

## MINUTES

### MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON EDUCATION

Call to Order: By Senator H.W. Swede Hammond, on January 11, 1989, at 1:00 pm in room 402 in the State Capitol.

#### ROLL CALL

Members Present: Senators Dennis Nathe, Chet Blaylock, Dick Pinsoneault, John Anderson, and Joe Mazurek

Members Excused: Senators Bob Brown, William Farrell, and Pat Regan

Members Absent: None

Staff Present: Dave Cogley, Julie Harmala

Announcements/Discussion:

#### HEARING ON SB 66

Presentation and Opening Statement by Sponsor: SENATOR JUDY H. JACOBSON, sponsor of SB 66 stated that this bill came to her at the request of the Montana Education Association. This bill is asking that a school employee be allowed to be present at the first interview between an abused or neglected child (K-8) and the social worker. The teacher on a voluntary basis and at the discretion of the social worker should be allowed, as Senator Jacobson stated, to sit in on that meeting. She went on to say that evidently this was something that had been done and it was decided that it was in violation of our Montana statutes. Therefore by including this language in, hopefully this will take care of it. Senator Jacobson suggested that the committee take a close look at the statute, to make sure that all sections indicated by the Attorney General's opinion that needed the language changed were included.

List of Testifying Proponents and What Group they Represent:

Margo Voermans, Montana Education Association  
Judith Birch, Office of Public Instruction  
John Madsen, Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

MARGI VOERMANS, a third grade teacher from Missoula, supports SB 66. She stated that up until the ruling by Attorney General Greely, teachers had been allowed to participate in the first interview with the child. Now if a child disclosed that he or she has been sexually abused, the teacher must contact Family Services, talk to a social worker, share the information and then that is the end of the teacher's involvement. The social worker then comes to the school, pulls the child from the classroom, and interviews the child. The real tragedy being that the child is in real fear, emotionally upset and faces a total stranger. The tragedy is further extended when the child refuses to say anything to the total stranger. This problem can be related to the high grades also. So as Ms. Voermans stated that by the passage of this amendatory language, a teacher could, with the discretion of the social worker be present at the first interview.

Exhibit #1 - The A. G. opinion from the Montana Administrative Register demonstrating where the necessary language needs to be amended.

Exhibit #2 - Three letters pointing up the need for the language to be amended in the A. G. opinion.

JUDITH BIRCH, representing the office of OPI, stated that her office supports this amendment and that it should read "an employee of the school...may participate in at least the first interview of the child..."

Exhibit #3 - Testimony by Judith Birch in support of SB 66

JOHN MADSEN (Senator Pineseault asked him to come), with the Department of Family Services, stated that they are in support of SB 66. Family Services feels that it would be helpful in some cases to be able to have a school employee present when the child is interviewed. Although, as he stated, the investigating social worker must have the authority to decide if the school employee is to

be involved.

Questions From Committee Members: Senator Chet Blaylock ask about "a school employee being present." Margo Voermans responded by pointing out that who a child may develop a confidence with is interesting. It may be the janitor, the school secretary, or someone in the school that they see and know year after year.

Senator Nathe asked "Do school employees know when they are hired of this responsibility?" Senator Hammond felt that most employees would go to the principal, who understands the policy of contacting Family Services. Margo Voermans responded by stating that teachers are to never go into the investigative mode on their own.

Senator Pineseault made the observation, that from a prosecutors stand point, that at the interview, someone who's credibility by virtue of trust should be included in order for the child to talk to the social worker. The child's testimony would then be invaluable.

Senator Nathe asked Senator Pineseault about the danger of false charges. Senator Pineseault said there is always that danger, but social workers are unique in their ability to "ferret it out."

Closing by Sponsor: Senator Jacobson closed by asking the members to be sure to include all the necessary amendatory language in the Montana Codes.

#### DISPOSITION OF SB 66

Discussion: Senator Hammond decided that because there were several members missing, there would be no executive action taken.

