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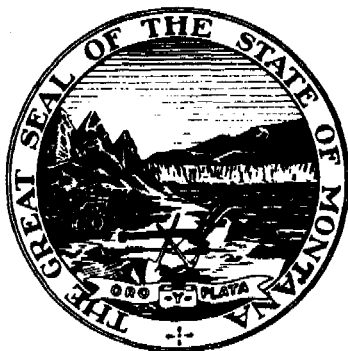
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MONTANA
ADMINISTRATIVE
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1989 ISSUE NO. 5
MARCH 16, 1989
PAGES 342-374



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MAR 20 1989

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5 OF MONTANA

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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) NOTICE OF ADOPTION OF ARM 10.55.601
Adoption of Montana) (RULE I) THROUGH ARM 10.55.2003
Accreditation Stan-) (RULE CLXXXVI), MONTANA ACCREDITATION
dards and Repeal of) STANDARDS AND PROPOSED REPEAL OF
Standards of) ARM 10.55.101 THROUGH ARM 10.55.504,
Accreditation) STANDARDS OF ACCREDITATION

TO: All Interested Persons

1. On October 13, 1988, the Board of Public Education published notice of a proposed adoption of ARM 10.55.601 (RULE I) through ARM 10.55.2003 (RULE CLXXXVI), Montana Accreditation Standards and the repeal of ARM 10.55.101 through ARM 10.55.504, Standards of Accreditation, on page 2075 of the 1988 Montana Administrative Register, issue number 19 and an amended notice on page 2271, issue number 20.

2. The Board has repealed the rules as proposed.

3. The Board has adopted the rules as proposed with the following additions and changes:

10.55.601 (RULE I) ACCREDITATION STANDARDS: PROCEDURES

(1) and (2) Remain the same.

(3) For school years 1989-90 and 1990-91, accreditation will be based on the school's submission of the fall report and a preliminary plan for meeting the new standards. The fall report shall reflect the required standards the school is currently meeting. For the school year 1989-90, the preliminary plan will show how the school has organized its planning effort. For the school year 1990-91, the plan will describe and the preliminary plan will explain how the school will meet those standards which become effective in subsequent years. These preliminary plans will be submitted by December 1 of each year, 1989 to the office of public instruction on forms provided by them. An assessment of the plan will be included in the office of public instruction's recommendation of accreditation status to the board of public education. (Eff. 7/1/89; Repeal 7/1/90)

(4) Effective on July 1, 1989, schools are required to maintain present programs that meet standards until such standards are superceded. In addition, schools are expected to maintain current programs that conform to standards which have been adopted but have a delayed effective date.

10.55.602 (RULE II) DEFINITIONS (1) For the purposes of this chapter, the following terms apply:

~~(a) "At-risk" means children and youth whose present status, or whose predictable status, would indicate that they might fail to make successful transitions in school and/or to a productive adulthood.~~

~~(b)(a)~~ Remains the same.

~~(c)(b)~~ Remains the same.

{d}{c} Remains the same.

{e}{d} Remains the same.

{f}{e} Remains the same.

{g}{f} "Facilitator" means a person on-site, either certified or noncertified, who assists students in receiving distance learning instruction.

{h}{g} Remains the same.

(h) "Learner goals," as developed by the local school board, community, and educators and provided to the office of public instruction, are the attitudes, concepts, skills, and knowledge which students are given the opportunity to acquire during their K-12 schooling. They are to be developed progressively through three checkpoints:

(i) completion of the primary level (typically, at the end of grade 3);

(ii) completion of the intermediate level (typically, at the end of grade 8);

(iii) upon graduation (typically, the completion of grade 12).

Program areas designated by the board of public education in the accreditation standards will have locally developed learner goals which shall use as a model the learner goals as approved by the board and provided by the office of public instruction. The learner goals, as approved by the board, are contained in the March 1989, Montana School Accreditation Manual, and are hereby adopted by reference and incorporated in this rule. A copy may be obtained from the Office of Public Instruction, Capitol Station, Helena, MT 59620.

(i) "Assessment" means local assessment used to monitor and measure the effectiveness of the instructional program.
(Eff. 7/1/89)

10.55.603 (RULE III) CURRICULUM DEVELOPMENT AND ASSESSMENT

(1) Local school districts are responsible for incorporating all required learner goals into their curriculum, defining and organizing the program area learner goals of the accreditation standards into specific curricula and for extending them to help students meet the challenges of the future, introducing the learner goals when appropriate, implementing them sequentially and developmentally, and building upon previous goals. Student assessment shall be used to examine the program and ensure its effectiveness.

(2) In all program areas and at all levels, the school district shall:

(a) establish curriculum and assessment development and evaluation processes as a cooperative effort of personnel certified in the program area and trustees, administrators, other teachers, students, specialists, parents, community and, when appropriate, state resource people;

(b) develop, in accordance with the schedule in subsection (3), written sequential curricula for each subject area. The curricula shall address learner goals as defined in ARM 10.55.602 from the standards and district educational goals;

(c) construct curriculum with ~~equal emphasis on~~ to include the three such parts of education: as content, skills and thinking;

(d) review curricula annually at intervals not exceeding five years and modify as needed to meet educational goals;

(e) establish a curriculum review cycle and timelines for curriculum development and evaluations; and

(f) select materials and resources to include supplies, books, materials and equipment necessary for development and implementation of the curriculum and assessment that are consistent with the goals of the education program. These materials shall be reviewed at least every five years.

