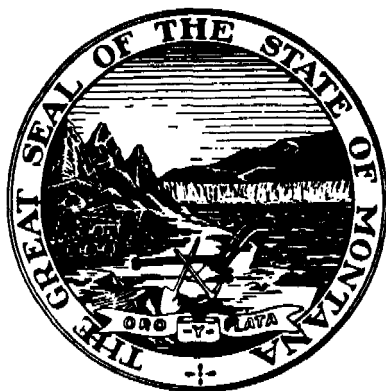


**RESERVE**

**MONTANA  
ADMINISTRATIVE  
REGISTER**

STATE LAW LIBRARY  
AUG 31 1984  
OF MONTANA

1984 ISSUE NO. 16  
AUGUST 30, 1984  
PAGES 1161-1198



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of Rule 10.55.302 )	AMENDMENT OF RULE
Certificates )	10.55.302 CERTIFICATES
	NO PUBLIC HEARING
	CONTEMPLATED.

TO: All Interested Persons

1. On September 29, 1984, the Board of Public Education proposes to amend rule 10.55.302(2), certificates.
2. The rule as proposed to be amended provides as follows:

10.55.302 CERTIFICATES (1) remains the same.

(2) All personnel coaching intramural or interscholastic athletics shall ~~have successfully completed a course in first aid~~ and hold a current Red Cross first aid certificate.

(3) through (5) remains the same.

3. Until now, first aid could be administered by coaches without standardized and current preparation and training. The lack of standardization and currency might result in the risk that an injured athlete received improper first aid treatment resulting in permanent injury. The amendment is proposed to eliminate the risk by requiring standardized and current training.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request, along with any written comments, to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, MT 59620, no later than September 27, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 200 persons based on 2,000 coaches in Montana.

7. The authority of the Board to make the proposed amendment is based on sections 20-2-121, 20-2-114, and 20-4-102, MCA, and the rule implements sections 20-4-101 and 20-4-102, MCA.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Urdole Van Dyke*

Certified to the Secretary of State August 20, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PROPOSED
amendment of rule 10.55.205 )	AMENDMENT OF 10.55.205
Supervisory and Administrative )	SUPERVISORY AND ADMIN-
Time and rule 10.65.101 Policy )	ISTRATIVE TIME AND
Governing Pupil Instruction- )	10.65.101 POLICY
related days approved for )	GOVERNING PUPIL IN-
foundation program calculations)	STRUCTION-RELATED
	DAYS APPROVED FOR
	FOUNDATION PROGRAM
	CALCULATIONS

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons

1. On September 30, 1984, the board of public education proposes to amend rule 10.55.205 Supervisory and Administrative Time and rule 10.65.101 Policy Governing Pupil Instruction-Related Days approved for Foundation Program Calculations.

2. The rules as proposed to be amended provide as follows:

10.55.205 SUPERVISORY-AND-ADMINISTRATIVE-TIME PROFESSIONAL DEVELOPMENT ~~(1)-Supervision-and-administration shall-include-a-continuous-in-service-program-for-the-improvement-of-instruction--A-minimum-in-service-program-shall-consist-of-monthly-meetings-of-staff-devoted-to-instructional improvement--Teachers,-supervisors-and-administrators-shall plan-together-the-in-service-programs-for-curriculum-development-and/or-instructional-planning.~~

~~(2)-All-specifically-designated-supervisors-shall-be certified-in-accordance-with-state-statutes-and-with-the policies-of-the-Board-of-Public-Education-when:~~

~~(a)-These-positions-are-required-by-special-programs.~~

~~(b)-Positions-are-involved-in-hiring,-evaluation, retention-and-dismissal.~~

(1) The school district shall provide as part of a continuous program for the improvement of instruction a minimum of three days of professional development annually for each certified employee in the district. A day of professional development is defined as six hours of actual contact time.

(2) By May 1 of each year, the school district shall formulate a plan for professional development which includes:

(a) Goals and objectives stating the needs appropriate to the professional development of teachers, administrators and other professional personnel.

(b) Acceptable activities.

(c) Methods of evaluation required for each activity contained in the plan.

(3) For purposes of development and evaluation of the plan, the Board of Trustees shall establish a committee composed of teachers, administrative personnel and a trustee. A majority of the committee shall be teachers.

(4) The plan shall be on file in the school's administrative office and shall be available to employees and patrons of the district.

(Auth: Sec. 20-2-121(6) MCA

Imp: 20-1-304, MCA

10.65.101. POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS APPROVED FOR FOUNDATION PROGRAM CALCULATIONS (1) A school which in any year was in session for at least 180 pupil instruction days may count for the following year's foundation program a total of not more than seven days in addition to the required 180 pupil instruction days, provided that such additional days were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) Pre-school staff orientation (not to exceed two days)-meeting(s) held prior to the beginning of pupil instruction for the purpose of organization for the school year (not to exceed one day).