#### HEARING ON SB 46

Presentation and Opening Statement by Sponsor: SENATOR JOE MAZUREK, District #23, at the request of the Helena school officials, is sponsoring SB 46. He stated that this bill is "simple" in what it accomplishes. He used

Helena's School District to demonstrate the need for the bill. He went on to explain that the outlying district, which included the Warren School and the Jim Darcy School was a separate independent district and was annexed into the Helena School District. These two schools had sent students into Helena, and therefore paid tuition. When they consolidated into the Helena district, the tuition for the last year that they were still independent could not be collected because the tuition for this school year would be paid from assessments made against the paying district next year. When consolidation occurred, the independent district became a part of the single Helena district and approximately \$200,000.00 in tuition payments were owed but were never paid because tuition pays for the year following the year that it actually occurred. So this bill would essentially allow, where there are tuition payments due from the abolished districts, an additional levy to be made against property in the former district.

List of Testifying Proponents and What Group they Represent:

John C. Campbell, The School Business Officials  
Bruce Moerer, Montana School Board Association  
Claudette Morton, Executive Secretary of the Board of  
Public Instruction

List of Testifying Opponents and What Group They Represent:

None

Testimony:

JOHN C. CAMPBELL spoke in support of SB 46.

Exhibit #1 - A written statement explaining that this bill would require a discontinued school district to pay its last year's tuition obligation. He pointed out the fact that many boards of trustees would not be willing to consider annexation when they find out that such an approval would create a loss of revenue for their district the first year of operation by the nonpayment of a legal obligation of the discontinued district.

BRUCE MOERER, representing the MSBA, requested favorable consideration of SB 46.

CLAUDETTE MORTON, representing the Montana Board of Public Education, explained that in our trying

to understand the foundation program, the differences in what different districts pay, we have come across a situation where non-operating districts, which can be in that mode for 3 years before they are abandoned or start up again, do send their students into an operating district and they do not increase the levies to cover those expenses and it shows a difference in tax disparity and so we would certainly support the bill from this stand point.

Questions From Committee Members: Senator Nathe stated that this problem would be easier to understand if it was limited to abandonment but when it involves annexation of the taxable valuation of the area they are going into, the taxable valuation is being increased and the new district is assuming all their property (books, schools, etc.). This value could be recaptured. He asked of Mr. Campbell if it is that big of a problem. Mr. Campbell responded by saying "yes", because both of the schools are still operating and there is a large enrollment. Senator Mazurek added that this particular problem happened to the Helena School District at the same time that Initiative 105 was on the ballot. Because of the reserves that were available in that district, we actually reduced the mil levy that year, based on the consolidation and then we got frozen into that levy so this \$200,000 loss even hit harder.

Senator Nathe asked if the school board was just not paying attention and who will have the power to go back into those old districts and impose a levy. Kay McKenna, Helena's County Superintendent answered that the County Superintendent would have that power.

Closing by Sponsor: Senator Mazurek added that bonus payments are made essentially as an incentive to consolidate and for problems that arise when two districts merge and additional faculty, books, and etc. are needed. Tuition, on the other hand, was designed to make up the costs of the prior year. He feels that this bill would do just that and he encouraged the committee to support the it. He thanked the committee for the discussion and he also thanked the visitors who testified.

#### DISPOSITION OF SB 46

Discussion: Senator Blaylock stated that he felt this bill was a good idea, because school districts should pay their debt.


Senator Hammond commented that he felt Initiative 105 set this whole problem off. He feels that the present situation is a disincentive toward consolidation and this could happen where a merger is involved. He did add though that many schools have reserves and annexing districts do inherit those reserves and in many cases it will off set any tuition that is owed. He feels that not every consolidation will be a problem because often times students go to another school other than the consolidating district.

Dave Cogley pointed out that under the bill, if there are any reserves or any cash to pay debts, these funds will be used to pay any debt, including tuition debt or bonded indebtedness, so we are talking about only those districts that have used up all the available cash. Only tuition remaining after that would be affected by this bill.

Senator Hammond closed the hearing and took no executive action because there were four members missing.

## ADJOURNMENT

Adjournment At: 2:40 pm



Senator H.W. Swede Hammond, Chairman

HH/jh

senmin.111



EXHIBIT NO. 11/1/89

DATE 11/1/89

BILL NO. SB66

VOLUME NO. 42

OPINION NO. 2.

