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**MONTANA FIRST JUDICIAL DISTRICT COURT
 LEWIS & CLARK COUNTY**

<p>MONTANA QUALITY EDUCATION COALITION,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>THE OFFICE OF PUBLIC INSTRUCTION; and ELSIE ARNTZEN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. DV-25-24-201-IJ</p> <p>Judge: Hon. Michael F. McMahon</p> <p>PLAINTIFF’S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION OR, ALTERNATIVELY TEMPORARY RESTRAINING ORDER AND REQUEST FOR EXPEDITED RULING</p>
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COMES NOW the Plaintiff, MONTANA QUALITY EDUCATION COALITION (“MQEC”), by and through its counsel of record Elizabeth A. Kaleva, Elizabeth A. O’Halloran, and Kevin Twidwell of Kaleva Law Office and hereby

submits the following brief in support of its Motion for Preliminary Injunction or, Alternatively, for Temporary Restraining Order.

I. BACKGROUND

During the 2023 Montana Legislative Session, the Montana Legislature passed the Public Charter School Act (“PCSA”), comprehensive legislation addressing the formation and oversight of public charter schools in Montana. Mont. Code Ann. § 20-6-801, *et seq.* The PCSA established the Board of Public Education (“BPE”) as the administrative body charged with reviewing and approving applications for public charter school status, contracting with charter school boards of trustees, monitoring compliance with standards, and regulating the newly authorized public charter schools. Mont. Code Ann. § 20-6-802(3).

In an effort to generate roll out of authorized schools for Fiscal Year 2025, commencing on June 30, 2024, the BPE established a deadline for applications from governing boards to submit their requests for approval of their proposals for innovative, unique charter programs for which there was sufficiently demonstrated demand among the families and children residing within the boundaries of the proposed schools. In accordance with its authority, the BPE developed applications to solicit information and data consistent with the criteria developed by the legislature for the establishment of a public charter school. Based on the work of

districts seeking approval to start their programs, the BPE reviewed applications and approved 19 public charter schools on January 19, 2024. Ex. A, at 14-15.

Upon approval, approved charter school boards of trustees and the BPE had a short window of time (45 days) in which to execute charter contracts. Mont. Code Ann. § 20-6-806(2). The charter contracts addressed the terms of approval, operation, oversight, and fiscal management, as well as the commitments necessary to begin operation pursuant to Mont. Code Ann. § 20-6-806. Aff. of P. Joseph, Ex. G, at ¶ 13.

Though Elsie Arntzen, the current Superintendent of Public Instruction for the State of Montana, is an *ex officio*, non-voting member of the BPE, Arntzen and the Office of Public Instruction recently announced that public charter schools were required to undergo a separate school opening process that exists in Title 20, Chapter 6, Part 5 of the Montana Code Annotated and applies to schools generally. Exs. B and C. Though public charter schools had already been through the approval process in January with BPE, and their governing boards had executed contracts establishing commencement of operations, Arntzen and OPI engaged in a communications campaign indicating that further recognition of public charter schools was necessary.

Arntzen and OPI modified the OPI website and sent communications to approved charter school administrators, indicating that they were required to go through the non-charter school opening procedures. This, in addition to other

identified concerns about Arntzen’s leadership on legislative initiatives, led to public criticism by the Legislative Interim Education Subcommittee for failing to implement education legislation. Ex. D. In response to the criticism, Arntzen and OPI set up a Virtual Meeting on March 20, 2024, explaining their positions relative to various programs. In the March 18, 2024, email announcing the meeting and relative to the PCSA, OPI provided the following information:

[HB 549, Charter Schools Bill](#), Rep Fred Anderson:

Bill Overview: This bill authorized the establishment of public charter schools in Montana and tasked the Montana Board of Public Education as authorized entity to enter into public charter contracts with a governing board.

OPI’s Position: Nothing in this legislation waives or replaces the public-school opening procedures, which are in already established law. Therefore, OPI is required by law to have public charter schools go through these opening procedures, which are straightforward and make the schools eligible for state funding. It was asserted in the committee that public charter schools do not need to go through this procedure. The language of the bill could have waived the school opening requirement, but it did not. In addition, the process in [Section 6\(6\)](#) must “ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.” We are following this legislation as written as well as long standing law as written.

It is also important to note, that there are currently 19 public charter schools slated to be open in the next school year.

Ex. E.

Arntzen and OPI have consistently and belatedly asserted this position on the OPI website, in webinars offered to newly approved and contracted public charter

schools,¹ and in correspondence to the BPE (Ex. F), and in personal testimony offered to the BPE when it convened to directly address Arntzen and OPI's interference in the approval and operation of public charter schools. <https://www.youtube.com/watch?v=CRJaTiGZemU>.

Arntzen's reference to the application "other legal requirements" to public charter schools forms the basis for OPI entanglement of public charter schools in an unnecessary layer of bureaucratic red tape. Based on the applications for approval, charter school applicants demonstrated that hundreds of families expressed interest in and committed to enrolling their children in the already approved schools. Arntzen and OPI have restated their intent to allow general and conflicting legislative provisions to control the very specific provisions associated with the BPE's authority and its statutory responsibility for establishing preopening obligations of public charter schools, resulting in confused implementation of clear statutory requirements, undermining the express authority of the BPE, nullifying express BPE approvals based on specific legislative criteria and adoption of an approval scheme that undermines the express, legislative intent behind the PCSA.

OPI and Arntzen's position on the PCSA has placed approved charter schools in the tenuous position of having to adhere to their charter contracts with no

¹ <https://www.youtube.com/watch?v=n3grNA0ZtdI>; <https://www.youtube.com/watch?v=KvzsHt3bsSw>; and, <https://www.youtube.com/watch?v=4rSiBcUy1Ds>.

guarantee that appropriate funds will be directed to them by OPI, in the absence of an assigned school code and performance of other basic functions associated with receipt of “Average Number Belonging” funds. In addition, the artificial and unnecessary delay calls into question whether public charter schools will be able to timely open and establish ANB calculations by June 1, 2024.

In addition, separate charter school funding appropriated for FY25 for commencing operations is also suspended based on the failure of OPI to recognize established public charter schools. As noted in the Affidavit of Pete Joseph, Corvallis School District Superintendent, Ex. G, Arntzen and OPI’s position regarding public charter school opening procedures injects uncertainty in programs on which over 700 students and their families are depending on and costs the charter schools time and money while trying to hire staff, designate space, schedule courses for students, and complete other activities that must occur before the fiscal year starts. The new public charter schools are prevented from making assurances to potential staff during the critical months when other school districts are offering and securing commitments from staff and candidates for open positions.

By filing this petition, MQEC seeks immediate removal of legally unjustifiable barriers erected by OPI and Arntzen and declaratory recognition of the constitutional and legislative mandates of the PCSA and the BPE’s authority over public charter schools. The valid legal bases for MQEC’s position in its complaint

and below include constitutional claims, however, this Court need look no further than the applicable statutes to determine that Arntzen and OPI's position is irreconcilable with the PCSA, legislative policy, and intent expressly incorporated into the PCSA, and the statutory assignment of responsibilities to the BPE.

Due to the irreparable harm resulting from the unnecessary delay baked into OPI and Arntzen's positions, the MQEC requests an order granting a preliminary injunction or, alternatively, a temporary restraining order requiring Arntzen and OPI to step out of the substantive school opening process for public charter schools, to recognize the BPE's authority over the regulatory framework surrounding public charter schools and to perform the administrative functions necessary for public charter schools to obtain funding, access resources and meet their obligations under their charter contracts.

II. STANDARD OF REVIEW

The requirements for the issuance of a preliminary injunction are well known. A plaintiff seeking such relief must establish (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the plaintiff's favor; and (4) a preliminary injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 21, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008); Mont. Code Ann. § 27-19-201.

Importantly here, “the limited function of a preliminary injunction is to preserve the status quo and to minimize the harm to all parties pending full trial.” *Porter v. K & S P'ship* (1981), 192 Mont. 175, 183, 627 P.2d 836, 840; accord *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386. If a preliminary injunction will not accomplish these purposes, then it should not be issued. *Id.*; *Driscoll*, ¶ 20. A preliminary injunction does not resolve the merits of a case but rather prevents further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on its merits. *Knudson v. McDunn* (1995), 271 Mont. 61, 65, 894 P.2d 295, 298.

One purpose of a preliminary injunction is to “minimize the harm to all parties pending final resolution on the merits.” *Driscoll*, ¶14. “The court has a duty to balance the equities and minimize potential damage when considering an application for a preliminary injunction.” *Four Rivers Seed Co. v. Circle K Farms*, 2000 MT 360, ¶ 12, 303 Mont. 342, 16 P.3d 342 (citing *Porter*, 192 Mont. at 180, 627 P.2d at 839); *see also Winter*, 555 U.S. at 24 (“In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.”). Further, plaintiffs seeking a preliminary injunction must clearly demonstrate how the injunction requested serves the public interest. *Winter*, 555 U.S. at 20.

Because the approved public charter schools started on a path to enrolling students in FY25 following BPE's direction, and the BPE's efforts to ensure that the schools meet the criteria and standards of the PCSA, preservation of the status quo involves eliminating undue interference in performing functions under executed charter contract terms and conditions. Arntzen and OPI's interjection of additional processes halts all planning and preparation undertaken by approved public charter schools and endangers the timely receipt of funding to accommodate students and parents whose plans for enrollment will be thrown into uncertainty.

III. LIKLIHOOD OF SUCCESS ON THE MERITS: THE BOARD OF PUBLIC EDUCATION HAS AUTHORITY TO ESTABLISH PRE-OPENING PROCEDURES AND OPEN PUBLIC CHARTER SCHOOLS.

A. The Express Provisions of the PCSA Unambiguously Establish that the Charter Contract Execution is the Triggering Point at which Charter Schools May Commence Operation.

Relative to the request for injunctive relief precluding OPI and Arntzen from unlawfully infringing on the BPE's authority, this Court need look no further than the provisions of the PCSA to establish the exclusivity of the BPE's authority over opening public charter schools. The PCSA, in addition to establishing a new form of school in Montana, articulates a detailed framework under which the BPE evaluates, approves, and regulates public charter schools exclusively. All substantive criteria and processes to establish or open a public charter school are designated the

responsibility of the BPE, not OPI or the Superintendent of Public Instruction, or county commissioners as contemplated for regular elementary schools.

Legislative intent to provide the BPE with exclusive authority over the formation of public charter schools was expressly woven into the fabric of the PCSA. The 2023 Legislature vested local control of public charter schools with elected trustees and placed general supervision of public charter schools under the BPE. Mont. Code Ann. § 20-6-802(3) (“It is the legislature's intent to create innovative and high-performing public charter schools under the general supervision of the board of public education and under the supervision and control of trustees of the governing board who are elected by qualified electors in the community where the charter school is located.”).

The PCSA’s framework is based on the fact that public charter schools are a new and different animal in need of different care and feeding. The purpose of the newly established brand of educational opportunity is to allow additional options for parents and opportunities for students. Mont. Code Ann. § 20-6-802(1). Moreover, public charter schools are designed to “encourage[e] and inspire[e] the use of different models of teaching, governing, scheduling, and providing instruction...” Mont. Code Ann. § 20-6-802(2)(d).

The PCSA anoints the BPE with responsibility for executing “essential powers and duties” related to public charter schools, including approval of charter

proposals that meet specified needs, denying approval of proposals, executing charter contracts with approved schools, monitoring performance, and determining whether charter contracts merit renewal, non-renewal, or revocation. Mont. Code Ann. § 20-6-804. Importantly, neither Arntzen nor OPI is endowed with any authority to effect denials, renewals, or revocation of charter contracts with the BPE, nor does OPI or Arntzen have any involvement in the development of the terms of charter contracts.

Even the definition of a “public charter school” points directly to the conclusion that a public charter school’s establishment is contingent *only* upon the execution of its charter contract with the BPE, rather than any separate approval or opening process:

(9) “Public charter school” means a public school that:

(a) has autonomy over decisions including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction as defined in a charter contract;

(b) is governed by a local school board or, in the case of a governing board other than a local school board, by the governing board of the charter school district of which the charter school is a part;

(c) *is established* and operated *under the terms of a charter contract*;

(d) allows parents choose to enroll their children;

(e) admits students on the basis of a lottery if more students apply for admission than can be accommodated;

(f) provides a program of education that may include any or all grades from kindergarten through grade 12 and vocational education programs;

(g) operates in pursuit of a specific set of educational objectives as defined in its charter contract;

(h) *operates under the general supervision of the board of public education in accordance with its charter contract*; and

(i) if the school is a high school, establishes graduation requirements and has authority to award degrees and issue diplomas.

Mont. Code Ann. 20-8-803(9) (*emphasis added*).

The charter contract as the sole organizing principle underlying the opening of a charter school, after BPE approval, is further reinforced by the statutory charter contract requirements. The execution of a charter contract between the BPE and the governing board of the charter school must occur within 45 days of the approval of a charter proposal, Mont. Code Ann. § 20-6-806(2). Mont. Code Ann. § 20-6-806(5) establishes that a charter contract must be executed before a public charter school may commence operations. This provision clarifies that the commencement of operations is contingent on the charter contract, ***not*** on the extraneous and irrelevant non-charter school opening procedures mandated by Arntzen and OPI.

Finally, and clearly in contravention of OPI and Arntzen’s assertion that a public charter school is not “open” until they say it is, the legislature designated the BPE as the entity responsible for the development of *preopening* procedures:

The board of public education may establish reasonable preopening requirements or conditions to monitor the startup progress of a newly approved public charter school to ensure that the school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.

Mont. Code Ann. § 20-6-806(6).

