

MONTANA BOARD OF PUBLIC EDUCATION



NEW MEMBER ORIENTATION

MANUAL

September 2024

BOARD OF PUBLIC EDUCATION

Handbook Index

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Section I
Board of Public
Education
(BPE)

MONTANA BOARD OF PUBLIC EDUCATION

The Board of Public Education was created by the Montana Constitution of 1972 to exercise general supervision over the elementary and secondary schools of the state. The Board consists of seven members appointed by the Governor and confirmed by the Senate to staggered seven-year terms. By statute the Governor must appoint members to the Board so that not more than four may be from one of the two commission districts and not more than four may be affiliated with the same political party. The Governor, the Superintendent of Public Instruction, and the Commissioner of Higher Education are ex-officio, non-voting members of the Board. In 1978 the Board added a student representative who is elected by the executive committee of the Montana Association of Student Councils to a one-year term. The Board maintains offices in Helena.

The Board is vested with constitutional rulemaking authority which is self-executing and independent from any power that is delegated to the Board by the Legislature. The Board of Public Education meets with the Board of Regents one time each year to form the Board of Education with responsibilities for long-range planning of the state's educational system.

In addition to the constitutional mandate to exercise general supervision of the schools, the Board is assigned specific responsibilities by the Montana Legislature. A partial list of duties requires the Board to:

- adopt standards of accreditation for Montana schools and establish the accreditation status of each school;
- effect a uniform system of teacher certification, including the accreditation of the teacher and administrator training programs;
- consider the suspension or revocation of teacher certificates and hear appeals from the denial of teacher certificates;
- administer and order the distribution of state equalization aid;
- adopt policies for the special education of handicapped and gifted and talented students; and
- act as the governing agency for the Montana School for the Deaf and Blind.

MONTANA BOARD OF PUBLIC EDUCATION

The Board of Public Education and the Office of Public Instruction are separate state agencies that must work collaboratively and cooperatively to create, implement, and executive education policy in Montana. The head of the Office of Public Instruction is the elected State Superintendent of Public Instruction. To illustrate, the Board of Public Education orders the distribution of the state BASE aid to schools and the Superintendent of Public Instruction distributes the BASE aid. The elected Superintendent of Public Instruction makes accreditation recommendations to the Board of Public Education as part of his/her general supervision responsibilities of K-12 schools, and the Board has the responsibility to evaluate and take action on the recommendations..

Local school district boards of trustees were created by Article X Section 8 of the Montana Constitution and are vested with the powers of local supervision and control of schools in their respective school districts. In Montana, there are currently 401 separate school districts consisting of 826 schools and a student population of 150,573 K-12 students. The local board of trustees govern the individual schools within the district under the confines of the Board's accreditation standards.

The Board of Public Education values its proactive association with the state legislature in its current involvement with the Education Interim Committee and Education Interim Budget Committee. The Board has actively been involved in education interim studies. The Legislature has spearheaded the organization of the "Constitutional Players", which consists of members from the Education Interim Committee, Education Interim Budget Committee, Board of Public Education, Board of Regents, Commissioner of Higher Education, Montana School Boards Association, and the Office of Public Instruction. The Constitutional Players met multiple times since 2021 and reached consensus on focusing on four areas: Support proficiency-based learning, Transform the teaching profession and increase retention of teachers, Promote rigorous career and technical education programs, and Support early childhood education. Many of these areas have garnered support from the full Legislature, including early literacy targeted interventions, expansion of the TEACH Act, increased advanced opportunities and transformational learning programs, and establishment of public charters schools.

MACIE

There is the Montana Advisory Council for Indian Education (MACIE) to advise the Board and the Superintendent of Public Instruction on matters related to Indian education. The purpose of the Council is to... provide for more effective and meaningful participation by Indian people in planning, implementation, and administration of relevant educational services and programs under the authority of local school boards.”

The Council is comprised of representatives of the twelve tribal nations in Montana and other groups working in the interest of Indian people.

BOARD MEMBERS

Term Expires

2/1/25	Jane Lee Hamman janeleehamman@aol.com	PO Box 164 Clancy, MT 59634	C 406-431-9395 O 406-933-8203
2/1/26	Madalyn Quinlan madquinlan@bresnan.net	605 9th Ave Helena, MT 59601	H 406-443-2433 C 406-459-2481
2/1/27	Tim Tharp, Chair timtharpmt@gmail.com	PO Box 215 Savage, MT 59262	C 406-788-3168
2/1/28	Susie Hedalen, Vice Chair saillake.ds@gmail.com	391 Stagecoach Lane Townsend, MT 59644	C 406-465-3531
2/1/29	Renee Rasmussen renee.rasmussen.mt@gmail.com	3 Skyline Dr Clancy, MT 59635	C 406-949-3126
2/1/30	Ron Slinger slingerR@milesc.edu	116 Atlantic Ave Unit 41 Miles City, MT 59301	C 406-874-6158 303-579-7452
2/1/31	Lisa Schmidt l.schmidt@a-land-of-grass-ranch.com	564 Graham Ranch Lane Conrad, MT 59425	H 406-278-0159
6/1/25	Gavin Mow, Student Rep. gavin.mow@gmail.com	1952 University St. Helena, MT 59601	C 406-461-4132

EX OFFICIO MEMBERS

Greg Gianforte Governor State of Montana	Montana State Capitol PO Box 200801 Helena, MT 59620-0801	O 406-444-3311
Elsie Arntzen Superintendent Office of Public Instruction	1227 11th Avenue, 2nd Floor PO Box 202501 Helena, MT 59620-2501	O 406-444-5658
Clayton Christian Commissioner Office of the Commissioner of Higher Education	2500 Broadway, PO Box 203101 Helena, MT 59620-3101	O 406-444-6570

BOARD STAFF

McCall Flynn Executive Director mflynn@mt.gov	PO Box 200601 Helena, MT 59620-0601	O 406-444-0300 C 406-691-0550
Jenny Murnane Butcher Program Officer jeanette.MurnaneButcher@mt.gov	PO Box 200601 Helena, MT 59620-0601	O 406-444-0159
Kris Stockton Administrative Specialist kmstockton@mt.gov	PO Box 200601 Helena MT 59620-0601	O 406-444-0302
Julie Balsam Accounting Technician jbalsam@mt.gov	PO Box 200601 Helena MT 59620-0601	O 406-444-6576

MONTANA SCHOOL FOR THE DEAF AND BLIND

Paul Furthmyre Superintendent pfurthmyre@msdb.k12.mt.us	3911 Central Avenue Great Falls, MT 59401	O 800-882-6732
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Board of Public Education

Board of Public Education Strategic Plan 2024-2025

MISSION STATEMENT:

The Board of Public Education has a mission statement as directed by the Montana Constitution, which states, “There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law”. The Board of Public Education was established to supervise, serve, maintain, and strengthen Montana's system of free quality public elementary and secondary schools.

STRATEGIC PLAN:

1. Exercise the Board’s constitutional and statutory authority to improve Montana’s education system.

- Work with constitutional education authorities to ensure they understand and respect the constitutional authority of the Board of Public Education.
- Collaborate with constitutional education authorities around initiatives to improve and support public education in Montana and implementation of legislative priorities and directives.
- Work with the Montana Advisory Council on Indian Education, Office of Public Instruction, and education partners to implement Indian Education for All.
- Promote and maintain a transparent and open public participation process.

2. Promote a safe learning environment.

- Work with education partners to help school districts navigate federal and state regulations and funding.
- Assign the Executive Director to participate in the Montana School Safety Advisory Committee meetings.

3. Evaluate and adopt the Board’s accreditation standards to ensure they are contemporary and effective to improve quality education for all Montana students.

- Maintain the Board’s commitment to rigorous standards and assessments, and support flexibilities within the current frameworks.
- Collaborate with education partners in support of drafting and implementing state standards, including efforts around licensing, content, transportation, assessment, accreditation, educator preparation programs, and other standards within the Board of Public Education’s authority.