CHILD ABUSE - School staff members attending investigative interviews;  
 PRIVACY - School staff members attending investigative interviews of reportedly abused and neglected children;  
 SCHOOL DISTRICTS - Policy requiring school staff members to attend investigative interviews of reportedly abused and neglected children;  
 SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF - School staff members attending investigative interviews of reportedly abused and neglected children;  
 TEACHERS - Attending investigative interviews of reportedly abused and neglected children;  
 MONTANA CODE ANNOTATED - Title 41, Chapter 3; sections 41-3-108, 41-3-201, 41-3-202, 41-3-205;  
 OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 49 (1986).

**Held:** A school district policy requiring that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is prohibited.

19 January 1987

Scott B. Spencer  
 Deputy Lincoln County Attorney  
 Courthouse, 512 California Avenue  
 Libby MT 59923

Dear Mr. Spencer:

You have requested my opinion on the following issue:

Whether a school district policy which requires that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is in conflict with section 41-3-205, MCA.

Montana Administrative Register

3-2/13/87



You have informed me that the school's stated reason for having a school staff person present at the interview is to protect the child.

I conclude that the presence of a school staff member at an investigative interview conducted to determine if a child has been neglected or abused is prohibited.

Title 41, chapter 3, of the Montana Code Annotated is the chapter on child abuse, neglect, and dependency. Pursuant to statute, a school teacher or employee who knows or has reasonable cause to suspect that a child known to him in his professional or official capacity is an abused or neglected child must report the matter promptly to the Department of Social and Rehabilitation Services or its local affiliate. § 41-3-201, MCA. Section 41-3-202, MCA, provides in part that upon receipt of a report that a child may be an abused or neglected child:

(1) ... [A] social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. ...

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective

services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

A social worker, the county attorney, or a peace officer investigates reports of possible abuse or neglect. The statute provides for no involvement of school staff persons in the conduct of an investigation following such a report.

Further, the records resulting from the investigation, including any interview with the child, would be included in the written report of the investigating social worker and become part of the case record. § 41-3-202(4), MCA.

Abuse and neglect records are strictly confidential. Section 41-3-205, MCA, states:

(1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

As I noted in 41 Op. Att'y Gen. No. 49 (1986):

Strict disclosure limitations are enacted for a variety of reasons. Reports of child abuse often contain information about the most private aspects of personal and family life. The information may or may not be corroborated and can be very damaging to the integrity of the family unit if released indiscriminately. Confidentiality also encourages the public to report incidents of child abuse. Case workers and those providing information rely on the confidential nature of the case records. A further reason disclosure is limited is to alleviate the potential stigma to the abused or neglected child.

I conclude the school's desire to protect a child under its care would not justify setting aside these statutory and policy reasons for refusing to allow school staff members access to investigative interviews with children concerning possible abuse or neglect.

In conclusion, if school officials are concerned about protecting a child when parents are not notified of an investigative interview, they may have a school staff person accompany the child to the site of the interview. However, the school staff person has no statutory authority or practical justification for attending the interview and should not be present in the room where the interview takes place.

THEREFORE, IT IS MY OPINION:

A school district policy requiring that an individual investigating a child abuse or neglect case have a school staff member present at the child's interview if the interview is conducted without parental notification, is prohibited.

Very truly yours,

*Mike Greeley*  
MIKE GREELEY  
Attorney General

Montana Administrative Register

3-2/13/87

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

The language is clear. It expressly limits disclosure of abuse and neglect records to an interagency interdisciplinary child protective team and to a court when relevant to an issue before it. School officials, teachers, and employees are not included in interagency interdisciplinary child protective teams. § 41-3-108, MCA. They would therefore have no access to the abuse and neglect records of the Department of Social and Rehabilitation Services, the county welfare department, the county attorney, or the court.

I held in 41 Op. Att'y Gen. No. 49 (1986), as follows:

Absent a court order, section 41-3-205, MCA, prohibits the Department of Social and Rehabilitation Services from disclosing case records and reports of child abuse and neglect to: (1) the natural parents or parent, or other person having legal custody of a child who is the subject of a dependency and neglect action filed under section 41-3-401, MCA; (2) health care professionals who are treating a child suspected of being abused or neglected; (3) the noncustodial parent of a child who has been removed from the custodial parent following an incident of abuse or neglect; and (4) the natural parents or parent, or other person having legal custody of a child who has been abused or neglected while in the care of foster parents.

