

April 13, 2011

The Honorable Mike Milburn
Speaker of the House
State Capitol
Helena, MT 59620

The Honorable Jim Peterson
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Milburn and President Peterson:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 456 (HB 456), **“AN ACT ALLOWING FOR PARENTAL CONTROL OVER STUDENT PARTICIPATION IN COURSES OF INSTRUCTION INVOLVING HUMAN SEXUAL EDUCATION; REQUIRING A SCHOOL DISTRICT TO INFORM A PARENT OR GUARDIAN WHEN EVENTS OR COURSES ON HUMAN SEXUALITY WILL BE HELD OR TAUGHT; PROHIBITING A SCHOOL DISTRICT FROM ALLOWING ANY ABORTION SERVICES PROVIDER TO OFFER MATERIALS OR INSTRUCTIONS AT A SCHOOL; AMENDING SECTION 20-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE.”**

I have been advised that HB 456 likely runs afoul of the Montana Constitution's requirements for local control of schools, and poses free speech, freedom of association, and equal protection problems under both the state and federal constitutions. House Bill 456 also presents numerous practical problems for schools, both, generally, in the administration of the “opt-in” requirements for educational offerings addressing human sexual education, and, specifically, in ensuring that the “opt-in” requirements are followed notwithstanding the broadly described categories of course offerings subject to those requirements.

Regarding local control, Article X, § 9(3)(a) of the Montana Constitution charges the board of public education with the “general supervision” of Montana’s public school system, while Article X, § 8 places direct “supervision and control” of schools in a board of trustees elected as provided by law. Under this constitutional structure, the board of public education must adopt accreditation standards for public schools, including a basic instructional program for students, and school trustees are charged with establishing curriculum guidelines to meet the Board’s standards.

The Montana Supreme Court forcefully affirmed the principles of local control in *Yanzick v. School District*, 196 Mont. 375, 389-90, 641 P.2d 431, 440 (1982), in which the court quoted from the transcripts to the 1972 Constitutional Convention Proceedings where delegates discussed their express intent not to grant in the new board of public education the power to “control” the schools, but rather to limit the power of the board of public education to one of “supervision.” Where the Board of Public Education is limited in its ability to “control” public schools in Montana under the state constitution, the Legislature’s ability to do so is even more confined.

Just as the Montana Constitution places “control” of the Montana university system in the Board of Regents, thus limiting the authority of the Legislature to control the university, particularly in the area of academic instruction, see *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975), so the Montana Constitution places general supervision of the schools in the Board of Public Education and direct “control” of Montana’s public schools in the board of trustees, a structure upon which the Legislature may not encroach, particularly in the area of course offerings. By infringing on the authority of local board of trustees to establish their own attendance policies regarding excused and unexcused absences and creating barriers to the provision of instructional resource materials in the area of sex education, HB 456’s requirements raise grave constitutional concerns.

In summary, I believe HB 456 would establish dangerous precedent as a content-based restriction on the power of local schools to make their own curriculum decisions. Where parents object to curriculum or policies adopted by members of local school boards, their recourse properly lies at the local level.

For these reasons, I ask for your support in sustaining my veto of HB 456.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division