

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By CHAIRMAN DARYL TOEWS, on March 13, 1995, at
3:13 p.m.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
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: N/A

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 415, HB 110, HB 480
Executive Action: None.

HEARING ON HB 415

Opening Statement by Sponsor:

REP. ROSE FORBES, HD 42, Great Falls, said HB 415 was a simple housekeeping bill for the Montana School for the Deaf and the Blind, explaining it clarified eligibility of admittance to the school, explained duration of attendance, offered an opportunity for admission of nonresident children and cleaned up requirements from employment placement through continuing education.

Proponents' Testimony:

Bill Sykes, Business Manager, Montana School for the Deaf and Blind, said the former language in the school admittance policy was not in compliance with civil rights legislation; therefore, HB 415.

Wayne Buchanan, Board of Public Education, said the Board is fully aware of the language in HB 415 and fully supports the bill. He also thanked REP. FORBES for this legislation.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. DARYL TOEWS asked the reason for changing the age from 18 to 21 years. Bill Sykes said Federal and State Special Ed laws require service to 21 years of age. SEN. TOEWS asked if it was mandatory or permissive to 21 and Mr. Sykes said it was permissive. SEN. TOEWS wondered why it was added and Mr. Sykes said it would comply with state and Federal regulations.

SEN. DELWYN GAGE asked the content of the repealed section. Mr. Sykes said currently admission to the School was through school district Child Study Teams, instead of parental admission as stated in 20-8-105.

SEN. LOREN JENKINS asked if Page 2, Line 30, referred to new appropriated monies. Mr. Sykes said this section relates to out-of-state tuition which is paid when a student from out-of-state is accepted.

SEN. GARY FORRESTER asked if a new state special revenue account would be created. Mr. Sykes said an account was already in place which received interest income revenue from school trust lands.

Closing by Sponsor:

REP. FORBES thanked the committee for the brief and good hearing. She said the School for the Deaf and the Blind was in her district so she had spent about three hours touring the school. REP. FORBES she was impressed with what was happening there. She asked the committee's favorable consideration.

SEN. KEN MESAROS will carry HB 415.

HEARING ON HB 110Opening Statement by Sponsor:

REP. MARJORIE FISHER, HD 80, Whitefish, said when a child is classified as severely emotionally distressed, the school sets up

an individualized training plan; however, if the child cannot be taken care of with this plan, he or she may be sent to a residential treatment center. The 1993 legislative session set up a program called Managing Resources of Montana (MRM) which determined where these children were placed. She said **HB 110** addressed a situation where MRM was not yet in place, so the emotionally distressed student was sent to a residential treatment center in Idaho. The parents of that student did not agree with the placement so they appeared before OPI for a hearing. When the hearing was completed, OPI ruled the student should be sent to Colorado. When the parents visited their child, their way was paid. The result of this situation was the Kalispell school district paid the cost of \$100,000.

REP. FISHER said since the Kalispell school district had no voice in the decision, it felt it unfair to pick up the tab. She said she understood that from now on, these children will be run through the MRM program; however, at this time, the state is paying. She stated the cost would be very prohibitive for an individual school district.

REP. FISHER referred to Page 3, Subsection 3, which finalized the reason for **HB 110**, i.e. when it was determined to place the student out-of-state, the Superintendent of Public Instruction shall negotiate with the provider for the amount of payment.

Proponents' Testimony:

Don Waldron, Montana Rural Education Association (MREA), said if a small rural school district had an emotionally distressed student who was placed out-of-state, paying for that student could take up to 50% of its budget. **Mr. Waldron** said the small schools would each consent to give up a small portion of the state special ed monies and place these monies in a state fund to be used for the out-of-state payment.

Opponents' Testimony:

Andree Larose, Montana Advocacy Program, read her written testimony. **EXHIBIT 1**

Robert Runkel, Director of Special Education, Office of Public Instruction, said his testimony had seven points: (1) In past years, legislatures and state agencies have worked very hard to bring children home. The whole development of Managed Resources of Montana came about because Montana realized the change in the Medicaid system would bring more children home. **HB 110** makes state financing more readily available for out-of-state placements; (2) The situation in Kalispell is an extraordinarily rare circumstance. **Mr. Runkel** said he asked the legal department to check on all due process cases hearings since January 1, 1989, and found there were 42; only one case dealt with an out-of-state placement; (3) Montana has a wonderful track record of parents and schools working together. Passage of **HB 110** would increase

the numbers of due process hearings, which are not friendly events; (4) Management of the fund would be difficult for both OPI and school districts, i.e. cost projection at the end of the biennium. OPI does not initiate the due process hearings (trustees and parents do) so they have no control over the cost projection of potential hearings; (5) Section 1 says OPI is to be responsible for the financial costs of the care and treatment of the child while Section 2 says OPI is to negotiate with the provider for the education fees consistent with the child's IEP, which could include transportation costs for parents to visit their child; (6) School trustees would want a due process hearing because of the great financial incentives, i.e. **HB 110** as currently written, would require OPI to pay 100% of the costs, while currently OPI pays a portion because out-of-state placement is an allowable cost under special ed. The reality is under the current model, districts can access partial support while **HB 110** would require OPI to pay 100%; (7) Authority to initiate due process rests with parents and trustees. His concern was trustees having the authority to initiate due process hearings, which actually gives them direct access to state funds.

Mr. Runkel summed his testimony by saying **HB 110** gave some financial protection for districts, but OPI believed more problems would be created than solved because the pressure to serve emotionally disturbed youth in places outside their home district is very great -- the cost to the state could be very high.

