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AUG 23 2010

SUPERINTENDENT  
OF PUBLIC INSTRUCTION

Kristi Allen-Gailushas  
296 FRANKLIN MINE ROAD  
HELENA MONTANA 59602  
Pro-Se

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

Kristi Allen-Gailushas

Cause No \_\_\_\_\_

Pro-Se  
Plaintiff

**Complaint**  
~~Including~~

- Vs.

Superintendent Bruce Messinger, The Helena School District including the following listed known representatives of the Helena School District: Aaron Sieminski PE Instructor, Cheryl Summerer School Nurse, Drenda Carlson Youth Connections Director, Elizabeth Marshall School Psychologist, Gary Myers Elementary Teacher, Greg Upham Administrator, Helen Fee Social Service Coordinator, Janet Erickson PE Instructor, Jeff Beaver PE Instructor Joan Leik Consumer Science Teacher, Joe Furshong Administrator Josh McKay Administrator, Karen Stout-Suenram Administrator Karrie Fairbrother St. Peter's Hospital, Kathy Boutilier School Nurse Katy Bungi Parent, Lisa Waterman PE Instructor Kelly Robertson PE Instructor, Kendra Selser School Nurse Linda Paull PE Instructor, Lisa Solomon PE Instructor, Pam Campbell, Soc. Service Coordinator, Mary Seitz, PE Instructor Mike Rieley, Primary Teacher, Missy Sampson, PE Instructor

42 Noel Petty, Shirley Chesterfield, PE Instructor, Peggy Schluter, Health Instructor  
43 Reg Hageman, Health Instructor , Rene Cloninger, PE Instructor  
44 Shane Hildenstab, Law Enforcement , Wendy Biegler, PE Instructor  
45 Torey Keltner, Law Enforcement . Tracy Moseman, SSHS Project Director  
46 Veronica Newhart, DPHS, Walt Chancy, Administrator ,Bill Gray, PE Instructor ,  
47 Carl Straub HS Teacher, Dan Purcell PE Instructor, Ed Darfler PE Instructor  
48 Nancy Emmert PE Instructor , Marc McCauley MS Counselor and PE Instructor,  
49 Ann Schile Adaptive PE Instructor, Lona Carter-Scanlon Administrator,  
50 Mike Albert PE Instructor, District Board of Trustees Michael O'Neil, Aidan  
51 Myhre, Cherche Prezeau, Libby Goldes, Joe Cohenour, Don Jones, Robin LeNeve,  
52 Trevor Wilkerson, Terry Beaver, Executive Committee of the Board of Directors,  
53 Craig Crawford, Alternative Education Coordinator, other known or unknown  
54 representatives of the Helena School District. **(District)**  
55

56 And  
57

58 Montana office of Public Instruction  
59 Superintendant Denise Juneau **(OPI)**  
60

61  
62 

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Defendants

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63 Now comes Kristi Allen- Gailushas herein after (Kristi) before the First Judicial District  
64 Lewis & Clark County Helena Montana to seek relief in the above titled matter filing this action  
65 in the proper court in the state of Montana.  
66

67 To insure that the facts in the case and points of law are heard, Kristi hereby prays the  
68 court to have patience in the preparation and presentation of the action and to forgive Kristi if a  
69 particular procedure or process is inadvertently overlooked. Kristi also asks the court to allow  
70 for amendments to the complaint to insure due process and procedure are not forfeited due to  
71 error or oversight.  
72  
73  
74

75 **COMPLAINT**

76 Action is sought to enjoin the above titled defendants in an action before the court to seek  
77 intervention in the proceedings of the Helena School District and the above named and un-named

78 (Defendants) that Kristi hereby names are representatives of the Helena School District,  
79 hereinafter referred to as (District) and the Office of Public Instruction with Superintendent  
80 Denise Juneau named as defendant hereinafter known as (OPI).  
81

