

Elizabeth A. Kaleva
Elizabeth A. O’Halloran
Kevin A. Twidwell
KALEVA LAW OFFICE
1911 S. Higgins Ave.
P.O. Box 9312
Missoula, MT 59807-9312
Telephone: (406) 542-1300
Facsimile: (406) 721-1003
eakaleva@kalevalaw.com; kwitt@kalevalaw.com
bohalloran@kalevalaw.com
ktwidwell@kalevalaw.com

Attorneys for Plaintiff Montana Quality Education Coalition

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

<p>MONTANA QUALITY EDUCATION COALITION,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>THE OFFICE OF PUBLIC INSTRUCTION; and ELSIE ARNTZEN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. _____</p> <p>Judge: _____</p> <p>COMPLAINT</p>
---	--

INTRODUCTION

1. The Office of Public Instruction (“OPI”) and Superintendent of Public Instruction Elsie Arntzen (Superintendent Arntzen) are interfering in the opening and operation of some public charter schools approved for opening and operation

by the Board of Public Education (hereafter BPE) pursuant to the provisions of House Bill 549 (HB 549) that was passed during the 2023 Legislative Session. Superintendent Arntzen and OPI have advised the school districts with charter schools approved by BPE that they must follow requirements that are in conflict with and inapplicable to charter schools under HB 549. Superintendent Arntzen and OPI are usurping the power the Legislature specifically provided to BPE – not OPI – to open the public charter schools by attempting to require them to jump through administrative hoops that are designed for opening and reopening noncharter public schools (as defined in Mont. Code Ann. § 20-6-803), even though those rules are inapplicable and incompatible with the creation of charter schools under the provisions of Title 20, Chapter 6, Part 8. As set forth in this Complaint, Defendants’ actions violate the newly enacted laws and unjustifiably delay recognition of approved charter schools, leading to irreparable harm to constitutionally empowered school boards attempting to set their budgets and serve students by opening new charter schools in 2024 as authorized by the constitutionally empowered BPE.

2. During the 2023 session of the Montana Legislature, Montana enacted HB 549, a new law authorizing public charter schools, citing a need for educational options for Montana parents and their children, expanding educational opportunities for kindergarten through 12th grade students and facilitating programs

that develop the “full educational potential” of each person which is “vital to the economic and competitiveness of” Montana. Mont. Code Ann. § 20-6-802.

3. To foster innovation and creative development of educational programs, the Legislature established public charter schools, through the Public Charter Schools Act (Title 20, Chapter 6, Part 7, hereafter “PCSA”), including a comprehensive regulatory scheme for the establishment, opening, and operation of public charter schools under the specific and exclusive jurisdiction of the BPE in its exercise of general supervision as provided in Article X, § 9 of the Montana Constitution.

4. The PCSA was enacted in a stand-alone, comprehensive bill, codified as an organized Act placed under new part 7 of Title 20, Chapter 6 with all new sections of law specifically and uniquely addressing all elements of the application and approval process for public charter schools. The PCSA incorporated detailed specific provisions delineating necessary requirements for public charter school applications, the contents of the Charter School contract, the opening and operation of public charter schools, and the autonomy and funding of public charter schools. The Montana Legislature made the PCSA effective on July 1, 2023, for the purposes of allowing the BPE sufficient time to publicize the application process and develop applications consistent with the statutory criteria for public charter schools.

5. A major component of the PCSA is the designation of the BPE as exclusively responsible for the review and approval of public charter school applications and regulatory oversight of public charter schools. The BPE is a party to a public charter school's charter contract and is specifically authorized but not required to establish preopening requirements or conditions to ensure a smooth opening on an agreed date. The BPE did not impose any supplemental requirements beyond the contracts themselves and has formally disputed the interpretation of Superintendent Arntzen and OPI that the general provisions for opening and reopening noncharter public schools under Title 20, Chapter 6, Part 5 apply to public charter schools already opened by contract with the BPE. The BPE has declared the public charter schools that it has approved are open and has directed OPI to take the necessary steps to ensure their funding.

6. Since the effective date of the PCSA, BPE has actively publicized opportunities for those intending to open public charter schools, developing criteria and terms for charter contract approval, and working with applicants to ensure that approved public charter schools open in accordance with the PCSA and the regulatory program devised, publicized, and made available to applicants. The BPE developed and published a timeline for Boards of Trustees to open public charter schools on or before July 1 of each year. The deadline for a school board to adopt its general fund budget is August 20, 2024. Mont. Code Ann. § 20-9-131. However,

to adopt its budget in August, the board must take steps significantly in advance of that deadline, starting with the publication of an estimate of any increase in several budgeted funds no later than March 31, 2024, pursuant to Mont. Code Ann. § 20-9-116. The accuracy of several of these estimates depends on the assurance that charter schools approved by the BPE will be funded, an assurance that Superintendent Arntzen and OPI have placed in doubt by attempting to apply an opening process applicable to noncharter public schools under Title 20, Chapter 6, Part 5 of the code. An additional deadline coming up in the immediate future is the early April deadline for a school board to finalize and certify its levy elections pursuant to Mont. Code Ann. § 20-20-401. More serious than even the accuracy of estimates for the March 31, 2024, resolution publication, the deadline in early April for certifying ballots is a legally enforceable deadline for finalizing ballot language that will definitively set the limits of what a school board may ask its voters to support for the school fiscal year starting July 1, 2024. General fund levy elections may take place only once each calendar year on the regular school election day, which falls on May 7, 2024, this year pursuant to Mont. Code Ann. § 20-20-105. Without an assurance that their public charter schools are open and will be funded as provided by law, school boards cannot accurately complete this statutory duty unless they have an assurance of knowing that the public charter schools approved by the BPE will be funded. Defendants' actions and refusal to recognize the

approved public charter schools will prevent some charter schools from meeting these deadlines, effectively halting any progress toward serving the charter school students entitled to attend them and providing ambiguous and potentially inaccurate information to voters in the May levy elections.