(3) By September 15, 1991, Beginning the school year 1991-1992, the schools shall have at least one program in conformance with begin the curriculum development process and continue to align in at least one program. School districts will continue to follow their approved plan to align programs a year until the school year 1999-2000, when all programs must be in alignment with the above curriculum development process. The schools shall submit a plan by the same date to the office of public instruction designating the subject areas to be considered each year and the anticipated completion. Any variation of the plan must be approved by the board of public education.

(4) In all program areas and at all levels, the school district shall:

(a) assess, in accordance with the schedule in subsection

(5), student progress toward achieving learner goals including:

(i) the content and data;

(ii) the accomplishment of appropriate skills; and

(iii) the development of critical thinking and reasoning in equal weight; and

(iv) attitude.

(4)(b) through (4)(c)(viii) remain the same.

(5) Beginning the school year 1992-1993, schools shall have at least one program in conformance with the assessment process and continue to align at least one program a year. Not later than the school year immediately following the completion of a written sequential curricula in a subject area, the school shall begin the development of an assessment process for that subject area. Once begun, the assessment process for a subject area will be in place within two years until the school year 2000-2001, when all programs must be in alignment with the above assessment process. (Eff. 7/1/89)

(6) Beginning 7/1/92 schools shall conduct follow-up studies of graduates and students no longer in attendance. The study results shall be incorporated considered into curriculum development and shared with staff and school consultants. (Eff. 7/1/92)

10.55.604 (RULE IV) ALTERNATIVE STANDARD (1) Any school may apply to the board of public education through the office of public instruction for permission to use an alternative to any standard, section of standards, or the entire set of

standards, excluding required--learner-goal--standards--or standards pertaining to law or certification requirements. To do so, the school shall provide the office of public instruction evidence that the opportunity to meet the accreditation standards' learner goals are at the core of its curricula--that is, that the school has put in place curriculum and assessment procedures which give students opportunities to meet the stated goals and which have been the results of the curriculum development process as outlined in the standards. The board of public education may withdraw its permission of the alternative program at any time if experience shows it no longer provides an educationally sound alternative.

(2) Permission to use an approved alternative shall be granted for one year, and it is renewable for up to an additional five years without special annual approval, if both the school and the board of public education find the one-year pilot to be workable and educationally sound.

(3) remains the same.

(4) Approval and renewal of an alternative standard shall be done by the board of public education in open meeting, which provides opportunity for public comment on each school's application for use of the alternative standard. (Eff. 7/1/89)

10.55.605 (RULE V) CATEGORIES OF ACCREDITATION

~~(1) Project Excellence accreditation:--The school shows an outstanding dedication to education.--Staff are certified, appropriately assigned, and utilized to the fullest extent possible.--Specialists, support personnel, and resources are used to enrich the basic program.--The school uses effective schooling practices.--There is cogent professional development.--The school, trustees, staff, parents, and community work together to provide a quality education.--The community is involved in designing an effective program, providing resources for enrichment of the program, and generally encouraging a stimulating and positive learning environment.~~

~~(2)(1) Remains the same.~~

~~(3)(2) Remains the same.~~

~~(4)(3) Remains the same.~~

~~(5)(4) Accreditation with deficiency status: The fifth fourth level is for schools that have been on advice status for two years and continue to have serious and/or numerous deviations, or have substantially increased the seriousness of deviations over the previous year. A school that employs a noncertified teacher, that has a facility that creates an unhealthy environment with safety and health hazards, or that provides an inadequate learning environment will be placed on deficiency status. The school administrator and the chair of the board of trustees must will submit and/or come before the board of public education with an improvement plan and a systematic procedure for correcting the deviations noted.~~

~~(6)(5) Nonaccredited status: If a school is on level four deficiency status and fails to document that it has met~~

its improvement plan improvements, its accreditation may be rescinded. (Eff. 7/1/89)

10.55.701 (RULE VI) BOARD OF TRUSTEES (1) and (2) remain the same.

(3) Each school district shall have in writing and available to the staff and public:

~~(a) clearly-articulated policies that cover all aspects of operations; (Eff. 7/1/91)~~

~~(b)(a) comprehensive philosophy of education; which reflects the specific learning needs of students; (Eff. 7/1/89)~~

~~(c)(b) remains the same.~~

~~(d)(c) sequential curricula for each program area which addresses the accreditation standards' learner goals and the district's educational goals; (Eff. 7/1/2000)~~

~~(e)(d) remains the same.~~

~~(f)(e) remains the same.~~

~~(g)(f) remains the same.~~

~~(h)(g) remains the same.~~

~~(i)(h) remains the same.~~

~~(j) an academic freedom policy; (Eff. 7/1/91)~~

~~(3)(j) through (5) remain the same.~~

(6) The board of trustees shall have written policies and procedures for regular and periodic evaluation of all regularly employed certified administrative, supervisory, and teaching school personnel. The individual evaluated shall have a written copy of the evaluation, the opportunity to respond in writing to the evaluation, and access to his/her files. Personnel files shall be confidential. (Eff. 7/1/89)