(b) Staff-in-service-training-programs A minimum of three days of staff professional development programs scheduled during the year for the purpose of improving instruction which may include professional organizations' instructional and professional development programs (the latter not to exceed two days). If the district includes statewide professional organizations' programs as part of its staff development, it must concurrently provide alternative staff development for those not attending. These days may be divided into half days to facilitate delivery of staff development programs.

(c) Parent-teacher conferences for the purpose of acquainting parents with the school and the progress of their children (not to exceed two days).

(d) Post-school record and report completion (not to exceed one day) at the end of the public instruction year. This day may be divided so as to provide one-half day at the end of each semester.

(e) State-teachers'-association-meetings-(not-to-exceed two-days).

Auth: 20-2-121(6) MCA

Imp: 20-1-304 MCA

3. The purpose of the Pupil Instruction Related Days is to improve the quality of instruction. The revision of the rule is meant to regulate the use of PIR days in such a manner as to assure optimum usage.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South

Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request, along with any written comments, to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,000 based on the approximately 10,000 elementary and secondary teachers in Montana.

7. The authority of the Board of Public Education to make the proposed amendment is based on section 20-2-121(6), MCA, and the rule implements section 20-1-304, MCA.



TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: 

Certified to the Secretary of State August 16, 1984



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of Rule 10.57.106	)	AMENDMENT OF RULE
Life Certificates	)	10.57.106 LIFE CERTIFICATES
		NO PUBLIC HEARING
		CONTEMPLATED

TO: All Interested Persons

1. On September 30, 1984, the Board of Public Education proposes to amend rule 10.57.106 life certificates.

2. The rule as proposed to be amended provides as follows:

10.57.106 LIFE CERTIFICATES (1) Life certificates issued under former provisions (the last were issued in 1954) remain in force, ~~until the holder reaches age 70~~ unless revoked for cause.

3. This amendment is proposed because the Montana Supreme Court ruled against the requirement that teachers could be dismissed after age 70, as age discrimination. The present proposed amendment eliminates the reference to age to comply with this Supreme Court ruling.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 72 as there are 727 persons now holding life certificates.

7. The authority of the Board to make the proposed amendment is based on Section 20-4-102, MCA and the rule implements section 20-4-102, MCA.

*Ted Hazel Baker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Walter Van Dusen*

Certified to the Secretary of State August 16, 1984

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PROPOSED ADOPTION  
of a rule relating to the ) OF RULE RELATING TO THE  
Educational Media Library ) EDUCATIONAL MEDIA LIBRARY.  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 30, 1984, the Board of Public Education proposes to adopt the rule relating to educational media library.
2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.
3. The proposed rule provides as follows:

RULE I EDUCATIONAL MEDIA LIBRARY (1) The Board affirms a policy which will provide media materials that develop critical thinking, objective evaluations, and aesthetic appreciation suitable to the maturity level and ability of students.

(2) In the management of the Educational Media Library, the Superintendent of Public Instruction shall prepare, subject to Board approval:

- (a) Definition of scope and purpose of the library
- (b) Establishment of selection criteria
- (c) Procedures for acquisition, circulation, replacement and withdrawal.

(3) The determination of the educational effectiveness of instructional materials is the responsibility of the local school districts as addressed in

ARM 10.55.404(2) "Each school district shall have written policies regarding the selection, use and evaluation of materials and services and procedures for handling challenged material. The selection and use of specific items of material, with the advice of the staff, are the responsibility of the local school board." If an interested person objects to a particular item of locally assigned instructional material as offensive on grounds of individual conscience, he/she should turn to the district officials. Such objection should not be considered a challenge to the existence of the material in the Educational Media Library which serves the State of Montana.

(4) If an interested person wishes to challenge the existence of certain materials in the Educational Media Library, the following procedures shall be followed:

(a) Such person shall be directed to the Library Media Specialist;

(b) The Library Media Specialist will invite the complainant to complete and return the "request form for re-evaluation of resources;"

(c) The completed questionnaire will be submitted by the Library Media Specialist to a review committee consisting of the Library Media Specialist, specialist(s) representing the

subject area being challenged and a Board representative:

(d) The review committee will examine the resources referred to, check the general acceptance of the resources through reviews, weigh values and faults of the material and form an opinion based on the resource as a whole, and meet to discuss the resource to review the complainants' objections and prepare a report for the Board decision;

(e) The decision of the Board will be forwarded to the complainant, the State Superintendent and members of the committee.

4. The board of public education is proposing this rule to comply with the statutory duty set forth in MCA 20-2-121(8).

5. Interested persons may present their data, views or arguments concerning the proposed rule in writing to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 27, 1984.

6. If a person who is directly affected by the proposed rule wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request, along with any written comments to Ted Hazelbaker, Chairman of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620, no later than September 27, 1984.