7. Superintendent of Public Instruction Elsie Arntzen is an *ex officio*, non-voting member of the BPE and is aware of the BPE's authority to open public charter schools, as well as the planning and publication of the BPE's process for processing public charter school applications.

8. Disregarding the broad authority conferred on the BPE, Superintendent Arntzen and the Office of Public Instruction adopted the position that public charter schools are subject to an additional layer of red tape and bureaucracy beyond that authorized by the PCSA. According to Superintendent Arntzen and OPI, public charter schools must adhere to an additional school opening procedure applicable to noncharter public schools, *see* Mont. Code Ann. § 20-6-50, despite the clear authority of the BPE to establish the pre-opening procedures applicable to public charter schools.

9. The legislative oversight committee, the BPE, and the bill sponsor of the PCSA advised Superintendent Arntzen of the BPE's exclusive authority and the inapplicability of the noncharter public school procedures she and OPI are seeking to impose on the public charter schools. The manner in which Superintendent

Arntzen and OPI interpret the general provisions of Title 20, Chapter 6 Part 5 to cross over to and override the after-enacted, new separate Part 7 specifically governing the opening process for public charter schools under the PSCA frustrates the express intent and purposes of the PSCA and impedes the timely and smooth opening of public charter schools in the coming fiscal year, thereby harming students and families seeking access to approved public charter schools during the 2024-2025 school year.

10. Superintendent Arntzen and OPI have specifically published guidance that identifies a four-month-long supplemental approval process for public charter schools already opened by the BPE. This guidance was published in February 2024, which would mean that a district that followed the guidance could not know whether its charter school has been approved until late June, well after applicable deadlines for estimating increased taxes, finalizing ballots and the conduct of school levy elections themselves have all since passed. Superintendent Arntzen's and OPI's unnecessary additional procedures place public charter schools in the untenable position of facing County Commissioner disapproval based on no standards, even though the same public charter school achieved BPE approval based on the express, detailed requirements articulated in Title 20, Chapter 6, Part

11. Not only is Superintendent Arntzen's and OPI's interference in the opening of public charter schools based on an incorrect interpretation of the law, their approach unconstitutionally and impermissibly usurps public charter school approval authority away from the BPE as intended by the Legislature and grants such authority to Boards of County Commissioners whose determinations are not subject to the express legislative guidance governing the approval, opening, and operation of public charter schools.

PARTIES

12. The Montana Quality Education Coalition ("MQEC") is a nonprofit organization headquartered in Helena, Montana, formed in 2001 to advocate for adequate and equitable public school funding and to defend the Montana Constitution's guarantee of free quality public education. The MQEC membership includes the Montana Federation of Public Employees, the Montana School Boards Association, the School Administrators of Montana, the Montana Association of School Business Officials, the Montana Rural Education Association, and more than 100 school districts in the state of Montana, ranging from large to small school districts and urban to rural school districts, including districts that have applied to open public charter schools. MQEC's member districts are located throughout Montana.

13. The Office of Public Instruction (“OPI”) is an executive branch agency of the state of Montana government. OPI’s primary office is located in Helena, Montana. The Office of Public Instruction is included in the executive branch by the Constitution of Montana. Mont. Const. Art. VI, §1(1).

14. Superintendent Arntzen is currently and was, at all times material to this Complaint, the Montana Superintendent of Public Instruction. In her official capacity, Superintendent Arntzen’s duties include those “provided by law.” Mont. Const. Art. VI, §4(5). Relative to supervision of schools, the Superintendent of Public Instruction’s duties are defined by statute. Mont. Code Ann. § 20-3-106. As related to this Complaint, Superintendent Arntzen is responsible for “approving or disapproving the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-504, or 20-6-505.” Mont. Code Ann. § 20-3-106(4). This description of Superintendent Arntzen’s duties is general and pre-dates the PCSA and the specific legislative assignment of responsibility for opening public charter schools to the BPE.

15. In addition, and relevant to these proceedings, the Superintendent of Public Instruction is charged with the duty to:

- a. ...approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313; and,
- b. ...distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the

provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369[.]

Mont. Code Ann. §§ 20-3-106(11) and (12).

JURISDICTION AND VENUE

16. Plaintiff seeks declaratory relief pertaining to Defendants’ exercise of administrative authority over the authorization and opening of charter schools in the state of Montana, as authorized by the 2023 Montana Legislature.

17. Jurisdiction and venue are proper in Lewis & Clark County, Montana pursuant to Mont.R.Civ.P. 4 and Mont. Code Ann. § 25-2-118, as Defendants Superintendent Arntzen and OPI are located in Lewis & Clark County and have their principal offices in Helena, Montana.

