varying circumstances, requiring services that develop or evolve after the final budget finance time. The purpose of this bill is to provide for these new arrivals or discoveries in the school district. These circumstances evolve after the final budget is adopted and the new circumstances require new monies, and that is what the contingencies provide. Our concern is with the handling of the financing when it is forwarded from the Office of Public Instruction through the general fund budgets for the school districts. Lasy year the auditor questioned us as to why we expended this money over and above our general fund budget report.

WAYNE BUCHANAN, Montana School Boards Association, stood in support of the bill for the above-stated reasons.

Rep. Peck closed by saying the state sends money after going through all the wrong procedures, and they cannot spend it according to the auditing agencies, even though OPI says they can. I agree with the auditing agencies, I think the board sets budgets and they have to do it properly. This bill would allow them to spend money out out of the funding for miscellaneous budget areas without changing the general fund budget that was established. If they want to add that special eudcation agency contingency money into the general fund budget, they have to go through the agencies budget process.

Questions from committee. Rep. Eudaily asked Mr. Campbell what the miscellaneous programs fund is and how it got started. The reply was the miscellaneous programs fund is a recognized fund by the state government.

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Rep. Eudaily asked Mr. Campbell what else is included in the fund. The response was money that is received for special projects, such as the Title I program. Within that fund, each program is segregated.

Rep. Eudaily asked what the difficulty would be in running it through the emergency budget. Mr. Campbell answered we were told by OPI that we didn't have to go through the emergency budget process. How sensible is it to make a school district with a 10 million dollar budget go through the emergency budgeting process in order to spend \$12,500.

Mr. Stockton commented when the contingency fund moneys were first established by the legislature, they made no provision for how they would be handled by a school district. The law does specify that any special education moneys that have been approved and sent to the school district become maximum budget without a vote. The budget of the school district is maximum budget without a vote plus the voted levy. So we took the interpretation because the expenditures of these moneys had been approved by the office special education people for a specific purpose, to get it into their hands as quickly as possible.

Chairman Daily closed the meeting at 1:40 p.m.

EXECUTIVE SESSION

HOUSE BILL 428

Rep. Eudaily moved House Bill 428, DO PASS.

Rep. Eudaily moved the amendments to House Bill 428, DO PASS, the motion carried unanimously. (see exhibit 3)

Rep. Eudaily moved House Bill 428, DO PASS as amended, the motion carried unanimously.

HOUSE BILL 422

Rep. Peck moved House Bill 422, DO PASS, the motion carried unanimously.

HOUSE BILL 519

REP. Peck moved House Bill 519 DO PASS, the motion carried unanimously.

HOUSE BILL 310

Rep. Kitselman moved to table House Bill 310, the motion carried unanimously.

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HOUSE BILL 461

Rep. Kitselman moved House Bill 461, DO PASS.

Rep. Kitselman moved the amendments to House Bill 461, to reinsert the language on lines 13, 14, and 15, on line 7, the amendments passed unanimously.

Rep. Kitselman moved House Bill 461 DO PASS as amended, the vote was unanimous in favor of passing the bill.

HOUSE BILL 499

Rep. Lory moved House Bill 499 DO NOT PASS.

Rep. Sands said I think this bill addresses two pretty serious problems. I don't think the conflict of interest can be resolved by permitting school districts to hire their own attorney. The county attorney represents the school board first and cannot represent the county superintendent which they are supposed to do. In many instances the county attorney does not have the time to deal with these things. We have good and bad county attorneys, some can handle requests from school boards and some can't.

The DO NOT PASS motion carried with 16 voting yes, and Rep. Sands abstaining.

HOUSE BILL 196

Rep. Peck moved House Bill 196 DO PASS.

Rep. Peck commented I have had a number of conversations with OPI. We would amend the bill to change rules to policies.

Rep. Peck moved an amendment to House Bill 196, to strike the word rules and insert policies, as well as to add a July, 1984 effective date. The motion carried unanimously.

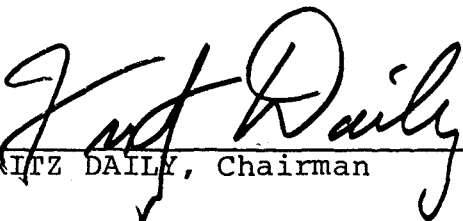
The statement of intent was voted to be attached to the bill, 16 to 1, with Rep. Lory voting no.

