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2  
3 BEFORE DENISE JUNEAU, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,  
4 STATE OF MONTANA

5 \*\*\*\*\*

6 KATHY KNOBLOCH, )  
7 Appellant, ) OSPI 319-09  
8 vs. ) **Decision and Order**  
9 BIG HORN COUNTY TRANSPORTATION )  
10 COMMITTEE, )  
11 Respondent. )  
12 \*\*\*\*\*

13 Having reviewed the record and considered the parties' briefs, the Superintendent of  
14 Public Instruction issues the following decision and order:

15 **PROCEDURAL HISTORY**

16 This appeal is Appellant's second, following a previous decision of the Superintendent of  
17 Public Instruction.

18 Appellant Knobloch originally filed a petition on behalf of parents living on the eastern  
19 portion of Hardin District 17-H, asking the Bighorn County Transportation Committee to  
20 "determine that it is impractical for our elementary children to attend school in Hardin due to the  
21 fact that the length of time for each bus trip is in excess of the 1-hour limit authorized under  
22 MCA 20-10-121." The petition further requested the Hardin school district approve out-of-  
23 district attendance agreements and cooperate with the Colstrip schools to provide transportation.  
24

25 The petition was not acted on by the transportation committee and Knobloch appealed to  
the Superintendent of Public Instruction.

1 The State Superintendent issued an order requiring the Bighorn County Transportation  
2 Committee ("CTC" or "Committee") to make a determination if it is "impractical for the Muddy  
3 Cluster area children represented in the petition presented by Appellant Knobloch to attend  
4 school in the children's district of residence in accordance with the criteria in 20-5-321(1)(b),  
5 MCA". (Knobloch I, OSPI 316-08, Decision and Order dated April 30, 2009.)

6 Following that decision the CTC held its annual transportation committee meeting for the  
7 2009/2010 school year on June 10, 2009. Pursuant to the State Superintendent's decision and  
8 order in Knobloch I, the committee discussed and approved motions on the issue.  
9

10 The CTC determined that it was not impractical for any K-5 grade students living in this  
11 area to attend a school in the Hardin district based on the criteria in § 20-5-321(1)(b), MCA.

12 The CTC also decided that it was not impractical for any 6-8 grade students to attend  
13 school in the Hardin district based on the same criteria.

14 On behalf of all the petitioners, Knobloch appealed these decisions of the CTC to the  
15 State Superintendent on July 7, 2009. The State Superintendent issued a Notice and Briefing  
16 Schedule, the parties submitted briefs, and this matter is now at issue.

17 **ISSUES ON APPEAL**

18 1. Did the Big Horn County Transportation Committee err in its determination that  
19 pursuant to the criteria in § 20-5-321, MCA, it was not impractical for grade K-5 students living  
20 in the eastern portion of the Hardin District 17-H to attend a school within the district?  
21

22 2. Did the Big Horn County Transportation Committee err in its determination that  
23 pursuant to the criteria in §20-5-321, MCA, it was not impractical for 6-8 grade students living in  
24 the eastern portion of the Hardin District 17-H to attend a school within the district?

25 3. Should the Big Horn County Transportation Committee direct the Hardin District

1 17-H Board of Trustees to approve out-of-district attendance agreements for students for whom  
2 it is impractical to attend school within the district pursuant to the criteria in § 20-5-321, MCA?

3 **STANDARD OF REVIEW AND AUTHORITY**

4 This is a review of a county transportation committee decision pursuant to § 20-3-  
5 107(1)(b), MCA. The State Superintendent applies the standard of review of administrative  
6 decisions established in § 2-4-704, MCA, and adopted by the State Superintendent in Admin. R.  
7 Mont. 10.6.125. The State Superintendent may reverse or modify a county transportation  
8 committee's decision if substantial rights of the appellant have been prejudiced because the  
9 decision is (a) in violation of constitutional or statutory provisions; (b) in excess of the  
10 committee's statutory authority; (c) made upon unlawful procedure; (d) affected by other error of  
11 law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole  
12 record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
13 exercise of discretion; or (g) affected because findings of fact upon issues essential to the  
14 decision were not made although requested. Admin. R. Mont. 10.6.125(4).