(7) The board of trustees shall consider ways use its best efforts to establish conditions that contribute to a positive school climate and morale by encouraging cooperative and harmonious relationships among staff members, students, parents, and community. (Eff. 7/1/91)

(8) To enhance a positive learning environment, the board of trustees shall should use its best efforts to:

~~(a) and (b) remain the same.~~

~~(c) guarantee that interscholastic and intramural activities and associated youth programs are used to enhance but not supplant instruction; (Eff. 7/1/91)~~

(9) To ensure continuous education improvement, the district shall conduct a district self-evaluation program at least every five ten years. (Eff. 7/1/91)

10.55.702 (RULE VII) CERTIFICATION AND DUTIES OF DISTRICT SUPERINTENDENT Remains the same.

10.55.703 (RULE VIII) CERTIFICATION AND DUTIES OF BUILDING LEVEL ADMINISTRATOR: PRINCIPAL (1) The building administrator shall:

~~(a) remains the same.~~

~~(b) have a certificate endorsed at the level assigned as an have at least three years teaching experience at the level~~

{K-8, 5-12}-assigned-as administrator;

(c) consider ways use his/her best efforts to:

(i) remains the same.

(ii) remains the same.

(iii) encourage teachers to ensure that teachers have high expectations for student achievement; and

(1)(c)(iv) through (1) (f) remain the same.

10.55.704 (RULE IX) ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) For assignment of district superintendents prior to 7/1/92 see Rule-X ARM 10.55.705 (1). (Eff. 7/1/89; Repeal 7/1/92).

(2) remains the same.

(3) An independent elementary district with 4-11 FTE certified staff shall use the county superintendent or employ at least a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district superintendent and building principal.

(4) A combined elementary-high school district or a county high school district with 4-11 FTE certified staff shall employ at least a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district superintendent and building principal.

(5) A combined elementary-high school district or a county high school district or an independent elementary district with 128-29 FTE certified staff shall employ at least a half-time district superintendent in addition to the required building administrator.

(6) through (8) remain the same.

10.55.705 (RULE X) ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF BUILDING ADMINISTRATORS (1) through (1)(e) remain the same.

(f) Any junior or senior high school, junior high, middle school and grades 7 and 8 budgeted at high school rates with an enrollment of over 500 students shall employ an assistant principal who shall devote at least one half of each school day to supervision and administration.

(g) remains the same.

(2) Beginning 7/1/92 schools shall employ appropriately endorsed building administrators as follows:

(a) remains the same.

(b) .5 FTE for schools with 4-11 FTE certified staff;

(c) 1 FTE for schools with 128-29 FTE certified staff or 250-550 students;

(2)(d) through (4) remain the same.

10.55.706 (RULE XI) TEACHER INVOLVEMENT Remains the same.

10.55.707 (RULE XII) CERTIFICATION Remains the same.

10.55.708 (RULE XIII) TEACHING ASSIGNMENTS (1) through (2) remain the same.

(3) No teacher shall have more than 28 clock hours of assigned student responsibility per week except for one- and two-teacher schools.

10.55.709 (RULE XIV) LIBRARY/MEDIA SERVICES, K-12 (1) through (1)(e) remain the same.

(2) Beginning 7/1/94 the library shall be housed in a central location, and each school shall have a full-time or part-time certified school library/media specialist with a K-12 library/media endorsement at the ratio as follows:

(2)(a) through (3)(b) remain the same.

10.55.710 (RULE XV) ASSIGNMENT OF GUIDANCE STAFF Remains the same.

10.55.711 (RULE XVI) GENERAL: CLASS SIZE AND TEACHER LOAD (1) remains the same.

(2) Schools wishing to vary exceed class sizes and/or teacher loads shall seek the approval of the board of public education. In determining those variations the following will be considered:

(a) and (b) remain the same.

(c) a school may augment the classroom teacher with the use of certified personnel who are endorsed in specialized K-12 areas, to exceed the maximum class size in the elementary grades. (Eff. 7/1/89)

10.55.712 (RULE XVII) CLASS SIZE: ELEMENTARY (1) In single-grade rooms, the maximum class size shall be:

(a) no more than 24 ~~{Eff. 7/1/89} + 20 -- {Eff. 7/1/92}~~ students in kindergarten;

(b) no more than 26 ~~{Eff. 7/1/89} + 20 -- {Eff. 7/1/92}~~ students in grade 1;

(c) no more than 26 ~~{Eff. 7/1/89} + 20 -- {Eff. 7/1/92}~~ students in grade 2;

(d) no more than 28 ~~{Eff. 7/1/89} + 26 -- {Eff. 7/1/92}~~ students in grades 3 and 4; and

(e) No more than 30 ~~{Eff. 7/1/89} + 28 -- {Eff. 7/1/92}~~ students in grades 5 through 8. (Eff. 7/1/89)

(2) In single-grade rooms the maximum class size shall be:

(a) no more than 20 students in kindergarten and grades 1 through 2. (Eff. 7/1/92)

~~{2}{3}~~ remains the same.

