

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Blaylock, on February 15, 1993, at
1:02 p.m.

ROLL CALL

Members Present:

Sen. Chet Blaylock, Chair (D)
Sen. Harry Fritz, Vice Chair (D)
Sen. Bob Brown (R)
Sen. John Hertel (R)
Sen. Dennis Nathe (R)
Sen. Spook Stang (D)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: Senator Wilson, Senator Yellowtail

Members Absent: None

Staff Present: Eddy McClure, Legislative Council
Sylvia Kinsey, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 330
SB 348

Executive Action: None

HEARING ON SENATE BILL 330

Opening Statement by Sponsor: Senator Nathe, Senate District 10, Redstone, said he was going to let Kim Kradolfer, Justice Department and Wayne Buchanan explain the detail of this bill. It is very necessary and also very controversial. He asked the committee to keep one thing in mind, K-12 is not meant for adults, it is meant for children and this bill is meant to help children.

Proponents' Testimony: Kimberly Kradolfer, Council for the Board of Education and testifying today on behalf of the Board in support of SB 330. Her testimony is attached. (exhibit 1)

Wayne Buchanan, Board of Education, said two years ago Kimberly

Kradolfer recommended they put in a bill last year similar to the one today. He looked at the statute and wrote a strongly worded memo to the Board, Kim and Beda Lovitt, saying he felt the present statute was sufficient to do anything they needed to do. Over the past two and one half years he has become a believer that this is a bill that is very much needed. He said "teaching attracts people that are pedophiles, it attracts people who are homosexuals, it attracts individuals who abuse the authority that is given to them for their own personal gratification, whatever that might be". He said there is a growing problem of sexual harassment in the schools and very often these kind of things are kept secret. They are well known to everyone in the community over a long period of time. This is a national problem and there have been at least three major news programs that have centered on the problem of sexual harassment and other things that happen in the schools. He gave an example of a teacher who had made sexual advancements to two students and in one case had traded sex for a guarantee that the student would graduate from high school. He said this was brought to their board and 60 people turned up to testify, the vast majority in favor of this teacher. He said if you put yourself in the place of a superintendent or principal who has to bring charges against that individual, you can see the problem involved, especially since this was in a small community.

Joe McKenna, Board of Education said this is a perennial problem and he believed this legislation would help.

Joan Schmidt, Chairperson of the Certification Standards and Practices Advisory Council said she represents a group that includes a majority of classroom teachers plus an administrator, one trustee and one representative from a college teacher preparation program. She said in spite of the diversity of the membership, the support for this bill was unanimous and no reservations were expressed by council members.

Jack Copps, Deputy Superintendent, OPI, said they stand at the end of the list for supporters because they do have some reservations. The office did support the Board of Publication in drafting some legislation which would address some serious concerns that both the Board and the office has with existing law. There needs to be some clarification in law to define what the responsibilities of the Board of Education are. There seems to be some confusion about when they need to report and when they don't need to report. He said they also need some revision in the law which will allow the State Superintendent to conduct an investigation when it is believed there may be cause for the revocation of a certification. He said they have some reservations, and if he were a school employee he would be a bit nervous with the passage of this bill. The reason is because it says if you are a school employee that you have a responsibility and "you must support misconduct". He had no problem as long as he knew what he must report but this bill says you must report if a person had pled guilty to moral turpitude, you must report if a

person has been convicted of moral turpitude. The second part says you must report if you "suspect" a teacher is guilty of immoral conduct related to the teaching profession and immoral conduct is not defined in statute or in this proposal. If he did not report, then he would subject himself to some civil liability. He said if he were a school trustee, the language says he must investigate a report "from anyone" which that would concern him, and also "investigate" is not defined.

Chip Erdman, Montana Rural Education Association, said this was a hard bill to know which side to be on. They feel there is a legitimate need for revision in the reporting statutes and recognize there are problems out there. They also had some questions as to whether the approach in this bill is the correct one. He said Ms. Kradolfer mentioned school districts were reluctant to make the reports when there were resignations. Under the way the law was worded, there was good cause for that. The district got immunity under the law if there was a termination or non-renewal. It did not say anything about a resignation. He said there are also instances where schools have made good faith in-depth reports and come to the conclusion there wasn't any grounds under 1 e or 1 f, to make a referral. Then because of newspaper reports which are not always too accurate, there was a request from the OPI for more information.

Chair Blaylock pointed out the hearing on this bill by proponents was much longer than he had expected, however a number of the proponents were giving reasons why there may be problems with the bill. He said we have one more bill to hear today and asked the proponents be cut off at 2 p.m.

Bruce Moerer, School Boards Association, said they support the concept of the bill. He believed the area of resignations created some uncertainty and did need to be clarified. He referred to section 9 on penalty and said it appears in section 4 there are two duties to report. One is the initial report to the school and the second is the report following the investigation. Section 9 requires a penalty for failure of the district to report to OPI after the investigation. He did not believe there was any penalty for failure to make the initial report in section 4 1) because the penalty only applies to people who don't report after they have reasonable cause to believe. Their main concern was in regard to the penalty. Section 9 1) does set forth a civil liability that is not there now. In 2) criminal penalties, we are looking at trustees who are voluntary public servants and believed it would raise concern. In 3) clarifying this is official misconduct and could be grounds to terminate a trustee. We do not have an endless pool of people who are willing to be trustees, and these things would tend to scare people off.

Loren Frazier, School Administrators of Montana, said they support the concept but do have questions similar to those expressed.

