# MINUTES

## MONTANA SENATE
## 54th LEGISLATURE - REGULAR SESSION

## COMMITTEE ON EDUCATION

**Call to Order:** By **VICE-CHAIRMAN JOHN HERTEL**, on February 6, 1995, at 1:05 p.m.

### ROLL CALL

**Members Present:**
Sen. John R. Hertel, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Delwyn Gage (R)
Sen. Loren Jenkins (R)
Sen. Kenneth "Ken" Mesaros (R)
Sen. Steve Doherty (D)
Sen. Gary Forrester (D)
Sen. Barry "Spook" Stang (D)
Sen. Mignon Waterman (D)

**Members Excused:** Sen. Daryl Toews, Chairman (R)

**Members Absent:** N/A

**Staff Present:** Eddye McClure, Legislative Council
Janice Soft, Committee Secretary

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

**Committee Business Summary:**
Hearing: HB 151, HB 99, SB 172
Executive Action:

VICE-CHAIRMAN JOHN HERTEL CHAIRED THE MEETING IN THE ABSENCE OF CHAIRMAN DARYL TOEWS

### HEARING ON HB 151

Opening Statement by Sponsor:

**REP. RAY PECK, HD 93, Havre,** said **HB 151** takes the sunset off the compensated absences fund and allows districts to continue to accumulate a reserve for payment of accumulated sick or vacation leave of non-teaching personnel upon their termination. It would also be based on the current rather than prior year. Any money remaining at the end of the fiscal year could be reappropriated

for the next fiscal year.

Proponents' Testimony:

**Lynda Brannon, Montana Association of School Business Officials (MASBO),** expressed appreciation to **REP. PECK** for bringing **HB 151** before the committee. **HB 151** allows for more control and better management of school monies. **HB 151** does not change what schools are currently doing as to paying compensated absences, nor does it have a significant fiscal impact.

**Loran Frazier, School Administrators of Montana (SAM),** said SAM wishes to go on record as supporting **HB 151.** At a time when budgets are getting tighter, **HB 151** allows schools to plan for future liabilities. This is good fiscal management.

**Michael Keedy, Montana School Boards Association (MSBA),** said they were fully in support of **HB 151** for reasons already stated. MSBA believes **HB 151** gives schools flexibility to go along with funding requirements which hit them from time to time. **Mr. Keedy** asked the committee's favorable support of **HB 151.**

**Don Waldron, Montana Rural Education Association (MREA),** said **HB 151** is a good bill and urged the committee's support.

**Larry Fasbender, Great Falls Public Schools,** voiced support for **HB 151.**

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. DELWYN GAGE** asked what was repealed in **HB 151. REP. PECK** said it was the sunset date.

**SEN. LOREN JENKINS** asked if the 30% was repealed. **REP. PECK** said it wasn't and **Eddye McClure** further explained the termination date was repealed so existing law could be used.

**SEN. JOHN HERTEL** wondered about the bills dealing with monies being moved from the schools' General Funds to other funds. **Kathy Fabiano, OPI,** said she was aware of at least three such bills. The question of the transfer being within or outside the budget caps originally surfaced with HB 28. OPI determined the transfers were to be within the budget cap. The Attorney General ruled schools could move and spend the money outside the budget caps; however, the AG also said it was a policy question which the legislature should address.

**SEN. GAGE** asked

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Closing by Sponsor:

**REP. PECK** said the legislature dwindled schools' reserves so paying compensated absences liability from the General Fund would be a hardship; therefore, it only made sense that the legislature allow them another way to meet the obligation.

## HEARING ON HB 99

Opening Statement by Sponsor:

**REP. DANIEL FUCHS, HD 15, Billings,** said **HB 99** clarified the state's definition of a displaced homemaker so as to bring it into conformity with the federal Carl D. Perkins Act. He asked that the word, "and," be added to the end of line 18 because it was inadvertently omitted. It needs to be included in order to match exactly with the wording of the Carl D. Perkins Act. **HB 99** is an enhancement to the program and has no fiscal impact.