Questions From Committee Members and Responses:

SEN. GAGE asked if the cost was outside the \$500,000 mentioned on Page 2, Lines 2-3, of **HB 110**. **Robert Runkel** said the \$500,000 was for in-state residential placement only; out-of-state placements would come from the state's special ed fund, which is \$33.8 million.

SEN. GAGE wondered why "delinquent youth" on Page 2, Line 27, was not placed in Section 1. **Mr. Runkel** said it was because when **20-7-422** was written or amended in 1993, an effort was made to ensure OPI coverage of state agency-placed children, i.e. if a state agency made the placement, a state agency should pay the costs. In order to put that language into Section 1, a school would make the placement and Department of Family Services would pay for room and board.

SEN. CASEY EMERSON asked for verification of his understanding **HB 110** allows no limit on what may be spent. **Mr. Runkel** verified, explaining the real problem was the potential of having no more funds by the second year of the biennium -- where would OPI get more funds?

SEN. JENKINS asked for affirmation of his understanding Section 1 of **HB 110** dealt with mentally disturbed children. **Robert Runkel**

said almost all in-state or out-of-state residential treatment placements are emotionally disturbed children.

SEN. JENKINS also asked if his understanding of Section 1, Subsection 5, was correct in that if a student could not be placed in-state, he or she would be placed out-of-state and OPI would pay for the care and treatment of the child. **Mr. Runkel** concurred.

SEN. JENKINS asked if the difference between current law and **HB 110** was now OPI would be obligated to pay, whether the placement was in-state or out-of-state. **Mr. Runkel** said current law requires OPI to pay educational fees of children placed in Montana residential treatment.

SEN. JENKINS said it was his understanding Section 2 addresses children from the court whose educational fees are paid by OPI and other costs by the judicial system. **Mr. Runkel** said there was not obligation for other state agencies to pay for room and board if the child was placed by a hearing officer; that was an education decision. He explained current law required OPI to negotiate for court-ordered out-of-state placements of children of disabilities to ensure they get special ed. He stated if a child is placed out-of-state for educational reasons, **HB 110** would require OPI to pay all the costs; whereas, now all OPI was required to pay was the educational costs if the placement was made by a court or state agency.

SEN. FORRESTER asked if the sponsor had seen the fiscal note. **REP. FISHER** said she had not seen one recently; the original was about \$100,000.

SEN. FORRESTER said the current one stated there was an unclear impact on the general fund; however, the long-range effects indicate the state's financial obligation would increase. He asked the sponsor if she planned to offer an amendment on the floor to increase the appropriation to cover the costs. **REP. FISHER** said she did not because amendments (**EXHIBIT 2**) had been prepared. She explained MRM would work with the districts to determine the best treatment placement for the child.

SEN. FORRESTER asked for further information on MRM funding as it came from the Appropriations Committee. **REP. FISHER** said it was about \$10 million, which was a 23% increase over the 1994 expenditures.

SEN. JENKINS asked if the expenditures for situations such as the Kalispell incident were paid from the general fund. **REP. FISHER** said they were.

SEN. JENKINS said the fiscal note said OPI sent \$60,000 to the Kalispell district. **REP. FISHER** said that was correct, though OPI reluctantly paid. She was of the opinion this substantiated the suggestion that OPI pay the costs.

SEN. GAGE wondered if, according to Section 2, Lines 18-19, the placement of an abused or neglected child could depend upon the recommendation of the IEP. **Mr. Runkel** said the special ed team does not have the authority to declare a child abused or neglected; that comes from the Youth Court.

SEN. GAGE wondered if his understanding that IEPs are for educational placement and the court is for abuse, neglected or delinquent placement, was correct. **Robert Runkel** said it was, explaining the court placements are based on filling the child's needs and community security, not an adequate education.

SEN. EMERSON asked for an average cost estimate to send these children out-of-state. **Mr. Runkel** said about \$100 thousand.

SEN. JENKINS asked if the payment was made from the general fund. **Mr. Runkel** said the first year the expenses were paid from contingency funds (district funds supplemented by the state). If the cost would have exceeded the above amount, the district would have paid it from the general fund. Expenses for 1994-95 are being paid from Federal funds.

SEN. JENKINS referred to Page 2, Lines 9-11, and asked if the child from Kalispell was placed by a state agency. **Mr. Runkel** said if OPI made the placement through the act of a hearing officer, the reading of old law may be correct; however, Section 2, Lines 10-11, clearly states the payments for a child with disabilities must be paid by the Superintendent of Public Instruction.

SEN. JENKINS reminded **Mr. Runkel** of the earlier testimony which said Sections 1 and 2 were different; Section 1 deals with children with disabilities and Section 2 deals with court-related placements. **Mr. Runkel** said HB 110 may access the state equalization aid account.

SEN. EMERSON asked if other states were in the same situation regarding out-of-state placements. **Mr. Runkel** said other states have many more out-of-state placements than Montana does. He said Montana has an extraordinarily low number of out-of-state placements due to public school-made placements. He reminded the committee HB 110 didn't encourage the districts and state agencies to work together; rather, if the local trustees were unhappy with MRM, they could call for a due process hearing which would mean OPI would pay the entire cost.

SEN. MIGNON WATERMAN asked about the insurance policy mentioned by **Don Waldron**. **Mr. Waldron** replied he called it an insurance policy; in reality, if the state paid the entire cost for an out-of-state placement, all districts would have to relinquish some special ed money in order to pay the cost.