15  
16 The State Superintendent is authorized to decide this matter pursuant to §§ 20-3-  
17 107(1)(b) and 20-5-321(1)(b)(ii), MCA.

18 **STATEMENT OF FACTS**

19 1. The Hardin district operates schools for grades Kindergarten through 12<sup>th</sup> (K-12)  
20 in the town of Hardin and a K-5 school at Crow Agency, Montana.

21 2. Respondent CTC held its annual transportation committee meeting on June 10,  
22 2009. Agenda item 7 was "Determination of OSPI 316-08" (Knobloch I).

23 3. Appellant Knobloch supplied the CTC a spreadsheet containing the location of  
24 petitioners' residences and names, ages, and grades of the children at issue for 14 of the families  
25

1 on the original petition. She also provided calculations of mileage related to each petitioner's  
2 residence.

3 4. Knobloch's calculations were not contested at the CTC meeting, nor by any party.

4 5. At the June 10, 2009 meeting, the CTC approved the 2009/2010 school year bus  
5 routes (Bus 16 and Bus 4) for the Hardin district buses picking up children in the eastern portion  
6 of the Hardin district, including the Muddy Cluster/Muddy Creek area. The approved bus route  
7 for Bus 16 indicates a bus stop at the intersection of Muddy Cluster and Highway 212, which,  
8 according to Knobloch's calculations, is approximately 55 miles from Hardin and approximately  
9 39.5 miles from Crow Agency. It is approximately five miles from Lame Deer, but is outside of  
10 the Lame Deer elementary district.  
11

12 6. The bus route for Bus 16 indicates the initial bus stop is at Muddy Cluster at 6:50  
13 a.m. Bus 16 is scheduled to arrive at the Crow Agency School at 7:40 a.m. and at the Hardin  
14 school at 8:00 a.m.

15 7. The bus route approved for Bus 4 indicates the initial bus stop is on the Kirby  
16 Decker Road at mile marker 37 (MM37) at 6:45 a.m. Bus 4 is scheduled to arrive at Crow  
17 Agency School at 7:40 a.m. and at the Hardin school at 8:00 a.m.

18 8. The only school available for students in grades 6-12 in the Hardin district is the  
19 Hardin school in Hardin, Montana.

20 9. High school students (grades 9-12) in the Muddy Creek/Muddy Cluster area are  
21 residents of the Lame Deer high school district.  
22

23 10. Appellant Knobloch and her husband were the only parents on the petition to  
24 attend the meeting and submit evidence regarding whether it was impractical for their children to  
25 attend a school in the Hardin district due to the statutory criteria related to time and distance

1 from the available schools in the district.

2 11. Knoblochs have two children in grades K-5. According to Knobloch, they live  
3 three miles southeast of Busby, which is 27.5 miles from the K-5 school at Crow Agency and  
4 approximately 46 miles from the Hardin school.

5 12. Other families listed on the petition live varying distances from the school at  
6 Crow Agency and the school in Hardin.

7 13. Following discussion, the CTC unanimously passed two virtually identical  
8 motions for children in grades K-5 and 6-8 which were stated as follows:  
9

10 [The c]hildren reside in a location where, because of the geographical  
11 condition between the child's home and the school that the child would  
12 attend within the district of residence, it is not impractical to attend school  
13 in the district of residence. I further move that the committee has  
14 considered each of the statutory criteria and has determined that:

15 A. The length of time for each bus trip for an elementary child is  
16 not in excess of one hour;

17 B. The distance traveled is not greater than 40 miles one way  
18 from the child's home to school on a dirt road or is not greater than a total  
19 of 60 miles one way from the child's home to school in the district of  
20 residence over the shortest passable route; or

21 C. There is not any road condition or existence of geographical  
22 barrier, such as a river or mountain pass, which causes a hazard that  
23 prohibits safe travel between the home and school.