It is against this backdrop and context that the imposition of other school opening procedures must be considered, both as a matter of practicality and as a matter of statutory obligation. All substantive criteria, procedures, and oversight governing public charter schools are evident in Title 20, Chapter 6, Part 8 and performed by the BPE. Application of the non-charter school opening procedures in Title 20, Chapter 6, Part 5, as advocated by OPI and Arntzen, adds nothing to the mix. The general language of Part 5 does not incorporate the term “public charter schools” and merely applies to “schools” generally. Indeed, the definition of “school” in Title 20, Chapter 6, Part 5, gravitates against the application of general school opening procedures of an already chartered school:

Definition of various schools. As used in this title, *unless the context clearly indicates otherwise*, the term “school: means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense...

Mont. Code Ann. § 20-6-501.

As it pertains to public charter schools and opening procedures, the context clearly indicates otherwise. The authority given to the BPE to establish reasonable pre-opening requirements or conditions reinforces that the BPE gets the final say as to what pre-opening conditions are required. Moreover, as the agency responsible for the administration of the PCSA, the BPE’s interpretation of the act controls here, as the BPE is assigned the responsibility of determining the terms of the charter

contracts and the means by which to ensure that a charter school meets other “legal obligations” controls here. Mont. Code Ann. § 20-6-806(6).

A public charter school that has been vetted and approved by the BPE and has executed a charter contract with the BPE may commence operations and *is open*, for all intents and purposes. Title 20, Chapter 6, Part 8 preempts the field in terms of how to open a public charter school. Mandating general non-charter school procedures on public charter schools offends the plain language of Title 20, Chapter 6, Part 8 and applies an inapplicable definition of “school” because the public charter school context requires otherwise.

B. Arntzen and OPI’s Interpretation of the Application of School Opening Procedures is Nonsensical and Contrary to Ordinary Rules of Statutory Construction.

Despite the fact that only Title 20, Chapter 6, Part 8 addresses the requirements for approval and regulation of public charter schools, Arntzen and OPI suggest that the Legislature should have expressly excluded public charter schools from the existing school opening processes provided in Title 20, Chapter 6, Part 5. This argument defies the express legislative intent of the PCSA and appends extraneous procedures to an already comprehensive framework.

Part 8 very specifically addresses the fundamental procedural requirements for the establishment of a public charter school, as well as all the considerations applicable to its operations, whether operating under a local board of trustees or a

board of a school district established through approval of the charter school. *See* Mont. Code Ann. § 20-6-805.

Part 5 very generically applies to opening or re-opening schools at various levels but does not include any specific reference to public charter schools which did not exist at the time Part 5 processes were developed. Just as Arntzen and OPI argue that the legislature should have excused public charter schools from generic school opening requirements, a public charter school district may also argue that the Legislature should have included public charter schools in the generic school opening procedures. It is circular logic that lacks consideration of the express purposes of the PCSA. Logically, appending an additional process *after* execution of a charter school contract makes little sense, especially as Part 8 displaces any potential benefit of those procedures by thorough careful vetting and regulation.

Under the operative provisions of the PCSA, execution of a charter contract is the same day a public charter school is authorized to commence operations and plan for the first day of school. Regardless, OPI and Arntzen challenge this legal framework by interpreting older, general provisions to limit and delay a public charter school's ability to plan and lay the groundwork for operation until authorized by OPI. In the case of elementary or K-12 schools, further approval is required from the applicable Boards of County Commissioners. Mont. Code Ann. §20-6-502(3), By doing so, OPI and Arntzen erect an unauthorized barrier to a charter school's

access to funding, ability to enroll students, and secure needed staff and facilities when decisions regarding class offerings and enrollment need to be made by students and families. In the event a Board of County Commissioners, unbound by the substantive policy and criteria applicable to the BPE's oversight, determines not to approve a school, the legislature's express policy and intent are irreversibly harmed.

Public charter schools fall explicitly within the jurisdiction of the BPE under the PCSA. Approval of preopening procedures and the terms of the governing document - the charter contract - are not subject to approval or interference from OPI or Arntzen, except to the extent that Arntzen has advisory input, though not a vote, as a member of the BPE. Given the BPE's delegated authority and expertise in the application of standards to public charter schools, the BPE is entitled to deference regarding the operability of a public charter school under principles requiring deference to the administrative agency's interpretation of its own rules and policies.

The Montana Supreme Court applies the principles of deference routinely:

An agency's interpretation of its rule is afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule. The agency's interpretation of the rule will be sustained so long as it lies within the range of reasonable interpretation permitted by the wording. *Kirchner v. Mont. Dept. Pub. Health & Human Servs.*, 2005 MT 202, ¶ 18, 328 Mont. 203, 119 P.3d 82; *Juro's United Drug v. Mont. DPHHS*, 2004 MT 117, ¶ 12, 321 Mont. 167, 90 P.3d 388; *Easy v. Mont. DNRC*, 231 Mont. 306, 309, 752 P.2d 746, 748 (1988).

Clark Fork Coalition v. Montana Dept. of Env'tl. Quality, 2008 MT 407, ¶ 20, 347 Mont. 197, 197 P.3d 482.

Of note is Arntzen's admission of the BPE's authority to determine which preopening procedures apply to public charter schools. In her March 22, 2024, correspondence to the BPE, Arntzen states that the Board "may make a policy (or rule) to change those requirements" applicable to public charter schools. Ex. F. The BPE responded by authorizing, as a Board, a letter directing Arntzen to perform functions necessary to allow public charter schools to access funding and resources through OPI. Ex. H. Though she admitted to the breadth of the BPE's authority, Arntzen continues to insert her office and agency into the establishment of preopening procedures, despite the fact that neither Arntzen nor her agency is a party to any charter contract. If the BPE wanted to subject public charter schools to additional procedures, it could under Mont. Code Ann. 20-6-808(6), but it did not. If the BPE did not include Title 20, Chapter 6, Part 5 procedures as a required opening procedure in the charter contract, those procedures are not required. Arntzen and OPI may not append such requirements to the governing agreement by caveat.

In addition to deference to the BPE regarding requirements for the operation of public charter schools, principles of statutory construction also gravitate in favor of MQEC's application for injunctive relief. Arntzen and OPI's interpretation elevates general, earlier statutory provisions which do not include express legislative intent over the specific, later enacted PCSA, which does include statutory

expressions of legislative intent and the policy. This offends principles of statutory construction:

In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

Mont. Code Ann. § 1-2-102.

It is the court's province to:

...simply ascertain and declare what is in terms and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Mont. Code Ann. § 1-2-101.

The Montana Supreme Court distilled statutory construction obligations into four factors to be considered by a court managing a dispute involving statutory interpretation:

- (1) Is the interpretation consistent with the statute as a whole?
- (2) Does the interpretation reflect the intent of the legislature considering the plain language of the statute?
- (3) Is the interpretation reasonable so as to avoid absurd results?
- (4) Has an agency charged with the administration of the statute placed a construction on the statute?

State ex rel. Holt v. Dist. Ct. of Twenty-First Jud. Dist. Ct., 2000 MT 142, ¶ 7, 300 Mont. 35, 3 P.3d 608.

In addition to imposing obligations with conflict with those specified in the charter contract between the BPE and the public charter school, Arntzen and OPI's requirements insert what has been omitted from the PCSA. Moreover, Arntzen and OPI subject elementary charter schools to Board of County Commissioner approvals that are not authorized by the legislature. The BPE's construction of relevant reopening procedures is consistent with the PCSA's uniformity regarding all levels of public charter schools.

Unlike the PCSA, Title 20, Chapter 6, Part 5 contains no expression of policy or legislative intent underlying public charter school opening procedures. Reference to House Bill 358 (2001) demonstrates that opening procedures and approvals governing non-charter schools were intended to address problems confronted when re-opening or opening small rural schools. According to the bill's sponsor, providing a school opening process that included other entities' approvals, eased the burden on rural schools to meet requirements and provided for budgetary considerations that might otherwise be unavailable to rural schools. Ex. I.

In contrast to Part 5, no such concerns exist about public charter schools. The PCSA and the BPE base approval on realistic estimates of minimum enrollment, advanced budget and finance calculations, and vetting of proposals to determine the viability of the school. Those unable to demonstrate budgetary planning sufficient to support a determination of viability are not approved by the BPE. Mont. Code

Ann. § 20-6-805. Application of Part 5 to public charter schools does not serve the legislative intent of the non-charter school opening procedures and clearly undermines the express legislative policy and intent of the PCSA.

The unique legislative authorization for public charter schools encompasses all that is necessary to establish, approve, and open a public charter school. OPI and Arntzen’s second round of approvals would be based on no standards at all. As the BPE has already engaged in substantive review, approval, and entry into an enforceable charter contract for the provision of education to public charter school students, OPI and Arntzen’s enforcement of non-charter school procedures would lead to an absurd result, potentially permitting another body to “undo” the BPE’s work in evaluating the public charter school and contracting for its operations.

The Montana Supreme Court has addressed cases in which the substance of a legislative endeavor has been undermined by technical language. Even if the Legislature did err by failing to include a sentence excusing public charter schools from generic non-charter school opening procedures, such an error is insufficient to undermine the substance of the PCSA. In deciding that a codification error that seemingly thwarted “the whole of the judiciary’s sentencing authority” was essentially a scrivener’s error, the Montana Supreme Court determined:

This Court will not permit legislative intent to be thwarted, and the whole of the judiciary's sentencing authority to be undermined, by a mere scrivener's error. Further, the interpretation of § 46–18–201(5), MCA (1999), we have adopted today will give effect to the other

statutory provisions providing for and implementing the payment of restitution to victims under suspended sentences which would otherwise be rendered meaningless or uncertain.

State v. Heath, 2004 MT 126, ¶ 37, 321 Mont. 280, 90 P.3d 426.

By enacting the PCSA, the legislature constructed a comprehensive network of laws that are designed to establish: criteria for the approval and operation of public charter schools; obligations of the local districts operating them; the contents of governing charter contracts; the time frame between approval by the BPE and entry into a charter contract; considerations for renewal or revocation and closure of a public charter school; and vesting of administrative authority over the entire process in the BPE. The architecture of the PCSA displaces any authority to vet, approve, contract with, or require preopening procedures vested in any other official or agency. To conclude otherwise on the absence of a provision that recognizes that displacement in words thwarts the policy, purpose, and intent of the PCSA.

Applying these rules of statutory construction in favor of the requested preliminary injunction is simple because “opening” is neither a term of art nor a technical term applicable only in the educational context. The mere use of the term “opening” a school in Part 5 does not displace, append, or otherwise limit the BPE’s authority to approve and enter into a charter contract with a public charter school, to determine appropriate “pre-opening” processes and to effectively “open” the school.

The PCSA and Title 20, Chapter 6, Part 5 may be construed as displacing or directly conflicting with OPI and Arntzen’s responsibilities under non-charter school opening procedures because of the substance of the PCSA. While both parts of Title 20, Chapter 6 address how to open schools, they are mutually exclusive and applicable separately to different kinds of schools: public charter schools (the PCSA); and public non-charter schools (Title 20, Chapter 6, Part 5). .

C. OPI and Arntzen’s Insertion of Additional Procedures to Open Public Charter Schools Unconstitutionally Contravenes the Express Authority Granted to the Board of Public Education and Local School Boards.

Montana’s Constitution establishes the BPE as the constitutional authority “to exercise general supervision over the public school system ***and such other public educational institutions as may be assigned by law.***” Mont. Const. art. X. § 9(3)(a) (*emphasis added*). Though the constitution permits the legislature to assign additional responsibilities to the BPE, it is independent, and its authority may not be encroached or otherwise infringed by an executive, including the Superintendent of Public Instruction or the Office of Public Instruction. *See Bd. of Regents of Higher Ed. v. State*, 2022 MT 128, ¶¶ 107–08, 409 Mont. 96, 512 P.3d 748.

Constitutional provisions requiring the establishment and maintenance of a system of a free public education and to fund it, are “solemn mandate to the Legislature for the purpose of insuring to the people the system described.” *State ex rel. Lien v. Sch. Dist. No. 73 of Stillwater Cnty.* (1938), 106 Mont. 223, 226, 76 P.2d

330, 331. In addition to the mandate to provide the educational system required by the Constitution, “[t]he legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable.” Mont. Const. art. X, § 1. The Legislature did just that when enacting the PCSA.

The PCSA assigns supervision over public charter schools to the BPE and is silent as to the assignment of responsibilities governing the operations of public charter schools to other agencies or officials, except local school boards. The policy and intent of the PCSA definitively underscores the BPE’s authority with reference to public charter schools:

It is the legislature's intent to create innovative and high-performing public charter schools under the general supervision of the board of public education and under the supervision and control of trustees of the governing board who are elected by qualified electors in the community where the charter school is located.

Mont. Code Ann. § 20-6-803(3).

Though Arntzen and OPI wish to trigger their own and county commissioner involvement in approving public charter schools, neither are charged with any responsibility for the approval or supervision of public charter schools by the Montana Legislature. County Commissioners and County Superintendents are not delegated authority under the PCSA, nor are Arntzen and OPI empowered to redelegate a legislative assignment of responsibility to BPE, especially when those

bodies are not held to the standards evident under statute or determined by the responsible authority (the BPE).

The Legislature did not expand Arntzen, OPI, the County Superintendents, or the Boards of County Commissioners' authority to include supervision, approval, or authorization of public charter schools, while the BPE's authority over public charter schools was expressly embedded in the PCSA. Only the Legislature may endow the BPE, Arntzen, or OPI with additional educational responsibilities, and the Legislature is constitutionally entitled to "provide such other educational institutions...as it deems desirable." In doing so, it stated its policy and intent as guidance to the BPE, to approve and establish conditions for public charter school operations.