Rep. Peck moved House Bill 196 DO PASS as amended with the statement of intent adopted by the committee, the motion passed 10 to 7, with Representatives Donaldson, Hannah, Kitselman, Miller, Nisbet, Sands, and Daily voting no.

The subcommittee working on House Bill 395 submitted tentative amendments for the discussion of the committee. (see exhibit 4)

Chairman Daily adjourned the meeting at 2:50 p.m.

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FRITZ DAILY, Chairman

ADDITIONAL INFORMATION ATTACHED


Cheryl Fredrickson, secretary

VISITOR'S REGISTER

HOUSE

COMMITTEE

BILL 461

DATE 2/4/83

SPONSOR ~~Parent~~

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____

COMMITTEE

BILL 499

DATE _____

SPONSOR Ellison

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE _____

COMMITTEE

BILL 519

DATE _____

SPONSOR Peck

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Edus

COMMITTEE

461

DATE _____

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WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

RATIONALE FOR AMENDMENT OF
SECTION 20-1-204, M.C.A., AND REPEAL
OF SECTION 20-1-205, M.C.A.

Section 7-4-2711(1), M.C.A., provides as follows:

"The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county."

In addition, the county attorney has an abundance of other duties, as is shown by an examination of pages 470-477, inclusive, to Volume 9 of the 1981 edition of the Montana Code Annotated.

He is also required to give his opinion to all county officers on matters relating to the duties of their respective offices. Section 7-4-2711(2), M.C.A.

Section 20-3-210, M.C.A., requires the county superintendent of schools to hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county, as well as other school controversies.

As a practical matter, when the trustees are involved in making controversial decisions, they contact the county attorney first, utilizing the present provisions of Section 20-1-204, M.C.A., and get the county attorney involved in the decision-making process. If the decision is appealed to the county superintendent, the county attorney has a conflict of interest because he cannot act as an impartial adviser to the county superintendent. Section 20-1-205, M.C.A., does not solve the problem in such a case, because it deprives

both the county superintendant and the trustees of the district of the county attorney's services in the resolution of the controversy.

Other arguments in favor of the change are as follows:

1. If a county attorney is devoting time to school business, it is taking up time which could be devoted to county business and advising the county commissioners and other county officers. Depending on the work load, this could either result in the county attorney being unable to devote sufficient time to all business, therefore having to neglect some, or the necessity of hiring additional staff, thereby increasing the general fund budget.

2. There is some criticism of requiring all of the taxpayers of a county, whose taxes support the county attorney's budget, to subsidize the legal affairs of a particular school district. The point is made that only the taxpayers of the district which receives the benefit of the legal services should pay for those services and that taxpayers of other school districts which receive no benefit from the legal services shouldn't have to pay for them.

3. Considerable concern has been expressed since the last Legislature about improving the providing of prosecutorial services in criminal cases. One clear way to improve prosecutorial services is to relieve the county attorney of the burden of representing school district trustees, thereby allowing the spending of more time and resources on law enforcement and criminal matters.

OFFICE OF THE COUNTY ATTORNEY
STILLWATER COUNTY, MONTANA

C. ED LAWS
COUNTY ATTORNEY

COLUMBUS, MONTANA 59019

February 2, 1983

21 NORTH 4TH STREET
(406) 322-4333

(RECEIVED)

FEB 03 1983

Honorable Dave Brown, Chairman
House Judiciary Committee
State Capitol
Helena, Montana 59620

COUNTY PROSECUTOR SERVICES
Helena, Montana

Dear Representative Brown:

I take this opportunity to comment on three bills before the House Judiciary Committee.

House Bill 499 designed to eliminate conflicts of interest for County Attorneys in school matters is, in my opinion, a much needed piece of legislation. There has been an age old problem in this area since the County Superintendent of Schools is often called upon to pass judgment in matters which involve a school district. Often, the County Attorney is first contacted by the school district concerning a problem and undertakes to advise and represent the school district in the matter. Upon resolution of the matter at the district level, there is ordinarily provision for an appeal to either the County Superintendent of Schools or the County Transportation Committee. A conflict of interest immediately arises and either the County Superintendent of Schools must act without benefit of legal counsel or outside counsel must be hired for one of the parties.

