

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN KATHLEEN GALVIN-HALCRO**, on March 30, 2005 at 3:15 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Kathleen Galvin-Halcro, Chairman (D)
Rep. Joan Andersen, Vice Chairman (R)
Rep. Gary Branae, Vice Chairman (D)
Rep. Edward B. Butcher (R)
Rep. Margaret H. Campbell (D)
Rep. Tim Dowell (D)
Rep. Wanda Grinde (D)
Rep. Roger Koopman (R)
Rep. Bob Lake (R)
Rep. Joe McKenney (R)
Rep. Holly Raser (D)
Rep. Jon Sonju (R)
Rep. Dan Villa (D)
Rep. John Ward (R)
Rep. Jeanne Windham (D)

Members Excused: Rep. Scott Sales (R)

Members Absent: None.

Staff Present: Chris Lohse, Legislative Branch
Eddy McClure, Legislative Branch
Nina Roatch-Barfuss, Committee Secretary
Linda Keim, Transcribing Secretary

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

Committee Business Summary:

Hearing & Date Posted: HJ 35, 3/22/2005; SB 224, 3/24/2005
Executive Action: SB 224, SB 198

HEARING ON HJ 35**REP. ELSIE ARNTZEN, HD 53, BILLINGS****Opening Statement by Sponsor:**

REP. ELSIE ARNTZEN opened the hearing on **HJ 35**, a study resolution to investigate the options for providing a State policy authorizing the administration of prescribed medications during the school day by a parent-designated school employee or by student self-administration. She handed out and briefly discussed the following: a manual entitled "Serving Students with Health Care Needs in Public Schools," a paper listing Medical Conditions and possible Medications, and a sample general policy that school districts are getting from Office of Public Instruction (OPI) to write their own policy.

[EXHIBIT](#)(edh67a01)

[EXHIBIT](#)(edh67a02)

[EXHIBIT](#)(edh67a03)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11}

Proponents' Testimony:

Erik Burke, Montana Education Association /Montana Federation of Teachers (MEA/MFT), stated the need for a statewide policy on medication administration to students. He passed out a suggested amendment and asked for support of HJ 35.

[EXHIBIT](#)(edh67a04)

Jenifer Sheehy, Family Nurse Practitioner, Montana Nurses Association, presented and read written testimony.

[EXHIBIT](#)(edh67a05)

{Tape: 1; Side: A; Approx. Time Counter: 11 - 14.8}

Lance Melton, Montana School Boards Association (MTSBA), voiced their support for HJ 35 and the Amendments suggested by MEA/MFT. He said they have a model policy that has been used by their members since 1996. It is not just a matter of what the current law allows, but whether that is the best thing for the children.

{Tape: 1; Side: A; Approx. Time Counter: 14.8 - 17.1}

Darrell Rud, Executive Director, School Administrators of Montana (SAM), noted strong support for HJ 35.

Rod Svee, Superintendent of Schools, Billings, asked the Committee to look at medical procedures as well as medication because there are definite needs. He discussed specific situations where staff have to step in when a nurse is not

available. He stated, "It is not wise medically and there may be liability involved, but it is necessary at times."

{Tape: 1; Side: A; Approx. Time Counter: 17.1 - 21.2}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. SONJU discussed the cost of the OPI report (Exhibit 1) which is estimated at \$22.36/copy or \$9,000 for 400 copies and asked if the cost of something like that would be in the report to the 60th Legislature. **REP. ARNTZEN** said she had no input in that document. She said there is no Fiscal Note and suggested that the cost would not be publicized.

REP. SONJU noted that 20 reports had been handed out in Committee at a cost of \$400 and asked if they could be recycled. **REP. ARNTZEN** said she was going to ask that they be returned so she could take them back to OPI.

REP. WINDHAM voiced concern about doing a study when medicine is an ever-changing area. She asked if any other state has a Statute dealing with what is being requested in the study. **REP. ARNTZEN** redirected to Lance Melton. **Mr. Melton** said he was familiar with asthma and glucogen and noted the issues seem to come one at a time. He stated that he did not have specific information on any comprehensive action. He said that the definition of the practice of nursing in those states and the Statutes addressing what types of medications could be administered in the schools are intertwined because of the problem of practicing without a license.

REP. WINDHAM said it seemed they could have saved a lot of time and money by researching that instead of doing another study. **Mr. Melton** said there is a model existing in the state. It is: "Rules Adopted by the Board of Nursing for Delegation of Tasks to Unlicensed Persons." He suggested possible incorporation of the Rules into Statute to assure parents this is ongoing State policy.