7. If the Board receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the 200 school districts who utilized the Library last year.

8. The authority of the Board of Public Education to make the proposed rule is based on section 20-2-121(8), MCA, and the rule implements section 20-2-121(8), MCA.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By: *Wade Lou Dym*

Certified to the Secretary of State August 16, 1984

BEFORE THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES OF THE  
STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF PUBLIC HEARING ON
ment of Rules 46.10.308,	)	THE AMENDMENT OF RULES
46.10.317, 46.10.402,	)	46.10.308, 46.10.317,
46.10.403, 46.10.406,	)	46.10.402, 46.10.403,
46.10.506, 46.10.508,	)	46.10.406, 46.10.506,
46.10.510, 46.10.512,	)	46.10.508, 46.10.510,
46.10.513 and 46.12.3401	)	46.10.512, 46.10.513 AND
pertaining to eligibility	)	46.12.3401 PERTAINING TO
requirements regarding the	)	ELIGIBILITY REQUIREMENTS
AFDC Program	)	REGARDING THE AFDC PROGRAM

TO: All Interested Persons

1. On September 20, 1984, at 9:00 a.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.10.308, 46.10.317, 46.10.402, 46.10.403, 46.10.406, 46.10.506, 46.10.508, 46.10.510, 46.10.512, 46.10.513 and 46.12.3401 pertaining to eligibility requirements regarding the AFDC Program.

2. The rules proposed to be amended provide as follows:

46.10.308 WORK REGISTRATION REQUIREMENTS (WIN)  
Subsections (1) through (1)(e) remain the same.  
(f) children under the age of 16; ~~or~~  
(g) a caretaker of a child, when the nonexempt parent is registered and is willing to participate;  
(h) persons who are working not less than 30 hours per week in unsubsidized employment expected to last a minimum of 30 days; ~~or~~  
(i) women in their third trimester of pregnancy.  
Subsections (2) through (5) remain the same.

AUTH: Sec. 53-4-212 MCA  
IMP: Sec. 53-4-211 MCA

46.10.317 PROTECTIVE AND VENDOR PAYMENTS Subsections (1) through (2) remain the same.  
(3) Protective payments may be made to a sanctioned individual who is not in compliance with work program or certain child support requirements.  
(34) The number of individuals for whom protective payments or vendor payments are made who can be counted as recipients for federal financial participation in any month is limited to twenty percent of the number of other AFDC recipients in the state for that month.  
(a) Individuals who have refused without good cause to participate in WIN or refused without good cause to assign

rights to support are not to be counted in the twenty percent.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

46.10.402 STANDARD OF ASSISTANCE AND ASSISTANCE UNIT

Subsection (1) remains the same.

(2) An assistance unit is composed of an individual, or the persons whose needs are met by the grant amount, who form a family group, all of whom meet the requirements for AFDC. Parents and all minor siblings living with the dependent child must be included in the assistance unit unless the individual is an SSI beneficiary or the child's stepbrother or step-sister. A separate grant amount shall be computed for each assistance unit regardless of the number of units in a household. Each assistance unit is entitled to a grant amount based on the full benefit standard for an assistance unit of its size even if other assistance units live in the same household.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

46.10.403 TABLE OF ASSISTANCE STANDARDS (1) The tables of assistance standards contain the income and grant limits for assistance units according to the number of persons, the type of living arrangement, and whether shelter is or is not included.

(2) Monthly income as defined in ARM 46.10.505 is tested against the gross monthly income standard and, after specified exclusions and disregards, the net monthly income standard. These tests are applied using income reasonably expected to exist in the benefit month; however, if income is reported or discovered after the month of receipt, this income must be accounted for by applying the gross monthly income test retroactively in the second month after receipt. Monthly income is to be compared to the full standard for the size assistance unit even though the grant may only cover part of the month. If this monthly income exceeds the standard, the assistance unit is not eligible for any part of the benefit month. The assistance unit may be further ineligible as provided in ARM 46.10.403(3).

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 384	474
2	508	623
3	603	742
4	773	949
5	911	1,123
6	1,026	1,262
7	1,135	1,397
8	1,246	1,534
9	1,354	1,667
10	1,463	1,800
11	1,571	1,935
12	1,680	2,070
13	1,788	2,203
14	1,897	2,338
15	2,005	2,473
16	2,114	2,607

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Amount Per Month</u>
1	\$ 106
2	107
3	276
4	365
5	454
6	547
7	640
8	733
9	827
10	920
11	1,016
12	1,130
13	1,245
14	1,360
15	1,423
16	1,587
	1,702
	1,817

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Month</u>
1	\$ 256	\$ 92
2	337	149
3	401	202
4	513	263
5	607	311
6	682	350
7	755	386
8	829	424
9	901	462
10	973	500
11	1,046	538
12	1,119	576
13	1,191	614
14	1,264	652
15	1,337	690
16	1,409	728

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.



NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Amount Per Month</u>
1	\$ 70
2	124
3	183
4	242
5	303
6	363
7	425
8	487
9	549
10	611
11	673
12	735
13	796
14	858
15	920
16	982

(3) When net monthly income exceeds the net monthly income standard because of receipt of a non-recurring lump sum payment, the assistance unit is ineligible for the number of months equal to the total amount of the net monthly income divided by the net monthly income standard. The remainder which results from this computation will be treated as if it were is income received and available in the first month following the period of ineligibility.

(a) If net monthly income in excess of the net monthly income standard is discovered after the month of receipt, the ineligibility period may begin with the month of discovery provided that the recipient has a history of consistent cooperation in reporting monthly income. If the recipient has not been consistent in reporting income, the period of ineligibility begins with the month that the excess income is received and a recovery of overpayment will be initiated, as late as the corresponding payment month. The period of ineligibility will be recalculated with respect to the remaining months in any one or more of the following cases:

(i) an event occurs which, had the assistance unit been receiving aid, would have changed the amount of aid payable;

(ii) the income received has become unavailable to the assistance unit for reasons beyond their control; or

(iii) the assistance unit incurs, becomes responsible for, and pays medical expenses in a month of ineligibility.

(b) If net monthly income in excess of the net monthly income standard is caused by a regular and periodic extra paycheck from a recurring income source, assistance will be suspended rather than terminated when ineligibility would be for only one benefit month.

(4) An assistance unit receives the full amount of the benefit standard less net monthly income which is prorated if eligibility is for less than a full month. From this amount recoveries will be taken for prior overpayments.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE  
INCLUDED IN THE ASSISTANCE UNIT

<u>No. Of Persons in Household</u>	<u>With Shelter Obligation Per Month</u>	<u>With Shelter Obligation Per Day</u>	<u>Without Shelter Obligation Per Month</u>	<u>Without Shelter Obligation Per Day</u>
1	\$ 212	\$ 7.07	\$ 76	\$ 2.53
2	279	9.30	123	4.10
3	332	11.07	167	5.57
4	425	14.17	217	7.23
5	501	16.70	258	8.60
6	564	18.80	290	9.67
7	624	20.80	320	10.67
8	685	22.83	350	11.67
9	744	24.80	382	12.73
10	804	26.80	413	13.77
11	864	28.80	445	14.83
12	923	30.77	476	15.87
13	983	32.77	508	16.93
14	1,042	34.73	539	17.97
15	1,102	36.73	571	19.03
16	1,162	38.73	602	20.07

(b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE  
INCLUDED IN THE ASSISTANCE UNIT

<u>No. of Children in Household</u>	<u>Grant Amount Per Month</u>	<u>Grant Amount Per Day</u>
1	\$ 53	\$ 1.77
2	103	3.43
3	152	5.07
4	201	6.70
5	250	8.33
6	301	10.03
7	352	11.73
8	403	13.43
9	454	15.13
10	505	16.83
11	556	18.53
12	607	20.23
13	658	21.93
14	709	23.63
15	760	25.33
16	811	27.03

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.406 PROPERTY RESOURCES Subsections (1) through (4) (e) remain the same.

(f) One burial space for each family member and not more than \$1,000 designated for burial arrangements for each member.

(g) Real property the family is making a good faith effort to sell, but only for six months and only if they agree to use the proceeds from the sale to repay the department for any AFDC benefits received. The remainder is considered a resource.

(h) Any other property resources not excluded in (4) (a) through (4) (e) of this section not to exceed \$1,000 in equity value.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-211 MCA

46.10.506 EXCLUDED UNEARNED INCOME Subsections (1) through (1) (m) remain the same.

~~(n) all weekly incentive allowances paid under P.L. 93-203, the Comprehensive Employment and Training Act of 1973;~~

(en) incentive payments or reimbursement of training-related expenses made to WIN participants by the manpower agency;

16-8/30/84

MAR Notice No. 46-2-412

(po) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in service corps of the retired executives and active corps of executives, and any other program under Titles II and III of P.L. 93-113;

(ep) payments to individual volunteers under Title I (VISTA) of P.L. 93-113, pursuant to section 404(g) of that law;

(rg) individuals receiving supplemental security income shall not be considered as a member of the assistance unit unless they choose to relinquish their SSI grant; and

(r) \$50.00 of any monthly child support payment.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.508 SPECIALLY TREATED INCOME Subsections (1) and (1)(a) remain the same.

(b) Earned income tax credit advance payments for--which an individual--is eligible--shall be--included--in net monthly income--whether the--individual actually--receives the advance payment--or--not--The--earned--income--tax--credit--actually received--and assumed--to be received--will be reconciled at the end--of the--tax year and settled as--an underpayment or overpayment--are counted to determine eligibility and benefits when received.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.510 EXCLUDED EARNED INCOME Subsections (1) through (2)(a) remain the same.