(a) through (c) remain the same.

~~{3}{4}~~ remains the same.

~~{4}{5}~~ remains the same.

10.55.713 (RULE XVIII) TEACHER LOAD AND CLASS SIZE: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL, AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) In addition to the school administrator, the school shall employ a sufficient number of

certified FTEs to allow for varying instructional patterns including, but not limited to, teaming, core curriculum and departmentalization. Each program offered shall have properly endorsed FTE(s). (Eff. 7/1/89)

(2) remains the same.
(e)(a) Class size limits do not apply to instrumental music or choral groups. (Eff. 7/1/89)

(a)(b) Health enhancement and typing classes shall have no more than 45 ~~{Eff. 7/1/89}~~ ~~30~~ ~~{Eff. 7/1/92}~~ students. (Eff. 7/1/89)

(c) Health enhancement and typing classes shall have no more than 30 students; (Eff. 7/1/92)

(b)(d) Laboratory/studio class size shall be limited for safety purposes. The number of students shall be determined through consultation with the teacher, considering the number, size and use of laboratory stations. (Eff. 7/1/92)

(3) The number of students assigned a teacher per day shall not exceed 160. ~~(Eff. 7/1/89)~~ ~~150~~ ~~{Eff. 7/1/92}~~.

(a) ~~Teachers with a significant writing program shall have a maximum load of 100 students. (Eff. 7/1/92)~~

(b)(a) remains the same.

(e)(b) remains the same.

(d)(c) remains the same.

(4) The number of students assigned a teacher per day shall not exceed 150. (Eff. 7/1/92)

(5) Teachers with a significant writing program, as determined by the local board of trustees, shall have a maximum load of 100 students. (Eff. 7/1/92)

10.55.714 (RULE XIX) PROFESSIONAL DEVELOPMENT Remains the same.

10.55.801 (RULE XX) SCHOOL CLIMATE (Beginning 7/1/91)
(1) The board of trustees shall ~~use its best efforts~~ consider ways to:

(a) through (d) remain the same.

(e) offer programs and services which, in content and presentation, are endeavor to be free of bias and stereotyping in terms of age, sex, religion, race, national origin, or handicapping condition;

(f) remains the same.

(g) inform students of ~~its~~ the school's expectations and of students' rights and responsibilities;

(h) through (j) remain the same.

(2) In the area of technology, the board of trustees shall ~~use its best efforts~~ consider ways to:

(a) through (e) remain the same.

10.55.802 (RULE XXI) OPPORTUNITY AND EDUCATIONAL EQUITY Remains the same.

10.55.803 (RULE XXII) LEARNER ACCESS (1) Equal opportunity to learn is a primary consideration of all program areas, at all levels. In order to integrate this concept throughout the education program, the board of trustees shall develop and implement processes for assessing the educational needs of its students.

(a) ~~develop and implement processes for assessing~~

~~students' educational needs. This assessment shall include but not be limited to students the school identifies as gifted and talented, at risk, in need of special services, ethnic minorities, bilingual, and the educationally disadvantaged.~~

(2) In developing curricula in all program areas, the board of trustees shall consider ways to:

(a) and (b) remain the same.

(c) nurture an understanding of the values and contributions of Montana's Native Americans and the unique needs and abilities of Native American students and other minority groups;

(d) provide learning resources that are universally available, ~~free of bias~~, culturally inclusive, and current;

(e) remains the same.

(f) provide equal access to learning resources, including technology; and

(g) provide instructional materials which are sequential and compatible with previous and future offerings; and ~~{Eff. 7/1/91}~~

(h) identify, using the school's own criteria, students who may be at risk, in need of special services, bilingual training or who are otherwise exceptional. (Eff. 7/1/92)

10.55.804 (RULE XXIII) GIFTED AND TALENTED Remains the same.

10.55.805 (RULE XXIV) SPECIAL EDUCATION Remains the same.

10.55.901 (RULE XXV) BASIC EDUCATION PROGRAM: ELEMENTARY

(1) An elementary school shall have an education program that gives students the opportunity to meet the learner goals ~~set forth in the program area standards as defined in ARM 10.55.602~~ at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

10.55.902 (RULE XXVI) BASIC EDUCATION PROGRAM: MIDDLE SCHOOL (1) remains the same.

(2) A middle school shall have an education program that gives students the opportunity to meet the learner goals ~~set forth as defined in ARM 10.55.602~~ in the program areas standards listed in subsection (5) at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(3) and (4) remain the same.

(5) If the middle school program for grades 7 and 8 is funded at high school rates, it the program shall include:

(a) visual arts: including but not limited to art history, art criticism, aesthetic perception, and production;

(b) English language arts: including but not limited to ~~such as~~ literature, language study, reading, writing, listening, speaking, and thinking;

(c) remains the same.

(d) remains the same;

(e) mathematics: including but not limited to written and mental computation and problem solving;

(f) music: including but not limited to general, instrumental, and vocal (emphasizing comprehensive music elements, music history, criticism, aesthetic perception, and musical production);

(g) through (j) remain the same.