Proponents' Testimony:

**Sheila Hogan, Executive Director of Career Training Institute & Vice-Chairman of Montana Displaced Homemaker Network,** said there were 14 displaced homemaker centers in Montana. **HB 99**, with its language to conform to the Carl D. Perkins Act, is valuable because of (1) administrative efficiency. The new definition will be closer to the definitions for other federal programs which means that less time will be spent on administrative functions and more on direct client services; (2) allowing the ability to more adequately address the needs of this population by the use of more dollars. The Carl D. Perkins program assists the population in lieu of the welfare system. The language change would be helpful in adequately packaging dollars in meeting the needs of the population.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

**SEN. GARY FORRESTER** asked what, exactly, was the problem **HB 99** addressed. **REP. FUCHS** said it was language clarification for administration. **Ms. Hogan** explained that someone may be qualified under the state displaced homemaker program but may not qualify for training under Carl Perkins; therefore, eligibility is determined differently for two programs. The language change in **HB 99** would allow serving clientele under both programs.

**SEN. FORRESTER** said the Carl D. Perkins money comes to the state through the Commissioner of Higher Education and wondered about the cost. **Jane Karas, State Director for Carl D. Perkins,** said the Carl D. Perkins funds received for the displaced homemaker program are administered through the office of the Commissioner

of Higher Education. The Office of Public Instruction is also contracted to administer the secondary Perkins program.

**SEN. FORRESTER** wondered how much Carl Perkins money would be used for this program which is not being used now. **Ms. Karas** said the same amount of displaced homemaker monies would be used, further explaining that there are two programs for displaced homemakers. **HB 99** addresses the state displaced homemaker program which is funded with state funds. The Perkins displaced homemaker program uses only federal dollars. The problem is the two programs have differing definitions for displaced homemaker, which means service providers must do the paperwork twice. The result is more money for administration and less for the client services.

**SEN. FORRESTER** again asked for the dollar figure. **Ms. Karas** said she had no state figures but about $300,000 in federal monies was received across Montana. **SEN. FORRESTER** wondered who would lose since there would be more recipients from an amount of Perkins money which did not increase. **Ms. Karas** said the same people would be eligible for the Perkins as would be eligible for the state displaced homemakers money. **Sheila Hogan** also answered **SEN. FORRESTER** by saying the language change in **HB 99** would allow clients to use state as well as Carl Perkins funded training, which is a better use of the monies from an administrative standpoint.

**SEN. JENKINS** asked if line 29 was correct, i.e. "criminal offender", and commented it was his understanding it was not in present state law. **Ms. Hogan** said it was a definition in the Carl Perkins act. **SEN. JENKINS** asked for verification of his interpretation that criminal offenders would be the only ones to benefit from the change because the other criteria is already covered by both the Perkins and state programs. **Ingrid Danielson** said **HB 99** proposes to replace the state definition of a displaced homemaker with one of the two federal definitions under which Montana is currently operating.

**SEN. JENKINS** was curious about the two federal definitions. **Ms. Danielson** said they were the Job Training Partnership Act and the Carl Perkins Act.

**SEN. JENKINS** stated "criminal offender" was added and lines 26-27 were deleted. He wondered if there were other differences between the state and federal definitions. **Ms. Danielson** said the changes were mostly housekeeping which streamlined the language.

**SEN. JENKINS** wanted clarification of the definition of a displaced homemaker. **Ms. Danielson** explained it would read as found in 3a plus b,c,d & e.

**SEN. GAGE** also asked for clarification, wondering if qualifications for a displaced homemaker required the language in 3a & b plus either c or d. **Ingrid Danielson** verified his

understanding. **SEN. GAGE** also wanted to know if

*{Tape: 1; Side: A; Conversation between Sen. Gage and Ingrid Danielson is too garbled to transcribe.; .}*

**SEN. KEN MESAROS** asked what would happen if the other federal definition were chosen. **Ingrid Danielson** said there was $216,000 set aside from out-of-state money for the displaced homemaker program

*{Tape: 1; Side: A; Approx. Rest of conversation between Sen. Mesaros and Ingrid Danielson is too garbled to translate; .}*

**SEN. WATERMAN** asked if she was correct in saying if Montana conforms to the Carl Perkins Act, the clientele served are at risk of going on welfare, and if the conformity is to the Job Training definition, the clientele must already be on welfare. **Ingrid Danielson** verified her understanding.

