

K-12 School Accreditation Standards: An Overview of the Process for Adoption or Amendment of Standards and Review of the Process Related to the Montana Common Core Standards

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Purpose

Montana K-12 school accreditation standards are updated on an ongoing basis by the Board of Public Education (BPE) following recommendations from the Superintendent of Public Instruction. At the June 24, 2013 Education and Local Government Interim Committee (ELG) meeting, following discussion of the work plan and public input, the committee directed staff to prepare this overview and review. Staff reviewed the legal framework and case law related to the adoption of standards of accreditation as well as minutes from BPE and ELG meetings and MAR notices from the relevant time period.

Overview of the Process for Adoption or Amendment of Accreditation Standards

Article X, Section 9(3) of the Montana Constitution creates the Board of Public Education to “exercise general supervision over the public school system”.

The authority of the Board of Public Education was affirmed in Board of Public Education v. Administrative Code Committee, Cause No. BDV-91-1072 (1992) First Judicial District, Lewis & Clark County. Judge Sherlock ruled 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.” Id. at 11.

The Board of Public Education’s powers and duties are listed in statute, including the adoption of standards of accreditation:

- 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.

“Accreditation standards” is defined in statute:

20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Accreditation standards" means **the body of administrative rules governing standards** such as:
 - (a) school leadership;
 - (b) educational opportunity;
 - (c) academic requirements;
 - (d) program area standards;
 - (e) content and performance standards;
 - (f) school facilities and records;
 - (g) student assessment; and
 - (h) general provisions.

Additionally, the Montana Supreme Court found in Helena Elementary School District No. 1 v. State, 236 Mont. 44, 57 (1989) that “the Montana School Accreditation Standards are minimum standards upon which quality education must be built.”

This “body of administrative rules governing standards” can be found in Title 10 of the Administrative Rules of Montana—Education. For this review the relevant chapters include:

Chapter 53. Content Standards. (These are the English language arts and literacy and mathematics content standards known as the Montana Common Core Standards. They were adopted on November 4, 2011, by the Board of Public Education.)

Chapter 54. Content Standards and Performance Descriptors. (This is the chapter that contains content standards in subject areas other than English language arts and literacy and mathematics which were previously located here before being repealed and reestablished in Chapter 53.)

Chapter 55. Standards of Accreditation. (This is where the bulk of the school accreditation standards are located.)

The process for adoption or amendment of standards of accreditation is described to some degree in statute:

20-7-101. Standards of accreditation.

(1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the education and local government interim committee for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.

(3) If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

During the 2009-2010 interim, ELG asked staff to work with the Board of Public Education (BPE) and the Office of Public Instruction (OPI) to establish a process for ELG review of accreditation standards and for development of a fiscal analysis by the Legislative Fiscal Division. The following table illustrates the non-statutory, non-binding process developed by the participants at that time.

Process for Fiscal Analysis of Proposed Accreditation Standards
Board of Public Education Meetings

	BPE Meeting 1	BPE Meeting 2	BPE Meeting 3
	<i>Information</i>	<i>Notice of Proposed Rulemaking</i>	<i>Adoption of Rule</i>
Prior to meeting:	BPE sends letter to the ELG to communicate the planned process and timeline for adoption of the content and performance standard.		BPE holds public hearing to receive input on the proposed standards.
At Meeting:	OPI presents cost assumptions to BPE along with draft version of standards.	Any revisions of proposed standards and cost assumptions are presented to BPE. BPE approves notice of proposed rulemaking, which begins the formal rulemaking process.	LFD fiscal analysis is presented to BPE.
Meeting Follow-up:	BPE sends letter to ELG with draft cost assumptions. ELG requests LFD analysis.	LFD prepares its fiscal analysis of the proposed rule.	If the proposed standard is substantially changed from the version in the Notice of Proposed Rulemaking, the LFD will revise its analysis and present its conclusions to BPE in a conference call prior to the next scheduled BPE meeting.

During the 2011-2012 interim, two major changes to the accreditation standards were in play: 1) changes in Chapters 53 and 54 related to Montana’s participation in the Common Core State Standards Initiative; and 2) various changes to Chapter 55 standards, including the incorporation of student performance (output) standards, anti-bullying policy requirements, and teacher evaluation and mentoring. The following timelines describe the process for each.

Chapters 53 & 54—Content Standards Adoption Timeline
for Montana Common Core Standards (MCCS)