10.55.903 (RULE XXVII) BASIC EDUCATION PROGRAM: JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES

(1) The basic education program for junior high school and grades 7 and 8 budgeted at high school rates shall have an education program that gives students the opportunity to meet the learner goals set forth in the program area standards as defined in ARM 10.55.602 at the appropriate levels. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(2) through (2)(h) remain the same.

(i) beginning 7/1/94, in addition, students shall have the opportunity to take: a second language, 1/2 unit each year in junior high and grades 7-8. ~~{Eff. 7/1/94}~~

10.55.904 (RULE XXVIII) BASIC EDUCATION PROGRAM OFFERINGS: HIGH SCHOOL

(1) The basic education program for each high school shall be at least 16 ~~{Eff. 7/1/89}~~ ~~+20~~ ~~{Eff. 7/1/92}~~ units of course work that give students the opportunity to meet the learner goals set forth in the program area standards as defined in ARM 10.55.602. (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(2) Study areas shall include at least the following:

(a) 4 units of English language arts; ~~{Eff. 7/1/89}~~

(b) 2 ~~{Eff. 7/1/89}~~ ~~+3~~ ~~{Eff. 7/1/92}~~ units of mathematics;

(c) 2 ~~{Eff. 7/1/89}~~ ~~+3~~ ~~{Eff. 7/1/92}~~ units of science;

(d) 2 ~~{Eff. 7/1/89}~~ ~~+3~~ ~~{Eff. 7/1/92}~~ units of social studies;

(e) 2 units of vocational/practical arts; ~~{Eff. 7/1/89}~~

(f) 1 ~~{Eff. 7/1/89}~~ ~~+2~~ ~~{Eff. 7/1/92}~~ unit of fine arts;

~~{g}~~ 2 units of second language; ~~{Eff. 7/1/92}~~

~~{h}~~ ~~{g}~~ 1 unit of health enhancement; (Eff. 7/1/89) and

~~{i}~~ ~~{h}~~ 2 units of electives. (Eff. 7/1/89) ~~+Repeat 7/1/92}~~

(3) The basic education program for each high school shall be at least 20 units of course work that give students the opportunity to meet the learner goals as defined in ARM 10.55.602. (Eff. 7/1/92) (At least one component a year beginning 7/1/91; Eff. 7/1/99)

(4) Study areas shall include at least the following:

(a) 4 units of English language arts;

(b) 3 units of mathematics;

(c) 3 units of science;

(d) 3 units of social studies;

(e) 2 units of vocational/practical arts;

(f) 2 units of fine arts;

(g) 1 unit of health enhancement;

(h) 2 units of second language; and

(i) 2 units of electives (repeal 7/1/92).

(Eff. 7/1/92)

10.55.905 (RULE XXIX) GRADUATION REQUIREMENTS (1)
remains the same.

(2) In order to meet the learner goals set forth in the accreditation standards as defined in ARM 10.55.602, the following 9 1/2 (Eff. 7/1/89); 123 (Eff. 7/1/92) units shall be part of the 20 units required for all students to graduate:

(a) 4 (Eff. 7/1/89); 3 (Eff. 7/1/92) units of English language arts;

(b) through (d) remain the same.

(e) 1 unit of health enhancement, with 1/2 unit each year for two years; (Eff. 7/1/89)

(2)(f) through (4) remain the same.

10.55.906 (RULE XXX) CREDIT: HIGH SCHOOL, JUNIOR HIGH AND GRADES 7 AND 8 BUDGETED AT HIGH SCHOOL RATES (1) through (2)(a) remain the same.

(3) Credit Waiver

(a) Each governing authority may waive specific course requirements based on individual student needs and performance levels. Waiver requests shall also be considered with respect to age, maturity, interest, and aspirations of the students and shall be in consultation with the parents or guardians.

(3)(4) remains the same.

(a) with the permission of the school district trustees, to a student may be given credit for a course satisfactorily completed in a period of time shorter or longer than normally required and, provided that the course meets the district's curriculum and assessment requirements, which are aligned with the learner goals stated in the education program. Examples of possible acceptable course work include accredited correspondence and extension courses, adult education, summer school, work study, specially designed courses and challenges to current courses. Any acceptable program must be consistent with local board policy.

(4)(b) remains the same.

10.55.907 (RULE XXXI) DISTANCE LEARNING (1)--The board of trustees shall not use distance learning as an alternative to on-site classroom instruction when a certified teacher, appropriately endorsed, may be hired for the purpose.

(2)(1) remains the same.

(a) documenting demonstrating in writing the need for the course;

(b) describing outlining how the course instruction will be delivered and will meet learner goals;

(c) remains the same.

(d) validating that the teachers of distance learning courses are certified and appropriately endorsed in Montana, eligible for certification in the sending state or certifiable in their resident state and have experience in delivering instruction via background in distance learning. If the teacher of a distance learning course cannot meet any of the above certification criteria, then the facilitator in the receiving classroom must be certified at the appropriate

level, but not necessarily endorsed in the area of assignment:

(e) and (f) remain the same.

(g) describing in writing why the course is not taught using on-site classroom instruction.

(Eff. 7/1/89)

RULE XXXII Rule Not Adopted.