**SEN. JENKINS** asked how many people were involved and **Mr. Danielson** said there were about 216 women at risk who were served each year.

Closing by Sponsor:

**REP. FUCHS** reminded the committee the purpose of **HB 99** was to bring the two definitions together to make the displaced homemakers program easier to administrate. **REP. FUCHS** asked for favorable consideration from the committee for **HB 99.**

## HEARING ON SB 172

Opening Statement by Sponsor:

**SEN. TERRY KLAMPE, SD 31, Florence,** said the intention of **SB 172** is to improve education. The words in Section 1, line 14, will hold school districts accountable for setting and maintaining reasonable educational expectations. **SEN. KLAMPE** stressed **SB 172** is not an anti-tenure bill, nor is its purpose to get teachers fired. Rather, there needs to be an achievable educational standard in order to address poor performance by some teachers. **SB 172** is a way for teachers and supervisors to hold the system accountable to reasonable educational standards.

Proponents' Testimony:

**Ernie Jean, Superintendent, Florence-Carlton Schools,** said **SB 172** was a positive step in improving education. **SB 172** continues the statutory provisions currently in law and protections for teachers which tenure brings. The bill allows for a greater performance accountability of tenure teachers. **Mr. Jean** declared he is not opposed to the tenure provision for teachers; it was

instituted for protection against capricious terminations. He said current statute was enacted in a time long since past, and at times, bears little touch with the reality of the '90's. Once a teacher has achieved tenure status, there is often no incentive, except the teacher's personal desire, to improve performance.

**Mr. Jean** stated that according to current statute, the only reason a tenure teacher could be dismissed is if he/she were declared incompetent, unfit, immoral or insubordinate. The truth of the matter is these definitions and the proof of them are nearly impossible to make. **SB 172** adds "failure to meet the educational expectations of the district" as another reason to terminate a tenure teacher.

He also said it was difficult to write exact language which would have broad application into a bill, explaining each district's expectations will be unique to that district. It is for the above reason **SB 172** seems vague to some people.

**Mr. Jean** said it has been asked who would make the determination and he responded by saying the school boards establish the priorities which undergird the specific practices outlined by the teachers' direct supervisors.

Another objection to **SB 172** is it would open the gate for tenure teacher termination across Montana. **Mr. Jean** said it was highly unlikely to happen because the majority of Montana's teachers and school districts do an excellent job of encouraging improvement and not termination.

The placement in Statute **20-4-207** seems to be another reason for disapproval of **SB 172**. **Mr. Jean** said it was there because when a case is brought, case law supports the fact that the judge looks to **20-4-207** to require the district to prove the reason for dismissal.

**Mr. Jean** ended by giving the example of a teacher who, after 20 years, seemed to be tired and worn out. This was evident by the way the class was conducted -- students were handed a sheet of questions and were expected to find the answers in the text. Supervisors attempted to improve this teacher by making other classroom and teacher observation and workshops available. The teacher, however, would not take advantage of the offers. **Mr. Jean** concluded incompetence and unfitness would be hard to prove in a court. The above teacher would probably hide behind the law when encouraged by his supervisors to improve, knowing the district would not bring termination charges. **Ernie Jean** encouraged the committee to give **SB 172** DO PASS.

**Michael Keedy, Montana School Boards Association (MSBA),** voiced support for **SB 172**. He mentioned Mr. Klampe had already pointed out the only change in **20-4-207**, which is line 14. The founders of the Constitution delegated the general supervisory authority

of the public school system to the Board of Public Education, but it vested supervision and control of public schools in the locally elected boards of trustees. **Mr. Keedy** said **SB 172** would allow school districts to take adverse action in the case of a teacher who is able to perform at a bare minimum of sufficiency but who is only just competent under some broad state standard. The standard is what insulates him from termination decisions and actions of the trustees.