82 The Helena School District is a subdivision of the state of Montana and the Board of  
83 Trustees are elected and charged with serving the citizens of the District to distribute funding and  
84 assimilate the procedures and processes administering K-12 education. The elected officials  
85 individually have taken an oath of office to perform the duties of the district and to defend the  
86 constitution. The board is charged with several duties which include but are not limited to  
87 funding and development of the class curriculum for use in the teaching programs administered  
88 by the District. The District, under Montana law, is authorized to establish and give authority to  
89 committees as needed to administer school curriculum. Committees authorized by the District  
90 are in themselves subdivisions of state and local government and rules of administrative  
91 procedures are well established under Montana law.  
92

93 The Office of Public Instruction is a subdivision of the state of Montana charged with  
94 administering funding and curriculum standards in the public education system. As such, all  
95 actions related to funding and curriculums are under the authority of the OPI. The  
96 superintendant of OPI is an elected position and bound by an oath of office to uphold the  
97 constitution and is the representative of the people of Montana in defending those rights as that  
98 elected official carries out the duties of that position.  
99

100 It is fact that the District and OPI are within the judicial boundaries of the First Judicial  
101 District. This jurisdiction is in effect includes elected officials of Lewis & Clark County, the  
102 incorporated city of Helena Montana, OPI, all of which are covered and within the District. The  
103 jurisdiction of the Montana First Judicial Court in Lewis & Clark County therefore is the proper  
104 venue to hear matters regarding the District, OPI and other responsible subdivisions of the state  
105 of Montana in its entirety and Kristi therefore claims proper venue has been chosen to hear the  
106 above titled matter.  
107

108 Kristi claims to hold standing in the above matter as she is a resident of Helena Montana,  
109 Lewis & Clark County in the State of Montana, and has 3 children actively and physically  
110 residing in the same county registered and actively engaged in the public education system  
111 administered by the District and OPI and therefore has proper standing before this court.  
112

113 Kristi's complaint is based on the laws of Montana and the United States including but  
114 not limited to the Constitutions of the United States and Montana. The Administrative  
115 procedures Act, Freedom of Information Act, The Sunshine Act and other Montana laws are also  
116 part of the plaintiff's complaint and motion for action before the court.  
117

118  
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120  
121 Respectfully submitted on this 20, day of August 2010.  
122

123 Kristi Allen Gailushas  
124 Kristi Allen-Gailushas  
125 296 FRANKLIN MINE ROAD  
126 HELENA MONTANA 59602

127 Pro-Se

128  
129 Subscribed and sworn to  
130 before me this 20th Day of  
131 August 2010

(NOTARY SEAL)

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**BRIEF IN SUPPORT OF COMPLAINT**

Kristi comes now before the court seeking relief presenting the following brief in support of the motions.

**BACKGROUND**

The District embarked on what is known as the Health Enhancement Curriculum at least two (2) years ago. The authorization to develop this health enhancement curriculum is not in question, but rather the content of the health enhancement curriculum and the process used to develop this health enhancement curriculum.

The process that the District engaged in over two (2) years ago was developed with the input of internal administrative personnel of the District including information from OPI and was carried out void of any public hearings or meetings affording the citizens an opportunity to observe and participate in that process.

Montana Constitution as amended in 1972 provides a Declaration of Rights. These rights provide under Article II Section 8 **Right of participation:**

*"The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."*

236 At the June 8<sup>th</sup> 2010 school board meeting, the draft of the curriculum (*See Attached*)  
237 (*Exhibit A*) was released to the Board and the public. It was stated at the meeting in July, that  
238 the curriculum developed by the District would be adopted at the August meeting of the School  
239 Board.

240 Kristi repeatedly made the claim that the District failed to disclose documentation and  
241 provide for accurate minutes of meeting records leading up to the adoption of the proposed 62  
242 page draft health enhancement curriculum. The continued denial of due process on obtaining  
243 discovery of public information leads to this cause.

244 The District has also embarked on a separate program that initiated a process of  
245 administering a curriculum with a predetermined arbitrary outcome.

246 *“The District adopted a program of Critical Competencies that represent*  
247 *content that students are expected to know at each grade level. The Critical*  
248 *Competencies are not the entire curriculum, but learner outcomes should be*  
249 *taught in sequential, systematic approach to promote an appropriate foundation*  
250 *to health & wellness.”*

251 This administrative process adopted by the District is arbitrary in its vagueness and the  
252 failure by the District to advise the citizens of the District of this process leading to the  
253 development of a health enhancement curriculum has capriciously circumvented the  
254 Constitutional rights of the people.