D. Statutes Governing Non-Charter School Opening are Unconstitutionally Vague as Applied by OPI and Arntzen to Public Charter Schools.

Plaintiff further objects to the vagueness of the Title 20, Chapter 6, Part 5 procedures for school opening, as applied by Arntzen and OPI to public charter schools. The detail with which the Legislature established standards for the review, approval, and operation of public charter schools to be considered by the BPE is glaringly absent in Title 20, Chapter 6, Part 5 school opening procedures. Furthermore, the Part 5 procedures do not tie consideration by Arntzen, OPI, the County Superintendent, or Boards of County Commissioners to any standard associated with what criteria governs the decision to open a public charter school.

Relative to County Commissioner approval of a new elementary school, the statute merely indicates that they may approve or deny a proposed opening. Mont. Code Ann. § 20-6-502(3).

The Legislature may constitutionally delegate its legislative functions to an administrative agency, but it must provide, with reasonable clarity, limitations upon the agency's discretion and provide the agency with policy guidance. *In the Petition to Transfer Territory from Lame Deer to Colstrip (Lame Deer)*, 2000 MT 342, ¶ 13, 303 Mont. 204, 15 P.3d 447.

In the territory transfer context, the Montana Supreme Court has limited the ability to delegate the legislature's authority:

The law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion... A statute granting legislative power to an administrative agency will be held to be invalid if the legislature has **failed to prescribe a policy, standard, or rule** to guide the exercise of the delegated authority. If the legislature fails to prescribe with **reasonable clarity the limits of power delegated** to an administrative agency, or if those limits are too broad, the statute is invalid.

Williams v. Bd. of County Comm'rs, 2013 MT 243, ¶ 44, 371 Mont. 356, 309 P.3d 88, (citing *Bacus v. Lake County* (1960), 138 Mont. 69, 78, 354 P.2d 1056, 1061) (*emphasis added*).

Concerning adequate standards and guides in the delegation of legislative power, the applicable principles gravitate against delegation of public charter school opening procedures under Title 20, Chapter 6, Part 5:

If the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, its attempt to delegate is a nullity.

On the other hand, a statute is complete and validly delegates administrative authority when nothing with respect to a determination of what is the law is left to the administrative agency, and its provisions are sufficiently clear, definite, and certain to enable the agency to know its rights and obligations.

Huber v. Groff (1976), 171 Mont. 442, 457, 558 P.2d 1124, 1132, *citing Milk Control Board v. Rehberg* (1962), 141 Mont. 149, 161, 376 P.2d 508, 515.

Unbound and unguided delegation of school opening authority to a Board of County Commissioners, especially in light of the comprehensive provisions of the PCSA, is an unconstitutional delegation of legislative authority and efforts to require as much should be enjoined.

IV. IRREPARABLE HARM

As previously referenced and as demonstrated in the sworn statement of Pete Joseph (Ex. G), Arntzen and OPI's enforcement of inapplicable requirements leads to significant disruption in the planning and preparation for opening a public charter school, in terms of funding, hiring, designation of space, and development of administrative policies and procedures, not to mention enrollment of students with sufficient time to determine class assignments and availability.

The unnecessary delay and subjection of approved charter schools to possible denial by entities that are not educational experts or guided by principles explicitly detailed in the PCSA.

In addition to these identified harms, MQEC has asserted constitutional claims relative to the infringement of BPE authority, as well as the unconstitutional delegation of legislative authority. A violation of constitutional rights which impacts the public and approved charter schools equates to a demonstration of irreparable harm.

Despite the actual harm caused by the delay attributable to Arntzen and OPI, the unconstitutional process of approval required by Arntzen and OPI is a harm in and of itself and constitutes irreparable injury. *See City of Billings v. Cnty. Water Dist. of Billings Heights* (1997), 281 Mont. 219, 231, 935 P.2d 246, 253 (“We are mindful that courts often consider constitutional rights violations as producing injuries which cannot effectively be remedied by a legal judgment. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673 (1976) (violation of First Amendment rights produces irreparable injury); *Mitchell v. Cuomo*, 748 F.2d 804 (2d Cir.1984) (violation of Eighth Amendment rights produces irreparable injury)”).

MQEC has established irreparable harm and is entitled to consideration of this factor as support for entry of a preliminary injunction requiring Arntzen and OPI to refrain from requiring additional school opening procedures and to affirmatively

recognize the approved charter school as open for the purposes of budget and resource disbursement and administration.

V. BALANCE OF THE EQUITIES GRAVITATES IN FAVOR OF INJUNCTIVE RELIEF

“The court has a duty to balance the equities and minimize potential damage when considering an application for a preliminary injunction.” *Four Rivers Seed Co. v. Circle K Farms*, 2000 MT 360, ¶ 12, 303 Mont. 342, 16 P.3d 342 (citing *Porter*, 192 Mont. at 180, 627 P.2d at 839); *see also Winter*, 555 U.S. at 24 (“In each case, courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.”). Further, plaintiffs seeking a preliminary injunction must clearly demonstrate how the injunction requested serves the public interest. *Winter*, 555 U.S. at 20.

In this matter, the equities gravitate in favor of the issuance of a preliminary injunction. OPI and Arntzen have expressed no reason or public benefit for the rote application of inapplicable school opening procedures. Plaintiff has demonstrated the manner in which students, families, and educators are precluded from accessing the educational institutions authorized by the Legislature. In addition, the Plaintiff has demonstrated the effect of Arntzen and OPI’s insistence on applying Title 20, Chapter 6, Part 5 on the policies and legislative intent of the PCSA. In balancing the equities, immediate cessation of Arntzen and OPI’s interference in the commencement of public charter schools serves the public interest without any

competing harm to the public or educational administration.

VI. THE PUBLIC INTEREST

The expression of public interest is evident in the introduction to the PCSA in which the policies served by the development of public charter schools are explicitly identified. In addition, the charters of each approved public charter school demonstrate the labor of committed educators seeking to serve Montana students through unique and innovative programs. Each approved public charter school has demonstrated consistency with the legislative intent behind the PCSA, as well as support for the viability of and interest in its programs.

Alternately, there is little to recommend Arntzen and OPI's approach. The BPE has developed criteria, vetting, approval, and compliance systems that are far superior to the process that is advocated by Arntzen and OPI. Moreover, the BPE's process for authorizing and opening public charter schools does not risk arbitrary or unconstitutional disapproval of opportunities that students may not otherwise access.

DATED this 3rd day of April, 2024.

KALEVA LAW OFFICE

By: /s/ Elizabeth A. Kaleva

Elizabeth A. Kaleva

Attorneys for Plaintiff

EXHIBIT A

BOARD OF PUBLIC EDUCATION MEETING MINUTES

January 18-19, 2024
Montana State Capitol Building, Room 152
Helena, MT

Thursday, January 18, 2024
8:30AM

CALL TO ORDER 08:30:23

Chair Tharp called the meeting to order at 8:30 AM and led the Board in the Pledge of Allegiance. Ms. Kris Stockton took Roll Call, the Chair read the Statement of Public Participation, and welcomed guests.

Board members present: Dr. Tim Tharp, Chair; Ms. Susie Hedalen, Vice Chair; Ms. Renee Rasmussen; Dr. Ron Slinger; Ms. Jane Hamman; Ms. Anne Keith; Ms. Madalyn Quinlan; Mr. Gavin Mow, Student Representative. Ex Officio members: Dr. Angela McLean, Office of the Commissioner of Higher Education (OCHE); Mr. Dylan Klapmeier, Governor's Office. Staff present: Ms. McCall Flynn, Executive Director; Ms. Kris Stockton, Administrative Assistant; Ms. Julie Balsam, Accounting Technician. Guests: Dr. Daniel Sybrant, Cognia; Ms. Jordann Lankford-Forster, Montana Advisory Council on Indian Education (MACIE) Chair; Mr. Lance Melton, Montana School Boards Association (MTSBA); Dr. Christine Lux; Montana State University (MSU); Ms. Marie Judisch, Office of Public Instruction (OPI); Principal Anne Penn Cox Winans Elementary School, Livingston; Ms. Crystal Andrews, OPI; Mr. John Melick, MSU; Dr. Rob Watson, School Administrators of Montana (SAM); Mr. Brenton Craggs, Attorney, OPI; Mr. Chad Vanisko, Board Legal Counsel, Agency Legal Services, Superintendent Paul Furthmyre, Montana School for the Deaf and Blind (MSDB); Mr. Larry Crowder, Montana Rural Education Association (MREA); Principal Brett Zanto Capital High School; Ms. Melina Pyron, Polaris Classical School; Superintendent Pete Joseph, Corvallis Public Schools; Superintendent Tony Biesiot, Darby Public Schools, Superintendent Rick Duncan, Powell County Public Schools; Dr. Dan Lee, University of Montana (UM); Superintendent Dan Rispens, East Helena Public Schools; Ms. Jenny Murnane Butcher, Montanans Organized for Education (MOFE); Mr. Alex Rotzal, Missoula County Public Schools (MCPS); Mr. Austin Amestoy, Montana Public Radio; Ms. Christine Kolczak; Dr. Jeril Hehn, Billings Public Schools (BPS); Ms. Jenn Gilbert; Ms. Carrie Kouba, OPI; Mr. Brad Weaver, Cognia; Ms. Barbara Frank, MCPS; Ms. Elizabeth Kaleva, Kaleva Law Firm; Mr. Gary Meyers, Helena Public Schools (HPS); Mr. Rick Wooten, OPI; Mr. Gordon Klasna, BPS; Dr. Chris Olszewski, BPS; Ms. Cedar Rose, OPI; Mr. Caleb Swanson, Glendive Public Schools; Mr. Rob Stutz, Deputy Superintendent and Chief Legal Counsel, OPI; Superintendent Dan Grabowska, Park City Schools; Ms. Kim Popham, Montana Federation of Public Employees (MFPE).

PUBLIC COMMENT – 08:32:21

Ms. Melina Pyron, founding member of the Polaris Classical School, commented on charter schools and concerns she has with the process the Board has taken in opening Public Charter Schools in Montana.

CONSENT AGENDA – 08:40:46

Board member Quinlan moved to adopt the Consent Agenda as presented. Motion seconded by Board member Rasmussen.

Board member Rasmussen thanked the Board for the time stamps and the work taken to complete the minutes.

No further discussion. Motion passed unanimously.

Board member Slinger moved to adopt the agenda as presented. Motion seconded by Board member Hamman.

No discussion. Motion passed unanimously.

*******Items are listed in the order in which they are presented*******

❖ **REPORTS – Dr. Tim Tharp (Items 1-2)**

**Item 1 CHAIRPERSON REPORT – 08:42:00
Dr. Tim Tharp**

Chair Tharp thanked members for the work they have put in since the November meeting related to Public Charter School applications, noting that for a volunteer Board there has been a dramatic increase in work for Board members.

**Item 2 EXECUTIVE DIRECTOR REPORT – 08:44:44
McCall Flynn**

Ms. McCall Flynn reviewed work completed by Board staff since the November meetings, thanked Board members for scoring the applications for Public Charter Schools, and asked for ideas to streamline the process for the next application cycle. Ms. Flynn reviewed recent meetings of the Community Choice School Commission and discussed work completed by the Early Literacy Advisory Council to create the Early Literacy Targeted Intervention program standards. Ms. Flynn noted the Board will act on the proposed standards at this meeting, then concluded her report with a summary of work for HB 338 pertaining to Indian Education for All. Chair Tharp reviewed the implementation process for HB 338 and stated the Board, MACIE, and OPI are working together to implement the new legislation. Ms. Flynn answered Board member questions.

❖ **ACCREDITATION COMMITTEE – Madalyn Quinlan (Item 3)**

**Item 3 PRESENTATION ON THE CROSSWALK BETWEEN COGNIA AND ARM
TITLE 10, CHAPTER 55, ACCREDITATION STANDARDS – 08:54:40
Dr. Daniel Sybrant**

Mr. Daniel Sybrant presented an overview of the Cognia accreditation process and it’s alignment with the Montana accreditation standards. Superintendent Paul Furthmyre, Principal Brett Zanto, Superintendent Pete Joseph, Superintendent Tony Biesiot, and Superintendent Rick Duncan all discussed their experience with the Cognia accreditation process and how it aligns with the Montana Accreditation Standards. Board members asked questions of the group.

❖ **CHARTER COMMITTEE – Jane Hamman (Item 4)**

**Item 4 WORK SESSION ON THE APPROVAL AND DENIAL OF PUBLIC CHARTER
SCHOOLS – 10:00:50
Jane Hamman**

Chair Tharp opened the item highlighting work done by the Board to review the 26 applications received for the Public Charter School program. Board member Hamman, Chair of the Charter School Committee, thanked the Board for their work, and discussed the process the Board held to review and score the applications, and the interview process that took place during the special Board meeting on November 30, 2023. Board member Keith explained the scoring process and how the numbers were calculated to give each application a final score. Ms. Flynn noted that education partners were asked to review the applications and submit their scores to the Board. Board member Hamman reviewed the number of public comments for each application and whether the comments were in support of, or opposed to, the

❖ **ASSESSMENT COMMITTEE – Anne Keith (Item 7)**

- Item 7** **INITIAL REVIEW AND WORK SESSION OF EARLY LITERACY ADVISORY COUNCIL’S RECOMMENDATIONS PERTAINING TO EARLY LITERACY TARGETED INTERVENTION RULEMAKING IN ARM TITLE 10, CHAPTER 63, EARLY CHILDHOOD EDUCATION STANDARDS – 13:18:27**
Lance Melton, Executive Director, Montana School Board Association; Dr. Christine Lux, Professor of Early Childhood Education, Montana State University; Marie Judisch, Senior Manager of Teaching and Learning, OPI; Dr. Anne Penn Cox, Principal, Winans Elementary School – Livingston

Ms. McCall Flynn reviewed work the Early Literacy Advisory Council completed pertaining to the implementation of HB 352, Early Literacy Targeted Interventions, the recommendations the Council has made to the Board, and work related to create new standards. Ms. Flynn briefly reviewed the proposed standards recommended by the Council then asked panel members to introduce themselves. Board member Keith began the questions for the panel and upon conclusion of the panel thanked the members for their work.