After trying to juggle the conflict of interest caused by these matters for several years, I have taken the position that I will represent the County Superintendent of Schools and have advised school districts that in situations where there is potential conflict of interest, it will be necessary for them to hire outside counsel. It is my understanding that other County Attorneys have done the same. However, there is probably no legal basis for this arrangement and school districts could very well force me to represent them, if they so desire.

Further, school districts pay no part of the County Attorney's salary nor are they required to pay any part of the expenses of the County Attorney's office such as travel, lodging, etc. which are oft times involved in representing them in matters. The need for representation by school districts tends to be quite unequal in this county. I have always felt that it is unfair for the taxpayers of the entire county to foot the bill for a particular school district which may be involved in a great deal of controversy, while other districts seldom have the need for representation.

For the above reasons, I would urge the adoption of House Bill #499.

I am also concerned with House Bill #537 concerning mandatory sentencing for crimes against disabled persons or persons over 60 years of age.

The intent of this bill is laudable, however, it would only serve to further confuse what is becoming an unwieldy sentencing structure in this state. Section 6 is particularly cumbersome since it involves proof of a belief that the defendant had at the time of the crime.

Finally, it is my belief that each crime, each victim, and each defendant must be looked at separately at the time of sentencing in making a fair determination on punishment. I am sure that most, if not all, County Attorneys are particularly sensitive to crime victims who are aged or handicapped. This concern is reflected in sentencing recommendations and in actual sentences imposed. As a County Attorney with the reputation of being "hard nosed" when it comes to sentencing, I would prefer to see the legislature devote its energies to funding adequate prison facilities and the criminal justice system in this state rather than continually wrestling with the question of mandatory sentencing. If you really want to do something beneficial to Section 46-18-223, I would recommend that you repeal Subsections 1(b) through (e).

House Bill #516 is a useless piece of legislation which will only add to the present overburden of County Attorneys' offices. I assume that the sponsors of this bill can come up with some justification for its being, however, I fail to see any. I personally have enough bureaucratic garbage to put up with as things now stand, and can see nothing to be gained from having to report to the Attorney General each time I decline to prosecute a case. I must answer to the voters in my county for my actions, and most importantly to my own conscience. The Attorney General has supervisory powers over my office and can presumably step in if I am manifestly abusing my discretion in initiating prosecutions. I assume that if the legislature would trust me to be honest in making the report required by House Bill #516, it could likewise assume that I would be honest in making a decision to decline a prosecution even for reasons that might be difficult to articulate.

If there is a useful purpose to be served by House Bill #516, I would suggest that the purpose be explained to the Montana County Attorneys' Association and the Attorney General and alternatives

to legislation explored for obtaining the information required by this bill.

I hope that members of the Judiciary Committee will recommend the passage of House Bill #499, and recommend against the passage of House Bills #537 and 516.

Thank you very much for this opportunity to comment. I know that the Judiciary Committee has a heavy workload this session, and I appreciate your taking the time to consider my comments.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'C. Ed Laws', with a stylized flourish at the end.

C. Ed Laws
Stillwater County Attorney

CEL/rmk

AMENDMENTS TO HB 428 INTRODUCED COPY

Title, line 9
Following "20-6-305,"
Strike "and "
Following "20-6-306,"
Insert "and 20-6-310,"

Page 9
Following: line 20
Insert: "New Section: Section 7.

HIGH SCHOOL DISTRICT CONSOLIDATION OF DISTRICTS IN TWO OR MORE COUNTIES TO ORGANIZE JOINT HIGH SCHOOL DISTRICT. Any two or more high school districts located in more than one county and whose territory is contiguous may consolidate to organize a joint high school district. When a joint district consolidation. When a joint district consolidation proposition is to be introduced and considered in two or more districts, the consolidation procedure for high school district consolidation without the assumption of bonded indebtedness prescribed in (Section 2) and (Section 6) shall be used except that each district shall submit its resolution or petition and its election certificate to the County Superintendents of its resident county, and the several County Superintendents shall jointly perform the duties prescribed for the County Superintendent in (Section 2)."

Renumber: All subsequent sections

AMENDMENTS TO HB 395
(For discussion purposes)

Section 1

Page 1, line 21, after "superintendent", add ", principal or specialist"

Section 2

Strike the entire section from page 2, line 12, to page 4, line 19.
Insert in lieu thereof:

"20-4-204. Non-renewal of tenure teacher services.

- (1) The trustees of a district may decline to renew the services of a tenure teacher for good cause. Good cause may be any of the following:
 - (a) Any of the reasons described in 20-4-207,
 - (b) The teacher has failed to promote acceptable levels of student achievement
 - (c) The teacher has not adequately maintained student control and discipline
 - (d) The financial condition of the school requires such reduction, and there are no teaching responsibilities being performed by a nontenure teacher that could be performed by the tenure teacher if so qualified
 - (e)
 - (f)
 - (g)

(2) Whenever the trustees of any district resolve to hear a case of tenured teacher nonrenewal, they shall notify the teacher in writing before May 1 of such a hearing. The notice of hearing shall contain a statement declaring clearly and explicitly the specific reasons for the proposed action.

(3) The hearing shall be held within 20 days but not less than 10 days from the date of notice unless the parties mutually agree to another date.

(4) If the trustees decide to not renew the teacher's contract, the teacher may appeal the board's decision to the county superintendent.

(5) Either the teacher or the trustees may appeal the decision of the County Superintendent to the Superintendent of Public Instruction.

(6) Any review of a decision made under this section shall be in accordance with the provisions of 2-4-704.

Section 4

On page 5, line 12, after "acceptance", insert "termination and statement of reasons".

On page 5, after line 24, insert "(3) When the trustees notify a nontenure teacher of termination, the teacher may, within 10 days after receipt of such notice, make written request of the trustees for a statement of reasons for such termination. Within 10 days after receipt of the request, the trustees shall furnish a written statement to the teacher declaring clearly and explicitly the specific reason or reasons for the termination. This statement shall be a final and conclusive disposition of the matter, which shall not be subject to review."

Section 5

On page 6, line 15, after "for", insert "immorality..."

OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59801
TELEPHONE: (406) 721-5700

ROBERT L. DESCHAMPS III
COUNTY ATTORNEY

February 2, 1983

Five Daily
Rep. ~~Dave Brown~~
Chairman *Education*
House ~~Judiciary~~ Committee
State Capitol
Helena, MT 59620

RE: HB 499

Dear Rep. *Daily* ~~Brown~~ and Members of the Committee:

Please accept my strong opposition to HB 499, which would prohibit school districts from utilizing the County Attorney for any legal services.

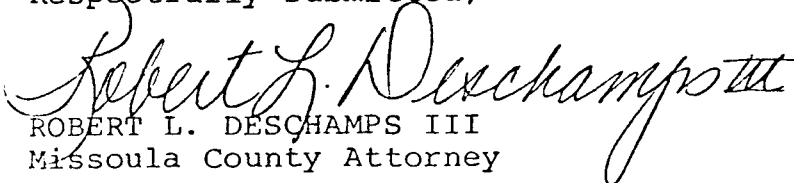
This bill is a classic lawyer's relief act, and I think would easily cost the school districts of the state \$1,000,000 in attorneys' fees which they do not now have to pay. This figure is based in part on recent experiences in Missoula County where a single district paid approximately \$90,000.00 in attorneys' fees to private attorneys during a labor dispute. It is further based on this office's experience, which shows that we adverage about 1,000 hours a year in attorney time devoted to schools. While this only amounts to a part-time position in our office, costing between 10 and 15 thousand dollars a year, if this same business were taken to private attorneys, and billed out at a typical \$50 an hour, the cost to school districts would be \$50,000. Multiply this figure by Montana's 56 counties, and the costs approach \$3,000,000 a year! Of course, this is a high figure, since most counties do not have the population and volume of work Missoula does.

I do not see how it can possibly be in the public interest to saddle Montana's school system with this unnecessary expense. The existing law allows school districts to hire their own attorney if they wish. This is more than adequate to handle those circumstances where the County Attorney is unable or unwilling to represent the schools satisfactorily.

Some arguments in favor of HB 499 have focused on the conflict of interest situation that arises when an appeal is taken from a board of trustee's decision to the County Superintendent of schools. Although the County Attorney is the statutory legal adviser to both the County Superintendent and the school district, he obviously cannot represent or advise both at an appeal hearing without creating a conflict of interest. Fortunately such occurrences only come up a few times each year, even in a county the size of Missoula. As a result, we have simply had the County Superintendent hire an outside legal advisor for the hearings. This procedure has cost Missoula County less than \$1,000 a year for outside counsel, and has nicely solved the problem for us.

The state has realized a savings of hundreds of thousands of dollars a year paid to dozens of private lawyers by the creation of the 5 lawyer agency legal services bureau in the Attorney General's Office. This experience clearly shows the cost effectiveness of the present system. HB 499 would replace this with a highly expensive and unnecessary requirement that private lawyers be retained. It should be killed.

Respectfully submitted,


ROBERT L. DESCHAMPS III
Missoula County Attorney

RLD:lh

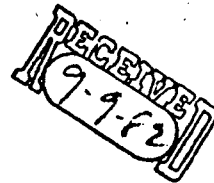


OFFICE OF PUBLIC INSTRUCTION

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

Ed Argenbright
Superintendent

September 7, 1982



Dr. Roger Eble
Superintendent
Helena Schools
PO Box 5417
Helena, MT 59624

Dear Dr. Eble:

This is approval for contingency funds in the amount of \$4,437 for the 1982-83 special education budget for a teacher at the Deaconess Home to be used in the following line items:

\$4,437 in line item 0215

This amount will be deposited in the General Fund, line item 01-01-47 of your district. Because this allocation is now part of your maximum budget without a vote, additional spending authority for the amount of the allocation is given your district and the emergency budget process is not applicable. Please add the amount of the award to your district's special education budget.

When the Special Education Trustees Report (20SE) and the Trustees Financial Summary (20 or 21) are prepared at the end of the fiscal year, contingency expenditures are to be included with the other special education expenditures.

If you have questions, please contact me.

Sincerely,

GAIL GRAY
Specialist
Department of Special Services

GG/vv

Enclosure

cc: OPI Accounting



OFFICE OF PUBLIC INSTRUCTION

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

ED ARGENBRIGHT
Superintendent

To: Authorized Representative
From: Special Education Program Accountant
Re: CONTINGENCY PAYMENT - SPECIAL EDUCATION

Your request for Special Education Contingency funds has been processed by this office in the amount indicated on the copy of the State of Montana "Agency Vendor Payment File" shown below.

The warrant has been mailed to your county treasurer by the state auditor. Your county treasurer will deposit the payment in General Fund 01-01-47, to the credit of your school district.

If you have any questions regarding the warrant, please don't hesitate to contact us.

Lynda Brannon

STATE OF MONTANA STATEWIDE BUDGETING AND ACCOUNTING SYSTEM		TRANS. DATE (Optional)	
		FORM CODE	231
		INPUT AGENCY	3501
AGENCY VENDOR PAYMENT FILE		DOCUMENT NUMBER	720010
DESCRIPTION OF ITEMS BEING PAID		INPUT AGENCY NAME	
SPECIAL EDUCATION - CONTINGENCY FOR DEPOSIT IN GENERAL FUND 01-01-47		SUPERINTENDENT OF PUBLIC INSTRUCTION	
HELENA HS #1 4,437.00 MAGUSTA EL #45 3,150.00		PAYABLE TO	
7,587.00		LEWIS & CLARK CO TREASURER HELENA MT 59601	
TOTAL AMOUNT PAID			

- (1) Material amounts of supplies are not reflected in the financial statements as required by generally accepted accounting principles.
- (2) Not all supplies are inventoried periodically. This not only helps control supplies from waste and obsolescent, but also aids in future purchases.

Recommendation;

We recommend that the District correct the above noted weaknesses.

Budget Expansion

The budget for the District is usually finalized by the business office in late July or early August each year. This budget has been approved by the Board of Trustees and signed by it's chairperson. The budget is then sent to the County Superintendent of Schools, who sets the mill levies and also approves the budget. According to 20-9-133, MCA this is the final budget except for approved intrafund transfers between line items.

Our review of the budget disclosed that budget authority was increased after the final budget and without the use of an emergency budget. Per instructions of the Office of Public Instruction (OPI) the District's General Fund Budget was increased by \$12,500 for Special Education and by \$5,388 for Vocational Education. This additional money received from OPI was due to increased appropriations for these programs from the State Legislature. We asked OPI how they could increase the school's budget apparently against state statutes. They stated that they were of the opinion that an emergency budget was not necessary as the legislature approved the expenditures.

We then asked the Department of Administration, Intergovernmental Services Division, which is in charge of School District's audits, if an emergency budget was necessary to expend the additional money. That Agency responded that an emergency budget was indeed necessary.

It should be noted that the school budget was not over spent because of this problem and due to a change in law, Vocational Education money will be handled differently in the future.

Recommendation:

Until this matter is resolved we recommend that the District expend the additional Special Education money only after approval of an emergency budget. We also recommend that the District request a County Attorney's opinion to determine if an emergency budget is necessary to expend the additional special education money.

Account Groups

The District's financial statements do not include a General Fixed Assets Account Group or a General Long-Term Debt Account Group. School officials are working toward gathering the information necessary to present the General Fixed Asset Account Group in future years. Information required includes an inventory of all equipment or equipment classes, buildings and land. The cost or estimated cost and date of purchase or construction are also necessary. We encourage the District to continue to collect this information so that future audit reports will not contain an adverse opinion on this account group.

The information required to present a Long-Term Debt

WITNESS STATEMENT

Name Joe Roberts Committee On _____
Address 729 Eleventh Ave. Date _____
Representing DD/LAC Support as amended
Bill No. 461 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2. *amend page 5, line 7 by adding the language
deleted on lines 13 through 15.*

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Wayne P. Tharrell Committee On _____
Address WIBAUx Date 1-28-83
Representing SCHOOL DIST. 6 Support _____
Bill No. 395-96 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Jennifer Harney Committee On Education
Address Missoula Date 2/4/93
Representing Montana Coalition of Handicapped Individuals Support ✓
Bill No. 461 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: M.C.H.I. (Montana Coalition of Handicapped Individuals)

1. Supports HB 461 on the basis that it meets with current Federal Legislation, Civil Rights, sec 504.
2. We do raise the question of the wording on line 24, page 2 "comprehensive evaluation" pertaining to the qualifications of the individual(s) responsible for the evaluations.
- 3.
- 4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Jennifer Fenchak Committee On Education
Address 809 1/2 W. Pine Date 4 Feb 83
Representing HSU - UoFM. Support X
Bill No. HB 461 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. We Support HB 461. The Bill is designed in such a manner as to allow all citizens, handicapped or otherwise to receive the training and education necessary to allow them to compete.
2. We Are Concerned, however, with the wording on page 2, line 24. We would request a clarification be added indicating who would give the comprehensive evaluation, which would identify an "emotionally disturbed" individual.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Sharon Rehard Committee On _____
 Address 920 Parkhill Dr. Blye Date 2/4/83
 Representing Parents Support ✓ as amended
 Bill No. 461 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. OT
PT
Speech
2. Audio are a vital part of the Educational system & should not be deleted. we have a 15 daughter who has benefited greatly through these services at MCHC and Grand Ave School in Billings. It is thru these services that she has grown in the areas she has plus it helps her to feel good about her accomplishments.
4. feel good about her accomplishments

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name VICTOR HAGER Committee On _____
Address Box 820 Date 2/4/85
Representing PARENT Support ☒ AS AMENDED
Bill No. 461 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. OT
PT.
speech.
WE HAVE HAD TO FIGHT FOR SERVICES.
2. when they are listed out specifically IF
THE bill does. I have direct working
3. IT IS I AM AFRAID IT COULD BE
EXPOSED FOR PROGRAMS NEEDED.
4. I support the bill as amended.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

STANDING COMMITTEE REPORT

1 of 2

February 4, 1933

MR. **SPEAKER:**

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

HOUSE 428
having had under consideration Bill No.

first reading copy (white)
color

"AN ACT TO GENERALLY REVISE THE PROCEDURES FOR CHANGING
HIGH SCHOOL DISTRICT BOUNDARIES THROUGH ANNEXATION,
CONSOLIDATION, OR TRANSFER OF TERRITORY OF SUCH DISTRICTS;
AMENDING SECTIONS 20-6-304, 20-6-311, 20-6-402, AND
20-6-403, MCA; REPEALING SECTIONS 20-6-302, 20-6-305,
AND 20-6-306, MCA."

Respectfully report as follows: That HOUSE 428
be amended as follows: Bill No.

1. Title, line 9.
Following: "20-6-305,"
Strike: "AND"
Following: "20-6-306,"
Insert "and 20-6-310,"

2. Page 5, line 15.
Following: "of"
Strike: "20-20-302"
Insert: "20-20-301"

XXXXXX
DO PASS

3. Page 9, line 6.

Following: "of"

Strike: "20-20-302"

Insert: "20-20-301"

4. Page 12.

Following: line 7

Insert: "NEW SECTION Section 8. High school district consolidation of districts in two or more counties. Any two or more high school districts located in two or more counties and whose territory is contiguous may consolidate to organize a joint high school district. Whenever a joint district consolidation is considered by two or more districts, the procedure for consolidation with the assumption of bonded indebtedness prescribed in [section 2] and [section 6] must be used, except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendents in [section 2]."

Renumber: subsequent sections

5. Page 15, line 21.

Following: "20-6-305,"

Strike: "and"

Following: "20-6-306,"

Insert: "and 20-6-310,"

6. Page 15, line 23.

Strike: "7"

Insert: "8"

7. Page 15, line 25.

Strike: "7"

Insert: "8"

AND AS AMENDED
DO PASS

STANDING COMMITTEE REPORT

February 4,

83

19.....

SPEAKER:

MR.

EDUCATION AND CULTURAL RESOURCES

We, your committee on

HOUSE

461

having had under consideration Bill No.

first

white

reading copy (.....)
color

"AN ACT TO DEFINE THE TERMS "DEAF/BLIND", "MULTIHANDICAPPED",
AND "RELATED SERVICES" AS THEY RELATE TO THE LAWS GOVERNING
SPECIAL EDUCATION OF HANDICAPPED PERSONS IN MONTANA; AMENDING
SECTION 20-7-401, MCA."

HOUSE

461

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

be amended as follows:

1. Page 2, line 18.

Following: "as"

Strike: "autistic,"

2. Page 5, line 4.

Following: "services"

Insert: ", including speech pathology, audiology, occupational
therapy, and physical therapy,"

AND AS AMENDED

DO-PASS-

STANDING COMMITTEE REPORT

February 4, 1983

SPEAKER:

MR.

EDUCATION AND CULTURAL RESOURCES

We, your committee on

having had under consideration HOUSE Bill No. 499

first white
reading copy ()
color

"AN ACT TO ELIMINATE CONFLICTS OF INTEREST FOR A COUNTY ATTORNEY
IN SCHOOL MATTERS BY PROVIDING THAT A COUNTY ATTORNEY REPRESENT
ONLY THE COUNTY SUPERINTENDENT OF SCHOOLS; TO PROVIDE THAT
TRUSTEES OF A SCHOOL DISTRICT OR A COMMUNITY COLLEGE DISTRICT
EMPLOY AN ATTORNEY OTHER THAN THE COUNTY ATTORNEY; AMENDING
SECTIONS 20-1-204 AND 20-15-404, MCA; REPEALING SECTION 20-1-205,
MCA."

Respectfully report as follows: That HOUSE Bill No. 499

XXXXXX
DO PASS
DO NOT PASS

STANDING COMMITTEE REPORT

February 4, 1983

SPEAKER:

MR.

EDUCATION AND CULTURAL RESOURCES

We, your committee on

having had under consideration HOUSE Bill No. 519

first

white

reading copy ()
color

"AN ACT CLARIFYING THE PROCEDURES FOR GRANTING CONTINGENCY
FINANCING OR EMERGENCY BUDGETS FOR ALLOWABLE COSTS OF SPECIAL
EDUCATION; AMENDING SECTION 26-9-321, MCA."

Respectfully report as follows: That HOUSE Bill No. 519

.DO PASS—