4. Foster quality teaching and administration.

- Work with legislators and other entities to ensure they understand the roles and responsibilities of the Board of Public Education.
- Adopt revisions to the Administrative Rules of Montana that are within the Board of Public Education’s authority.
- Work with partners in P-12 and higher education to coordinate recruitment and retention efforts of teachers, staff, and school leaders.
- Receive guidance from professional education organizations and take action on their recommendations, when appropriate.

5. Support the preparation of all Montana students for employment, post-secondary education, and civic life.

- Work to support and expand pathways to career and life success through dual enrollment, internships, work-based learning, etc.
- Collaborate with the Montana Digital Academy to support online instruction for students, and assign the Executive Director to serve on the Montana Digital Academy Governing Board.
- Plan and prepare for the Board of Education meetings to support P-20 priorities and adopt a unified education budget.
- Work with school districts and education partners to promote the Montana Seal of Biliteracy.
- Prioritize and support innovation through the public charter school application process.
- Work with and administratively support the Montana Community Choice School Commission.
- Receive guidance from the Montana Advisory Council on Indian Education and take action on their recommendations, when appropriate.

6. Recognize and fulfill the Board’s statutory obligation to the Montana School for the Deaf and Blind.

- Hire, support, and evaluate the Superintendent of the Montana School for the Deaf and Blind (MSDB).
- Support and take action on personnel items, out of state travel requests, policies, and other items.
- Assign the Executive Director and MSDB liaison to participate in the Montana School for the Deaf and Blind Foundation meetings.
- Advocate for budgetary resources to support MSDB’s programmatic and facility requests.



Board of Public Education

Governor

Board of Public Education

Executive Director
#5110006

Administrative Specialist
#5110003

Program Officer
#5113006

Accounting Technician
#5110005



Board of Public Education

BOARD OF PUBLIC EDUCATION ANNUAL AGENDA CALENDAR January 2025 – November 2025

(Proposed items from OPI are in italics – C symbolizes Consent Agenda)

January 16-17, 2025 – Helena, MT

Exiting Board Member – Last Meeting and Recognition
 MACIE Update
 Review individual Community Choice Schools' Annual Reports
 ABCTe Interim Report
 Action on Authorizing Public Charter Schools
Transportation Report
Assessment Update
Federal Update
Accreditation Report
Teacher Licensure Report
Qualify Transformational Learning & Advanced Opportunity Grant Applications
Quality Educator Loan Assistance Program Report
Content Standards Revision Update
 Action on MSDB Superintendent Contract Extension
MSDB Superintendent Performance Evaluation & Contract Extension Discussion

March 11-12, 2025 – East Helena, MT

MACIE Update
 Action on MSDB School Calendar
 Action on Early Literacy Screening Tools (Odd Years)
Assessment Update
Federal Update
Accreditation Report
Annual School Food Services Report
Review Draft CAEP MOU
Content Standards Revision Update

May 15-16, 2025 – Great Falls, MT

Student Representative Last Meeting & Recognition
 MACIE Update
Action on K-12 Schools Payment Schedule
Assessment Update
Accreditation Update
Action on CAEP MOU
Federal Update
Content Standards Revision Update
Action on Accreditation Status of All Schools
Executive Director Performance Evaluation

July 16-18, 2025 – Helena, MT

Strategic Planning Meeting
 MACIE Update
 Action on MSDB/Golden Triangle Co-op
 Reflection and Review of Chapter 56 Assessment Standards
 Review Public Charter School Annual Report (20-6-809)
Assessment Update
Federal Update
OPI Staffing Report
Accreditation Report
Content Standards Revision Update
Indian Education for All Report

September 11-12, 2025 – Dillon, MT

Lewistown, Glendive, Evergreen, Polson
 Election of Board Officers
 Action on Strategic Planning Items – C
 MACIE Update
 Montana Digital Academy Update
 MACIE Renewal (Even Years)
 Review Community Choice School Academic Performance and Financial Reports
Annual HiSET Report
Annual Special Education Report
Assessment Update
Federal Update
Content Standards Revision Update

November 19-21, 2025 – Missoula, MT

Board of Education Meeting
 Montana Council of Deans of Education Update
 MACIE Update
Assessment Update
Federal Update
Annual Data Collection
Action on Variance to Standards Requests & Renewals
Accreditation Report
Youth Risk Behavior Survey Update (Odd Years)
Annual Professional Development Unit Providers List
Content Standards Revision Update



Board of Public Education

Board of Public Education Committee Assignments July 2024

STANDING COMMITTEES

Executive Committee

Tim Tharp, Chair
Susie Hedalen, Vice Chair
McCall Flynn, Executive Director

Licensure Committee

Susie Hedalen, Chair
Jane Hamman, Member
Tim Tharp, Member

Charter School Committee

Jane Hamman, Chair
Lisa Schmidt, Member
Tim Tharp, Member

MSDB Committee

Lisa Schmidt, Chair
Ron Slinger, Member
Tim Tharp, Member

Legislative Committee

Renee Rasmussen, Chair
Madalyn Quinlan, Member
Tim Tharp, Member

Ad Hoc Legal Complaint Committee

*Madalyn Quinlan, Chair
Susie Hedalen, Member
Tim Tharp, Member*

Accreditation Committee

Madalyn Quinlan, Chair
Susie Hedalen, Member
Tim Tharp, Member

Assessment Committee

Ron Slinger, Chair
Renee Rasmussen, Member
Tim Tharp, Member

ADVISORY GROUP LIAISONS

Montana Advisory Council on Indian Education – Susie Hedalen
Montana Early Childhood Advisory Council – McCall Flynn
Montana School Safety Advisory Committee – McCall Flynn

OTHER COMMITTEE APPOINTMENTS

Education and Workforce Data Governing Board – Susie Hedalen
Montana Digital Academy Governing Board – McCall Flynn

Professional Educators of Montana Code of Ethics

Model Principles

To serve the needs of all students, it is essential that professional educators strive to maintain the highest ethical standards. It is their responsibility to create learning environments to help all students reach their full potential while honoring the trust and confidence placed in them by students, families, colleagues, and the community.

The Professional Educators of Montana Code of Ethics serves as a set of aspirational principles intended to guide educator conduct and protect the rights of all students. These model principles are intended to be used by school districts, educator preparation programs, and other educational entities as they seek to adhere to the highest ethical standards in their service to students and families, the profession, and the community.

Principle I. Commitment to Students and Families. The ethical educator:

- A. Makes the well-being of students the foundation of all decisions and actions.
- B. Promotes a spirit of inquiry, creativity, and high expectations.
- C. Assures just and equitable treatment of every student.
- D. Protects students when their learning or well-being is threatened by the unsafe, incompetent, unethical, or illegal practice of any person.
- E. Keeps information confidential that has been obtained in the course of professional service, unless disclosure serves a compelling purpose in the best interest of students, or is required by law.
- F. Respects the roles, responsibilities, and rights of students, parents, and guardians.
- G. Maintains appropriate educator-student relationship boundaries in all respects, including speech, print, and digital communications.
- H. Demonstrates an understanding of educational inclusion, respects human diversity, and provides opportunities and resources for all students to reach their full potential.

Principle II. Commitment to the Profession. The ethical educator:

- A. Fulfills professional obligations with diligence and integrity.
- B. Demonstrates continued professional growth, collaboration, and accountability.
- C. Respects the roles, responsibilities, and rights of colleagues, support personnel, and supervisors.
- D. Contributes to the development of the profession's body of knowledge.
- E. Manages information, including student data and assessments, with integrity.
- F. Teaches without distortion, bias, or prejudice.
- G. Represents professional qualifications accurately.

Principle III. Commitment to the Community. The ethical educator:

- A. Models the principles of citizenship in a democratic society.
- B. Protects the civil and human rights of students and colleagues.
- C. Assumes responsibility for personal actions.
- D. Demonstrates good stewardship of public resources.
- E. Exemplifies a positive, active role in school-community relations.
- F. Adheres to the terms of contracts, district policies and procedures, and relevant statutes and regulations.
- G. Uses social media and digital communications responsibly and professionally.