Opponents' Testimony: Phil Campbell, Montana Education Association (MEA) said he had no reluctance on which side of the bill he wanted to be and the four past speakers spoke in opposition to the bill as written. They felt many of the problems could be solved in a much simpler manner. He pointed out the 22 cases the proponents talked about, when they got down to 13 of them they picked out seven under the current law and the remainder were out of the newspaper. He said an investigation based on a newspaper account was something we ought not to be a party to. He did not believe lack of reporting was a major problem and Mr. Buchanan said sexual harassment was a major problem out there and under this title, under "e" or "f", sexual harassment does not even fall into that category. Sexual harassment is not grounds under the present law, nor under this bill, to revoke a license. Mr. Buchanan said he did not want both the administration and the State Superintendent involved in the investigation because it would mess up their due process. He pointed out in section 2, line 10 it says "the board shall investigate". On line 12 after they investigate, if they find out there is a reasonable cause, they will conduct a hearing and on line 20, following the hearing, they can revoke a license. They will investigate, find probable cause, hold a hearing and then suspend. He asked where the due process was.

Eric Feaver, MEA, said this is the first time he has ever spoken in opposition to a bill that a fellow member of their association had already addressed, but felt for the record he must make some comment. The current law, was not at the request of the MEA but was the combined wisdom of a great number of parties including the Montana School Boards Association, School Administrators of Montana, Board of Public Education, OPI, and Montana Federation of Teachers. Those entities worked on this for nearly two years to bring together the current law. If that law had impediments, we knew them then and he would invite this committee if it wished, to go back and read the testimony that was delivered in both the House and Senate committees on SB 32. The whole premise of that law is that there is a presumption of guilt here, that somebody had been convicted, had pled no contest, or whatever was necessary to establish guilt. A report, a simple accusation was not sufficient grounds for revocation or suspension of certificate and that is in the testimony you will find in SB 32. He also took exception to what Mr. Buchanan said here as well as at a Board of Public Education meeting and he took exception to it then and will continue to do so in any public forum where the executive secretary of the Board of Public Education stands before the people and says "our profession attracts pedophiles and homosexuals and people who prey on our children". In neither case was the media present and thankful there wasn't because that homophobic statement, that kind of anti professional statement, that kind of disparagement of our profession which has dedicated itself to the very children we want to protect in this presumed good piece of legislation". We have all been besmirched.

Terry Minnow, Montana Federation of Teachers, said they oppose SB

330 and have some grave concerns about this bill and it's interpretation in local school districts. We do not want to protect anyone who may be engaging in inappropriate conduct, but feel this bill is currently worded far too sweepingly and can have a chilling impact on a school district and school employees.

Informational Testimony: None

Questions From Committee Members and Responses:

Chair Blaylock told Ms. Kradolfer she had given a very lengthy explanation of this bill and asked if she could very briefly say what this bill is really going to do anything that cannot be done right now. Ms. Kradolfer said this bill gives guidance to local trustees and school officials. It puts them on notice how the system should work, that when certain things happen, the person has been convicted of crimes, they follow through and the report shall be made to the local trustees and they will then conduct an investigation. They will have access to criminal files in the system and if there is reasonable grounds to believe the teacher's conduct falls within 1 e) or 1 f), they must then report to the Superintendent. The Superintendent needs additional information he/she has the authority to put up a further investigation. If the Superintendent believes there is sufficient information to support reasonable cause, he/she will then request the Board scrutinize the certificate. It clarifies that procedure, supplies immunity to the people who report, support penalties that exist under the law as well as a penalty of misdemeanor for failure to report. She said contrary to Mr. Campbell's understanding, the Superintendent did not try to bring six cases by taking them out of the newspaper. The Superintendent did successfully bring six cases by picking them out of the newspaper report. We have a gap here where the districts are not sure of what they should be doing, who they should be reporting to, what information they should be passing on, and what information they are entitled to have into their initial investigation.

Senator Brown told Ms. Kradolfer that he was troubled by the need for the bill and it seems what has really brought out the opponents, is section four. He asked how critical that section is to the bill. Ms. Kradolfer said she believed section four is absolutely critical to the bill. It does set out two "has the duty to" reports, tells them how they go about it, when they have to report and what it is they have to report.

Senator Brown said what jumped out at him in that section when he thought of his own years as a teacher, is that if he suspected someone was a pedophile in the school district, he would talk to the principal or superintendent. We do not need a law to make you do that, and he believed most teachers would do the same thing. This indicates he could get his certificate pulled if he saw something and did not take it as seriously as perhaps he should have and it could later be proven. Ms. Kradolfer said the

intent is to provide penalty for it. Senator Brown said we do not need a penalty in the law to make a teacher do what 99% of them would do anyway. Ms. Kradolfer said in looking at the cases that have come up, she believed that has not been the case. There are cases where teachers or administrators have seen things and thought it must not be what it appeared to be and did not report it. Under the child abuse neglect statutes, they have similar provisions, but don't have anything that would impact the certificate. The idea is to put you on notice that if you have a suspicion of misconduct, you should act on it.

Senator Brown asked Ms. Kradolfer if she was present on the behalf of the Attorney General and was told no, on behalf of the Board of Public Education.

Chair Blaylock said in looking at the law and listening to Ms. Kradolfer and the proponents of this bill, they are attempting to put in the law a requirement to make our school personnel, namely our administrators, do what a little courage would have them do anyway. School superintendents and principals are decently paid and one of the reasons they are is that they have some onerous duties, this being one of them. If they hear this type of thing, they are to call that teacher or person in and ask them what is going on. He did not believe you could legislate courage.

Ms. Kradolfer said while she did not disagree, in practice it doesn't always happen. The current bill does not put the duty on the administrators, it puts it on the trustees, often gets dealt with quietly and the person moves on to another district in another state.

Senator Waterman said this automatically puts the trustees right in the middle of the investigation at the same time there could be one going on by the County Attorney and the County Attorney's files would be open to the trustees as well. You have two simultaneous investigations going on at the same time. Ms. Kradolfer said there is nothing that would keep the trustees from relying on the County Attorney's investigation.