May 12, 2011	Supt. Juneau recommends BPE adopt MCCS
May 26, 2011	BPE notifies ELG staff and LFD of proposed MCCS
June 13, 2011	ELG meets; BPE Executive Secretary Steve Meloy informs committee that MCCS are “in the pipeline to be adopted this fall”; explains the dynamic for fiscal analysis and that LFD has been informed (<i>No request for fiscal analysis</i>)[correction to this summary made 9/20/13 PM]
July 14-15, 2011	BPE update and discussion of process
September 8-9, 2011	BPE approves Notice of Public Hearing for MCCS and sets date
September 15, 2011	ELG is notified of proposed MCCS as part of Administrative Rules Report; some discussion including concern about costs and requirement for fiscal analysis (<i>No request for fiscal analysis</i>)
September 22, 2011	Notices of public hearing published in MAR (10-53-256 & 257) including delayed effective date of proposed rule changes to July 1, 2013
October 24, 2011	Public hearing on MCCS
November 1, 2011	OPI produces cost assumptions for implementation of MCCS (<i>Table indicates this happens earlier in process</i>)
November 4, 2011	BPE adopts MCCS for English Language Arts and Math
November 18, 2011	ELG receives OPI cost assumptions and requests fiscal analysis of implementing MCCS
November 25, 2011	MAR publishes notices of adoption and repeal with effective date November 26, 2011 (<i>Delayed effective date not part of adoption notice</i>)
January 24, 2012	LFD presents fiscal analysis (no substantial fiscal impact)
June 18, 2012	LFD presents refined fiscal analysis (no substantial fiscal impact)
July 1, 2013	Implementation of MCCS

Chapter 55—Accreditation Standards Adoption Timeline
for revisions to accreditation standards related to bullying, variances to standards, student performance standards, teacher and administrator evaluation, etc.

March 23, 2012	ELG requests fiscal analysis of Chapter 55 revisions
May 10, 2012	Supt. Juneau recommends BPE adopt Chapter 55 revisions
June 18, 2012	ELG discussion of Common Core, “substantial”, etc.
July 26, 2012	Notice of public hearing published in MAR (10-55-262) including delayed effective date of proposed rule changes to July 1, 2013
August 20, 2012	BPE public hearing on Chapter 55 revisions
September 13, 2012	LFD presents fiscal analysis to ELG (no substantial fiscal impact)
September 14, 2012	BPE adopts Chapter 55 revisions to take effect July 1, 2013
October 11, 2012	MAR publishes notice of adoption and amendment
July 1, 2013	Chapter 55 Accreditation Standards revisions effective, including references to MCCA

Conclusion/analysis

In reviewing the adoption of the Montana Common Core Standards, it is difficult to conclude that a clear, workable process exists, despite efforts to establish one. It is also difficult to conclude that any major transgressions took place. Breakdowns in the process are noted in the timelines above, but these missteps can be attributed to each involved entity and appear to result from steps in the process being overlooked, unclear, or impractical.

Section 20-7-101(2), MCA, can be interpreted as requiring the Board to wait for the fiscal analysis to be completed before adopting a standard, but the statute is not as clear as it could be in that regard. Another interpretation could be that the statute simply requires the Board to submit each proposal to ELG. Regardless, it is hard to find harm when the Board delayed implementation of the standards until July 1, 2013, following the next regular legislative session in accordance with statute to accommodate either outcome of LFD’s analysis—substantial fiscal impact or no substantial fiscal impact. Much time can be spent analyzing each step in the table on page 3, but it must be remembered that the process outlined in the table is not legally binding.

During the 2011-2012 interim a great deal of time was devoted to the process for adoption and amendment of accreditation standards, including lengthy discussion of how “substantial fiscal impact” and “readily absorbed” should be defined. Even if the agreed upon process was followed, a number of questions can arise in trying to adhere to 20-7-101, MCA:

1. ELG exists for roughly 16 months of the 24-month biennium. How is 20-7-101(2) executed when there is no ELG?
2. Does every proposed adoption or amendment warrant a fiscal analysis? What if amendment is simply clean-up? Should ELG determine whether to request a fiscal analysis?
3. Is the intention that LFD's fiscal analysis be completed and reviewed by ELG prior to adoption? If so, statute could be clarified.
4. Does LFD determining what constitutes "substantial fiscal impact" and delaying the implementation of rule based on that determination in effect grant LFD authority over rulemaking?
5. LFD's determination of "substantial fiscal impact" is made on each proposal in isolation. What if multiple proposals, none of which have substantial fiscal impact separately, do add up to a substantial fiscal impact?
6. What if the legislature does not fund a proposed standard that LFD has determined to have "substantial fiscal impact"? May the proposed standard still be implemented on July 1 following the session?

Senate Bill No. 302 (2013—Arntzen) attempted to clarify the process for adoption or amendment of accreditation standards and addressed several of the above questions. In his veto of SB 302, Governor Bullock describes the balance of authority between the entities involved in the accreditation standard and budgeting process as "delicate" and acknowledges that "current provisions of law do require greater communication and cooperation." The ELG staff and authors of this brief concur with this analysis, but respectfully add that current provisions of law related to this topic as well as agreements previously negotiated between the entities could be reviewed and likely clarified in order to improve the required communication and cooperation.

With the current controversy surrounding the Common Core standards and the planned incorporation for science and social studies Common Core standards in the coming years, the process is likely to be under continued scrutiny. Moving forward, the committee might consider the following options:

- Striving for improved communication and cooperation with involved entities;
- Revisiting the process agreement with involved entities, either as a whole committee, subcommittee, work group, or staff assignment; and/or
- Clarifying the process as described in statute through legislation with input from involved entities.