Tab 2

Board of Public Education's Duties and Rulemaking Authority		
Citation	Section Heading	Duties/Rulemaking Authority
Constitution of Montana -- Article X -- Education and Public Lands		
Section 9.		
Mont. Const. Art. X, sec. 9 ^	Boards of education	Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board. (3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law. (b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.
Title 2. Government Structure and Administration		
Chapter 15. Executive Branch Officers and Agencies		
2-15-122, MCA	Creation of advisory councils	The board of public education may create advisory councils, which shall serve at their pleasure, without the approval of the governor.
2-15-1507, MCA	Board of public education	
2-15-1508, MCA	Appointments to board of public education and board of regents -- conditions -- vacancy	
2-15-1522, MCA	Certification standards and practices advisory council	The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred to serve the unexpired term.
Chapter 18. State Employee Classification, Compensation, and Benefits		
2-18-103, MCA	Officers and employees excepted	
2-18-701, MCA	Definitions	
Title 5. Legislative Branch		
Chapter 5. Legislative Procedures		
5-5-224, MCA	Education and local government interim committee	
Title 17. State Finance		
Chapter 5. Public Bond Issues		
17-5-202, MCA	Definitions	
Chapter 7. Budgeting and Appropriations		
17-7-162, MCA	Montana school for the deaf and blind exempt from vacancy savings	
Title 19. Public Retirement System		
Chapter 20. Teachers Retirement		
19-20-101, MCA	Definitions	
19-20-302, MCA	Active membership	
Title 20. Education		
Chapter 1. General Provisions		
20-1-101, MCA	Definitions	
20-1-212, MCA	Destruction of records by school officer	
20-1-213, MCA	Transfer of school records	
20-1-303, MCA	Conduct of school on Saturday or Sunday prohibited -- exceptions	
20-1-304, MCA	Pupil-instruction-related day	
Chapter 2. State Boards and Commissions		

20-2-101, MCA	Combined boards as state board -- budget review -- officers -- meetings -- quorum	The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.
20-2-111, MCA	Officers of boards -- quorum	The board of public education and the board of regents may each select a presiding officer from among their appointed members
20-2-112, MCA	Quarterly meetings of boards -- called meetings -- notice of meetings	The board of public education and the board of regents shall meet at least quarterly
20-2-113, MCA	Per diem of board members -- expenses	
20-2-114, MCA ^	Adoption of rules -- seal -- record of proceedings	Adopt rules
20-2-121, MCA ^	Board of public education -- powers and duties	The board of public education shall: (1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111; (2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110; (3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344; (4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111; (5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions of 20-1-303 and 20-1-304; (6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102; (7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201; (8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402; (9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131; (10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904; (11) adopt rules for student assessment in the public schools; and (12) perform any other duty prescribed from time to time by this title or any other act of the legislature.
20-2-122, MCA	Executive secretary to board of public education -- staff	The board of public education may: (1) appoint an executive secretary and employ other persons within legislatively authorized appropriations; (2) prescribe the term, duties, and compensation of its executive secretary; (3) provide office space for its staff to carry out its duties.
20-2-403, MCA	Duties	
Chapter 3. Elected Officials		
20-3-101, MCA	Election and qualifications	
20-3-106, MCA	Supervision of schools -- powers and duties*	
20-3-205, MCA	Powers and duties	
20-3-323, MCA	District policy and record of acts	
20-3-324, MCA	Powers and duties	
Chapter 4. Teachers, Superintendents, and Principals		
20-4-102, MCA	Board of public education policies*	To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for: (1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106; (2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates; (3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial; (4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and (5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.
20-4-103, MCA	Issuance of teacher or specialist certificates	

20-4-106, MCA	Classifications of teacher and specialist certificates*	(1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates....
20-4-107, MCA	Outstanding teacher certificates	
20-4-108, MCA	Term of teacher and specialist certificates -- renewal	
20-4-109, MCA	Fees for teacher and specialist certificates	
20-4-110, MCA	Letter of reprimand, suspension, revocation, and denial of certificate*	(1) The board of public education may issue a letter of reprimand or may suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons....
20-4-111, MCA	Emergency authorization of employment	
20-4-122, MCA	Designated official for purposes of interstate agreement	
20-4-131, MCA	Definitions	
20-4-132, MCA	Meetings -- assistance	
20-4-133, MCA	Duties of the council	
20-4-301, MCA	Duties of teacher -- nonpayment for failure to comply	
20-4-502, MCA	Definitions	
20-4-503, MCA	Critical quality educator shortages	(1) The board of public education, in consultation with the office of public instruction, shall identify: (a) specific schools that are impacted by critical quality educator shortages; and (b) within the schools identified in subsection (1)(a), the specific quality educator licensure or endorsement areas that are impacted by critical quality educator shortages. (2) The board of public education shall publish an annual report listing the schools and the licensure or endorsement areas identified as impacted by critical quality educator shortages, explaining the reasons that specific schools and licensure or endorsement areas have been identified and providing information regarding any success in retention. (3) Quality educators working at schools identified in subsection (1) are eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part.
Chapter 5. Pupils		
20-5-102, MCA	Compulsory enrollment and excuses	
Chapter 7. School Instruction and Special Programs		
20-7-101, MCA ^	Standards of accreditation*	Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction.
20-7-102, MCA	Accreditation of schools*	(1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.
20-7-104, MCA	Transparency and public availability of public school performance data -- reporting -- availability for timely use to improve instruction	
20-7-111, MCA ^	Instruction in public schools	The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.
20-7-118, MCA	Offsite provision of educational services by school district*	
20-7-131, MCA	Equivalency of completion of secondary education	

20-7-202, MCA	School library required	
20-7-205, MCA	Reporting school library information	
20-7-401, MCA	Definitions	
20-7-402, MCA	Special education to comply with board policies*	
20-7-403, MCA	Duties of superintendent of public instruction	
20-7-414, MCA	Determination of children in need and type of special education needed*	
20-7-431, MCA	Allowable cost schedule for special programs -- superintendent to make rules -- annual accounting*	
20-7-454, MCA	Final approval and filing of full service education cooperative contract	
20-7-475, MCA	Blind persons' literacy rights and education - personnel training	The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.
20-7-804, MCA	Authority of board of public education	In all cases where school property is utilized, the board of public education shall have authority: (1) to establish minimum qualifications of local recreational directors and instructors; and (2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.
20-7-903, MCA	Programs to serve gifted and talented children -- compliance with board policy -- funding	
20-7-904, MCA	Review and recommendations of proposals	(1) The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain: (a) evidence that identification procedures are comprehensive and appropriate; (b) a program description including stated needs and measurable objectives designed to meet those needs; (c) evidence that the activities are appropriate and will serve to achieve the program objectives; and (d) a method to evaluate the effectiveness of the program. (2) School districts may request assistance from the staff of the superintendent in formulating program proposals. (3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by: (a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and (b) establishing a procedure for review and approval of program proposals.
20-7-1201, MCA	Montana digital academy -- purposes -- governance	teacher appointed by the board of public education; a Montana-licensed school district administrator appointed by the board of public education; a trustee of a Montana school district appointed by the board of public education.
Chapter 8. Montana School for the Deaf and Blind		
20-8-101, MCA	Montana school for deaf and blind -- state-supported special school	Control over the Montana school for the deaf and blind.
20-8-103, MCA	Board of public education rules	The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.
20-8-106, MCA	Duration of attendance at school -- suspension or expulsion -- transfer	
20-8-107, MCA	Admission of nonresident children and advance payment of cost -- Indian children*	The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

20-8-111, MCA	Duty of board of public education as to property of school	The board of public education shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property transferred to the board or to the state of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the school for the deaf and blind. All donations, gifts, devises, or grants vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.
20-8-113, MCA	Duties of superintendent of school for the deaf and blind	
20-8-120, MCA	Communications skills required of certain employees	
20-8-121, MCA	Transportation of students at school	
Chapter 9. Finance		
20-9-161, MCA	Definition of budget amendment for budgeting purposes	
20-9-213, MCA	Duties of trustees	
20-9-311, MCA	Calculation of average number belonging (ANB) -- 3-year averaging*	
20-9-327, MCA	Quality educator payment	
20-9-344, MCA	Duties of board of public education for distribution of BASE aid	(1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education: (a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law; (b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and (c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue. (2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to: (a) submit reports or budgets as required by law or rules adopted by the board of public education; or (b) maintain accredited status because of failure to meet the board of public education's assurance and performance standards. (3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.
20-9-346, MCA	Duties of superintendent of public instruction for state and county equalization aid distribution*	
20-9-376, MCA	Purpose of increased funding beyond inflation	
Chapter 10. Transportation and Food Services		
20-10-101, MCA	Definitions	
20-10-103, MCA	School bus driver qualifications*	
20-10-104, MCA	Penalty for violating law or rules	