Ms. Kradolfer said it was not the intent of the Board to have the trustees investigating initially in section 1 and section 2. The wording we had intended and did not realize it was unchanged, was that the employee should report the matter promptly to the school administrator, superintendent, or the trustees of the district. The same language would be in section 2. The intent of the "or" is a recognition that there are small districts where there is not a chief administrator or superintendent.

Senator Brown said Mr. Moerer hinted there might be some civil liability that a trustee would be open to. If the trustee is the one this is reported to, obviously the trustee cannot have the certificate pulled as an administrator or a teacher could, so what do we do with the trustee who ignores the report. Ms. Kradolfer said there is a potential for civil liability, being

charged with a misdemeanor or official misconduct. Senator Brown asked who would bring the action and Ms. Kradolfer said if it is criminal the County Attorney would, if it is civil, the victim would have to bring it. She cited the example of a school district where a teacher had engaged with sexual improprieties with a student, the trustees allowed that teacher to resign and move on to a new district where the conduct was repeated. The victim of the second district would then have a cause of action against the first district because they failed to report as required.

Senator Brown asked if there would be a statute of limitations on it and Ms. Kradolfer said the tort section of limitation is three years. Senator Brown asked what if the child who was sexually abused grew up and claimed 20 years later he/she was psychologically damaged by what the trustee failed to report. Ms. Kradolfer said depending on the wisdom of the Legislature in passing the statute of limitations, there are several cases where there could be action based on that circumstance but it would follow the general statute of limitations.

Closing by Sponsor: Senator Nathe closed by reiterating his opening statement that we are dealing with children, the issue Senator Brown raised has already been addressed by the '89 legislative session where he had two bills which revamped and allowed people to go back if their psychological trauma could be tied back to sexual abuse and if they could prove that sexual abuse. We changed this so they had three years after the age of 18 to bring charges. When we deal with these cases we think of a one-on-one basis, in these cases which involve sexual abuse of children, the three he was familiar with, only one of which involved a teacher, there was multiple numbers of children involved. Unless you get on top of it at the start, you wind up with a lot of people involved. He cited the figures on Mountain View and Pine Hills and the money it cost in SRS to handle this later on, and said sexual abuse is something we have to get on top of, it is costing a lot of money through appropriations.

HEARING ON SENATE BILL 348

Opening Statement by Sponsor: Senator Halligan, Senate District 29, Missoula said this bill is on behalf of the Superintendent of Public Instruction today. He said members of the OPI were here and could explain the bill. The bill is the product of a 24 member commission in the last couple of years.

Gail Gray, Division of Accreditation, OPI, said Special Education has been fraught with litigation in the last decade as well as the spiraling costs of providing special ed. One area everybody seems agreed upon is that the system of allocating the state appropriation for special education is unfair, too complicated, too unpredictable, and has all kinds of problems. It directs the program from the state level rather than the district level and that was fine when there was 100% state funding or close to that

amount. The figure is now closer to 75% of approved costs, there is little flexibility for local school districts and it gives the false promise that if you identify more kids as having a disability you are going to get more money. She said as we have to provide more of those services, it means those that are "in the bag" are getting less and less. There are substantial problems with allocating special education funds. Because of so much frustration, Superintendent Keenan, at a conference she called annually, dedicated that particular one to talking about the issues associated with Special Ed and announced the formation of a commission to study special education funding. She set parameters by saying she wanted the focus to be on funding methods and to establish a funding method, irrespective of the level of Legislative appropriation. Ms. Keenan also emphasized it was essential to maintain the integrity of programming for students requiring special education, utilize all educational resources including those of general and special education effectively and productively and to create a predictable and manageable funding methodology for special education.

Ms. Gray gave further comments on the study and said the commission was appointed in November. She handed out the report from that commission to the Superintendent. (exhibit 2) She pointed out this is not a report from the OPI, it is from the commission which was a very geographically diverse and broad based group of people. She walked the committee through the report, giving actions of the committee and their conclusions.

Senator Blaylock asked if Ms. Gray was saying everybody gave 25% and she answered yes and added that Bob Runkel is available to answer questions and Dori Nielson, who worked on this, is ill.

Chair Blaylock asked if she was saying this can all be done within the \$33 million and Ms. Gray said they are saying the Superintendent said no matter how much we had, we have to have a better way of allocating it. There is an effective date in the next legislative session and it does say you would provide ANB for all students, and that does cost more money, because you have these kids in special education that are going half time that are not getting ANB right now. She said there is no fiscal note on this bill, but there would be one next session.

Senator Brown asked if she could give a "ball park" figure and she said in talking about providing ANB for roughly 2400 kids, we are talking about \$5 million per year to make sure all kids generate ANB. She said this is 2400 of the 18,000 predicted for this year, it is a small number, but it is a big impact to places that are not getting any funding for this.

Proponents' Testimony: Gail Cleveland, Director of Special Education for the Great Falls Public Schools, and was a member of the task force that spent two years working on this bill. She said the Special Ed Directors in the state are in favor of this bill, particularly in favor of the concept that all students get

ANB, and favor the issue of the block grants. She said the concept of taking kids out of the regular class and putting them into a separate segregated classroom is about over. The direction now is to take the students and work with them in a more natural regular classroom life environment.

Kathy Seacat, Montana congress of Parents, Teachers and Students spoke in favor of SB 348 and gave written testimony. (exhibit 3)

Larry Fasbender, Representing Great Falls Schools said one of the things that has not been done so far as this legislation is concerned is to fund numbers to see who is hurt and who is helped by this legislation. At this point he could not tell the committee whether the Great Falls Public Schools would be helped or hurt, but in discussing it with the Superintendent and others, they feel the concepts in this legislation would give them some flexibility and increase the fairness and equity so far as different school districts are concerned and feel SB 348 should be given careful consideration by this committee.

