



**MEETING PROJECT NAME: Education Advocates Meeting**

**DATE OF MEETING: September 10, 2019**

**TIME: 9:14 AM – 9:47 AM**

**LOCATION: OPI – 1201 11<sup>th</sup> Avenue Conference Room**

**ATTENDEES:**

**PRESENT**

Pad McCracken, Legislative Services

McCall Flynn, Education Policy Advisor, Governor's Office

Pete Donovan, Executive Director, Board of Public Education (BOPE)

Laura Sankey Keip, Attorney, Legislative Services (via computer)

Laura Smith, Deputy Director, Department of Health and Human Services (DPHHS), (via phone)

Diane Burke, Executive Director, Montana Quality Education Coalition (MQEC)

Tim Davis, Water Quality Division Administrator, Department of Environmental Quality (DEQ) (via phone)

Rebecca Harbage, Public Policy Director, DEQ (via phone)

Nancy Hall, Governor's Office of the Budget and Program Planning (OBPP) (via computer)

Stevie Schmitz, (via phone)

Alison Harmon, Dean of Education, MSU (via computer)

**OPI STAFF**

Elsie Arntzen, State Superintendent

Jule Walker, Deputy Superintendent for Operations

Susie Hedalen, Deputy Superintendent for Education Services

Julia Swingley, Chief Legal Counsel

Tracy Moseman, Health Enhancement Manager

Dylan Klapmeier, Director of Communications and Federal Regulations (via phone)

John Perkins, Director of Policy & Planning (via phone)

**RECORD KEEPER**

Virginia Díaz, Administrative Clerk, Office of Public Instruction

Elsie Arntzen, Superintendent

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STATE OF MONTANA

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## TOPIC & PRESENTER INFO

**Final discussion regarding DPHHS proposed rules, *Tracy Moseman***

- Reviewed OPI's Draft Comments regarding the [DPHHS proposed rules](#)
- [Education Advocates meeting can be listened to a this link](#)



**Montana Office of Public Instruction** comment regarding New Rules 1 through IV and amendments of ARM 37.111.801, 37.111.804, 37.111.805, 37.111.810, 37.111.811, 37.111.812, 37.111.825, 37.111.832, 37.111.833, 37.111.834, 37.111.840, 37.111.841, 37.111.842, 37.111.846, and the repeal of 37.111.831 pertaining to healthy learning environments in Montana public schools.

GENERAL COMMENTS: Below are the Montana Office of Public Instruction's comments regarding each new rule and rule amendment. In general, there are questions regarding the department's process for conducting the fiscal impact analysis for schools and the implementation plan for how schools will implement what is required. The OPI disagrees with the department's fiscal impact statement indicating the lead testing would be the only fiscal impact on schools. A survey conducted by the OPI with schools in July 2019 resulted in responses from small rural schools to the larger AA districts. A common theme from those schools indicated the need for training, technical assistance, and financial resources to be in compliance with these rules. For schools with limited staff, there were responses that indicated the schools would not be able to follow these new rules due to staffing limitations. The schools expressed financial impacts on their schools above and beyond the lead testing and in some instances those costs were either unable to be determined due to a lack of information upwards to \$50,000 for some districts.

Further, the amount of changes being placed on schools at one time creates an implementation burden. The OPI wants to clearly understand the roadmap, timeline, training, technical assistance and resources available to support school districts ranging in size from Billings to Canyon Creek, and what the expectations are for OPI's involvement in that process. While the OPI understands it is the intention of the department to support schools in the implementation process, the details remain unclear to the OPI. Further, the new language added in 37.111.810 now creates citations and rule violation language, which does not align with the philosophy of support and help. This is concerning to the OPI. Finally, the new tasks being placed on school staff within these rules require specialized training and support as these are functions outside the training of educators.

Montana schools vary greatly in size. The Office of Public Instruction sees the implementation being different depending on the size of school and resources available. The OPI wants to see the implementation plan for how DPHHS will support schools of all sizes in the successful implementation of the final rules.

#### NEW RULE 1 INDOOR AIR QUALITY

- 1) Once the inspection is complete using the department-approved inspection form, what is the school required to do with the form?
- 2) How will administrators be trained on conducting the annual check of the ventilation system to ensure they operate within manufacturers' parameters?
- 3) How much time does this annual inspection take to complete, including staff training, conducting the inspection, and finalizing the report?