20-10-111, MCA	Duties of board of public education	(1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must: (a) prescribe minimum standards for the design, construction, and operation of school buses consistent with: (i) the recommendations adopted by the national conference on school transportation; and (ii) the federal motor vehicle safety standards; (b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with: (i) current specifications approved by the society of automobile engineers; (ii) motor vehicle laws; and (iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402; (c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103; (d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county; (e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; and (f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity. (2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.
20-10-112, MCA	Duties of superintendent of public instruction*	
20-10-124, MCA	Private party contract for transportation -- individual transportation contract	
20-10-141, MCA	Schedule of maximum reimbursement by mileage rates	
20-10-145, MCA	State transportation reimbursement*	
20-10-146, MCA	County transportation reimbursement	
20-10-201, MCA	Acceptance, expenditure, and administration of federal school food services money	
Chapter 20. School Elections		
20-20-201, MCA	Calling of school election*	
Chapter 26. Student Financial Assistance		
20-26-603, MCA	Definitions	
Title 52. Family Services		
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52-5-106, MCA	Curricula at facilities	
Title 61. Motor Vehicles		
Chapter 9. Vehicle Equipment		
61-9-402, MCA	Audible and visual signals on police, emergency vehicles, and on-scene command vehicles -- immunity	
61-9-502, MCA	Semiannual inspection of school buses	

^ currently in BPE authority memo

*duties of the Superintendent of Public Instruction

COURT CASES
Involving
The Board of Public Education

BOARD OF PUBLIC EDUCATION-v-THOMAS L. JUDGE, GOVERNOR

Decided July 5, 1975 by the Montana Supreme Court

The issue was whether the Board of Public Education or the Board of Education would be responsible for vocational education. The Supreme Court found in a declaratory judgment in the Board of Public Education's favor and said that HB 566 which created a Board of Vocational Education under the Board of Education was unconstitutional.

MICHAEL PERETTI, et al –v- STATE OF MONTANA, THE BOARD OF PUBLIC EDUCATION and its members.

Decided July 19, 1989 by the Montana Supreme Court

This case was begun in 1977 by students in the "Career Pilot Program" at the Missoula Vo-tech, the case centered on the Board's authority to cut programs due to a decrease in the legislative appropriation. The students' alleged loss of the program translated into loss of opportunity and requested the awarding of significant damages. The Fourth Judicial District Court (Missoula) found in their favor, but the Supreme Court in a 5/2 decision reversed the order and found in favor of the State and the Board.

HELENA ELEMENTARY SCHOOL DISTRICT NO. 1 etc., et al –v- the STATE OF MONTANA; etc., et al.

Decided February 1, 1989 by the Montana Supreme Court

Commonly called "The Underfunded Lawsuit", the court found the financing of public schools in Montana to be unconstitutional with respect to student opportunity and taxpayer equity. Of special interest to the Board of Public Education It found that "the Montana School Accreditation Standards are minimum standards upon which quality education must be built". At this time the Court had been asked to retain jurisdiction by the plaintiff schools until July 1, 1991.

THE ASSOCIATED PRESS, et al –v- THE BOARD OF PUBLIC EDUCATION

Decided August 4, 1989 by the First Judicial District Court

Generally referred to as the Open Meeting Lawsuit, the press asked for a summary judgment declaring that subsection of 25-7-602 MCA was unconstitutional. This is the part of the law which allows public bodies to close meetings when discussing litigation strategy. The Board used this section of the law during a conference call and thus became the defendant in the case. The judge found that the constitution takes a very strong stand on the public's right to know and found that section of law unconstitutional.

THE MONTANA BOARD OF PUBLIC EDUCATION et al –v- MONTANA ADMINISTRATIVE CODE COMMITTEE

Decided March 1992 by Judge Sherlock of the Montana First Judicial District Court, Lewis & Clark County.

Generally referred to as the "Sherlock Decision", the adopted rule 10.55.804 stating "schools shall make an identifiable effort to provide educational services to gifted and talented students, which are commensurate with their needs and foster a positive self-image." The Administrative

Code Committee felt that this rule was in contravention of Section 20-7-902 (1), MCA, which provides “A school district may identify gifted and talented children and devise programs to serve them.” In 1991 the legislature passed HB 116 which repealed Rule 10.55.804 . The Board of Public Education felt it had the authority to promulgate the aforementioned rule pursuant to the Article X, Section 9(3)(a), of the Montana Constitution of 1972. The Board brought a judgment action against HB 116. It was found that HB 116 was invalid and that “the Board of Public Education, pursuant to Article X, Section 9(3), of the Montana Constitution, is vested with constitutional rule-making authority. This provision is self-executing and independent of any power that is delegated to the Board by the legislature. The Board’s rule mandating gifted and talented programs is within the purview of the Board’s constitutional power of general supervision pursuant to Article X, Section 9(3), of the Montana Constitution. HB 116, to the extent that it interferes or conflicts with the Board’s constitutional rule-making power, is in violation of the separation of powers doctrine of Article III, Section 1, of the Montana Constitution, and is therefore invalid and of no further force or effect.”

Tab 3

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Roles and Responsibilities

BOARD OF PUBLIC EDUCATION

Roles and Responsibilities

Constitution of Montana -- Article X -- EDUCATION AND PUBLIC LANDS

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Constitution of Montana -- Article III -- GENERAL GOVERNMENT

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Montana Code Annotated 2023 – Adoption of Rules

20-2-114. Adoption of rules -- seal -- record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

Montana Code Annotated 2023 – Powers and Duties

20-2-121. Board of public education -- powers and duties. The board of public education shall:

- (1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;
- (2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;
- (3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;
- (4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;
- (5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions of 20-1-303 and 20-1-304;
- (6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;
- (7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;
- (8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;
- (9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;
- (10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;
- (11) adopt rules for student assessment in the public schools; and
- (12) perform any other duty prescribed from time to time by this title or any other act of the legislature.

Montana Code Annotated 2023 – Standards of Accreditation

20-7-101. Accreditation Standards – process for adoption. (1)(a) Accreditation standards, as defined in 20-1-101, for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). For an accreditation standard that required implementation by school districts, the recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

(b) For accreditation standards addressing academic requirements, program area standards, or content and performance standards, the economic impact statement under section (1)(a) must include an analysis of the ability of school districts to implement the standard within existing resources, including time. The intent of this subsection (1)(b) is to ensure that school districts have the capacity to adhere to required accreditation standards within a basic system of free quality public elementary and secondary schools.

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

- (a) school district trustees;
- (b) school administrators;

- (c) teachers;
- (d) school business officials;
- (e) parents; and
- (f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to

(a) during a regular legislative session, the joint appropriations subcommittee on education; or

(b) during the legislative interim, the education interim budget committee established in 5-12-501 for review at least 1 month in advance of a scheduled committee meeting.

(4) Unless the expenditures by school districts required under the proposal are determined by the appropriate committee under subsection (3) to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following;

(a) under subsection (3)(a), the current legislative session; or

(b) under subsection (3)(b), the next regular legislative session and shall request the superintendent of public instruction include a request in the superintendent's budget that the same legislature fund implementation of the proposed standard.

(5) The provisions of this section may not be construed to reduce or limit the authority of the education interim committee to review administrative rules, including accreditation standards, within its jurisdiction pursuant to 5-5-215.

(6) Standards for the retention of school records must be as provided in 20-1-212.

Montana Code Annotated 2023 – School Bus Standards

20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

(a) prescribe minimum standards for the design, construction, and operation of school buses consistent with:

(i) the recommendations adopted by the national conference on school transportation; and

(ii) the federal motor vehicle safety standards;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;

(e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; and

(f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.