(b) earned income of a part-time student who works part-time, but his/her earnings are not to be excluded if employment is full-time; and

(c) income received by a dependent child under section 503 of the Job Training Partnership Act (JTPA) of 1982, P.L. 97-300, will be excluded for the first 6 months of participation in JTPA training; and

(d) income received by a dependent child who is a full-time student for the first six months AFDC is received.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.512 EARNED INCOME DISREGARDS (1) When testing net monthly income and determining grant amount, the following disregards are subtracted in the order listed from earned income of each working member of the assistance unit after exclusions provided in ARM 46.10.510 and inclusion of earned

income credit advance payments provided in ARM 46.10.508, except as provided in ARM 46.10.513:

(a) \$75 from each person's earned income, ~~if the person was employed 120 hours or more in the budget month; \$40 if the person was employed 20 to 119 hours in the budget month; and \$10 if the person was employed less than 20 hours in the budget month.~~

Subsections (1)(b) through (2)(d) remain the same.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.10.513 LIMITS ON DISREGARDS (1) The \$30 and one-third disregard provided in ARM 46.10.512(1)(c) ~~does not only apply to applicants who have not received AFDC assistance within any of the previous four months prior to application, nor to applicants or recipients after the fourth consecutive month it has been applied to the earner's earned income unless he/she has not been a recipient of AFDC assistance for 12 consecutive months.~~ The \$30 disregard is applicable to the earner's earned income for 12 consecutive months. The one-third disregard is applicable to the earner's earned income for 4 consecutive months. Once the \$30 and one-third disregards have been used, they cannot be used again until 12 consecutive months have elapsed during which the family did not receive AFDC benefits.

Subsections (2) through (2)(d) remain the same.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-4-231, 53-4-241 and 53-4-242 MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN Subsections (1) through (2)(e)(iii) remain the same.

(f) pregnant women in two-parent families where the principal breadwinner is unemployed who would be eligible for AFDC except for failure to meet the deprivation requirements in ARM 46.10.303;

(g) individuals whose AFDC is terminated solely because of increased income from employment;

(i) these individuals will continue to receive medicaid for nine months, providing;

(A) The family lost AFDC eligibility because of the loss of \$30 and one-third disregard;

(B) Any private insurance coverage is disclosed;

(C) Application is made within 6 months from the date regulations implementing this provision become final;

(D) Eligibility for AFDC would continue if the \$30 and one-third disregard were applied;

~~(f) -- individuals whose AFDC is terminated solely because of increased income from employment;~~

~~(i) -- these individuals will continue to receive medicaid for four further months, providing:~~

(AE) The assistance unit received AFDC in any three or more months during the six month period preceding the month of AFDC closure; and

(BF) At least one member of the assistance unit is employed throughout the four nine month period of continued medicaid coverage;

(ii) this four nine month period of continued medicaid coverage begins:

(A) the month following the date of AFDC closure; or

(B) if AFDC eligibility ends prior to the month of closure, with the first month in which AFDC is erroneously paid.

Subsections (3) through (3) (b) remain the same.

(4) Medicaid will be provided to children born after October, 1983 to two parent families who meet the AFDC income and resource requirements. This provision applies through October, 1988.

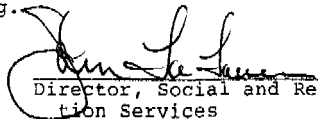
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-131 MCA

3. The Deficit Reduction Act of 1984 (H.F. 4120) was passed by Congress and signed by the President on July 18, 1984. A significant number of provisions affect AFDC and Medicaid. The proposed rules reflect the regulations presented in the Act and are effective October 12, 1984. The new regulations generally serve to clarify or to expand services provided under these assistance programs.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than September 27, 1984.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 20, 1984.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF COSMETOLOGISTS

In the matter of the amendments ) NOTICE OF AMENDMENTS OF 8.14.  
of 8.14.814 concerning fees for ) 814 FEES, INITIAL, RENEWAL,  
cosmetologists and amendment of ) PENALTY, AND REFUND FEES and  
8.14.1010 concerning fees for ) 8.14.1010 FEE INITIAL,  
electrologists ) RENEWAL, PENALTY AND REFUNDS

TO: All Interested Persons:

1. On April 12, 1984, the Board of Cosmetologists published a notice of amendments of the above-stated rules and on May 31, 1984 a notice of public hearing on the same at pages 548 through 551, 1984 Montana Administrative Register, issue number 7 and page 861, 1984 Montana Administrative Register, issue number 10.