❖ **LICENSURE COMMITTEE – Susie Hedalen (Items 8-12)**

- Item 8** **WORK SESSION ON THE PROPOSED NOTICE OF PUBLIC HEARING PERTAINING TO RULEMAKING IN ARM TITLE 10, CHAPTER 57, EDUCATOR LICENSURE STANDARDS AND EXPERT PANEL – 13:54:41**
Crystal Andrews, Director of Accreditation and Licensure, OPI; Dr. Julie Murgel, Chief Program Officer, OPI; John Melick, Director of Field Placement and Licensure, Montana State University; Rob Watson, Executive Director, School Administrators of Montana

Vice Chair Hedalen opened the item for the Board and asked Ms. McCall Flynn to introduce the panel members. Vice Chair Hedalen and Board members asked questions of the panel pertaining to the proposed revisions to the Educator Licensure Standards, and Ms. Flynn noted the Board will act on Friday to approve the notice and called for questions.

Dr. Tharp closed the meeting for Executive Session at 2:38 PM for the evaluation of the MSDB Superintendent.

- Item 14** **MSDB SUPERINTENDENT EVALUATION**
Dr. Tim Tharp

Executive Session ended at 2:57 PM.

- Item 9** **NOTICE OF THE SURRENDER OF BPE CASE #2023-07 – 15:03:02**
Brenton Craggs, OPI Legal Counsel

Mr. Brenton Craggs notified the Board of the surrender in BPE Case #2023-07.

- Item 10** **ACTION ON INITIAL REVIEW OF BPE CASE #2022-13, HARNING – 15:05:16**
Brenton Craggs, OPI Legal Counsel

Mr. Brenton Craggs reviewed the Superintendent’s request for revocation in BPE Case #2022-13, Harning and answered Board member questions.

Vice Chair Hedalen moved to approve moving BPE Case #2022-13, Harning to a contested case hearing. Motion seconded by Board member Rasmussen.

No discussion. Motion passed unanimously.

Assessment Update – Ms. Cedar Rose, Assessment Director, discussed the third MAST window opening, reviewed the Monitoring and Field Outreach, and highlighted upcoming Assessment Events. Ms. Rose answered Board member questions.

MAST Update – Ms. Krystal Smith discussed the MAST Assessment Pilot, gave an update on outreach to schools, and reviewed the completion data required for the Federal Flexibility Testing Waiver. Ms. Smith discussed recently held external focus groups made up of educators across the state to assist the OPI with MAST implementation and answered Board member questions.

ESSER Update – Ms. Wendi Fawns presented the Federal Report to the Board highlighting the annual data reporting to the Department of Education beginning in March, finalization of the American Rescue Plan (ARP) Act plans, ESSER Grant Funding Project Outcomes, and an update on the Extended/Expanded Education Learning Opportunity Program. Ms. Fawns answered Board member questions.

Accreditation Report – Ms. Crystal Andrews reported that the OPI continues to provide professional development to districts regarding the new accreditation process and she has been working with SAM to provide training opportunities for districts. The new accreditation platform is on schedule to be released January 31st, and testing is being finalized ahead of implementation. The Accreditation division will be traveling across the state assisting districts with meeting the March 29th reporting deadline for the new accreditation process. Ms. Andrews stated work sessions will be provided to districts in February and March, before answering Board member questions.

Rigorous Action Information – Ms. Carrie Kouba updated the Board regarding the Rigorous Action Plan, and the method to assist schools in correcting deviations to move out of Comprehensive Support.

Transportation Report – Ms. Donnel Rosenthal presented the Annual Transportation Report reviewing the annual Transportation Conference and discussed the ongoing statewide driver shortage. Ms. Rosenthal answered Board member questions.

Content Standards Report – Ms. Marie Judisch gave a brief report on the status of the Content Standards Revision updates and where each content area is in the review cycle.

Data Modernization Update – Mr. Chris Sinrud reviewed the most recent Data Modernization Report submitted to the Education Interim Committee and provided an update on the status of the Data Modernization project for the Board.

Indian Education for All Payments in 20-9-329, MCA – Mr. Jay Phillips provided an overview of the implementation of HB 338 and discussed the status of the implementation process at OPI stating that coordination with school districts is ongoing to follow the statute. Members of the Board Legal Committee commented on the effective date of the statute of July 1, 2024, and the OPI interpretation of the law being effective retroactive to July 1, 2023. It was requested that a resolution be brought forward at the March meeting regarding the effective date. Mr. Phillips answered Board member questions.

Assistant Superintendent Mock-Stutz thanked the OPI staff for their work and for the Board for their time.

❖ **EXECUTIVE COMMITTEE – Dr. Tim Tharp (Items 17-24)**

Item 17

**PRESENTATION ON DEPARTMENT OF LABOR AND INDUSTRY
EDUCATION PROGRAMS – 09:44:53**

Sarah Swanson, Commissioner, Department of Labor and Industry

Commissioner Sarah Swanson introduced herself and her Leadership Team to the Board. Commissioner Swanson discussed areas she is focusing on including building relationships across the state, working

Board member Keith noted there is still a question of what is transformational and what is innovative. Ms. Flynn stated that the statute defines what is transformational, the bill sunsets in 2025, and that in the future the Legislature may have other requirements.

Vice Chair Hedalen noted the increase in applications is the result of the work of OPI and DLI promoting the program.

No further discussion. Motion passed unanimously.

Board member Slinger moved to approve the Transformational Learning Grant Annual Reports for 2023. Motion seconded by Board member Quinlan.

No discussion. Motion passed unanimously.

**Item 22 ACTION ON ADVANCED OPPORTUNITY GRANTS – 11:42:18
Krystal Smith**

Ms. Krystal Smith reviewed changes made to the Advanced Opportunity Grant program during the 2023 Legislature and stated that an increased number of districts have applied resulting in a waitlist of districts to receive funding. Ms. Smith reviewed the application process before answering Board member questions regarding the lack of an Annual Report for Grass Range. Ms. Smith stated that Grass Range has a new Superintendent who is working on the Annual Report, and that she has followed up with the Superintendent numerous times but has not received the report to date..

Board member Slinger moved to approve the qualification of the Advanced Opportunity Grant applications for FY2025. Motion seconded by Board member Quinlan.

No discussion. Motion passed unanimously.

Board member Slinger asked Ms. Smith the best way to handle Grass Range not submitting an Annual Report. Ms. Smith replied that the district has received funding for two years, the Superintendent is working on the Annual Report, and suggested approving the reports that have been received and she will return at the next meeting with the Grass Range report.

Board member Slinger moved to approve the Advanced Opportunity Grant Annual Reports that have been received for 2023. Motion seconded by Board member Quinlan.

No discussion. Motion passed unanimously.

**Item 23 INFORMATION ON THE QUALITY EDUCATOR LOAN ASSISTANCE PROGRAM – 11:51:27
Jay Phillips**

Mr. Jay Phillips presented information on the Quality Educator Loan Assistance Program and reviewed the report of impacted schools, which the Board and OPI are required to post.

**Item 24 PRESENTATION OF THE YOUTH RISK BEHAVIOR SURVEY REPORT –
13:00:12
Genie Zeeck**

Ms. Genie Zeeck presented the 2023 Youth Risk Behavior Survey highlighting topics surveyed including drug and alcohol use, nicotine use, sexual behavior, driving behavior, seatbelt use, and more. Ms. Zeeck noted the survey is free to schools and answered Board member questions.

❖ ACCREDITATION COMMITTEE – Madalyn Quinlan (Item 25)

Item 25 ACTION ON THE PROPOSED NOTICE OF PUBLIC HEARING PERTAINING TO RULEMAKING IN ARM TITLE 10, CHAPTER 53, ENGLISH LANGUAGE PROFICIENCY CONTENT STANDARDS, AND AUTHORIZE FILING OF THE NOTICE WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE MONTANA ADMINISTRATIVE REGISTER – 13:16:12
Madalyn Quinlan

Board member Quinlan moved to approve the Notice of Public Hearing pertaining to rulemaking in ARM Title 10, Chapter 53, English Language Proficiency Content Standards, and authorized filing of the notice with the Secretary of State for publication in the Montana Administrative Register. Motion seconded by Board member Rasmussen.

No discussion. Motion passed unanimously.

Ms. Flynn noted that implementation of these rules is not until 2025 to allow time for Professional Development.

❖ MSDB LIAISON – Renee Rasmussen (Item 26)

Item 26 ACTION ON MSDB SUPERINTENDENT 2024-2025 CONTRACT – 13:19:00
Dr. Tim Tharp

Board member Rasmussen moved to approve the MSDB Superintendent 2024-2027 contract. Motion seconded by Board member Vice Chair Hedalen.

Chair Tharp noted this is a 3-year rolling contract.

No further discussion. Motion passed unanimously.

❖ ASSESSMENT COMMITTEE – Anne Keith (Items 27-28)

Item 27 ACTION ON THE PROPOSED NOTICE OF PUBLIC HEARING PERTAINING TO RULEMAKING IN ARM TITLE 10, CHAPTER 63, EARLY CHILDHOOD EDUCATION STANDARDS AND TIMELINE, AND AUTHORIZE FILING OF THE NOTICE WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE MONTANA ADMINISTRATIVE REGISTER – 13:21:02
Anne Keith

Board member Keith moved to approve the proposed Notice of Public Hearing pertaining to rulemaking in ARM Title 10, Chapter 63, Early Childhood Education Standards and Timeline, and authorized filing of the notice with the Secretary of State for publication in the Montana Administrative Register. Motion seconded by Board member Quinlan.

Ms. Flynn reviewed the timeline to ensure they are completed prior to the beginning of the 2024-2025 school year.

No further discussion. Motion passed unanimously.

Item 28

ACTION ON AND RESPONSE TO PUBLIC COMMENTS SUBMITTED ON REVISIONS TO ARM TITLE 10, CHAPTER 54, EARLY LITERACY TARGETED INTERVENTION STANDARDS – 13:23:25
Anne Keith

Board member Keith moved to disagree with Comment 1 and stated that the parental notification requirements are prescribed in the Early Literacy Targeted Intervention statute in 20-7-1803(4), MCA. Motion seconded by Board member Hamman.

Chair Tharp noted that the statute is clear, and the Board must follow the law, so the response is to disagree.

No further discussion. Motion passed unanimously.

❖ **LICENSURE COMMITTEE – Susie Hedalen (Items 29-32)**

Item 30

PRESENTATION OF ANNUAL EDUCATOR LICENSURE REPORT – 13:34:31
Crystal Andrews

Ms. Crystal Andrews presented an overview of the 2023-2024 Annual Educator Licensure Report noting additions to the report particularly added endorsements and internships. Ms. Andrews noted the number of licenses granted under the Unusual Cases rule, number of applications denied, number of Emergency Authorizations granted, new licenses in fields of critical endorsements for a five-year period, and an increase in new applications from the previous year. Ms. Andrews answered Board member questions.

Item 29

ACTION ON PRAXIS TEST SCORE FOR AMERICAN SIGN LANGUAGE – 13:58:12
Crystal Andrews

Ms. Crystal Andrews reviewed the work to add American Sign Language (ASL) to the PRAXIS Assessment and work completed by the expert panel to determine a qualifying score. Ms. Lisa Colon Durham, Educational Testing Services (ETS) explained that ETS partnered with Galludet University to have their ASL assessment added to the PRAXIS Assessment for Montana. Ms. Andrews reviewed the process the expert panel used to determine the passing score, which was forwarded to the PRAXIS Working Group and the Montana Council of Deans of Education (MCDE) who both approved the score of 3+. Ms. Andrews noted that a new test for Special Education will be under review in the coming months.

Vice Chair Hedalen moved to approve the American Sign Language Proficiency Interview Assessment and the qualifying score of 3+. Motion seconded by Board member Hamman.

No discussion. Motion passed unanimously.

Item 31

ACTION ON THE SUPERINTENDENT'S RECOMMENDATION TO INITIALLY APPROVE ABCTe AS AN ALTERNATIVE TEACHER CERTIFICATION AND ENDORSEMENT PROGRAM – 14:15:41
Dr. Julie Murgel and Crystal Andrews

Dr. Julie Murgel reviewed the legislation passed allowing alternative teacher certification programs in Montana. Dr. Murgel introduced Ms. Jessie Luther, who has been assisting with bringing on a new program, and Ms. Isabelle Welch from ABCTe. Dr. Murgel and Ms. Welch provided background information on ABCTe and answered Board member questions.

Vice Chair Hedalen moved to approve the Superintendent's recommendation to initially approve ABCTe as an alternative teacher certification and endorsement program through January 2026. Motion seconded by Board member Rasmussen.

Board member Keith stated her concern that ABCTe does not require student teaching prior to certification, and asked if approval of this program could exclude Special Education certification due to concerns around classroom experience.

Board member Quinlan stated her concerns that current Educator Licensure Standards require classroom experience.

Dr. McLean asked how the pedagogy coursework is handled without actual classroom experience and Ms. Welch described how the test is designed to capture those areas.