ALLEGATIONS COMMON TO CLAIMS AND REQUESTED RELIEF

18. The Board of Public Education is constitutionally authorized to “exercise general supervision over the public school system and such other public educational institutions as may be assigned by law.” Mont. Const. Art. 10, § 9(3)(a). In addition to the BPE’s constitutional mandate, the Legislature endowed the BPE with additional specific duties, as well as “any other duty prescribed by this title or any other act of the legislature.” Mont. Code Ann. § 20-2-121(12).

19. The 2023 Montana Legislature passed the Public Charter Schools Act (“the PCSA”) as a comprehensive, self-contained act with a specific title as opposed to a random number of additional sections of law without reference to a common

theme. The naming of this act by the Legislature and its placement as a separate part under Title 20, Chapter 6 provides strong additional evidence of legislative intent that the interpretation of its provisions is to be found within Title 20, Chapter 6, Part 8 itself. The PCSA was designed and enacted to promote the full educational development of each person by offering parents options for their children, facilitating implementation of different educational models, and advancing preservation of American Indian cultural identity. Mont. Code. Ann. § 20-6-802(2). All sections of the PCSA were codified in Title 20, Chapter 6, Part 8 of the Montana Code Annotated. The PCSA became effective on July 1, 2023.

20. The PCSA includes a comprehensive statement of legislative findings and intent. The statement endows powers and duties correlated to public charter schools to two entities – the trustees of the local school board of the charter school and the Board of Public Education. Mont. Code Ann. §§ 20-6-802(2) and (3).

21. The PCSA includes provisions for the approval and denial of public charter schools, sets forth the required provisions for the charter contract between an approved public charter school Board of Trustees and the BPE, and includes provisions related to the financing and administration of the schools, as well as the monitoring of performance and legal compliance with the charter contract terms. Among other duties under the PCSA, the Board of Public Education is assigned the responsibilities of “[a]pproving charter proposals that meet [specified] identified

educational needs” and “denying approval of charter proposals that fail to provide clear and convincing proof of their likelihood of success...” Mont. Code Ann. §§ 20-6-804(b) and (c).

22. Within the definition of the “Board of Public Education” in the PCSA, the Legislature included the following language:

For the purposes of public charter schools established under this part, the board of public education is the *sole entity* authorized to enter into charter contracts with a governing board.”

Mont. Code Ann. § 20-6-803 (emphasis added).

23. The PCSA comprehensively addresses the prerequisites for the opening of a public charter school. These prerequisites directly displace the older, general school opening procedures applicable to “noncharter public schools” as that term is defined in Mont. Code Ann. § 20-6-803. Mont. Code Ann. § 20-6-806(6) expressly permits the BPE to define “reasonable preopening requirements or conditions,” without the participation of any other agency or public official, including Superintendent Arntzen and OPI. The BPE has directed that its approval of charter contracts makes the approved charter schools legally open and eligible for applicable distributions of K-12 BASE aid.

24. The PCSA does not assign any responsibility for approval of public charter schools to the Office of Public Instruction or to the Superintendent of Public Instruction. On the contrary, the PCSA specifically distinguishes between

noncharter public schools and public charter schools in Mont. Code Ann. § 20-6-803.

“20-6-803(7) "Noncharter public school" means a public school that is under the supervision and control of a local school board or the state ***and is not operating under a charter contract*** pursuant to 20-6-806.”

“20-6-803(9) "Public charter school" means a public school that: . . . (c) ***is established and operated under the terms of a charter contract;*** . . . (g) operates in pursuit of a specific set of educational objectives ***as defined in its charter contract;*** and (h) ***operates under the general supervision of the board of public education in accordance with its charter contract.***

Mont. Code Ann. § 20-6-803(7) and (9) (emphasis added). Under the plain language of these distinct definitions of noncharter public schools and public charter schools, Superintendent Arntzen and OPI’s attempted application of requirements for opening noncharter public schools to public charter schools is incorrect and must fail.

25. Pursuant to its designated responsibilities under the PCSA, the Board of Public Education established an application process for proposed public charter schools to ensure that a proposed school meets legislatively established criteria. In addition, the BPE procedures implement BPE’s duty to supervise the opening and operation of public charter schools.

26. Despite the absence of any statutory authority, OPI and Superintendent Arntzen require proposed public charter schools to comply with additional, duplicative, and sometimes conflicting processes that apply only to the opening

noncharter public schools as defined in Mont. Code Ann. § 20-6-803(7) “that are not operating under a charter contract pursuant to 20-6-806.”

27. The definitions in Title 20, Chapter 6, Part 5 do not include “public charter school” within the general definition of a “school” subject to the requirements of Mont. Code Ann. § 20-6-501 *et. seq.*—the very requirements that Superintendent Arntzen and OPI are applying to the public charter schools. The PCSA’s creation of new definitions of both “public charter school” and “noncharter public school” clearly distinguishes between the regulatory treatment of these distinct types of public schools. The definitions are particularly relevant in confirming that the process for overseeing these two types of public schools is to be found in separate places in the Montana Code. In addition, the 2023 Montana legislature did not incorporate references to public charter schools in any of the school opening processes established in Title 20, Part 6, Chapter 5 when enacting the PCSA.