Closing by Sponsor:

REP. FISHER read a letter which capsulized the cost of the Kalispell case, including the spending of taxpayers' money to defend the school. She said the incidence of out-of-state placements is low and she doesn't believe the passing of HB 110 would change that. She asked the committee to place the amendments in HB 110. She reminded the committee the children addressed in HB 110 would not be going to Pine Hills, because those would be court placements. REP. FISHER said it was her opinion the Kalispell case was an unfunded mandate and urged support for HB 110.

{Tape: 1; Side: B}

HEARING ON HB 480Opening Statement by Sponsor:

REP. PEGGY ARNOTT, HD 20, Billings, said HB 480 allows trustees to hire management they think appropriate. Currently, the Board of Public Education adopts the accreditation standard which requires school districts to employ personnel. She said HB 480 originated from the public's perception that excessive dollars are spent on public school administrators. REP. ARNOTT said HB 480 would provide local districts with alternative ways to solve budget problems. She reminded the committee many districts were still struggling with the impact of HB 667, and it was the legislature's responsibility to provide alternatives for solving those budget problems and to give people the local control needed to determine how much administration they desired. REP. ARNOTT stated there was a time when small schools operated with one superintendent who also taught part of the day; now it has evolved into one superintendent, one high school principal and one elementary principal.

She distributed copies of standards (EXHIBIT 3) from the Board of Public Education and referred to Section a. She said in a small school, the best way for a superintendent to understand what was happening in the classroom was to be there. REP. ARNOTT also distributed copies of OPI Average Administrative Salaries (EXHIBIT 4) and explained the highlighted areas were schools in Yellowstone County. She pointed out Elysian Elementary had 141 students and .5 administrator while Broadview Public Schools had 108 students and one administrator.

REP. ARNOTT said opponents will say local school districts already have the ability to determine how much administration they want; however, if trustees wish to do so, they must ask the Board of Public Education for approval of alternative standards. She maintained the process may be intimidating because it is just one more hoop to jump through and one more layer of bureaucracy.

Proponents' Testimony:

REP. DICK SIMPKINS, HD 39, Great Falls, said he wanted to support HB 480 for two reasons: (1) Section 1 is an incomplete section of law because it states the Board of Public Education shall, before adopting the rules, policies and standards, submit the financial impact to the legislature for the purpose of providing the funds; however, it doesn't stop the Board from enacting the rules. He reminded the committee to remember, as they read HB 480, the Board of Public Education is fully in control; they decide whether the rules should be put into effect and they decide whether local school districts can absorb the costs of unfunded mandates; (2) Let the local people decide how many administrators they want. REP. SIMPKINS remarked opponents to HB 480 will say the legislature has no right to tell districts what to do, and will quote Constitutional rights. He said the Constitution guarantees local control of schools, through "general supervision." As to court cases, REP. SIMPKINS said there has been only one recently, i.e. the Sherlock Decision which dealt with gifted and talented. He said the Decision was general supervision must also include rulemaking authority, and the legislature cannot use their administrative rules procedure to cancel the rules of the Board of Public Education. REP. SIMPKINS informed the committee the unanswered question was, "Can the Board of Public Education pass a rule which was contrary to law?", and said that issue had not yet been tried before the courts.

REP. SIMPKINS referred to another court case where the school trustees tried to terminate a teacher without going through the county superintendent. The case went before the Supreme Court which recognized the control and supervision of the trustees; however, its decision was control does not override legislative law. He contended the decisions were inconsistent.

REP. SIMPKINS identified the problem as the need for the legislature to determine if it wants to give the Board of Public Education, with its appointed members, authority over the legislature, i.e. pass rules which force the legislature to provide the funding. He encouraged the committee to consider HB 480 because of its local control feature. He said the legislature's responsibility, according to the Constitution, is to establish and fund the educational system. REP. SIMPKINS reminded the committee HB 480 allows school districts the authority to determine how many managers they need, and makes them responsible for their decisions.

Opponents' Testimony:

Wayne Buchanan, Board of Public Education, said the original intent of HB 480 was attempting to remove the Board's accreditation standards relating to administrators. He said it was unfortunate the legislature had to deal with the public perception there were too many school administrators, explaining

one uncontroversial fact in education is a principal who has the time to be both in the classroom and the administrative office can have a dramatic effect on schools. **Mr. Buchanan** called the committee's attention to the standards (EXHIBIT 3) and said they were not burdensome, i.e. one principal for 550 students and 30 FTE was not oppressive. He stated present standards tend to hold down rather than increase the number of administrators; for example, when superintendents suggest hiring an assistant principal, the trustees ask what the state standards are.

Mr. Buchanan commented another purpose of **HB 480** was to resurrect a Supreme Court challenge to the Sherlock Decision. He requested the committee, if **HB 480** passes, ask the legislature for an appropriation for the Board of Public Education to accomplish the challenge.

Mr. Buchanan drew the committee's attention to Page 2, Lines 9-10, of **HB 480**, which was an amendment added by **REP. SIMPKINS** on the House floor. He suggested the amendment did not accomplish what **REP. SIMPKINS** and **REP. ARNOTT** intended: (1) It makes a mistake which has already been corrected in Line 5. He contended the amendment suggested before the Board adopts a rule, it must get legislative appropriation; this is not the way the law should be. Line 9 says the Board may not adopt a rule, so the lines are contradictory; (2) Line 8 says the funding is through the BASE program while Line 10 says, "unless the legislature provides funding for it." **Mr. Buchanan** suggested **HB 480** was not a bill which deserved the committee's efforts.

