BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

MICHAEL DRAPER AND MARSHA DRAPER,
Parents of Michael Draper, Jr.,

Petitioners and Respondents,

v.

VICTOR SCHOOL BOARD and
VICTOR SCHOOL DISTRICT #7,

Respondents and Appellants.

No: OSPI 150-88
Decided: Dec. 13, 1988

Appeal from the Acting Ravalli County Superintendent of Schools.

Memorandum and Order by Ed Argenbright, State Superintendent.

ABSENCE--SCHOOL BOARDS, Whether school boards may impose grade reductions on students who are absent from school with their parents' permission.

Draper, Petitioners and Respondents, v.
Victor Sch. Board, Respondents and Appellants
7 Ed Law 252

This controversy arose from the appeal by the Victor School District of an April 18, 1988 decision made by the Acting Ravalli County Superintendent of Schools.

The subject of the appeal is a school board policy dealing with grade reductions imposed on students who are absent for more than seven (7) days per quarter, which reads in pertinent part:

"No. 8. Students in grades 7-12 with seven (7) written absences or more in a quarter will have five percentage points deducted from their quarter grade. All absences count except for those which are of extended illness."

The main issue centers on the conflict between this local board policy or rule found in the student handbook and in state statutes regarding compulsory attendance. The Acting County Superintendent concluded that there was a conflict between Section 20-5-103, MCA, and the enacted board policy. Moreover, the Acting County Superintendent determined that the school district failed to follow the rules it had promulgated as a result of the stated policy and had not notified petitioners that Michael Draper was reaching a level of excessive absences.

The board's written notification required in pertinent part:

"No. 10. As a student reaches certain levels of excessive absences, the principal will notify in writing the parents/guardians of the situation. Again, the school wants to work with the parent/guardians on insuring regular attendance of our students." (emphasis supplied.)

The Hearing Officer's Findings of Fact No. 15 was agreed upon by the parties. That finding established that the written notification required by the district's own rule was not followed in this instance.

In itself, this finding and conclusion, which determined that the district failed to properly administer its own policy, is acceptable to affirm the Acting County Superintendent's ruling.

Furthermore, it illustrates the tie between Section 20-5-103, MCA, which requires parents to send their children to school and the board's own policy at issue here, which clearly contemplated working with parents to insure that the compulsory attendance laws were followed.

The conflict between the statute and rule is clear on its face and resort to legislative or other rule of construction is unnecessary. Excused absences are exceptions from the compulsory education statute enacted by the legislature but are not included in the district's rule.

Section 20-5-103, MCA, was recently re-enacted by the 1971 General Recodification. Article X, Section 8 of the 1972 Constitution, grants local control and supervision of school districts to the local

board of trustees. In School District 12 v. Hughes, 170 Mont. 267, 552 P.2d 328 (1976), the Montana Supreme Court held that such control was not absolute and was limited by pre-existing statutory enactments.

It is argued by both the district and the Montana School Board Association (MSBA) as Amicus Curiae in this matter, that the reference to excused absences found in Section 20-5-103, MCA, is more for the parent's benefit and does not and should not impact the school's attendance polices. The argument of the district and the MSBA logically suggests that Montana legislators would not place criminal sanctions on parents for excused absences but would allow school districts total, unfettered discretion to impose sanctions on children including, but not limited to, grade reductions without reference to excused absences. In other words, this would penalize children, but not their parents, for excused absences.

After serving for eight years in this office and working with four legislative sessions, I find such an analysis to be, at best, unbelievable. Certainly, the statutes contemplate fairness to both parents and pupils in areas of compulsory attendance and excused absences and so should a board's rules on those issues.

The Acting County Superintendent's decision is not erroneous and is not in violation of any statutory or constitutional provisions.

The Findings of Fact which were found by the County Superintendent were agreed to by the parties, and by definition, supported by substantial credible evidence in the record. I have considered the other arguments raised by the school district and reject them. The decision of the County Superintendent of Schools is hereby affirmed.

IT IS SO ORDERED.

DATED this 13th day of December, 1988.

s/Ed Argenbright
State Superintendent