28. Superintendent Arntzen and OPI developed and published “Public Charter Schools Guidance,” a true and correct copy of which is attached hereto as Ex. A. In the guidance, Superintendent Arntzen and OPI asserted authority over opening public charter schools despite the fact that this conflicts with the broad authority assigned to the BPE. The OPI guidance provisions that conflict with the PCSA include, but are not limited to:

- a. Any new charter application that is accepted by the BPE needs to follow the statutory school opening-process in Montana.¹
- b. Once charter schools are approved by the BPE, the OPI is responsible for the oversight of the educational functions of the new school.
- c. School opening procedures as outline in Title 10 {sic}, Chapter 6, Part 5, MCA, require county superintendents to estimate average number of belonging (ANB) after investigating the probable enrollment for the school. This enrollment estimate will be reported to the OPI as part of the school opening process.

Id.

29. Superintendent Arntzen and OPI continue to impose requirements on elementary public charter schools that conflict with the broad authority of BPE to open and close public charter schools. For elementary public charter schools, Superintendent Arntzen and OPI require conformity with Mont. Code Ann. § 20-6-502. This statute requires a parental petition to open a school, a board of trustees' resolution, county superintendent of schools' review, and a discretionary vote to “approve or disapprove” by the board of commissioners in the county in which the school will operate.

30. In addition to the “Public Charter Schools Guidance,” Superintendent Arntzen articulated specific intent to require public charter schools to undergo general school opening processes applicable to opening non-charter public schools

¹ The guidance hyperlinked this reference to Title 20, Chapter 6, Part 5 of the Montana Code Annotated.

in a March 22, 2024, letter to the Board of Public Education. A true and correct copy of the letter is attached as Ex. B. In her correspondence to the BPE, Superintendent Arntzen stated:

Through the statutory process, school districts will prepare the information required by statute and obtain the county superintendent's ANB estimate. In some cases – for example, when opening an elementary school under § 20-6-502(3), MCA – the approval of the county commissioners is required.

Id.

31. Superintendent Arntzen additionally indicated that the BPE should, as a matter of Board policy, establish a separate school opening process and indicated that she would defer to the BPE if such rules or policies were adopted. Specifically, Superintendent Arntzen stated:

I welcome the Board encouraging school districts to follow the existing school opening statutes *or, in the alternative, establishing a separate school opening process as a matter of Board policy*. I encourage you to partner with school districts and the OPI to promote the school opening process so that public charter schools can prepare to open on time, without slipping unnecessarily close to the June 1 statutory deadline.

Id. (emphasis added).

32. By recognizing BPE's rule-making authority relative to opening public charter schools, Superintendent Arntzen admitted that the BPE's authority extends to the public charter school opening processes. This position is consistent with the Legislature's designation of the BPE as responsible for preopening procedures and ensuring smooth opening conditions for public charter schools.

Despite this clear authority granted to the BPE, Superintendent Arntzen continues to require public charter schools to undergo additional, unnecessary, and inapplicable procedures without any authority to do so.

33. The context of Title 20, Chapter 6, Part 8, and Mont. Code Ann. § 20-6-501 et. seq., irreconcilably conflict as it pertains to school opening procedures and the BPE's authority to ultimately approve public charter schools for opening and operation and develop preopening processes.

34. In a letter to Superintendent Arntzen, the BPE re-asserted its legislatively delegated authority on March 25, 2024, after having approved 19 public charter schools under the statutory process detailed in Mont. Code Ann. § 20-6-801, et seq. Ex. C. BPE declared the approved public charter schools open and directed OPI to administratively recognize the open public charter schools, thereby enabling the schools to receive funding as directed by the provisions of Title 20, Chapter 6, Part 8 and in time to begin operations during the fiscal year starting July 1, 2024. *See* Mont. Code Ann. § 20-6-812. This direction precludes any assertion of a requirement that the BPE-approved public charter schools complete conflicting opening procedures in Title 20, Chapter 6, Part 5 that are limited to noncharter public schools as defined in Mont. Code Ann. § 20-6-803(7).

35. Superintendent Arntzen's and OPI's defiance of the BPE's constitutional and legislatively-delegated authority to approve public charter

schools and to declare them open will, if not remedied, prevent qualified and approved public charter schools' inclusion in general fund budgeting procedures beginning in a matter of days for fiscal year 2025. Moreover, Superintendent Arntzen's delay impedes or prevents access to public charter school funding for applicable basic entitlements and for students enrolled in the approved public charter schools. Superintendent Arntzen's and OPI's delay in recognizing the BPE's delegated authority to open public charter schools subjects approved schools to the possibility of losing funds to which they and their students are entitled during Fiscal Year 2025.

36. To date, Superintendent Arntzen and OPI have not complied with BPE's direction. Upon information and belief, Defendants have indicated that they have made their position clear and do not intend to acquiesce to the BPE's authority.

CLAIMS FOR RELIEF

COUNT I – DECLARATORY RELIEF

37. MQEC realleges the preceding paragraphs.

38. Based on the foregoing, MQEC is entitled to a Declaration by this Court pursuant to Mont. Code Ann. § 27-8-101, et seq., that the schools approved and declared open by the BPE are exempt from the procedures applicable to public non-charter schools under the unique and specific regulatory requirements for public charter schools.

39. Superintendent Arntzen’s and OPI’s interpretation of Title 20, Chapter Six, Part 5 to require two separate processes to open a public charter school is unreasonable and violates the express legislative intent articulated in Mont. Code Ann. § 20-6-802 and the distinct definitions of “noncharter public school” and “public charter school” in Mont. Code Ann. § 20-6-803(7) and (9).

40. Superintendent Arntzen’s and OPI’s interpretation of Title 20, Chapter 6, Part 5 is unreasonable and legally incorrect, given the definition of “school” in Mont. Code Ann. § 20-6-501, which corresponds to the definition of “noncharter public school” in Mont. Code Ann § 20-6-803(7). These sections state:

As used in this title, *unless the context clearly indicates otherwise*, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense.

Mont. Code Ann. § 20-6-501(*emphasis added*). Contrast this definition with the more specific distinguishing definitions of “noncharter public school” and “public charter school” in Mont. Code Ann. § 20-6-803(7) and (9):

(7) "Noncharter public school" means a public school that is under the supervision and control of a local school board or the state *and is not operating under a charter contract pursuant to 20-6-806*.

(9) "Public charter school" means a public school that: . . . (c) is established and operated under the terms of a charter contract; . . . (g) operates in pursuit of a specific set of educational objectives as defined in its charter contract; and (h) operates under the general supervision of the board of public education in accordance with its charter contract.

Mont. Code Ann. § 20-6-807 (*emphasis added*).

These definitions make clear that opening processes for noncharter public schools (traditional schools not operating under a charter contract) and public charter schools (which are specifically governed by their charter contract) are distinct from one another.

41. Based on legislative intent, the maxims of jurisprudence, the conflicts between Title 20, Chapter 6, Part 8 and Title 20, Chapter 6, Part 5, and the express authority given to the BPE constitutionally and by statute, questions regarding the authority to administer public charter school opening procedures and receipt of funding must be reconciled in favor of the BPE's authority to approve and declare public charter schools open.

42. MQEC's members, as public schools, administrators, and entities directly involved in public education, have rights affected by the dispute described in the preceding paragraphs. MQEC's members are entitled to obtain a declaration of rights under the statutes governing the approval, opening, and funding of public charter schools and inclusion of those schools in Fiscal Year 2025 budgets and general fund revenue distribution.

43. Pursuant to Mont. Code Ann. § 27-8-201, this Court has the authority to render a declaratory judgment establishing that the BPE's declaration that the approved public charter schools are open is valid. Moreover, this Court has the authority to render a declaratory judgment directing Superintendent Arntzen and

OPI to comply with BPE's March 25, 2024, direction regarding the performance of administrative functions relative to the approved charter schools.

44. Pursuant to Mont. Code Ann. § 27-8-201, this Court has the authority to render a declaratory judgment establishing that neither Superintendent Arntzen nor OPI has the authority to approve, declare open, or interfere with the opening or correlated calculation or receipt of funding due to public charter schools under Title 20, Chapter 6, Part 8.

45. Plaintiff requests entry of a declaratory judgment establishing the BPE's authority as stated above, directing Superintendent Arntzen and OPI to adhere to the BPE's March 25, 2024, directive and to refrain from exerting authority over public charter schools beyond those administrative functions necessary to ensure distribution of general fund appropriations.

COUNT II – PRELIMINARY INJUNCTION

46. MQEC restates the preceding allegations.

47. A preliminary injunction may be granted if the applicant establishes that:

- a. The applicant is likely to succeed on the merits of the claim;
- b. The applicant is likely to suffer irreparable harm in the absence of preliminary relief;
- c. The balance of equities tips in the applicant's favor; and,
- d. The order is in the public interest.

Mont. Code. Ann. § 27-19-201(1).

48. MQEC is entitled to a preliminary injunction in this matter, as it is likely to succeed on the merits of the claim and MQEC's members and mission will be irreparably harmed in the event Superintendent Arntzen and OPI continue to interfere with the opening of, budgeting, and funding opportunities for approved public charter schools who have a diminishing window of time to secure funding to open in Fiscal Year 2025.

49. MQEC is entitled to a preliminary injunction in this matter because the constitutional interests in the legislatively delegated responsibility for approval and oversight of public charter schools are being usurped and re-delegated to entities without legislative authority over public charter schools or responsibility to administer Title 20, Chapter 6, Part 8 of the Montana Code Annotated.

50. MQEC is entitled to a preliminary injunction because a balancing of the equities tips in favor of application of the detailed regulatory scheme established by the Legislature and administratively delegated to BPE. BPE has engaged in a substantive review of public charter school applications, while OPI's additional processes do not add a substantive review and result only in unreasonable barriers and bureaucratic involvement of political subdivisions generally uninvolved in public education.

51. MQEC is entitled to a preliminary injunction because the public interest, as expressly established by the Legislature in Mont. Code Ann. § 20-6-802, is best served by expediting the opening and funding of public charter schools that have already met the statutory requirements for opening established by the 2023 Montana Legislature.

COUNT III – FINAL INJUNCTION

52. MQEC restates the preceding paragraphs.

53. Pursuant to Mont. Code Ann. § 27-1-102, MQEC is entitled to a final injunction precluding Superintendent Arntzen and OPI from usurping the BPE’s regulatory authority over public charter schools, as demonstrated above.

54. Pecuniary compensation would not afford adequate relief, as regulatory responsibility for existing approved and new public charter schools should be consistently applied by the agency to which authority over public charter schools is legislatively delegated.

55. Restraining Superintendent Arntzen and OPI from future efforts to interfere with BPE authority over public charter schools is necessary to prevent future actions of this nature.

COUNT IV – UNCONSTITUTIONAL INVASION OF THE PROVINCE OF THE BOARD OF PUBLIC EDUCATION.