255 The District under the guidance of Superintendent Messenger continues to move forward  
256 with the process excluding the people from that process and the District and OPI continue to fail  
257 to defend the constitutional rights of the people of Lewis & Clark County School District  
258

259 Montana Constitution as amended in 1972 provides a Declaration of Rights. These rights  
260 provide under Article II Section 9. **Right to Know:**

261 *“No person shall be deprived of the right to examine documents or to observe*  
262 *the deliberations of all public bodies or agencies of state government and its*  
263 *subdivisions, except in cases in which the demand of individual privacy clearly*  
264 *exceeds the merits of public disclosure.”*  
265

266 The public was notified by the District that an executive committee had determined the  
267 public would be provided additional time to review the curriculum developed by the District.  
268 The District advised the public that the draft health enhancement curriculum has been referred to  
269 the "Executive Committee" for revision in the controversial area of sex education.  
270

271 Then, Superintendent Messinger determines he has exclusive authority to revise the  
272 curriculum without providing for the public disclosure of any proceedings or deliberations, or  
273 examination of all documents being used to make these decisions. This unbridled authority  
274 given to the superintendent by the District and OPI, constitutes a separate violation of the rights  
275 of the people.  
276

277 Kristi sent a letter making a request to the District delivered via certified mail requesting  
278 a seat at the table and was refused. **(See Attachment B & C)** Kristi in good faith tried to remedy  
279 the harm being done by actively and sincerely attempting to participate in the process and to  
280 examine documents and testimony provided to the District. Kristi purports that the District  
281 continues to fail to open the procedure up to public review. The District further violates the  
282 rights of the people under provisions of the Administrative Procedures Act (ADA) and the  
283 Montana Sunshine Act. Therefore Kristi believes that the court has the obligation to intervene in  
284 this matter.

285 The above mentioned letter was received by the District with a request to respond within  
286 a reasonable time. The District has acknowledged delivery of the letter, but failed to respond  
287 within the specified time and that response was denying participation in the development of the  
288 curriculum short of providing a comment that cannot be substantive without having all the facts  
289 and information available for review.

290 The written request to participate in the proceedings from the date of the August Board  
291 meeting, Tuesday August 10<sup>th</sup> 2010, has been ignored. The elected officials of the district and  
292 OPI are now in violation of their oath of office by failing to defend the rights of the citizens of  
293 Montana under Article II Section 7. **Freedom of speech, expression and press.**

294 *"No law shall be passed impairing the freedom of speech or expression. Every*  
295 *person shall be free to speak or publish whatever he will on any subject, being*  
296 *responsible for all abuse of that liberty. In all suits and prosecutions for libel or*

297 *slander the truth thereof may be given in evidence; and the jury, under the*  
298 *direction of the court, shall determine the law and the facts.*  
299

300 The District, at the meeting on August 10<sup>th</sup> 2010, cited a policy that prohibits public  
301 comment on issues not on the agenda. The District prohibited the public from commenting on  
302 issues on the agenda. The arbitrary and capricious actions of the Board of Trustees provided for  
303 the violation of this basic right by impairing Kristi the right to freedom of speech and expression.  
304 “Every person shall be free to speak or publish whatever he will on any subject.” Kristi was  
305 censored by the District, leaving Kristi’s freedom and liberty arbitrarily and capriciously  
306 violated.  
307

308 Under the provisions of the Montana Constitution Article X **Education and Public**  
309 **lands. Section 6: Aid prohibited to sectarian schools:**

310 (1) *“The legislature, counties, cities, towns school districts and public*  
311 *corporations shall not make any direct or indirect appropriation or payment from any*  
312 *public fund or monies, or any grant of lands or other property for any sectarian*  
313 *purpose or to aid any church, school, academy, seminary, college, university, or other*  
314 *literary or scientific institution, controlled in whole or in part by any church, sect, or*  
315 *denomination.*

316 Kristi has made attempts as late as the August 10, 2010 District Board meeting to  
317 acquire an economic analysis of the development and production of the health  
318 enhancement curriculum brought forward by the district. None of this information has  
319 been made available, again rendering question as to the source of funding. All funding  
320 and the sources of the funding of the school curriculum must be disclosed under law.  
321 Without such, Kristi claims the findings of facts once again violate her rights under these  
322 provisions of the law. With federal funding being used in the education programs in  
323 Montana it is furthermore important to have access to the sources of that funding as a  
324 right to know by the people of Montana.  
325

326 Kristi again on August 18<sup>th</sup> requested the District to provide for an opportunity to  
327 address the Board of Trustees at their next meeting. (See Attached Exhibit D) Insuring

328 the District is aware of all the facts prior to adoption of the District Health Enhancement  
329 Curriculum is the root of the complaint and without such, finding of facts is  
330 shortchanged. At time of the filing, the District has failed to respond to the request to  
331 address the meeting on this matter.

### 332 CONCLUSION

333 Ultimately, under the Montana Constitution Article X Section 8 , vests the  
334 supervision and control of the schools in each school district with the Board of Trustees  
335 that are under oath as elected officials as provided by law. The law provides the citizens  
336 of the state of Montana a means of checks and balances. Without such, we the people  
337 have no way to insure the interests of the people are protected. The legal system provides  
338 for a process to administer all levels of government and the people a way to insure the  
339 actions of the District and OPI do not infringe on the basic rights of the people. It is here  
340 that Kristi rests her faith in the separation of powers and the court to grant immediate  
341 relief to Kristi.

342  
343 The many administrative decisions made by the District under the control of the  
344 Board and those of OPI under the control of Superintendent Juneau must be brought out  
345 for a full discovery, and Kristi prays the court to grant the motions without delay.

346  
347 Kristi makes this plea to the court to grant summary judgment in the finding of  
348 facts and points of law that clearly show the constitutional rights of Kristi have been and  
349 will continue to be violated by the district without intervention. The rights of Kristi and  
350 other citizens of the District can only be protected through the wisdom of the court to  
351 intervene in the actions of the District to insure Kristi due process of law.

352  
353 By granting the motion to provide an immediate injunction, Kristi and other  
354 citizens of the District and Montana will be afforded due process of law. The opportunity  
355 to discover all facts and information that have lead the District to the adopted draft health  
356 enhancement curriculum can then be made. The failure to grant an injunction will allow  
357 the District to move forward with the final adoption of the health curriculum at which  
358 time will cause irreparable harm to Kristi and her children.

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Kristi would also like to ask the court to render compassion and patience for the form and content of the action now before the court. Kristi seeks the courts understanding that as a pro-se action before the court, Kristi is respectfully asking for the right to amend the complaint as needed to conform to the rules of civil procedures and or other laws that cover the filing of this action before the court, including the guarantee of due process of law.

Because Kristi is going through great expense to bring this case before the court, Kristi would like to ask the court to consider awarding any and all legal costs that may be incurred by Kristi as provided for under Montana law and the civil rules of procedure.

Respectfully submitted on this 30, day of August 2010.

Kristi Allen-Gailushas  
Kristi Allen-Gailushas  
296 FRANKLIN MINE ROAD  
HELENA MONTANA 59602  
Pro-Se

Subscribed and sworn to (NOTARY SEAL)  
before me this 30th Day of August 2010

  
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**Motions For  
Partial Summary Judgment**

Kristi now moves this court to grant partial summary judgment in the finding of facts and points of law that show the constitutional rights of Kristi and other citizens of the state of Montana have been violated. It is the intent and purpose of this action to show that the District has abused its authority and arbitrarily and capriciously advanced the school health enhancement curriculum without affording the citizens of the District to be heard or to participate in that process.

OPI further complicates the process by failing to intervene in the process initiated by the District violating the rights of the citizens of Lewis & Clark County School District and failing to provide intervention including oversight of expending funds in the development of the health enhancement curriculum without proper disclosure.

Because the District and OPI continue to provide a venue for the Superintendent of the Helena School District to bypass an open forum for citizens to exercise their rights under the constitution, Kristi is finding no opportunities to effectively participate in the process and is being denied access to information that has lead to the adoption of the draft health enhancement curriculum by the District.