**Mr. Keedy** also contended **SB 172** would inspire administrators to do a better job of monitoring, working with and attempting to improve performance records of both tenure and non-tenure teachers. He summed up his testimony by encouraging the committee members to ask themselves if they would change **20-4-207** if the present language were the same as **SB 172**, i.e. is there something objectionable about the language of **SB 172.**

**Chip Erdmann, Montana Rural Education Association (MREA),** said there were three statutes in Montana which deal with teacher termination: (1) **20-4-206** (non-tenure teachers); (2) **20-4-204**

*{Tape: 1; Side: B; Approx. Counter: ; Comments: .}*

(tenure teachers); **20-4-207** (mid-contract termination which applies to both non-tenure and tenure termination). **20-4-207** is Montana's standard for teacher terminations. Incompetency is the only reason which deals with performance, and there is no definition by which to judge. **Mr. Erdmann** reminded the committee **SB 172** applies to both teachers and administrators.

He said if Montana tenure teachers are evaluated as not performing up to standard, the district must provide a plan of improvement. If, after a period of time, the teachers still are not performing up to the district standards, yet cannot be termed incompetent, the school district can do nothing. **SB 172** would provide for greater accountability and **Mr. Erdmann** urged a DO PASS.

**Loran Frazier, School Administrators of Montana (SAM),** rose in support of **SB 172** because it offers a better system of accountability than past bills dealing with the issue. He said schools still must show their reasonable expectations; consequently, the fear that expectations may be unreasonable is unfounded. **Mr. Frazier** shared several definitions of incompetency, based on court decisions. **EXHIBIT 1** lists the definitions found in Black's Law Dictionary, while **EXHIBIT 2** gives a definition based on a court ruling in Missoula County School District 1 vs. Anderson. His concluding remarks were **SB 172** adds more accountability in the evaluation of teachers and administrators.

**Robert Smith, Superintendent, Box Elder District,** gave support for **SB 172**, saying he was a former tenure teacher and now a superintendent. He remarked **SB 172** was good for students, for

schools and for instructional improvement. **Mr. Smith** said there was no cost involved except seeds for increased community involvement, parent participation, professional growth plans and enhancement of the learning process. **SB 172** can focus job performance on particular criteria for both principals and teachers; and invites input from teachers in organizing board policy, places parents more in a proactive than reactive position. **Mr. Smith** said **SB 172** could upgrade the performance of teachers and administrators because the expectations would be in writing. He urged support for **SB 172.**

Opponents' Testimony:

**Eric Feaver, Montana Education Association (MEA),** said **SB 172** has nothing to do with teacher tenure. **20-4-204** says it is presently possible to terminate a tenure teacher at the end of a contract year; however, a cause must be given which the district will have to prove. A non-tenure teacher does not have to be issued another contract and the burden of proof is on the teacher (**20-4-206**). **SB 172** deals with dismissal of teachers under contract. **Mr. Feaver** said MEA was willing to amend **SB 172** to strike "unfitness" and "incompetence", because both were meaningless and difficult to prove.

**Mr. Feaver** drew the committee's attention to Section 1 of **SB 172** and said the proponents had missed the last sentence of Section 1, subsection 1, which is already existing law. He suggested the proponents were admitting that trustees did not have policies dealing with educational expectations of school districts, policies which would hold teachers accountable. **Mr. Feaver** argued local trustees already had policies and if they did not, it was their fault. He also said trustees already had the opportunity to bargain with teacher unions and collectively bargain appropriate and effective supervision and evaluation standards. He concluded **SB 172** was ridiculous on its face and redundant at best; therefore, he urged DO NOT PASS.

**Terry Minow, Montana Federation of Teachers (MFT),** expressed opposition to **SB 172** because it is unnecessary. She said current law is already broad enough to cover valid teacher dismissal. On the other hand, failure to meet the educational expectations of the district is a vague term because they are subjective and often unwritten. This contrasts with adopted policies which are written and concrete. **Ms. Minow** related how a school trustee had asked her why the educational expectations could not be expressed under adopted school board policy. Her final remarks were **SB 172** is vague and unnecessary, and urged a DO NOT PASS from the committee.

**Mary Sheehy-Moe, tenure teacher,** pointed out **SB 172** is designed to get a teacher in the middle of the year; whereas, tenure statutes indicate an emergency situation allows early dismissal. The added phrase has no case law and is very vague. It also allows the district to circumvent the good cause criteria which

can be used to terminate a teacher in a respectable way. **Ms. Sheehy-Moe** said she understood the desire of both sides of the aisle to make teachers as accountable and effective as possible. She urged DO NOT PASS.