Montana Code Annotated 2023 – Montana School for the Deaf and Blind

20-8-101. Montana school for deaf and blind -- state-supported special school. The school for the deaf and blind, located in the city of Great Falls, is known and designated as the Montana school for the deaf and blind and must be conducted as a separate and independent unit and special school of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name of the school or in the objects or purposes of the school may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school.

Montana Code Annotated 2023 – Montana School for the Deaf and Blind

20-8-103. Board of public education rules. The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.

Montana First Judicial District Court County of Lewis and Clark

MONTANA BOARD OF PUBLIC EDUCATION,
Petitioner,

Cause No. BDV – 91 – 1072

vs.

MONTANA ADMINISTRATIVE CODE COMMITTEE,
Respondent.

ORDER AND DECISION

This matter is before the Court on motions by all parties for summary judgment.

FACTUAL BACKGROUND

In 1989, the Board of Public Education (hereinafter the Board), adopted Rule 10.55.804, A.R.M. That rule, in pertinent part, provided as follows:

Beginning 7-1-92 the school shall make an identifiable effort to provide educational services to gifted and talented students, which are commensurate with their needs and foster a positive self-image.

The Administrative Code Committee felt that the aforementioned rule was in contravention of Section 20-7-902(1), MCA, which provides:

A school district may identify gifted and talented children and devise programs to serve them." (emphasis added).

The Board would not change its rule. Thereafter, at the request of the Administrative Code Committee, the 1991 legislature passed House Bill 116 which states as follows:

Whereas, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

Whereas, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

Whereas, a rule may not conflict with a statute and is invalid if it does; and

Whereas, Section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them" and Rule 10.55.804 ARM mandates a gifted and talented children program in each school, thereby directly and clearly conflicting with the statute; and Whereas, the Legislature has made a gifted and talented children program discretionary, at the choice of each local school board, the Legislature nonetheless affirms its support of gifted and talented education and encourages local school districts to identify gifted and talented students and design and implement programs that meet the needs of those students.

Be it enacted by the legislature of the State of Montana:

Section 1. Repealer. Rule .10. 55.804, ARM, is repealed.

Section 2 Effective Date. This Act is effective July 1, 1991.

The Board felt that it had the authority to promulgate the aforementioned rule pursuant to the Article X, Section 9(3)(a), of the Montana Constitution of 1972, which provides:

There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

The Board brought the instant declaratory judgment action seeking a ruling as follows:

1. The legislative branch is not the sole law-making, or rule-making body under the Montana Constitution. Rather, the Board of Public Education, in exercising its Art. X Sec. 9(3) powers of "general supervision" has constitutional rule-making authority. This provision is self-executing, and the authority granted is independent of any power that is "delegated" to the Board by the legislature.
2. The Board's accreditation standards, including the rule mandating gifted and talented programs, are within the purview of its Art. X Sec. 9(3), constitutional powers of "general supervision".
3. That House Bill 116 and/or 20-7-902 MCA, to the extent they interfere or conflict with the Board's constitutional rule-making are in violation of the separation of powers doctrine of Art. III Sec. 1 of the Montana Constitution and are therefore invalid and of no legal effect.

STANDARD OF REVIEW

Before reviewing the factual matter in particular, it would be helpful to review the standard that this Court will use in granting a motion for summary judgment. As all are aware, this Court cannot grant a motion for summary judgment if a genuine issue of material fact exists. Rule 56, M.R.Civ.P. Summary judgment encourages judicial economy through the elimination of unnecessary trial, delay, and expense. *Wagner v. Glasgow Livestock Sale Co.*, 222 Mont. 385, 389, 722 P.2d 1165, 1168 (1986); *Clarks Fork National Bank v. Papp*, 215 Mont. 494, 496, 698 P.2d 851, 852-853 (1985); *Bonawitz v. Bourke*, 173 Mont. 179, 182, 567 P.2d 32, 33 (1977).

Summary judgment, however, will only be granted when the record discloses no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), M.R.Civ.P.; *Cate v. Hargrave*, 209 Mont. 265, 269, 689 P.2d 952, 954 (1984). The movant has the initial burden to show that there is a complete absence of any genuine issue of material fact. To satisfy this burden, the movant must make a clear showing as to what the truth is so as to exclude any real doubt as to the existence of any genuine issue of material fact. *Kober & Kyriss v. Billings Deac. Hosp.*, 148 Mont. 117, 417 P.2d 476 (1966).

The opposing party must then come forward with substantial evidence that raises a genuine issue of material fact in order to defeat the motion. *Denny Driscoll Boys Home v. State*, 227 Mont. 177, 179, 737 P.2d 1150, 1151 (1987). Such motions, however, are clearly not favored. "[T]he procedure is never to be a substitute for trial if a factual controversy exists." *Reaves v. Reinbold*, 189 Mont. 284, 288, 615 P.2d 896,

898 (1980). If there is any doubt as to the propriety of a motion for summary judgment, it should be denied. *Rogers v. Swingley*, 206 Mont. 306, 670 P.2d 1386 (1983); *Cheyenne Western Bank v. Young*, 1 Mont. 492, 587587 P.2d 401 (1978); *Kober* at 122, 417 P.2d at 479.

Clearly, summary judgment is appropriate since there is no disputed question of fact, as has been acknowledged by both parties.

This Court is of the view that the Board's motion should be granted.

IMMUNITY

The parties have done a heroic effort of briefing the Court on the question of whether or not the Administrative Code Committee has immunity from the present action. This Court feels, however, that the immunity issue need not be addressed or decided in order to resolve this matter. The Court has before it the State of Montana as a defendant. Clearly, the Board is entitled to have House Bill 116 tested before a Court. Perhaps the Administrative Code Committee is not the appropriate defendant. Clearly, however, the State of Montana is an appropriate defendant in such an action. Thus, in order to avoid the question of whether or not the Administrative Code Committee is immune, the Court will dismiss the Administrative Code Committee from this suit. This, however, still leaves the question of whether or not House Bill 116 improperly interfered with the Board's constitutional authority.

CONSTITUTIONALITY OF H.B. 116

The Court has been directed to a West Virginia case that is very persuasive. See *West Virginia Board of Education vs. Hechler*, 376 S.E.2d 839 (West Virginia 1988). In that case, the Supreme Court of West Virginia noted that Article XII, Section 2, of the West Virginia State Constitution provided:

The general supervision of the free schools of the state shall be vested in the West Virginia Board of Education which shall perform such duties as may be prescribed by law.

Id. at 842.

Pursuant to that Constitutional enactment, the West Virginia Board of Education adopted rules concerning design and equipment of school buses. The board filed their rule with the West Virginia secretary of state for publication. However, the secretary of state of West Virginia refused to file the rule because the Board had failed to first submit the rule to a legislative oversight committee. The West Virginia Supreme Court held that any attempt to impede rules proposed by the West Virginia Board of Education was not consistent with the general supervisory powers conferred upon the board by the West Virginia constitution.

The West Virginia court noted that state legislators, since they infrequently meet, cannot assume supervisory responsibility for public schools. In such cases, the supervision and administrative control over the state school system is placed in a State Board of Education. Decisions that pertain to education should be faced by those who possess expertise in the educational area. *Id.* at 842.

The West Virginia court noted that the Board of Education enjoyed a special standing due to its placement in the West Virginia Constitution. The Supreme Court of West Virginia held that the particular rule-making by the State Board of Education was within the meaning of general supervision of state schools as announced by the West Virginia Constitution, and that any statutory provision that interfered with such rule-making was unconstitutional. *Id.* at 843.

This is precisely the situation presented before this Court. In the first instance, the West Virginia constitutional provision in question in *Hechler* is very similar to Article X, Section 9(3), of the Montana Constitution. As in *Hechler*, we here have a situation where the Montana legislature is interfering with the rule-making authority of a constitutionally created Board of Education. This being the case, that statutory interference is unconstitutional.

The Montana Constitution provides:

The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

See Montana Constitution, Art. III, sec. 1.

This Court is cognizant of the fact that there must be balancing between the powers of the legislature and those of special boards created by Montana's Constitution. This balancing was discussed in detail in the case of Board of Regents vs. Judge, 168 Mont. 433, 543 P.2d 1323 (1975). However, in this case, this Court is convinced that the rule here in question, as adopted by the Board, is well within its constitutional prerogative to exercise general supervision over the public school system.