24 14. At the CTC meeting on June 10, 2009, Hardin Public Schools District  
25 Superintendent, Al Peterson, reported that on June 9, 2009, the Hardin Public Schools Board of  
Trustees approved three transportation agreements for four students in grades 6-8 who were  
represented on the petition originally filed with the CTC by Appellant Knobloch, disapproved  
some agreements and did not act on transportation issues for any petitioners who did not submit  
an agreement to the Board for its consideration.

## CONCLUSIONS OF LAW AND OPINION

**Issue 1. Did the Big Horn County Transportation Committee err in its**

1 **determination that pursuant to the criteria in § 20-5-321, MCA, it was not impractical for**  
2 **6-8 grade students living in the eastern portion of the Hardin District 17-H to attend a**  
3 **school within the district?**

4 It is the duty of the Big Horn County Transportation Committee to determine if  
5 geographical conditions make it impractical for a child to attend school in the district of  
6 residence. Section 20-10-132(1)(e), MCA.

7 Section 20-5-321, MCA, provides the criteria by which a county transportation  
8 committee is to determine if it is practical for a student to attend a school in the district.  
9

10 **Attendance with mandatory approval – tuition and transportation.** (1) An out-of-  
11 district attendance agreement that allows a child to enroll in and attend a school in a  
12 Montana school district that is outside of the child's district of residence . . . is mandatory  
13 whenever:

14 \*\*\*

15 (b) (i) the child resides in a location where, because of geographical conditions between  
16 the child's home and school that the child would attend within the district of residence, it  
17 is impractical to attend school in the district of residence, as determined by the county  
18 transportation committee based on the following criteria:

19 (A) the length of time that is in excess of the 1-hour limit for each bus trip for an  
20 elementary child as authorized under [20-10-121](#);

21 (B) whether distance traveled is greater than 40 miles one way from the child's home to  
22 school on a dirt road or greater than a total of 60 miles one way from the child's home to  
23 school in the district of residence over the shortest passable route; or

24 (C) whether the condition of the road or existence of a geographic barrier, such as a river  
25 or mountain pass, causes a hazard that prohibits safe travel between the home and school.

26 The mileage Appellant Knobloch submitted to the CTC was not contested. Therefore,  
27 for the purposes of this appeal and decision, it is assumed those mileages are accurate. The  
28 intersection of Highway 212 and Muddy Creek Road is 11.5 miles from Busby. Busby is 27.5  
29 miles from the Crow Agency K-5 school operated by the Hardin district. Based on the mileage  
30 provided by Appellant Knobloch, all of these residences are within 60 miles of the K-5 school at  
31 Crow Agency.

32 Knobloch alleges that the Committee's decision was erroneous because the committee

1 failed to follow § 20-10-106, MCA, to calculate the distance from each child's home. This  
2 statute does specify the procedure to follow when mileage is contested. However, neither the  
3 CTC nor any parents on the petition disputed the mileage submitted by Knobloch. Therefore,  
4 there is no prejudice to Knobloch or the other petitioners for failure to follow the statutory  
5 procedure.

6         The original petition filed by Knobloch with the CTC addressed the statutory criteria for  
7 the length of the bus ride for elementary students. The bus route and schedule approved for  
8 Hardin Schools' Bus 16 shows the bus leaving Muddy Cluster at 6:50 a.m. and arriving at the  
9 Crow Agency school at 7:40 a.m. Hardin Schools' Bus 4 starts its scheduled route at 6:45 a.m.,  
10 arriving at Crow Agency school at 7:40 a.m. Pursuant to the approved bus routes and schedules,  
11 none of the children on these buses would typically ride the bus for longer than the one hour bus  
12 trip referenced in § 20-5-321(1)(b)(i)(A), MCA.

13         The CTC discussed road conditions from the district's eastern border to Hardin. The  
14 committee discussed the effect of weather on road conditions. The committee members agreed  
15 that at times the bus trip to the Crow Agency School might take more than an hour, but that was  
16 the exception due to extreme weather. No one submitted evidence that there was a road  
17 condition, other than intermittent weather related conditions, which causes a hazard that prohibits  
18 safe travel between the Muddy Cluster area and the Crow Agency School. Section 20-10-106,  
19 MCA provides that " [i]n determining reasonable passage, a route may not be disqualified  
20 because it is impassable during temporary, extreme weather conditions such as rains, snow, or  
21 floods."