Loren Frazier, School Administrators of Montana said there are losers and winners and his membership looks at that, but none of them argue with the concept.

Don Waldron, Rural Education Association said his organization supports the concept of this bill. We have winners and losers, true, but we are concerned with the inequities of some districts that are spending very little of their own money and others spending a lot. They also feel it is important to look at the ANB schedule, since it is the number of kids we identify. He felt sometimes we over identify to get the funding and this should level that out.

Bruce Moerer, School Boards Association said they support the bill, but as others stated, we have not seen numbers and that always gives concern.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.


Closing by Sponsor:

Senator Halligan closed.

ADJOURNMENT

Adjournment: 2:42 p.m.


CHET BLAYLOCK, Chair


SYLVIA KINSEY, Secretary

CB/sk

ROLL CALL

SENATE COMMITTEE

EDUCATION

DATE 2/15/93

[illegible]

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Attach to each day's minutes

SB 330
Senate Education and Cultural Resources
February 15, 1993

TESTIMONY OF KIMBERLY A. KRADOLFER
ASSISTANT ATTORNEY GENERAL

I am legal counsel for the Board of Public Education and appear today on behalf of the Board to support SB 330. I have been an assistant attorney general for the State of Montana for some nine and a half years. For the past three and a half years, I have provided civil defense work to other State agencies and in that capacity I am retained by the Board of Public Education as their legal counsel. As part of my duties, I advise the Board with respect to cases in which a request is made to suspend or revoke a teacher's certificate or in appeals from a denial of a teacher's certificate.

Based upon the Board's experiences with the current suspension and revocation statute provisions, the Board has drafted this bill and has requested its introduction.

The bill before the committee looks fairly extensive. However, many of the changes that are reflected in the bill are simply an attempt to break up what was getting to be a very long, complex, and confusing statute. Therefore many of these changes are true "housekeeping" statutes in the truest sense of the word. The bill does a number of things, and I will address them each one by one. I would ask you, however, to review the provisions of the existing statute which are struck out and compare them with the substitute statutes. If you do so, you will realize that most of the provisions are nearly identical, if not actually identical.

We've simply broken the statute up so that it is not so hard to find what you are looking for. This way, there will be several statutes with headings that designate subject matter, so the reader can focus on the specific matter he or she is trying to find.

1. Administrators

The first thing that the bill does is to add the word administrator wherever it talks about teacher and specialist certificates. I would like to make it clear that the revocation provisions pertain to all teacher and specialist certificates as defined in section 20-4-106, MCA. That section looks at the various classifications of certificates issued to teachers, administrators including supervisors, adult education certificates, and various sorts of specialist certificates. This is a change merely to put the administrators on notice that their certificates are subject to the same review process that any other certificate would be.

2. "School or School District"

The phrase "school or school district" is used throughout the bill as revised. That is so that in those instances where there may be a private school which has reason to request suspension or revocation of a teacher's certificate, it may do so. The situation has arisen where a teacher certified by the State of Montana who

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was teaching in a private school was convicted of three counts of sexual assault. In that instance, the private school did request the Board to take action against the certificate, and action was taken. However, the Board would like the statute clarified so that there is no question that the Board has complete authority to act on suspension or revocation requests pertaining to the certificate of a teacher which is issued pursuant to the Board's rules -- whether they come from the private school or from one of the school districts in the State of Montana. This change clarifies that private districts may make a direct request to the Board, instead of being required to go through the Superintendent of Public Instruction.

3. Reporting Requirements

The substantive portion of this bill deals with clarifying the reporting requirements that currently exist with regard to teachers who have engaged in conduct that is described in 20-4-110(1)(1e) or (1f), MCA. As background, the committee should note that the original reporting requirement was enacted in 1987 as SB 232. It was carried by Senator Joe Mazurek at the request of the Montana Education Association.

Currently the trustees of the school district have the obligation to report to the Office of Public Instruction if a teacher is terminated or not renewed because the trustees have

reason to believe that the teacher or specialist engaged in the conduct described in subsection (1)(e) or (1)(f). Those sections deal with "conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;" or "immoral conduct related to the teaching profession."

"Immoral conduct related to the teaching profession" is narrowly defined by the Board in its regulations. The regulations were adopted after work by a task force that included representatives from the Montana Education Association, the School Administrators of Montana, the Office of Public Instruction, the Montana School Boards Association, and the Board of Public Education. The rules provide definition to the Board to assist it in determining what sorts of acts constitute moral turpitude related to the teaching profession.¹

Over the past three or four years, it has become clear that in some instances the local trustees are not reporting when they have reason to believe that teachers have engaged in the conduct defined in the statute. Some of the districts are very candid

¹The Board's rules define moral turpitude related to the teaching profession to include sexual contact or sexual intercourse with a student, sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct that is nonconsensual or with a student, offenses involving prostitution, endangering the welfare of children, sexual abuse of children, obscenity, and public display of offensive material, and drug offenses other than first offense misdemeanor convictions.

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about the fact that they are afraid of facing civil liability if they make a report and the Board does not find sufficient grounds to suspend or revoke a certificate. The districts therefore take a narrow reading and report only if there had been a technical nonrenewal of a teaching contract for the grounds set out in the statute or if there has been a good cause termination of employment based upon the conduct proscribed in the statute.

In some instances, the situation that forms the basis for a belief that conduct occurred is something that causes a major rift in the community. The trustees, therefore, don't always want to report it. In some instances, a teacher has handed in a resignation to an administrator so that the trustees were never technically put on notice that such conduct occurred and were, therefore, not required to report.