10.55.1001 (RULE XXXIII) DISTRICT'S RESPONSIBILITIES FOR PROGRAM AREA STANDARDS (1) It is the school district's task to:

(a) Incorporate all required learner goals, as defined in ARM 10.55.602, into its curriculum.

(b) remains the same.

10.55.1002 (RULE XXXIV) CROSS-CONTENT AND THINKING SKILLS Remains the same.

10.55.1101 (RULE XXXV) COMMUNICATION ARTS PROGRAM (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

RULES XXXVI through LXV Rules Not Adopted.

10.55.1201 (RULE LXVI) FINE ARTS PROGRAM (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

RULES LXVII through LXXX Rules Not Adopted.

10.55.1301 (RULE LXXXI) HEALTH ENHANCEMENT PROGRAM (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

10.55.1302 (RULE LXXXII) HEALTH ENHANCEMENT PARTICIPATION (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

RULES LXXXIII through LXXXVI Rules Not Adopted.

10.55.1401 (RULE LXXXVII) MATHEMATICS PROGRAM (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

RULES LXXXVIII through CXIV Rules Not Adopted.

10.55.1501 (RULE CXV) SCIENCE PROGRAM (In accordance with Rules--~~III~~ ARM 10.55.603 and ~~XXXIII~~ ARM 10.55.1001) Remains the same.

RULE CXVI through CXXV Rules Not Adopted.

10.55.1601 (RULE CXXVI) SOCIAL STUDIES PROGRAM (In

accordance with Rules--III ARM 10.55.603 and XXXIII ARM 10.55.1001) Remains the same.

RULES CXXVII through CXLVIII Rules Not Adopted.

10.55.1701 (RULE CXLIX) VOCATIONAL/PRACTICAL ARTS PROGRAM (In accordance with Rules--III ARM 10.55.603 and XXXIII ARM 10.55.1001) Remains the same.

RULEX CL through CLXI Rules Not Adopted.

10.55.1801 (RULE CLXII) LIBRARY/MEDIA PROGRAM (In accordance with Rules--III ARM 10.55.603 and XXXIII ARM 10.55.1001) Remains the same.

RULES CLXIII through CLXIX Rules Not Adopted.

10.55.1901 (RULE CLXX) DEFINITION (In accordance with Rules--III ARM 10.55.603 and XXXIII ARM 10.55.1001) Remains the same.

RULES CLXXI through CLXXXIII Rules Not Adopted.

10.55.2001 (RULE CLXXXIV) SCHOOL FACILITIES (1) and (2) remain the same.

(3) The board of trustees shall provide for educational facilities which are pleasant and reasonably safe for the conduct of the educational and extracurricular activities of students, and which will meet federal accessibility standards ~~are accessible to all students.~~

(4) through (6) remain the same.

10.55.2002 (RULE CLXXXV) STUDENT RECORDS Remains the same.

10.55.2003 (RULE CLXXXVI) SPECIAL EDUCATION RECORDS Remains the same.

4. Oral testimony was presented by 140 of the 387 individuals in attendance at the public hearings held on November 2 and 3, 1988. Fourteen people testified as proponents, four testified as opponents, 34 testified in favor of postponing the new accreditation standards, and 17 favored a pilot project. Sixty-two individuals testified in favor of specific sections and 9 asked for changes. Prior to November 10, 1988, the date on which the Board closed the hearing record, 848 pieces of written testimony were received. A detailed report on this testimony is available from the Board office. The Board considered all comments and then made additions and deletions in the proposed rules which: clarified the Board's intent, provided more flexibility for local school districts, ensured continuity throughout the rules and

responded to the testimony received. The rules that have been deleted are referenced in ARM 10.55.602 (h), "Learner Goals," and will be used as models rather than rules. The Board, therefore, feels the rules, as written, sufficiently address the comments from the public hearings. The effective date of these rules will be 7/1/89, with phase-in dates noted within the rules.

Alan Nicholson

ALAN NICHOLSON, CHAIRMAN
BOARD OF PUBLIC EDUCATION

BY:

Claudette Morton

Certified to the Secretary of State March 6, 1989.

VOLUME NO. 43

OPINION NO. 5

HOSPITALS - Emergency detention of seriously mentally ill;
INSTITUTIONS, DEPARTMENT OF - Emergency detention of seriously mentally ill;
MENTAL HEALTH - Emergency detention of seriously mentally ill;
MONTANA CODE ANNOTATED - Sections 53-21-102(4), 53-21-102(15), 53-21-114, 53-21-121, 53-21-123, 53-21-129.

HELD: In an emergency situation, section 53-21-129, MCA, allows for a person at any time to be detained and treated until the next regular business day when that person must be released or proceedings initiated pursuant to section 53-21-121, MCA.

February 23, 1989

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion on a question which I have rephrased as follows:

Are the emergency detention procedures of section 53-21-129, MCA, limited to hours when county offices and courts are not open for regular business?

The relevant portions of the section provide:

(1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation

exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section.

§ 53-21-129, MCA.