In its brief, the State of Montana has delved extensively into comments made by delegates to the 1972 constitutional convention. However, if the language of the Constitution is clear, it may not be ignored. Further, if the language is clear, its meaning is to be ascertained from the Constitution itself construing the language as written. This being the case, there is no occasion for construction since the language is plain and unambiguous. See General Agriculture Corporation v. Moore, 166 Mont. 510, 516, 534 P.2d 859 (1975).

Further, the State notes that the rule, as originally suggested by the Board, was allegedly drafted pursuant to statutory authority and not pursuant to the Constitution. Thus, argues the State, the Board cannot now seek to use the Constitution to support the passage of the rule. With this contention this Court cannot agree. The Board is a constitutionally recognized and created agency. As such, it is not subject to the usual administrative and legislative constraints to which the State refers. For example, it matters not that the Board may or may not have precisely complied with the Montana Administrative Procedure Act in adopting the rule in question. That Act is enacted by the legislature. As noted earlier, the legislature cannot interfere with other constitutionally created bodies that are properly conducting their business.

Further, the State points to the Attorney General's opinion contained at 44 Op. Att'y Gen. No. 4. However, that opinion expressly indicated that it was not dealing with any constitutional power of the Board.

The State exalts form over substance and would require the Board to perform a meaningless act. The State seems to be contending that one of the reasons this rule is invalid is that the Board did not follow precise administrative procedures. Thus, argues the Board, if the Board did follow these precise administrative procedures, and indicated that the rule was not being adopted pursuant to a statute but pursuant to the Constitution, then perhaps the rule would be valid. This Court considers such a procedure to be a futile act. This Court will not require the Board to go through such a futile procedure. Perhaps that argument would be well taken if we were here dealing with a board or agency created by another branch of government. However, we are dealing with a constitutionally-empowered board.

Based on the above, the Court hereby enters its declaratory ruling as follows:

The Board of Public Education, pursuant to Article X, Section 9(3), of the Montana Constitution, is vested with constitutional rule-making authority. This provision is self-executing and independent of any power that is delegated to the Board by the legislature. The Board's rule mandating gifted and talented programs is within the purview of the Board's constitutional power of general supervision pursuant to Article X, Section 9(3), of the Montana Constitution. House Bill 116, to the extent that it interferes or conflicts with the Board's constitutional rule-making power, is in violation of the separation of powers doctrine of Article III, Section 1, of the Montana Constitution, and is therefore invalid and of no further force or effect.

DATED this day of March 1992.
s/JUDGE SHERLOCK

pc: W. William Leaphart Eddy McClure
Judy Browning

Part One – Notice and Opportunity to Be Heard

Montana Code Annotated 2019

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in **2-3-202**, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in **2-3-212**.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5); amd. Sec. 1, Ch. 425, L. 2003.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of **2-3-103** if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

2-3-105. Supplemental notice by radio or television. (1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.

(2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.

(3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201; amd. Sec. 38, Ch. 61, L. 2007.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

2-3-111. Opportunity to submit views -- public hearings. (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3); amd. Sec. 1, Ch. 487, L. 1997.

2-3-112. Exceptions. The provisions of **2-3-103** and **2-3-111** do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under **2-4-623(6)** and **2-4-501**, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement -- attorney fees. (1) The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition of any person whose rights have been prejudiced. A petition pursuant to this section must be filed within 30 days of the date on which the person learns, or reasonably should have learned, of the agency's decision.

(2) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 8, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229; amd. Sec. 1, Ch. 211, L. 2007; amd. Sec. 1, Ch. 266, L. 2015.

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History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

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History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229; amd. Sec. 1, Ch. 211, L. 2007; amd. Sec. 1, Ch. 266, L. 2015.

Part Two – Open Meetings

Montana Code Annotated 2019

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in **2-3-203**, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

2-3-211. Recording. A person may not be excluded from any open meeting under this part and may not be prohibited from photographing, televising, transmitting images or audio by electronic or digital means, or recording open meetings. The presiding officer may ensure that these activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405; amd. Sec. 1, Ch. 138, L. 2017.

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by **2-3-203** to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

(b) a list of the individual members of the public body, agency, or organization who were in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to **2-3-203**, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403; amd. Sec. 1, Ch. 65, L. 2011; amd. Sec. 29, Ch. 348, L. 2015.

2-3-213. Voidability. Any decision made in violation of **2-3-203** may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406; amd. Sec. 2, Ch. 211, L. 2007.

2-3-214. Recording of meetings for certain boards. (1) Except as provided in **2-3-203**, the following boards shall record their public meetings in a video or audio format:

(a) the board of investments provided for in **2-15-1808**;

(b) the public employees' retirement board provided for in **2-15-1009**;

(c) the teachers' retirement board provided for in **2-15-1010**;

(d) the board of public education provided for in Article X, section 9, of the Montana constitution; and

(e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.

(2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.

(3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in **5-11-1111** or through publication of streaming video or audio content on the respective board's website.

(b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.

History: En. Sec. 1, Ch. 133, L. 2015.

2-3-221. Costs to prevailing party in certain actions to enforce constitutional right to know. A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632; amd. Sec. 39, Ch. 61, L. 2007; amd. Sec. 30, Ch. 348, L. 2015.

Part Three – Use of Electronic Mail Systems

Montana Code Annotated 2019

2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- fees prohibited. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which **2-3-111** applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet; or
- (d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to **2-6-1003**, disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in **2-4-302(2)(a)(ii)**. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

History: En. Sec. 1, Ch. 484, L. 1999; amd. Sec. 1, Ch. 77, L. 2001; amd. Sec. 19, Ch. 313, L. 2001; amd. Sec. 1, Ch. 41, L. 2011; amd. Sec. 31, Ch. 348, L. 2015.

Tab 4

**STATE OF MONTANA
BOARD OF PUBLIC EDUCATION**

BYLAWS

Article I. Name

The legal name of the Board is the Board of Public Education.

Article II. Objective

The objective of the Board is to carry out its constitutional and statutory responsibility to exercise general supervision, in cooperation with the Superintendent of Public Instruction, over the public school system and other such public educational institutions as may be assigned by law.

Article III. Membership

The Board consists of seven members appointed by the Governor and confirmed by the Senate. Not more than four may be from each of the two commission districts per § 5-1-102 (2)(a)(b), MCA, and not more than four may be affiliated with the same political party. The Governor, Superintendent of Public Instruction, and Commissioner of Higher Education are ex-officio, non-voting members of the Board. There is also a non-voting student member, appointed by the Montana Association of Student Councils. The term of members appointed to the Board shall be seven years. When a vacancy occurs, the Governor shall appoint a member for the remainder of the term of the incumbent. Members appointed to the Board, before discharging their duties, shall take and subscribe to the constitutional oath of office.

Article IV. Officers

The officers of the Board shall consist of a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson shall be elected among the appointed membership for the period of one year; annual reelection is permissible. Election of the Chairperson and Vice Chairperson shall be conducted by voice vote. The Chairperson-elect and Vice Chairperson-elect shall assume their respective office upon adjournment of the meeting at which they were elected. If the office of the Chairperson or Vice Chairperson is vacated prior to the expiration of the term, the Board will hold an election to fill the vacated office; the newly elected officer will serve for the remainder of the unexpired term and assume the gavel immediately. The duties of the Chairperson shall include presiding at meetings, participating in the construction of meeting agendas, and appointing all committees. The Chairperson shall vote on all matters. In the absence of the Chairperson, the Vice Chairperson shall preside and shall perform such duties as are prescribed for the Chairperson.

Article V. Executive Director

The Board shall appoint, prescribe the term and duties, and establish the salary of the Executive Director. The Executive Director shall serve as administrator to the Board and also as liaison between the Board and the Superintendent of Public Instruction, the Commissioner of Higher Education, the Legislature, and the Governor's office.