22         The State Superintendent finds that there was sufficient evidence before the Big Horn  
23 County Transportation Committee to support the determination that it was not impractical for K-  
24  
25

1 5 students represented on the petition to attend the district's school at Crow Agency, Montana.

2 **Issue 2. Did the Big Horn County Transportation Committee err in its**  
3 **determination that pursuant to the criteria in § 20-5-321, MCA, it was not impractical for**  
4 **6-8 grade students living in the eastern portion of the Hardin District 17-H to attend a**  
5 **school within the district?**

6 Although Appellant Knobloch's children are of elementary age and grade and their  
7 immediate situation has been addressed in the preceding issue, this opinion will address the  
8 students in grades 6-8 who were represented on the petition and appropriately addressed in the  
9 CTC's decision at their meeting on June 10, 2009. That issue is clearly before the State  
10 Superintendent on appeal.  
11

12 Although grades 6-8 may be called "middle school" all grade K-8 students are considered  
13 to be elementary students and the statutory criteria regarding the length of a bus ride applicable  
14 to elementary students is relevant to the discussion of students in grades 6-8.

15 The motion approved by the CTC regarding students in grades 6-8 was virtually identical  
16 to the motion for grades K-5 which restated the law, but also implied that no children fell within  
17 the stated criteria for either distance or time. The discussion regarding the issue seemed to  
18 indicate that the CTC intended the motion to mean there was a determination made that it was  
19 impractical for any child residing over 60 miles from the Hardin school or subject to a bus ride  
20 longer than one hour to attend school in the Hardin District. Regardless if the CTC decision was  
21 hypothetical for "any child" or specific to the children on the petition, the decision was overly  
22 broad and did not address the children individually. Although the Knobloch I decision and  
23 order did not specify that the CTC must review each student's situation individually, that  
24 requirement could be implied by the statutory language and procedure for approving  
25

1 transportation agreements. Transportation agreements are for individual children and the  
2 statutory criteria must be applied to each child.

3 The CTC was aware that there are families on the petition residing more than 60 miles  
4 from the Hardin school. This was clear from both the mileage presented to the CTC by  
5 Knobloch and from information provided by the District Superintendent. The Hardin District  
6 Board of Trustees approved transportation agreements for several of the grade 6-8 students  
7 identified on the petition who live more than 60 miles from the Hardin school and who had  
8 timely submitted an agreement to the district for approval. The motion approved by the CTC  
9 regarding students in grades 6-8 did not specify that some students live over 60 miles from the  
10 Hardin school and therefore qualify for approval of an out-of-district transportation agreement.  
11

12 To decide categorically which students meet the criteria, there should be an established  
13 cut-off point determined by mileage from the school to a perimeter of 60 miles. Under the  
14 mileage presented and referenced at the CTC meeting, there are seven families on the petition  
15 who live over 60 miles from the Hardin School. The CTC erred in not specifying which  
16 students met the criteria in § 20-5-321, MCA based on mileage.

17 Of the petitioners who have a child in grade 6-8, three families had transportation  
18 agreements approved because they live over 60 miles from the Hardin Middle School. The  
19 Harris child would also meet that criteria, but did not submit an agreement for the 2009/2010  
20 school year. There is a discrepancy in the documentation regarding mileage for the Harris  
21 residence. The petition states they live 6.5 miles up Muddy Creek Road, but the corresponding  
22 spreadsheet states 5.9 miles. However, either calculation puts the Harris residence over 60 miles  
23 from the Hardin school, so their 6-8 grade child meets the criteria of § 20-5-132(1)(b)(i)(B),  
24 MCA. The Harris family did not submit an individual transportation agreement for the  
25

1 2009/2010 school year for approval by the June 1, 2009 deadline. Consequently, there is no  
2 action to be taken on behalf of Harris and this issue is moot for this school year.