Respectfully submitted on this 20, day of August 2010.

Kristi Allen-Gailushas

Kristi Allen-Gailushas

Subscribed and Sworn to  
before me this 20<sup>th</sup> day  
of August, 2010

(Notary Seal)

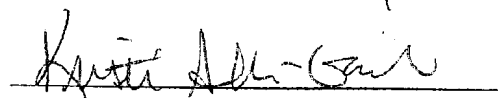
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178 **Motion for**  
179 **Immediate Injunctive Relief**  
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181 Kristi therefore moves this court to grant a motion for an immediate injunction against  
182 the District. Failure to provide for a venue for Kristi and other citizens to participate and  
183 examine all information that is being used in the development of the health enhancement  
184 curriculum is a violation of the basic rights provided for under our constitution.  
185

186 It is in the heart of due process whereas the District must afford Kristi and other citizens  
187 of Montana a right to discover and disseminate the information and to process documents used in  
188 the development of the health curriculum by the District which has refused to allow. The finding  
189 of facts and due process of law cannot be administered without the blessing of the court to  
190 intervene in the District's closed door process that is being endorsed by OPI.  
191

192 Understanding that the District has not adopted the health curriculum in question, it is  
193 important to recognize the irreversible harm that has and will be caused if the District is allowed  
194 to proceed without affording full and proper discovery. Due Process provides for the  
195 participation of the education programs overseen by OPI and administered by the District.  
196 Commenting on a final decision is contrary to the term "participation" and therefore is wrong.  
197

198 Respectfully submitted on this 20, day of August 2010.  
199

200 

201 Kristi Allen-Gailushas  
202 296 FRANKLIN MINE ROAD  
203 HELENA MONTANA 59602

204 Pro-Se  
205

(NOTARY SEAL)

Subscribed and Sworn to  
Before me this 20<sup>th</sup> day of  
August, 2010.

August 6, 2010

To: Helena School District  
Attention: School Board and District Superintendent  
From: Kristi Allen-Gailushas

Attachment B

Dear Board members and Superintendent Mr. Messinger,

My name is Kristi Allen-Gailushas, and I live in Lewis & Clark County and have my children in the Helena school system. I was surprised like many citizens when I found the details in the school Health Enhancement curriculum proposal that was released last month.

What I found more appalling than the curriculum itself, was the makeup of the committee and the process endorsed by the school district. This closed door administrative process has been underway for at least the past two years with little or no notice of the proceedings to the citizens of this district.

The outcry against this process and the Health Enhancement curriculum from the citizens of this district and across Montana caused for a postponement in this process. I along with many other parents' thank you for making this decision. Your decision to postpone adopting the Health Enhancement curriculum pending a review and possible revision was the right thing to do.

I understand that the schedule for the revision of this draft is now set. I understand that there will be a review process by a committee charged to do so by the school board. I also understand that the revised curriculum will be presented to the public at the September 14<sup>th</sup> meeting of the school board. I further understand that from that point, a public comment period will be afforded with a tentative adoption of the curriculum set for the October school board meeting. If this is not correct, I respectfully request that you advise me immediately of the process you are scheduled to follow.

With that said, I would like to go on record at this time with the following request. Because the future of my children and the rights of my children are being planned and affected by the school district, I wish to be part of the process with a seat at the

table. The past proceedings only included administrative staff of the district. I do not believe that my rights or the rights of my children were represented, and I wish to correct that. Furthermore it is important to have this representation on behalf of every parent with children in the Helena School District today and in the future.

Under the Administrative Procedures Act, it is important to have an opportunity to participate in the proceedings of our elected officials. It is further defined that under Article II of the Montana Constitution, the rights of my children and me must be protected.