Gail Gray, Office of Public Instruction (OPI), said her office was concerned about the Constitutional legitimacy of **HB 480**. She gave a background of the Sherlock Decision, explaining in 1989, the Board of Public Education adopted **10-55-804**, which said beginning July 1, 1992, schools had to make an identifiable effort to provide educational services for gifted and talented students. Once that was adopted, the administrative code committee met and felt the rule was in conflict with **20-7-902** which said school districts may identify gifted and talented students and may devise programs to serve them. It then went back to the Board of Public Education who wouldn't change the rule. It went to the 1991 legislature which passed **HB 116**, saying a rule could not be in conflict with the law; if it was, it was invalid. The next step was returning to the Board of Public Education, who went to court. On March 12, Judge Sherlock entered a declaratory ruling which said, "The Board of Public Education, pursuant to Article X, Section IX, Part 3, of the Montana Constitution, is vested with Constitutional rulemaking authority. This provision is self-executing and independent of any power delegated to the Board by the legislature. The Board's rule mandating the gifted and talented program is within the purview of the Board's Constitutional power of general supervision, pursuant to Article X, Section IX, Part 3, of the Montana Constitution. **HB 116**, to the extent it interferes or conflicts with the Board's constitutional rulemaking power, is in

violation of the separation of powers adopted of Article III, Section 1, of the Montana Constitution and is therefore invalid and of no further force or effect."

Ms. Gray said the Sherlock Decision was never appealed so it is unknown what the Supreme Court would have said; however, since today's society is extremely litigious, passage of **HB 480** would add another subject for potential litigation.

Loran Frazier, School Administrators of Montana (SAM), said **HB 480** was really a battle of who was in control of the standards. He said school districts can already do what **HB 480** proposes, by setting the number of administrators desired. **Mr. Frazier** said **HB 667** has caused districts to look at the standards and the number of administrators. **Mr. Frazier** said from 1981-1995, there were 27 fewer administrators and 49 more teachers in Montana's school districts. He related how there are 41 superintendents who are serving as the districts' only administrators, 19 people who serve as superintendent and high school principal, 31 who are both superintendent and elementary principal and 30 are superintendents of elementary stand-alone districts.

Mr. Frazier said if the legislature was allowed to delete sections of accreditation standards, they were really in control of the standards. He wondered why the administration section was being attacked; why not the sections pertaining to librarian, counselors, etc. He said **HB 480** was a wide-open invitation for court decisions if there is money at the state level for that. **Mr. Frazier** requested DO NOT PASS for **HB 480**.

Don Waldron, Montana Rural Education Association (MREA), said he agreed with most of the previous testimony which opposed **HB 480**. He reminded the committee the Court has decided a rule which has already been made cannot be taken away. **Mr. Waldron** said the perception of too many administrators is probably true in some cases; however, if **HB 480** passes, none of those school districts would cut their administrator numbers because they have determined them to be necessary. **HB 480** would enable districts to remove any administrative position, which could make for an inefficient and chaotic school.

Lynda Brannon, Montana Association of School Board Officials (MASBO), referred to Page 3, Section 4, Line 16, where "shall" was changed to "may", and Line 21 where "or a designee" was added after "clerk of the district." She said "or a designee" opens the door to employ several unqualified persons, i.e. high school business class, teacher, janitor, etc. **Ms. Brannon** said **HB 480** does not empower local trustees under the guise of local control, because in the case of a clerk, the chaos which would result from the above example, would result in destruction of the district. **Ms. Brannon** suggested the board give the clerks more job security so they can do their jobs more effectively. She urged the committee to amend the language which pertained to the district clerk; better yet, kill **HB 480**.

Terry Minow, Montana Federation of Teachers (MFT), said there are many serious issues to be addressed in **HB 480** and MFT opposed it.

Michael Keedy, Montana School Boards Association (MSBA), said **REP. ARNOTT'S HB 480** and **REP. SIMPKINS'** amendments have capitalized on several themes which have been sounded by MSBA, i.e. local control and unfunded mandates; however, MSBA is speaking in opposition to **HB 480**. He referred to Page 9, Lines 24-26, and said the new language forbids the Board of Public Education to adopt standards in respect to administrators, and that is local control; however, there is no clear and rational basis for singling out administrators or standards in respect to administration. **Mr. Keedy** also drew the committee's attention to Page 2, Lines 9-10, 14-17, and stated the amended **HB 480** says no standards which have a substantial financial impact may be adopted by the Board of Public Education unless the legislature has approved both the standards and the funding. However, even if the standards are in place, if they have substantial financial impact, the district can choose to ignore them without losing their financial support.

Mr. Keedy said the problem he sees is the potential of making the legislature a super Board of Public Education and super Board of Trustees which would be asked to periodically pass accreditation standard by standard upon the visit of each of those standards and their enforceability. He said it would cause a potential wealth of litigation because there is much room for legitimate dispute and disagreement as to what constitutes a sensible accreditation standard and what defines substantial financial impact.

Mr. Keedy recapitulated **HB 480** is very much in tune with principles espoused by MSBA, but it would create more problems than it would resolve; on that basis, he urged the committee's opposition to **HB 480**.

Eric Feaver, Montana Education Association (MEA), said **HB 480** would allow school districts to have no superintendent, clerk or principal and still be accredited. He pointed out "designee" does not apply only to clerks, but to superintendents and principals also. **Mr. Feaver** referred to Page 10, Section 14, which he said was unconstitutional and had no forcible effect in Montana; language was added to an unconstitutional statute. He asked the committee who the designee may be, wondering what qualifications would be required. **Mr. Feaver** suggested **HB 480** did not deserve the committee's fullest consideration. He urged DO NOT PASS.