Questions From Committee Members and Responses:

**SEN. WATERMAN** asked if a teacher could be dismissed at the end of the contract year for failure to meet educational expectations. **Chip Erdmann** said a teacher could if the case were documented sufficiently. **SEN. WATERMAN** said she would be more comfortable if the wording of **SB 172** be put into the tenure statute because teachers should meet educational expectations; however, she could not think of a reason for a teacher to be dismissed mid-year for failure to meet educational expectations. **Mr. Erdmann** said he could think of three or four occasions which called for performance terminations, explaining sometimes the plan of remediation is not working so the administration has to determine whether or not to take action.

**SEN. WATERMAN** asked if **SB 172** applied to situations other than remediation. **Mr. Erdmann** said there were no remediation requirements found in state statute, but administratively the State Superintendent of Public Instruction has said before a tenure teacher can be terminated for performance reasons, every effort must be made to assist the teacher with improvement. In summary, a school board could not succeed on a performance termination without showing documentation of remedial efforts. The preceding statement would be true for non-tenure teachers for mid-year dismissal.

**SEN. DOHERTY** asked for expansion on educational expectations. **Chip Erdmann** said the bill drafters looked at the accountability factor and districts do have educational expectations. Adding that term makes it clear from the beginning that teachers will be expected to comply with the expectations.

**SEN. DOHERTY** asked for more clarifications on why "educational expectations" would be better than "written educational standards." **Ernie Jean** said the rationale of the drafters was to tie performance standards to educational performance.

**SEN. DOHERTY** asked if failure to meet the educational expectations would be a one-time or continuing failure. **Mr. Jean** said the district would have to show substantiation with remediation plans. Even in non-renewal cases at the end of the year, the court tends to use **20-4-207** to require the districts to show proof for non-renewal.

**SEN. DOHERTY** wondered how the educational expectations could be concrete -- will teachers know about them at the beginning of the school year? **Ernie Jean** explained case law says if a district holds a teacher accountable, the teacher must know the standard to which he/she is being held.

**SEN. DOHERTY** then wanted to know the difference between current law and proposed legislation. **Mr. Jean** said a certain level of the expectation is not policy, but performance standards which may be appropriate for one person but not for another. He said his experience with case law shows cases brought because of insubordination speak more to violation of policy than performance standards.

**SEN. WATERMAN** asked if there would be a problem with the addition "as set forth in the adopted policies of the trustees" to the end of added phrase on line 14, explaining the expectations must be set. **Mr. Jean** said at times policy is extrapolated from so he was reluctant to include the suggested phrase. **SEN. WATERMAN** commented teachers have different ways of achieving educational outcome (student learning), which is the educational expectation. Outlining the methods of reaching the educational expectation may not be relevant because each teacher teaches differently. **Ernie Jean** said the primary goal is maximizing student opportunity and helping students achieve all they can.

**SEN. STANG** commented **Loran Frazier** called the educational expectations "reasonable" and wondered where **Mr. Frazier** found that. **Mr. Frazier** supported his statement by saying if the case went to court, the district would have to prove its expectations to be reasonable. He went on to say there is some concern as to who will set the expectations.

**SEN. STANG** asked if any school boards had educational expectations in their adopted policies. **Mr. Frazier** said he could not, and neither could he think of negotiated agreements which included educational expectations.

**SEN. GAGE** asked what was magic about non-renewal at the end of the year rather than mid-year. **Eric Feaver** said there is something wrong with adding the language on line 14 without understanding exactly what it means. "Just cause" seems to be statutorily defined.

**SEN. GAGE** asked for more clarification on why it wasn't acceptable to terminate in the middle of the year, when it was definite the termination would happen at the end of the year. **Mr. Feaver** said a non-tenure teacher is not protected under our statutes because all the burden of proof rests with the teacher. The law does not provide reasons for terminating a tenure teacher; rather, the administration and trustees determine that. **Mr. Feaver** wondered why **SB 172** was in **20-4-207.** He answered his question by saying it was an intimidation ploy.

Closing by Sponsor:

**SEN. KLAMPE** added to the question of violation of policy by explaining violation is a willful disregard of a directive or order. **SEN. KLAMPE** said the issue was poor educational performance standards and a remedy. He wondered what was wrong

with putting "educational standards" into the acceptable criteria for teacher dismissal, since that was the main reason there were teachers. **SEN. KLAMPE** said a teacher should not be intimidated by having to live up to educational expectations.