3         The CTC also discussed bus routes and travel time from the students' homes to the  
4 Hardin school. Statements regarding the times conflicted and the discussion at the CTC meeting  
5 indicated uncertainty about length of time for the bus rides. Section 20-10-106, MCA addresses  
6 how to calculate contested mileage between a residence and a school, but not length of time of a  
7 bus trip. However, earlier at the same June 10 meeting, the CTC approved bus routes and  
8 schedules for the area in question. Again, this is the most compelling evidence of the travel time  
9 involved. Many of the children represented by the petition live south of the intersection of the  
10 Muddy Creek Road and Highway 212. The approved district bus route and schedule for that  
11 area indicates a bus-stop at Muddy Cluster at 6:50 a.m. with the bus arriving at Hardin School at  
12 8:00. If students along this route would get on at that bus-stop or any bus-stop before 7:00 a.m.,  
13 their bus trip is over an hour. Likewise, Bus 4 starts its route at Mile Marker 37 on the Kirby  
14 Decker Road at 6:45 a.m., arriving at the Hardin School at 8:00 a.m. Based on this information,  
15 some students on that route also have a bus ride of over an hour. Without another reliable,  
16 verifiable method of determining the length of time of a bus trip, the approved bus routes and  
17 schedules should be used by the CTC for determining impracticality based on time.  
18

19         The Hardin district's minutes of the June 9<sup>th</sup> meeting indicate that the board denied other  
20 transportation agreements for some of the families on the petition, however, the denial of these  
21 agreements were not appealed to the CTC and are therefore moot for this school year.  
22

23         The State Superintendent finds that the CTC's decision that it was not impractical for all  
24 6-8 grade students in the eastern portion of the Hardin district to attend a school of the district is  
25 clearly erroneous.

1           **Issue 3.           Should the Big Horn County Transportation Committee direct the**  
2 **Hardin District 17-H Board of Trustees to approve out-of-district attendance agreements**  
3 **for students for whom it is impractical to attend school within the district pursuant to the**  
4 **criteria in § 20-5-321, MCA?**

5           As reflected in the Hardin Public Schools District H-17 Board of Trustees minutes from  
6 their June 9, 2009 meeting, the Board did not approve individual transportation agreements for  
7 students who the Board determined "did not meet the requirements" for approval. The district  
8 did not receive agreements from all students represented on the petition, and therefore  
9 appropriately limited their consideration to those agreements timely submitted to the Board. No  
10 party appealed the Board's denial of their transportation agreement.

11           The issue before the CTC was impracticality of attending school in the district due to  
12 length of time on the bus, distance from the school, and road conditions. This decision finds the  
13 CTC clearly erroneous in its determination that no 6-8 grade children in the district met the  
14 criteria set forth in § 20-5-321, MCA.

15           Section 20-10-121(3)(b)(i), MCA, deals with the duty of trustees to provide  
16 transportation for eligible students, including transportation provided by "paying the parent . . .  
17 for individually transporting the pupil." Subsection (1) states: ". . . The trustees shall furnish  
18 transportation when directed to do so by the county transportation committee and when that  
19 direction is upheld by the superintendent of public instruction." Section 20-5-321, MCA,  
20 requires mandatory approval of out-of-district attendance agreements when criteria regarding  
21 geographical conditions are met. Based on this decision and direction given to the CTC, the  
22 trustees must approve agreements submitted for individual students living over 60 miles from the  
23 Hardin 6-8 grade school or required to ride the bus for more than one hour.  
24  
25



1 **CERTIFICATE OF SERVICE**

2 THIS IS TO CERTIFY that on this 8<sup>th</sup> day of December 2009, I caused a true and exact  
3 copy of the foregoing DECISION AND ORDER to be mailed, postage prepaid, to the following:

4 **Kathy Knobloch**  
5 **PO Box 7**  
6 **Busby, MT 59016**

7 **Sandy Watts**  
8 **Big Horn County Transportation Committee**  
9 **PO Box 908**  
10 **Hardin, MT 59034**

11 **Georgette Hogan**  
12 **Big Horn County Attorney**  
13 **PO Box 908**  
14 **Hardin, MT 59034**

15 **/s/ Beverly Marlow**  
16 Beverly Marlow  
17 Paralegal  
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20  
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25