56. MQEC restates the preceding paragraphs.

57. Montana’s Constitution requires the Montana Legislature to “provide a basic system of free quality public elementary and secondary schools.” Mont. Const. art X, § 1(3).

58. The Montana Constitution also establishes discrete agencies delegated constitutional responsibilities for the provision of a basic system of education, including the BPE.

59. The Montana Constitution provides: “There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.” Mont. Const. art. X, § 9(3)(a).

60. The Montana Legislature’s delegation of authority and responsibility for the implementation of the substantive provisions of the PCSA was clearly conferred upon the BPE. While ministerial duties necessary to ensure appropriate funding and resource access are performed by the Superintendent of Public Instruction and OPI, all substantive determinations affecting the operations of public charter schools are within the province of the BPE and the local Board of Trustees for the school under the PCSA.

61. As applied by Superintendent Arntzen and OPI, the application of Title 20, Chapter 6, Part 5 to public charter schools constitutes an unlawful

usurpation of legislative authority validly delegated to another constitutional body, the BPE.

**COUNT V – UNCONSTITUTIONAL REDELEGATION
OF LEGISLATIVE AUTHORITY (AS APPLIED)**

62. MQEC restates the preceding paragraphs.

63. Superintendent Arntzen has impermissibly retained, in part, and redistributed, in part, legislative authority to approve the opening of public charter schools to another body (the Boards of County Commissioners).

64. Under the statutory framework applied by Superintendent Arntzen and OPI, neither the Defendants nor the Boards of County Commissioners' official acts relating to public charter schools are governed by Title 20, Chapter 6, Part 8. As a result, Defendants and any Board of County Commissioners are not governed or restrained by key factors and criteria. Defendants and any Board of County Commissioners undertaking official acts related to public charter schools are not mandated to adhere to the detailed criteria applicable to public charter schools.

65. Official actions by Defendants or the Boards of County Commissioners, without obligation to apply legislatively established parameters, is an unconstitutional delegation of legislative authority.

66. Superintendent Arntzen's and OPI's application of Title 20, Chapter 6, Part 5 to require public charter schools is unconstitutional because the second approval process for public charter schools (primarily elementary public schools)

occurs without reasonable clarity, limitations on commissioner discretion, or policy guidance.

67. The standards and guidelines applicable to the BPE are not required of Superintendent Arntzen, OPI, or any Board of County Commissioners, potentially resulting in “arbitrary and capricious” actions, dependent wholly on the will and whim” of others. *Williams v. Bd. of County Comm'rs*, 2013 MT 243, ¶ 45, 371 Mont. 356, 308 P.3d 88 (citing *Bacus v. Lake County* (1960), 138 Mont. 69, 78, 354 P.2d 1056, 1061).

68. Superintendent Arntzen’s and OPI’s exercise of authority over the opening of public charter schools is an unconstitutional usurpation of power belonging to the BPE. Application of Title 20, Chapter 6, Part 5 to public charter schools by Arntzen and OPI is an unconstitutional delegation of legislative authority.

69. Because neither the Superintendent of Public Instruction nor OPI was delegated authority to establish, open, or supervise public charter schools, Superintendent Arntzen’s and OPI’s assertion of administrative authority over public charter schools is an unconstitutional delegation of legislative authority and an unauthorized abridgment of the BPE’s constitutional and statutory authority.

PRAYER FOR RELIEF

Based on the foregoing, Plaintiff respectfully requests that this Court:

1. Enter an order granting a declaratory judgment enjoining Defendants from imposing additional school opening procedures under Title 20, Chapter 6, Part 5 on BPE-approved public charter schools;
2. Enter an order enjoining Defendants and all agencies, agents, and employees from abridging the authority of the BPE as it pertains to public charter schools;
3. Enter an order directing Defendants to perform administrative functions as detailed in the BPE's March 24, 2024, correspondence. Specifically, Plaintiff's request and order requiring Defendants to:
 - a. Assign a school code to each charter school approved by the BPE;
 - b. Incorporate funding for the charter schools approved by the Board in the preliminary general fund budget worksheets for the districts to be used by the districts in adopting their fiscal year 2025 budgets; and
 - c. Distribute K-12 BASE Aid for each district with charter schools approved by the Board with basic entitlements for fiscal year 2025 based on the planned enrollments submitted by each district as part of its application for approval and the terms of each district's charter contract and per-ANB and other enrollment-driven funding elements based on enrollment counts in October and February of the school year.
4. Enter an order granting any other appropriate relief that may be necessary to ensure that BPE's supervision of public charter schools is not further abridged;
5. Award of attorneys' fees and costs incurred in bringing this action; and,
6. Award any further relief this Court deems just and appropriate.

DATED this 28th day of March, 2024.

KALEVA LAW OFFICE

By: /s/ Elizabeth A. Kaleva
Elizabeth A. Kaleva
Attorneys for Plaintiff

EXHIBIT A



Public Charter Schools Guidance

Contents

Purpose.....	1
History and References.....	1
Overview	1
School Opening Process with the OPI	2
Opening of Public Charter Schools Operating Under a Local School Board	2
Additional Opening Considerations of Public Charter Schools	3
Funding of Public Charter Schools.....	3
Basic Entitlement for Newly Approved Public Charter Schools	3
1) Public Charter Schools Operating Under a Local School Board	3
2) Public Charter Districts.....	3
Gifts, Donations, and Surplus Funds	4
Resources	4

Purpose

This document is intended to provide information to the public, particularly public charter school personnel, regarding the responsibilities of the Office of Public Instruction and public charter schools as created and defined by HB 549 (2023 Session).