He agreed with **Mr. Feaver** who said it was not a tenure bill. If "immorality" and "unfitness" were to be stricken, it would be acceptable, as would the addition of "reasonable" before "educational" on line 14. He closed by again stressing **SB 172** was not an anti-tenure or anti-teacher bill, but rather a pro-education bill.

## ADJOURNMENT

**Adjournment:** The meeting adjourned at 2:45 p.m.

**SEN. DARYL TOEWS**, Chairman

JANICE SOFT, Secretary

DT/jes

MONTANA SENATE
1995 LEGISLATURE
EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL DATE 2/6/95

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| SEN. JOHN HERTEL, VICE CHAIRMAN | ✓ | | |
| SEN. DELWYN GAGE | ✓ | | |
| SEN. KEN MASAROS | ✓ | | |
| SEN. STEVE DOHERTY | ✓ | | |
| SEN. MIGNON WATERMAN | ✓ | | |
| SEN. BARRY "SPOOK" STANG | ✓ | | |
| SEN. LOREN JENKINS | ✓ | | |
| SEN. GARY FORRESTER | ✓ | | |
| SEN. C.A. CASEY EMERSON | ✓ | | |
| SEN. DARYL TOEWS, CHAIRMAN | | | ✓ |
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SENATE EDUCATION
EXHIBIT NO. 1
DATE 2/6/95
BILL NO. SB 172

**Incompetency.** Lack of ability, legal qualification, or fitness to discharge the required duty. A relative term which may be employed meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness. See also **Incapacity; Insanity.**

**Insanity.** The term is a social and legal term rather than a medical one, and indicates a condition which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behavior with concomitant danger to himself and others. The term is more or less synonymous with mental illness or psychosis. In law, the term is used to denote that degree of mental illness which negates the individual's legal responsibility or capacity.

**Unfit.** Unsuitable; incompetent; not adapted or qualified for a particular use or service; having no fitness. Word "unfit" means, in general, unsuitable, incompetent or not adapted for a particular use or service. As applied to relation of rational parents to their child, word "unfit" usually, though not necessarily, imports something of moral delinquency, but, unsuitability for any reason, apart from moral defects, may render a parent unfit for custody.

**Incapacity.** Want of capacity; lack of power or ability to take or dispose; lack of legal ability to act. Inefficiency; incompetency; lack of adequate power. The quality or state of being incapable, want of capacity, lack of physical or intellectual power, or of natural or legal qualification; inability, incapability, disability, incompetence.

*Legal incapacity.* This expression implies that the person in view has the right vested in him, but is prevented by some impediment from exercising it; as in the case of minors, committed persons, prisoners, etc. See **Civil death; Minority.**

*Total incapacity.* In Workers' Compensation Acts, such disqualification from performing the usual tasks of a worker that he or she cannot procure and retain employment. Incapacity for work is total not only so long as the injured employee is unable to do any work of any character, but also while he remains unable, as a result of his injury, either to resume his former occupation or to procure remunerative employment at a different occupation suitable to his impaired capacity. Such period of total

if it represents an abuse of discretion. *Steffen v. Dept. of State Lands* (Mont. 1986), [223 Mont. 176,] 724 P.2d 713, 715, 43 St.Rep. 1636, 1638.

The District Court determined that the Board of Trustees overcame the presumption that Anderson is competent to teach in the classroom. The District Court failed to apply the standard of review outlined above when reviewing the decision of the State Superintendent of Public Instruction. The court erroneously states that "the issue in this case is how much evidence is needed to demonstrate teacher incompetence." The actual issue before the District Court, however, was whether the administrative agency, the State Superintendent of Public Instruction, abused its discretion in its conclusion of law or whether the findings of facts were clearly erroneous. Upon review of the record, we hold that the District Court erroneously substituted its judgment for that of the State Superintendent of Public Instruction.

The record clearly indicates that substantial evidence exists to support the findings of fact. For example, substantial evidence exists to support the State Superintendent's findings that Anderson was employed by the Missoula County School District No. 1 for thirteen years; that she held a tenured position; that she received satisfactory evaluations for her thirteen years of classroom teaching; that she participated in four structured interviews during the summer of 1984 to determine what teaching position she qualified for and that she performed poorly in all four interviews; and that as a result solely of the four structured interviews and the subsequent recommendation of the school administrators, the Board of Trustees dismissed Anderson for incompetence on September 10, 1984. These findings of fact are supported by substantial evidence and are not clearly erroneous.

Based upon the findings of fact, the State Superintendent of Public Instruction entered his conclusions of law. In pertinent part, the State Superintendent concluded that the Board of Trustees may dismiss a teacher before the expiration of her employment contract for incompetence pursuant to Section 20-4-207, MCA; incompetence consists of the inability to perform ably and above a minimum level of sufficiency as determined by law within a classroom; the results of the structured interviews are relevant and material to the issue of competence and placement; the results of the structured interviews are not sufficient in themselves to meet the burden of proof to dismiss a tenured teacher for incompetence; and that the Board of



Trustees should have considered Anderson's thirteen years of satisfactory classroom evaluations. The State Superintendent of Public Instruction then ordered that Anderson should be reinstated as a teacher in the Missoula County School District No. 1.

The State Superintendent of Public Schools did not abuse his discretion in determining the conclusions of law or in reinstating Anderson as a teacher in the Missoula county schools. As the State Superintendent noted; this case involves a careful balancing of Anderson's protected rights of tenure and the Board of Trustees' right to maintain the integrity of the schools. This Court has repeatedly recognized that a teacher's tenure is a substantial, valuable, and beneficial right which cannot be taken away except for good cause. *Yanzick v. School District No. 23, Lake County* (1982), 196 Mont. 375, 391, 641 P.2d 431, 440; *State ex rel. Saxtorph v. District Court, Fergus County* (1954), 128 Mont. 353, 361, 275 P.2d 209, 214. Incompetency qualifies as a good cause to take away a teacher's tenure, however, past decisions have indicated that a teacher's performance should be assessed in a classroom atmosphere. See *Yanzick*, 196 Mont. at 392, 641 P.2d at 441. The relevancy of the structured interviews are not questioned, however, they cannot be the sole determination of a teacher's level of competency when classroom experience and other valid means are also available for assessment.

When a tenured position is at stake, the teacher must have the benefit of having all the available evidence properly considered and weighed. The County Superintendent of Schools considered and weighed all the evidence, and determined that in light of Anderson's thirteen years of classroom experience, the Board of Trustees, by relying solely on the four structured interviews, failed to prove by a preponderance of evidence that Anderson was incompetent to teach in the Missoula county schools. The County Superintendent and the State Superintendent did not abuse their discretion in reinstating Anderson and allowing her classroom performance to be considered in determining her level of competency as a teacher. As a result, we hold that the District Court abused its discretion in substituting its judgment for that of the State Superintendent of Public Schools.

We reverse the District Court and reinstate the decision of the State Superintendent of Public Instruction and the Missoula County Superintendent of Schools.

MR. CHIEF JUSTICE TURNAGE and MR. JUSTICES HARRISON, WEBER, SHEEHY and McDONOUGH concur.

DATE- 2-6-95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: SB 172 - H.B 99
H. B. 151

## < ■ > PLEASE PRINT < ■ >

| Name | Representing | Bill No. | Check One: Support | Oppose |
|---|---|---|---|---|
| Robert C. Smith | Box Elder School Dist | SB172 | ✓ | |
| Ernie Jean | Florence-Carlton School | SB172 | ✓ | |
| William Kelly | MSBA | SB 172 | X | |
| | | HB151 | X | |
| Mike Dahlem | MSBA | SB172 | ✓ | |
| Kate Cholewa | MT Womens Lobby | HB99 | ✓ | |
| ERIC FEAVER | MEA | SB172 | | X |
| Terry Minow | MFT | SB 172 | | X |
| John Maley | M.E.T. | | | |
| Sheila Hogan | CI | SB 99 | X | |
| Chip Erdmann | MREA | SB 172 | X | |
| Larry Dashenden | GFPS | SB 151 | X | |
| Karen Hogan | SBA | SB151 SB172 | ✓ | |
| | | | | |

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY