

MINUTES OF THE MEETING
EDUCATION AND CULTURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 16, 1983

The meeting of the Senate Education and Cultural Resources Committee was called to order by Chairman Bob Brown on March 16, 1983, at 12:37 p.m. in Room 442, State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL 879: Due to the length of the hearing on House Bill 879 on March 14, the committee members did not have time to ask questions of the witnesses. Senator Brown allotted a half hour of this meeting for that purpose.

Senator Haffey asked Jack Anderson, Montana High School Association, if the MHSA would be eliminated under the bill. Mr. Anderson replied the state would assume constitutional control of all aspects of education and athletics would become a co-equal. As a result, he said, MHSA would no longer have regulatory authority. He said currently participation in school sports is a privilege and not a right but under the provisions of this bill that will no longer be the case.

Jess Long, School Administrators of Montana, presented a letter to the committee that was sent to his membership (exhibit #1).

Representative Peck, sponsor of the bill, said he felt the fiscal note is wrong. He noted expenditures in Washington amounted to only \$72,000 per biennium and they have five times the population of Montana. He said the bill only guarantees the right of access to activities and programs, it does not say students will be forced to participate.

Jess Long, School Administrators of Montana, noted Washington has federal dollar assistance in their compliance activities.

Representative Peck countered by pointing out Montana will receive federal dollars in the same ratio.

Senator Haffey asked Representative Peck what is the primary need for the bill.

Representative Peck replied the primary need is sex equality and the primary purpose is to allow educators to go through an accepted process for resolving complaints and problems in the educational system.

There being no further discussion, the hearing was closed.

Jennifer Kingman, a student at Ray Bjork School, Helena, self-contained classroom, demonstrated computer usage in math, spelling, and reading. Jennifer and her classmates in the EMR class have enjoyed working with the special computer programs and are learning a great deal from them. Merv Finstad, Principal, said computers are literally a revolution and the Helena school district is beginning a program of computer literacy in the regular and special education classes of all ages.

HOUSE BILL 519: Representative Peck, District 8, said the bill is merely a housekeeping matter. If a new special education class is started or an addition is made to an already established class after the general fund budget is set there is no way to get the funding without an emergency budget amendment. (Special education allowable costs are included in the maximum general fund budget without a vote.) He said the bill was requested by the School Business Managers and Clerks.

PROPONENTS

John Campbell, Montana Association of School Business Officials and Clerks, said the bill resolves the conflict between the two opinions regarding contingency funding. He said this bill specifies a contingency fund which is limited to an amount to be set by the Office of Public Instruction.

Bob Stockton, Office of Public Instruction, said the auditors are not clear on the application of funds at present and this bill would clarify the procedure, remove the exceptions the auditors object to, and make the whole procedure workable.

There being no further proponents and no opponents to the bill, the hearing was closed.

HOUSE BILL 461: Representative Asay, District 50, said the bill updates and clearly defines the definition of deaf/blind and multihandicapped with the current statutes.

PROPONENTS

Judith A. Johnson, Assistant Superintendent, Office of Public Instruction, presented her testimony in support of the bill (exhibit #2).

There being no further proponents and no opponents to the bill, the hearing was closed.

HOUSE BILL 444: Representative Swift, District 91, said the bill was requested by the Office of Public Instruction. The bill changes the basis on which each district receives its pro rata share of the budget when the budget of special education is exceeded. He said it approaches the problem on a variable basis because of wide variation in districts. This bill protects districts with lower budgets when the higher percentage is applied. As an example, he said the budgets come in at \$31 million and there is only \$23 million available. The bill would allow distribution based on need rather than each district sharing equally.

PROPONENTS

Judith A. Johnson, Assistant Superintendent, Office of Public Instruction, presented her testimony in support of the bill (exhibit #3).

There being no further proponents and no opponents, the hearing was closed.

HOUSE BILL 794: Representative Hand, District 82, presented the bill for the sponsor, Representative Daily. He said the bill is a committee bill of the House Education and Cultural Resources Committee and clarifies the definition of school bus and defines the exceptions such as vans or cars.

PROPOSERS

Chip Erdmann, Montana School Boards Association, presented two Attorney General's opinions regarding school buses (exhibit #4). He said the opinions resulted in a conflict and the bill attempts to take the definitions in Title 20 and Title 61 and the exceptions and come up with a workable definition.

Jess Long, School Administrators of Montana, said his group supports the bill.

Terry Brown, Student Transportation Specialist, Office of Public Instruction, urged the committee to pass the bill. He said it cleans up a lot of problems for trustees across the state and clarifies the statutes considerably.

There being no further proposers and no opponents, the hearing was closed.

EXECUTIVE SESSION

ACTION ON HOUSE BILL 794: Senator Blaylock moved House Bill 794 BE CONCURRED IN. The motion carried unanimously.

ACTION ON HOUSE BILL 519: Senator Berg moved House Bill 519 BE CONCURRED IN. The motion carried unanimously.

ACTION ON HOUSE BILL 461: Senator Haffey moved to amend the bill as per the attached committee report (exhibit #5). The motion carried unanimously.

Senator Berg moved House Bill 461 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HOUSE BILL 192: Senator Blaylock moved House Bill 192 BE NOT CONCURRED IN. The motion carried on a roll call vote (exhibit #6).

ACTION ON HOUSE BILL 196: Senator Mazurek moved House Bill 196 Be Concurred In. Senator Elliott moved House Bill 196 Be Not Concurred In as a substitute motion.

Senator Haffey noted that because the rules were changed to guidelines, the fiscal note has been eliminated.

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Education and Cultural Resources
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Senator Mazurek felt continuity should be maintained and since the Board of Public Education sets guidelines for special education they should also set them for gifted and talented.

On a roll call vote, the motion that House Bill 196 Be Not Concurred In failed. (exhibit #7).

Senator Mazurek's motion that House Bill 196 BE CONCURRED IN passed with Senator Brown voting no.

ACTION ON HOUSE BILL 809: Senator McCallum moved House Bill 809 Be Not Concurred In. After further discussion, he withdrew the motion.

Senator Brown appointed a subcommittee composed of Senators Berg, McCallum, and Gage to further study the bill and draft any proposed amendments.

ACTION ON HOUSE BILL 746: Senator Blaylock moved the amendments as per the attached committee report (exhibit #8). The motion carried unanimously with Senator Severson absent.

Senator Mazurek moved House Bill 746 BE CONCURRED IN AS AMENDED. The motion carried with Senators Berg and Gage voting no and Senator Severson absent.

ADJOURN: There being no further business to come before the committee, the meeting adjourned.



Senator Bob Brown, Chairman

jdr

ROLL CALL

EDUCATION AND CULTURAL RESOURCES

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 3/12/83

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Bob Brown, Chairman</u>	X		
<u>Senator Ed Smith, V. Chairman</u>	X		
<u>Senator Roger Elliott</u>	X		
<u>Senator Delwyn Gage</u>	X		
<u>Senator George McCallum</u>	X		
<u>Senator Elmer Severson</u>	X		
<u>Senator Harry Berg</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Jack Haffey</u>	X		
<u>Senator Joseph Mazurek</u>	X		

DATE

March 16, 1983

COMMITTEE ON

Education & Cultural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Karen Zellman	House aide - Connelly	HB 879		
Lynne Scott	Women's Policy Group	HB 879		
Jack Copps	Helena School Dist #1	HB 879		X
Jack Anderson	MT. High School Assoc.	HB 879		X
Chip Eromann	MSBA	HB 794 HB 879	X	X
Allice Jolly	MSBA / Hellgate Elementary	HB 794 HB 879	X	X
Jim Long	SAM	HB 879		X
Holly Kabecky	Self			
Billy Tech	observer			
Sammy Pursley	observer			
Jim Foster	Plains, MT	HB 879		X
Gray Johnson	OPI	HB 444 HB 461	X	
Ann A. Dinward	Thompson Falls	HB 879		X
Alan Freund	Mt. Fuji School Assoc.	HB 879		X
Wendy Amstad	M.A.E.S.P. ^{Elem Sch.} Principals	HB 879		
DAVID SEXTON	MEA	HB 879	X	
Bob ANDERSON	SOMERS School - SOMERS, MT	HB 879		X
Dale Moore	Manhattan Sch Dist			
Don Skelton	Manhattan Sch Dist #3			
Ron Zier	Manhattan Sch Dist #3			
MERRY VANDERPLAN	Belgrade Schools			
HARRY D. ERICKSON	Belgrade Schools			
Jim Koke	East Helena Schools	HB 879		X
Ray Haugen	Evangel #50 Kalepell	HB 879		X
Tom Am	Rep. Dist #50	HB 461	✓	
Bill Hand	Rep. Dist. 82	HB 794	✓	

(Please leave prepared statement with Secretary)

DATE _____

March 16, 1983

Education / Cultural Resources

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

TO: Senate Committee on Education and Cultural Resources

FROM: Lee Heiman, Committee Counsel

DATE: March 16, 1983

RE: Summaries of House Bills 444, 461, 519, and 794

House Bill 444 (Swift). Provides that if the total allowable costs for special education budgets exceed appropriations, the Superintendent of Public Instruction will pro-rate the available money based upon prioritized budget items that he has established.

House Bill 461 (Asay). Amends provisions governing special education of the handicapped by defining "deaf/blind"; "multihandicapped"; and "related services"; and moves speech pathology, audiology, occupational therapy, and physical therapy into this definition from "special education". Moves "autistic" condition from the definition of "emotionally disturbed" to "other health impaired".

House Bill 519 (Peck). Establishes use of appropriated contingency funds for special education if the program is started or expanded after determination of the district maximum-budget-without-a-vote. If there are no contingency funds available, the emergency budget provisions may be used for funding.

House Bill 794 (Daily). Clarifies the definition of "school bus" primarily by excluding classes of vehicles or vehicle uses.

LEGISLATIVE UPDATE

VOL. II NO. 5

FEBRUARY 24, 1983

LEGISLATIVE PHONE NUMBERS

For Legislative information directly from the Capitol - 1-800-332-3408

For OPI information on Legislation and Committee Hearing dates and times -

Maynard Olson or Betty Christi - 1-800-332-3402

For Committee Hearing dates and times - Legislative Information Office 449-4853

To leave messages for Legislators, and to have them return your calls - 449-4800

For any Legislative information - SAM office - 442-2510

MOTHERHOOD, APPLE PIE & CHEVROLET

H.B. 879 (Peck-D) is a bad bill. Taking a position in opposition to this piece of legislation is seemingly being opposed to a concept held in high priority by the people of Montana and the United States. HB 879 is to prohibit discrimination on the basis of sex (a copy of Title IX) against any student in public schools of Montana. It requires OPI to develop rules to eliminate discrimination in employment, counseling and guidance services, access to course offerings and recreational and athletic activities, and in textbooks and instructional materials.

The problem with HB 879 is that it creates another level of bureaucracy in an already well covered area. Currently there are numerous avenues of appeal for cases of discrimination. The Office of Civil Rights, Human Rights Commission are only a couple of organizations to which an appeal or complaint can be made. OPI is not interested in monitoring and enforcing this kind of legislation. In all probability the OPI would be required to hire 5-7 additional personnel. School districts would also have to hire compliance personnel for themselves.

HB 879 has passed the House and sent to the Senate. Please contact Senate Education Committee members and as well as your own Senator.

Representative Peck (former assistant superintendent at Havre) lambasted administrators and school boards during the committee closing and during his remarks on the 2nd reading floor debate in the House. The accusation of administrators spreading false information and fostering sex discrimination has lowered the credibility of administrators in the eyes of the other Representatives. It would seem that Representative Peck's approach does not do much for the support and confidence in public education.

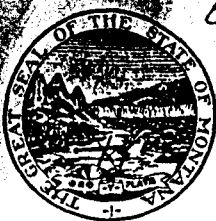
The evidence is plain that administrators are not willing to tolerate discrimination. Several school districts have been reviewed and given a clean bill of health.

School Administrators of Montana has been supportive of the Northwest Women in Educational Administration and individually you might talk to Pat Price, Superintendent at Judith Gap, about SAM's support.

An additional page in this newsletter is a copy of HB 879 (Third Reading) along with the Statement of Intent.

"OUR EXCUSE"

"If you find mistakes in this publication, please consider they are put there for a purpose. We try to publish something for everyone, and some people are always looking for mistakes."



May 7, 1983
March 16, 1983
Exhibit #2

OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

March 16, 1983

To: Senator Bob Brown, Chairman
Members of the Education and
Cultural Resources Committee

From: Judith A. Johnson *Judith A. Johnson*
Assistant Superintendent
Department of Special Services
Telephone: 449-3693

Re: HB 461

A bill for an Act entitled: "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."

The intent of this bill is to add and make minor revisions to the current definitions in state statute in order to bring them into concordance with federal regulations.

1. Add a definition for "deaf/blind." This category of handicapping condition was created in federal regulation subsequent to the establishment of Montana statute. The definition proposed here is identical to the federal definition and is the same as is currently in state special education regulation.
2. Add a definition for "multihandicapped." Justification and explanation same as for deaf/blind.

3. Delete the term "autistic" from the definition of "emotionally disturbed" (page 2, line 18). Create a new paragraph under "other health impaired" to include autistic condition (page 4, lines 21-23). These proposed changes reflect a recent change in federal regulations wherein autism is now included under the handicapping condition "other health impaired" rather than under "emotionally disturbed." The wording suggested for inclusion is taken directly from federal regulation.
4. Create a category of "related services." This category currently exists in federal regulation and the wording proposed here is an abbreviated version of the federal definition (page 5, lines 4-8). Additionally, the bill proposes to strike the language currently included in the definition of "special education" (page 5, lines 14-16) which is now to be included in the definition of "related services."

It is our belief that the changes proposed here will bring Montana statute in line with federal regulations and offer some clarity as to the nature and scope of special education and related services. These changes will not directly affect any current practices. Montana is currently identifying and reporting children (as required by federal regulation) by the categories created here. The addition of the category of related services is currently applied and the inclusion here will help clarify the intent of current federal and state regulations.

Exhibit #3



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 449-3095

Ed Argenbright
Superintendent

March 16, 1983

To: Senator Bob Brown, Chairman
Members of the Education and
Cultural Resources Committee

From: Judith A. Johnson *Judith A. Johnson*
Assistant Superintendent
Department of Special Services
Telephone: 449-3693

Re: HB 444

A bill for an Act entitled: "An Act to change the basis on which each school district receives its pro rata share of the available appropriations for special education whenever the total allowable cost of the special education budgets exceeds available appropriations; amending Section 20-7-431, MCA."

During the 1981-82 budget cycle, it became clear that requested state special education funds would greatly exceed the available appropriation. Requested increases in the 1981-82 budgets ranged from 5,875 percent to -4 percent. A straight pro rata of requested funds would need to be 72 percent. The Office of Public Instruction, in an effort to provide a plan to provide budget allocations on as consistent and equitable basis as possible, devised a variable pro rata system based on available special education appropriations. The office felt that there were certain services for handicapped children that were basic, at the core, of their free and appropriate public education (FAPE). These included resource and self-contained classroom teacher and aide positions, speech pathologists and school psychologists positions and the allowable costs for out-of-district placements. Other services also felt important, but at a lower priority for handicapped students to receive

a free appropriate public education, included recreation, occupational, physical therapy, special education administration, social workers, vocational education teachers, adaptive physical education teachers, equipment, supplies, clerical services, nurses and rent and utilities for special education cooperatives. These services were pro rated to the funding level left after priority one or core services were pro rated at 100 percent. The resulting pro rata was 59 percent. The pro rata was used to determine an allocation of state special education funds for each district and special education cooperative. The district or cooperative, upon review of the state allocation, then examined their available local and federal resources and prepared an amended state special education budget which totaled the state allocation.

We feel the variable pro rata system provided for greater consistency and equity in the allocation of state special education funds and would urge a "do pass" on HB 444.

JAJ:mf

Erdmann
March 16,
1983
Exhibit
#4

VOLUME NO. 39

OPINION NO. 63

HIGHWAY PATROL - School bus inspections;

MOTOR VEHICLES - Definition of "school bus";

SCHOOL BUSES - Definition of "school bus";

MONTANA CODE ANNOTATED - Section 61-1-116, Title 61,

Chapter 1, Title 61, Chapter 8, Title 61, Chapter 9.

HELD:

Vehicles operated by the Head Start Program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

14 June 1982

Colonel Robert W. Landon
Administrator
Highway Patrol Division
Department of Justice
303 North Roberts
Helena, Montana 59620

Dear Colonel Landon:

You have asked my opinion on the following question:

What constitutes a school bus for the purposes of Title 61, MCA?

Specifically you have inquired whether buses operated by parochial schools and by the federally sponsored Head Start Program are to be considered to be "school buses" under section 61-1-116, MCA. If so, they must comply with all the equipment requirements and traffic regulations of Title 61, MCA, pertaining to school buses. See, e.g., sections 61-3-350(2) (school bus to stop at railroad crossings); 61-8-351(2) ("school bus" signs to appear on front and rear of bus); (driver must actuate lights whenever the bus is to be stopped on a highway or street to receive or discharge school children); section 61-9-402(4) (school bus must be equipped with flashing red and amber lights), MCA. In addition, motorists would be obliged to stop for properly marked Head Start and parochial school vehicles whenever their flashing red signal lights were in operation. § 61-8-351(1), MCA.

Section 61-1-116, MCA, defines "school bus" as follows:

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school. (Emphasis added.)

The statute utilizes both proprietary and functional criteria to define the term "school bus." A school bus may be publicly or privately owned. If privately owned, it must be operated "for compensation." To be considered as a school bus, a motor vehicle must also be used "for the transportation of children to or from school."

Resolution of your question turns on the interpretation given to the terms "school," "compensation" and "public or governmental agency."

For the purposes of the education title (Title 20), section 20-6-501, MCA, defines "school" as follows:

As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. (Emphasis added.)

Under section 1-2-107, MCA, a definition of a word in one part of the Code is applicable anywhere that word appears in the Code unless a contrary intention appears. In my opinion, a contrary intention does plainly appear in the express limitation of that definition to Title 20. The term "school bus" is defined by section 20-10-101, MCA. Again, however, by express statutory provision, that definition expressly applies only to the use of the term in Title 20. Sections 20-6-501 and 20-10-101, MCA, defining "school" and "school bus," respectively, for the purposes of the education title are not in pari materia with section 61-1-116, MCA, defining "school bus" for the purpose of the Motor Vehicle Code. (See § 61-1-101, MCA.) The two titles govern different subjects. The concern of Title 20 is the administration of the public educational system in particular. The thrust of Title 61 is traffic safety and motor vehicle regulation in general. Furthermore, Title 20 and Title 61 both define "school bus" differently. The definition contained in section 61-1-116, MCA, is plainly broader in scope than the definition provided in section 20-10-101, MCA, which expressly limits "school bus" for the purpose of Title 20, inter alia, to motor vehicles owned by, or under contract to, a public school district. Section 61-1-116, MCA, makes no attempt to similarly limit the term.

Legislative intent is the polestar of statutory interpretation and that intent must be determined, if possible, from the plain meaning of the words used in a statute. Maker v. Southwestern Ry. Co., 176 Mont. 364, 369, 578 P.2d 724, 727 (1978). The words used in a statute should be given their usual and ordinary meaning. Rierson v. State, 37 St. Rptr. 627, 630, 614 P.2d 1020, 1023 (1980).

A school, in the ordinary acceptance of the word, is a place where general education is imparted to young people; it refers to an institution conducting a course of general education and mental training similar to that offered to children by a public education system. Cadet-ettes Corp. v.

Brown, 406 N.E.2d 538, 540 (Ohio App. 1977); State ex rel. Church of the Nazarene v. Fogo, 79 N.E.2d 546, 547 (Ohio 1948); 68 Am. Jur. 2d Schools, § 1 (1973). The term refers to "an institution of learning of a lower grade, below a college or university; a place of primary instruction," Cadet-ettes, 406 N.E.2d at 540-41. The word "school" includes private as well as public institutions of learning. 68 Am. Jur. 2d Schools, § 1 at 360, § 307 at 627 (1973). It does not, however, include a "Sunday school" providing solely religious instruction. Fogo, 79 N.E.2d at 547.

According to Webster's New International Dictionary (2d ed. 1941), "compensation" means "[t]hat which constitutes, or is regarded as, an equivalent or recompense;...that which compensates for loss or privation;...remuneration; recompense."

Clearly, privately owned vehicles are "school buses" within the meaning of section 61-1-116, MCA, if their owners are reimbursed in any manner for transporting children to or from school. A private or parochial school which operates any motor vehicle to transport children to and from its school and charges parents for that service, either by way of tuition or by a direct billing, is operating a "school bus" under section 61-1-116, MCA. The statutory definition of school bus is broad enough to include vehicles owned and operated by parochial schools, as well as private vehicles under contract with parochial schools or with public school districts to provide transportation of children to or from school.

By the plain and ordinary meaning of the term, "a public or governmental agency" is broad enough to encompass both federal and state agencies. Whether they are federally or privately owned, Head Start vehicles would, therefore, fall within the ownership criteria of section 61-1-116, MCA. Since the Head Start program would seem to impart general, primary education to the young, the program falls under the broad meaning of the word "school" as used in the statute. Hence, Head Start vehicles transporting children to and from such programs must be considered to be "school buses" for the purposes of Title 61. It is noteworthy that in 1976, the acting chief counsel of the National Highway Traffic Safety Administration (NHTSA) concluded in a memorandum that vehicles carrying children to and from Head Start programs are "school buses" for federal purposes. NHTSA Memorandum of February 18, 1976. There are two definitions of "school bus" in programs administered by NHTSA. Section 201 of the Motor Vehicle and School Bus Safety Amendments of 1974 added a definition of "school bus" to section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. § 1391), as follows:

(14) "[S]choolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools;

NHTSA accordingly amended its definition of "school bus" in 49 C.F.R. § 571.3, effective October 27, 1976, as follows:

"School bus" means a bus that is sold, or introduced in interstate commerce, for purposes

that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation.

In the view of NHTSA a Head Start program designed to afford educational benefits to "preprimary" school children could reasonably be described as a "preprimary school" and its attendees are "preprimary school students." Hence, the NHTSA memorandum concluded that, under 49 C.F.R. § 571.3, a vehicle sold after October 27, 1976, for the purpose of transporting students to and from Head Start programs would have to comply with the school bus safety requirements established under the National Traffic and Motor Vehicle Safety Act.

The definition of school bus found at 49 C.F.R. § 571.3 reflects current congressional policy regarding school buses and, therefore, has a bearing on the scope of the definition of school bus in Uniform Highway Safety Program Standard No. 17 (23 C.F.R. § 1204.4), Pupil Transportation Safety, issued by NHTSA pursuant to its authority under the National Highway Safety Act of 1966 (23 U.S.C. § 401, et seq.). This standard sets minimum requirements for a state highway safety program dealing with pupil transportation and includes requirements for the identification, operation, and maintenance of school buses. Because No. 17's requirements apply to all vehicles while in operation as school buses and because neither NHTSA regulations nor the relevant statutes distinguish between categories of "school," the acting chief Counsel of NHTSA concluded in his 1976 memorandum not only that Head Start vehicles are school buses for the purpose of Standard No. 17, but also that both private and public educational institutions, whether profit or nonprofit institutions, were "schools" under the federal definitions.

The conclusions reached by the NHTSA memorandum are re-enforced by both the similarities between Head Start and parochial school transportation, on the one hand, and public school transportation, on the other, and by the legislative history underlying the federal definitions. The apparent purpose of transportation is to give children instruction at a central site. The risks encountered by parochial and Head Start school children while traveling to or from the site are the same as those encountered by public school children. The congressional definition of school bus contained in section 102 of the National Traffic and Motor Vehicle Safety Act Amendments of 1974 (15 U.S.C. § 1391) is necessarily broad. It was intended to include a wide variety of passenger vehicles. See H.R. Rep. No. 93-1191, 93rd Cong., 2d Sess. 42, reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. Similarly, the scope of the Highway Safety Act of 1966, pursuant to which Uniform Standard No. 17 was promulgated, is broad. The express purpose of that enactment is the promotion of safety on the nation's highways in general. S. Rep. 1302, 89th Cong., 2d Sess., reprinted in [1966] U.S. Code Cong. & Ad. News 2741, 2743. In promulgating its administrative definition of "school bus" (49 C.F.R. § 571.3), NHTSA construed the congressional definition (15 U.S.C. § 1391) to include private as well as public school buses. See 40 Fed. Reg. No. 251, 60033 at 60034 (1975).

In finding Head Start buses to be "school buses" under Montana law, there is no danger in running afoul of federal law. Far from preempting state law on the matter, federal

law complements state regulation of Head Start vans as school buses.

The definition of school bus which appears in section 61-1-116, MCA, is the original definition of "school bus" which appeared in the Uniform Vehicle Code (U.V.C.) from 1934 until 1962. U.V.C. Act V, § 1(e) (Rev. eds. 1934, 1938, 1944); U.V.C. Act V, § 1(f) (Rev. eds. 1948, 1952); U.V.C. § 1-156 (Rev. ed. 1954); U.V.C. § 1-160 (Rev. ed. 1956). As of 1972, a total of twenty states had adopted, with slight modification, the same definition. E. Yaw, National Committee on Uniform Traffic Laws and Ordinances, "Laws Requiring Drivers to Stop for School Buses," 1 Traffic Laws Commentary No. 5 (August 1972), prepared for the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) at p. 4. In 1957, the Attorney General of Arizona, which had adopted the same U.V.C. definition as has Montana, had occasion to address much the same issue as is presented here. He held that the legislative definition of "school bus" was sufficiently broad to include not only buses owned and operated by school districts but also parochial school buses owned and operated by private institutions. 57-135 Op. Att'y Gen. at 139 (Ariz. 1957). He concluded that the equipment requirements and traffic regulations pertaining to school buses "were enacted for the purpose of protecting not only the children attending public school but all children of the state regardless of what type of school they attend." Id. In other states, the purpose of provisions relating to equipment and operation of school buses has also been declared to be the promotion of the safety of school children riding the bus. See, e.g., Hunter v. Boyd, 28 S.E.2d 412, 414 (1943).

It should be noted that under section 61-9-502(1), MCA, the Highway Patrol is statutorily obliged to conduct semiannual inspections of school buses. Under section 61-9-502(2), MCA, the Patrol is directed to determine whether "the school buses meet the minimum standards for school buses as adopted by the board of public education." Under section 20-10-111, MCA, the board of public education must promulgate uniform safety standards relating to "the design, construction, and operation of school buses in Montana." Because the Legislature has seen fit to incorporate by reference the board of education's safety standards into section 61-9-502(2), MCA, all school buses as defined by section 61-1-116, MCA, whether public or private, must comply with those standards and must be inspected semiannually by the Highway Patrol.

Under section 20-10-111(1)(a)(ii), MCA, the school bus standards promulgated by the board of public education may not be inconsistent with the "minimum standards adopted by the national highway safety bureau," now the National Highway Traffic Safety Administration (NHTSA). See Act of Oct. 15, 1966, P.L. 89-670, § 6(a)(1)(A), 90 Stat. 937, 49 U.S.C. § 1655; Act of Dec. 31, 1970, P.L. 91-605, Title II, § 202, 84 Stat. 1740.

The Legislature amended the aforementioned inspection statute, § 61-9-502, MCA, in 1973 to bring it in compliance with the requirement of semiannual school bus inspection set forth in NHTSA's Uniform Standard No. 17. As discussed above, the federal definition of school bus includes all vehicles equipped to carry more than 10 passengers that are likely to be "significantly used" to transport preprimary, primary, or secondary school children to and from school or school events, whether the school be public or private. See

15 U.S.C. § 1391(14); 49 C.F.R. § 571.3. The federal definition was not, however, intended to include private motor vehicles used to transport members of the owner's household or other students in a car pool arrangement. H.R. No. 93-1191, 93rd Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Ad. News 6046, 6076. It should be noted that Montana law, unlike federal law, does not define "school bus" in terms of the number of students carried. Since the federal definition of school bus applies to private school as well as public school vehicles and since Montana's school bus inspection statute, 61-9-502, MCA, was amended in 1973 in order to comply with the requirements of the federal Uniform Standard No. 17, it is my opinion that section 61-9-502(1), MCA, requires semiannual inspections of both private and public school buses as well as Head Start vehicles.

THEREFORE, IT IS MY OPINION:

Vehicles operated by the Head Start program and privately owned vehicles operated for compensation by or for parochial schools, as well as all vehicles operated by or for public school districts, for the purpose of transporting children to and from school are "school buses" within the meaning of section 61-1-116, MCA. Accordingly, they must comply with the statutory provisions in the Motor Vehicle Code (Title 61, MCA) relating to school bus equipment, operation and inspection.

Very truly yours,


MIKE GREELY
Attorney General

MG/SMJ/ar

HIGHWAYS - School bus operation:

SCHOOL BUSES - Operation on highways; covering or concealing "school bus" markings;

MONTANA CODE ANNOTATED - Section 61-8-351(3).

HELD: "School bus" markings need not be covered or concealed where school buses are being utilized to transport children to or from school on school-sponsored field trips or in connection with school athletic events or other authorized activities.

9 September 1930

James C. Nelson, Esq.
Glacier County Attorney
P.O. Box 1244
Cut Bank, Montana 59427

Dear Mr. Nelson:

You have requested my opinion on the following question:

Whether section 61-8-351(3), MCA, requires "school bus" markings to be covered or concealed where school buses are being utilized on school-sponsored field trips or for transportation of school children to and from school athletic events or other authorized activities.

The statute in question, section 61-8-351(3), MCA, provides:

When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

Your question turns on whether the purposes you describe are "purposes other than the actual transportation of children either to or from school" as that phrase is used in section 61-8-351(3), MCA. In the Education title the term "transportation" has a specific meaning and is limited to the conveyance of a pupil between his legal residence and the school he attends. Section 20-10-101(1), MCA. Under section 1-2-107, MCA, this definition applies throughout the Code unless a contrary intention plainly appears. In my opinion such a contrary intention does appear. The two sections, 20-10-101(1) and 61-8-351(3), are not in pari materia; they govern different subjects. "Transportation to or from school" is plainly broader than conveyance between a legal residence and school. It has long been the rule that

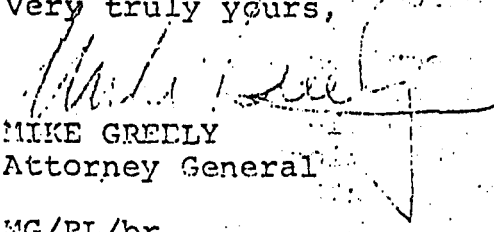
legislative intent governs the interpretation of a statute and that such intent must, if possible, be determined from the plain meaning of the words used. Maker v. Southwestern Ry. Co., Mont. ___, 578 P.2d 724, 727 (1978). In many cases, a child who is being transported on a school-sponsored field trip or to and from school athletic events or other authorized activities is being transported "to or from school" in connection with the activity. Accordingly, where school buses are being utilized for such purposes, their "school bus" markings need not be covered or concealed pursuant to section 61-8-351(3), MCA.

However, where school buses are being utilized for purposes that do not involve transporting children either to or from school, section 61-8-351(3), MCA, would apply. If a school bus is being used to transport a group of teachers, or an adult booster group to or from an athletic event or other activity, for example, the "school bus" markings must be covered or concealed. There may be circumstances in which a school bus is being used to transport children and the children are not being taken to or from school, such as where a civic group utilizes school buses as part of a recreational activity. Here too, "school bus" markings must be covered or concealed in accordance with 61-8-351(3). The particular facts of a given situation control.

THEREFORE, IT IS MY OPINION:

"School bus" markings need not be covered or concealed where school buses are being utilized to transport children to or from school on school-sponsored field trips or in connection with school athletic events or other authorized activities.

Very truly yours,


MIKE GREELY
Attorney General

MG/RL/br

STANDING COMMITTEE REPORT

March 17, 19 83

MR. **PRESIDENT:**

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

having had under consideration **HOUSE** Bill No. **519**

Peck (Berg)

Respectfully report as follows: That **HOUSE** Bill No. **519**

BE CONCURRED IN.
DOUGLAS

plc.