In two instances, a local district extracted a resignation from the teacher and agreed to not report the conduct if the teacher voluntarily returned his or her teaching certificate. However, there is no provision in state law which allows the Board to accept a returned certificate without taking official action to suspend or revoke. Such a provision would also not be desirable since the Office of Public Instruction would then be unable to place the action on the national registry of certificates to notify other states that action had been taken in Montana and the grounds for such action. In one of the two cases in which a teacher

attempted to return his certificate, he and his attorney were quite candid about the teacher's intent to obtain reciprocal certification in a mid-western state and to continue teaching.

I want to emphasize to the committee that there are only a few cases which arise under these provisions in any given year. This bill is intended to clarify the procedures and the duties of the parties in investigating and reporting such instances. It provides specific procedures and authority. It requires that investigations be handled confidentially and that files be maintained confidentially. It provides for penalties for failure to report and investigate and for immunity for those who do.

Over the course of the last four years, Beda Lovitt, the former legal counsel for the Office of Public Instruction (OPI), and I have tracked these cases and have attempted to bring them before the Board so that it could review whether or not it was appropriate to take action against a teacher's certificate. In a number of these instances, the cases were brought before the Board only because Ms. Lovitt had picked out the case from a newspaper article pertaining to the criminal charges that were pending against a teacher or where a conviction had been entered for an offense that would constitute moral turpitude in this state or another state or country. After picking that information out of the newspaper, Ms. Lovitt would then contact the local trustees and attempt to get them to file an official request with the

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Superintendent's office so that the Superintendent could begin an investigation and make a determination as to whether it was appropriate to allow the Board to scrutinize the certificate.

I have reviewed all of the cases which the Board has considered in the past three and a half years or which came to the attention of OPI and were reviewed by OPI to determine whether or not to request revocation or suspension for any reason. There have been a total of 22 cases which fall into the following categories:

A. Five of the cases are situations in which action was requested were instances in which a person provided false information on an application and a check by OPI of the national data base on teaching certificates or anonymous tips provided sufficient information for OPI to act. These cases did not involve anyone who was actually living in Montana.

B. Four of the 22 cases involved requests by a local district to take action based upon substantial and material nonperformance, where a teacher broke his or her contract.

C. One case was reported to OPI by a private school after the teacher had been convicted of three counts of sexual assault.

D. In two cases a local district requested a teacher to resign and to then voluntarily return his or her certificate. The same local district was involved each time. In one instance, there was a criminal conviction for sexual assault which OPI used to request action. In the other instance, the local district had

deposed various individuals and had an investigation in its possession. The district wanted the Board to take action, but did not want to release the information it had gathered. Ultimately, the district agreed to provide the investigative materials to OPI so that a review could be made of the need for action. In that instance, the teacher chose to not contest Board action.

E. In four cases, the local district requested the Board to take action. Two of the four requests were from the same district and involved situations in which the teachers had both been convicted of multiple counts of sexual assault or assault. In the other two cases, the districts relied upon a police investigation or a Human Rights investigation. They both involved sexual improprieties with students.

F. There were a total of six cases which were brought to OPI's attention only because Beda Lovitt happened to pick them up from newspaper articles on criminal matters or which came to OPI's attention because the victims came forward to OPI to request action. OPI unsuccessfully sought access to an investigative file in one of those cases and was unable to gather sufficient information to move forward on two of the others. OPI did go forward at great effort on three of those cases, however, in spite of a reluctance or refusal of local authorities to provide information on the cases.

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G. Finally, there are other cases out there which are not being reviewed in any manner to determine whether it is appropriate for a teacher, administrator, or specialist's certificate to be scrutinized. Board member Sally Listerud provided me with a newspaper clipping from November 1992 which discusses a Montana special education director who has entered into an agreement for a deferred prosecution on three counts of sexual intercourse without consent with a three year old. That individual still holds his position in his school district. All of the court documents and criminal investigative files have been sealed by the district court pending resolution of the deferred prosecution.

As I indicated above, there are a relatively small number of cases in which this problem arises. This bill is not intended as a witch hunt to look for teachers who are engaging in inappropriate conduct. Rather, it is simply a bill that is designed to clarify the duty on a local district which has knowledge of inappropriate conduct on the part of the teacher to report that information to the Superintendent of Public Instruction so that review can be made and action taken if it is appropriate.

a. Duty to Report

There are two separate duties to report which are set out in the statute now. The intent of the bill is to pattern itself to an extent upon the child abuse and neglect reporting statutes.

1. Any school employee.

The first duty requires any person who is employed by a school district and who may have knowledge or who may come into knowledge of a teacher engaging in conduct described in subsection (1)(e) or subsection (1)(f) to report that matter to the administrators and trustees of the district that employs the teacher, administrator, or specialist. That duty would apply to any employee of any school district. That is because the Board recognizes that in many instances the teacher or employee of one school district may have contact with a student from another district and may come into information that should be investigated. For example, a speech coach from one school might observe or learn of inappropriate behavior between a teacher at another school and one of his or her students. That speech coach would then have the duty to contact the trustees at the school or the administrator at the school where the student was enrolled. At that point, the duty to report anything would end.

b. District administrator's or trustees' duty to report.

A second sort of reporting requirement that is found in this statute clarifies the duty that is the duty on the administrator of a school district or its board of trustees. When a report by anyone is made to the school district--either to its administrator or to one of the trustees, the school then has a duty to

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investigate it. After investigation, if there are reasonable grounds to believe that the teacher, administrator, or specialist has engaged in the conduct described in 20-4-110(1)(e) or (1)(f), the district administrator or trustees would then have a duty to report that to the Superintendent of Public Instruction.