{Tape: 1; Side: A; Approx. Time Counter: 21.2 - 27.1}

REP. WINDHAM asked about providing a copy of any Statute enacted to local school districts. **Mr. Melton** said a lot of school districts have this kind of policy. This process would help them reach agreement and understanding with the nursing profession as to what is safe.

REP. LAKE asked **REP. ARNTZEN** how the study would be funded. **REP. ARNTZEN** said she did not know how much these studies would cost and there is no Fiscal Note.

{Tape: 1; Side: A; Approx. Time Counter: 27.1 - 28.7}

REP. LAKE asked who would participate in this study. **REP. ARNTZEN** answered it would be the people at the Hearing and hoped to have parent and medical profession involvement, teachers and certified staff.

REP. LAKE felt that other studies are available and questioned the anticipation of going to the level of accepted care with teachers and asked how the liability is going to be covered.

REP. ARNTZEN stated, "We need to look at what we are taking care of in our schools now." She said the list is inconclusive.

REP. BUTCHER referred to the list of procedures under Digestive Disorder (Exhibit 2) which include tracheotomy and catheter, and asked if a non-nurse can be legally trained for that. **Jenifer Sheehy** said nurses are accustomed to training individuals to carry out these functions in the home setting. She felt there are some liability issues that need to be addressed in an institution, and that would be the key purpose of this study.

REP. BUTCHER asked if any small school heading in this direction would have to hire a nurse. **Ms. Sheehy** said that ideally everyone would have access to a nurse.

REP. BUTCHER said there are 11 schools in his district but only one has access to a nurse and asked if about half of the procedures listed would almost necessitate a nurse. **Ms. Sheehy** said that ideally they would all be carried out by a nurse or a medical professional. The issue is that is not possible.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 6.3}

REP. BUTCHER asked about the manual (Exhibit 1). **Cathy Warhank, OPI**, said the manual was published several years ago to support the efforts of people working with Special Education students who have more medically compromised issues. She stated it was recently updated to recognize other severe health issues and now includes students who use inhalers or short-term medicine.

REP. BUTCHER noted the \$22 cost of the book and asked why it wasn't put on-line so it could be printed off. **Cathy Warhank** said it is on-line, and only a limited number were printed.

REP. BUTCHER asked if the motivation for this bill came indirectly from OPI or if it was from one of the schools. He noted that a lot of research has already been done. **REP. ARNTZEN** said she is an elementary school teacher and works with the problem daily. She brought the bill forward on her own.

REP. BUTCHER asked if any research had been done to see how this was taken care of in other states before introducing the bill.

REP. ARNTZEN said she looked into this, but not in great depth. She will research this before Executive Action.

{Tape: 1; Side: B; Approx. Time Counter: 6.3 - 11.9}

REP. ANDERSEN asked if the members of the committee will take input from other people or if the various entities that have a stake in this will make up the committee. **REP. ARNTZEN** said there are varied interests that need to be there such as nurses, parents, teachers and medical association representative.

REP. ANDERSEN asked **REP. ARNTZEN** whether she envisioned a different type of study that would be undertaken instead of an interim study. **REP. ARNTZEN** said legislators have the ability to gather information from the varied interests but a prior study needs to be done. She is looking for legislation where student rights are protected and the environment of the school is understood.

{Tape: 1; Side: B; Approx. Time Counter: 11.9 - 14.6}

REP. KOOPMAN asked whether MEA/MFT want the primary objective of this bill to be a uniform policy, recommendations or resources. **Erik Burke** said this issue has been addressed in the past on a piecemeal basis and the legislature could help with this. He stated that the group mentioned by **REP. ARNTZEN** needs to come together in order to come up with a consensus on what schools should do in a consistent manner.

{Tape: 1; Side: B; Approx. Time Counter: 14.6 - 18}

REP. KOOPMAN asked what MEA/MFT would like to see coming out of this. **Mr. Burke** said they need to come to a common understanding of what kind of procedures, medications and problems the schools are trying to deal with. She noted that they need to ask the nurses and the people who are trying to deal with these problems how they should be handled, and perhaps initiate legislation dealing with liability. It could be done on both a local and a state level to get a broad range of recommendations.

REP. KOOPMAN asked **REP. ARNTZEN** what the primary objectives of this study are. **REP. ARNTZEN** stated it would be the liability factor. She commented that it would also be understanding what medications are affecting education, administering medications

and the effect of administering medications on the educational environment.

REP. KOOPMAN asked if there was any objection to an amendment that would include a search of the work done in other states.

REP. ARNTZEN did not have a problem with adding that, but assumed that would already be part of the study.

Closing by Sponsor:

REP. ARNTZEN closed by saying that a lot of information can come from a study but the important thing is what is done with that information. Legislators need to make sure that good legislation comes from it at the next session. She also raised a lot of questions that could be answered by the study. She stated that she will get information to the Committee about what other states have done.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 25}

HEARING ON SB 224

SEN. JESSE LASLOVICH, SD 43, ANACONDA

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH opened the hearing on **SB 224**, a bill to allow educational services at an offsite instructional setting. This bill sets State policy around distance-learning and brings Montana up-to-date with current technology. This bill covers home-based instruction, provides alternative learning environments for children serving disciplinary suspensions, provides an innovative approach to improve graduation rights and allows dual credit for people wanting to get college credit while they are still in high school. He explained the Fiscal Note, which is based on current law and said it will change with current legislation. SB 224 makes no reduction to the general fund and has a positive impact because of SEN. STORY's bill.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 28.9}

Proponents' Testimony:

Lance Melton, Montana School Board Association (MTSBA), spoke in support of SB 224. He said the bill is needed because present law was developed before the invention of the internet and technology-based-learning. It is not clear as to whether attendance means physical presence in the building.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 5.8}

Madalyn Quinlan, representing State Superintendent of Schools, Linda McCullough, spoke in support of SB 224 and said she was available to answer questions about the Fiscal Note.

Erik Burke, Montana Education Association /Montana Federation of Teachers (MEA/MFT), voiced support of the way the bill sets the groundwork and the incentives so districts have the opportunity to provide distance-learning in a meaningful way.

Darrell Rud, Executive Director, School Administrators of Montana (SAM), spoke in favor of the bill and the local control aspect.

Rod Svee, Superintendent of Schools, Billings, agreed with former testimony. The uniformity of online services allows students in a Billings youth detention center to continue their education when they get back home. It will also allow services for some of their home-schooled students at a neutral site.

{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 11.2}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WARD asked if he understood correctly that this will open up services for home-schooled students. **Mr. Melton** said that is the basis of the \$370,000 estimate in the Fiscal Note.

REP. WARD referred to Page 3, Lines 1-3 that defines an off-site instruction setting and said he understood that a home-schooled student is not enrolled in the district. **Mr. Melton** said there is a provision in the law for part-time enrollment and a child could enroll to take two courses that a parent does not feel qualified to teach.

REP. LAKE asked for clarification of the term "special-needs." **Mr. Melton** said it would be a student who qualifies for the disability under the Individual Disability Education Act (IDEA). He said the distinction is whether the student is living within the district.

REP. LAKE asked if the district would receive the additional funding because of the classification even if the student isn't physically in the building. **Mr. Melton** said that was correct, the child could be served in an offsite group home or other residential setting. He stated that under existing law there is an obligation to serve the child at a full level.

REP. LAKE referred to Page 1, Line 25 and asked for an explanation. **Mr. Melton** said there are certain classifications where a district has to allow a child to attend their school, even if they reside out of the district. One is if they live closer to a school that is outside of their district. The other is an elementary child whose older sibling is in the high school that is attached to the component elementary district. In this case, the sending school is obligated to pay the tuition.

REP. LAKE asked if a child that was restricted to their home under a court order could take advantage of this education. **Mr. Melton** said this section does not address that situation. If the child was in the school system and is put under home arrest, that child would currently be dropped out of the system. This bill would allow the school to provide services offsite.

{Tape: 2; Side: A; Approx. Time Counter: 11.2 - 18}

REP. ANDERSON asked how students on suspension could be served through this bill. **Mr. Melton** said this bill would not require any alternative space; it would provide that curriculum through electronic means.

CHAIRMAN GALVIN-HALCRO asked whether the terms distance-learning and online-learning were being used interchangeably. **Mr. Svee** said, "Yes."

CHAIRMAN GALVIN-HALCRO asked if Billings has implemented any of this instruction and if there is any concern about the cost. **Mr. Svee** said they have not had a request for special equipment for special-needs children. He said Billings has some equipment set up offsite and it would not be a major expense.

CHAIRMAN GALVIN-HALCRO asked how a lecture is delivered to a student who may be home-bound or in a juvenile facility. **Mr. Svee** said they currently send a teacher to the facility. They would be able to take advantage of online courses if this bill were implemented. With the online option, they can still provide the services.

REP. KOOPMAN asked if the bill allowed public school students any flexibility in their school day while still remaining enrolled. **Mr. Svee** said that would be up to each school to decide.

REP. KOOPMAN asked how tests are administered. **Mr. Svee** said a test can be designed to allow an open book and can require research as a basis for the opinion. The teacher designs that into the course.

REP. SONJU asked if this would solve the problem for the Big Sky-Ophir School situation. **Mr. Melton, Office of Public Instruction (OPI)**, said it solves the problem for a lot of schools. It helps areas like Ophir have appropriate access to the curriculum and will be useful in other situations.

Closing by Sponsor:

SEN. LASLOVICH said they are giving school districts this option and if it is not practical the school districts would not be required to do it. He asked REP. LAKE to carry the bill on the House floor if he supports it and if the bill passes out of Committee.

{Tape: 2; Side: A; Approx. Time Counter: 18 - 29.5}

EXECUTIVE ACTION ON SB 224

Motion: REP. WARD moved that SB 224 BE CONCURRED IN.

Discussion:

REP. WARD asked for verification of Page 2, Line 8 from Ms. McClure and they discussed the correct interpretation.

Vote: Motion carried 15-1 by voice vote with REP. SALES voting no. REPS. LAKE, CAMPBELL, WINDHAM and SALES voted by proxy.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 2}

CHAIRMAN GALVIN-HALCRO said REP. LAKE will carry the bill. If he is not available, REP. BRANAE will carry it.

EXECUTIVE ACTION ON SB 198

Motion: REP. BRANAE moved that SB 198 BE CONCURRED IN.

Motion: REP. BRANAE moved that AMENDMENT SB 019801 BE ADOPTED.
EXHIBIT(edh67a06)

Discussion:

Ms. McClure explained the amendments and referred to the Gray Bill to discuss them. She said these amendments were requested by the Education Subcommittee that met March 22.

EXHIBIT(edh67a07)

REP. MCKENNEY recapped the Subcommittee meeting. He stated it was opened for public comment; proponents and opponents presented their testimony and members all agree on the amendments.

REP. DOWELL congratulated the Subcommittee on doing a good job of addressing concerns that came up in testimony and voiced support.

REP. LAKE asked if there were any accredited private schools in Montana and discussed whether a private school can be directed to do an activity. **CHAIRMAN GALVIN-HALCRO** said she interpreted the title of the bill to mean privately-funded schools. **Ms. McClure** said that amendment came at the request of the Office of Public Instruction (OPI).

REP. LAKE asked Mr. Meloy to address this concern. **Mr. Meloy** said that if they seek accreditation at the request of OPI, regardless of whether they are public or private, they fall under this bill.

{Tape: 2; Side: B; Approx. Time Counter: 2 - 14.4}

CHAIRMAN GALVIN-HALCRO said it is in Statute that if a school wants to be accredited they need to follow OPI guidelines.

Motion: **REP. KOOPMAN** moved to **SEGREGATE THE LAST TWO LINES OF NEW SECTION 2b (i) and NEW SECTION 4 of the proposed amendment.**

CHAIRMAN GALVIN-HALCRO said she understood that under this bill districts would be free to come up with their own definition and if they don't, then at a minimum they would need to include this definition. **Ms. McClure** discussed the motion.

REP. ANDERSEN said she would support the amendment.

REP. DOWELL stated he will resist the motion to segregate because he wants to support the Subcommittee and he also believes that every district will need some guidance.

REP. MCKENNEY said they need to define legislative intent as to what bullying, harassment and intimidation are.

REP. RASER agreed with **REP. MCKENNEY** that there needs to be a definition.

REP. KOOPMAN spoke about his amendment.

{Tape: 2; Side: B; Approx. Time Counter: 14.4 - 25.4}

REP. ANDERSEN said school boards will feel they have to address each issue when this kind of language is added to a bill. What they need to do is address a policy that keeps their children safe, allows them to learn, and doesn't try to define every possible situation that is going to affect a child in school. She said, "What affects a third grader is not going to be something that is pertinent to a fifth grader."

{Tape: 2; Side: B; Approx. Time Counter: 25.4 - 27.2}

CHAIRMAN GALVIN-HALCRO introduced Mr. Copps who has been asked to tell about a personal incident. **REP. KOOPMAN** and **REP. BUTCHER** stated that outside testimony was not allowed in Executive Action and said when an objection is raised in other committees, it is respected. **CHAIRMAN GALVIN-HALCRO** said, "We have heard from Mr. Meloy and there was no difference." **REP. KOOPMAN** again objected. **REP. BUTCHER** stated, "This is completely irregular." **CHAIRMAN GALVIN-HALCRO** asked Mr. Copps to tell the Committee how bullying has affected his life.

Mr. Copps told about his 5th-grade grandson who was shot and killed by a 4th-grader while waiting in line to come into school. He said the 4th-grader had already been in 11 different schools and some of the kids at school were teasing him. He stated schools have a responsibility to teach personal, interpersonal and social skills and assess how well that job was done on a school-wide basis. If that is not done, the chances increase for a tragedy in the school system.

REP. SONJU asked about the language on Page 5 of the Gray Bill. **Ms. McClure** explained.

REP. MCKENNEY discussed the definition of harassment and said concern was voiced about that at the Hearing. He spoke in favor of the amendments.

CHAIRMAN GALVIN-HALCRO asked for a vote on the amendments minus the language that was segregated out.

Vote: Motion carried 14-2 by roll call vote with **REP. SALES** and **REP. WARD** voting no. **REPS. CAMPBELL, SALES** and **WINDHAM** voted by proxy.

CHAIRMAN GALVIN-HALCRO asked for a vote on including the language that **REP. KOOPMAN** segregated out of the amendments.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 11.2}

Vote: Motion carried 10-6 by roll call vote with **REP. ANDERSEN, REP. BUTCHER, REP. KOOPMAN, REP. LAKE, REP. SALES,** and **REP. WARD** voting no. **REPS. CAMPBELL, SALES** and **WINDHAM** voted by proxy.

Discussion:

REP. BUTCHER stated that putting policies into Statute does nothing to solve the issue; it just drives this underground and creates an opportunity for litigation and conflict.

{Tape: 3; Side: A; Approx. Time Counter: 11.2 - 14.3}

REP. SONJU said this is a liability issue and schools want to protect themselves. He expressed support for the bill and said that if this protects kids from getting shot it is worthwhile.

REP. LAKE asked why the Board of Education hasn't already done this. He said that kids act disciplined and respectful because of how they are instructed not because of a piece of paper.

{Tape: 3; Side: A; Approx. Time Counter: 14.3 - 19.4}

REP. MCKENNEY said the bill now leaves it up to individual school boards to make policy. He noted that society has changed and it is affecting our kids. He voiced support for the bill.

REP. WINDHAM said teachers are doing the best they can and this bill is one more tool to help them.

REP. RASER agreed with **REP. WINDHAM** and stated there is only so much teachers can do.

REP. LAKE said it is a circumstance of someone sitting on the outside looking in.

{Tape: 3; Side: A; Approx. Time Counter: 19.4 - 24}

REP. WINDHAM said this is a school safety issue and something should have been done two years ago. She will support the bill.

{Tape: 3; Side: A; Approx. Time Counter: 24 - 26.7}

REP. BUTCHER discussed the Lewistown school shooting and noted that the problems are often because of their home life. He said schools already have policy and violent acts are covered by laws.

{Tape: 3; Side: A; Approx. Time Counter: 26.7 - 30}

CHAIRMAN GALVIN-HALCRO thanked the Subcommittee and everyone involved in working on the compromise and said she had waited two years for the issue to be addressed. She discussed the value of putting the issue at the forefront and said she would support the legislation.

Vote: Motion carried 11-5 by roll call vote with **REP. ANDERSEN**, **REP. BUTCHER**, **REP. KOOPMAN**, **REP. SALES**, and **REP. WARD** voting no. **REPS. CAMPBELL**, **KOOPMAN**, **SALES** and **VILLA** voted by proxy.

CHAIRMAN GALVIN-HALCRO said that **REP. FACEY** will carry the bill.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 3.4}

With no further business, **CHAIRMAN GALVIN-HALCRO** adjourned.

ADJOURNMENT

Adjournment: 6 P.M.

REP. KATHLEEN GALVIN-HALCRO, Chairman

LINDA KEIM, Secretary

KG/lk

Additional Exhibits:

EXHIBIT ([edh67aad0.PDF](#))