History and References

- [HB0549 \(2023 Session\)](#)
- [Title 20 Chapter 6 Part 8, MCA](#)
- [Board of Public Education Public Charter School webpage](#)

Overview

HB 549 (2023) authorized the establishment of public charter schools in Montana and defined the roles and requirements of schools, the Board of Public Education (BPE), and the Office of Public Instruction (OPI).

The Board of Public Education is tasked with the review and approval of proposed public charter schools, as well as contract maintenance for any approved facilities. For additional information regarding the BPE process, please visit the [Board of Public Education Public Charter School webpage](#). Any new charter application that is accepted by the BPE needs to follow the statutory [school-opening process in Montana](#).



Once charter schools are approved by the BPE, the OPI is responsible for the oversight of the educational functions of the new school. Public charter schools are identified as a separate school code (SC) and must meet the requirements as such, including financial and educational reporting and maintenance of student attendance agreements. Public charter school districts are identified as an individual legal entity (LE).

School Opening Process with the OPI

As with all schools in the State of Montana, the goal of public charter schools must be to provide Montana students with a learning environment that allows them to develop their full educational potential and enhance their opportunities (20-6-802, MCA, 20-1-102, MCA).

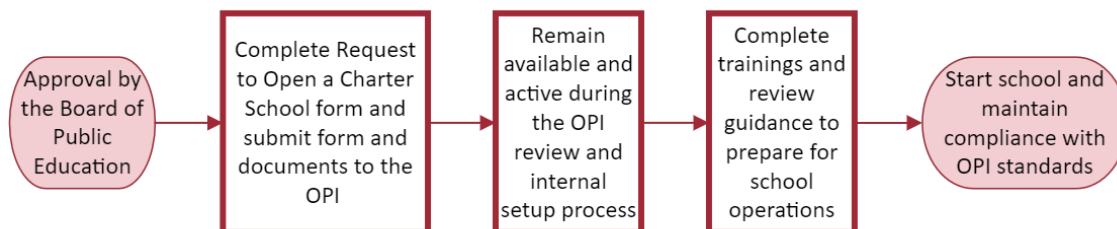
There are two types of public charter schools: those operating under an existing local school board and those operating as a new school district under a separate governing board. Those schools operating as a new school district will have additional requirements and responsibilities. For both types of charter schools, the school must apply for contract with the Board of Public Education and be approved to proceed.

After approval of the Board of Public Education, a new charter school or charter district must apply with the OPI to complete the school set-up process. Schools and districts will need access to multiple OPI systems to maintain students' information and their own.

Opening of Public Charter Schools Operating Under a Local School Board

After approval by the BPE, a public charter school must:

1. Submit the Request to Open a Charter School form to the OPI, along with the required documents listed.
2. Work with the OPI to ensure that system set up is completed. There may be a need to double check logins, review website accesses, and add or remove users.
3. Participate in trainings and review guidance made available by the OPI.





Additional Opening Considerations of Public Charter Schools

A public charter school or district's obligations will include, but are not limited to:

- Meet Special Education legal requirements, as available for review in [Special Education Guidance](#) and via the U.S. Department of Education [Office of Special Education](#) website.
- Work with the Assessment team to appoint a Test Coordinator and understand the testing requirements and processes, as can be reviewed through the [Assessment webpage](#).
- Work with School Nutrition to assess needs, review [School Meal Programs](#), and implement program.
- Review [Accreditation requirements](#) and work with the team to meet standards.

Funding of Public Charter Schools

Basic Entitlement for Newly Approved Public Charter Schools

School opening procedures as outline in [Title 10, Chapter 6, Part 5, MCA](#), require county superintendents to estimate average number of belonging (ANB) after investigating the probable enrollment for the school This enrollment estimate will be reported to the OPI as part of the school opening process. On the first budget sheet of the first year of a new public charter school that is located within an existing district, the students who will be enrolled in that charter school, may already have been counted for ANB purposes in another school in the district. To ensure students are not double counted, the new charter school will show on the budget report as having non enrolled students for the first year's budget sheet but will receive basic entitlement.

1) Public Charter Schools Operating Under a Local School Board

When a public charter school is operated by a local school board, a public charter school must

1. Be considered a separate budget unit of the located school district;
2. Have its Average Number Belonging (ANB) calculated separately from other budget units of the district;
3. Receive a basic entitlement calculated separately from other budget units of the district when its ANB is greater than:
 - (i) 70 for an elementary school or program;
 - (ii) 20 for a middle school or program; or
 - (iii) 40 for a high school or program.

The governing board of a public charter school shall report annually on the financial activities of the public charter school in the manner prescribed in [20-9-213\(6\)](#).

2) Public Charter Districts

For newly approved public charter school districts, the county treasurer of the county in which a public charter school is located shall establish funds for the public charter district separate from the funds of the located school district. Funding of the public charter school district must be distributed as BASE aid, at



- 80% of the basic entitlement,
- 80% of the total per-ANB entitlement,
- 100% of the total quality educator payment,
- 100% of the total at-risk student payment,
- 100% of the total Indian education for all payment,
- 100% of the total American Indian achievement gap payment,
- 100% of the total data-for-achievement payment, and
- 140% of the special education allowable cost payment.