That means that the if the victim himself or herself comes in and tells an administrator or a teacher or a trustee, and the district is, therefore, in possession of such information, the district then has a duty to conduct an investigation. While it conducts its investigation, the district has a duty of maintaining confidentiality on the matter. Again, it is not the intent of the Board to make this a witch hunt and to drag people's names through the mud. However, if there is information presented to a district that such conduct has occurred, it is incumbent upon the district to move forward to conduct a confidential investigation.

If, after investigation, the administrator of the district or its trustees have reasonable grounds to believe that the teacher, administrator, or specialist has engaged in the conduct described in the statutes, the chief school administrator or the trustees there will then have a second duty to report. That duty is the duty to report in writing to the Superintendent of Public Instruction.

c. Written report to Superintendent of Public Instruction.

The report which this bill requires the local district to provide to the Superintendent is a written report that must be filed within 30 days after the administrator or trustees have reason to believe that the teacher, administrator, or specialist has engaged in the proscribed conduct. The report must set out the basis for the belief that the conduct has violated the subsections, and it has to provide the Superintendent with copies of all the investigative materials or other evidence that was available to the school or the school district and that is relevant to the matters which were alleged or it could lead to the discovery of relevant evidence.

4. Investigative Authority of the Superintendent

Section 5 of the bill clarifies the investigative authority of the Superintendent. It provides that the Superintendent shall be provided access to any of the materials that would be available to the school or school district where the superintendent is investigating whether it is appropriate to request suspension or revocation action against a teacher's certificate. It also clarifies that the Superintendent has authority to conduct an independent investigation to determine whether there are grounds to act against the certificate.

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5. Access to Criminal Justice Information

Section 6 of the bill clarifies that the Superintendent of Public Instruction and the local trustees who are investigating allegations of violation of subsection (1)(e) or subsection (1)(f) may apply to a district court to review confidential criminal justice information that is relevant to the investigation. As I indicated before, the Superintendent has sought such information and on one occasion was granted access to such information.

The Montana Criminal Justice Information Act allows release of confidential criminal justice information pursuant to a written release by the person to whom that information pertains, it allows for sanitized information to be released for certain statistical purposes, and there is a general provision that allows the district to release such information where it is appropriate. This provision in the bill simply will clarify that this can be an appropriate situation for a district court to release such information. It will establish that the Legislature recognizes that it is appropriate for an investigation to be conducted into allegations of this nature and that the trustees and Superintendent should be provided with the means of ascertaining whether or not there is a basis for requesting a review of the teacher's certificate.

Again, there is a confidentiality provision in this section of the bill which requires that the court issue a protective order

to protect the confidentiality of the information that is released. And that is the standard approach the district courts will take when sensitive information is released.

6. Immunity

Section 8 on immunity is the identical provision which existed in the old statute. There is no change.

7. Jurisdiction

Subsection (3) which has been added to 20-4-110 on page four of the bill simply clarifies that if there has been a request made to act on a teacher's certificate that is made before that certificate has expired, the Board retains jurisdiction to act on the request. This again will allow the Board to continue action on a certificate and to get any action on the national registry of information. There was a recent Montana Supreme Court case addressing the jurisdiction issue of the Board of Medical Examiners. In that case, the Board of Medical Examiners had initiated action against a doctor's certificate. The term of the doctor's license expired during the course of those proceedings, and the doctor attempted to argue that the proceedings were, therefore, null and void. That would have allowed the doctor to go to another state, gain a license there, and to be able to

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truthfully answer to questions in the other state that no action had been taken against his license in Montana.

The court recognized that the Board of Medical Examiners retained jurisdiction to act on such a certificate since it has initiated action prior to the expiration date. That holding was based upon the wording of the statute on revocation of doctors' licenses. For that reason, the Board is requesting similar language in this statute that will clarify continuing jurisdiction.

8. Hearing

Section 2 of the bill is virtually identical to the old statute on hearings. There are a few minor changes which were made by Legislative Council simply for clarification and to make it gender neutral.

The only actual change to the bill was to clarify that the Board has the option to not only suspend or revoke a teacher's certificate, but to also place a written reprimand in the teacher's certification file.

9. Appeal of Denial of Certificate

Section 3 of the bill is identical to the language in the old statute.

10. Confidentiality

Section 7 of the bill has a specific provision that requires that the trustees, superintendent, and Board of Public Education protect the confidentiality of the individuals involved and ensure the confidentiality of any report made, submitted, or obtained under the provisions in this bill.

This section also provides that once an investigation has been concluded, the records pertaining to the investigation must be sealed by the entity that holds those records. Those records can then only be released by written consent of the party or parties to whom they pertain or by order of the district court. This makes a plea that there is, in fact, a very high duty of confidentiality to protect the good name of the teacher who has been accused and for whom there has been no basis in fact found to support the allegations that were made.

11. Penalty

This bill also provides a penalty for failure to report. It is found in both section 9 of the bill and in section 1 of the bill under 20-4-110(1)(i). Subsection (1)(i) provides that one basis for action against a certificate of a teacher, administrator, or specialist is their failure to report pursuant to the statutory duty that this bill imposes.

The other penalty provisions in section 9 are mirrored from the penalty provisions in the child abuse and reporting statutes. Subsection (1) places those persons who have a duty to report on notice that their failure to do so could subject them to civil damages proximately caused by the failure to report. This is not a new penalty that this Legislature is imposing. Where there is a statutory duty imposed that is designed to protect a certain group of people and the person on whom the duty is proposed breaches that duty which causes harm to someone who should have been protected by the statute, that is negligence as a matter of law. Here, if a teacher or school district failed to make a report and to investigate allegations of conduct proscribed under subsection (1)(e) or (f), the teacher simply moved on to another district or another state and engaged in similar conduct and injured a student in the new location, the person or institution that failed to report could be determined to be negligent as a matter of law.