2. The public hearing was held on June 27, 1984 in the Scott Hart Auditorium, Helena, Montana. In addition to board members and staff, there were 19 persons present for the hearing. The board received 172 written comments prior to the hearing. 137 were requests for a public hearing; 126 stated that the proposed increase amounts were excessive; 9 stated the need for the increases should be shown. Most comments were combinations of requests for a hearing and contained an unsupported statement that the increases proposed were excessive.

The comments at the hearing were questions as to the procedures for the determination of the new fees. Mrs. Kathryn Tucker, Administrative Assistant for the board gave a full and complete item by line item explanation of how the need for each fee was derived and calculated.

Because the fees were calculated based on actual program area costs, as set out by section 37-1-134, MCA, the rules are being amended as proposed with the exception of 8.14.814 (1) regarding student registration and 8.14.1010 (1)(d) concerning the examination which were amended and will read as follows: (new matter underlined, deleted matter interlined)

"8.14.814 FEES, INITIAL, RENEWAL, PENALTY, AND REFUND  
FEES (1) Student registration and processing fees shall be ~~\$35.00~~ \$10.00 for initial enrollment, plus \$10.00 for each re-enrollment following a withdrawal.

(2) ..."

"8.14.1010 FEE INITIAL, RENEWAL, PENALTY, AND REFUNDS

(1) Initial

(a) ...

(d) Examination to practice shall be ~~\$40.00~~ \$100.00, plus \$25.00 license fee.

(e) ..."

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PLUMBERS

In the matter of the amendments )	NOTICE OF AMENDMENTS OF ARM
of 8.44.403 concerning applica- )	8.44.403 APPLICATIONS, 8.44.
tions, 8.44.404 (1),(1)(a), (8) )	404 EXAMINATIONS, 8.44.405
concerning examinations, 8.44. )	RENEWALS, 8.44.406 DUPLICATE
405 (2),(3) concerning renew- )	AND LOST LICENSES, and
als, 8.44.406 concerning dupli- )	ADOPTION OF A NEW RULE 8.44.
cate and lost licenses, and )	412 FEE SCHEDULE
adoption of a new rule setting )	
out a schedule, 8.44.412 )	

TO: All Interested Persons:

1. On May 17, 1984, the Board of Plumbers published a notice of amendments and adoption of the above-stated rules and on June 28, 1984 a notice of public hearing on the same at pages 748 through 751, 1984 Montana Administrative Register, issue number 9 and page 948, 1984 Montana Administrative Register, issue number 12.

2. The public hearing was held on July 19, 1984 in the downstairs conference room, Department of Commerce, 1424 9th Avenue, Helena. In addition to board members and staff, there were 8 persons present for the hearing. One written request for a public hearing had been received prior to the hearing from the United Association of Journeyman and Apprentice Plumbers.

The objections raised were with the fee schedule. There were no objections to the other proposed amendments. Some participants at the hearing suggested that fee increases would be more acceptable when improved regulation is demonstrated.

Because the fees are those calculated as necessary to cover program area costs as set out in section 37-1-134, MCA, the board is amending and adopting the rules as proposed.

3. No other comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: 

GARY BUCHANAN, DIRECTOR

Certified to the Secretary of State, August 20, 1984.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION OF  
of a rule relating to the ) RULE-GIFTED AND TALENTED  
Gifted and Talented Children )  
Program. )

TO: All Interested Persons:

1. On May 17, 1984 the Board of Public Education published notice of a proposed adoption of a rule concerning gifted and talented children program at page 756-757 of the 1984 Montana Administrative Register, issue number 9.

2. The board has adopted the rule with the following changes:

10.55.405A GIFTED AND TALENTED (1) (a) Every school district shall make an identifiable effort to provide educational services to the gifted and talented pupils which are commensurate with their needs and which foster a positive self-image.

(b) Gifted and talented pupils are those who have outstanding abilities and who are capable of high performance in one or more of the following areas: Creative, productive thinking, leadership, intellectual and academic abilities and visual and performing arts talents. These pupils require differentiated educational programs beyond those normally offered in order to fully achieve their potential contribution to self and society.

(2) Such services will be outlined in a general comprehensive district plan which includes:

(a) Identification of talent areas and their priorities  
pupil selection criteria according to a written program philosophy;

~~(b) Standards for pupil identification and participation;~~

~~(c) (b) A curriculum which is specific about subject matter areas, instructional materials and which allows for a modified school day; reflects pupil needs;~~

~~(d) (c) Teacher selection and preparation;~~

~~(e) (d) Objective e Criteria for evaluating progress formative and summative evaluation;~~

~~(f) (e) Supportive services;~~

~~(g) (f) Parent awareness and education involvement;~~

~~(h) (g) Procedures for student dismissal or reassignment changing a pupil's active programs status.~~

(3) (a) through (d) remains the same.

AUTH: 20-2-121(7) and (11) MCA. IMP: 20-7-101, MCA.

