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Representative David Bedey
Chair, Education Interim Budget Committee

RE: Follow up regarding access to student-level data by local, state, federal, and third-party entities

Dear Chairman Bedey,

This letter is to provide a follow up for the Education Interim Budget Committee (EIBC) regarding the analysis I submitted to the committee in December 2023 about legal provisions governing access to student-level data. I have reviewed the presentations made to EIBC at its meeting on December 13, 2023, and related correspondence between you, the Office of Public Instruction (OPI), and the vendor.

Upon review of those materials, I continue to be confident in my analysis as presented in my letter dated December 10, 2023. I do not believe there are barriers in statute, at the state or the federal level, that prevent the collection, use, sharing, and analysis of student-level data. I do not believe FERPA or Montana statutes prohibit OPI from collecting student-level data, as long as that data is collected and used in accordance with the applicable regulations; as discussed in my initial letter, multiple "FERPA exceptions" would potentially cover the situations for which OPI would gather and analyze student-level data.

Further, I do not agree that OPI is limited to collecting only data elements specified in statute, as evidenced by the fact that OPI was developing a statewide student information system with student-level data years before the original version of section 20-7-104, MCA was enacted. I do not agree with the argument that that the Superintendent is limited to collecting only data that is "required" to be collected by law. I also do not agree that OPI is constrained by the elements contained in the "AIM Data Dictionary," which is a resource of the agency's own creation. While it is a useful reference for districts designed to increase the consistency and accuracy of data collected, it is not itself a grant or limit of authority for OPI to collect data.

Finally, I do not agree that House Bill 949 (2023) amended state statutes in a way that would tie the hands of OPI in collecting student-level data. Instead, the primary purpose of HB 949 is to facilitate collection, use, sharing, and analysis of data to evaluate and maximize the benefit of various investments in education and workforce systems and ultimately to develop the full educational potential of Montanans.

In conclusion, I stand by the analysis I previously provided EIBC. I hope this follow-up adequately addresses your concerns. Please reach out if I can be of further assistance.

Sincerely,

/s/ Laura M. Sankey Keip

Laura M. Sankey Keip
Staff Attorney