Board member Rasmussen asked how long the Initial Approval is, and Dr. Murgel answered that for K-12 accreditation with new schools there is an initial timeframe before site visits occur and then recommendation for full approval for 5 years.

Dr. Dan Lee representing the MCDE gave public comment sharing MCDE's concerns with the ABCTe program and the approval process. MCDE requests the Board delay approval for further consideration.

Ms. Kim Popham commented regarding concerns about underprepared teachers struggling to succeed without classroom experience.

Ms. Jenny Murnane Butcher commented about concerns with teachers not having classroom experience, and the lack of Indian Education for All training within the program.

Chair Tharp asked for clarification from ABCTe regarding other states only allowing certain endorsement areas offered by ABCTe. Ms. Welch stated that some states only approve certain areas. The Chair asked what areas OPI is requesting, and Dr. Murgel referred to page 431 in the packet for a list of the endorsement areas being requested.

Chair Tharp asked ABCTe to respond to the issue that their teachers lack student teaching requirements. Ms. Welch replied that their long-standing existence is proof their program works and that their teachers are prepared.

Board member Quinlan asked how the endorsement areas were determined and asked for a response to the concerns surrounding Special Education. Dr. Murgel stated that ABCTe approached OPI after identifying the endorsement areas specific to Montana. Dr. Murgel stated that she sent ABCTe the Montana requirements for the endorsement areas they identified, then gave an example that currently if an individual wanted a Class 5 License and was enrolled through ABCTe they would not be able to be licensed because ABCTe is not an approved teacher certification program in Montana.

Board member Quinlan asked for a comparison between the ABCTe Reading Endorsement program and the recent approval of the Reading Endorsement program at Salish Kootenai College (SKC). Dr. Murgel stated the SKC requirements are very similar to those of ABCTe.

Board member Quinlan noted the heavy work the Board has done with Charter applications and asked if it would be problematic for the Board to delay action until the March meeting for more information and consideration could take place. Ms. Welch stated that it delays an individual's ability to be in the classroom though Dr. Murgel answered a delay would not impact OPI.

Board member Keith inquired about satisfaction of schools with ABCTe teachers. Dr. Murgel responded that surveys are sent to the EPP's about the teachers they have trained, and to employers about the teachers they have hired, to find out if teachers have been adequately trained. Dr. Murgel stated that would be the same expectation for teachers trained by ABCTe.

Board member Keith asked ABCTe how many states have tried ABCTe and have not kept them as an alternative program. Ms. Welch stated that has happened historically due to legislation passed outlawing alternative teacher programs.

Board member Rasmussen stated that any time a new process comes on board the public has concerns, but that she supports an initial two year process to determine the program's success.

Vice Chair Hedalen expressed her appreciation for many aspects of the ABCTe program particularly her interest in the Veteran's component offered by ABCTe, but has concerns with the lack of student teaching, the Special Education program, and the Reading Specialist Program. Vice Chair Hedalen stated she does not want to water down expectations, but that the state is experiencing a teacher shortage, and this program offers a solution to that problem.

Dr. McLean thanked everyone for their input and noted programs such as the Teacher Residency Program, Sprint Degree, Master of Art's in Teaching, and programs that decrease the time to earn degrees and get educators prepared, licensed, and in the classroom. Dr. McLean asked that the Board address the concerns regarding IEFA and Special Education, amend the motion, and let the BPE Licensure Committee gather more information before acting.

Chair Tharp referenced work done with the Constitutional Players regarding the changing face of education and noted that other professions have alternative pathways to be licensed for their profession. However, the Board is responsible for maintaining high quality education.

Vice Chair Hedalen noted she supports many of the components of ABCTe, has concerns with other components, but recognizes that as a whole there are questions and that taking the time to address those concerns seems appropriate.

Vice Chair Hedalen amended the original motion to move Item #31 approving ABCTe as an alternative teacher certification program to the March 2024 meeting. No second.

Back to the original motion. Chair Tharp restated the original motion.

Board member Slinger stated his support of ABCTe and that he would support a friendly amendment to pull Special Education, address teacher mentorship, and the IEFA concerns. He stated he would not support the original motion.

Board member Rasmussen asked if ABCTe certified teachers can take the IEFA course online to satisfy that requirement and Ms. Andrews stated they can complete the online course. Board member Rasmussen stated concerns about slowing the process down too much and that she would not support pulling Special Education after the Annual Licensure Report noted the increased number of teachers who have added Special Education as an endorsement.

Chair Tharp noted that he intends to vote against the motion on the table and if the motion fails he will direct staff to place this on the agenda for the March meeting and direct the Licensure Committee to meet in the interim.

No further discussion. Motion failed 5-2 with Board member Rasmussen and Vice Chair Hedalen voting in favor.

Chair Tharp requested Ms. Flynn to place this item on the March agenda and for the Licensure Committee to meet ahead of the March meeting.

Item 32

**ACTION ON THE PROPOSED NOTICE OF PUBLIC HEARING PERTAINING TO RULEMAKING IN ARM TITLE 10, CHAPTER 57, EDUCATOR LICENSURE STANDARDS, AND AUTHORIZE FILING OF THE NOTICE WITH THE SECRETARY OF STATE FOR PUBLICATION IN THE MONTANA ADMINISTRATIVE REGISTER – 15:07:02
Susie Hedalen**

Vice Chair Hedalen moved to approve the Notice of Public Hearing pertaining to rulemaking in ARM Title 10, Chapter 57, Educator Licensure Standards, and authorized filing of the notice with the Secretary of State for publication in the Montana Administrative Register. Motion seconded by Board member Quinlan.

No discussion. Motion passed unanimously.

❖ CHARTER COMMITTEE – Jane Hamman (Item 33)

Item 33

**ACTION ON THE RESOLUTIONS TO APPROVE AND DENY PUBLIC CHARTER SCHOOLS – 15:24:19
Jane Hamman**

Board member Hamman opened the item for the Board to act on the applications for Public Charter Schools noting some late public comment that came in regarding Billings Opportunity School, and a letter from Park City Schools withdrawing their application to create a public charter school.

Board member Hamman moved to approve the resolution to adopt the public charter proposals as listed in the resolution: Billings Early College School, Great Falls Core Elementary School, Kalispell Rising Wolf Charter, Missoula TEACH Academy, Billings Multilingual Academy, Bozeman Bridger Charter, Bozeman Charter School, East Helena 227 Academy, Frenchtown Bronc Fast Track Public Charter, Hamilton Bitterroot Polytech, Helena Mount Ascension Learning Academy, Helena Project for Alternative Learning Academy, Kalispell PACE Academy Charter, Corvallis Distance Learning Charter, Corvallis Transformational Learning Charter, Missoula CONNECT Academy, Boulder Jefferson Academy, Helena Montessori Charter School, Billings Opportunity School. Motion seconded by Board member Quinlan.

*Draft – CAEP MOU
Content Standards Revision Update*

PUBLIC COMMENT – 15:56:18

Dr. Rob Watson thanked Board member Keith for her work on the Board, as a colleague, and as a teacher to his own children. Dr. Watson invited Board members to upcoming SAM meetings, conferences, and monthly webinars which have covered subjects including AI and Accreditation, and upcoming webinars regarding open enrollment, and recording of school board meetings. Dr. Watson discussed concerns with the graduation requirements and implementing the new financial literacy requirements and asked for those areas to be considered if the Accreditation Standards are reopened.

Vice Chair Hedalen thanked Dr. Watson for his assistance to school districts.

Chair Tharp thanked Dr. Watson for the guidance pertaining to the new Accreditation Standards.

ADJOURN

Meeting adjourned at 4:00 PM.

The Montana Board of Public Education is a Professional Development Unit Provider. Attending a Board of Public Education Meeting either in person or via Zoom may qualify you to receive professional development units. Please complete the necessary information on the sign-in sheet if you are applying for professional development units.

Agenda items are handled in the order listed on the approved agenda. Items may be rearranged unless listed “time certain”. Public comment is welcome on all items listed as “Action” and as noted at the beginning and end of each meeting.

The Board of Public Education will make reasonable accommodations for known disabilities that may interfere with an individual’s ability to participate in the meeting. Individuals who require such accommodations should make requests to the Board of Public Education as soon as possible prior to the meeting start date. You may write to: Kris Stockton, PO Box 200601, Helena MT, 59620, email at: kmsstockton@mt.gov or phone at 406-444-0302.

EXHIBIT B

From: Mock-Stutz, Christy <Christy.Mock-Stutz@mt.gov>
Sent: Friday, February 23, 2024 1:39 PM
To: Mock-Stutz, Christy <Christy.Mock-Stutz@mt.gov>
Cc: Moog, Kiera <Kiera.Moog@mt.gov>; Quinn, Barbara <Barbara.Quinn@mt.gov>
Subject: New Public Charter School Welcome, Information, and Invitations to upcoming webinar events

Good afternoon, Superintendents and Board Chairs,

Congratulations on your recent Public Charter School approval from the Board of Public Education. The Office of Public Instruction (OPI) welcomes your new public charter school(s) and looks forward to supporting you in the school opening process per § [20-6-5XX, MCA](#). This process will ensure your new charter school is set up to receive funding for the upcoming year. OPI has created a [Public Charter School](#) page on our website with helpful resources. There, you will find resources including the following:

- Request to Open a School (fillable form)
- Guidance and FAQ Document
- Links to various OPI Units and helpful information
- Public Charter School Webinars that will take place on:
February 29, 2024, at 10:30 am, and March 20 at 4:00 pm (meeting information is available on our [Charter School webpage](#).)

You're invited!

Superintendent Arntzen hosts community discussions each month on a different legislative topic. This month's topic is Public Charter Schools. She would like to invite you to join next week's Community Discussion and share a brief introduction to your charter school(s). The details for this meeting are below:

Superintendent Arntzen's Community Discussion

Topic: Public Charter Schools

February 28, 2024

7:00 p.m. via [Zoom](#) (Meeting ID 829 0029 4903 Password: 946780)

If you are able to attend the discussion on Wednesday evening and would like to share a brief overview of your new public charter school, please [email Kiera Moog](#), OPI's Family Engagement Specialist (she is also copied on this email). Please do not hesitate to contact [Barb Quinn in school finance](#), or me, with any questions as you launch your new public charter school.

Thanks for all you do for Montana's students!

Christy



Christy Mock-Stutz

Assistant Superintendent

Montana Office of Public Instruction

- Phone: 406-444-5658
- Mobile: 406-461-1274
- Website: <http://opi.mt.gov/>
- Email: Christy.Mock-Stutz@mt.gov

EXHIBIT C



Public Charter Schools Guidance

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Purpose

This document is intended to provide information to the public, particularly public charter school personnel, regarding the responsibilities of the Office of Public Instruction and public charter schools as created and defined by HB 549 (2023 Session).

History and References

- [HB0549 \(2023 Session\)](#)
- [Title 20 Chapter 6 Part 8, MCA](#)
- [Board of Public Education Public Charter School webpage](#)

Overview

HB 549 (2023) authorized the establishment of public charter schools in Montana and defined the roles and requirements of schools, the Board of Public Education (BPE), and the Office of Public Instruction (OPI).

The Board of Public Education is tasked with the review and approval of proposed public charter schools, as well as contract maintenance for any approved facilities. For additional information regarding the BPE process, please visit the [Board of Public Education Public Charter School webpage](#). Any new charter application that is accepted by the BPE needs to follow the statutory [school-opening process in Montana](#).



Once charter schools are approved by the BPE, the OPI is responsible for the oversight of the educational functions of the new school. Public charter schools are identified as a separate school code (SC) and must meet the requirements as such, including financial and educational reporting and maintenance of student attendance agreements. Public charter school districts are identified as an individual legal entity (LE).

School Opening Process with the OPI

As with all schools in the State of Montana, the goal of public charter schools must be to provide Montana students with a learning environment that allows them to develop their full educational potential and enhance their opportunities (20-6-802, MCA, 20-1-102, MCA).

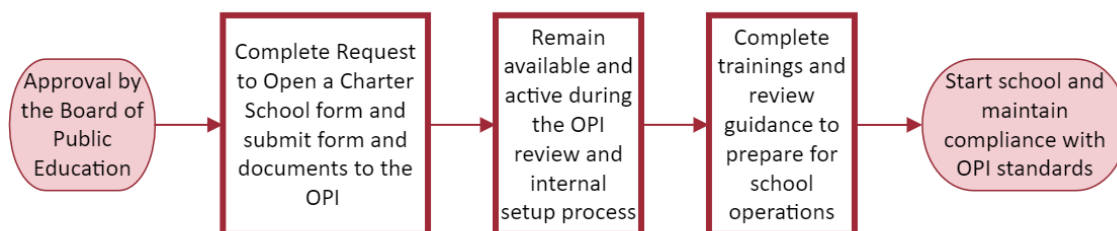
There are two types of public charter schools: those operating under an existing local school board and those operating as a new school district under a separate governing board. Those schools operating as a new school district will have additional requirements and responsibilities. For both types of charter schools, the school must apply for contract with the Board of Public Education and be approved to proceed.

After approval of the Board of Public Education, a new charter school or charter district must apply with the OPI to complete the school set-up process. Schools and districts will need access to multiple OPI systems to maintain students' information and their own.

Opening of Public Charter Schools Operating Under a Local School Board

After approval by the BPE, a public charter school must:

1. Submit the Request to Open a Charter School form to the OPI, along with the required documents listed.
2. Work with the OPI to ensure that system set up is completed. There may be a need to double check logins, review website accesses, and add or remove users.
3. Participate in trainings and review guidance made available by the OPI.