The term "emergency situation" is defined as "a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill." § 53-21-102(4), MCA. The Montana Supreme Court has recently explained the statute on emergency detention as follows:

Subsection (1) merely permits the officer to take a person into custody for an evaluation; it does not, as M.C. contends, give the officer the authority to decide whether the person should be placed in emergency detention. Under subsection (2), the professional person makes the decision on whether the person appears to be seriously mentally ill and should be placed in emergency detention.

In re M.C., 43 St. Rptr. 508, 512, 716 P.2d 203, 206-07 (1986). The case law makes it clear that an emergency detention is to be utilized only when absolutely necessary to protect the person or others from imminent threat or danger of serious bodily harm. Compare In re M.C., *supra*, and Reiser v. Prunty, 43 St. Rptr. 1967, 727 P.2d 538 (1986), with Matter of Shennum, 210 Mont. 442, 684 P.2d 1073 (1984).

The duties of a professional person relating to emergency detention were recently characterized as follows:

1. Once a person is brought into custody, that person may not be detained unless a professional person concludes that the person appears to be seriously mentally ill and that an emergency situation exists with respect to that person's condition.

2. If the professional person concludes that these factors are present, then the person may be detained and treated until the next regular business day following this determination.

3. On the next regular business day, the professional person is obliged to either release the detained person or file appropriate findings with the county attorney, who may then seek involuntary commitment of the detainee pursuant to other provisions of the Mental Health Code.

4. Whether the professional person reports his findings to the county attorney or releases the detainee, the professional person is required to file a report with the district court explaining his actions with respect to the detainee.

Reiser v. Prunty, 43 St. Rptr. at 1972, 727 P.2d at 544. These duties differ from the responsibility for an evaluation pursuant to section 53-21-123, MCA, following the filing of a petition for involuntary commitment. The latter section contemplates an extensive examination, culminating in an opinion as to whether the person is indeed "seriously mentally ill" as defined by section 53-21-102(15), MCA. Section 53-21-129, MCA, merely requires a determination as to whether an emergency situation exists and whether the person appears to be seriously mentally ill.

While section 53-21-129, MCA, does provide that the person "may be detained and treated until the next regular business day," by which time the professional person must either release the person detained or contact the county attorney, there is nothing in the statute which indicates the person may not be detained during business hours. If an emergency situation arises during business hours, a person may be taken into custody and a professional person contacted to determine if emergency detention is warranted. If detained, the person should be informed of his procedural and constitutional rights pursuant to section 53-21-114, MCA. The person's need for care may be met by emergency detention and treatment while the county attorney is

contacted for further proceedings pursuant to section 53-21-121, MCA.

THEREFORE, IT IS MY OPINION:

In an emergency situation, section 53-21-129, MCA, allows for a person at any time to be detained and treated until the next regular business day when that person must be released or proceedings initiated pursuant to section 53-21-121, MCA.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot". The signature is fluid and cursive, with the first name "Marc" and last name "Racicot" clearly distinguishable.

MARC RACICOT
Attorney General

VOLUME NO. 43

OPINION NO. 6

HIGHWAYS, DEPARTMENT OF - Availability to trade union organization of payroll record information submitted to Department in order to verify payment of wages in conformance with federal law;
PRIVACY - Availability to trade union organization of payroll record information submitted to Department of Highways in order to verify payment of wages in conformance with federal law;
RIGHT TO KNOW - Availability to trade union organization of payroll record information submitted to Department of Highways in order to verify payment of wages in conformance with federal law;
STATE GOVERNMENT - Availability to trade union organization of payroll record information submitted to Department of Highways in order to verify payment of wages in conformance with federal law;
MONTANA CONSTITUTION - Article II, sections 9, 10;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 64 (1988), 38 Op. Att'y Gen. No. 109 (1980), 38 Op. Att'y Gen. No. 1 (1979);
UNITED STATES CODE - 40 U.S.C. § 276(a).

HELD: Payroll record information, including the names, addresses, and wages of private employees working on a publicly funded project, that is reported to the Department of Highways is subject to public disclosure. The social security numbers of those employees are not subject to public disclosure.

February 27, 1989

Jesse Munro, Interim Director
Department of Highways
2701 Prospect Avenue
Helena MT 59620

Dear Mr. Munro:

Your predecessor requested my opinion on the following question:

Is a trade union organization entitled to payroll record information, including the names and social security numbers of employees, submitted to the Department of Highways for the purpose of verifying the

Montana Administrative Register

5-3/16/89

payment of wages in conformance with the Davis-Bacon Act?

The Department of Highways receives federal funds for the construction of highways. As a condition of receiving that aid, the Department must ensure that the firms with which it contracts pay the prevailing rate of wages established by the United States Department of Labor and incorporated into the construction contract. Pursuant to 40 U.S.C. § 276a(b), and as used in this opinion, the term "wages" or "prevailing wages" includes fringe benefits.

Because the Department of Highways must monitor the wages paid by the contractor, the contractor is required to submit to the Department a weekly payroll record. The record includes the name, address, social security number, work classification, hours worked per week, rate of pay, deductions, and gross and net pay of each employee on the payroll.

The Montana Heavy and Highway Construction Sub-Committee, a trade union organization, has requested copies of some of these records, including the names, addresses, and social security numbers of employees. The trade union organization states it is requesting the records in order to verify compliance with the Davis-Bacon Act, 40 U.S.C. § 276a. The Department of Highways has resisted releasing the names, addresses, and social security numbers of the employees.

Each Montanan's "right to know" is guaranteed by Article II, section 9 of the Montana Constitution, which states:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The right of individual privacy referred to in this section is guaranteed by Article II, section 10 of the Montana Constitution, which states:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Opinions of the Montana Supreme Court and the Montana Attorney General have spoken of the need to reconcile

these two rights. The Constitution requires that a potential conflict between the public's right to know and an individual's right of privacy be resolved by applying a balancing test. 42 Op. Att'y Gen. No. 64 (1988). The following balancing test for dealing with these questions has been developed:

(1) [D]etermining whether a matter of individual privacy is involved, (2) determining the demands of that privacy and the merits of publicly disclosing the information at issue, and (3) deciding whether the demand of individual privacy clearly outweighs the demand of public disclosure. [Emphasis in original.]

42 Op. Att'y Gen. No. 64 (1988). See also Missoulia v. Board of Regents, 207 Mont. 513, 522, 527, 675 P.2d 962, 967, 970 (1983). It is the duty of each agency, when asked to disclose information, to apply these steps and make an independent determination within the guidelines of the law, subject to judicial review. 38 Op. Att'y Gen. No. 109 at 375, 376 (1980). It is useful, however, to examine legal precedent in determining and weighing the merits of privacy or disclosure.

The Montana Supreme Court has allowed a governmental agency to assert the privacy interests of others where potential economic injury to the agency could result from lawsuits for improper disclosure. Belth v. Bennett, 44 St. Rptr. 1133, 1136, 740 P.2d 638, 641 (1987); Montana Human Rights Division v. City of Billings, 199 Mont. 434, 443, 649 P.2d 1283, 1288 (1982). Such potential economic injury exists in this case, and it is therefore my opinion that the Department of Highways may assert the privacy interests of the employees whose payroll records are involved.

The Montana Supreme Court has spoken several times of a party's subjective expectation of privacy and whether society considers that expectation reasonable. Belth v. Bennett, 740 P.2d at 642; Missoulia v. Board of Regents, 675 P.2d at 967-68; Montana Human Rights Division v. City of Billings, 649 P.2d at 1287. While there are no set guidelines for the determination of whether a matter of individual privacy is involved, Opinions of the Attorney General have held that information which reveals facts concerning personal aspects of the individual's life necessarily involve individual privacy. 42 Op. Att'y Gen. No. 64 (1988), 38 Op. Att'y Gen. No. 1 at 1, 4 (1979). 38 Op. Att'y Gen. No. 109 at 375 (1980) concluded that a state employee's title, dates and duration of employment, and salary are

public information. The findings in that opinion concerning public employee information are not necessarily dispositive of an issue concerning private employees working on a publicly funded project. Nonetheless, I find the discussion of the nature of names and wages helpful, and I conclude that the names, addresses, and wages of employees are not intimate details of a highly personal nature. Thus, with respect to the names, addresses, and wages of the employees, I find that while they involve a privacy interest, it is a minimal one. In comparison, the public has a substantial interest in verifying that employees receiving federal funds are complying with labor laws. In my opinion, the slight demand for individual privacy concerning names, addresses, and wages does not outweigh the merits of public disclosure.

The social security numbers of the employees are a different matter. Montana's constitutional right of privacy is explicit. The protection it offers is more substantial than that offered by the federal constitution. Missoulian v. Board of Regents, 675 P.2d at 967; Montana Human Rights Division v. City of Billings, 649 P.2d at 1286. However, even the federal authorities have recognized the strong privacy interest that employees have in their social security numbers. I.B.E.W. Local Union No. 5 v. U.S. Dept. of H.U.D., 852 F.2d 87, 89 (3d Cir. 1988). Against this strong privacy interest, I find no public interest that would be furthered by release of the social security numbers. I therefore conclude that the demand of individual privacy clearly outweighs the demand of disclosure of the employees' social security numbers.

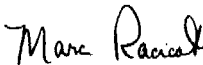
Federal case law is consistent with my conclusion. See I.B.E.W. Local Union No. 5 v. U.S. Dept. of H.U.D., supra (names and addresses of employees of nonunion contractor performing work on federally funded project should be disclosed under Freedom of Information Act privacy exemption, but their social security numbers should not be disclosed); United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, Local 598 v. Dept. of Army Corps of Engineers, 841 F.2d 1459 (9th Cir. 1988) (Army's refusal to disclose its payroll records to union had no reasonable basis in federal law).

THEREFORE, IT IS MY OPINION:

Payroll record information, including the names, addresses, and wages of private employees working on a publicly funded project, that is reported to the Department of Highways is subject to public

disclosure. The social security numbers of those employees are not subject to public disclosure.

Sincerely,


MARC RACICOT
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 the 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 statutes 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
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the
accumulative table and the table of
contents in the last Montana Administrative
Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each
title which list MCA section 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 December 31, 1988. This table includes those rules adopted during the period January 1, 1989 through March 31, 1989 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 December 31, 1988, 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 1988 and 1989 Montana Administrative Registers.

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