Article VI. Meetings

According to § 20-2-112, MCA, the Board shall meet at least quarterly. Special meetings may be called by the Governor, the chairperson of the Board, the Executive Director, or a request in writing of four regular appointed members. When necessary, the Board may hold meetings for resolution of specific agenda items either by a meeting in person, by conference call, or by a combination of both. In the case of a special meeting, the Executive Director shall notify each regular and ex-officio member either by e-mail, mail, or by telephone sufficiently in advance of the meeting to allow all Board members to travel to the meeting site from their principal Montana residence.

The Board of Public Education and the Board of Regents shall meet yearly as the State Board of Education per § 20-2-101, MCA.

Meetings of the Board shall be open to the public. The Chairperson may close the meeting to the public if he or she determines:

- a. That the demand of individual privacy clearly exceeds the merits of public disclosure, or
- b. That an open meeting would have a detrimental effect on the bargaining or the litigating position of the Board.

The Chairperson shall read for the minutes the reason for the closing, or the minutes will show that the person in question requested a closed session.

Article VII. Quorum

A majority of the appointed members shall constitute a quorum for the transaction of business.

Article VIII. Organization

Section A. Officers

The Board shall select, by a majority vote, a Chairperson and Vice Chairperson from its appointed members each September. The term of elected office shall be for one year. The Chairperson shall be the presiding officer and shall preside over all regular, special, and public meetings of the Board. The Vice Chairperson shall perform the functions of the Chairperson in their absence.

Section B. Committees

Standing committees shall be as follows:

1. An Executive Committee: composed of the Chairperson, Vice Chairperson, and the Executive Director
2. An Accreditation Committee
3. A Licensure Committee
4. A Montana School for the Deaf and Blind Committee
5. A Legislative Committee
6. An Assessment Committee
7. A Charter School Committee

The Board may create special committees as deemed necessary to carry out the responsibilities of the Board. Members of the special committees shall be appointed by the Chairperson.

Duties of the committees shall be to review, report on, and make recommendations concerning any item referred to them and alert the Chairperson and Executive Director on any matters which should be placed on the agenda for Board discussion or action. The Chairperson shall serve as a member of all committees, unless otherwise determined by the Chairperson. The Executive Director shall attend all committee meetings and provide support as determined by the committee chairperson.

The Board shall establish a Montana School for the Deaf and Blind Committee. Due to the uniqueness of the operations of the Montana School for the Deaf and Blind, the Committee is expected to meet more regularly than other committees of the Board. As required under § 20-8-101, MCA, the Montana School for the Deaf and Blind is under general supervision, direction, and control of the Board. This relationship requires more regular oversight and involvement in the maintenance and governance of the school.

Article IV. Order of Business

The regular order of business shall be as follows:

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Statement of Public Participation
5. Welcome Visitors
6. Items Pulled from Consent Agenda

7. Consent Agenda Adoption
8. Agenda Adoption
9. Agenda
10. Date and Place of Next Meeting
11. Adjournment

Article X. Communications

All official communications should come to the attention of the Board through the Executive Director of the Board.

Article XI. Parliamentary Procedure

The Board will use Robert's Rules of Order as a guide on questions of parliamentary procedure.

Article XII. Amendments

These bylaws may be added to or amended by a majority vote at any meeting of the Board of Public Education provided that a quorum is present and provided that the proposed amendment is sent in writing to members of the Board of Public Education at least seven days in advance.

Article XIII. Professional Development

The Board of Public Education offers professional development opportunities for Board members whenever possible. Board members may attend at least one professional development conference each year, when funding is available. All requests must be submitted to the Executive Director at least one month prior to the conference. Board members should submit the request using the Request and Justification for Travel Form. All out of state travel and travel that exceeds \$1,000 must be approved by the Executive Committee prior to participation.

[Request and Justification for Travel Form \(mt.gov\)](https://mt.gov)

Tab 5

Reimbursement Information

This is a handy reminder of what items need to be included in this packet. If all the information is included in your folder at the end of the meeting, there shouldn't be any delays in your reimbursement.

- **Travel Expense Voucher**—You **NEED** to sign and date this form.
- **Travel Detail Form**—Please fill out **everything** on this form.
- **Motel and/or Airline Receipt**—Reimbursement **cannot** be made without the receipt in our office.

Thanks so much!

**MONTANA BOARD OF PUBLIC EDUCATION
TRAVEL DETAILS**

NAME _____

DATE _____ FROM _____ TO _____

DEPARTING* _____ TIME ARRIVING* _____

MODE OF TRAVEL _____

MILEAGE TRAVELED _____

DATE _____ FROM _____ TO _____

TIME DEPARTING* _____ TIME ARRIVING* _____

MODE OF TRAVEL _____

MILEAGE TRAVELED _____

OTHER DETAILS PERTINENT TO REIMBURSEMENT:

***APPROXIMATE TIME**

1. Please submit this form along with your Motel/Hotel receipt and signed travel vouchers to the Council secretary before you leave.
2. If you are submitting your travel claim separately or have done travel other than the Board meetings, please be sure to submit your claim within a 10-day time period.
3. If you are traveling and will complete your travel before June 30th of any year, you must have the travel claim turned in before June 30th.
4. Any travel performed before June 30th and not submitted before July 1st CANNOT BE REIMBURSED DUE TO FISCAL YEAR ENDING.
5. If you have any questions, please call the Board Secretary at 444-6576.

TRAVEL GUIDE

Meals:

1. Must have traveled for more than 3 continuous hours and be a distance of at least 15 miles from headquarters or home, whichever is closer. (ARM 2.4.126)
2. A maximum of 2 meals during the travel shift. A travel shift is defined as that period of time beginning 1 hour before or terminated more than 1 hour after normally assigned work shift. (ARM 2.4.127)
3. Time ranges – Must have traveled for more than 3 continuous hours within one of the following time ranges (ARM 2.4.128):

Travel Time:

In-State

Out-of-State

❖ Three hours or less

None

None

❖ Greater than three hours and at least three hours within the ranges below:

Morning (12:01 a.m. – 10:00 a.m.)

\$8.25

\$13.00

Midday (10:01 a.m. – 3:00 p.m.)

\$9.25

\$15.00

Evening (3:01 p.m. – 12:00 midnight)

\$16.00

\$26.00

Total for the day:

\$33.50

\$54.00

- ❖ Only 1 meal per day when travel is performed solely within the confines of a travel shift. (ARM 2.4.130)
- ❖ Two meals per 24-hour calendar day when departing within the travel shift but returning outside the limits or departing prior to travel shift and returning during travel shift. (ARM 2.4.130)

Mileage:

The reimbursement rate for mileage driven in connection with State business is 65.5 cents per mile. To claim reimbursement at this rate the employee must qualify according to the Administrative Rules of Montana (A.R.M.) Section 2.4.114. Total mileage will be determined by Board policy.

Tab 6

Section II
Montana School for
the Deaf and Blind
(Foundation)

MSDB Foundation

Alone we can do so little; together we can do so much.

- Helen Keller

The MSDB Foundation provides Montana's deaf and blind children with opportunities for academic and social development similar to those of other children, in order to better prepare them for independent lives.

With the help of many generous donors, the Foundation has funded a large technology program that brought the School into the 21st century, an updated and automated library with an expanded collection, a playground accessible for children with vision or hearing loss, and many programs that directly benefit MSDB students.

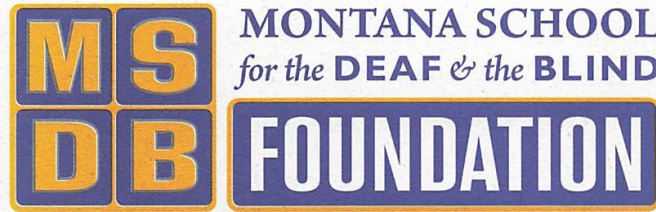
The MSDB Foundation provides ongoing support for:

- job training and career preparation
- assistive technology
- outreach services for students in their home communities
- capital improvements on campus

Each year, the Foundation supports a wide range of academic and extracurricular activities that improve the students' self confidence, quality of life, and education. These include:

- MSDB's Academic Bowl team
- Visually Impaired Games
- Summer camps for kids from across the state
- Family Learning Weekends
- Academic achievement awards
- Field trips
- Holiday parties, proms, and a yearbook
- Expressions of Silence – a performing group of students who use sign language choreographed to recorded music to “sing” songs for audiences at various events.