Questions From Committee Members and Responses:

SEN. STEVE DOHERTY asked why "designee" was added and asked for its definition. **Eddy McClure** said if a person were to be eliminated, there would still be the duties to perform, and someone would have to perform them. She said it was not a

defining term; rather, someone who was assigned by the trustees to do the work.

SEN. DOHERTY asked what was to prevent the superintendent's or clerk's duties being assigned to the janitor. **REP. ARNOTT** said she hoped good sense would prevail in the appropriate duty designations.

SEN. JENKINS said the Constitution listed the duties of the Board of Regents, and the Board of Public Education was given general supervisory powers over schools; however, the legislature gave the Board of Public Education the powers of accreditation. He wondered if the Board of Public Education felt it was their Constitutional right, even though it was only legislative. **Wayne Buchanan** said **SEN. JENKINS** correctly understood the legislature required the Board to adopt accreditation standards; however, the court has found supervision as a Constitutional authority also gives the Board the right to adopt accreditation and teacher certification standards.

SEN. WATERMAN wondered why **HB 480** centered its attention on administrators.

{Tape: 2; Side: A}

REP. ARNOTT said her constituents expressed desire for fewer administrators, not teachers.

SEN. HERTEL asked if school administrators and clerks had been contacted regarding their work load. **REP. ARNOTT** said she did not ask superintendents if they were underworked because that was not her approach; however a book salesman had told her of a superintendent in a small school who spent much of his time in the gym working out, etc., and was rarely in his office.

SEN. HERTEL commented he was hearing from administrators and clerks their workload included "mountains of paperwork." **REP. ARNOTT** said perhaps **HB 480** should have also addressed the numbers of forms which were necessary to complete.

SEN. WATERMAN referred to the above-mentioned superintendent and asked if the trustees would have the backbone to remove him and designate someone else. **REP. ARNOTT** said the Board negotiates with the administration and very often the administrators are not the ones intended for removal; however, **HB 480** allows for non-replacement for vacancies created through resignation, retirement, etc. She did not envision Boards cutting current positions.

SEN. JENKINS asked if his understanding was correct in that **HB 480** allowed local school boards to combine administrative positions, not fill vacancies, etc., and was not a mandate directing them to fire administrators. He also asked for affirmation of his understanding the financing note was to ensure

there be no unfunded mandate which would be forced on the boards before the legislature could enact the funding. **REP. ARNOTT** concurred on both understandings.

SEN. FORRESTER asked why Page 10, Section 14, was added. **REP. ARNOTT** said "designee" had to be inserted wherever principal, superintendent or clerk was mentioned.

SEN. EMERSON asked for more information regarding the two lawsuits **REP. SIMPKINS** mentioned. **REP. SIMPKINS** said the Sherlock Decision was not decided on Montana Constitution, but on West Virginia interpretation. He said if this were to be challenged, it would be necessary to go to Montana's Constitution which intended the Board of Public Education to exist as an administrative board but leave the control to the local districts. **REP. SIMPKINS** said that challenge has yet to come before the Supreme Court. He said Judge Sherlock's interpretation was correct in that the legislature cannot use administrative rules to cancel the Board's rules.

SEN. EMERSON asked if challenging the Decision would be a good idea. **REP. SIMPKINS** opined the Board of Public Education would be wasting taxpayers' dollars by challenging the legislature on this.

SEN. GAGE commented it appeared the purpose of **HB 480** was to offer options from which school districts could select. **REP. ARNOTT** agreed wholeheartedly.

SEN. TOEWS asked where MSBA stood in regard to local school boards taking responsibility for local issues. **Michael Keedy** said from the beginning, MSBA had supported the concept of returning control of education decisions to the local trustees. He said he hoped no one misinterpreted his testimony regarding **HB 480**, but if they did he hoped to clarify their misunderstanding by saying legislation referred to in **HB 480** would put the burden on 150 legislators, rather than the local trustees.

SEN. GAGE asked how many school boards had contacted MSBA regarding **HB 480**. **Mr. Keedy** said he really couldn't say, though the office of MSBA had ongoing contacts with school boards regarding the legislation.

SEN. JENKINS asked what would happen if **HB 480** didn't pass but the Board had adopted a rule which entailed substantial financial cost. He asked from where the Board would get the money, since it didn't think prior legislative approval was necessary. **Mr. Keedy** said school districts would depend on legislative appropriations and voted levies to finance public schools.

SEN. JENKINS said he wondered if MSBA wanted the legislature to provide funds, but have no say in whether the requests passed.

SEN. JENKINS suggested the legislature have the authority to talk to the Board beforehand about the request. **Mr. Keedy** agreed the

Board of Public Education, the legislature and local trustees ought to communicate with each other regarding educational policy and funding. He said **HB 480** as amended with **REP. SIMPKINS'** amendment is asking the legislature, point by point, to make decisions about the desirability and feasibility of the accreditation standards, rules and regulations. **Mr. Keedy** said it was a shift away from local control to the hands of the legislature.

SEN. JENKINS said Page 2, Lines 10-11, refers to substantial financial impact, which means the legislature should first have a chance to review the rule, policy or standard before its passage. **Mr. Keedy** referred to Page 2, Lines 16-17, which indicates any standard which would have substantial financial impact on a district should be subject to legislative scrutiny and argument by the local trustees and Board of Public Education as to whether the proposed standard triggers the required inquiry.

Closing by Sponsor:

REP. ARNOTT said she agreed with **Wayne Buchanan** who said an administrator in the classroom can have significant impact on the educational value. She wondered, then, why the state standards say the administrator cannot be in the classroom.

