



MTSBA

"...fostering excellence in public education
through
school board leadership."

Date 11 JAN 07
Bill No. SB49

TO: Senate Judiciary Committee

FROM: Debra A. Silk, Associate Exec. Dir. / General Counsel
Montana School Boards Association

RE: SB49

DATE: Thursday, January 11, 2007

The Montana School Boards Association appreciates Senator Esp's introduction of SB49. However, as written, MTSBA opposes the bill for the following reasons:

- This bill will force school districts to enroll children who may have been expelled in their home district, only to be shipped off to a non-parent relative. The child under existing law is subject to discretionary enrollment. By changing the residence to whomever the child happens to be with, the child becomes a mandatory enrollee. By way of example, we often deal with many situations in our public schools where a student is expelled from one district for violation of school rules and/or violation of the law. In order to get the child enrolled in another school district, the parent voluntarily has the child live with a relative in another school district. Under existing law, a school district may (but is not required to) enroll the child under the discretionary out-of-district attendance statute (§ 20-5-320), MCA). In determining whether to enroll the student, most of the school districts in this state have discretionary out-of-district policies that provide that students who are expelled from another district will not be allowed to enroll. Another factor that schools look at is whether the student is in good standing with the last school attended. This bill takes away a school district's discretion to determine whether out-of-district students should be enrolled.
- This bill impinges on local control and will impede a school board's rights under Article X, Section 8 of Montana's Constitution to "supervise and control" the schools within their boundaries. This bill gives the parents, caretaker relatives and students the right to determine where the student will be educated and will cause much confusion for our schools. Existing law is clear – A student has the right to attend public school in the district where the parent(s) reside, unless other statutory circumstances exist requiring mandatory attendance under § 20-5-321. If a minor student disagrees with a parent about where the student will be attending school, under this bill, the minor child can go live with a relative thereby being entitled to attend school in the district in which the relative lives.
- This bill will strip school districts of the right to collect tuition from the home district that they are currently collecting right now. That could mean a \$1,300-\$1,800 per child shortfall for districts that currently collect tuition from the home district for such children.
- It will force school districts to regulate and referee family relationships in dysfunctional environments. The caretaker has quasi authority to direct the child's education, until

mom or dad shows back up and usurps that authority. The district will have to referee these battles. School districts will undoubtedly get caught up in domestic disputes. Under this bill there will be disputes about who has the right to admit a child to a school and who as the right to access school records. This could cause increased litigation for Montana's public schools.

- The bill contains many ambiguities, e.g., no definition of "full-time" under Section 2, contact between the parent and caretaker relative – does not require the caretaker to contact the parent. Section 2 and the sample affidavit simply provide that the "caretaker relative is unable to contact the parent . . ."
- The immunity provision needs to be broader than currently written. There should be few if any qualifiers. Nothing would prevent the parents, for example, from initiating a lawsuit against the school for violation of the parents' rights and subjecting the school district and its employees to protracted litigation as a result of following the directives of the caretaker, not the parents. Caretaker relatives should be required to fully indemnify the school district and its employees in the event the school district gets sued as a result of reliance upon the caretaker relative.
- The bill jeopardizes federal funding for schools. The Family Educational Rights and Privacy Act ("FERPA") protects the disclosure of information from educational records to outside third parties without the consent of the parent. Although FERPA defines parent broadly (34 CFR 99.3 -- Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian), if there are disputes between the parent and the caretaker relative (which undoubtedly there will be), the District will be forced to make a call as to whether information should be released to the parent or to the caretaker relative and could be faced with a FERPA violation if they are wrong and disclose information to the caretaker relative over the parent's objection.
- There are no enforcement provisions for a caretaker relative who signs the affidavit knowing that the information is false and/or a parent who is involved in collusion with the caretaker relative.

In addition to the foregoing, while Senator Esp's intentions are completely valid, it is the position of MTSBA that under the circumstances described in SB49 (i.e., the natural parent abandons the child to another), the interests of the child and the caretaker of the child would best be served by petitioning the court to obtain temporary care and custody of the child. In such a circumstance, the Court would set forth the powers and duties of the caretaker and would undoubtedly address the issue of education and medical care.

Thank you.