The total funding received constitutes both the minimum and maximum amount of public funding for the public charter school district. Tuition and fees are prohibited.

A public charter school district may obligate the public charter school district to indebtedness and is solely responsible for those debts. A public charter school district is not responsible for the debts of the located school district.

A public charter school district is not eligible for a basic entitlement unless its ANB is greater than:

- 70 for an elementary school or program;
- 20 for a middle school or program; or
- 40 for a high school or program.

Gifts, Donations, and Surplus Funds

The governing board of a public charter school is authorized to accept gifts or donations and utilize them in accordance with the donor's stipulations, provided they align with legal provisions or charter contract terms.

Money remaining in the public charter school's accounts at the end of a budget year must be retained for subsequent use.

Resources

For questions or concerns, please contact the School Finance Division of the Office of Public Instruction at OPISchoolFinance@mt.gov.

EXHIBIT B

Elsie Arntzen, Superintendent
PO Box 202501
Helena, MT 59620-2501
406-444-5643
In-State Toll-free: 1 888 231 9393
TTY Users: 406-444-0235
opi.mt.gov

OFFICE OF PUBLIC INSTRUCTION
STATE OF MONTANA

Putting Montana Students First **A⁺**



March 22, 2024

Re: Opening of public charter schools

Dear Board of Public Education Members:

As education leaders, we have the tremendous opportunity and responsibility to implement public charter schools for the benefit of Montana's children. By collaborating, the promise of charter schools will be realized in districts around the state.

Several public charter schools have already successfully completed the school opening process in Title 20, Chapter 6, Part 5 with minimum effort. The public charter school application and contracting process is different, but the school opening process, long established in Montana law, is the same for public charter schools as it is for any other public school. Nothing in HB 549 changes or waives the existing, statutory school opening process.

Through the statutory process, school districts will prepare the information required by statute and obtain the county superintendent's ANB estimate. In some cases – for example, when opening an elementary school under § 20-6-502(3), MCA – the approval of the county commissioners is required.

The preopening process must “ensure that each school meets all building, health, safety, insurance, *and other legal requirements for school opening.*” § 20-6-806(8), MCA. Because HB 549 did not change or waive the legal requirements, the Board may make a policy (or rule) to change those requirements. The Office of Public Instruction (OPI) will follow either the existing legal requirements for school opening in Title 20, Chapter 6, Part 5 or will follow a Board policy (or rule) establishing a public charter school opening process. § 20-3-106(30), MCA.

I welcome the Board encouraging school districts to follow the existing school opening statutes or, in the alternative, establishing a separate school opening process as a matter of Board policy. I encourage you to partner with school districts and the OPI to promote the school opening process so that public charter schools can prepare to open on time, without slipping unnecessarily close to the June 1 statutory deadline.

Sincerely,

A handwritten signature in cursive script that reads "Elsie Arntzen".

Elsie Arntzen
Montana Superintendent of Public Instruction

EXHIBIT C



Board of Public Education

BOARD MEMBERS

March 25, 2024

APPOINTED MEMBERS:

Tim Tharp, Chair
Savage

Superintendent Elsie Arntzen
Office of Public Instruction

Susie Hedalen, Vice-Chair
Townsend

Dear Superintendent Arntzen:

Ron Slinger
Miles City

As you know, the Board of Public Education has approved 19 public charter schools to open and operate pursuant to the provisions of Montana law codified in Title 20, Chapter 6, Part 8 of the Montana Code and the Montana Constitution. Given this authority, the Board declares the public charter schools open.

Renee Rasmussen
Clancy

Lisa Schmidt
Conrad

Public charter schools approved by the Board have fully satisfied all requirements set forth in law to open and operate starting July 1, 2024. Each public charter school has, through its constitutionally empowered board of trustees, fully executed contracts with the Board authorizing the opening dates. The terms of these contracts specify the preopening requirements to ensure that each charter school is prepared to open smoothly on the date agreed. Nothing in the law that your staff have cited from a different and inapplicable part of the Code, or the terms of those contracts requires school districts to obtain supplemental approval of their charter schools from the county commissioners or your office.

Jane Lee Hamman
Clancy

Pursuant to Title 20, Chapter 6, Part 8, MCA, and the constitutional authority over the public school system vested in the Board of Public Education by Article X, Section 9 of the Montana Constitution, the Board directs that your office:

Madalyn Quinlan
Helena

Gavin Mow, Student Rep.
Helena

EX OFFICIO MEMBERS:

Clayton Christian,
Commissioner of
Higher Education

Elsie Arntzen,
Superintendent of
Public Instruction

Greg Gianforte,
Governor

1. Assign a school code to each charter school approved by the Board;
2. Incorporate funding for the charter schools approved by the Board in the preliminary general fund budget worksheets for the districts to be used by the districts in adopting their fiscal year 2025 budgets; and
3. Distribute K-12 BASE Aid for each district with charter schools approved by the Board with basic entitlements for fiscal year 2025 based on the planned enrollments submitted by each district as part of its application for approval and the terms of each district's charter contract and per-ANB and other enrollment-driven funding elements based on enrollment counts in October and February of the school year.

EXECUTIVE DIRECTOR:

McCall Flynn

Should you have any questions, please contact the Board's Executive Director.

Sincerely,

Dr. Tim Tharp, Chair
Board of Public Education