Subsection (2) provides that it is a misdemeanor to fail to report. Finally, subsection (3) provides that if a school trustee fails to report as required, that would constitute official misconduct within the meaning of the official misconduct statutes. Again, that is not a new penalty imposed by this Legislature. This provision in the bill simply places an elected official on notice

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that to fail to perform a mandatory duty proscribed by law would
or could be grounds for official misconduct proceedings.

12. Codification

The Board is asking that these sections be codified as an integral part of Title 20, chapter 4, part 1. As I noted above, we're asking that 20-4-110 be broken down into a number of smaller statutes which each pertain to a single matter. That will simply make it easier for the average person to follow and to understand what procedures they need to go through.

13. Effective Date

The Board requests that this bill pass with an effective date of July 1, 1993.



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE RAY PECK

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COMMITTEES:
APPROPRIATIONS
LEGISLATIVE FINANCE

SENATE EDUCATION
EXHIBIT NO. 2
DATE 2/15/93
S BILL NO. 348

January 22, 1993

Nancy Keenan
State Superintendent
Office of Public Instruction
State Capitol
Helena, Montana 59620

Dear Nancy:

The following is a brief report on the activities of the Special Education Funding Commission. The Commission convened seven times between December 11, 1991, and November 23, 1992, and consisted of twenty-four members (list enclosed). The results of their deliberations are enclosed.

Sincerely,

Ray Peck, Chairman
Commission on Special Education Finance

RP/mc

Enclosures

LIST OF MEMBERS OF THE SPECIAL EDUCATION FUNDING COMMISSION

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SPEC. ED. FUNDING COMMISSION
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MILES CITY SCHOOL DISTRICT
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COMMISSION ON SPECIAL EDUCATION FINANCE FINAL REPORT

January 20, 1993

INCLUSION OF SPECIAL EDUCATION STUDENTS IN ANB

All special education students shall be counted for ANB under the current foundation program funding schedules, not only those in special education half time or less.

STRUCTURE AND MEMBERSHIP OF SPECIAL EDUCATION COOPERATIVES

1. By July 1, 1994, geographic areas for coops will be defined using the School Administrators of Montana (SAM) regional organizations to advise the State Superintendent. One representative from every district, county superintendents and coop directors should be involved to recommend coop boundaries within their regions so that all school districts in the state will be included in a coop boundary. Coop boundaries should be drawn so that they are contiguous and do not overlap.
2. Although all districts will be included in a coop boundary, districts will not be required to be members of the coop. One objective of the new funding model, however, is to strongly encourage coop membership by providing incentives to join.
3. The total number of coops statewide will be no greater than the present number.
4. Coop accountability will be increased through increased reporting (e.g., a Fall Report of service patterns, and/or an upgraded Trustees' Report for expenditures).
5. A qualified special education director must oversee the special education component of any coop programs.

INSTRUCTIONAL BLOCK GRANT

1. The purpose of the instructional block grant will be to fund allowable costs for teacher salaries, aides, equipment and supplies, and will include contracted instructional services from the cooperative or other districts.
2. The calculation of funding for the instructional block grant will be based on the district's ANB count (including all general and special education students). It will be a single rate per student and not indexed on school size.

3. The block grant will be allocated to all school districts, whether hosting a special education program or not.
4. The school district must provide a match of local dollars to qualify for the block grant.
 - a. Districts would not retain any unmatched portion of block grant. The unmatched portion would be determined by reviewing the trustees' summaries.
 - b. A 75% state and 25% local match would closely approximate the contribution to the general fund of the permissive amount raised based on state special education payments to districts and cooperatives. Currently in the general fund, districts may permissively raise 35% of special education payment (plus prorated coop amounts) and receive GTB for those permissive mills, if eligible.

RELATED SERVICES BLOCK GRANT

1. The purpose of the related services block grant will be to fund related services personnel and aides, administrative costs, independent evaluations, medical evaluations, and in-service training costs.
2. The related services block grant will be provided to cooperatives and non-member districts.
3. The calculation of the grant will be based on a dollar amount per ANB in the coop or non-member district. The funding rate for related services will be indexed differentially for coops and for non-member districts. The index will serve to compensate coops for additional costs of operation (such as travel costs) and serve as one of the incentives for joining cooperatives.

REIMBURSEMENT OF DISPROPORTIONATE LOCAL DISTRICT COSTS

The Commission on Special Education recommended that the Office of Public Instruction construct a model for reimbursing specified allowable costs beyond those covered by other funding. The model would take into account various factors, including excess costs on the state level, tax equalization (e.g., using a mechanism like GTB reimbursement), with reimbursement not to exceed 65 percent of total local district excess costs. GTB would be used to calculate the local district portion of the disproportionate cost.

ADVANCE REIMBURSEMENT

The Commission on Special Education recommended that the Office of Public Instruction include a provision for advance reimbursement. A district can choose to be reimbursed during the current budget year, upon submitting evidence that all available options for funding have been exhausted.

CONTINGENCY

Contingency funds will be eliminated under the new funding model.

INSERVICE TRAINING FOR PERSONNEL

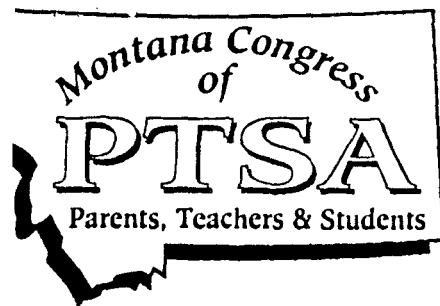
All special education cooperatives and non-member districts will be encouraged by the OPI to set aside at least 5 percent of their Part B and Preschool entitlements for inservice training regarding special education to better serve special education students.