Allowing a member of the school staff to attend the actual interview of the child would clearly circumvent the statutory scheme limiting access to abuse or neglect records.

Montana Administrative Register

3-2/13/87

WITNESS STATEMENT

NAME: Margo Voermans

DATE: 1/11/89

ADDRESS: 4175 Snowshoe Lane, Missoula

SEN. TE. EDUCATION

EXHIBIT NO. 1

DATE: 1-11-89

PHONE: 542-4035

SB 66

REPRESENTING WHOM? Montana Education Association

APPEARING ON WHICH PROPOSAL: SB 66

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: This language is necessary to enable a school employee to go with a child who has disclosed abuse to them to the first interview in order to provide support and dispell the child's fears.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SEN. TE. EDUCATION  
EXHIBIT NO. 1  
DATE: 1/11/89  
SB 66



215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

W. TE EDUCATION

EXHIBIT NO. 2

DATE 1/11/89

BILL NO. SB 66

January 9, 1989

To Whom It May Concern:

I am writing in support of Senate Bill 66, sponsored by Jacobson. As a school psychologist for the past eight years, I have experienced many situations in which an abused child would have more comfortably and accurately disclosed their experiences to a social worker had I or their teacher been present to offer emotional support.

One specific case comes to mind, involving a 14 year old female, residing in the Bitterroot Valley. This girl had been physically and sexually abused by her father. She freely discussed this with me and her P.E. teacher, but would not tell the social workers after we reported it. I warned them that I felt she may harm herself if they didn't get her out of the home, but still she would not talk to the social workers. In one month she shot herself in the stomach. While in the hospital she finally told an M.D. and social worker.

I feel this could have been avoided, had I been allowed to be present at the initial social service interview.

Sincerely,

Linda Zimmerman, Ph. D.  
School Psychologist  
Missoula School Dist. #1  
Missoula, MT



215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

January 10, 1989

To Whom It May Concern:

I am writing to express support for Senate Bill 66 to be reviewed by the Education Committee on 1-11-89. As a social worker in the public school district I act as a consultant to teachers in the area of child abuse and neglect. It has come to my attention in almost every reported case that school personnel are excluded when the child is interviewed by the county social workers. This appears to cause conflict for both the child and the teacher who has reported the abuse. The child views the teacher as a known entity and someone he/she can trust. It is apparent to me that the county worker who is a stranger to the child would get a much more accurate set of details from the child if that child's comfort level is increased by the presence of the known teacher.

Thank you for considering this piece of legislation that I strongly endorse.

Sincerely,

A handwritten signature in cursive script that reads "Marianne Moon".

Marianne Moon, MSW  
Licensed School Social Worker

MM/dh



215 South Sixth West

Missoula, Montana 59801

Telephone 406-728-4000

January 10, 1989

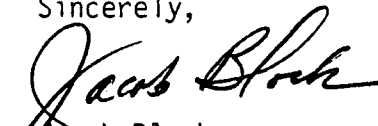
Senator Swede Hammond, Chairman  
Senate Education Committee  
State Capitol  
Helena, MT 59620

Dear Senator Hammond:

Missoula School District #1 was informed by Attorney General Mike Greely on April 22, 1987 that school staff members are prohibited from being present in a child's interview by Division of Family Services (formerly Social Rehabilitation Services) personnel investigating child abuse or neglect cases. Attorney General Greely further informed us that although the Legislature had amended the applicable statutes regarding access to abuse or neglect records, school staff members were not expressly mentioned in these amendments. It was further suggested that we contact legislators regarding proposed changes.

Prior to this interpretation it had been the practice of School District #1 to allow the child the option of having a school employee present when conferring with DFS (SRS) officials. Notwithstanding Attorney General Greely's opinion, the District continues to have concern that DFS personnel who arrive at school for an interview are regarded as total strangers by the children. District personnel clearly understand the need for confidentiality; however, students who disclose such information need the opportunity of having the support of a trusted teacher, counselor or other school employee. It is, therefore, requested that the Legislature consider amending the appropriate provisions, Sections 41-3-108, 41-5-201, 41-3-202 and 41-3-205, Montana Codes Annotated, to allow DFS personnel to grant school personnel access to the initial conference in cases of child/abuse neglect.