- 4) How did the department determine there would be no fiscal impact to this new function?
- 5) OPI recommends this function be performed by staff at the local health department who is trained in air ventilation systems to reduce burden to schools.

#### NEW RULE II OUTDOOR AIR QUALITY

- 1) To ease the burden to administrators, DPHHS could develop a notification system for administrators, so they do not have to search for and monitor the changing air quality standards from the department.
- 2) What are the best practices for sealing a school building to outside air during poor air quality?
- 3) How will ongoing training and technical assistance for administrators be provided to schools regarding the best practices of sealing a school building?
- 4) How did the department determine there would be no fiscal impact to schools to perform this function of protocol development and implementation?
- 5) Will the department provide schools a sample of the protocol, so it can be adopted without each district being required to write their own protocol?

#### NEW RULE III SCIENCE, SHOP AND ART LABORATORY SAFETY

- 1) The term “shop” is not current terminology used in education. “Industrial Arts” is the correct terminology.
- 2) The new rule states that a school must develop and maintain a Chemical Hygiene Plan and designate a school and district Chemical Hygiene Officer in accordance with the requirements of the Occupational Safety and Health Administration. How was it determined that these new functions would not have a fiscal impact? This function appears to require ongoing FTE and in some districts, this could be substantial.
- 3) Who will provide the annual training and cover the training costs for someone in the district to be trained as the Chemical Hygiene Officer?
- 4) The rule requires “A science chairperson, or equivalently qualified faculty member” to be the Chemical Hygiene Officer. One-teacher schools will fail at this requirement if their teacher is not a certified science teacher.
- 5) Item (7) states, “The department may work with the Department of Labor and Industry to determine if stop work orders are necessary”. What does this mean, how does it impact schools, and what are the penalties to schools if this occurs? Please provide an example of when this would be used.

#### NEW RULE IV INCORPORATION BY REFERENCE

- 1) This new rule states that the rest of these rules reference other federal laws, regulations, and guidebooks. The document in its entirety is difficult to read when these references are mentioned, and seems laborious to ask school administrators to cross reference these



citations to understand what the requirements are. All requirements should be spelled out in the rule in which they apply without the expectation of school staff doing research to find rules and regulations from OSHA, DEQ, and other agencies as referenced.

- 2) Is it appropriate to put guides and handbooks into rule? There is one guide referenced that is a 2010 version of the ADA Standards for Accessible Design, and another 2010 handbook for "Public Playground Safety." Further, when a new version of these handbooks is produced, these rules become outdated.

#### 37.111.801 DEFINITIONS

- 1) Item (18) defines a school as a "Structure or portion thereof occupied or used at least 180 days per year..." This would mean districts who run a 4-day school week may not meet the definition.

#### 37.111.804 PRECONSTRUCTION REVIEW

- 1) Item (1)(a) uses the term "home economics." This is no longer the appropriate educational term. The correct term is "Consumer Science."
- 2) How was it determined that the new additions to districts for construction will not have increased economic costs to a school/community? Items (4), (5), (6) all appear to be new construction requirements that add to the cost of constructing a new building.

#### 37.111.810 INSPECTIONS

- 1) New item (4) adds language that states, "The report must include written citations for every rule violation." This language appears punitive, and does not align with the philosophy of providing training and support to assist schools. Why would this language be added if it is the intent of the department to support schools? Further, if the rules on lead testing are being drafted and lead from the Department of Environmental Quality, what is the authority of DPHHS to enforce that section of new rule? Will the inspections on lead testing be conducted annually even though the new rule only proposes a one-time water test?

#### 37.111.811 PHYSICAL REQUIREMENTS

- 1) With the addition of the words "lockable, vented" for janitorial facilities, how did the department determine there would be no fiscal cost to schools who need to add one/both of those functions to their storage areas?
- 2) In item (1) (c) how will the department define "adequate" coat/jacket storage? Will this impact schools that have students double on locker space?
- 3) Item (1) (d) will the department provide a draft policy and procedure to all schools regarding the storage, administration, and lawful disposal of prescription, nonprescription, and over-the-counter medication?



4) Item (1) (f) Montana has approximately 90 schools with one staff member present. Can the department provide an implementation plan for how schools would provide a staff member break times to meet this provision without leaving students unattended?

5) Items (1) (g) Will the department consider an exemption to this requirement for the one-room school houses or other buildings where a private and secure room other than the bathroom is not available for breast feeding? If not, a school would need to construct an addition to the facility to meet this requirement, which has substantial fiscal impacts not addressed in the economic impact statement.

6) Item (1) (g) (i) indicates that “livestock and poultry must be located more than 50 feet from food service areas...” Will a school be found in violation if they serve/allow students to eat breakfast or lunch in their classrooms where animals may be located for science projects/class pets?

#### 37.111.812 SAFETY REQUIREMENTS

1) Item (4) adds language that hot water must now be provided at each handwashing sink. How was it determined this would not be a fiscal impact to schools?

2) Item (6) indicates the topography of a site must permit good drainage of surface water away from the school building. How did the department determine this would not create a fiscal impact to schools if construction costs are required to rectify this issue?

3) Item (8) requires monthly playground inspections and a record of the inspection. Will there be training for staff on this process? How did the department determine this would not require staff time/resources or have an economic impact to the district?

#### 37.111.825 HEALTH SUPERVISION AND MAINTENANCE

1) Item (3) (a) “isolate the staff member” may also be needed in this statement if they were the one with a communicable disease?

2) Item (4) (c) indicates it is required for districts to have chronic disease management training. Where do schools go to get this training and who covers the costs of that training?

3) Item (5), OPI recommends updating the language to reflect recent changes to tobacco law. The language should be updated to read, “ (5) In addition to the requirements of [50-40-104](#) and [20-1-220](#), MCA, no tobacco/electronic cigarette use signs must be posted at school building entrances and should be clearly visible in hallways, cafeterias, gymnasiums, and near restrooms. Tobacco/electronic cigarette use must be prohibited in school vehicles.” How will the department disseminate these signs to each school?

#### 37.111.832 WATER SUPPLY SYSTEM



1) The new language regarding lead testing is a large new function for schools. It appears this is the only rule that had a fiscal impact study conducted. While the OPI is still unclear about the secured funding for schools to perform the lead mitigation, it does appear discussions have been held to acknowledge this cost to schools and to begin seeking resources. The Montana Office of Public Instruction asks the department to pull this rule from the current rule notice and creates a new rule process to address the lead testing and abatement specifically. It appears this is a priority for the department, and with some amendments, it may move more quickly through the rule-making process and allow for more time for necessary amendments to the other proposed rule amendments and new rules.

2) Historically, water testing is a function of other departments, not schools or the OPI. As a result, the OPI requests that the testing be conducted by trained individuals--other than school officials-- who have experience and background in water quality. The amount of training and technical assistance to bring hundreds of administrators to competency regarding this process appears insurmountable.

3) Item (8) indicates a start date of October 1, 2019. Due to the amended timeline for the rules, the OPI assumes the lead testing timeline will be adjusted.

4) Item (8) (a) indicates all schools shall submit to the department a schematic and inventory of their building which includes schools identifying lead service lines. Without the time to ask schools, it would appear to OPI that these schematics and inventories may be difficult to create if the records do not exist for many of the older buildings in Montana. How would the department advise schools to research this information? How did the department determine there would be no fiscal impact for the time this task will take to achieve?

#### 37.111.841 CLEANING AND MAINTENANCE

1) Item (1) (m) now requires cleaning supplies to be stored with approved ventilation. Who approves this ventilation, and how did the department determine this would not have a fiscal impact to schools now needing to add ventilation to their storage closets?

#### 37.111.842 FOOD SERVICE REQUIREMENTS

1) (1) (a) This language is nebulous and creates confusion with schools. Clear language should read, "Licensure as a food service establishment is required."

#### 37.111.846 NOXIOUS PEST AND ANIMAL CONTROL

1) Item (5) requires schools to develop and implement an approved Integrated Pest Management program. Who approves the IPM? Will there be sample plans available for schools to work from? How was it determined that development and implementation of this plan will not have a fiscal impact? Further, the amount of detail and steps required by a school to implement to mitigate for pests appears to put undue burden on schools, creating a situation where they may not have the resources to efficiently and effectively manage pests.



2) Item (9) (c) references (9) (f) and the OPI cannot find (9) (f) within the rule draft.

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