FUNDING SHORTFALL

The Commission on Special Education Finance also recommended that, should the total amount of the instructional block grant, the related services block grant and the reimbursement fund exceed the total available state appropriation, adjustments to each shall be made, such that all grants be funded at an equal percent of the total.

PHASE-IN OF THE FUNDING MODEL

Any new funding model shall incorporate a phase-in provision to prevent an excessive or rapid loss or gain of funding to schools impacted by changing criteria.



SENATE EDUCATION
EXHIBIT NO. 3
DATE 2/15/93
S BILL NO. 348

Testimony S.B. 348
Senate Education & Cultural Resources
February 15, 1993

Chairman Blaylock and Members of the Senate Education & Cultural Resources Committee;

I am Kathy Seacat, Legislative Coordinator for the Montana Congress of Parents, Teachers and Students. We are commonly known as the Montana PTSA and we are the largest child advocacy organization within the state. The National PTA, our parent organization, is the largest child advocacy organization in the nation with 7 million members. The welfare and safety of children and youth is at the heart of all we do and advocate. One of our objects is to secure adequate laws for the care and protection of all children and youth in our state and nation.

Today I am here on behalf of the 10,250+ members I represent to address S.B. 348 and to ask you to support this act to authorize full-time special students to be regularly enrolled for ANB purposes. The Montana PTSA and National PTA actively support the right to a quality education for children with special needs. We even have a resolution on file which supports a return to full funding of the direct costs of special education by the State of Montana. (Copies of MPTSA and NPTA resolutions attached.)

Costs associated with special needs students go above and beyond the costs associated with the average student. This bill will make sure that the local school district receives foundation program funding for every student, including the special needs students. On top of the foundation program funding local school districts will receive a supplemental dollar amount for every student to meet the additional needs of special needs students. This supplemental dollar amount will be in the form of an instructional block grant and a related-services block grant. This revised process should equalize and simplify the special education funding process.

Please support passage of S.B 348. Thank you for your time and attention.

Kathy Seacat
2710 Tizer Road
Helena, MT 59601
443-6637

SPECIAL EDUCATION FUNDING

- Whereas, A free and appropriate education in the least restrictive environment is mandated under Public Law 94-142; and
- Whereas, The Montana Constitution, Article X, Section 1 sets as a goal to "develop the full educational development of each person;" and
- Whereas, The MPTA has always supported programs for exceptional children; and
- Whereas, Full state funding for direct services has allowed a child to attend any school that provides classes to meet his special needs; and
- Whereas, No district is required to accept children into classes which meet his special needs if he resides in another district; and
- Whereas, Duplication of classes in all districts in the state would be prohibitively expensive; and
- Whereas, Full state funding of direct special education removes district boundary problems in placement to best meet the needs of individual students; and
- Whereas, The 1979 Montana Legislature placed a ceiling on the amount the state will pay for special education and returned part of the direct classroom costs to the local district taxpayers; therefore be it
- RESOLVED, The MPTA support a return to full funding of the direct costs of special education by the State of Montana.

P O S I T I O N S T A T E M E N T

(Adopted by the 1991 Board of Directors)

EDUCATION FOR HANDICAPPED STUDENTS

The National PTA believes that all children have the right to a quality education that allows each child to reach his or her fullest potential.

The National PTA, therefore, supports and works for legislation that will provide for the educational needs of all children. Children with handicapping conditions, physical and/or mental, must receive special or additional educational services. The NPTA supports PL 94-142, The Education for All Handicapped Children Act of 1975, "which requires local school divisions to provide for the educational services for children with special needs."

As part of its commitment to the educational needs of children and youth, the NPTA monitors through its constituent bodies compliance with PL 94-142; seeks implementation of this law and responds as it did in 1982 to any proposed changes/additions to PL 94-132.

The NPTA believes that in order to protect all children and their parents/guardians served by PL 94-142, the following criteria must be included in the regulations:

- maximum parental involvement in special education decisions
- maximum safeguards to ensure that all handicapped children receive free, appropriate public education in the least restrictive environment
- related services promised in the Act to meet the unique educational needs of handicapped children, and
- guarantees of the protection of the rights of handicapped children and those of their parents or guardians including due process.

DATE 2/12/93
 SENATE COMMITTEE ON Education
 BILLS BEING HEARD TODAY: Executive Action
SB 330, SB 348

| Name | Representing | Bill No. | Check One | |
|----------------------|---|----------|-----------|--------|
| | | | Support | Oppose |
| Kimberly A Kradoffer | Bd of Public Educ | SB330 | X | |
| Jude Oberst | Parents 1091 | SB 348 | X | |
| Phil Campbell | MEA | SB330 | | X |
| Chip Edmonson | MESA | SB330 | X | |
| Larry Tashender | Great Falls Public Schol | SB348 | X | |
| Jack Capps | OPI | SB 330 | | |
| | | SB 348 | X | |
| Kathy Seacat | Montana Congress of Parents Teachers & Students | SB 348 | ✓ | |
| Dore Waldron | MREA | SB 330 | | |
| | | SB 348 | ✓ | |
| Gail Cleveland | Montana Council of Special Ed Admin | SB 348 | ✓ | |
| Marion Evenson | Etazier | SB348 | ✓ | |
| Loran Frazier | S An | SB 330 | | |
| | | SB 348 | ✓ | |
| Pat Jones | OPI | 348 | ✓ | |
| Bob Ruckel | OPE | 348 | ✓ | |
| Joan Schmeier | CSPA | 330 | X | |
| Tina M... | ME | 330 | | X |
| | | | | |

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY