

SENATE BILL NO. 319

INTRODUCED BY JACOBSON, BERGENE

IN THE SENATE

February 4, 1985	Introduced and referred to Committee on Education and Cultural Resources.
February 6, 1985	Fiscal Note requested.
February 12, 1985	Fiscal Note returned.
February 19, 1985	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 20, 1985	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Education and Cultural Resources.
March 21, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, pass consideration.
March 25, 1985	On motion, taken from second reading and rereferred to Committee on Judiciary.

March 28, 1985	Committee recommend bill be concurred in. Report adopted.
March 30, 1985	Second reading, pass consideration.
April 3, 1985	Second reading, concurred in.
April 4, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

April 15, 1985	Received from House. Sent to enrolling. Reported correctly enrolled.
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Senate BILL NO. 319
INTRODUCED BY ~~J. Jackson~~ T. Bergene

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE APPOINTMENT OF A SURROGATE PARENT FOR A HANDICAPPED CHILD TO REPRESENT THE CHILD IN THE DECISIONMAKING PROCESS RELATED TO THE CHILD'S EDUCATION; PRESCRIBING THE RESPONSIBILITIES OF A SURROGATE PARENT; AMENDING SECTIONS 20-7-401 THROUGH 20-7-403 AND 20-7-414, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe

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educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the

1 educational rights of others to the point that supportive
2 services are required. These behavioral patterns may
3 include:

4 (a) excessive physical or verbal aggression toward
5 oneself or others and a lack of response to regular
6 educational intervention;

7 (b) high frequency of persistent inattention to
8 academic or social tasks associated with regular classroom
9 performance; and

10 (c) persistent withdrawal from peer or adult
11 interactions associated with the expected social development
12 in a regular educational environment.

13 (5) "Handicapped child" means a child evaluated as
14 being mentally retarded, hard-of-hearing, deaf,
15 speech-impaired, visually handicapped, emotionally
16 disturbed, deaf/blind, multihandicapped, orthopedically
17 impaired, other health-impaired, or as having specific
18 learning disabilities, who because of those impairments
19 needs special education and related services.

20 (6) "Hard-of-hearing" means a hearing impairment,
21 whether permanent or fluctuating, which adversely affects a
22 child's educational performance but which is not included
23 within the definition of deaf.

24 (7) "Mentally retarded" means significantly subaverage
25 general intellectual functioning existing concurrently with

1 deficits in adaptive behavior and manifested during the
2 developmental period, which adversely affects a child's
3 educational performance.

4 (8) "Multihandicapped" means concomitant impairments
5 (e.g., mentally retarded/blind or mentally
6 retarded/orthopedically impaired), the combination of which
7 causes such severe educational problems for the child so
8 impaired that the child cannot be accommodated in a special
9 education program designed solely for one of the
10 impairments. The term does not include deaf/blind children.

11 (9) "Orthopedically impaired" means a severe
12 orthopedic impairment which adversely affects a child's
13 educational performance. The term includes but is not
14 limited to impairment caused by congenital anomaly (e.g.,
15 clubfoot or absence of some member), impairments caused by
16 disease (e.g., poliomyelitis, bone tuberculosis), and
17 impairments from other causes (e.g., fractures or burns
18 which cause contractures, amputation, cerebral palsy).

19 (10) "Other health-impaired" means:

20 (a) having an autistic condition that is manifested by
21 severe communication and other developmental and educational
22 problems; or

23 (b) having limited strength, vitality, or alertness
24 due to chronic or acute health problems such as a heart
25 condition, tuberculosis, rheumatic fever, nephritis, asthma,

1 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
2 leukemia, or diabetes.

3 (11) "Related services" means transportation and such
4 developmental, corrective, and other supportive services as
5 are required to assist a handicapped child to benefit from
6 special education and includes speech pathology, audiology,
7 occupational therapy, and physical therapy.

8 (12) "Special education" means specially designed
9 instruction, given at no cost to the parents or guardians,
10 to meet the unique needs of a handicapped child, including
11 but not limited to classroom instruction, instruction in
12 physical education, home instruction, and instruction in
13 hospitals and institutions.

14 (13) "Specific learning disability" means a disorder in
15 one or more of the basic psychological processes involved in
16 understanding or in using language, spoken or written, which
17 may manifest itself in an imperfect ability to listen,
18 think, speak, read, write, spell, or do mathematical
19 calculations. The term includes but is not limited to such
20 conditions as perceptual handicaps, brain injury, minimal
21 brain dysfunction, dyslexia, and developmental aphasia. The
22 term does not include children who have learning problems
23 which are primarily the result of visual, hearing, or motor
24 handicaps; mental retardation; or environmental, cultural,
25 or economic disadvantages.

1 (14) "Speech/language impaired" means a communication
2 disorder such as stuttering, impaired articulation, or a
3 language or voice impairment which adversely affects a
4 child's interpersonal relationships or educational
5 performance.

6 (15) "Surrogate parent" means an individual appointed
7 to safeguard a child's rights and protect the child's
8 interests in educational evaluation, placement, and hearing
9 or appeal procedures concerning the child.

10 ~~(15)~~(16) "Visually handicapped" means a visual
11 impairment which, after correction, adversely affects a
12 child's educational performance. The term includes both
13 partially seeing and blind children."

14 Section 2. Section 20-7-402, MCA, is amended to read:
15 "20-7-402. Special education to comply with board
16 policies. (1) The conduct of special education programs
17 shall comply with the policies recommended by the
18 superintendent of public instruction and adopted by the
19 board of public education. These policies shall assure and
20 include but are not limited to:

21 (a) placement of handicapped children in the least
22 restrictive alternative setting;

23 (b) due process for all handicapped children,
24 including the appointment of a surrogate parent if
25 necessary;

1 (c) use of child study teams to identify handicapped
2 children and use of instructional teams to plan individual
3 education programs;

4 (d) comprehensive evaluation for each handicapped
5 child; and

6 (e) other policies needed to assure a free and
7 appropriate public education.

8 (2) The superintendent of public instruction shall
9 promulgate rules to administer the policies of the board of
10 public education."

11 Section 3. Section 20-7-403, MCA, is amended to read:

12 "20-7-403. Duties of superintendent of public
13 instruction. The superintendent of public instruction shall
14 supervise and coordinate the conduct of special education in
15 the state by:

16 (1) recommending to the board of public education
17 adoption of those policies necessary to establish a planned
18 and coordinated program of special education in the state;

19 (2) administering the policies adopted by the board of
20 public education;

21 (3) certifying special education teachers on the basis
22 of the special qualifications for such teachers as
23 prescribed by the board of public education;

24 (4) establishing procedures to be used by school
25 district personnel in identifying handicapped children;

1 (5) recommending to districts the type of special
2 education class or program needed to serve the handicapped
3 children of the districts and preparing appropriate guides
4 for developing individual education programs;

5 (6) seeking for local districts appropriate
6 interdisciplinary assistance from public and private
7 agencies in diagnosing the special education needs of
8 children, in planning programs, and in admitting and
9 discharging children from such programs;

10 (7) assisting local school districts, institutions,
11 and other agencies in developing full-service programs for
12 all handicapped children;

13 (8) approving, as they are proposed and annually
14 thereafter, those special education classes or programs
15 which comply with the laws of the state of Montana, policies
16 of the board of public education, and the regulations of the
17 superintendent of public instruction;

18 (9) providing technical assistance to district
19 superintendents, principals, teachers, and trustees;

20 (10) conducting conferences, offering advice, and
21 otherwise cooperating with parents and other interested
22 persons;

23 (11) preparing appropriate training and instructional
24 material for persons appointed as surrogate parents that
25 outlines their duties toward the child, limitations on what

1 they may do for the child, duties in relation to the child's
 2 records, sources of assistance available to the surrogate
 3 parent, and the need to seek competent legal assistance in
 4 implementing hearing or appeal procedures;

5 ~~(11)~~(12) acting as the coordinating agency with federal
 6 agencies, other state agencies, political subdivisions of
 7 the state, and private bodies on matters concerning special
 8 education, reserving to the other agencies and political
 9 subdivisions their full responsibilities for other aspects
 10 of the care of children needing special education;

11 ~~(12)~~(13) administering regional special education
 12 services for children in need of special education in
 13 accordance with policies of the board of public education;
 14 and

15 ~~(13)~~(14) contracting for the delivery of audiological
 16 services to those children allowed by Montana law in
 17 accordance with policies of the board of public education."

18 Section 4. Section 20-7-414, MCA, is amended to read:

19 "20-7-414. Determination of children in need and type
 20 of special education needed -- approval of classes and
 21 programs by superintendent. (1) The determination of the
 22 children requiring special education and the type of special
 23 education needed by these children shall be the
 24 responsibility of the trustees, and such determination shall
 25 be made in compliance with the procedures established in the

1 rules of the superintendent of public instruction. Whenever
 2 the trustees learn of a handicapped child in their
 3 jurisdiction who is in need of special education, they shall
 4 determine whether the child is in need of a surrogate parent
 5 by determining whether the parents or guardian is unknown or
 6 unavailable or if the child is a ward of the state. The
 7 determination must be made within 10 days of the date on
 8 which the trustees learned of the presence of the child in
 9 the district. If the child is in need of a surrogate parent,
 10 the trustees must nominate a surrogate parent for the child
 11 as provided in [section 5].

12 (2) Whenever the trustees of any district intend to
 13 establish a special education class or program, they shall
 14 apply for approval and funding of the class or program by
 15 the superintendent of public instruction. The superintendent
 16 of public instruction shall approve or disapprove the
 17 application for the special education class or program on
 18 the basis of its compliance with the laws of the state of
 19 Montana, the special education policies adopted by the board
 20 of public education, and the rules of the superintendent of
 21 public instruction. No special education class may be
 22 operated by the trustees without the approval of the
 23 superintendent of public instruction. Each special education
 24 class or program must be approved annually to be funded as
 25 part of the maximum-budget-without-a-vote for special

1 education."

2 NEW SECTION. Section 5. Appointment of surrogate
3 parent. (1) Any person may advise the trustees of a school
4 district of a handicapped child within the district who may
5 be in need of a surrogate parent. The trustees must
6 determine whether the child is in need of a surrogate parent
7 as provided in 20-7-414. If the trustees determine that the
8 child is in need of a surrogate parent, they shall nominate
9 a surrogate parent for the child within 30 days of that
10 determination.

11 (2) The person nominated as a surrogate parent must be
12 an adult who is not an employee of a state or local
13 educational agency. The surrogate parent may not have a
14 vested interest that will conflict with his representation
15 and protection of the child. The surrogate, whenever
16 practicable, must be knowledgeable about the educational
17 system, special education requirements, and the legal rights
18 of the child in relation to the educational system. Whenever
19 practicable, the surrogate parent must be familiar with the
20 cultural or language background of the child.

21 (3) The nomination for appointment of a surrogate
22 parent, along with all necessary supporting documents, must
23 be submitted to the youth court for official appointment of
24 the surrogate parent by the court. If the court does not
25 appoint the nominee, the trustees must make another

1 nomination under this section.

2 NEW SECTION. Section 6. Responsibilities of surrogate
3 parent. A person assigned as a surrogate parent shall
4 represent the handicapped child in all decisionmaking
5 processes concerning the child's education by:

6 (1) becoming thoroughly acquainted with the child's
7 history and other information contained in school and other
8 pertinent files, records, and reports relating to that
9 child's educational needs;

10 (2) complying with state and federal law as to the
11 confidentiality of all records and information to which he
12 is privy pertaining to that child and using discretion in
13 the necessary sharing of the information with appropriate
14 people for the purpose of furthering the interests of the
15 child;

16 (3) becoming familiar with the educational evaluation
17 and placement for the child and by giving his approval or
18 disapproval for the evaluation and placement and reviewing
19 and evaluating special education programs pertaining to the
20 child and such other programs as may be available; and

21 (4) initiating any mediation, hearing, or appeal
22 procedures necessary and seeking qualified legal assistance
23 whenever such assistance is in the best interest of the
24 child.

25 NEW SECTION. Section 7. Surrogate parent -- immunity

1 from liability -- reimbursement. (1) A person appointed as
2 a surrogate parent is exempt from liability for any act or
3 omission performed by him in his capacity as a surrogate
4 parent except an act or omission which is found to have been
5 committed in a grossly negligent or malicious manner.

6 (2) A surrogate parent has the same protection and
7 immunity in professional communications as a teacher.

8 (3) A surrogate parent must be reimbursed by the
9 school district for all reasonable and necessary expenses
10 incurred in the pursuit of his duties, as prescribed by
11 rules adopted by the superintendent of public instruction.

12 NEW SECTION. Section 8. Extension of authority. Any
13 existing authority of the board of education or
14 superintendent of public instruction to make rules on the
15 subject of the provisions of this act is extended to the
16 provisions of this act.

17 NEW SECTION. Section 9. Codification instruction.
18 Sections 5 through 7 are intended to be codified as an
19 integral part of Title 20, chapter 7, part 4, and the
20 provisions of Title 20 apply to sections 5 through 7.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 357-85

Form BD-15

In compliance with a written request received February 6, 19 85, there is hereby submitted a Fiscal Note for S.B. 319 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the appointment of a surrogate parent for a handicapped child to represent the child in the decisionmaking process related to the child's education.

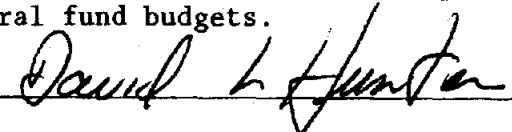
ASSUMPTIONS:

1. 30 students in public schools need surrogate parents.
2. 50% or 71 students in youth correctional facilities need surrogate parents.
3. 44 students in state operated institutions for the handicapped need surrogate parents.
4. Surrogate parents need to attend a minimum of one meeting a school year.
5. Surrogate parents would be recruited from areas around the child's location.
6. Appropriate materials and training can be done through the existing Office of Public Instruction programs.
7. The appropriate school district is responsible for reimbursement of necessary costs.

FISCAL IMPACT:

<u>Expenditures</u>	<u>FY 86</u>	<u>FY 87</u>
Current Law	\$ <u>-0-</u>	\$ <u>-0-</u>
Proposed Law	<u>1,285</u>	<u>1,285</u>
Increased Cost	\$ <u>1,285</u>	\$ <u>1,285</u>

The surrogate parent program would not be an allowable state special education cost. Reimbursement to parents would come from federal special education funding or school/institution general fund budgets.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 12, 1985

SB319

APPROVED BY COMM. ON EDUCATION
AND CULTURAL RESOURCES

1 STATEMENT OF INTENT

2 SENATE BILL 319

3 Senate Education and Cultural Resources Committee

4

5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the superintendent of
7 public instruction. In preparing instructional and training
8 material to be given to a person appointed as a surrogate
9 parent, the superintendent should look to the material used
10 in the state of Connecticut, which developed the surrogate
11 parent concept. The superintendent should tailor the
12 material to carefully delineate the procedure used in
13 Montana for evaluating and placing handicapped children and
14 devising educational programs for them. The material should
15 specifically delineate the role of the surrogate in working
16 with the child study team as early as possible.

17 Rules adopted by the superintendent concerning
18 reimbursement of the surrogate parent should be aimed at
19 fully reimbursing the surrogate while not creating a
20 financial hardship to the school district. The rules should
21 be such that people will not be financially discouraged from
22 accepting appointment as a surrogate parent.

SECOND READING

SB 319

1 SENATE BILL NO. 319

2 INTRODUCED BY JACOBSON, BERGENE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 APPOINTMENT OF A SURROGATE PARENT FOR A HANDICAPPED CHILD TO
6 REPRESENT THE CHILD IN THE DECISIONMAKING PROCESS RELATED TO
7 THE CHILD'S EDUCATION; PRESCRIBING THE RESPONSIBILITIES OF A
8 SURROGATE PARENT; AMENDING SECTIONS 20-7-401 THROUGH
9 20-7-403 AND 20-7-414, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 20-7-401, MCA, is amended to read:

13 "20-7-401. Definitions. In this title, unless the
14 context clearly indicates otherwise, the following
15 definitions apply:

16 (1) "Appropriate public education" means the provision
17 of regular or special education and related aids and
18 services that are designed to meet individual educational
19 needs of handicapped persons as adequately as the needs of
20 nonhandicapped are met.

21 (2) "Deaf" means a hearing impairment which is so
22 severe that the child's hearing is nonfunctional for the
23 purpose of educational performance.

24 (3) "Deaf/blind" means concomitant hearing and visual
25 impairments, the combination of which causes such severe

1 educational problems for the child so impaired that the
2 child cannot be accommodated in a special education program
3 designed solely for deaf or blind children.

4 (4) "Emotionally disturbed" means a condition
5 exhibiting one or more of the following characteristics to a
6 marked degree and over a long period of time: an inability
7 to learn which cannot be explained by intellectual, sensory,
8 or health factors; an inability to build or maintain
9 satisfactory interpersonal relationships with peers and
10 teachers; inappropriate types of behavior or feelings under
11 normal circumstances; a general pervasive mood of
12 unhappiness or depression; or a tendency to develop physical
13 symptoms, pains, or fears associated with personal or school
14 problems. The term does not include children who are
15 socially maladjusted. The emotionally disturbed category may
16 include students who also may have been diagnosed by
17 appropriate specialists as psychotic, sociopathic, or
18 schizophrenic. An emotionally disturbed child's disorders
19 are not primarily the result of problems with visual acuity,
20 hearing impairment, physical handicaps, cultural or
21 instructional factors, or mental retardation. "Emotionally
22 disturbed" refers to a person who has been identified, based
23 on a comprehensive evaluation, as having observable
24 behavioral patterns which seriously inhibit the academic and
25 social or emotional growth of the individual or the

1 educational rights of others to the point that supportive
2 services are required. These behavioral patterns may
3 include:

4 (a) excessive physical or verbal aggression toward
5 oneself or others and a lack of response to regular
6 educational intervention;

7 (b) high frequency of persistent inattention to
8 academic or social tasks associated with regular classroom
9 performance; and

10 (c) persistent withdrawal from peer or adult
11 interactions associated with the expected social development
12 in a regular educational environment.

13 (5) "Handicapped child" means a child evaluated as
14 being mentally retarded, hard-of-hearing, deaf,
15 speech-impaired, visually handicapped, emotionally
16 disturbed, deaf/blind, multihandicapped, orthopedically
17 impaired, other health-impaired, or as having specific
18 learning disabilities, who because of those impairments
19 needs special education and related services.

20 (6) "Hard-of-hearing" means a hearing impairment,
21 whether permanent or fluctuating, which adversely affects a
22 child's educational performance but which is not included
23 within the definition of deaf.

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25 general intellectual functioning existing concurrently with

1 deficits in adaptive behavior and manifested during the
2 developmental period, which adversely affects a child's
3 educational performance.

4 (8) "Multihandicapped" means concomitant impairments
5 (e.g., mentally retarded/blind or mentally
6 retarded/orthopedically impaired), the combination of which
7 causes such severe educational problems for the child so
8 impaired that the child cannot be accommodated in a special
9 education program designed solely for one of the
10 impairments. The term does not include deaf/blind children.

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12 orthopedic impairment which adversely affects a child's
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14 limited to impairment caused by congenital anomaly (e.g.,
15 clubfoot or absence of some member), impairments caused by
16 disease (e.g., poliomyelitis, bone tuberculosis), and
17 impairments from other causes (e.g., fractures or burns
18 which cause contractures, amputation, cerebral palsy).

19 (10) "Other health-impaired" means:

20 (a) having an autistic condition that is manifested by
21 severe communication and other developmental and educational
22 problems; or

23 (b) having limited strength, vitality, or alertness
24 due to chronic or acute health problems such as a heart
25 condition, tuberculosis, rheumatic fever, nephritis, asthma,

1 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
2 leukemia, or diabetes.

3 (11) "Related services" means transportation and such
4 developmental, corrective, and other supportive services as
5 are required to assist a handicapped child to benefit from
6 special education and includes speech pathology, audiology,
7 occupational therapy, and physical therapy.

8 (12) "Special education" means specially designed
9 instruction, given at no cost to the parents or guardians,
10 to meet the unique needs of a handicapped child, including
11 but not limited to classroom instruction, instruction in
12 physical education, home instruction, and instruction in
13 hospitals and institutions.

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15 one or more of the basic psychological processes involved in
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17 may manifest itself in an imperfect ability to listen,
18 think, speak, read, write, spell, or do mathematical
19 calculations. The term includes but is not limited to such
20 conditions as perceptual handicaps, brain injury, minimal
21 brain dysfunction, dyslexia, and developmental aphasia. The
22 term does not include children who have learning problems
23 which are primarily the result of visual, hearing, or motor
24 handicaps; mental retardation; or environmental, cultural,
25 or economic disadvantages.

1 (14) "Speech/language impaired" means a communication
2 disorder such as stuttering, impaired articulation, or a
3 language or voice impairment which adversely affects a
4 child's interpersonal relationships or educational
5 performance.

6 (15) "Surrogate parent" means an individual appointed
7 to safeguard a child's rights and protect the child's
8 interests in educational evaluation, placement, and hearing
9 or appeal procedures concerning the child.

10 ~~{15}~~{16} "Visually handicapped" means a visual
11 impairment which, after correction, adversely affects a
12 child's educational performance. The term includes both
13 partially seeing and blind children."

14 Section 2. Section 20-7-402, MCA, is amended to read:
15 "20-7-402. Special education to comply with board
16 policies. (1) The conduct of special education programs
17 shall comply with the policies recommended by the
18 superintendent of public instruction and adopted by the
19 board of public education. These policies shall assure and
20 include but are not limited to:

21 (a) placement of handicapped children in the least
22 restrictive alternative setting;

23 (b) due process for all handicapped children,
24 including the appointment of a surrogate parent if
25 necessary;

1 (c) use of child study teams to identify handicapped
2 children and use of instructional teams to plan individual
3 education programs;

4 (d) comprehensive evaluation for each handicapped
5 child; and

6 (e) other policies needed to assure a free and
7 appropriate public education.

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9 promulgate rules to administer the policies of the board of
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11 Section 3. Section 20-7-403, MCA, is amended to read:

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13 instruction. The superintendent of public instruction shall
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17 adoption of those policies necessary to establish a planned
18 and coordinated program of special education in the state;

19 (2) administering the policies adopted by the board of
20 public education;

21 (3) certifying special education teachers on the basis
22 of the special qualifications for such teachers as
23 prescribed by the board of public education;

24 (4) establishing procedures to be used by school
25 district personnel in identifying handicapped children;

1 (5) recommending to districts the type of special
2 education class or program needed to serve the handicapped
3 children of the districts and preparing appropriate guides
4 for developing individual education programs;

5 (6) seeking for local districts appropriate
6 interdisciplinary assistance from public and private
7 agencies in diagnosing the special education needs of
8 children, in planning programs, and in admitting and
9 discharging children from such programs;

10 (7) assisting local school districts, institutions,
11 and other agencies in developing full-service programs for
12 all handicapped children;

13 (8) approving, as they are proposed and annually
14 thereafter, those special education classes or programs
15 which comply with the laws of the state of Montana, policies
16 of the board of public education, and the regulations of the
17 superintendent of public instruction;

18 (9) providing technical assistance to district
19 superintendents, principals, teachers, and trustees;

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21 otherwise cooperating with parents and other interested
22 persons;

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24 material for persons appointed as surrogate parents that
25 outlines their duties toward the child, limitations on what

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 3 parent, and the need to seek competent legal assistance in
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 6 agencies, other state agencies, political subdivisions of
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 8 education, reserving to the other agencies and political
 9 subdivisions their full responsibilities for other aspects
 10 of the care of children needing special education;

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 16 services to those children allowed by Montana law in
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18 Section 4. Section 20-7-414, MCA, is amended to read:

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 25 be made in compliance with the procedures established in the

1 rules of the superintendent of public instruction. Whenever
 2 the trustees OF A SCHOOL DISTRICT OR THE GOVERNING AUTHORITY
 3 OF AN INSTITUTION learn of a handicapped child in their
 4 jurisdiction who is in need of special education, they shall
 5 determine whether the child is in need of a surrogate parent
 6 by determining whether the parents or guardian is unknown or
 7 unavailable or if the child is a ward of the state. The
 8 determination must be made within 10 days of the date on
 9 which the trustees OF A SCHOOL DISTRICT OR THE GOVERNING
 10 AUTHORITY OF AN INSTITUTION learned of the presence of the
 11 child in the district. If the child is in need of a
 12 surrogate parent, the trustees OF A SCHOOL DISTRICT OR THE
 13 GOVERNING AUTHORITY OF AN INSTITUTION must nominate a
 14 surrogate parent for the child as provided in [section 5].

15 (2) Whenever the trustees of any district intend to
 16 establish a special education class or program, they shall
 17 apply for approval and funding of the class or program by
 18 the superintendent of public instruction. The superintendent
 19 of public instruction shall approve or disapprove the
 20 application for the special education class or program on
 21 the basis of its compliance with the laws of the state of
 22 Montana, the special education policies adopted by the board
 23 of public education, and the rules of the superintendent of
 24 public instruction. No special education class may be
 25 operated by the trustees without the approval of the

1 superintendent of public instruction. Each special education
2 class or program must be approved annually to be funded as
3 part of the maximum-budget-without-a-vote for special
4 education."

5 NEW SECTION. Section 5. Appointment of surrogate
6 parent. (1) Any person may advise the trustees of a school
7 district OR THE GOVERNING AUTHORITY OF AN INSTITUTION of a
8 handicapped child within the district who may be in need of
9 a surrogate parent. The trustees OF A SCHOOL DISTRICT OR THE
10 GOVERNING AUTHORITY OF AN INSTITUTION must determine whether
11 the child is in need of a surrogate parent as provided in
12 20-7-414. If the trustees OF A SCHOOL DISTRICT OR THE
13 GOVERNING AUTHORITY OF AN INSTITUTION determine that the
14 child is in need of a surrogate parent, they shall nominate
15 a surrogate parent for the child within 30 days of that
16 determination.

17 (2) The person nominated as a surrogate parent must be
18 an adult who is not an employee of a state or local
19 educational agency. The surrogate parent may not have a
20 vested interest that will conflict with his representation
21 and protection of the child. The surrogate, whenever
22 practicable, must be knowledgeable about the educational
23 system, special education requirements, and the legal rights
24 of the child in relation to the educational system. Whenever
25 practicable, the surrogate parent must be familiar with the

1 cultural or language background of the child.

2 (3) The nomination for appointment of a surrogate
3 parent, along with all necessary supporting documents, must
4 be submitted to the youth court for official appointment of
5 the surrogate parent by the court. If the court does not
6 appoint the nominee, the trustees OF A SCHOOL DISTRICT OR
7 THE GOVERNING AUTHORITY OF AN INSTITUTION must make another
8 nomination under this section.

9 NEW SECTION. Section 6. Responsibilities of surrogate
10 parent. A person assigned as a surrogate parent shall
11 represent the handicapped child in all decisionmaking
12 processes concerning the child's education by:

13 (1) becoming thoroughly acquainted with the child's
14 history and other information contained in school and other
15 pertinent files, records, and reports relating to that
16 child's educational needs;

17 (2) complying with state and federal law as to the
18 confidentiality of all records and information to which he
19 is privy pertaining to that child and using discretion in
20 the necessary sharing of the information with appropriate
21 people for the purpose of furthering the interests of the
22 child;

23 (3) becoming familiar with the educational evaluation
24 and placement for the child and by giving his approval or
25 disapproval for the evaluation and placement and reviewing

1 and evaluating special education programs pertaining to the
2 child and such other programs as may be available; and

3 (4) initiating any mediation, hearing, or appeal
4 procedures necessary and seeking qualified legal assistance
5 whenever such assistance is in the best interest of the
6 child.

7 NEW SECTION. Section 7. Surrogate parent -- immunity
8 from liability -- reimbursement. (1) A person appointed as a
9 surrogate parent is exempt from liability for any act or
10 omission performed by him in his capacity as a surrogate
11 parent except an act or omission which is found to have been
12 committed in a grossly negligent or malicious manner.

13 (2) A surrogate parent has the same protection and
14 immunity in professional communications as a teacher.

15 (3) A surrogate parent must be reimbursed by the
16 school district for all reasonable and necessary expenses
17 incurred in the pursuit of his duties, as prescribed by
18 rules adopted by the superintendent of public instruction.

19 NEW SECTION. Section 8. Extension of authority. Any
20 existing authority of the board of education or
21 superintendent of public instruction to make rules on the
22 subject of the provisions of this act is extended to the
23 provisions of this act.

24 NEW SECTION. Section 9. Codification instruction.
25 Sections 5 through 7 are intended to be codified as an

1 integral part of Title 20, chapter 7, part 4, and the
2 provisions of Title 20 apply to sections 5 through 7.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 319

3 Senate Education and Cultural Resources Committee
4

5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the superintendent of
7 public instruction. In preparing instructional and training
8 material to be given to a person appointed as a surrogate
9 parent, the superintendent should look to the material used
10 in the state of Connecticut, which developed the surrogate
11 parent concept. The superintendent should tailor the
12 material to carefully delineate the procedure used in
13 Montana for evaluating and placing handicapped children and
14 devising educational programs for them. The material should
15 specifically delineate the role of the surrogate in working
16 with the child study team as early as possible.

17 Rules adopted by the superintendent concerning
18 reimbursement of the surrogate parent should be aimed at
19 fully reimbursing the surrogate while not creating a
20 financial hardship to the school district. The rules should
21 be such that people will not be financially discouraged from
22 accepting appointment as a surrogate parent.

THIRD READING

SB 319

1 SENATE BILL NO. 319

2 INTRODUCED BY JACOBSON, BERGENE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 APPOINTMENT OF A SURROGATE PARENT FOR A HANDICAPPED CHILD TO
6 REPRESENT THE CHILD IN THE DECISIONMAKING PROCESS RELATED TO
7 THE CHILD'S EDUCATION; PRESCRIBING THE RESPONSIBILITIES OF A
8 SURROGATE PARENT; AMENDING SECTIONS 20-7-401 THROUGH
9 20-7-403 AND 20-7-414, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 20-7-401, MCA, is amended to read:

13 "20-7-401. Definitions. In this title, unless the
14 context clearly indicates otherwise, the following
15 definitions apply:

16 (1) "Appropriate public education" means the provision
17 of regular or special education and related aids and
18 services that are designed to meet individual educational
19 needs of handicapped persons as adequately as the needs of
20 nonhandicapped are met.

21 (2) "Deaf" means a hearing impairment which is so
22 severe that the child's hearing is nonfunctional for the
23 purpose of educational performance.

24 (3) "Deaf/blind" means concomitant hearing and visual
25 impairments, the combination of which causes such severe

1 educational problems for the child so impaired that the
2 child cannot be accommodated in a special education program
3 designed solely for deaf or blind children.

4 (4) "Emotionally disturbed" means a condition
5 exhibiting one or more of the following characteristics to a
6 marked degree and over a long period of time: an inability
7 to learn which cannot be explained by intellectual, sensory,
8 or health factors; an inability to build or maintain
9 satisfactory interpersonal relationships with peers and
10 teachers; inappropriate types of behavior or feelings under
11 normal circumstances; a general pervasive mood of
12 unhappiness or depression; or a tendency to develop physical
13 symptoms, pains, or fears associated with personal or school
14 problems. The term does not include children who are
15 socially maladjusted. The emotionally disturbed category may
16 include students who also may have been diagnosed by
17 appropriate specialists as psychotic, sociopathic, or
18 schizophrenic. An emotionally disturbed child's disorders
19 are not primarily the result of problems with visual acuity,
20 hearing impairment, physical handicaps, cultural or
21 instructional factors, or mental retardation. "Emotionally
22 disturbed" refers to a person who has been identified, based
23 on a comprehensive evaluation, as having observable
24 behavioral patterns which seriously inhibit the academic and
25 social or emotional growth of the individual or the

1 educational rights of others to the point that supportive
2 services are required. These behavioral patterns may
3 include:

4 (a) excessive physical or verbal aggression toward
5 oneself or others and a lack of response to regular
6 educational intervention;

7 (b) high frequency of persistent inattention to
8 academic or social tasks associated with regular classroom
9 performance; and

10 (c) persistent withdrawal from peer or adult
11 interactions associated with the expected social development
12 in a regular educational environment.

13 (5) "Handicapped child" means a child evaluated as
14 being mentally retarded, hard-of-hearing, deaf,
15 speech-impaired, visually handicapped, emotionally
16 disturbed, deaf/blind, multihandicapped, orthopedically
17 impaired, other health-impaired, or as having specific
18 learning disabilities, who because of those impairments
19 needs special education and related services.

20 (6) "Hard-of-hearing" means a hearing impairment,
21 whether permanent or fluctuating, which adversely affects a
22 child's educational performance but which is not included
23 within the definition of deaf.

24 (7) "Mentally retarded" means significantly subaverage
25 general intellectual functioning existing concurrently with

1 deficits in adaptive behavior and manifested during the
2 developmental period, which adversely affects a child's
3 educational performance.

4 (8) "Multihandicapped" means concomitant impairments
5 (e.g., mentally retarded/blind or mentally
6 retarded/orthopedically impaired), the combination of which
7 causes such severe educational problems for the child so
8 impaired that the child cannot be accommodated in a special
9 education program designed solely for one of the
10 impairments. The term does not include deaf/blind children.

11 (9) "Orthopedically impaired" means a severe
12 orthopedic impairment which adversely affects a child's
13 educational performance. The term includes but is not
14 limited to impairment caused by congenital anomaly (e.g.,
15 clubfoot or absence of some member), impairments caused by
16 disease (e.g., poliomyelitis, bone tuberculosis), and
17 impairments from other causes (e.g., fractures or burns
18 which cause contractures, amputation, cerebral palsy).

19 (10) "Other health-impaired" means:

20 (a) having an autistic condition that is manifested by
21 severe communication and other developmental and educational
22 problems; or

23 (b) having limited strength, vitality, or alertness
24 due to chronic or acute health problems such as a heart
25 condition, tuberculosis, rheumatic fever, nephritis, asthma,

1 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
2 leukemia, or diabetes.

3 (11) "Related services" means transportation and such
4 developmental, corrective, and other supportive services as
5 are required to assist a handicapped child to benefit from
6 special education and includes speech pathology, audiology,
7 occupational therapy, and physical therapy.

8 (12) "Special education" means specially designed
9 instruction, given at no cost to the parents or guardians,
10 to meet the unique needs of a handicapped child, including
11 but not limited to classroom instruction, instruction in
12 physical education, home instruction, and instruction in
13 hospitals and institutions.

14 (13) "Specific learning disability" means a disorder in
15 one or more of the basic psychological processes involved in
16 understanding or in using language, spoken or written, which
17 may manifest itself in an imperfect ability to listen,
18 think, speak, read, write, spell, or do mathematical
19 calculations. The term includes but is not limited to such
20 conditions as perceptual handicaps, brain injury, minimal
21 brain dysfunction, dyslexia, and developmental aphasia. The
22 term does not include children who have learning problems
23 which are primarily the result of visual, hearing, or motor
24 handicaps; mental retardation; or environmental, cultural,
25 or economic disadvantages.

1 (14) "Speech/language impaired" means a communication
2 disorder such as stuttering, impaired articulation, or a
3 language or voice impairment which adversely affects a
4 child's interpersonal relationships or educational
5 performance.

6 (15) "Surrogate parent" means an individual appointed
7 to safeguard a child's rights and protect the child's
8 interests in educational evaluation, placement, and hearing
9 or appeal procedures concerning the child.

10 ~~(15)~~(16) "Visually handicapped" means a visual
11 impairment which, after correction, adversely affects a
12 child's educational performance. The term includes both
13 partially seeing and blind children."

14 Section 2. Section 20-7-402, MCA, is amended to read:

15 "20-7-402. Special education to comply with board
16 policies. (1) The conduct of special education programs
17 shall comply with the policies recommended by the
18 superintendent of public instruction and adopted by the
19 board of public education. These policies shall assure and
20 include but are not limited to:

21 (a) placement of handicapped children in the least
22 restrictive alternative setting;

23 (b) due process for all handicapped children,
24 including the appointment of a surrogate parent if
25 necessary;

1 (c) use of child study teams to identify handicapped
2 children and use of instructional teams to plan individual
3 education programs;

4 (d) comprehensive evaluation for each handicapped
5 child; and

6 (e) other policies needed to assure a free and
7 appropriate public education.

8 (2) The superintendent of public instruction shall
9 promulgate rules to administer the policies of the board of
10 public education."

11 Section 3. Section 20-7-403, MCA, is amended to read:

12 "20-7-403. Duties of superintendent of public
13 instruction. The superintendent of public instruction shall
14 supervise and coordinate the conduct of special education in
15 the state by:

16 (1) recommending to the board of public education
17 adoption of those policies necessary to establish a planned
18 and coordinated program of special education in the state;

19 (2) administering the policies adopted by the board of
20 public education;

21 (3) certifying special education teachers on the basis
22 of the special qualifications for such teachers as
23 prescribed by the board of public education;

24 (4) establishing procedures to be used by school
25 district personnel in identifying handicapped children;

1 (5) recommending to districts the type of special
2 education class or program needed to serve the handicapped
3 children of the districts and preparing appropriate guides
4 for developing individual education programs;

5 (6) seeking for local districts appropriate
6 interdisciplinary assistance from public and private
7 agencies in diagnosing the special education needs of
8 children, in planning programs, and in admitting and
9 discharging children from such programs;

10 (7) assisting local school districts, institutions,
11 and other agencies in developing full-service programs for
12 all handicapped children;

13 (8) approving, as they are proposed and annually
14 thereafter, those special education classes or programs
15 which comply with the laws of the state of Montana, policies
16 of the board of public education, and the regulations of the
17 superintendent of public instruction;

18 (9) providing technical assistance to district
19 superintendents, principals, teachers, and trustees;

20 (10) conducting conferences, offering advice, and
21 otherwise cooperating with parents and other interested
22 persons;

23 (11) preparing appropriate training and instructional
24 material for persons appointed as surrogate parents that
25 outlines their duties toward the child, limitations on what

1 they may do for the child, duties in relation to the child's
 2 records, sources of assistance available to the surrogate
 3 parent, and the need to seek competent legal assistance in
 4 implementing hearing or appeal procedures;

5 †11†(12) acting as the coordinating agency with federal
 6 agencies, other state agencies, political subdivisions of
 7 the state, and private bodies on matters concerning special
 8 education, reserving to the other agencies and political
 9 subdivisions their full responsibilities for other aspects
 10 of the care of children needing special education;

11 †12†(13) administering regional special education
 12 services for children in need of special education in
 13 accordance with policies of the board of public education;
 14 and

15 †13†(14) contracting for the delivery of audiological
 16 services to those children allowed by Montana law in
 17 accordance with policies of the board of public education."

18 Section 4. Section 20-7-414, MCA, is amended to read:

19 "20-7-414. Determination of children in need and type
 20 of special education needed -- approval of classes and
 21 programs by superintendent. (1) The determination of the
 22 children requiring special education and the type of special
 23 education needed by these children shall be the
 24 responsibility of the trustees, and such determination shall
 25 be made in compliance with the procedures established in the

1 rules of the superintendent of public instruction. Whenever
 2 the trustees OF A SCHOOL DISTRICT OR THE GOVERNING AUTHORITY
 3 OF AN INSTITUTION learn of a handicapped child in their
 4 jurisdiction who is in need of special education, they shall
 5 determine whether the child is in need of a surrogate parent
 6 by determining whether the parents or guardian is unknown or
 7 unavailable or if the child is a ward of the state. The
 8 determination must be made within 10 days of the date on
 9 which the trustees OF A SCHOOL DISTRICT OR THE GOVERNING
 10 AUTHORITY OF AN INSTITUTION learned of the presence of the
 11 child in the district. If the child is in need of a
 12 surrogate parent, the trustees OF A SCHOOL DISTRICT OR THE
 13 GOVERNING AUTHORITY OF AN INSTITUTION must nominate a
 14 surrogate parent for the child as provided in [section 5].

15 (2) Whenever the trustees of any district intend to
 16 establish a special education class or program, they shall
 17 apply for approval and funding of the class or program by
 18 the superintendent of public instruction. The superintendent
 19 of public instruction shall approve or disapprove the
 20 application for the special education class or program on
 21 the basis of its compliance with the laws of the state of
 22 Montana, the special education policies adopted by the board
 23 of public education, and the rules of the superintendent of
 24 public instruction. No special education class may be
 25 operated by the trustees without the approval of the

1 superintendent of public instruction. Each special education
2 class or program must be approved annually to be funded as
3 part of the maximum-budget-without-a-vote for special
4 education."

5 NEW SECTION. Section 5. Appointment of surrogate
6 parent. (1) Any person may advise the trustees of a school
7 district OR THE GOVERNING AUTHORITY OF AN INSTITUTION of a
8 handicapped child within the district who may be in need of
9 a surrogate parent. The trustees OF A SCHOOL DISTRICT OR THE
10 GOVERNING AUTHORITY OF AN INSTITUTION must determine whether
11 the child is in need of a surrogate parent as provided in
12 20-7-414. If the trustees OF A SCHOOL DISTRICT OR THE
13 GOVERNING AUTHORITY OF AN INSTITUTION determine that the
14 child is in need of a surrogate parent, they shall nominate
15 a surrogate parent for the child within 30 days of that
16 determination.

17 (2) The person nominated as a surrogate parent must be
18 an adult who is not an employee of a state or local
19 educational agency. The surrogate parent may not have a
20 vested interest that will conflict with his representation
21 and protection of the child. The surrogate, whenever
22 practicable, must be knowledgeable about the educational
23 system, special education requirements, and the legal rights
24 of the child in relation to the educational system. Whenever
25 practicable, the surrogate parent must be familiar with the

1 cultural or language background of the child.

2 (3) The nomination for appointment of a surrogate
3 parent, along with all necessary supporting documents, must
4 be submitted to the youth court for official appointment of
5 the surrogate parent by the court. If the court does not
6 appoint the nominee, the trustees OF A SCHOOL DISTRICT OR
7 THE GOVERNING AUTHORITY OF AN INSTITUTION must make another
8 nomination under this section.

9 NEW SECTION. Section 6. Responsibilities of surrogate
10 parent. A person assigned as a surrogate parent shall
11 represent the handicapped child in all decisionmaking
12 processes concerning the child's education by:

13 (1) becoming thoroughly acquainted with the child's
14 history and other information contained in school and other
15 pertinent files, records, and reports relating to that
16 child's educational needs;

17 (2) complying with state and federal law as to the
18 confidentiality of all records and information to which he
19 is privy pertaining to that child and using discretion in
20 the necessary sharing of the information with appropriate
21 people for the purpose of furthering the interests of the
22 child;

23 (3) becoming familiar with the educational evaluation
24 and placement for the child and by giving his approval or
25 disapproval for the evaluation and placement and reviewing

1 and evaluating special education programs pertaining to the
2 child and such other programs as may be available; and

3 (4) initiating any mediation, hearing, or appeal
4 procedures necessary and seeking qualified legal assistance
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6 child.

7 NEW SECTION. Section 7. Surrogate parent -- immunity
8 from liability -- reimbursement. (1) A person appointed as a
9 surrogate parent is exempt from liability for any act or
10 omission performed by him in his capacity as a surrogate
11 parent except an act or omission which is found to have been
12 committed in a grossly negligent or malicious manner.

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14 immunity in professional communications as a teacher.

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16 school district for all reasonable and necessary expenses
17 incurred in the pursuit of his duties, as prescribed by
18 rules adopted by the superintendent of public instruction.

19 NEW SECTION. Section 8. Extension of authority. Any
20 existing authority of the board of education or
21 superintendent of public instruction to make rules on the
22 subject of the provisions of this act is extended to the
23 provisions of this act.

24 NEW SECTION. Section 9. Codification instruction.
25 Sections 5 through 7 are intended to be codified as an

1 integral part of Title 20, chapter 7, part 4, and the
2 provisions of Title 20 apply to sections 5 through 7.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 319

3 Senate Education and Cultural Resources Committee

4

5 A statement of intent is required for this bill because
6 it delegates rulemaking authority to the superintendent of
7 public instruction. In preparing instructional and training
8 material to be given to a person appointed as a surrogate
9 parent, the superintendent should look to the material used
10 in the state of Connecticut, which developed the surrogate
11 parent concept. The superintendent should tailor the
12 material to carefully delineate the procedure used in
13 Montana for evaluating and placing handicapped children and
14 devising educational programs for them. The material should
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16 with the child study team as early as possible.

17 Rules adopted by the superintendent concerning
18 reimbursement of the surrogate parent should be aimed at
19 fully reimbursing the surrogate while not creating a
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2 INTRODUCED BY JACOBSON, BERGENE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 APPOINTMENT OF A SURROGATE PARENT FOR A HANDICAPPED CHILD TO
6 REPRESENT THE CHILD IN THE DECISIONMAKING PROCESS RELATED TO
7 THE CHILD'S EDUCATION; PRESCRIBING THE RESPONSIBILITIES OF A
8 SURROGATE PARENT; AMENDING SECTIONS 20-7-401 THROUGH
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19 needs of handicapped persons as adequately as the needs of
20 nonhandicapped are met.

21 (2) "Deaf" means a hearing impairment which is so
22 severe that the child's hearing is nonfunctional for the
23 purpose of educational performance.

24 (3) "Deaf/blind" means concomitant hearing and visual
25 impairments, the combination of which causes such severe

1 educational problems for the child so impaired that the
2 child cannot be accommodated in a special education program
3 designed solely for deaf or blind children.

4 (4) "Emotionally disturbed" means a condition
5 exhibiting one or more of the following characteristics to a
6 marked degree and over a long period of time: an inability
7 to learn which cannot be explained by intellectual, sensory,
8 or health factors; an inability to build or maintain
9 satisfactory interpersonal relationships with peers and
10 teachers; inappropriate types of behavior or feelings under
11 normal circumstances; a general pervasive mood of
12 unhappiness or depression; or a tendency to develop physical
13 symptoms, pains, or fears associated with personal or school
14 problems. The term does not include children who are
15 socially maladjusted. The emotionally disturbed category may
16 include students who also may have been diagnosed by
17 appropriate specialists as psychotic, sociopathic, or
18 schizophrenic. An emotionally disturbed child's disorders
19 are not primarily the result of problems with visual acuity,
20 hearing impairment, physical handicaps, cultural or
21 instructional factors, or mental retardation. "Emotionally
22 disturbed" refers to a person who has been identified, based
23 on a comprehensive evaluation, as having observable
24 behavioral patterns which seriously inhibit the academic and
25 social or emotional growth of the individual or the

1 educational rights of others to the point that supportive
2 services are required. These behavioral patterns may
3 include:

4 (a) excessive physical or verbal aggression toward
5 oneself or others and a lack of response to regular
6 educational intervention;

7 (b) high frequency of persistent inattention to
8 academic or social tasks associated with regular classroom
9 performance; and

10 (c) persistent withdrawal from peer or adult
11 interactions associated with the expected social development
12 in a regular educational environment.

13 (5) "Handicapped child" means a child evaluated as
14 being mentally retarded, hard-of-hearing, deaf,
15 speech-impaired, visually handicapped, emotionally
16 disturbed, deaf/blind, multihandicapped, orthopedically
17 impaired, other health-impaired, or as having specific
18 learning disabilities, who because of those impairments
19 needs special education and related services.

20 (6) "Hard-of-hearing" means a hearing impairment,
21 whether permanent or fluctuating, which adversely affects a
22 child's educational performance but which is not included
23 within the definition of deaf.

24 (7) "Mentally retarded" means significantly subaverage
25 general intellectual functioning existing concurrently with

1 deficits in adaptive behavior and manifested during the
2 developmental period, which adversely affects a child's
3 educational performance.

4 (8) "Multihandicapped" means concomitant impairments
5 (e.g., mentally retarded/blind or mentally
6 retarded/orthopedically impaired), the combination of which
7 causes such severe educational problems for the child so
8 impaired that the child cannot be accommodated in a special
9 education program designed solely for one of the
10 impairments. The term does not include deaf/blind children.

11 (9) "Orthopedically impaired" means a severe
12 orthopedic impairment which adversely affects a child's
13 educational performance. The term includes but is not
14 limited to impairment caused by congenital anomaly (e.g.,
15 clubfoot or absence of some member), impairments caused by
16 disease (e.g., poliomyelitis, bone tuberculosis), and
17 impairments from other causes (e.g., fractures or burns
18 which cause contractures, amputation, cerebral palsy).

19 (10) "Other health-impaired" means:

20 (a) having an autistic condition that is manifested by
21 severe communication and other developmental and educational
22 problems; or

23 (b) having limited strength, vitality, or alertness
24 due to chronic or acute health problems such as a heart
25 condition, tuberculosis, rheumatic fever, nephritis, asthma,

1 sickle-cell anemia, hemophilia, epilepsy, lead poisoning,
2 leukemia, or diabetes.

3 (11) "Related services" means transportation and such
4 developmental, corrective, and other supportive services as
5 are required to assist a handicapped child to benefit from
6 special education and includes speech pathology, audiology,
7 occupational therapy, and physical therapy.

8 (12) "Special education" means specially designed
9 instruction, given at no cost to the parents or guardians,
10 to meet the unique needs of a handicapped child, including
11 but not limited to classroom instruction, instruction in
12 physical education, home instruction, and instruction in
13 hospitals and institutions.

14 (13) "Specific learning disability" means a disorder in
15 one or more of the basic psychological processes involved in
16 understanding or in using language, spoken or written, which
17 may manifest itself in an imperfect ability to listen,
18 think, speak, read, write, spell, or do mathematical
19 calculations. The term includes but is not limited to such
20 conditions as perceptual handicaps, brain injury, minimal
21 brain dysfunction, dyslexia, and developmental aphasia. The
22 term does not include children who have learning problems
23 which are primarily the result of visual, hearing, or motor
24 handicaps; mental retardation; or environmental, cultural,
25 or economic disadvantages.

1 (14) "Speech/language impaired" means a communication
2 disorder such as stuttering, impaired articulation, or a
3 language or voice impairment which adversely affects a
4 child's interpersonal relationships or educational
5 performance.

6 (15) "Surrogate parent" means an individual appointed
7 to safeguard a child's rights and protect the child's
8 interests in educational evaluation, placement, and hearing
9 or appeal procedures concerning the child.

10 ~~(15)~~(16) "Visually handicapped" means a visual
11 impairment which, after correction, adversely affects a
12 child's educational performance. The term includes both
13 partially seeing and blind children."

14 Section 2. Section 20-7-402, MCA, is amended to read:

15 "20-7-402. Special education to comply with board
16 policies. (1) The conduct of special education programs
17 shall comply with the policies recommended by the
18 superintendent of public instruction and adopted by the
19 board of public education. These policies shall assure and
20 include but are not limited to:

21 (a) placement of handicapped children in the least
22 restrictive alternative setting;

23 (b) due process for all handicapped children,
24 including the appointment of a surrogate parent if
25 necessary;

1 (c) use of child study teams to identify handicapped
2 children and use of instructional teams to plan individual
3 education programs;

4 (d) comprehensive evaluation for each handicapped
5 child; and

6 (e) other policies needed to assure a free and
7 appropriate public education.

8 (2) The superintendent of public instruction shall
9 promulgate rules to administer the policies of the board of
10 public education."