3. At the public hearing which was held June 11, 1984, twenty-four persons submitted comment on the proposed rule. Ten persons testified at the public hearing and fourteen persons sent written comment to the board prior to June 15, 1984, the date on which the board closed the hearing record. Testimony falls into eight categories, each of which the board specifically addresses as follows: (a) Three persons stated that the board should not mandate that each district address the needs of gifted and talented students and that the decision to provide such services should be left to local discretion. The board disagrees and notes that local discretion whether or not to provide educational services to the gifted and talented does not meet the constitutional goal that the public school system "develop the full educational potential of each person." One person asked if the mandatory language contained in the board's proposed rule conflicted with the permissive language contained in section 20-7-902 MCA. The board notes that this section does not preclude the board from exercising its powers and duties under MCA 20-7-101. Moreover, MCA 20-2-121(11) specifically directs the Board to adopt policies for gifted and talented children. Finally, the board calls attention to the fact that the School Night for Excellence response tallies collected state wide February 14th, while subject to certain biases, show an inordinately high percentage (41.5%) of persons who feel that of all student services, services for the gifted and talented are least adequate.

(b) Four persons testified that the rule should include a definition of the gifted and talented. In response to this concern, the board wishes to give no more than a general delineation of talent areas but otherwise defers to the districts because it considers diversification of design very important and because it feels that the definition should reflect local needs, methods of identification, availability of resources, delivery of services and measurable results, as these vary from district to district.

(c) Seven persons testified that the rule should stress in particular that the district plan be comprehensive with the focus on the student and specifics as to the relationship between identification, goals, program structure, evaluation and parent involvement. The board agrees and has amended the rule to ensure that the district plan covers these items.

(d) Seven persons stressed that the rule should allow for local flexibility because the latter is essential if the services are to be effective. The board agrees and cites its acknowledgement of district needs under (b) above.

(e) Twelve persons expressed concern about the cost of services mandated under the rule. The board acknowledges this concern and observes the following: (1) the primary consideration is whether the constitutional obligation is being met in all districts,

(ii) cost depends heavily on the choice of program model and districts have the option to make choices,

(iii) the timeline provides the opportunity to plan for the necessary allocation of resources at the district level, and

(iv) the board will do whatever it can at the state level to address the fiscal needs resulting from the services to the gifted and talented.

(f) Seven persons expressed concern over the timeline for implementation of the rule. Specific testimony suggested a phase-in period of three or four years allowing for one year for needs assessment and formulation of philosophy, one year for identification of pupils, one year in formulation of the instructional program and one year for pilot implementation. The board acknowledges this concern and establishes the rule to be effective for accreditation purposes at the beginning of the 1990-1991 school year, July 1, 1990.

(g) Twelve persons expressed concern about the selection, preparation and qualifications of the staff necessary to deliver the services mandated under the rule. Indeed, the concern for the availability of adequately trained personnel was the most articulated. It covered teacher education, in-service training, administrators' preparation, and technical assistance from the office of public instruction. The board acknowledges this concern and observes the following: (i) qualifications and adequate preparation vary depending on the program model and the services provided,

(ii) special certification requirements will hamper the ability of smaller districts to comply with the rule,

(iii) a checklist of qualifications and course content areas for in-service training will be developed.

(h) Finally, six persons submitted amendments to the text of the rule as proposed. The board responds by amending the rule accordingly.

*Ted Hazelbaker*

TED HAZELBAKER, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

*Walter Van Dym*

By: \_\_\_\_\_

Certified to the Secretary of State August 16, 1984

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

IN THE MATTER of Proposed	)	NOTICE OF ADOPTION OF NEW
Adoption of New Rules for	)	RULES FOR CHARGES RELATED
Charges Related to Utility	)	TO UTILITY LINE MOVES
Line Moves Associated with	)	ASSOCIATED WITH MOVEMENT OF
Movement of Structures	)	STRUCTURES

TO: All Interested Persons

PLEASE NOTE: The Department of Public Service Regulation's adoption notice published at page 1131, 1984 Montana Administrative Register, issue number 15, adopted seven new rules. These rules were numbered 38.5.1401 through 38.5.1407. They should have been numbered 38.5.2401 through 38.5.2407.

  
THOMAS J. SCHNEIDER, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 21, 1984.

VOLUME NO. 40

OPINION NO. 62

FEES - Filing fee for a declaration of invalidity of a marriage;  
MARRIAGE AND DIVORCE - Filing fee for a declaration of invalidity of a marriage;  
MONTANA CODE ANNOTATED - Sections 25-1-201(1)(a), 40-1-102, 40-4-104, Title 40, chapter 1, part 4, chapter 4, parts 1 and 2.

HELD: The filing fee payable to the district court clerk for a declaration of invalidity of a marriage is twenty-five dollars.