**MONTANA SCHOOL FOR THE DEAF AND THE BLIND
FOUNDATION BOARD MEMBERS AND ASSOCIATES**



Mark Willmarth—President

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Laura Walker—Sec. /Treas.

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**AGREEMENT
BETWEEN THE
MONTANA BOARD OF PUBLIC EDUCATION
AND THE
MONTANA SCHOOL FOR THE DEAF AND THE BLIND FOUNDATION, INC.
SEPTEMBER 15, 2014**

This agreement (“Agreement”) is entered into by the Montana Board of Public Education (“Board”) and the Montana School for the Deaf and the Blind Foundation, Inc. (“Foundation”), a non-profit corporation organized under the laws of the State of Montana.

RECITALS

WHEREAS, the Montana School for the Deaf and the Blind (“School”) is an independent institution under the general supervision, direction and control of the Board of Public Education (“Board”) as described in Mont. Code Ann. 20-8-101; and

WHEREAS, the Montana School for the Deaf and the Blind Foundation, Inc. (“Foundation”) is a private, nonprofit corporation organized for the purpose of benefiting children and youths who are deaf, hard of hearing, blind, visually impaired and deaf blind and who are, or have been, students of the School for the Deaf and the Blind; and

WHEREAS, the Foundation is an independent corporation whose relationship to the Board and the School is described in this Agreement, the Articles of Incorporation of the Foundation, the By-laws of the Foundation, and Rules 10.59.101 through 104, Administrative Rules of Montana; and

WHEREAS, pursuant to Mont. Code Ann. 20-8-111, the Board has the authority, through a contract with a nonprofit corporation, to designate to said nonprofit corporation the power to receive, hold, manage, use, and dispose of real and personal property

transferred to the Board or to the State of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the School; and

WHEREAS, the Board and the Foundation wish to enter into this Agreement in order to make the Foundation its designee as described in Mont. Code Ann. 20-8-111 and in order to establish the relative duties and responsibilities of the parties.

NOW THEREFORE, based upon the above recitals and the mutual agreements contained in this Agreement, the parties agree as follows:

I. Designation of Foundation.

Pursuant to Mont. Code Ann. 20-8-111, the Board hereby engages the Foundation to render, and the Foundation agrees to render to the Board, the receipt holding, management, use and disposal of all real and personal property transferred to the Board or to the State of Montana by purchase, gift, devise, bequest or otherwise, and the proceeds, interest, and income thereof for the use and benefit of the students and programs of the School.

II. Articles of Incorporation.

The Foundation agrees that it shall maintain articles of incorporation which include the following provisions:

A. The Superintendent of the School shall by virtue of his or her office be one of the members of the Foundation's Board of Directors until his or her successor is duly appointed.

B. A designated member of the Foundation Board will present a quarterly report to the Board of Public Education either by mail or in person that would include a budget summary and minutes of meetings held.

III. Foundation Bylaws.

The Foundation agrees that it shall maintain bylaws which without limitation cover selection of officers, meetings, compensation for services and amendment procedures.

IV. Foundation Duties and Responsibilities.

A. The Foundation shall receive, hold, manage, use and dispose of real and personal property made or transferred to the Board or to the State of Montana by purchase, gift, devise, bequest or otherwise acquired, and the proceeds, interest and income for the use and benefit of the students and former students of the School and other students served by the School.

B. In fulfilling its responsibilities under this Agreement and Mont. Code Ann. 20-8-111, the Foundation agrees that it will:

1. Comply with applicable state and federal law;
2. Maintain financial and accounting records in accordance with generally accepted accounting principles, have an audit performed by a certified public accountant at least once every two years, and provide the Board with a copy of the most recently audited financial statement;
3. Provide the legislative auditor access to records as may be necessary to comply with the requirements of Mont. Code Ann. 18-1-118(2), except that the financial

records of private donors are confidential and shall not be released or accessed by the public unless required by law;

4. Establish and maintain a written policy covering the acceptance, management, disposal or expenditure of income, proceeds, interest and property managed by the Foundation pursuant to this Agreement.

V. Relationship Between Foundation and Board.

A The Board recognizes that the Foundation is a private, nonprofit organization independent of the Board;

B. The Board agrees to encourage and maintain the independence of the Foundation, while fostering a cooperative relationship between the Board and the Foundation;

C. The Foundation agrees to cooperate with the Board in fulfilling the Foundation's purposes as defined in its articles of incorporation and in complying with its responsibilities under this Agreement.

VI. Liability Exposure.

The parties agree that the liability of the Board, its officials and employees, is controlled and limited by the provisions of title 2, chap. 9, Mont. Code Ann. Any provisions of this Agreement shall be controlled, limited, and otherwise modified to limit any liability of the State of Montana and the Board to that set forth in title 2, chap. 9, Mont. Code Ann.

VII. Indemnification.

Each party agrees to be responsible and assume liability for its own wrongful or

negligent acts or omissions, or those of its officers, agents or employees, to the full extent required by law. Each party agrees to maintain reasonable coverage for such liabilities either through commercial insurance or a reasonable self-insurance mechanism, and the terms of such insurance coverage or self-insurance mechanism shall be provided to the other party upon request.

VIII. Term of Agreement; Entire Agreement.

This Agreement shall begin on the date of its execution by both parties and shall continue until terminated by either party as provided in this Agreement or until superseded by a subsequent agreement between the parties. This Agreement shall be considered the sole and entire Agreement between the parties and shall supersede and replace all pre-existing agreements between the parties.

IX. Termination.

This Agreement may be terminated at any time by the mutual written consent of the parties or upon sixty (60) days written notice by one party to the other party.

X. Dissolution.

If the Foundation's corporate structure is dissolved, the board of directors of the Foundation shall dispose of all the assets of the Foundation in accordance with the laws of the State of Montana and the terms of its articles of incorporation and by-laws. Any assets not so disposed of shall, to the extent allowed by law, be transferred to the Board.

XI. Amendments.

This Agreement may be modified by written amendments signed by authorized representatives of both parties.

XII. Disputes and Venue.

This Agreement is governed by the laws of the State of Montana. The parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court in and for the County of Lewis and Clark, State of Montana. Each party shall pay its own costs and attorney fees.

The following persons, being duly authorized to sign this Agreement and bind the above-named parties, do hereby execute this Agreement on the date shown below.

MONTANA SCHOOL FOR THE
DEAF AND THE BLIND FOUNDATION, INC.

By: John Masgrove

Title: President

Date: Oct 29, 2014

BOARD OF PUBLIC EDUCATION

By: Sharon Carroll

Title: Chair

Date: November 13, 2014

Tab 7

**Montana School
for the Deaf and
Blind
(MSDB)**

A Dedicated Team of Experts

MSDB's professional team of teachers and specialists has been highly trained to meet the specific educational needs of students with vision or hearing loss. The majority of the School's teachers have advanced degrees in the education of the deaf or the education of the blind, and their expertise is matched by their passion for their work.

Working in collaboration with the experienced and caring teachers, outreach consultants, and interpreters are two audiologists, a speech pathologist, transition specialist, orientation and mobility specialist, occupational therapist, physical therapist, guidance counselor, behavior specialist, and a school psychologist. The residential cottage attendants are trained and certified under the Residential Child and Youth Care Professional Program.

This dedicated staff of experts is committed to providing the best educational experiences to their students. The staff is led by an administrative team consisting of a Superintendent, Principal, Director of Student Services, Director of Outreach, and Business Manager.

Superintendent

Paul Furthmyre

Principal

Julie-Dee Alt

Director of Student Services

Jim Kelly

Business Manager

Donna Schmidt

Director of Outreach

Carol Clayton-Bye

Guidance Counselor

Trudy Hill

School Psychologist

OPEN

Audiologist

Dr. Katie Lynch

Lisa Cannon

Behavior Specialist

Yvette Smail

Speech Pathologist

Sherri Widhalm

Orientation & Mobility Specialist

Geri Darko

Physical Therapist

Laurie McRae

Occupational Therapist

Stephanie Annis

Maintenance Supervisor

Alex Sebik

Transition Specialist

Sheri Devlin