1. Section 3, all persons are born free and have certain inalienable rights. The section goes on to insure that the pursuit of happiness and defending the lives and liberties shall not be infringed.
2. Section 8, provides for the right of participation. Under this section of our Montana Constitution my right to participate in the proceedings prior to the final decision is afforded and shall not be infringed.
3. Under Section 9, I have the right to know. It is clear under the provisions of this section that no person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions. Because the Helena school district is a subdivision of the State of Montana, the elected board is bound by this provision.
4. Under Section 10, I am concerned that the individual privacy of my children may be infringed upon; compromising the well being of a free society and to date, there is no compelling state interest that can be shown to make that exception.
5. Under Section 17, the basic right of Due Process of Law has been compromised in the proceedings to date. It is imperative that the citizens of Lewis & Clark County and the State of Montana have the right to due process from this day forward.
6. Under Section 34 of the Montana Constitution, the Unenumerated rights of the people are protected. Without going into further detail at this time, it is important that you recognize that my rights as a parent given to me as a child of God shall not be infringed.

I also want to give notice to you that my rights under the United States Constitution must be observed.

1. Under the preamble of the Constitution and other provisions of federal and state law protect my rights and I expect the board to recognize and respect those rights. Because the future education and welfare of my children is being determined by this process it is my right to participate in that process.

I will expect to receive from you a complete schedule of meetings that will be held. This notification must include dates and times, with an agenda, regarding the curriculum revision process. I would also like to have copies of any and all internal documents and or memos circulated on this issue.

Affording me to serve on this administrative committee will insure me that my rights are being observed in the review of the Health Enhancement curriculum. The interests of due process are afforded to all, and I will expect an immediate acceptance of my request. I expect to hear from you within 5 days of the receipt of this notice. Time is short on the revision process.

I will look forward to working with you in the coming days on establishing a curriculum that is indeed healthy for my children and the future of our education system here in the Helena area.

Respectfully submitted on this the 6<sup>th</sup> day of August 2010.

---

Kristi Allen-Gailushas

Subscribed and sworn

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(Notary Seal)

Bruce K. Messinger, Ph.D.  
Superintendent

55 South Rodney Street  
Helena, Montana 59601  
Phone (406) 324-2001  
Fax (406) 324-2035

August 18, 2010

Kristi Allen-Gailushas  
296 Franklin Mine Road  
Helena, MT 59602

Attachment C

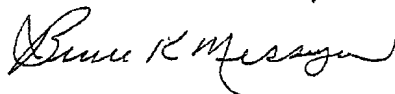
Dear Ms. Allen-Gailushas:

I am writing in response to your August 6<sup>th</sup> letter to myself and the Board of Trustees, wherein you've requested to serve on an administrative committee tasked with reviewing and revising the draft "Health Enhancement K-12 Critical Competencies" structure that was presented to the Board of Trustees earlier this summer.

As I trust you are now aware, there is no separate administrative process or committee that will be reviewing and revising that draft structure. Rather, I am undertaking the task of developing proposed revisions for the Board's consideration at a public meeting in September, and you will certainly have the opportunity to review those proposed revisions and to provide your thoughts and comments to the Board as part of that process. If you have specific changes that you would like to see made in the draft "Health Enhancement K-12 Critical Competencies" structure, I would greatly appreciate it if you could provide those to me with proposed text changes and page numbers.

Thank you for your interest in this important subject, and both the Board and I appreciate your willingness to participate in this process and provide comment and information for the Board's consideration.

Sincerely,



Bruce K. Messinger, Ph.D.  
Superintendent

pc: Board of Trustees

August 17, 2010

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AUG 17 2010

SUPERINTENDENT  
HELENA PUBLIC SCHOOLS

To: Helena School District Board of Trustees  
Subject: Meeting  
From: Kristi

Attachment D

Dear Board of Trustees,

I would like to officially request to appear before the Board at your next scheduled meeting on September 14<sup>th</sup>, 2010. I understand that your meeting will have on the agenda the health enhancement curriculum. I would like to respectfully request a spot on your agenda to address this issue. I would like to present some pertinent information for the board regarding the curriculum. This information is very important for your review prior to moving forward with the adoption of a health enhancement curriculum.

I would like to request approximately 5 minutes of your time on the agenda. I will look forward to visiting with you on this very important matter. Please let me know at your earliest convenience of your decision on my request to appear. I can be reached by calling 459-4170 and please respond by mail to me at 296 Franklin Mine Rd, Helena, MT. 59602 .

Sincerely,

Kristi Allen-Gailushas