REP. ARNOTT said she disagreed with **Mr. Buchanan** who said a fair reading of the standards indicated there weren't too many administrators. She asked the committee if a fair reading would indicate Broadview, with 108 students, would need a full-time administrator.

REP. ARNOTT referred to **Loran Frazier** who said the number of administrators could be reduced. She agreed, but said it could only be accomplished by the district jumping through a series of hoops. She wondered why that should be necessary.

REP. ARNOTT addressed **Mr. Frazier's** questioning whether Elysian should be a district by asking several Senators about retaining small school districts in their Senate Districts. She answered her own questions by stating small schools contribute significantly to the value of education in Montana.


REP. ARNOTT reminded the committee the designee would be a responsible person appointed by the local trustees.

She said **HB 480** was about giving local school districts options for dealing with tough budget issues, and not to allow unfunded mandates to be passed from the Board of Public Education. She said the boards have the option to leave in place the people they have already hired.

REP. ARNOTT thanked the committee for a lively hearing and informed the committee there were amendments coming.

ADJOURNMENT

Adjournment: The meeting adjourned at 5:42 p.m.



SEN. DARYL TOEWS, Chairman



JANICE SOET, Secretary

DT/jes

MONTANA SENATE
1995 LEGISLATURE
EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE _____

3/13/95

[illegible]

SEN:1995
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CS-09

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211

P.O. Box 1680

Helena, Montana 59624

DATE 3/13/95 (406)444-3889BILL NO. HB 110 1-800-245-4743

(VOICE - TDD)

Fax #: (406)444-0261

March 13, 1995

Senator Daryl Toews
Senate Education and Cultural Resources Committee
State Capitol
Helena, Montana 59620

Re: HB 110

Senator Toews and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify neither in support of or in opposition to the overall concept behind HB 110, but we do oppose one aspect of the bill.

1. HB 110 will generate costly, unnecessary litigation. It will be an enormous disincentive for a school to agree to an out-of-state placement of a child with disabilities in the IEP process, even when the school agrees that the placement is necessary to meet the child's individual needs. This bill shifts the financial burden for out-of-state placement of disabled children from the school district to OPI when a hearing officer or a court orders the placement. Yet a hearing officer or court is only involved in the placement of children with disabilities if the Individualized Education Program (IEP) team [a team comprised of parents and school officials] have been unable to agree. By making a court order or hearing officer's order the trigger for relieving the school district of its financial responsibility, this bill virtually guarantees that school districts will challenge and litigate every attempt to place a child with disabilities out-of-state, whether the placement is appropriate or not. An additional negative impact of this bill will be the erosion of trust and teamwork in the parent-school relationship.

2. If it is determined that payment from OPI will be required for out-of-state placements, we urge that the bill be amended to require such payment whenever there is a properly developed IEP calling for such placement. This would eliminate the financial incentive to litigate every request for out-of-state placement. We have some concern that the principle of "least restrictive environment" will be given short shrift if the bill is amended as we suggest, because it will always be easier and cheaper for a school to ship problem students out-of-state than deal with them in the school district. However, the IEP process does have some protections built into it and including a requirement in the law that the IEP be properly developed would give some measure of protection.

3. A better solution is to have a financial contribution from OPI whenever a student is placed out-of-state, whether by order of a hearing officer or court or by agreement of the IEP team. By requiring some financial contribution from OPI, the school district is given the

assistance it needs and the school still has a vested interest in the child. The school would have an incentive to monitor the child's program in the out-of-state facility and to develop a program which can hopefully bring the child home sooner rather than later.

I would be happy to work with the committee, the sponsor, and OPI in drafting amendments to this bill. Based on the above concerns, I urge you to amend the bill as I have suggested or to recommend against passage of HB 110. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Andree Larose", with a stylized flourish at the end.

Andree Larose
Staff Attorney

Amendments to House Bill No. 110
3rd Reading CopyRequested by Representative Fisher
For the Senate Committee on EducationPrepared by Andrea Merrill
March 13, 1995

1. Page 2, line 4.

Strike: "(2) AND (3)"

Insert: "(3) and (4)"

2. Page 2, line 25.

Following: line 24

Insert: "(2) Except as provided in subsections (3) and (4), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement."

Renumber: subsequent subsections

3. Page 3, line 10.

Strike: "(2) AND (3)"

Insert: "(3) and (4)"

RULE 10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1)

Effective 7/1/92 district superintendents shall be assigned as follows:

(a) **A combined elementary-high school district:**

(i) A full or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff.

(ii) A full or part-time district superintendent shall be employed for a district with 9-29 FTE certified staff. One

full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in Rule 10.55.705.1. A superintendent that also serves as principal(s) shall devote full-time to administration and supervision.

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(b) **A county high school district:**

(i) A full or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff.

(ii) A full or part-time district superintendent shall be employed for a district with 9-29 FTE certified staff. One full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in Rule 10.55.705.1. A superintendent that also serves as principal shall devote full-time to administration and supervision.

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(c) **An independent elementary school district:**

(i) A full or part-time district superintendent shall be employed for a district with fewer than 9 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of district superintendent as outlined in Rule 10.55.702.

(ii) A full or part-time district superintendent and a full or half-time building administrator as defined in Rule 10.55.705.1 shall be employed for a district with 9-17 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of district superintendent as outlined in Rule 10.55.702. One full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in Rule 10.55.705.1. A superintendent that also serves as principal(s) shall devote full-time to administration and supervision.