Additional Opening Considerations of Public Charter Schools

A public charter school or district's obligations will include, but are not limited to:

- Meet Special Education legal requirements, as available for review in [Special Education Guidance](#) and via the U.S. Department of Education [Office of Special Education](#) website.
- Work with the Assessment team to appoint a Test Coordinator and understand the testing requirements and processes, as can be reviewed through the [Assessment webpage](#).
- Work with School Nutrition to assess needs, review [School Meal Programs](#), and implement program.
- Review [Accreditation requirements](#) and work with the team to meet standards.

Funding of Public Charter Schools

Basic Entitlement for Newly Approved Public Charter Schools

School opening procedures as outline in [Title 10, Chapter 6, Part 5, MCA](#), require county superintendents to estimate average number of belonging (ANB) after investigating the probable enrollment for the school This enrollment estimate will be reported to the OPI as part of the school opening process. On the first budget sheet of the first year of a new public charter school that is located within an existing district, the students who will be enrolled in that charter school, may already have been counted for ANB purposes in another school in the district. To ensure students are not double counted, the new charter school will show on the budget report as having non enrolled students for the first year's budget sheet but will receive basic entitlement.

1) Public Charter Schools Operating Under a Local School Board

When a public charter school is operated by a local school board, a public charter school must

1. Be considered a separate budget unit of the located school district;
2. Have its Average Number Belonging (ANB) calculated separately from other budget units of the district;
3. Receive a basic entitlement calculated separately from other budget units of the district when its ANB is greater than:
 - (i) 70 for an elementary school or program;
 - (ii) 20 for a middle school or program; or
 - (iii) 40 for a high school or program.

The governing board of a public charter school shall report annually on the financial activities of the public charter school in the manner prescribed in [20-9-213\(6\)](#).

2) Public Charter Districts

For newly approved public charter school districts, the county treasurer of the county in which a public charter school is located shall establish funds for the public charter district separate from the funds of the located school district. Funding of the public charter school district must be distributed as BASE aid, at



- 80% of the basic entitlement,
- 80% of the total per-ANB entitlement,
- 100% of the total quality educator payment,
- 100% of the total at-risk student payment,
- 100% of the total Indian education for all payment,
- 100% of the total American Indian achievement gap payment,
- 100% of the total data-for-achievement payment, and
- 140% of the special education allowable cost payment.

The total funding received constitutes both the minimum and maximum amount of public funding for the public charter school district. Tuition and fees are prohibited.

A public charter school district may obligate the public charter school district to indebtedness and is solely responsible for those debts. A public charter school district is not responsible for the debts of the located school district.

A public charter school district is not eligible for a basic entitlement unless its ANB is greater than:

- 70 for an elementary school or program;
- 20 for a middle school or program; or
- 40 for a high school or program.

Gifts, Donations, and Surplus Funds

The governing board of a public charter school is authorized to accept gifts or donations and utilize them in accordance with the donor's stipulations, provided they align with legal provisions or charter contract terms.

Money remaining in the public charter school's accounts at the end of a budget year must be retained for subsequent use.

Resources

For questions or concerns, please contact the School Finance Division of the Office of Public Instruction at OPISchoolFinance@mt.gov.

EXHIBIT D



The Treasure State
MONTANA HOUSE OF REPRESENTATIVES

March 4, 2024

The Honorable Elsie Arntzen
Montana Superintendent of Public Instruction
Office of Public Instruction
1227 11th Avenue, Helena, MT 59601

via electronic delivery

Dear Superintendent Arntzen,

We are disappointed to learn from your chief legal counsel that you have declined an invitation to appear before the Education Interim Budget Committee on March 13, 2024, to help resolve a dispute regarding the OPI Database Modernization Project. This issue arose during the committee's meeting on December 13, 2023, and concerns whether the limitations on data collection and sharing upon which you apparently insist will diminish the effectiveness of this multimillion-dollar project, thus negatively impacting schools and students across the state as well as limiting the ability of those state agencies responsible for education and workforce programs to assess the quality and effectiveness of programs under their purview.

Although we were encouraged to find that OPI has since provided the project's contractor an updated and more detailed data dictionary/data element set, public statements you have made subsequent to the December meeting cause us to question your commitment to delivery of a project that meets requirements set forth in law last legislative session. The invitation for you to appear before the committee stands so that this matter might be productively resolved.

Turning now to next week's joint meeting of the Education Interim Committee and the Education Interim Budget Committee, we ask that you appear in person at 8:15 a.m. on March 12, 2024, to participate in a discussion of several recently enacted bills, including HB 203, HB 338, HB 352, and HB 549. Concerns have been raised as to whether legislative intent is being met in each case, and in some cases there are widespread concerns regarding OPI's implementation of these programs. This meeting will provide you an opportunity to clarify the situation. Please respond to this invitation no later than March 6, 2024.

Sincerely,

/s/ Dan Salomon

Senator Dan Salomon
Chairman, Education Interim Committee

A handwritten signature in black ink that reads "David F. Bedey".

Representative David Bedey
Chairman, Education Interim Budget Committee

EXHIBIT E

[REDACTED]

[REDACTED]

[REDACTED]

From: Montana Office of Public Instruction <MTOPI@announcements.mt.gov>
Sent: Monday, March 18, 2024 2:41 PM
To:
Subject: Legislative Brief & Virtual Meeting Addressing OPI's Policy Implementation



March 18, 2024

Addressing the Office of Public Instruction's Policy Implementation

Virtual Meeting

The Office of Public Instruction (OPI) will be holding an informational virtual meeting regarding implementation questions from last week's Education Interim Budget Committee hearing. The OPI staff will be available for questions during and after this meeting.

Date: Wednesday, March 20, 2024

Time: 7:00pm- 8:00pm

[Zoom Link](#)

Legislation Implementation Brief

There seems to be a number of false accusations stemming from the Interim Education Budget Committee, and I would like to address these issues directly. There has been no delay in implementation. The Office of Public Instruction (OPI) has and will continue to have discussions with all involved parties and organizations. Furthermore, OPI will continue to abide by the written law, as we are constitutionally required to do. Anything less would put our state, communities, and families at risk of agency overreach now and in the future.

Elsie Arntzen

Superintendent of Public Instruction



[HB 352, Early Literacy Intervention](#), Rep Brad Barker:

Bill Overview: This bill supports early reading interventions for eligible students aged four to entering third grade. There are three parts of this legislation: home-based, school-based, and Jumpstart.

OPI's Position: The Jumpstart Early Literacy program transition clause in [Section 9](#) of the legislation requires the program to be fully implemented "in the school year beginning July 1, 2024." However, the committee wanted us to implement the legislation in June. Our team is ready and are completely prepared for implementation. We would have no reservations with the program being implemented in June, except we must abide what is written in law. The only point of disagreement with the committee is the implementation date.

It is also important to note, that nothing prohibits schools from beginning their early literacy program before the full implementation of the bill. However, they just cannot count hours prior to implementation for purposes of receiving state funding.

[HB 549, Charter Schools Bill](#), Rep Fred Anderson:

Bill Overview: This bill authorized the establishment of public charter schools in Montana and tasked the Montana Board of Public Education as authorized entity to enter

into public charter contracts with a governing board.

OPI's Position: Nothing in this legislation waives or replaces the public-school opening procedures, which are in already established law. Therefore, OPI is required by law to have public charter schools go through these opening procedures, which are straightforward and make the schools eligible for state funding. It was asserted in the committee that public charter schools do not need to go through this procedure. The language of the bill could have waived the school opening requirement, but it did not. In addition, the process in [Section 6\(6\)](#) must "ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening." We are following this legislation as written as well as long standing law as written.

It is also important to note, that there are currently 19 public charter schools slated to be open in the next school year.

[HB 338, Indian Education for All \(IEFA\), Rep Jonathan Windy Boy:](#)

Bill Overview: This bill established new reporting requirements in addition to already established requirements for school districts and requires a reduction of future funding for school districts that fail to report IEFA expenditures.

OPI's Position: There are two discrepancies regarding: 1) the applicability date and 2) who is responsible for determining BASE funding amounts. OPI has implemented this bill as written.

- **Applicability Date:** The reporting of annual expenditures is not a new requirement. In fact, this requirement has been in law since 2007. The reporting about program instruction is a new statutory requirement. Under the applicability date in Section 7, the existing expenditure reporting requirement applies to FY 2024 reporting of the FY 2023 expenditures. However, under Section 7 the new program reporting requirement will apply to FY 2025 reporting of the FY 2024 expenditures. The committee wants to delay application of the bill to the existing expenditure reporting. However, OPI will continue to implement the law as written.
- **BASE funding responsibilities:** [Current law](#) establishes that the Board of Public Education has the authority to order OPI to withhold state BASE funding. Since this bill could impact BASE funding if reporting requirements are not met, and since that authority already rests with BPE, then BPE would be responsible for the determining the withholding of funds. The committee wants OPI to step beyond its authority in current law and withhold the funds without BPE's oversight process. OPI will fully abide by current law and the Board of Public Education will remain the lawfully authorized entity to reduce BASE funding.

[HB 949, Data Modernization, Rep David Bedey:](#)

Bill Overview: This legislation established an Education & Workforce Data Governing Board to establish guidelines for student data gathering and sharing between agencies.

OPI Position: The OPI must follow current federal and state law regarding the gathering of student and teacher data. The OPI will only gather and share children and teacher data required by state and federal statute and consistent with the [Montana Constitution](#) as well

as the federal [FERPA \(Family Educational Rights Act\)](#) restrictions that protect student data. OPI has fully participated in the Education & Workforce Data Governing Board. The committee wants OPI to agree ahead of time to whatever the Governing Board develops without determining how FERPA and the Montana Constitution may apply.

Superintendent's Op-Ed

Please also read Superintendent Arntzen's Op-Ed regarding the Education Interim Budget Committee's hearings last week.

[Read Here](#)

If you would like to watch the Education Interim Budget Committee hearings in question please click below.

Tuesday, March 12th, [Joint Education and Education Interim Budget Committee Hearing](#)

Wednesday, March 13th [Education Interim Budget Committee Hearing](#)

Questions? Contact:

[Katie Bloodgood](#), Legislative Liaison, Office: (406) 444-2082, Cell: (406)-594-3060

The OPI is committed to providing reasonable accommodations to people with disabilities. If you need a reasonable accommodation, require an alternate format, or have questions concerning accessibility, contact the OPI ADA Coordinator, 406-444-3161, opiada@mt.gov, Relay Service: 711.



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Helena, MT 59620



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This email was sent to david.bedey@legmt.gov using GovDelivery Communications Cloud, on behalf of: Montana Office of Public Instruction · 707 17th St, Suite 4000 · Denver, CO 80202



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EXHIBIT F



March 22, 2024

Re: Opening of public charter schools

Dear Board of Public Education Members:

As education leaders, we have the tremendous opportunity and responsibility to implement public charter schools for the benefit of Montana's children. By collaborating, the promise of charter schools will be realized in districts around the state.

Several public charter schools have already successfully completed the school opening process in Title 20, Chapter 6, Part 5 with minimum effort. The public charter school application and contracting process is different, but the school opening process, long established in Montana law, is the same for public charter schools as it is for any other public school. Nothing in HB 549 changes or waives the existing, statutory school opening process.

Through the statutory process, school districts will prepare the information required by statute and obtain the county superintendent's ANB estimate. In some cases – for example, when opening an elementary school under § 20-6-502(3), MCA – the approval of the county commissioners is required.

The reopening process must “ensure that each school meets all building, health, safety, insurance, and other legal requirements for school opening.” § 20-6-806(8), MCA. Because HB 549 did not change or waive the legal requirements, the Board may make a policy (or rule) to change those requirements. The Office of Public Instruction (OPI) will follow either the existing legal requirements for school opening in Title 20, Chapter 6, Part 5 or will follow a Board policy (or rule) establishing a public charter school opening process. § 20-3-106(30), MCA.

I welcome the Board encouraging school districts to follow the existing school opening statutes or, in the alternative, establishing a separate school opening process as a matter of Board policy. I encourage you to partner with school districts and the OPI to promote the school opening process so that public charter schools can prepare to open on time, without slipping unnecessarily close to the June 1 statutory deadline.

Sincerely,

A handwritten signature in cursive script that reads "Elsie Arntzen".

Elsie Arntzen
Montana Superintendent of Public Instruction

EXHIBIT G

Elizabeth A. Kaleva
 Elizabeth A. O'Halloran
 Kevin A. Twidwell
 KALEVA LAW OFFICE
 1911 S. Higgins Ave.
 P.O. Box 9312
 Missoula, MT 59807-9312
 Telephone: (406) 542-1300
 Facsimile: (406) 721-1003
ekaleva@kalevalaw.com; kwitt@kalevalaw.com
bohalloran@kalevalaw.com
ktwidwell@kalevalaw.com

Attorneys for Plaintiff Montana Quality Education Coalition

**MONTANA FIRST JUDICIAL DISTRICT COURT
 LEWIS & CLARK COUNTY**

<p>MONTANA QUALITY EDUCATION COALITION,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>THE OFFICE OF PUBLIC INSTRUCTION; and ELSIE ARNTZEN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. DV-25-2024-201-IJ Presiding Judge: Hon. Chris Abbott</p> <p>AFFIDAVIT OF P. JOSEPH</p>
---	---

STATE OF MONTANA)
 : ss
 County of Missoula)

I, Pete Joseph, having been duly sworn on oath, testifies as follows:

1. I am over the age of 18 years and am competent to testify to the matters set forth herein.

2. I am employed by the Corvallis School District as the Superintendent of the district.

3. Corvallis School District is a member of the Montana Quality Education Coalition.

4. Following the enactment of the Public Charter Schools Act, the Corvallis School District, by action of the Corvallis School District Board of Trustees, determined to apply for approval of three public charter schools within the district.

5. The charter schools were designed to meet the unique educational needs of students within the district in order to promote additional educational opportunities for students and families based on the District's identification of needs for the brand of educational opportunity offered through the charter schools.

6. I, on behalf of our district, applied to the State of Montana Board of Public Education for approval of a new public charter school, the Corvallis Distance Learning Pathway Academy. The Corvallis School District Board of Trustees, the governing board of the public charter school, determined to seek public charter school approval in order to offer options for parents of home-schooled children and parents and children who sought the flexibility of online learning. The program is

designed to expand options for alternative education for individuals whose learning is more conducive to online curriculum with oversight by District employees and staff.

7. At the time of application, our data and reported family interest supported the conclusion that 171 students would enroll in the Corvallis Distance Learning Pathway and Academy.

8. I, on behalf of our district, applied to the State of Montana Board of Public Education for approval of a new public charter school, the Transformation Learning Pathway & Academy (CTLPA). The Corvallis School District Board of Trustees, the governing board of the public charter school, determined to seek public charter school approval in order to offer options for parents of students seeking the flexibility and choice to pursue career and technical pathways. The charter school will offer educational opportunities, beginning in first grade as eligible for CTLPA's STEAM program. Student interest is also assessed as students reach the higher grades for their specific interests in CTE pathways provided in the high school years.

9. At the time of application, data and interest indicated that publicizing and recruitment to the CTLPA would not be necessary and that students within the District would be eligible for the STEAM program.

10. The application process was comprehensive, and the District compiled information necessary to submit the information required under the statutes and

required by the Board of Education over the course of months following the legislative authorization for public charter schools.

11. After a six-month process spanning from applications to interviews to approval, both the Corvallis Distance Learning Pathway Academy and the Transformation Learning Pathway & Academy were approved by the Board of Education in a public meeting on January 19, 2024.

12. Upon approval, the Corvallis School District, as the governing board for both approved charter schools began planning for recruiting staff and an executive director, advertising the opportunity to families and students, developing curriculum, determining and designating physical facilities for the use of the charter schools, and determining the fiscal needs for the operation of the school based on projected enrollment and ANB funding.

13. As the Governing Board of the Board of Public Education approved the charter schools, the Corvallis School District executed the charter contract with the Board of Public Education with a projected opening date of September 3, 2024, for the CTLPA (identified as RISE Charter Pathway Learning Academy) and the Distance Learning Pathway & Academy (identified as RISE Charter and Distance Learning Academy in the contract). The contracts for both charter schools were executed on February 28, 2024. The contracts included comprehensive terms regarding operations, governance, programs, performance measurement, personnel,

financial operations, audits, budgeting, cash flow projections, reporting requirements, renewal, corrective action, and termination, among other provisions.

14. Based on the Board of Public Education Approval, the Corvallis School Board designed a five-year strategic plan incorporating the public charter schools into planning for staff hiring, facilities use, and student enrollment.

15. As of today, the number of students committed to enroll in RISE Charter Pathway Learning Academy is 523 students (238 K-6, 176 7th-8th grades, and 109 in grades 9). As of today, the number of students committed to enroll in RISE Charter and Distance Learning Academy is 236 (106 K-6, 47 7th-8th grades, and 83 9th-12th grades).

16. Based on the approval and projections, the Corvallis School Board approved budgeting and stipends for the necessary facilities, equipment, and personnel for the operations of the public charter schools during the 2024-2025 school year. Hiring and contract approval are already in process as well.

17. After both charter schools had been approved by the Board of Public Education and the charter contracts had been executed by the governing board, the Office of Public Instruction, in the context of a “congratulations” email, stated that the approved schools were subject to additional approvals under Title 20, Chapter 6, Part 6.

18. On February 23, 2024, I received a communication from Christy Mock-Stutz, Assistant Superintendent at the Montana Office of Public Instruction advising that, as an approved charter school, OPI was offering support through the “school opening process” of Title 20, Chapter 6, Part 5, with a link to the general processes outlined in the Montana Code Annotated. Assistant Superintendent Mock-Stutz stated that going through the additional school-opening process would “ensure your new charter school is set up to receive funding for the upcoming year.”

19. A true and correct copy of the email from Assistant Superintendent Mock-Stutz is attached as Ex. A.

20. Assistant Superintendent Mock-Stutz’s email was the first advice that, in addition to the comprehensive application and approval process, further school opening procedures would be necessary in order to obtain funding distributions for our approved charter schools.

21. The projected timeline for the additional, OPI required school opening procedures raises the likelihood that the approved charter schools within our district will not meet the timelines necessary to ensure calculation of ANB funding, receipt of additional funding designated for new charter schools, budgeting approval, and disbursement of appropriated education funds necessary to meet the commitments made in the charter contracts, to parents and students determined to enroll in the charter schools for the 2024-2025 school year, financial commitments to hired staff

and support services and may delay opening of the approved charter schools until the 2025-2026 school year.

22. The elementary component of the two approved charter schools would require further approvals of the Ravalli County Board of County Commissioners if the OPI required additional processes must be followed. This would lead to further delay and a likely loss of appropriated funds for the approved charter schools based on OPI's failure to assign a school code or incorporate the schools into budgeting calculations and disbursements.

23. The legal requirements followed by the Corvallis School District under Title 20, Chapter 6, Part 8, as conveyed by the Board of Public Education. While the unique programs offered through our charter schools were evaluated by the Board under the statutory guidelines, there is a possibility that the Board of County Commissioners will not apply the same criteria. There is a potential for an arbitrary determination based on considerations that are not specifically related to educational goals and policies of the Public Charter School Act which Corvallis School District addressed in detail at the Board of Public Education.

24. Delay of the implementation and opening of the approved charter schools will irreparably harm the stakeholders, as funding will not be available for hired staff, curriculum development, and planned enrollment for the entire school year. The consequences of the delay cannot be measured in terms of loss of

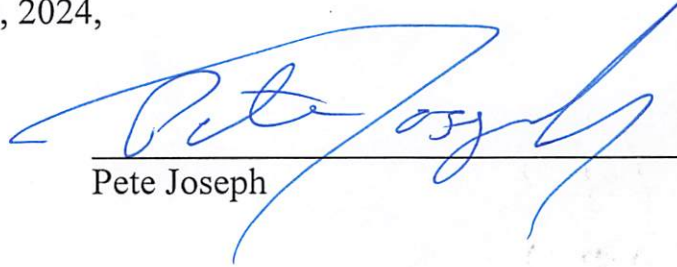
educational opportunity for students generally, but also for those nearing graduation most notably.

25. The delay of recognition as an open public charter school would cause significant turmoil in our school community based on a short-term need to significantly adjust all plans for the 759 students and families currently seeking the educational services promised under the charter contracts. Had the Office of Public Instruction advised our District and the governing boards of the two approved public charter schools in our District that additional approvals were required, the contract and planning for opening in Fall, 2024 could have been adjusted to meet the additional timelines. Further, the planning associated with our public charter schools was not premised on potential denial of approval by the Ravalli County Board of Commissioners, which is now a possibility.

26. The failure to provide any notice of additional requirements until February 28, 2024, severely compromises the availability of appropriated funding, executed agreements with the Board of Public Education and public charter school staff, places 759 students and their families in a state of uncertainty and confusion regarding the status of their enrollment in the Fall. Had OPI provided earlier notification or raised the issue of additional approvals to public charter school applicants, student and staff engagement, as well as facilities designation would have been addressed in an entirely different manner by me and the Board of Trustees.

27. Further affiant sayeth not.

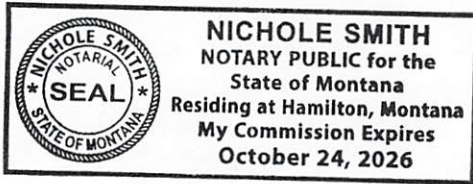
DATED this 29 day of March, 2024,



Pete Joseph

SUBSCRIBED AND SWORN TO before me this 29 day of March, 2024 by

Pete Joseph.





Notary Public for the State of Montana

EXHIBIT H



Board of Public Education

BOARD MEMBERS

March 25, 2024

APPOINTED MEMBERS:

Tim Tharp, Chair
Savage

Superintendent Elsie Arntzen
Office of Public Instruction

Susie Hedalen, Vice-Chair
Townsend

Dear Superintendent Arntzen:

Ron Slinger
Miles City

As you know, the Board of Public Education has approved 19 public charter schools to open and operate pursuant to the provisions of Montana law codified in Title 20, Chapter 6, Part 8 of the Montana Code and the Montana Constitution. Given this authority, the Board declares the public charter schools open.

Renee Rasmussen
Clancy

Lisa Schmidt
Conrad

Jane Lee Hamman
Clancy

Madalyn Quinlan
Helena

Gavin Mow, Student Rep.
Helena

Public charter schools approved by the Board have fully satisfied all requirements set forth in law to open and operate starting July 1, 2024. Each public charter school has, through its constitutionally empowered board of trustees, fully executed contracts with the Board authorizing the opening dates. The terms of these contracts specify the preopening requirements to ensure that each charter school is prepared to open smoothly on the date agreed. Nothing in the law that your staff have cited from a different and inapplicable part of the Code, or the terms of those contracts requires school districts to obtain supplemental approval of their charter schools from the county commissioners or your office.

EX OFFICIO MEMBERS:

Clayton Christian,
Commissioner of
Higher Education

Elsie Arntzen,
Superintendent of
Public Instruction

Greg Gianforte,
Governor

Pursuant to Title 20, Chapter 6, Part 8, MCA, and the constitutional authority over the public school system vested in the Board of Public Education by Article X, Section 9 of the Montana Constitution, the Board directs that your office:

EXECUTIVE DIRECTOR:

McCall Flynn

1. Assign a school code to each charter school approved by the Board;
2. Incorporate funding for the charter schools approved by the Board in the preliminary general fund budget worksheets for the districts to be used by the districts in adopting their fiscal year 2025 budgets; and
3. Distribute K-12 BASE Aid for each district with charter schools approved by the Board with basic entitlements for fiscal year 2025 based on the planned enrollments submitted by each district as part of its application for approval and the terms of each district's charter contract and per-ANB and other enrollment-driven funding elements based on enrollment counts in October and February of the school year.

Should you have any questions, please contact the Board's Executive Director.

Sincerely,

Dr. Tim Tharp, Chair
Board of Public Education

EXHIBIT I

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON EDUCATION**

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on February 2, 2001
at 3:10 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Bob Lawson, Vice Chairman (R)
Rep. Norma Bixby (D)
Rep. Verdell Jackson (R)
Rep. Ken Peterson (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 358, 1/22/2001; HB 384,
1/26/2001
Executive Action: HB 384; HB 321; HB 322

HEARING ON HB 358

Sponsor: KEITH BALES, HD 1, Otter

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE KEITH BALES, HD 1, Otter, said he presented the bill because the loss of population causes problems in rural schools. If a school is without pupils for three years, it is automatically forced to close. The school district is merged into another school district. In his situation, the school went for three years without students and the school district was merged into the Broadus school district. He lives about 55 miles from Broadus and he has hired an individual that has some children. His neighbor has done the same. The neighbor's family is home schooling their children. The **SPONSOR's** hired man is driving his son thirty miles one-way to catch a bus and then the son rides twenty-five miles to school. The family has two grade school children also. **REPRESENTATIVE BALES** looked into opening a school. He learned that it takes five students to open a school. One can petition to open a school with three students, but then the county commissioners need to confirm that there are five ANB at the present time. If it is during the middle of the year, the school is faced with a tight budget and it is virtually impossible to open a school. To find a solution to this problem, he drafted the bill. It will make it possible to open a school for two students in the middle of a school year. The process will remain relatively the same. It will have some additions. Someone has to go to the local school board, ask to have a school opened, they will look at the situation and then take it to the county superintendent. That person will take it to the county commissioners. The commissioners have to approve the request after they have verified that there are two students. The bill has some parameters in it and the request to open the school has to qualify for the isolation clause. Section 2 is the school isolation portion of the bill and it relates to how far a person lives from a school and takes into consideration the road conditions that must be traveled. The section would take care of the criteria and not allow for frivolous applications. The bill also authorizes the local school board or the county commissioners to send in a budget request at the time the request for the school is made to OPI. He had hoped OPI would have some money to help a school open, but now realizes that won't be true. The bill is written so that the school's budget would be prorated

on the amount of the year remaining. He has come to the conclusion that it often costs as much to start a school in midyear as it would to start a school at the beginning of the year. He has an amendment to offer that would change the prorated part of the bill. If the amendment is accepted, it would change the fiscal note. The fiscal note is in the amount of \$7,400 to impact the general fund. He feels there is no way of telling what the fiscal note amount should be because there may not be any requests to open a school one year and the next year there could be two requests. This is the best estimate that could be brought forth. He used his situation as an example, but there are the same situations elsewhere in the state.

Questions from Committee Members and Responses:

REPRESENTATIVE WADDILL had a question for **Mr. Cooper**. Would you have any idea why the number 3 was set on line 17, page 1? **Mr. Cooper** said he had no idea.

REPRESENTATIVE LEHMAN questioned the **SPONSOR**. Are the trustees who are alluded to in the proposal the trustees of the district to whom the closed district was merged? The **SPONSOR** said yes.

REPRESENTATIVE GALVIN-HALCRO also had a question for the **SPONSOR**. Is the fiscal impact the result of a school opening in the middle of the school year, realizing that the children started in one school which received funding for them and now a second school wants funding for the same children? Would both the schools receive funding, so the one that is losing its students would not be impacted when the reopened school receives funding? Would it be possible that two schools in two different buildings would be receiving funding for the same students? The **SPONSOR** said he presumed that could happen. He didn't believe there were adjustments made when a student moves from one district to another.

The **CHAIR** had a question for **Mr. Cooper, OPI**. How many schools in the past three or four years have reopened? **Mr. Cooper** said that he did not know of any. The **CHAIR** asked him if it is rather difficult to open a school once it is closed. **Mr. Cooper** said that it is difficult to reopen a building and hire a teacher for two or three students with the money that would be available.

REPRESENTATIVE FRITZ had a question for **Mr. Cooper**. Has OPI ever considered hiring itinerant teachers for this kind of situation? **Mr. Cooper** said no.

Closing by Sponsor:

REPRESENTATIVE BALES said he would doubt that any schools have been reopened lately because the present standard states that there must be five students to open the school. Budgets are tight and usually school boards say there is no financing to reopen a school. This is a problem that doesn't come up often, but when it does, it is a stressful time for the parents and the students. He believes in the future there might be some answers in interactive TV through the satellite system that might teach all rural students.

HEARING ON HB 384

Sponsor: REPRESENTATIVE TOM FACEY, HD 67, Missoula

Proponents: None

**Opponents: Lance Melton, MSBA
Bruce Messinger, Helena Schools**

Opening Statement by Sponsor:

REPRESENTATIVE FACEY, HD 67, Missoula, said his bill is about accountability. It is intended that the report requested in the bill will be filed with OPI and the county superintendent. It is intended to be flexible and easy for the school to do. He appreciates the fact that the report requested will take a fair amount of effort the first year because measurements will need to be taken. After the first year it will be much easier to do the report. The body of the bill is in lines 18 through 24.

EXHIBIT (edh27a01) He has seen children placed in very tight spaces and this bill would address that kind of situation. The bill is not asking for a long detailed description of space used for instruction. It would let the public know how much space is used for administration. The public can be made aware of what money is derived from leasing and renting school property. The school board could include in the report the needs they see currently or in the future. They can build a history of needs for the public. The report would be available to the public. A person in the district would be able to challenge information in the report and the school district would have 30 days to respond. The bill may need some changes so that the dates would align with current reports. He does not want the report to be a burden to the district. The fiscal note points out some dates that are already in existence.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE MANGAN had a question for the **SPONSOR**. Do we need to specify whether a building is a school building or is it a district building? He said that he doesn't know if there is a difference. **REPRESENTATIVE FACEY** said if a school building is closed and it becomes a community center, etc., then it would need to be described as other than a school building.

REPRESENTATIVE BRANAE had a question for the **SPONSOR**. How do you think the information in the report will be used? The **SPONSOR** said a person should think about the buildings in his school district. He has no public schools in his district. His district wants to know what it being done with the buildings once they are closed. He wants accountability and still wants the report to be short and easy.

REPRESENTATIVE FRITZ also had a question for the **SPONSOR**. She said that she is puzzled by the bill. She attends board meetings in Missoula and is sure all this information is available from the superintendent and the board of trustees. Do you believe this could be answered on a local level without the bill? The **SPONSOR** said no because he doesn't believe the local people have this information.

REPRESENTATIVE WADDILL had a question for **Mr. Cooper**. Since the bill requires OPI to gather information, why have you not stated whether your office is a proponent or an opponent? **Mr. Cooper** said he believes the requested information is already available in the schools. It would be a requirement for fire insurance and other necessary requests. That information could be requested at the local level or at the state level when a school is scheduled to be closed. He believes this is asking the school districts for a time-consuming job each year. **REPRESENTATIVE WADDILL** asked **Mr. Cooper** if he believes the administrative burden is worth the effort? The question was deferred to **Bruce Messinger, Superintendent of Helena Schools**. He said he is opposed to the bill. It is a significant burden. His schools have that information and can account for every square inch of their property. When there is the burden of either opening or closing a school or modifying boundaries, there is significant work. If there isn't, then the district should be held accountable. It is the public that should hold the district accountable. He sees the issues in the bill as local control issues and not state issues. It would be an undue burden for school administrators and OPI. It would serve the needs of very few.

REPRESENTATIVE WOLERY asked **Dr. Messinger** if he readily gives out the information that he has indicated is available in his district office? **Dr. Messinger** said that if they were asked for the information, they would share it. The frequency of that request is minimal. Functions change yearly or even during the year. It depends on what structural activities or support activities might be going on in the school building. Their blueprints are updated annually as to how they are using space.

REPRESENTATIVE WOLERY said his answer had jarred another thought. Would it be wise to hand out a blueprint of a building?

Dr. Messinger said information is given when it is appropriate to do so.

REPRESENTATIVE ANDERSEN had a question for the **SPONSOR**. Did you give consideration to the thought of having the report given orally to the school board at a regularly scheduled meeting so it could be reported by news media and become common knowledge to the general public? The **SPONSOR** said he did not want to depend on the media to get the information to the public. The crux of the matter is, how available is this information to the public? He does believe it is available to the public.

REPRESENTATIVE JACOBSON asked **Dr. Messinger** if he recalled about how many inquiries he had as to regards to the physical plants of the two schools that were recently closed in Helena?

Dr. Messinger said that he didn't know how many requests they received. There were hours of meetings held and public testimony and inquiries that occurred when the decision was made to close the schools. There was much conversation about both the future use of the school site and the impact the transition of students would have on the relocated school site. They looked at safety, traffic, neighbors and there was a great deal of discussion on other issues also. There was a great deal of open dialogue and much of it was captured in the minutes of the meeting and also in the Helena media. **REPRESENTATIVE JACOBSON** asked if the public hearing process, due to the pending school closures, addressed the basic issues contained within the inventory components of this bill? **Dr. Messinger** said, in his setting, the answer to the question is yes.

REPRESENTATIVE MANGAN also had a question for **Dr. Messinger**. What percent of the Helena school buildings were used for instruction in 1998? **Dr. Messinger** stated probably 85 to 90%.

REPRESENTATIVE MANGAN asked how many students were in the school system in 1998. **Dr. Messinger** said they probably had a little more than 8,000 students. **REPRESENTATIVE MANGAN** asked, in the year 2000, what percent of the Helena school buildings were used for instruction? **Dr. Messinger** said it would be the same percentage as they are using one of the buildings for an

alternative high school and they are leasing the second building. **REPRESENTATIVE MANGAN** asked how many students are in the system in the year 2000. **Dr. Messinger** said he believes there are about sixty fewer students this year. **REPRESENTATIVE MANGAN** said he was trying to justify the information requested in the **SPONSOR's** bill. Currently you have more students per square foot because you closed two schools. Is that correct? If you currently have the information, what would be the problem with submitting it? **Dr. Messinger** said he assumed it would not be a major issue for the submission, assuming that the data they have collected and maintained would be suitable. If they have to retrofit the information to the form, it might take time. It is not a huge burden. The greater burden would be on OPI for the purpose it would serve.

The **CHAIR** asked **Lance Melton, MSBA**, if he wished to comment on the bill. **Mr. Melton** said he doesn't see any necessity for having an exemption from the unfunded mandate clause in this bill. That is a red flag for MSBA. The mandate says the Montana Legislature does not impose an unfunded mandate on school districts without providing a funding mechanism for getting that new obligation done. You have heard that the information is probably already available. Title 2 would put a school district on legal obligation to produce this information if requested and it would be subject to attorney fees if it didn't produce it. Why have a provision in here that says we are going to give you an unfunded mandate and specifically declare that we are exempting ourselves from the unfunded mandate law because you are going to get it?

Closing by Sponsor:

REPRESENTATIVE FACEY said we are in a day and age when there is reduced public support for education. The public confidence in administration and trustees might not be as high as we would like it to be. He believes if he picked a school and wrote and asked for this information, it would take a long time for it to come. He doesn't believe the information is out there and all you have to do is ask for it. Some of the communities might be growing and the bill could be a vehicle for the districts in showing a need for building growth.

EXECUTIVE ACTION ON HB 384

REPRESENTATIVE MANGAN moved that **HB 384 DO PASS**.

REPRESENTATIVE MANGAN moved the following amendments: To make the following changes, on page 1, line 14, strike November and insert September and on line 17, strike December 1 and insert October 15. The second amendment would be to add the word "district" on line 16, following the word "school," on the first school building and the second school building, on line 22, insert the word "district" after the word "school," and on page 2, line 5, strike new section 3.

Motion/Vote: REP. MANGAN moved that **HB 384 BE AMENDED**. Motion carried 18-0.

Discussion:

REPRESENTATIVE WOLERY stated that the bill doesn't do much, the information is already available and it makes more work for OPI and maybe more work for the school district.

REPRESENTATIVE OLSON said Roundup School has this information and it could be supplied immediately. He can see someone in Washington mandating this legislature to come up with a building plan for every state building in the state. He cannot support the bill.

REPRESENTATIVE MASOLO said she could not support it with her respect for local control.

REPRESENTATIVE FRITZ stated that there is a great deal of unused space in Missoula and almost as much suspicion and conspiracy complexes in the city over the closed schools. She believes the **SPONSOR** was trying to respond to that situation. She does not see a need for the bill.

REPRESENTATIVE LEHMAN called for the question.

Motion/Vote: REP. MANGAN moved that **HB 384 DO PASS AS AMENDED**. Motion failed 2-16 with Branae and Mangan voting yes.

REPRESENTATIVE MC KENNEY moved **HB 384 AS AMENDED BE TABLED** by a reverse vote of 16-2.

EXECUTIVE ACTION ON HB 321

REPRESENTATIVE OLSON moved that **HB 321 DO PASS**.

Discussion:

REPRESENTATIVE OLSON said there are no amendments.

REPRESENTATIVE MANGAN asked that someone review the bill for him as he missed the hearing when he was ill.

REPRESENTATIVE OLSON said that when the outlying elementary districts have a greater population and taxable valuation than the district where the high school building is located, the district where the high school buildings are will have three trustees on the high school board and there will be four trustees from the outlying districts in trustee districts. This gives the population and taxable valuation in the outlying districts more of a say on the high school board. It must be approved by the local boards.

REPRESENTATIVE GALVIN-HALCRO asked if there is a greater tax value in the outlying districts, but not a greater population.

REPRESENTATIVE OLSON said that could be true in some areas, but in the Flathead area both the value and the population are greater than the district where the high school buildings are located.

Connie Erickson said she would like to clarify something in the bill for the committee. If one looks on page 2, line 14, subsection 3, the new language of this bill is that it offers a third alternative if more than half of the electors of the high school district reside outside the territory. In this particular section of law, there is another area that addresses the issue of taxable valuation. This particular new language primarily addresses the issue when you have more people residing outside the elementary district where the high school buildings are located that are part of the high school district. This particular part of the law is not talking about taxable valuation it is talking about the number of electors.

The **CHAIR** said that the people she had been hearing from live in eastern Montana and she doesn't believe they have the growing problems that the bill is addressing.

{Tape : 1; Side : B}

REPRESENTATIVE LEHMAN called for the question.

Motion/Vote: REP. OLSON moved that **HB 321 DO PASS. Motion carried 17-1 with Mangan voting no.**

EXECUTIVE ACTION ON HB 322

REPRESENTATIVE GALVIN-HALCRO moved that **HB 322 DO PASS.**

Discussion:

REPRESENTATIVE LEHMAN said that he has discussed the bill with the **SPONSOR**. He indicated that this was a problem brought to him by one of his constituents. **REPRESENTATIVE LEHMAN** believes this is a bad bill. It can't possibly be adhered to because loading zones at extracurricular events or activities are going to change throughout the course of the year based on weather conditions, the amount of snow, where it is pushed, etc. Having traveled the entire state of Montana for ten years and having gone to every school in the state at least twice a year, he can assure the committee that parking places vary from one time of the year to the next. For the most part, bus drivers are the most conscientious, careful drivers in the world and they will make every effort to load and unload students under the safest conditions available at the time. This bill would put an undue burden on the individual school districts throughout the state and perhaps law enforcement. He would urge the committee to give the bill a do not pass.

REPRESENTATIVE WADDILL said he would like to speak to the bill. He interprets the bill in a different way. It could be a matter of putting up some cones and he would rather error on the side of safety of the students. He is going to vote yes.

REPRESENTATIVE JACOBSON said he echos **REPRESENTATIVE WADDILL's** comments.

The **CHAIR** said that when the legislature passes a law that it thinks is simple, the law has unintended consequences. She had discussed it with other people and the **SPONSOR** and he is concerned about some unintended consequences that might be a problem for local school districts.

REPRESENTATIVE MANGAN said the thing that concerns him about this particular bill is the wording of lines 13,14 and 15. The trustees will apply to local government having jurisdiction for establishment of the passenger loading zone and, if you are talking about temporary loading zones, that may change as

REPRESENTATIVE LEHMAN has suggested. It may not be possible to get a permanent or temporary passenger zone. He would hate to have something in a statute that says a high school event cannot be held, when it may not be possible to meet the requirements of this bill should it become law. Making an error on the side of caution, he would have to vote no on the bill. Safety issues brought forward by this bill are important, but more investigation should take place before the bill could be passed.

REPRESENTATIVE OLSON said that he agrees with **REPRESENTATIVE MANGAN** and will vote no on the bill.

Motion/Vote: REP. WALTERS moved that **HB 322 BE TABLED**. Motion carried 14-4 with Bixby, Fritz, Jackson, and Waddill voting no.

ADJOURNMENT

Adjournment: 4:18 P.M.

REP. GAY ANN MASOLO, Chairman

NINA ROATCH, Secretary

GM/NR

EXHIBIT (edh27aad)

CERTIFICATE OF SERVICE

I, Elizabeth A. Kaleva, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 04-03-2024:

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Electronically signed by Kimberly Witt on behalf of Elizabeth A. Kaleva
Dated: 04-03-2024