13/16/83

STANDING COMMITTEE REPORT

March 17, 19 83

MR. **PRESIDENT:**

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

having had under consideration **HOUSE** Bill No. **461**

Asay (Haffey)

Respectfully report as follows: That **HOUSE** Bill No. **461**

third reading copy, be amended as follows:

1. Page 5, lines 4 and 5.

Strike: **" , INCLUDING SPEECH PATHOLOGY, AUDIOLOGY, OCCUPATIONAL THERAPY, AND PHYSICAL THERAPY, "**

2. Page 5, line 8.

Following: **"education"**

Insert: **"and includes speech pathology, audiology, occupational therapy, and physical therapy"**

And, as so amended, BE CONCURRED IN
~~XXXXXXXX~~

H.C.

STANDING COMMITTEE REPORT

March 17, 1983

MR. **PRESIDENT:**

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

having had under consideration **HOUSE** Bill No. **192**

Schultz (Blaylock)

Respectfully report as follows: That **HOUSE** Bill No. **192**

BE NOT CONCURRED IN

DO PASS

y.c.

7/3/16/83

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Date March 16, 1983 House Bill No. 192 Time 2:23

NAME	YES	NO
<u>Senator Bob Brown, Chairman</u>	<u>X</u>	
<u>Senator Ed Smith, Vice Chairman</u>	<u>X</u>	
<u>Senator Roger Elliott</u>		<u>X</u>
<u>Senator Delwyn Gage</u>	<u>X</u>	
<u>Senator George McCallum</u>	<u>X</u>	
<u>Senator Elmer Severson</u>	<u>X</u>	
<u>Senator Harry Berg</u>		<u>X</u>
<u>Senator Chet Blaylock</u>	<u>X</u>	
<u>Senator Jack Haffey</u>	<u>X</u>	
<u>Senator Joseph Mazurek</u>		<u>X</u>

Jill Rohyans
Secretary JILL ROHYANS

Senator Bob Brown
Chairman SENATOR BOB BROWN for

Motion: By Senator Blaylock that House Bill
192 Be not Concurred In.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

March 17, 19 83

MR. **PRESIDENT:**

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

having had under consideration **HOUSE** Bill No. **196**

Peck (Mazurek)

Respectfully report as follows: That **HOUSE** Bill No. **196**

BE CONCURRED IN

~~DO PASS~~

3/16/83

SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Date March 16, 1983 Roll Call Bill No. 196 Time _____

NAME	YES	NO
_____ Senator Bob Brown, Chairman	X	
_____ Senator Ed Smith, Vice Chairman		X
_____ Senator Roger Elliott	X	
_____ Senator Delwyn Gage		X
_____ Senator George McCallum	X	
_____ Senator Elmer Severson	X	
_____ Senator Harry Berg		X
_____ Senator Chet Blaylock		X
_____ Senator Jack Haffey		X
_____ Senator Joseph Mazurek		X

Jill Rohyans
Secretary JILL ROHYANS

Senator Bob Brown
Chairman SENATOR BOB BROWN *for*

Motion: by Senator Elliott that House Bill
196 Be Not Concurred In
failed

(include enough information on motion--put with yellow copy of committee report.)

3/16/83
STANDING COMMITTEE REPORT

March 17,

19 83

MR. **PRESIDENT:**

EDUCATION AND CULTURAL RESOURCES

Page 2

We, your committee on

EDUCATION AND CULTURAL RESOURCES

having had under consideration **HOUSE**

Bill No. **746**

Darko (Mohar)

Page 2, line 13
Following: "a"
Strike: "regular school"
Insert: "general"

Respectfully report as follows: That **HOUSE**

Bill No. **746**

third reading copy, be amended as follows:

1. Page 2, line 13.

Following: "a"

Strike: "regular school"

Insert: "general"

2. Page 3, line 8.

Following: "body"

Insert: ", board of regents"

3. Page 3, line 13.

Following: "any"

Strike: "regular school"

Insert: "general"

4. Page 5, line 23.

Following: "be"

Strike: remainder of line 23 through "petition" on line 24

Insert: "held at the next general election day"

~~XXXXXX~~

continued

4/e

March 17, 1983

EDUCATION AND CULTURAL RESOURCES

Page 2

House Bill 746

5. Page 6, line 24.

Strike: section 5 in its entirety

Re-number: subsequent section

Respectfully report as follows: HOUSE
Third reading copy, be amended as follows.

1. Page 2, line 13.

Following: "a"

Strike: "complex school"

Insert: "general"

2. Page 3, line 5.

Following: "best"

Insert: "board of directors"

3. Page 4, line 13.

Following: "and"

Strike: "regular school"

Insert: "general"

4. Page 5, line 23.

Following: "and"

Strike: "school" and line 24 through

Insert: "and the next section of the bill"

And, as so amended, BE CONCURRED IN

continued