(iii) A full or part-time district superintendent shall be employed for a district with 18-29 FTE certified staff. One full-time individual may fulfill the positions of district superintendent and half-time building administrator as defined in Rule 10.55.705.1. A superintendent that also serves as half-time principal shall devote full-time to administration and supervision.

(iv) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(2) A combined elementary-high school district or a county high school district or an independent elementary school district with 100 or more FTE certified staff shall employ a full-time curriculum coordinator to supervise the educational program. The curriculum coordinator must hold a Class 3 administrative certificate.

(3) Any district may seek alternatives to the above requirements including sharing a district superintendent (see "Alternative Standard," ARM 10.55.604). Where a district superintendent is shared, one superintendent may serve all the cooperating districts. If a district superintendent is shared within the requirements of Rule 10.55.704, an alternative standard need not be applied for by the district.

RULE 10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF BUILDING ADMINISTRATORS (1)

Beginning 7/1/92 school districts shall employ appropriately endorsed building administrators as follows:

(a) A district superintendent or supervising teacher and county superintendent for schools with less than 9 FTE certified staff.

(b) .5 FTE for schools with 9-17 FTE certified staff.

(c) 1 FTE for schools with 18-29 FTE certified staff or 250-550 students.

(d) 2 FTE for schools with 551-1,050 students.

(e) 3 FTE for schools with 1,051-1,550 students.

(f) 4 FTE for schools with 1,551-2,050 students.

(g) 5 FTE for schools with 2,051 or more students.

[Subject to Notice of Deferral]

(Previously required 1.5 FTE)

(2) Beginning 7/1/92 in schools with more than one building administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators shall have administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflect their supervisory responsibilities. For example, a school may assign properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs.

(3) Beginning 7/1/92 in schools with at least three FTE building administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional building administration. Department coordinators or chairpersons counted toward building administration may observe and supervise but shall not formally evaluate classroom instruction.

Office of Public Instruction
Montana Public Schools
Average Administrative Salaries
School Year 1993-1994

EXHIBIT NO. 4

DATE 3/13/95

STATE	SYSTEM LE	DISTRICT94	Enrollment 1993-94	- Principal and Asst - Total FTE Salary Full-time rate	- Superintendent and Asst - Total FTE Salary Full-time rate
50 TETON	0947	Dutton Public Schools	171	1.0 40,000	0.5 50,000
50 TETON	0940	Choteau Public Schools	513	2.0 38,250	1.0 40,000
50 TETON	0945	Bynum Elem	68	0.0 0	0.0 0
50 TETON	0949	Golden Ridge Elem	51	0.0 0	0.0 0
50 TETON	0951	Pendroy Elem	18	0.0 0	0.0 0
50 TETON	0953	Greenfield Elem	67	0.5 35,757	0.0 0
50 TETON	0955	Sunburst Public Schools	355	1.8 37,575	0.9 55,785
51 TOOLE	0962	Shelby Public Schools	776	3.0 44,713	1.0 50,000
51 TOOLE	0966	Galata Elem	20	0.0 0	0.0 0
52 TREASURE	0973	Hysam Public Schools	187	1.0 39,178	0.5 41,870
53 VALLEY	0980	Hinsdale Public Schools	101	0.5 43,000	0.5 43,000
53 VALLEY	0982	Nashua Public Schools	199	0.5 40,000	0.5 40,000
53 VALLEY	0976	Frazer Public Schools	163	1.0 40,800	1.0 50,000
53 VALLEY	0975	Glasgow Public Schools	990	4.2 44,067	1.0 61,812
53 VALLEY	0981	Opheim Schools	109	0.5 43,500	0.5 43,500
53 VALLEY	0985	Fort Peck Elem	16	0.0 0	0.0 0
53 VALLEY	0986	Lustre Elem	53	0.0 0	0.0 0
54 WHEATLAND	0992	Judith Gap Public Schools	132	0.5 39,672	0.5 39,672
54 WHEATLAND	0990	Harlowton Public Schools	307	1.0 35,000	1.0 52,500
54 WHEATLAND	0989	Two Dot Elem	7	0.0 0	0.0 0
54 WHEATLAND	0944	Shawmut Elem	13	0.0 0	0.0 0
54 WHEATLAND	0991	Wibaux Schools	226	1.3 39,129	1.0 48,960
55 WHEATLAND	0997	Shepherd Public Schools	812	2.5 41,600	1.0 58,136
56 YELLOWSTONE	1022	Huntley Project Public Scho	746	3.0 41,033	1.0 49,067
56 YELLOWSTONE	1011	Laurel Public Schools	1,899	6.5 47,904	1.0 59,989
56 YELLOWSTONE	1017	Broadview Public Schools	108	0.5 45,500	0.5 45,500
56 YELLOWSTONE	1007	Billings Public Schools	16,281	44.0 50,655	2.0 71,967
56 YELLOWSTONE	1008	Lockwood Elem	1,252	3.0 51,474	1.0 64,981
56 YELLOWSTONE	1009	Blue Creek Elem	101	0.0 0	0.0 0
56 YELLOWSTONE	1010	Canyon Creek Elem	248	0.8 41,000	0.3 41,000
56 YELLOWSTONE	1012	Elder Grove Elem	230	0.8 40,000	0.3 40,000
56 YELLOWSTONE	1014	Custer Schools	84	0.3 47,296	0.8 47,296
56 YELLOWSTONE	1015	Morin Elem	33	0.0 0	0.0 0
56 YELLOWSTONE	1019	Elysian Elem	141	0.5 36,003	0.0 0
56 YELLOWSTONE	1023	Pioneer Elem	74	0.0 0	0.0 0
56 YELLOWSTONE	1025	Independent Elem	184	0.5 40,774	0.5 40,774
56 YELLOWSTONE	1032	Yellowstone Education Ctr	41	0.6 42,436	1.0 44,373
STATE	AVE	MONTANA	162,825	476.4 45,113	157.1 51,306

This data is presented by school system (combined if districts have unified boards). The FTE represents full-time equivalents. Many Montana administrators may serve in more than one role - superintendent, principal, teacher, counselor. Salaries are reported at full-time rates and include all duties.