16 August 1984

Harold F. Hanser  
Yellowstone County Attorney  
P.O. Box 35025  
Billings MT 59107

Dear Mr. Hanser:

You have asked my opinion on the following question:

What is the filing fee payable to the district court clerk for a declaration of invalidity of a marriage?

Section 25-1-201, MCA, sets forth the schedule of fees to be collected by district court clerks. The statute provides, in pertinent part:

(1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, \$25; for filing a complaint in intervention, from the intervenor, \$25; and for filing a petition for dissolution of marriage, an additional fee of \$25. [Emphasis added.]

Your question concerns whether the above-underlined language pertaining to dissolutions of marriage applies

as well to declarations of invalidity, thereby resulting in imposition of a \$50 filing fee, with the first \$25 collected at the commencement of the action and the second \$25 representing the additional fee.

Montana law treats declarations of invalidity and dissolutions of marriage as separate matters. Declarations of invalidity are dealt with in Title 40, chapter 1, part 4, MCA. Decrees declaring a marriage invalid may be entered where parties lacked the requisite mental or physical capacity at the time of the marriage, where a party was underage and lacked parental or judicial approval of the marriage, or where the marriage was prohibited by law because a particular familial relationship existed between the parties to the marriage. See §§ 40-1-401 to 402, MCA. A declaration of invalidity may be sought by parties other than the parties to the marriage. § 40-1-402(2)(e) and (3), MCA.

Dissolutions of marriage, on the other hand, are governed by Title 40, chapter 4, parts 1 and 2, MCA. A dissolution of marriage requires a finding that the marriage is irretrievably broken due to separation of or discord between the parties. See § 40-4-104, MCA. A dissolution, by contrast with a declaration of invalidity, is an action instituted to sever a valid marriage relation, rather than a judicial determination that because of some disability or defect which existed at the time of the marriage ceremony, no valid marriage relation ever existed between the parties. Dissolutions, unlike declarations of invalidity, may not be sought by parties other than the parties to the marriage. Generally speaking, the two actions are dissimilar in that a dissolution is a divorce action, while a declaration of invalidity is an annulment of a marriage that was never valid.

There is no indication in either the language of the statute or its legislative history that the additional fee imposed for filing a petition for dissolution of marriage was meant to apply to declarations of invalidity. A cardinal principle of statutory construction is that when the language of the statute is plain and unambiguous the language must speak for itself; one interpreting the statute may neither insert what has been omitted nor omit what has been inserted. Reese v. Reese, 38 St. Rptr. 2157, 2159, 637 P.2d 1183, 1185 (1981).

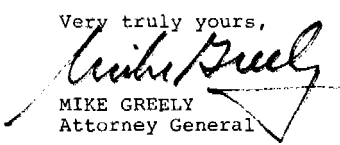
The imposition of the \$25 fee for a dissolution of marriage, to be paid in addition to the \$25 fee payable at the commencement of the action, was added to section 25-1-201, MCA, by chapter 709, section 11 (House Bill 400) in 1983. Chapter 709 was entitled "An Act Creating a Displaced Homemaker Program and Providing for an Appropriation; Amending Section 25-1-201, MCA; and Providing an Effective Date." The intent of the act was to provide aid to homemakers who had found themselves displaced on account of dissolution of marriage, death or disability of spouse, or other loss of family income. See ch. 709, preamble and § 2. According to discussions held in 1983 by the Senate Finance and Claims Committee and the House Appropriations Committee, the additional \$25 fee was imposed for the purpose of covering the costs of the displaced homemaker program. The testimony of Senator Pete Story indicates that the fee was to be charged to the person filing for divorce regardless of whether the filer was a man or woman. Minutes, Senate Finance and Claims Committee, April 8, 1983, discussion of House Bill 400. There is no mention in the legislative minutes of declarations of invalidity.

For the aforementioned reasons, I conclude that the additional \$25 filing fee for a dissolution of marriage does not apply to a declaration of invalidity; only the filing fee for commencing an action is applicable. My conclusion is unaffected by whether the invalidation decree is made retroactive or not, pursuant to section 40-1-402(5), MCA.

THEREFORE, IT IS MY OPINION:

The filing fee payable to the district court clerk for a declaration of invalidity of a marriage is twenty-five dollars.

Very truly yours,



MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.



HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE  
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM) :

- |            |  |
|------------|--|
| Known      | 1. Consult ARM topical index, volume 16. |
| Subject    | Update the rule by checking the          |
| Matter     | accumulative table and the table of      |
|            | contents in the last Montana             |
|            | Administrative Register issued.          |
| Statute    | 2. Go to cross reference table at end of |
| Number and | each title which lists MCA section       |
| Department | numbers and corresponding ARM rule       |
|            | numbers.                                 |

# ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1984. This table includes those rules adopted during the period July 1, 1984 through September 30, 1984, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 Montana Administrative Registers.

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