SENATE EDUCATION
EXHIBIT NO. 2
DATE 2-18-05
BILL NO. SB-333

MICHAEL DAHLEM

Attorney at Law

215 Eddy Avenue ◇ Missoula, MT 59801
Phone (406) 721-1940 ◇ Fax (406) 721-1942
E-mail: mwdahlem@qwest.net

TESTIMONY OF MICHAEL DAHLEM TO THE SENATE EDUCATION COMMITTEE IN SUPPORT OF SB 333 – FEBRUARY 18, 2005

I appear today on behalf of the Indian Impact Schools of Montana in support of SB 333. This legislation is necessary to bring Section 20-9-501, MCA into compliance with the federal Impact Aid statute, 20 U.S.C. § 7709. As you may know, 73 Montana school districts receive more than $38 million each year in federal Impact Aid. These funds are necessary to replace property tax revenue that is not received from land and property owned or held in trust by the federal government.

As you may also know, the 2003 Montana Legislature adopted SB 424. This bill amended Section 20-9-501, MCA to prohibit school districts from charging the retirement, social security or unemployment insurance costs of federally funded employees, including employees paid with Impact Aid, to their county retirement fund. These county funds are subsidized with State Guaranteed Tax Base (GTB) aid based on the taxable valuation of the county. The net effect of the passage of SB 424 has been the annual loss of approximately $15 million in state and county funds to Montana school districts. Earlier this session, this Committee heard testimony on SB 147, a bill that would repeal SB 424 in its entirety.

In response to the adoption of SB 424, the Indian Impact Schools of Montana made an inquiry to the United States Department of Education regarding the apparent conflict between Section 20-9-501, MCA, as amended by SB 424, and the federal Impact Aid statute, 20 U.S.C. § 7709. Section 8009 (a) of that statute provides that a State may not consider Impact Aid payments in determining a school district's eligibility for State aid. The federal statute further provides that a State may not provide less State aid than a school district would have received had it not been eligible for Impact Aid.

Following a public hearing, the Department of Education issued a preliminary determination on June 9, 2004 that the Section 20-9-501, MCA, as amended by SB 424, violates the federal Impact Aid statute by requiring state officials to take a school district's receipt of Impact Aid into consideration in determining a district's eligibility for State GTB aid and by reducing the amount of that aid based on a district's eligibility for Impact Aid.

Following proceedings in State District Court, the Montana Supreme Court issued a preliminary injunction pending appeal on August 18, 2004 preventing the State of Montana and 19 counties from complying with SB 424 as applied to employees paid with federal Impact Aid. That injunction was dissolved on September 28, 2004 after county commissioners set the retirement levies and many school districts amended their budgets in reliance on the preliminary injunction. The appeal of the

District Court's denial of the request for a preliminary injunction is still pending before the Montana Supreme Court.

On February 3, 2005, the Indian Impact Schools of Montana and two school districts filed suit in Federal District Court. On February 9, the Attorney General, the Superintendent of Public Instruction and the plaintiffs filed a Stipulation for Entry of Judgment and Permanent Injunction with the Court. Yesterday, Chief Federal Judge Donald Molloy granted a permanent injunction that requires both the State of Montana, operating through the Superintendent of Public Instruction, and its political subdivisions to reimburse Montana school districts for the retirement, social security and unemployment insurance costs of employees paid with federal Impact Aid on the same basis as employees paid from state or local funding sources. The injunction has a retroactive effective date of July 1, 2004. A copy of the Stipulation and Judgment are attached to this testimony.

In light of the determination of the United States Department of Education and the injunction issued by the Federal District Court, it is clear that Section 20-9-501, MCA must be amended to bring it into conformity with federal law. The passage of SB 333 will fully accomplish this purpose and its retroactive effective date of July 1, 2004 will ensure that school districts are made whole for the state and county funds they have lost this school fiscal year.

I strongly urge this Committee to pass SB 333. Respectfully submitted this 18th day of February, 2005.

Michael Dahlem

Michael Dahlem, Esq.
215 Eddy Avenue
Missoula, MT 59801
(406) 721-1940

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BROWNING PUBLIC SCHOOLS, POPLAR PUBLIC SCHOOLS and INDIAN IMPACT SCHOOLS OF MONTANA, Plaintiffs, v. STATE OF MONTANA and SUPERINTENDENT OF PUBLIC INSTRUCTION, Defendants.	)	Civil No. CV 05-04-H-DWM **STIPULATION FOR ENTRY OF JUDGMENT AND PERMANENT INJUNCTION**

COMES NOW, the undersigned and state that this Court has jurisdiction to grant relief in this matter pursuant to 20 U.S.C. § 7709 (e) or, in the alternative, because the State of Montana has waived its Eleventh Amendment immunity from suit. The undersigned request that this Court enter the enclosed permanent injunction restraining the Defendants, their agents, employees, and all persons and political subdivisions acting under the color of state law, from complying with Section 20-9-501, MCA (2004) as applied to school district employees paid with federal Impact Aid. All parties, persons and political

subdivisions so enjoined shall, retroactive to July 1, 2004, reimburse Montana school districts for the retirement, social security and unemployment insurance costs of these employees in the same manner as if they were paid from state or local funding sources.

Submitted this 9th day of February, 2005.

Michael Dahlem

Michael Dahlem, Esq.
215 Eddy Avenue
Missoula, MT 59801

Attorney for Plaintiffs

Mike McGrath, Attorney General
Sarah Bond, Assistant Attorney General
Montana Department of Justice
P.O. Box 201401
Helena, MT 59620-1401

Attorney for Defendant State of Montana

Cathy Warhank

Cathy Warhank, Chief Legal Counsel
Office of Public Instruction
P.O. Box 202501
Helena, MT 59620-2501

Attorney for Defendant Superintendent of Public Instruction

RECEIVED
FEB 1 1 2005
Clerk, U. S. District Court
District of Montana
HELENA

FILED
MISSOULA, MT
2005 FEB 17 PM 12 32
PATRICK E. DUFFY
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BROWNING PUBLIC SCHOOLS, POPLAR PUBLIC SCHOOLS and INDIAN IMPACT SCHOOLS OF MONTANA,	)	Civil No. CV 05-04-H-DWM
Plaintiffs,	)	
v.	)	**JUDGMENT**
STATE OF MONTANA and SUPERINTENDENT OF PUBLIC INSTRUCTION,	)	
Defendants.	)	

Upon the stipulation of the parties, and for good cause shown, it is Ordered and Adjudged that the Defendants, their agents, employees, and all persons and political subdivisions acting under the color of state law, shall be permanently enjoined from complying with Section 20-9-501, MCA (2004) as applied to school district employees paid with federal Impact Aid. The Defendants and all persons and political subdivisions so enjoined shall, retroactive to July 1, 2004, reimburse Montana school districts for the retirement, social security and unemployment insurance costs of these employees in the same manner as if they were paid from state or local funding sources. Each party shall bear its own fees and costs.

Dated this 16 day of February, 2005.

17:30 p.m.

District Court Judge