Sincerely,

  
Jacob Block  
Superintendent

STATE EDUCATION  
EXHIBIT NO. 33  
DATE 1/11/89  
BILL NO. SB66

Testimony by Judith Birch, Guidance Specialist at the Office of Public Instruction, representing the Office of Public Instruction in support of SB66.

The Office of Public Instruction supports the amendment of Section 41-3-202 MCA, thus allowing it to read "If considered appropriate by the social worker, an employee of the public school attended by the child involved may participate in at least the first interview of the child, if the child is enrolled in kindergarten through 8th grade.". We feel the student deserves the support of the school when enduring the trauma of being involved in a child abuse investigation. We hope that this amendment will be approved.

January 11, 1989

TESTIMONY IN SUPPORT OF SB66

"AN ACT ALLOWING SCHOOL EMPLOYEES TO PARTICIPATE IN INTERVIEWS OF CHILDREN IN KINDERGARTEN THROUGH 8TH GRADE IN ABUSE OR NEGLECT INVESTIGATIONS"

John Madsen, Department of Family Services

The Department of Family Services supports the amendment as proposed in SB66.

During the course of child abuse investigations, it is sometimes necessary to interview a child at school. It would be helpful in some cases to be able to have the teacher or nurse -- a school employee the child respects and feels comfortable with-- present during the interview. The subject matter of many of the interviews is quite often uncomfortable for the child to discuss, and a person who the child knows can help the child feel more at ease in disclosing the information necessary to determine if the child is an abused or neglected child.

The investigating social worker must have the authority to decide if a school employee is to be involved, and to designate which school employee is to be involved.



SENATE EDUCATION  
EXHIBIT NO. 15  
DATE 1/11/89  
BILL NO. SB 46

S.B. 46 Discontinued School District Tuition

This bill is to require a discontinued school district to pay its last year's tuition obligation.

Under present law, tuition obligations are paid the year after the students' attendance when the financial obligation is created (Sec. 20-5-307 MCA). This method is necessary since the whole school year must pass to know the number of students and their attendance that will generate the tuition obligation. This method works just fine until the sending school district ceases to exist through annexation, or abandonment. How is the nonexistent school district to pay its last year's tuition obligation? The present law provides that the cash on hand is to provide the financing for payment of all outstanding obligations. Since school districts operate on a current expenditure basis, the chances are great that they will not have an adequate cash balance at dissolution to pay its tuition obligation. The means provided under the present law is for the new enlarged district to pay the tuition obligation. Chances are great that the tuition is owed to the district that the discontinued district was attached to. What common-sense board of trustees will tax itself to pay the tuition owed their district?

The purpose of this bill is to provide a method for the discontinued district to raise the money to pay its last year's tuition obligation by property taxation. This method is the same as that utilized to pay off any existing bonded indebtedness the discontinued district may have at the time of dissolution.

Some people may say that the state bonus money received by the district assuming the discontinued district is compensation for the last year's tuition obligation. The purpose of the annexation incentive plan is explained in Section 20-6-402, MCA as a plan to provide additional financial assistance to the school district assuming the discontinued school district in setting up for the expanded educational program. It is not to pay an existing debt of the discontinued district!

Legislative members, state personnel, and others say "why do we have so many school districts in the state" (546 according to OPI 1988-89 directory). Attempts have been made to reorganize the school districting in the state in the past. These attempts have been shot down in favor of letting school district annexation, consolidation, and abandonment being decided by their own violation. This exemplifies the Montana spirit.

In order to consider annexation, both parties (the board of trustees of each district) must approve the elector consideration of the annexation proposal. I wonder how many boards of trustees will be willing to approve the annexation when it is known that approval will create a loss of revenue the first year of operation by the nonpayment of a legal obligation of the discontinued district.

EDUCATION  
CREDIT NO. 5  
DATE 1/11/89  
BILL NO. SB 46