11 Section 3. Section 20-7-403, MCA, is amended to read:

12 "20-7-403. Duties of superintendent of public
13 instruction. The superintendent of public instruction shall
14 supervise and coordinate the conduct of special education in
15 the state by:

16 (1) recommending to the board of public education
17 adoption of those policies necessary to establish a planned
18 and coordinated program of special education in the state;

19 (2) administering the policies adopted by the board of
20 public education;

21 (3) certifying special education teachers on the basis
22 of the special qualifications for such teachers as
23 prescribed by the board of public education;

24 (4) establishing procedures to be used by school
25 district personnel in identifying handicapped children;

1 (5) recommending to districts the type of special
2 education class or program needed to serve the handicapped
3 children of the districts and preparing appropriate guides
4 for developing individual education programs;

5 (6) seeking for local districts appropriate
6 interdisciplinary assistance from public and private
7 agencies in diagnosing the special education needs of
8 children, in planning programs, and in admitting and
9 discharging children from such programs;

10 (7) assisting local school districts, institutions,
11 and other agencies in developing full-service programs for
12 all handicapped children;

13 (8) approving, as they are proposed and annually
14 thereafter, those special education classes or programs
15 which comply with the laws of the state of Montana, policies
16 of the board of public education, and the regulations of the
17 superintendent of public instruction;

18 (9) providing technical assistance to district
19 superintendents, principals, teachers, and trustees;

20 (10) conducting conferences, offering advice, and
21 otherwise cooperating with parents and other interested
22 persons;

23 (11) preparing appropriate training and instructional
24 material for persons appointed as surrogate parents that
25 outlines their duties toward the child, limitations on what

1 they may do for the child, duties in relation to the child's
 2 records, sources of assistance available to the surrogate
 3 parent, and the need to seek competent legal assistance in
 4 implementing hearing or appeal procedures;

5 ~~(11)~~(12) acting as the coordinating agency with federal
 6 agencies, other state agencies, political subdivisions of
 7 the state, and private bodies on matters concerning special
 8 education, reserving to the other agencies and political
 9 subdivisions their full responsibilities for other aspects
 10 of the care of children needing special education;

11 ~~(12)~~(13) administering regional special education
 12 services for children in need of special education in
 13 accordance with policies of the board of public education;
 14 and

15 ~~(13)~~(14) contracting for the delivery of audiological
 16 services to those children allowed by Montana law in
 17 accordance with policies of the board of public education."

18 Section 4. Section 20-7-414, MCA, is amended to read:
 19 "20-7-414. Determination of children in need and type
 20 of special education needed -- approval of classes and
 21 programs by superintendent. (1) The determination of the
 22 children requiring special education and the type of special
 23 education needed by these children shall be the
 24 responsibility of the trustees, and such determination shall
 25 be made in compliance with the procedures established in the

1 rules of the superintendent of public instruction. Whenever
 2 the trustees OF A SCHOOL DISTRICT OR THE GOVERNING AUTHORITY
 3 OF AN INSTITUTION learn of a handicapped child in their
 4 jurisdiction who is in need of special education, they shall
 5 determine whether the child is in need of a surrogate parent
 6 by determining whether the parents or guardian is unknown or
 7 unavailable or if the child is a ward of the state. The
 8 determination must be made within 10 days of the date on
 9 which the trustees OF A SCHOOL DISTRICT OR THE GOVERNING
 10 AUTHORITY OF AN INSTITUTION learned of the presence of the
 11 child in the district. If the child is in need of a
 12 surrogate parent, the trustees OF A SCHOOL DISTRICT OR THE
 13 GOVERNING AUTHORITY OF AN INSTITUTION must nominate a
 14 surrogate parent for the child as provided in [section 5].

15 (2) Whenever the trustees of any district intend to
 16 establish a special education class or program, they shall
 17 apply for approval and funding of the class or program by
 18 the superintendent of public instruction. The superintendent
 19 of public instruction shall approve or disapprove the
 20 application for the special education class or program on
 21 the basis of its compliance with the laws of the state of
 22 Montana, the special education policies adopted by the board
 23 of public education, and the rules of the superintendent of
 24 public instruction. No special education class may be
 25 operated by the trustees without the approval of the

1 superintendent of public instruction. Each special education
 2 class or program must be approved annually to be funded as
 3 part of the maximum-budget-without-a-vote for special
 4 education."

5 NEW SECTION. Section 5. Appointment of surrogate
 6 parent. (1) Any person may advise the trustees of a school
 7 district OR THE GOVERNING AUTHORITY OF AN INSTITUTION of a
 8 handicapped child within the district who may be in need of
 9 a surrogate parent. The trustees OF A SCHOOL DISTRICT OR THE
 10 GOVERNING AUTHORITY OF AN INSTITUTION must determine whether
 11 the child is in need of a surrogate parent as provided in
 12 20-7-414. If the trustees OF A SCHOOL DISTRICT OR THE
 13 GOVERNING AUTHORITY OF AN INSTITUTION determine that the
 14 child is in need of a surrogate parent, they shall nominate
 15 a surrogate parent for the child within 30 days of that
 16 determination.

17 (2) The person nominated as a surrogate parent must be
 18 an adult who is not an employee of a state or local
 19 educational agency. The surrogate parent may not have a
 20 vested interest that will conflict with his representation
 21 and protection of the child. The surrogate, whenever
 22 practicable, must be knowledgeable about the educational
 23 system, special education requirements, and the legal rights
 24 of the child in relation to the educational system. Whenever
 25 practicable, the surrogate parent must be familiar with the

1 cultural or language background of the child.

2 (3) The nomination for appointment of a surrogate
 3 parent, along with all necessary supporting documents, must
 4 be submitted to the youth court for official appointment of
 5 the surrogate parent by the court. If the court does not
 6 appoint the nominee, the trustees OF A SCHOOL DISTRICT OR
 7 THE GOVERNING AUTHORITY OF AN INSTITUTION must make another
 8 nomination under this section.

9 NEW SECTION. Section 6. Responsibilities of surrogate
 10 parent. A person assigned as a surrogate parent shall
 11 represent the handicapped child in all decisionmaking
 12 processes concerning the child's education by:

13 (1) becoming thoroughly acquainted with the child's
 14 history and other information contained in school and other
 15 pertinent files, records, and reports relating to that
 16 child's educational needs;

17 (2) complying with state and federal law as to the
 18 confidentiality of all records and information to which he
 19 is privy pertaining to that child and using discretion in
 20 the necessary sharing of the information with appropriate
 21 people for the purpose of furthering the interests of the
 22 child;

23 (3) becoming familiar with the educational evaluation
 24 and placement for the child and by giving his approval or
 25 disapproval for the evaluation and placement and reviewing

1 and evaluating special education programs pertaining to the
2 child and such other programs as may be available; and

3 (4) initiating any mediation, hearing, or appeal
4 procedures necessary and seeking qualified legal assistance
5 whenever such assistance is in the best interest of the
6 child.

7 NEW SECTION. Section 7. Surrogate parent -- immunity
8 from liability -- reimbursement. (1) A person appointed as a
9 surrogate parent is exempt from liability for any act or
10 omission performed by him in his capacity as a surrogate
11 parent except an act or omission which is found to have been
12 committed in a grossly negligent or malicious manner.

13 (2) A surrogate parent has the same protection and
14 immunity in professional communications as a teacher.

15 (3) A surrogate parent must be reimbursed by the
16 school district for all reasonable and necessary expenses
17 incurred in the pursuit of his duties, as prescribed by
18 rules adopted by the superintendent of public instruction.

19 NEW SECTION. Section 8. Extension of authority. Any
20 existing authority of the board of education or
21 superintendent of public instruction to make rules on the
22 subject of the provisions of this act is extended to the
23 provisions of this act.

24 NEW SECTION. Section 9. Codification instruction.
25 Sections 5 through 7 are intended to be codified as an

1 integral part of Title 20, chapter 7, part 4, and the
2 provisions of Title 20 apply to sections 5 through 7.

-End-