Office of Public Instruction
Montana Public Schools
Average Administrative Salaries
School Year 1993-1994

This data is presented by school system. If a district have a combined system, the FTE represents full-time equivalents. Many Montana administrators may serve in more than one role - superintendent, principal, teacher, counselor. Salaries are reported at full-time rates and include all duties.

CO	SYSTEM LE	DISTRICT94	Enrollment		- Principal and Asst -		- Superintendent and Asst -	
			1993-94	Total FTE	Salary Full-time rate	Total FTE	Salary Full-time rate	
43	ROOSEVELT	0857	972	3.0	45,833	1.0	61,200	
43	ROOSEVELT	0860	1,078	4.0	47,709	1.0	40,000	
43	ROOSEVELT	0861	152	0.4	58,600	0.6	58,600	
43	ROOSEVELT	0863	119	1.0	32,916	0.5	39,780	
43	ROOSEVELT	0856	145	0.5	34,000	0.5	34,000	
43	ROOSEVELT	0774	113	0.5	50,767	0.5	50,767	
43	ROOSEVELT	0785	1,319	5.0	43,620	2.0	35,625	
44	ROSEBUD	0870	116	0.6	41,000	0.4	41,000	
44	ROSEBUD	0869	691	3.1	36,374	1.0	53,550	
44	ROSEBUD	0866	4	0.0	0	0.0	0	
44	ROSEBUD	0788	19	0.0	0	0.0	0	
44	ROSEBUD	0865	436	1.0	36,000	1.0	52,000	
44	ROSEBUD	0867	113	1.0	33,600	0.0	0	
44	ROSEBUD	0792	324	1.2	42,671	0.5	45,500	
44	ROSEBUD	0800	668	1.5	41,056	1.0	50,000	
45	SANDERS	0880	523	1.5	34,287	1.0	42,000	
45	SANDERS	0874	238	1.2	39,749	0.9	43,500	
45	SANDERS	0882	106	0.5	34,531	0.0	0	
45	SANDERS	0877	66	0.0	0	0.0	0	
45	SANDERS	0878	60	0.0	0	0.0	0	
45	SANDERS	0809	14	0.0	0	0.0	0	
45	SANDERS	0813	217	0.6	40,300	0.9	54,386	
46	SHERIDAN	0887	534	2.0	40,700	1.0	65,491	
46	SHERIDAN	0891	92	1.3	46,411	0.5	50,868	
46	SHERIDAN	0885	68	0.7	43,500	0.3	43,500	
46	SHERIDAN	0831	14	0.0	0	0.0	0	
46	SHERIDAN	0899	167	1.0	35,250	0.0	0	
47	SILVER BOW	0904	17	0.0	0	0.0	0	
47	SILVER BOW	0905	17	0.0	0	0.0	0	
47	SILVER BOW	0843	17	0.0	0	0.0	0	
47	SILVER BOW	0906	5,635	13.0	47,370	2.0	61,600	
47	SILVER BOW	1212	87	0.4	44,490	0.5	44,490	
48	STILLWATER	0917	78	0.5	51,240	0.5	51,240	
48	STILLWATER	0910	330	1.0	40,004	1.0	51,028	
48	STILLWATER	0908	431	1.6	44,025	0.4	51,900	
48	STILLWATER	0919	577	1.8	41,500	1.0	49,500	
48	STILLWATER	0909	5	0.0	0	0.0	0	
48	STILLWATER	0911	18	0.0	0	0.0	0	
48	STILLWATER	0852	11	0.0	0	0.0	0	
48	STILLWATER	0912	11	0.0	0	0.0	0	
48	STILLWATER	0857	345	0.5	47,444	0.5	47,444	
49	SWEET GRASS	0922	20	0.0	0	0.0	0	
49	SWEET GRASS	0925	34	0.0	0	0.0	0	
49	SWEET GRASS	0929	11	0.0	0	0.0	0	
49	SWEET GRASS	0932	4	0.0	0	0.0	0	
49	SWEET GRASS	0938	188	1.0	37,389	1.0	47,017	
49	SWEET GRASS	0881	162	0.3	50,000	0.3	50,000	
49	SWEET GRASS	0882	356	2.0	42,023	1.0	51,723	
50	TETON	0948						
50	TETON	0946						

DATE 2-13-95

SENATE COMMITTEE ON Education

BILLS BEING HEARD TODAY: HB 110, HB 415 +
HB 480

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Bill Ayler	MSAB	415	✓	
John Kishna	"	415	✓	
Lora Frege	STAN HB	480		X
Dynda Branner	MASBO	480		✓
Thom Minton	MT	480		X
Jim Javer	MEA	480		X
Michael Kelly	MSBA	480		X
Wayne Buchanan	Board of Pub. Ed	480		X
"	"	415	X	
Andree Larose	Mutual Auxay Prog	110		✓
Dick Simpkins	HB 41	480	X	
Don Waldron	DBREA	110 480	✓	✓
Pat Jay	OPD	480		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY