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ANALYSIS OF MONTANA EDUCATION LITIGATION, 1999–2003

by

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B.S., Montana State University – Northern, 1997

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Presented in partial fulfillment of the requirements

for the degree of

Doctor of Education

The University of Montana

2004

Approved by:

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Wattam, Donald K., Ed.D. May 2004 Educational Leadership

Analysis of Montana Education Litigation 1999 – 2003

Adviser: Roberta D. Evans, Ed.D.

This descriptive study was to ascertain what factors or characteristics are associated with the most successful attorneys representing school districts, students, employees and others in Montana K-12 lawsuits, 1999-2003. Additionally, this research also analyzed: what type of attorney public or private was used for education litigation for the period 1999-2003; what types of actions have been brought against Montana school districts; which classification of school districts has been involved in the most litigation; and what percentage of school districts' attorneys specialize in school law.

The study produced a sample and population of 89 cases with 135 issues decided 1999-2003. These decisions were distributed in the following forums; Montana State Supreme Court, 35 issues; Montana State Judicial District Court, 31 issues; Montana Office of Public Instruction, 36 issues; Montana Department of Labor and Industry, 26 issues, and Montana Workers Compensation Court, 7 issues.

The data was presented in the form of frequencies and percentages. Montana school districts utilized private attorneys 87.4% for education litigation, public attorneys were utilized for 3.6% of education litigation cases and no attorney was utilized for 9.0% of the education litigation. School districts utilized school law attorney/firms 73.3% for representation at Montana State Supreme Court; 49.6% for litigation at Montana State Judicial District Court; 72.2% for education litigation at Montana Office of Public Instruction; 70.8% for education litigation at Montana Department of Labor and Industry; and 83.3% at Montana Workers Compensation Court.

The largest percentage of litigation decided 1999-2003 were lawsuits by employees accounting for 55.2% of the total, while lawsuits by others accounted for 24.6% and lawsuits by students accounted for 20.1% of the total. Seventy-three issues or 54.1% of all issues were decided conclusively and completely in favor of school authorities. Thirty-seven or 27.4% of the issues were decided conclusively and completely in favor of students, employees or others. Analysis of outcome by attorney specialization gleaned 55.8% of issues represented by school law attorney/firms were decided conclusively and completely in favor of school authorities and 26.9% were decided conclusively and completely in favor of students, employees or others.

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DEDICATION

I would like to dedicate this dissertation to my loving wife and son for they have sacrificed so much during this project.

To: Marni Jo Wattam ~

The reason firm, the temperate will,
Endurance, foresight, strength, and skill;
A perfect Woman, nobly planned,
To warn, to comfort, and command;
And yet a Spirit still, and bright
With something of angelic light.

William Wordsworth

To: Donald Kenneth Wattam Jr. ~

Though nothing can bring back the hours,
Of splendor in the grass,
Of glory in the flowers,
We will not grieve not, rather find,
Strength in what remains behind...

William Wordsworth

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Throughout the chapters of my life the doctoral process sits squarely in the middle of the most important events realized thus far. My marriage to my wife Marni, the birth of our son DJ, the accident, and the completion of the dissertation all occurred simultaneously. Marni you have been there for all of these chapters. I can not think of anyone other person than you to have at my side during these times; you are the reason we are here. Thank you for the love and dedication to see this process through. Our future endeavors look exceedingly bright and I look forward to what the future holds for both of us. You are my always and forever, I love you. DJ always remember if you can dream it, you can do it.

I would like to acknowledge the service of my dissertation committee: Dr. Dean Sorenson, Chairman of the Department of Educational Leadership at the University of Montana for his genuine care and concern; Dr. Bill McCaw for prompting me to apply for the cohort experience and for his attention to detail only enriched this final product; Dr. Merle Farrier for his encouragement, assistance and reassurance; Dr. Rick van den Pol provided an insightful approach and asking probing questions, Thank you. Collectively the committee provided thoughtful insights that all greatly improved the dissertation.

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To Dr. Francee O'Reilly, I will be forever indebted for her editing services. A special thanks to Dr. William Lupini who provided the foundation for which this study was built and permission to use the instrument he refined.

I would like to express my gratitude to the members of Cohort IV for their support and friendship through the past three years. This cohort was comprised of a diverse group of colleagues all of which I hold in high regard. I would like to acknowledge the undying support and guidance of Linda Maass who contributed greatly to this study in many ways. Thank you for pushing me and challenging me through this process. The bond we have experienced, few will. I would be remiss not to mention Kelly Ball who was there to give me a hand up at the end and to help me laugh when I thought I could go no further.

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CHAPTER ONE

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will be business enough."

Abraham Lincoln (1850)

Introduction

Organizations today view litigation as a standard expense of their enterprises, according to Roos (1983) and Punger (1978). Among the institutions preparing for our litigious society are our school systems. Often, school systems have larger budgets and more employees than any other local agency. Punger (1978) emphasized this by stating, "The school board operates the largest restaurant chain and transit system in the county, serving 40,000 meals a day and operating 407 buses over a total of 4,316,886 miles a year" (p. 1). Considering the extensive operations inherent in public school, it is understandable that when organizations are regulated by policies and administrative rules, litigation is inevitable. Litigation is, for better or for worse, simply one cost of doing business. Schools across the nation, as well as those in Montana, are facing lawsuits. Montana is facing decreasing enrollment, and, as a result, decreases in funding. Kemp (1984) opined "Declining public school enrollments, diminishing number of public school parents and steadily increasing numbers of parents with no school age children combine to become 'partly responsible for a decreasing public confidence in education' (p. 188). Because of already-strapped school district budgets, the expense of litigation poses a tremendous difficulty for schools everywhere. Bittle (1980), Punger (1978) and Roos (1983) all concurred that managing and running a school is like a business under the oversight of a board of directors. Indeed, all across America, school boards today

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have awakened to the fact that the potential for litigation constitutes a significant wild card in developing district budgets.

American society has become more litigious, and a similar phenomenon has occurred in the governance of public education in the last three decades (Herbert, 1991). This means that a school administrator is dealing with and experiencing new situations that have not been experienced by earlier generations of administrators. Shannon (1973) offered examples of these changes: (a) today's administrator is "under the law; he no longer may safely presume that he is the law" (p. 3); (b) "Administrators are also dealing with students and parents who are entirely different than they were a decade ago" (p. 5); (c) Administrators must develop new styles of leadership due in part to the new expectations of education; and (d) Finally, administrators are subject to more judicial and legislative review than they had been in the past. Alexander (1932) and Murphy (1981) explored this last point and asserted that people previously have trusted in the law and in those in a position to interpret the law.

While the purpose of schools has been to educate the future citizens of society, most citizens have long trusted that administrators have been well-versed in the legal implications of their responsibility. Despite a growth in lawsuits, Murphy (1981) warned administrators not to lose sight of the basic purpose of a school--that schools (or administrators) exist to meet the needs of children and society. However, knowledge of legal principles is invaluable to the practice of effective school administration. Bartlett (1975) argued that an administrator who gives more consideration to a fear of the law instead of concentrating on the opportunities for students and the community is severely handicapped in his/her administrative capacity. Bednar (1984) and Bittle (1980) asserted that administrators often operate in a vacuum, but that schools must operate under the law

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and public eye. As a result, Bednar (1984) suggested administrators consult with their peers, parents, teachers, lawyers and board members to share with them the responsibility and also to standardize their decisions.

"Every administrative act has a legal basis," noted Stephen Roe at the University of Virginia in 1961 (p. 74). Roe (1961), Bednar (1984) and Murphy (1981) concurred that education has a process or framework that must be followed. Within that framework, administrators will continually face legal issues that could eventually result in litigation or at the very least, have legal implications. Underwood and Noffke (1990) stated that disputes which 50 years ago might have been resolved at a personal level are now more likely to be resolved through litigation. Painter (2001) reflected on all of these roles of administrators and concluded that "the principals' legal environment includes policy, procedures and even bargaining agreements...This conundrum deserves discussion and would be aided by research that explores administrative practice" (p. 219). McClung (1981) raised the point that policy in many states and districts is still being "...designed and implemented without sufficient sensitivity to the legal rights of students and other affected parties" (p. 37). The previous authors agreed with McClung on how this would promote more litigation, stronger policy and the further legalization of education.

Even though Roos (1983) felt that "litigation is as American as apple pie, I don't mean to perpetuate the old saw [saying] that all Americans are litigious" (p. 417). Taylor (2003), and Gullatt and Tollett (1997) dovetailed this concern and agreed that schools function in a legal environment and they are in a situation prime for lawsuits. Alexander (1932) made the observation that everyone deals with the law and that everyone has violated some school law everyday of his/her school life. With this comment in mind, Sametz (1983) and McGhehey (1982) reiterated that law must be studied because it

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affects all aspects of life and that we need to understand the law because it affects the sole purpose of education; to educate the children.

In 1974, Nolte observed the following:

> No longer can the administrator and school board act as their own lawyer. His advice to school districts: Locate and put on your team that missing element, the school board attorney. A school board member that I know well opined to me recently that his school district's attorney is at least, the best "sleep insurance" on the market. (p. 51)

Now, many school districts need to utilize outside sources to help resolve legal issues that arise in their districts. Hazard (1974) and Reutter (1986) postulated that by applying school law to conflict, the roles of educators and board members has changed since decisions are rarely accepted as the last word and are constantly contested in court. Bednar (1984, 1991) verified that disputes are now subject to court-like procedures, while Mac (1998) and Fischer (1989) heartily affirmed that society is becoming more litigious. Roe and Wells (1959) and Tanner-Otts (1995) concurred with the latter observation that school districts need someone who is versed in both district and school law. One issue complicating the school district situation relative to litigations is that schools are expanding in their social roles, taking on more responsibilities in educating the whole child. This, in turn, results in more situations that increase liability and litigation towards the district. While the "primary source" of legal advice has long been the office of a district attorney or attorney general, publicly elected attorneys are not always the best resource for school districts and their unique situations.

Attorneys are educated in all aspects of the law with the notable exception of education law. Few attorneys build their practices predominantly around education law.

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McKinney and Drake (1994), investigated this lack of expertise in their survey they conducted of school districts in a Midwestern state. When asked, "Does the attorney with whom you work specialize in school law?" (p. 473) only twenty-nine percent of the respondents reported "yes." The majority of the respondents instead noted their counsel usually practiced personal or corporate law.

This dearth of expertise also exists in Montana, where only a select handful of educational law firms are located in the more densely populated cities, including Missoula, Helena, Great Falls and Billings. However, Montana is a state comprised primarily of rural districts. Many districts are unable to afford a lawyer from these firms and must rely on the county attorney because of proximity and financial budgeting. Although unable to rectify the location issues, rural districts are able to supplement the use of the county attorney by utilizing the resources available through the Montana School Boards Association (MTSBA), to which schools may pay membership fees. Legal assistance comes with higher costs and with three attorneys on its staff, but Montana School Boards Association cannot respond quickly and easily to the inquiries of all school districts.

Despite their need to deal with legal matters, school administrators are not adequately prepared to address all legal matters well. Educators have little or no course-work in school law. Zollars, Zirkel and Kemerer (1986) decried this lack of legal knowledge within the group of educators and determined that via even a modicum of education law, administrators would be better served in the selection of a school attorney. They also believed that those with graduate legal coursework in school were deemed far better at ascertaining the effectiveness of their legal counsel.

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Statement of the Problem

School administrators spend a great deal of time each day making educational decisions with critical legal implications in the balance. "That schools exist in a complex legal environment is commonly accepted," noted Painter (1998, p. 73). Yet, "even when school administrators acts [sic] in complete good faith and with a reasonable familiarity with the new standards, they may find they must defend their actions in court or before the school board in an almost deadly adversarial proceeding" (Shannon, 1973, p. 12). Underwood and Noffke (1990) further asserted "if your system is typical, you'll end up defending one lawsuit a year -- most likely in the areas of negligence, teacher dismissal/nonrenewal, contract negotiation and implementation, or employee discipline" (p. 20). Educators must be aware of the rights of students, parents, fellow educators and elected officials (Grady, McKay, Krumm, and Peery, 1998).

Most school districts choose to follow one of three models to obtain professional legal advice. Some hire an in-house board attorney as a full-time employee; some use the services of an outside attorney paid on retainer; and others combine the two methods, retaining an outside lead attorney to work with in-house, full-time associates paid by the school district (Tanner-Otts, 1995). Regardless of the approach, school districts are in need of legal counsel and each district must decide how to best obtain legal advice.

The universal importance for school districts to garner expert legal advice has been recognized in the last few decades (Painter, 1998). Painter observed that

> School districts' needs for attorneys are also propelled by administrators' and board members' awareness of the possible consequences of proceeding without adequate legal advice, especially well-publicized damage awards for civil rights

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> violations for the reinstatement of teachers as a result of due process errors in the dismissal. (p. 73)

The advice of school attorneys has an undeniable and immediate impact on school district practice, but that effect is not the singular reason for considering the importance of the attorney's role. Jones (2000) underscored the complexity of the law by terming it "a fast-moving target" (p. 26).

The general responsibility of legal counsel is to render service on legal issues concerning governance, finance, property, pupils, employees, liability, and other legal concerns of the school district (National School Boards Association, Selecting and Working with a School Attorney: A Guide for School Boards, 1997). The National School Boards Association guidelines dovetail with professional obligations outlined by Painter in 1998. She felt that it is the duty of the attorney to provide competent representation, to abide by a client's decisions concerning the objectives of representation, to act with reasonable diligence and promptness, and to keep the client reasonably informed. The school attorney must be proficient in not just the law affecting school governance but those of administrative policy in order to be an effective advisor on school law matters. He/she must also have an excellent "working" knowledge about school administration generally and about the superintendent's "style of administration" specifically (Shannon, 1973). In Montana, another option for school districts is the counsel of the county attorney as per Montana Code Annotated § 20-1-204, 2003:

> Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or

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> community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business. (p. 414)

Since a county attorney is not under the authority of the school board, though held accountable by an electorate; their contribution to the school decision-making process is based on their legal expertise and commanded by an elected authority. On the other hand, since county attorneys and their staffs are not dependent on a school district for employment, their advice is independent in nature. Still, they are not compelled by the urgency essential to the service aspects of a traditional lawyer-client relationship (e.g., promptness and availability) usually enjoyed by legal services, school districts and boards (Shannon, 1973).

Research Questions

What factors or characteristics are associated with the most successful attorneys representing school districts, students, employees and others in Montana K-12 lawsuits, 1999 – 2003?

Sub-questions

1. Which type of (public/private) attorney was used for representation for education litigation for the period 1999-2003?
2. What types of actions have been brought against Montana School Districts for the period of 1999-2003?
3. Which classification (i.e. first class, second class, or third class) of school district has been involved most in litigation during the 1999-2003 time period?
4. What percentages of school districts' attorneys specialize in education law?

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Purpose of the Study

This research will draw conclusions about education law cases in Montana from 1999 to through 2003. Specifically, the examination of these cases will determine the cause of action prompting the case, and categorize the type of attorney who represented the school district.

Interestingly, little research has been conducted nation-wide in which education litigation has been traced and quantified to determine the most efficacious approach to attorney employment. By examining the success of school districts' litigation relative to their choices of attorney selection (private counsel, county attorney, or school district employee/attorney) and by the cause of action (lawsuits by students, lawsuits by employees, and lawsuits by others), this research will be able to determine which approaches have been associated with increased levels of success. Such information will be invaluable in offering recommendations for future school district practices, leaving trustees and administrators better equipped to assess and implement optimal legal actions. Two previous dissertations have been completed with regard to Montana case law in the form of handbooks for Montana administrators. The specific emphases of these studies were on K-12 education (Meggelin, 1979; Leith, 1986). Devich (1997) studied the decisions of the Montana Supreme Court and the Federal courts for Montana examining what effect decisions of the courts have had on postsecondary education.

Definitions of Terms

For the purposes of this study, the following definitions will apply:

Attorney. This is one class of persons admitted by the state's highest court or by a federal court to practice law in that jurisdiction. The attorney is regarded as an officer of the court and is always subject to the admitting court's jurisdiction as to his ethical and

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professional conduct (Gifis, 1984, p. 34). Attorney is defined as public (including the county attorney), private attorney, school district staff attorney, and school law firm attorney.

County Attorney. Upon the request of the trustees of any school district, shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be party; however the trustees of any school district may, in their discretion, employee any other attorney licensed in Montana to perform any legal services in connection with school board business (Montana Code Annotated § 20-1-204, 2003, p. 414).

Decision. Judgment rendered through analysis and adjudication of the factual issues presented, rather than by the existence of a technical or procedural defect that requires one party to prevail. Judgments not rendered on the merits are frequently considered dismissed without prejudice so that the factual issues may eventually be decided upon (Gifis, 1984, p. 252).

Defendant. In civil proceedings, the party responding to the complaint. In criminal proceedings also called the accused (Gifis, 1984, p. 122).

District. Is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law (Montana Code Annotated § 20-6-101, 2003).

District Classification. Districts are classified by the following population data: first class, population of 6,500 or more; second class, population of 1,000 or more but less than 6,500; third class, population less than 1,000 (Montana Code Annotated § 20-6-201, 2003).

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District Classification. For athletic classification high school enrollment figures are used; Class AA – 900+; Class A – 370-899; Class B – 130-369; Class C – 1-129 (Montana High School Association Handbook, 2003).

District Superintendent. The person who holds a valid Class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the Superintendent of Public Instruction and has been employed by a district as a district superintendent (Montana Code Annotated § 20-1-101, 2003, p. 412).

Education Law. Term that is broadly applied to a spectrum of legal authorities that have their genesis in other more traditional areas of the law, e.g. tort, constitutional, labor and civil rights law (Price, 1995).

Litigation. A controversy in a court; a judicial contest through which legal rights are sought to be determined and enforced (Gifis, 1984, p. 275).

Plaintiff. The one who initially brings the suit. A person who, in a personal action, seeks a remedy in a court of justice for an injury to, or a withholding of, his rights (Gifis, 1984, p. 346).

Private Attorney/Firm. An attorney or firms that practices law in the state of Montana that does not specialize in school law.

School Law Attorney/Firm. An attorney who practices school law in the state of Montana and is listed as attorney who specializes in school law as listed in the School Law Section Montana State Bar, Legal Databases, Martindale.com and Lawyers.com is defined by this category. This category also includes firms that register themselves as specializing in school law.

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Superintendent of Public Instruction. The state government official designated as a member of the executive branch by the Montana Constitution (Montana Code Annotated § 20-1-101, 2003, p. 413).

Teacher. A person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction and is employed by a district as a member of its instructional, supervisory, or administrative staff (Montana Code Annotated § 20-1-101, 2003, p. 413).

Trustee. A member of the governing board of the school district (Montana Code Annotated § 20-1-101, 2003).

Delimitations of the Study

This study will be delimited to the following:

1. This research investigated only Montana education litigation cases involving Montana public K-12 school districts. Further, this study does not explore litigation involving private or parochial schools in Montana.
2. Only cases which had a decision rendered by the conveying authority during the years 1999-2003 were examined.
3. The cases studied are from the Montana State Supreme Court, Montana State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry, and Montana Workers Compensation Court.
4. The only cases exempted from research are those in which the need for confidentiality to protect a student is such that the records are sealed and/or information regarding the case facts and attorney are not available.
5. This study does not account for cases settled before reaching court hearings.

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6. Cases included in this research were retrieved from the "State Reporter of Education Law," "Montana State Courts/Agency CD" published by the State Reporter Publishing Co., and Montana State Supreme Court.

Limitations of the Study

The following limitations are inherent in this study:

1. The categories are assumed to be appropriately inclusive; aberrant categorization is noted.
2. Public records are recorded by humans and as such could be subject to error.
3. The preliminary analysis sought to establish an accurate construct with adequate inter-rater reliability established between the researcher and education law specializing attorney; nonetheless, each subsequent case analysis was predicated on the judgment of the researcher.
4. The strength of the argument put forth by the districts involved in litigation was not accounted for in this study.

Significance of the Study

School districts are now faced with decreasing student numbers and subsequent governmental funding. Due to these decreases, schools are looking for the most cost-effective legal alternatives. After an exhaustive review of the literature several key elements with regard to the significance of the study are gleaned. Once such issue is the use of scarce resources as Heubert (1997) stated legal mandates and disputes significantly affect school leadership, teaching, learning, school discipline, allocation of scarce financial and other resources, and school reform (p. 539).

Additional perspectives were brought forward by Daniel (1985) who encouraged research into what impact legalism has on schools. Currently, no one even knows how

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many school related cases are being decided each year by the administrative law processes, civil rights agencies, labor relations boards, and various levels of courts. It's time to demand critical review of these activities. Zirkel (1998) continued by stating that "despite a plethora of publication concerning education litigation, very few articles examine the overall trend as compared to a specific case, issue or topic. The few that do take a macro view typically focus on the frequency, or volume, of education litigation" (p. 235). Again, Zirkel (1978) stated:

> ...if school leaders have an accurate awareness of court decisions affecting them, we may eventually see a reduction in the role the Supreme Court and lower courts now reluctantly play in school affairs. Neglecting the requirements and spirit of Supreme Court decisions is an open invitation to more litigation. (p. 521)

With regard to frequency and outcomes, Lupini and Zirkel (2003) concluded "It is all too common for policy makers and public commentators to make broad-sweeping characterizations about the trends in the frequency and outcomes of education litigation without an adequate base of empirical research" (p. 258). Finally, Heubert (1997) questioned the reader with the following inquiry "to what extent do lawyers who identify themselves as 'school attorneys' possess special expertise in school law? There is not much information on this question, and the available data raise questions that merit further study" (p. 557). In a previous dissertation, Williams (1980) noted the need for further research in the comparison of the outcome of court cases to the source of legal assistance used. This study will draw comparison in the outcome of court cases to the source of legal assistance used.

This research is potentially invaluable to school administrators and school boards desiring to understand past practice with regard to selection of legal counsel. Not only

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are the results informative about successful approaches, but they will also provide compelling information relative to budgeting considerations.

Because universities prepare countless future generations of school leaders across the United States, professors also are likely to find this research of interest in providing their graduate students with a comprehensive legal perspective.

Summary

Most organizations consider litigation a standardized expense, often referred to as "the cost of doing business." In many communities, the school is one of the largest employers with a very large budget. Regulations, policies, and rules set boundaries for schools and also create an environment that makes litigation inescapable.

The new generation of administrators in schools is experiencing new situations that their predecessors never imagined or have experienced. In education, a framework needs to be followed in decision making. Many times this decision making model is based on legal precedent, because the society has become more litigious.

Historically, attorneys are educated in all aspects of the law with the exception of education law. There are only a select handful of educational law firms with attorneys who specialize in education law, and these tend to be in the densely populated locales. Many districts are unable to afford these firms and are forced to use the county attorneys with some assistance for the Montana School Boards Association. School administrators themselves have minimal preparation in educational law.

Many school districts need to utilize outside sources to help resolve issues that arise in their districts. For many districts, the primary source of legal advice has been the county or district attorney and many times this option of a publicly elected official as a resource is not always the best resource for schools and their situations. As the school

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role evolves to a holistic teaching approach the school district is subject to more situations that could necessitate legal action.

School districts often choose to follow one of these three methods to obtain legal advice: an in-house board attorney, outside attorney paid on retainer, or a combination of both. Some districts have a choice of the three aforementioned combinations or to utilize the law appointed county attorney. However, without resources some districts are only able to use the services of the county attorney. One aspect of this study is to look at the effectiveness of the attorney utilized by the school district. What type of actions have been brought against Montana School Districts, which classifications as defined by Montana High School Association and Montana Code Annotated have been involved in litigation during 1999-2003, and what percentage of school districts' attorneys specialize in education law.

This study will draw conclusions about education law cases in Montana from 1999 to 2003. The examination of these cases will determine the cause of action which brought the case, categorize the type of attorney representation, and determined which approach resulted in the most success.

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CHAPTER TWO

REVIEW OF RELATED LITERATURE

The review of the literature consists of selected studies and information relevant to the following areas: (a) history of school law in Montana—including a brief history of governmental law structure; (b) incidence and growth of education litigation cases in Montana and nationally; (c) state structure, and in particular, the role of the county attorney; (d) funding issues with an emphasis on time and monetary cost; (e) preparation of attorneys in regard to school or education law; (f) preparation of educators and board members in regard to school or education law; (g) hiring of attorneys—private counsel will be contrasted to the county attorney and the role of attorneys in the school district; and (h) tracking of legal services. The available literature discusses many facets of this complex, multi-dimensional reality. The aforementioned areas in this review frame this study on the effectiveness of the school's attorney in resolving criminal and civil cases.

History of School Law in Montana

The laws in effect in Montana are those promulgated by these venues and entities: the United States Constitution, United States Supreme Court, United States Circuit Court of Appeals, State Constitution, State Supreme Courts, District Court, State Statutes, and Local Ordinances. School board policies are at the bottom of this legal hierarchy. Hazard (1974), Reutter (1986), Valente (1987), and Price (1995), asserted that law is a powerful force in shaping educational policies at the national, state and local district level. Reutter (1986) compounded this assertion by emphasizing that there is a recent tendency for federal and state-level legal entities to prescribe details of operation to local authorities. Roos (1983) then related that these laws draw attention to hidden

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problems and set tasks for school officials. He posited, "This role of litigation and the courts is well within the compass of the notion of checks and balances…" (p. 418).

Strickland, Phillips, and Strickland (1976), have postulated that courts have and will continue to be active in education. Newcomer and Zirkel (1999) supported this fact when they indicated that parents and school districts are typically represented by attorneys in legal proceedings. A pivotal, but foundation argument by Hillman (1988), Warfield (1997), and Lecker (2002) emphasized that administrators feel limited by the lack of easily accessible legal resources because there is a critical need for these resources.

Bittle (1980) and Heubert (1997) also conveyed that there is little written on this subject. Heubert (1997) also pinpoints a serious problem stating that locating attorneys specializing in and identifying themselves as experts in educational or school law is a tenuous search. While locating an expert school attorney is a difficult task, Lupini and Zirkel (2003) broadened this concern when they stated that "it is all too common for policy makers and public commentators to make broad-sweeping characterizations about the trends in the frequency and outcomes of education litigation without an adequate base for empirical research" (p. 258). Daniel (1985) and Underwood and Noffke (1990) reiterated Heubert and Bittle's concerns about the scope of this situation when they stated that there are cases being brought to court but no one has quantified how many school - related cases are decided each year by the administrative law processes, civil rights agencies, labor relations boards, or various levels of courts. Even though Hawkins (1982) analyzed the nature of law and education, this analysis was intentionally devoid of solid quantitative data. The Hawkins' (1982) analysis, does contain the basis for redirection… a changed lane of traffic for many legal problems. The number of actual cases filed

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versus the number of reported filings was reported by Underwood and Noffke (1990); their study analyzed and synthesized the trend to see if case filings have maintained, increased, or decreased in speed and regularity.

Painter (2001) asserted that in the hierarchy of government, education is designated as the responsibility of the state. The state constitution and legislative and state statutes are the governing authority over the educational system. This state authority is cognizant of the concerns of administrators which specifically include attendance, teacher evaluation, curriculum and assessment. Rapp (1985) said, "State law sometimes prescribes that an educational institution is to be represented by the attorney general or some other publicly elected, or appointed attorney" (p. 137). Montana adheres to the Rapp (1985) understanding of State Law.

Incidence/Growth of Cases – Montana and Nationally

Gullatt and Tollett (1997) and Underwood and Noffke (1990) contended, though, that courts are not required to publish decisions thus this does not provide an accurate or detailed account of number of cases brought forward. Underwood and Noffke (1990) purported that this specifically may be tied to the lack of precedence and interest in school law cases. The National Court Statistics Project (1983) coincides with this thought that "most state trial-court decisions do not result in published opinions, and although statistics concerning the total amount of litigation by state are available, they are not categorized" (p. 57). Although Imber and Gayler (1988), Zirkel (1998), and Jones (2000) disagree about an accurate and detailed account of cases they contend that there is ample research and publication of educational litigation, but very few articles that examine the overall trends when comparing specific cases, issues, or topics. Jones (2000) agreed with Zirkel (1998) by stating that courts acted like super-school boards, often

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overriding district decisions, and thereby siding with parents and students; though it is felt this now may be in opposition to an emerging trend. Nolte (1984) conveyed that research by a non-expert in school law is widely discounted, while even a subjective pronouncement by a recognized authority may be acceptable.

Lufler (1982), Valente (1987), Imber and Gayler (1988), and Jones (2000), opined that cases have increased to the point that many educational systems might be overwhelmed by new court decisions that constantly affect the operation of the schools. Lufler (1982) felt the greatest impact for education in the future was the increase of legal fees to be paid for seeking advice.

School board members must be involved in the decision-making process for the good of the community. These crucial duties should not, according to Bligh (1992) and O'Reilly (1982), be attempted without the help of legal expertise. School board service is like walking the razor's edge—for many offering their expertise are volunteers and a few new laws- or the latest precendential court rulings may place this volunteer in front of a judge. American educators, administrators and school board members have publicized their objections to the increasing legalization of schools. These people feel that the legal environment dominates the daily activities of school and that the courts have circumvented the role of school boards and policy making (Fischer, 1989). Bednar (1991) and Hazard (1974) noted that administrators must be detail-oriented in taking notes concerning all the parties involved in any form of dissent, because there is a possibility that they may end up in litigation. In this mode of operation the school district is kept in the defensive mode and is not able to proactively explore new policy that could potentially produce a different outcome to this and future problems.

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While Fischer, Schimmel and Kelley (1999) asserted that increasingly more teachers and administrators are becoming involved in litigation, Heubert (1997) and Hawkins (1992) reported that, "State departments of education maintain no records reflecting the extent or the cost of litigation in public schools and the same is true" (Hawkins, p. 23), "... for federal data collection" (Heubert, p. 568). Bednar (1984) was able to ascertain that more cases are tried at the district court level than are appealed and far more are filed than tried. He continued by saying that attorneys and their clients spend more time talking and working together than it takes to litigate their dispute.

National School Boards Association/Bittle (1976) and O'Reilly, (1982), found that school boards are active-agents in many areas and are willing to deal with issues that people want to challenge. Bittle (1976) ruminated that:

> The whole society has grown to accept the notion that if we don't agree with what school boards or any one else is doing, we should resolve our differences in court, or at least get a law passed to make sure no one else has to suffer the same burdens we do. (p. 3)

Lufler (1982) and Zirkel (1997) both stated that while litigation is increasing in the area of special education, in general education litigation has declined. In his article in 1978, Zirkel also predicted a decrease in the role of the courts in school affairs.

Imber and Gayler (1988) stated that in the past decade educators have become aware of the effect of litigation on policy, budgeting, and staffing. Entangled with governmental funding are new assessments and standards that demand a new educational template. This new governmental role is detailed by Grady, et al. (1998), and Underwood and Noffke (1990) when they agreed that the courts have played a significant role in establishing educational policy and impacting school administration. Reglin

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(1990) and Heubert (1997) concurred with their legal mandates and the significant disruption affecting leadership, teaching, learning, discipline and allocation of financial resources. Inherent in this disruptive power of the courts McClung (1981) delved into the aspects of litigative costs, time consumption and finally, the painful process for all parties involved in a legal battle.

Daniel (1985) predicted the litigation explosion. Redfield (2003) specified the number of cases over the years. She stated "In 1960, the education law reporters published some 300 suits with schools named as parties; in 1970, it was about 700; and by 2000, over 1800" (p. 4). However, McKinney and Drake (1994) felt the explosion was not inevitable if school administrators would just adjust their decisions so that the school district would not be subject to litigation. Kirp and Jensen (1987) purported that state courts are now involved in the review of policies and practices of school boards and state education departments subjecting them to a microscopic evaluation. Kalodner (1990) felt the increase in litigation was a positive aspect to the process as it allowed for change and a remedy for predicaments that challenged administrators, school districts' staffs, and school boards who often just wanted to carry out their traditional roles. Redfield (2003) gets to the heart of the matter when she stated "at times education litigation appears to outpace educators' ability to cope—and the result is confusion, frustration and even hostility towards the law" (p. 12).

State Structure

State statutes set forth the legal school requirements to be enacted by administrators; these include student attendance, teacher evaluation, curriculum, and assessment (Painter, 1998). Painter (2001) continued, "To complicate matters further, the principals' legal environment also includes school district policies and procedures and

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perhaps collective bargaining agreements… This conundrum deserves discussion and would be aided by research that explores administrative practice" (p. 219).

Garber (1956) stated that the courts indicate that a school board may employ legal counsel when its rights are involved. The prescription and use of an attorney general or publicly elected or appointed attorney by educational institutions was described by Rapp (1985). Even so, the most common pattern of legal representation is the use of an outside attorney by school entities because outside counsel is the most economical as they are retained only as needed (Rapp, 1985). McGhehey (1969), Herbert (1991), Heubert (1997), and Painter (1998) all agreed in that some districts are unable to afford a private attorney and these districts use the services of the municipal attorney. These aforementioned studies also indicated that using a municipal attorney does not jeopardize the case as they are not under the authority of the school board and are held accountable by the electorate. The municipal attorney then is able to offer independent advice (Painter, 1998). In reality, county attorneys then may be used to assist school entities with litigation but may not be able to be available when needed or be as prompt with a legal response as the situation dictates (Painter, 1998). This issue of the county attorney's availability or promptness on demand, can be a negative factor with school issues may need to be addressed with timeliness.

A review of literature indicated that administrators and school districts are not utilizing their option of a county attorney when they are in need of legal counsel. When examining coursework and textbooks designed for the education of administrators, the aspect of attorney selection is not discussed. This results in administrators who are not prepared to make an economical choice for their district. Painter (2001), agreed with Leithwood and Montgomery (1982) and Bednar (1991) when he documented the lack of

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education and professional preparation in the legal environment which is mired in legalese and mounds of detailed correspondences and records, that often overwhelms the present, future, or prospective administrator. French (1978) related the role of the administrator in that the principal must have knowledge of the employment contract, the legal implication regarding teacher tenure, and the applicability of due process and certain other constitution principles as they have been construed by the courts. This environment is documented by Underwood and Noffke (1990), who illustrated that 50 years ago disputes that might have been resolved at a personal level, are now resolved through litigation. In a 15-question survey compiled and created by Gary Reglin, assistant professor in the Department of Curriculum and Instruction at the University of North Carolina at Charlotte (1990) found that 80 percent of the administrators completing the poll correctly answered the survey with eight or more questions answered correctly. Through this survey, he was able to chronicle that "The courts are holding educators to ever-higher standards of competence and knowledge." According to Ogletree and Ganett's *Essentials of School Law*, as many as 3,000 lawsuits are brought against school executives and teachers every year – at a high cost in lost time, the stigma of public accusation, and, in some cases, attorney fees. A fraction of these lawsuits converge in an academic arena because of the assessment protocol or a strategy used by the classroom teacher. Taylor (2003) pointed out that teachers and administrators are being threatened with litigation more and more over grades that student and their parents deemed unacceptable.

Resource Issues

Rice (1982) quoted Scott McArthur an attorney in Monmouth, Oregon when he stated, "With a weak administration, you are going to have a very high lawyer's

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bill…recommend that districts look at the 'quasilegal' advice they can get free from state school officials or from school board associations"(p. 25). Knowing when to ask for legal advice—and when not to be a worrywart—is an art board members and administrators develop over time.

Funding

School boards try to conserve their use of public funds. "However, spending on legal advice should not be seen as an extravagant expense but rather as the cost of doing business and even as a means of avoiding much costlier outlays resulting from legal missteps" cautioned Warfield (1997). Shannon (1973) simply stated, "litigation is expensive." Cattaanach (1981) elaborated on the previous statement with the thought of trying to scrape together legal funds when the school system is in the middle of a crisis not only is a near impossibility, it is a financial folly as well. Legal service, especially today, is not an ideal area for budget cuts. Bartlett (1975), Hawkins (1982), Roos (1983), and McKinney and Drake (1994) found that administrators have reservations about spending money on court cases due to budget constraints. Money spent for legal services diverts revenue from the scarce resources for school programs that are already being reduced, cut, and are underfunded. Bartlett (1976) suggested a conservative approach hiring attorneys in this statement:

> Most attorneys charge by the hour, but the school board may want to consider an arrangement based on hourly fee with the payment of extra fees based on individual projects…Ask your lawyer to bill the district every month…Payment by retainer generally is not a good idea. (p. 37)

In an earlier article, Roesch (1956) stated that it benefits educational entities when they retain their own counsel as they are then privy to a wider range of services. Rapp (1985)

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agreed with Roesch (1956) that it was fiscally responsible to retain outside counsel because, a school district will only spend money when it absolutely needs to have representation.

Settlement

Jones (2000) focused on the fact that attorneys are busier and busier, so consequently, many more cases are settled out of court. Jones' (2000) evidence of this relationship between the number of cases reported and the number of cases filed also was noted by Zirkel (1989).

National School Boards Association (1976), Bednar (1984), and Hawkins (1982) all agreed that in the long run, it is often times cheaper to pay a smaller amount in the action of settling out of court than it would be to go to court. The most economically prevalent decision according to Splitt (1990), McGhehey (1969), and Hartmeister (1995) was that a school district's insurance company will settle a case out of court because it is cheaper in the long run. National School Boards Association (1976), Fossey, Sultanik and Zirkel (1991), Hawkins (1982), and Bednar (1984), all developed the idea that, in the long run, it is often times cheaper and less time consuming to pay a smaller amount in the action of settling out of court than it would be to go to court. Insurance companies are a major component to consider when school districts are facing litigation. Lupini and Zirkel (2003) remarked that insurance companies have periodically marketed policies to educators based on a perceived crisis in the frequency and outcomes of education litigation (Portner, 2000; Zirkel 1989). Thune (1997) opined about the role of insurance companies in litigation regarding selection of attorneys, arguing "While input as to the choice of an attorney to defend your district usually will be considered, most insurers retain the right to appoint the attorney since the company is paying the fees" (p. 14).

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French (1977) expanded upon the thought of insurance companies in that the insurer will provide legal counsel for each insured to participate in the proceedings along with the retained board attorney. It is important to guarantee that when individuals are sued along with the district, that counsel be retained for both interests, as oftentimes these interests may be in conflict.

Time

> 'Costly litigation' includes not only monetary considerations but also losses in time, employee morale, student interest in education, and public support for the board—losses that can and often do result from protracted court proceedings and the publicity they generate. (Punger, 1978, p. 2)

French (1977) concurred, stating that there are different types of cost and stated accordingly; litigation may take an extended period of time. Meanwhile, school business must proceed in an orderly fashion without constant awareness of the pending legal proceedings.

Heubert (1997) indicated that litigation often frustrated educational leadership and innovation because it drained resources that could be more effectively be used to advance educational objectives. Heubert said that while lawsuits are costly in many ways the most obvious costs are financial. Hawkins (1992), further stated that financial costs that were incurred by school entities for seeking advice from legal counsel. He included the preparation and presentation of briefs and evidence often continued for months or even years. Opportunity costs are embedded in this aspect of litigation. This time spent preparing for litigation is also time in responses that could be spent on other positive opportunities in the district. A school district that prevails in a judgment may need to spend large sums of money on attorney's fees and litigation costs, causing defendants to

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settle cases out of court that they could easily win in a court. Daniel (1985) reinforced this thought with "even if you win one case, you're not through: because litigation is expensive, your board might spend even more time and effort trying to avoid legal challenges" (p. 29). Usually, the plaintiffs are persons of limited means and after an extensive trial in which they emerge victors, they ask for attorney's fees on the grounds that since the public paid for the legal services of the school's attorneys in a situation where the school was shown to be not in compliance with the law, the public should be ready to pay the plaintiff's lawyer when the plaintiff prevailed (Shannon, 1973). In his book *Assessment of Children: Cognitive Applications*, Jerome Sattler (2001) quotes the Fourth Circuit Court of Appeals' reasoning in *Soroko* as follows:

> Allowing an award of attorneys' fees under these circumstances would encourage potential litigants and their attorneys to pursue legal claims prior to attempting a simpler resolution and would discourage schools from taking any action whatsoever once an administrative proceeding or lawsuit was underway for fear that any action on their part would give rise to a claim by a plaintiff that he [or she] prevailed and was entitled to attorneys' fees (p. 67).

The loss of staff time is an indirect cost of litigation rarely reduced to dollar terms though it represents time lost to educational entity when they are compiling documentation, responding to detailed requests for information, preparing for interviews or trial testimony, meeting with attorneys and outside experts to discuss issues and planning strategy – all these activities require major investments of staff time (Imber and Thompson, 1991). Hillman (1988) and Hawkins (1992) concurred that "along with the time constraint, administrators may feel even more limited by a lack of easily accessible legal resources" which results in more staff time expended on the legal problem and less

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on their regular duties. In an analytical comparison, Bednar (1984) realized that more cases were tried at the district court level than were appealed, and more still are filed than are tried, and one could infer that even more never find their way out of a lawyer's office because as Hawkins (1992) noted if they settle the case out of court it is often less costly than a court proceeding.

Another cost is the psychological toll on school staff as described by McGhehey (1969) and Imber and Thompson (1991). Doug Kocher through Portner (2000) made this point: "We have gotten so lawsuit happy and legal crazy, teachers are paranoid and justifiably so." Ultimately, students pay the price for low staff morale, and the loss of good teachers. According to Bittle (1980), experience has taught that mistakes in termination proceedings can be expensive in terms of lost time, litigation expense, and liability for back pay in the event the board's decision is overturned. This does not, however, mention the problems inherent with reinstatement following termination and protracted litigation. In addition, the plaintiffs often require great amounts of testimony from the defending school district prior to trial in order to perfect their case. The preliminary and court testimony exhausts the time of school board members and school employees and precludes them from going about their other business. Careful attention by the school's attorney is required to protect school people from harassment (Shannon, 1973).

McClung (1981) suggested that the toll exacted in lawsuits was painfully corrosive to a school district because they frequently pit one segment of the community against another. He then warned those initiating education policies:

> Yet education policy in many states and districts continues to be designed and implemented without sufficient sensitivity to the legal rights of students and other

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> affected parties. This in turn generates litigation, more judicially-determined education policy, and further legalization of education. At times education litigation appears to outpace educators' ability to cope – and the result is confusion, frustration and even hostility towards the law…Anyone who has been involved in litigation knows how expensive, time consuming and painful that process can be for all parties. (McClung, 1981, p. 38)

Finally, a school leader's authority can be diminished if he/she lose lawsuits with a perceived regularity. Heubert, (1997) as well as Shannon (1973) posited that school administrators are under the law; they no longer may safely presume that they are the law. Shannon purported, "Today's school administrator is dealing with a student who is entirely different at law than the student of a decade ago" (p. 39).

Since the defense of a school board's actions is a time-consuming and expensive enterprise, O'Reilly (1982) and Daniel (1985) justified hiring the best attorney as a good investment for the school system in order to avoid future legal challenges. Time savings are foremost to McClung (1981) as he asserted "An attorney will not be able to provide an opinion on most issues without taking some time for research and analysis, but the time and expense of this kind of preventive legal review is minimal compared to that involved in litigation" (p. 40.). Johnson (1982) acquiesces with McClung about the selection of an attorney either on a retainer or on an hourly basis—the school enjoys the privilege of being able to present situations to the attorney either in writing or by personal contact. Attorneys who are well-versed in school law can then provide the district's administration or board with immediate legal assistance. Heubert (1997) opined that "State departments of education maintain no records reflecting the extent or the cost of litigation in public schools" (p. 568). Whereas Hawkins (1992) "indicated the same is

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true for federal data collection" (p. 23). O'Reilly (1982) also stated that fees for litigation are considerably higher than what a board pays for a general counsel. Lufler (1982) articulated this concern:

> One of the major impacts of the increased number of education cases, then, an impact certain to be felt in the future, is the costly growth in legal fees associated with running school systems. More and more, school administrators find it necessary to get legal advice. (p. 178)

Heubert (1997) proposed a funding solution to pay for legal counsel by smaller school districts pooling their legal resources to hire one or more salaried in-house lawyers to offer legal services to all of the membership districts.

Andero (2000), Reutter (1986), and Shannon (1973) suggested that special interest groups force litigation in order to further their cause. Specifically, Andero (2000) claimed special interest groups prefer going to court rather than discussing board policy. Reutter (1986) endorsed the foundation of Andero's statement with the observation that special interest groups can be agents for skewing the educational element in law. In an outgrowth of this thought, Zirkel (1996) quoted Lisa Swem, a representative of school district defendants "...litigation was an attempt 'to put on trial the educational system and their way of doing things'" (p. 3). French (1977) built upon the foundation laid by Shannon and Reutter stated that organizations such as the American Civil Liberties Union, the American Association of University Professors and numerous State Education Association, have worked diligently and thoroughly the past few years and have accomplished much in communicating their ideas and philosophies to the Courts and to the Legislatures. Shannon (1973) and Reutter (1986) said that there was a fiscal aspect to the cases special interest groups opted to litigate. He emphasized that special interest

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groups will always ask for attorney fees regardless of whether they win or lose because they want their expenses to be paid for by taxes just like the educational entity. Often these groups will appeal these cases to the Supreme Court even when a unanimous decision is the expected outcome. Even though this often legal advocacy is financed by public and private funds brought to court by legal aid groups championing the causes for the poor and disenfranchised it is still costly and time consuming (Shannon, 1973). Petzko (2001) stated that legal aid advocacy for special education students and the fact there is increased litigation in this area are included in this group of special cause constituents.

Preparation of Attorneys

Most school board lawyers spend a fraction of their practice's time involved with school law; most of these attorneys have had little formal school law training while in Law School (Herbert, 1991; Jones, 2000; Lupato, 1973; Rehak, 1986). Sorenson (1984) concurred with previous authors in research by C. Robert Blackmon in that 1982 more than 85% of all schools and colleges of education included at least one course on education law and that by 1982 the number had increased to nearly 95%. Roesch (1956) advocated that the school attorney was a specialist who didn't normally confine his/her practice in order to exclude all others. Heubert's (1997) and Bednar's (1984) studies found that law schools are not teaching educational law to their students. In terms of university-based training, a national survey of school attorneys showed that only 16.2 percent of the respondents had taken a school law course at law school or at an education school (Rehak, 1986). In this same study, 43 percent of the respondents reported taking school law seminars run by bar associations and 61.7 percent attended training by other associations. Little is known about the content or quality of the courses and seminars

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attended by these respondents. Moreover, the figures suggest that many school lawyers have little or no formal training in education law, even after having entered this specialized field. Rehak (1986), Reutter (1986), and Edwards (1975) reported that most law students do take courses in constitutional law, contracts, torts, and property. All of these areas of the law apply to education. Blackmon (1982) found that despite burgeoning litigation on educational matters today, law schools do not seem to be expanding their offerings in education law importantly. The bulk of education law offering seem to be in graduate education programs. Currently, at The University of Montana Law School, there are no requirements for students to take a school law course when they are studying to obtain a Juris Doctorate (http://www.umt.edu/law/CurrReq.htm, n.d.).

Jones (2000) suggested that, "...law is such a fast-moving target that sometimes even experienced school attorneys aren't sure what's required" (p. 26). Painter (1998) expressed this also, reiterating:

> A concern expressed in the literature is that school law is a complex and specialized field and that a minimum practice in the field is required to develop and maintain adequate expertise. Consequently, it is recommended that school districts consider only those attorneys with some level of practice in the field. (p. 84)

McKinney and Drake (1994), when asking on a survey, "Does the attorney with whom you work specialize in school law?" found that only twenty-nine percent of the respondents who were school superintendents reported in the affirmative (p. 473). Downey (1986) advised school entities to "...use an attorney who has experience with teacher dismissals and school law" (p. 11). The selection and hiring of a good school

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attorney, must according to Zollars, Zirkel and Kemerer (1986) rest on the attorney's knowledge of school law.

Roesh (1956) found that:

> By a decided majority of school superintendents an attorney's knowledge of school law was more important than his ability to work with the board or the superintendent of schools and decidedly more important than the cost of his services. (p. 60)

Preparation of Educators and School Board Members

Reglin (1990) noted that school administrator at any level must possess a strong working knowledge of school law. He said that with this working knowledge of school law, an administrator would be better able to supervise and this would help the school entity to avoid unnecessary lawsuits. In addition, he or she must protect the rights and welfare of students and teachers. Heubert (1997) concluded that that many educators are not knowledgeable about school law. Painter (2001), along with Leithwood and Montgomery (1982) posited:

> The disconnect between professional preparation and practice may be related (in part) to academia's unfamiliarity with or inattention to the legal environment. To cite one example, most leadership and school reform literature makes only a cursory reference to collective bargaining, yet bargained contracts with teacher unions may contain certain provisions that significantly affect school improvement and leadership efforts. (p. 215)

Fischer (1989) commented that "We can only urge our educational leaders, including administrators and school board members, to become more knowledgeable about the ways of our judiciary and about the legal principles and procedures that are

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likely to influence educational policy" (p. 709). Grady, et al. (1998) and McCarthy and McCabe (1987) stated that many educators are aware of the increasing litigation that education entities face, but have misunderstandings about the basic legal concepts that are being applied to education.

Graduate courses in education law are available to the potential administrator. According to Hillman (1988), Gullatt and Tollett (1997), and Heubert (1997), discussing certification standards, found that there is a requirement for only those students seeking certification in administration and/or supervision to include at least one course in education law. However, Heubert (1997) made the point that "...administrators usually must take at least one course in school law as part of the certification process. Like school board members, however, administrators are under no obligation to remain legally current, and it appears that most do not" (p. 567). Zirkel's survey was conducted in 1978 when litigation was most common. The study illuminated the fact that most administrators were "abysmally ignorant" on most basic issues of school law. Later in 1985, Zirkel concluded, after reviewing research studies which had assessed the legal knowledge base of administrators and teachers, that "Educators generally evidence serious deficits in their knowledge of various school-related legal issues" (p. 3).

Research has amplified the fact that many administrators are in dire need of an infusion of law-related training. Painter (2001) stated, "Whether administrators are adequately trained in law is a difficult question to answer" (p. 215). Due to the fact that the content presents students with an overwhelming amount of new information, Lufler (1982), Hillman (1988), McCarthy and Webb (2000), and Petzko (2001) all have agreed that educators must educate themselves on the current state of the law, stay current and be aware of trends. Petzko reminded us that "even all the education in the world cannot

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protect us from litigation" (p. 37). Mac (1998) quoted Martin Semple, an education attorney in Denver, who said, "School leaders need to be versed in risk management because litigation is becoming so predictable" (p. 43). To complicate this problem further, Einstein (1983) purported that school administrators indicated that they relied on the district's counsel rather than university courses for school law information. Remmlein (1956) stated the need for an educational administrator to be qualified for work in public schools he/she must be grounded in school law.

School administrators tend to have a dearth of knowledge when it comes to the law and legal representation. Hillman (1988) contended, "Research continually has documented that school administrators possess a limited knowledge base of laws and cases affecting education" (p. 3). Hillman also stated that three general trends were reflected in the data collected on legal resources: a) Much legal information for administrators comes from oral sources, b) The school lawyer is a key person in providing legal information to school administrators, and c) Superintendents use the school lawyer the most, while elementary principals and, to a lesser degree secondary principals, rely more on obtaining legal information from their colleagues and superiors. Remmlein (1956) and McGehehey (1969) decided that the school administrator should know enough school law to know when it is necessary to consult an attorney, what kind of lawyer, to consult if there is no school lawyer, and how to explain the problem in legal terms. Bartlett (1975) went one step further by recommending that the school attorney be included in the decision-making team.

School boards are charged with making the best decisions for their districts, yet school board members tend to not have the knowledge to execute this duty. O'Reilly (1982) has reported that new laws and court rulings have made school board service a

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tricky business, and what once were routine decisions of a board now may be cause for a legal problem. Andero (2000) indicated that because of a school board's lack of expertise in many areas, the boards tend to base their decisions upon the recommendations and advice of experts. Bligh (1992) cautioned "... all of that legal authority flows through school boards. The duties of a school board are too important to be attempted without the help of legal expertise" (¶2). Punger (1978) illustrated the critical need for familiarity and

> Being a teacher, guidance counselor, or principal in a public school today requires knowledge of many laws, policies, and regulations. Ignorance of those rules and relevant court decisions can render the educator and, the school board, liable for damages, injunctive relief, or the termination of federal financial assistance. It behooves every school system to keep its staff informed about school law [because] incompetence can leave the school district wide open for potential lawsuits (p. 2).

McClung (1981), Lufler (1982), and Corkill and Hendricks (1997), Zirkel (1998), McCarthy and Webb (2000), LaMorte (1999) all concurred with the aforementioned statement by Punger (1978) warning districts about the legal consequences of not keeping the stakeholders aware of the laws, policies and regulations. Hillman (1988) believed that even though educators need to be versed in school law education, he felt it impossible to keep up-to-date on all aspects of school law. The lack of knowledge in school systems may be a result of not having the time to stay current rather than due to attitudinal indifference. Hillman (1988) warned that "In a sense, the increased legalization of education issues requires school personnel themselves to have a strong legal training" (p. 25).

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Imber and Thompson (1991) contended:

> The problem with the organizational schemes of education law textbooks is that they tend to be written at least as much from the viewpoint of the lawyer as of an educator, and thus group together cases raising related legal issues even if they arise from very different aspects of educational practice. (p. 227)

Bednar (1984) also questioned the way law is taught "Both in law schools and in graduate education programs, there is often overwhelming emphasis on the case method for teaching school law – the reading and interpretation of appellate judicial opinions" (p. 13). Warfield (1997) cautions that "Never before has American public education faced a more critical need for legal information, and never before have superintendents been more knowledgeable about matters of school law" (p. 18). Neither have superintendents had a greater need for assistance from legal professionals. Hawkins (1982) voiced an enhanced perspective of this viewpoint when he articulated that legal points are to be tested in many educational issues, but administrators and governing boards need to be given increased support for the spirit and intent of the law.

Hiring and Role of an Education Attorney

A cluster of authoritative educational authors are in accordance with each other on the hiring and the role of an educational attorney. Painter (1998) said that "The importance of school districts' need for expert legal advice has become universally recognized in the last few decades" (p. 74). Tanner-Otts (1995) also stated "...certain legal situations might arise that demand the hiring of an additional legal counsel...because in this litigious society, you need someone always available who knows both your school district and the law" (p. 31). Painter (1998) pointed out that "The role of the school attorney is so overlooked that it is not addressed in textbooks

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commonly used in general school administration courses nor by widely used texts in school law courses" (p. 76). O'Reilly (1982) contended "School systems most often use lawyers in two ways: as general counsel for day-to-day advice and to defend the system during litigation" (p. 31). Lecker (2002) reported the facts from a study completed by Public Agenda and summarized the results, "Superintendents also cite a number of issues they feel take up too much time including litigation and legal issues (50 percent), parents with complaints and special interests (48 percent), and issues related to unions and collective bargaining (39 percent)" (p. 32).

The complex litigious requirements are constantly bombarding the educational arena with continual changes that demand timely knowledge for schools, administrators, and school boards. This widespread and far-reaching legal implication is virtually experienced in every aspect of a school. Johnson (1982) furthered this thought, in that school districts vary in organizational structure, they may have different needs and uses for their legal counsel dependent upon their size, problems, and financial situation.

Rapp (1985), Tanner-Otts (1995), and Painter (1998) all examined and articulated the importance of expert legal advice for school districts. Painter (1998) continued, expanding the issue by stating:

> The increasing number of federal laws affecting school districts (e.g., Individuals with Disabilities Education Act, Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1974, Equal Access Act), the growing body of case law, and the increasing complexity of state education codes, procurement codes, and local building codes has created a web of controls and imperatives that require expertise usually beyond school administrators' training, experience and

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expertise, which generally focuses on curriculum and instruction, community relations, leadership skills, finance and budgeting. School districts' needs for attorneys are also propelled by administrators' and board members' awareness of the possible consequences of proceeding without adequate legal advice, especially well-publicized damage awards for civil rights violations or the reinstatement of teachers as a result of due process errors in the dismissal. For these reasons, school administrators and others have come to acknowledge and accept the importance of expert legal advice to the operation of school districts. (p. 74)

Hiring

Even if a specialist isn't needed unless the circumstances warrant it, a legal specialist must be available as part of the peripheral education system to keep the school district out of trouble. (Rice, 1982; Downey, 1986). These studies also indicated that this legal expert must have experience with teacher dismissals and the law. Bartlett (1975) warned that hiring a "name" law only for their name recognition could backfire if they know little about school law. Painter (1998), Geiger and Cantelme (2002) recommended that school districts consider only those attorneys with some level of practice in the field of education and that a brand-new education attorney may be less expensive, but the effort needed to research an issue may be less reliable than hiring a more expensive but more experienced attorney.

Law Firms or Private Attorneys

When school districts make a decision of whether to retain a private firm or utilize the county attorney's office, the research suggests a plethora of complex factors to be

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considered by school administrators and school boards. Bartlett (1975), O'Reilly (1982), and Warfield (1997) felt that ideally, a school should hire an attorney who lives in or near the district's community, who has an interest in and experience with school law, and, if possible, a partner in the law firm willing to take the case. They suggested this because school boards become involved in many areas in which legal questions arise e.g. contracts, property, constitutional rights, finance, and labor relations), and there is a chance that no one attorney in a firm is, versed in all aspects of school law. Geiger and Cantelme (2002) stated that often the larger firms also have specialists in areas that are in less demand but that the district might periodically need, including civil rights, construction law, personnel law, bonding, or sexual harassment. Therefore, if a school entity is to hire a firm with several attorneys, the combined knowledge and expertise will more adequately represent the school board in all its legal situations. Bligh (1992) contended "Having an ongoing relationship with an attorney who is an expert in the law of governing public education is an important part of achieving that objective" (¶2). LaMonte (1993) stated that when hiring:

> Larger school districts may be able to employ full-time legal counsel. Rural school districts may not be able to employ full-time legal counsel. For this reason, it may be particularly important for rural school administrators to be knowledgeable in important court cases (p. 20).

Garber (1960) cautioned "School boards that fail to employ an attorney may find itself in a legal vacuum, and the result may be costly or even disastrous" (p. 122). Bartlett (1976) suggested:

> Whom to hire. School boards, in most instances should engage a law firm, not a lone lawyer…School boards hiring law firms rather than individual attorneys can

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> receive a wide range of specialized knowledge and experience....Another bonus in hiring a law firm: When the regular school attorney is out of town or on vacation, the school board has access to the firm's other members...practical experience in school law. Don't simply hire a prestigious or a "name" law firm; many capable practicing attorneys know little of the complexities of school law. (p. 36)

Zollars, Zirkel and Kemerer (1986) championed the "qualifications factor" as "a major criterion in the selection of an attorney is the attorney's knowledge of school law" (p. 7). Predicating a proactive need for retaining an attorney as a pre-emptive strike, Jones (2000) stated, "Waiting to talk to your attorney until after someone files a lawsuit – that's the dumbest thing you can do" (p. 25). Julie Underwood of the National School Boards Association, along with McKinney and Drake (1994) substantiated that retaining an attorney or firm of attorneys is extremely important because of the mobility of educational administrators. "Attorneys live longer. Superintendents change more often than attorneys" (p. 477). Any form of legal fluency evaporates in a school district when administrators settle into different positions. McKinney and Drake (1994) continued on to say, when lawyers "outlast" superintendents, the attorney is viewed by board members as possessing heightened legal and educational expertise and the lawyer's allegiance is perceived to be to the school board. Rice (1982) argued:

> But most districts need more from their legal counsel; They need specialists who can handle labor questions, policy matters, civil rights issues, and so on. In short they need skilled attorneys who are familiar enough with school issues to keep the board out of court. (p. 24)

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Rice (1982) affirmed that "not all boards regularly need the services of a specialized law firm" (p. 24). Warfield (1997) differentiated the issue with the comment that "if your board uses a law firm specializing in different areas of the law, beware of the possible use of different attorneys in different circumstances" (p. 19). Keeney and Yelovac (1997) expounded on this theme, stating that school law is really a "potpourri" of different issues. The school law attorney must be a negotiator, a litigator, an advisor, a journalist, and sometimes a mediator.

McKinney and Drake (1994) purported "All of the superintendents reported that lawyers hired by school districts affect educational policy making to some extent" (p. 477). Bartlett (1976) summarized,

> Your state school boards association or state department of education may be able to supply you with names of attorneys active in school law practice. Make sure you ask for recommendations from other school districts familiar with a prospective law firm or attorney...legal matters of one National School Boards Association board may not always be consistent with the legal interests of other member school boards. (p. 36)

Nearly twenty years later, the problem persisted. Indeed, McKinney and Drake (1994) found:

> Our research shows that new working relationships have been forged between educators and lawyers. In fact, the degree to which education has been legalized and school board decision-making professionalized appears to be the degree to which educational policy-making has been 'lawyerized' (p. 480).

One interesting explanation for this "disconnect" lies in the work of Lutz and Merz (1992) who postulated that elite boards view themselves as trustees for the people yet

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separate from the people. Elite boards strive for consensus in private and informally and act in consensus at a public meeting with a unanimous vote. Conversely, they described arena boards, who view themselves as representatives of the people, enacting policy demanded by the public rather than via board policy in an effort to determine what the arena board itself believes best for the people.

McKinney and Drake had personal communications with Lutz (1994), in which they maintained that "attorneys are utilized as 'weapons in the superintendents' arsenal" and concluded that this utilization of attorneys "is likely to lead to increased elite board behavior where the superintendent is part and parcel of the elite board member behavior" (p. 480).

County Attorney

In 1998, Painter explained, "That schools exist in a complex legal environment is commonly accepted. What is often overlooked are the mechanisms by which that environment is interpreted for school district decision makers" (p. 73). As a school district may consider legal representation in the form of a lawyer in private practice, it should not preclude the skills of the county attorney. Painter endorsed the idea and stated that:

> County attorneys, while not under the authority of the school board, are held accountable by an electorate; thus, their contribution to the school decision-making process is on the basis of both legal expertise and elected authority (although they are elected by voters county-wide, not solely those in the district). (p. 84)

Furthermore, Painter (1998) embraced the skill of the elected specialist when he stated that:

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> At the same time, county attorneys and their staffs are not dependent for employment on the school districts who they advise, a situation that can foster more independence in advice-giving, but perhaps less urgency about attending to the service aspects of the relationship. (p. 84)

In the state of Arizona, Painter (1998) found that, "Smaller and more rural districts are more likely to use the services of the county attorney and less likely to use private firms" (p. 79). A county attorney's skill is not the only talents available to a school district. For example, Roesch (1956) in Michigan found, "For assistance on certain legal problems school superintendents in Michigan may, ...contact the department of public instruction or, perhaps, the county superintendent of schools" (p. 59).

A multi-level decision must be considered when determining which legal service to retain- the time, talent, and cost of those features needed for the specific case has implications. Roesch (1956) stated, "The cost factor, operating in this instance against retaining private legal counsel, is offset by other conditions [and] one of the conditions is probably the extensive range of services provided by private attorneys" (p. 59). Shannon (1973) said that:

> There are three principal ways which a school attorney works with the school administration. They are (1) as an advisor of the law; (2) as a counselor on governance of the schools; (3) as the attorney in charge of litigation in which the school district is a plaintiff or defendant. (p. 41)

Shannon (1973) concluded, "The school attorney is in a position to protect the school district administration and the school board from harassment, embarrassment, and the waste of time and energy in conducting school district litigation" (p. 42). Tanner-Otts

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(1995) stated the bottom-line in hiring an attorney, "After all, your objective in hiring an attorney is to stay out of court in the first place" (p. 31).

Role

After a school district makes the considered decision on, its selection of legal representation, the district must then discern the role of that legal specialist within the school entity. Roe (1961) and Bartlett (1975) felt that the best service of the school attorney is to keep the school district out of legal difficulties. If a new attorney is unsure as to his/her defined duties, McGhehey (1969) suggested that these attorneys immerse themselves in the handbooks prepared by the state school boards associations for reference. Bartlett (1975) and Bligh (1992) stated that a school district and the attorney need to have a symbolic relationship in order to stand by the decisions they have rationalized and made. McClung (1981) reinforced this belief that a good attorney should take time getting back to clients on issues for research and analysis, while McKinney and Drake (1994), along with Rapp (1985), defined the role of the attorney as one of legal advice-giving. They believed the attorney's suggestions should result in official school policy affecting teachers, students, parents, and school authorities. This advice must vary from school to school because of the cultural environment in which the school resides.

Tracking a Legal Success

Shannon (1973) and Bartlett (1985) observed that court decisions won by school administration rarely receive any attention in the media. Now, when a case is filed it is the start of a public campaign not to seek relief or redress of an alleged wrong but to establish and create new law.

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Of the 23 Montana State Judicial District Court decisions reviewed in this study, four of them are currently on appeal to the Montana Supreme Court:

1. *Cut Bank School Dist. No. 15 v. Rummel, 2002 ML 4174 (9th Jud. Dist.),*
2. *Herrmann v. Wolf Point School Dist., 2001 ML 2556 (17th Jud. Dist.),*
3. *Hinkle v. Shepherd School District #37, 2002 ML 4083 (13th Jud. Dist.),*
4. *Pannoni v. Browning Public School Dist. No. 9, 2003 ML3070 (9th Jud. Dist),*
5. *Roos v. Board of Trustees, School District No. 3, Kircher, Montana, 2003 ML 1333 (16th Jud. Dist.),*
6. *School Dist. No. 1, Fergus Co., MT v. Wells-Norlin, 2003 ML 1652 (10th Jud. Dist.), and*
7. *Svaldi v. Anaconda-Deer Lodge County, 2003 ML 1438 (3rd Jud. Dist.)*

Consequently, these cases were on appeal at the time this research and were included in the compilation of cases at Montana State Judicial District Courts level. At this time they are on appeal or have been decided by the Montana State Supreme Court.

Summary

The subject areas of law and education are ever--evolving and the boundary lines are becoming blurred in defining educational law. Law governing schools is based on the Constitution, case precedent, common law, legislatively—enacted law, and administrative rule. This illustrates increasing costs associated with the legal challenges are for hiring legal counsel as schools select the appropriate representation.

Today, attorneys are busier than ever and are taking more cases to settlement. More people are becoming involved in lawsuits, including teachers, administrators, parents, lawyers, coaches, and advisors. There are opportunity cost and lost wages for both parties in a lawsuit, along with expensive legal fees. The district parties involved in

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the suits want to carry out their traditional roles, and the parents involved would like what is best for their children.

There are several options for hiring representation for a school district and/or school board if and when the situation arises. Districts may enlist the services of the county attorney, hire a law firm or single legal practitioner, or they may retain legal counsel as staff. This research examined those choices.

Monetary costs associated with attorneys are at times seen as a luxury to an outsider but as vital to the school board and district, limited budgets often prohibit regular and timely use of legal personnel and because using funds in this way also limits money available for funding student programs, such expenses are a source of frustration. Everyone in the district understands there is a time cost associated with court cases or hearings. Teachers and administrators who must participate in the legal aspects of the preparation and hearings are taken out of their jobs temporarily and away from students. After many depositions, the case then is settled and not heard in a courtroom, because it is nearly always cheaper to settle than to participate in a lawsuit. All parties involved may also suffer a psychological loss due to the time and stress of the circumstances.

Attorneys are prepared for different types of law, but their focus usually isn't on school law. They are trained in many aspects of law that do have implications in school law. If there is any exposure to school law, it is often a couple of seminars and one or two classes in educational law. On the other hand, administrators have limited exposure to educational law; typically they take one graduate course. Aside from occasional workshops school board members tend to have very little legal expertise. In general, the hope is for all to have a basic concept of what school law is and how it is interpreted.

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There are many factors to consider in hiring different types of counsel. Law firms or private attorneys are often the main representation and choice by school districts. This option enables school boards to utilize one or several persons whose expertise lies in the areas of contracts, property, constitutional rights, finance, and labor relations. The negative aspect of hiring a firm is that this tends to be more costly. Also, they may have a heavier caseload than the county attorney representation. The county attorney is the choice of some school districts, and the county attorney is required by statute to represent the school board. This research examines the patterns of this selection process, along with outcomes.

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CHAPTER THREE

METHODS AND PROCEDURES

Introduction

This study analyzed and compared success rates of different types of attorneys utilized by school districts. Specifically, it focused on litigation for the years 1999-2003 in the state of Montana. The design for this study was descriptive research. Using comparative data, this design examined identified independent variables and their ex post facto relationships to a dependent variable. Causality is inferred but not empirically established. In this research, the independent variables are the type of attorney selected by the district, the type of cases selected, the inclusive years of the study, and the limiting factor of education litigation. The dependent variable is the win or loss result of the litigation.

Gay (1996) indicated that "Descriptive research involves collecting data in order to test hypotheses or answer questions concerning the current status of the subject of the study" (p. 14). Gay (1996) further stated the second benefit of the descriptive model and reasoning of why it was chosen "... the descriptive method is useful for investigating a variety of educational problems. Typical descriptive studies are concerned with the assessment of attitudes, opinions, demographic information, conditions, and procedures" (p. 249). Gay (1996) further postulated the research guidelines regarding document collection by defining a document as; "a document may be any written or nonwritten record which exists and which may enhance the researcher's overall understanding of the situation under study" (p. 221).

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Sample

The sample for this study were rendered decisions from the following agencies over the course of five: Montana State Supreme Court, Montana State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry and Montana Workers Compensation Court.

Eighty-nine cases have been decided for the period of 1999–2003, and categorized by the adjudication venue are as follows:

Montana Supreme Court	23
Montana State Judicial District Court	23
Montana Office of Public Instruction	17
Montana Department of Labor and Industry	21
Montana Workers Compensation Court	5

Delimited to this timeframe, the sample will be 89 cases. These data are generalizable only to themselves by virtue of independent case decisions made across all areas.

Research Questions

What factors or characteristics are associated with the most successful attorneys representing school districts, students, employees and others in Montana K-12 lawsuits, 1999 – 2003?

Sub-questions

1. Which type of (public/private) attorney was used for representation for education litigation for the period 1999-2003?
2. What types of actions have been brought against Montana School Districts for the period of 1999-2003?

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3. Which classification (i.e. first class, second class, or third class) of school district has been involved most in litigation during the 1999-2003 time period?
4. What percentages of school districts' attorneys specialize in education law?

Instrumentation

The Litigation Documentation Form provided in Appendix H was developed for the purposes of this study. The form consists of: (a) name of the case, (b) an assigned number for the case, (c) the time period of the decision, (d) the deciding authority for the case, (e) the school district classification as defined by Montana Code Annotated, (f) the school district classification as defined by the Montana High School Association, (g) the gender of the attorney representing the school, (h) the specialization of the attorney representing the district, (i) the number of the issue, (j) the category and subcategory for each case, and (k) the outcome for the issue at the particular forum.

Development Process

The development process included a review of the previous relevant research (Imber and Thompson, 1991; Newcomer and Zirkel, 1999; and Lupini 2000; and Lupini and Zirkel 2003). The form was further formulated after an examination of the Litigation Document Sheet/Form developed by Newcomer and Zirkel (1999) and further refined by Lupini (2000). Newcomer and Zirkel (1999) utilized a five-point outcome scale. Lupini (2000) further expanded the outcome section to a seven-point scale, refining Newcomer's middle category into three separate categories. In a personal communication with Dr. Zirkel (Zirkel, personal communication, March 11, 2004), it was recommended that the Litigation Documentation Form be modified and expanded to include outcomes for each issue in a case rather than a single Litigation Documentation Form for each case.

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Litigation Documentation Form Variables

Following is an explanation of each of the variables coded on the Litigation Documentation Form (Lupini, 2000);

Case Name and Number. This identifies the name of the cases and corresponding case number.

Time Period. This item indicates the year of the decision. The sample for this study includes only decisions rendered in 1999-2003. The study reported decisions at the highest judicial level during the time period studied.

Deciding Forum. This category includes identification of the forum in which the decision was rendered. The options for categorizing forum included the Montana State Supreme Court; Montana State Judicial District Court; Montana Office of Public Instruction; Montana Department of Labor and Industry and Montana Workers Compensation Court.

School District Classification per Montana Code Annotated § 20-6-201. This category includes the identification of the first, second or third class classification of school districts involved in the litigation. This classification was defined as pupil enrollment as reported in the *Directory of Montana Schools 2003-2004.*

School District Classification per Montana High School Association. This category includes the identification of the athletic (most commonly used) classification in Montana as either AA, A, B, C, or None. The classification of none is reserved for elementary school districts that, based on Montana Code Annotated § 20-6-201 are second or third class districts feeding into a first class district and/or a AA district. (An example of this would be the case; *DeSmet School District v. County of Missoula, 2001*

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ML 2423 (4th Jud. Dist.). DeSmet School District is a third class district and not part of the Missoula City Schools a first class school district).

Attorney Gender. This category lists the gender of the attorney representing the school authorities.

Attorney Specialization. This category recognizes, if any, membership in attorney specialization organizations. The resources utilized were: School Law Section of the Montana Bar Association, Legal Databases, Martindale, Findlaw, Lawyers.com, County Attorney, and Private Attorney.

Issue. This item allows for each issue to be categorized for the purpose of this study.

Issue Categorization. This item codes the category of party involved in the dispute with school authorities, as well as the subcategory of specific issues involved in the dispute.

Lawsuits by Students signify the first category of litigation. This category coded cases in which litigation was initiated by a student or student as well as a parent or parents on behalf of their child.

As defined in this instrument, the subcategories include: (a) negligence by school authorities, (b) control of behavior issues, (c) religious activities, (d) school program, (e) special education, (f) gifted education, (g) other equal opportunity issues and fiscal issues. While not readily apparent, the lawsuits by students were further delineated into the following subcategory, "fiscal issues" subcategory includes student transportation cases.

Lawsuits by employees correspond to cases in which the employee or employee professional organization initiated litigation, on behalf of the employee, as the plaintiff.

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Further subcategories are akin to Lupini (2000, p. 61) and include: (a) discrimination; (b) other employment actions (termination, nonrenewable, transfer, reassignment/ suspension, involuntary leaves of absence, retirement benefits and disability benefits), (c) professional negotiations, (d) torts, and (e) other. In order to avoid uncertainties in coding, the "other employment actions" were further delineated as:

1. The "termination" subcategory included tenured, non-tenured, and employees not otherwise specified.
2. The "nonrenewal" subcategory included only nontenured employee cases.
3. The "transfer" subcategory included transfers to either a position or site.
4. The "reassignment/suspension" subcategory was specific to cases in which an employee encountered a position change as well as a reduction in their position.
5. The "involuntary leave of absence" subcategory included reduction in force and recall rights issues.

The "lawsuits by others" category included cases in which third parties, as plaintiffs initiated litigation against a school authority, such as parents, taxpayers, and school board members. Topical issues include contracts, fiscal issues, negligence, religious activities, and other. With respect to "lawsuits by others" subcategory decision, the "other" subcategory includes voting dispute cases.

Outcome by Forum. This category entails both the prevailing party and the judicial forum. In determining outcome, "conclusiveness" is defined as the original relief sought by the plaintiff or, if unknown, the relief granted to the plaintiff on appeal.

Based on the definition of conclusiveness and the aforementioned choice decisions, the outcome scale contained seven options as follows:

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1. Conclusive decision completely favoring students, employees or others. This refers to decisions completely favoring student, employee or other party.
2. Conclusion decision largely, but not completely, favoring students, employees or others. This category included court decisions in which students, employees or others won a major or substantial portion, but not all, of the decision.
3. Inconclusive decision favoring students, employees or others. This describes reported decisions in which the student, employee or other party is favored, but does not prevail. Moreover, this category contains: (a) preliminary injunctions granted by the court; (b) the reversal or dismissal of a case by a lower court; and (c) denial of summary judgment by school authorities.
4. Conclusive or inconclusive split decision. This group was used to categorize court decisions that did not markedly favor either party. Additionally, this also includes cases in which the court awarded approximately 50% of the monetary settlement sought after by the student, employee or other; in cases where this was unknown, the monetary settlement awarded by the lower court was recorded. This grouping also included denials of petitions for rehearing or cross motions for summary judgment by either party.
5. Inconclusive decision favoring school authorities. This area classified court decisions that seemingly favored school authorities. More specifically, this included: (a) denial of preliminary injunctions; (b) denial of summary judgment sought by the student, employee or other party; (c) dismissals for failure to exhaust administrative remedies; and (d) dismissals without prejudice.
6. Conclusive decision largely, but not completely favoring school authorities. This option reported court decisions in which the student, employee, or other party was

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primarily denied the sought relief. In addition, this category also encompassed cases in which the monetary settlement awarded by the court was less than 50% of that originally sought by the student, employee or other; in cases where this was unknown, the monetary settlement awarded by the lower court of less than 50 % was recorded. Moreover, with regard to employee dismissal cases, back pay without reinstatement, were also included.

7. Conclusive decision completely favoring school authorities. This described reported decisions where school authorities prevailed. This also included cases which were dismissed by the court, with permission to file against other defendants, and summary judgment in favor of school authorities.

The investigator systematically recorded the judicial decision in each case. In turn, each case was analyzed according to the criteria set forth in the Litigation Documentation Form, in which the case name and number, the time period, category, subcategory, outcome and forum were recorded.

Litigation Documentation Form Pilot Study

To check the validity of the instrument, the researcher conducted a pilot study of five randomly selected reported court cases, one from each forum. Each case was analyzed by the researcher and Catherine Swift an attorney whose expertise is education law. Swift is a member of the School Law Section of the Montana Bar Association, the Montana Council of School Attorneys and has served as a Past President of the Montana Council of School Attorneys. She is a partner in the law firm Gough, Shanahan, Johnson and Waterman in Helena, Montana.

Collaborating with a school law attorney during the pilot study helped to establish inter-rater reliability. Inter-rater reliability was determined to be 97%, based on the

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independent coding by the researcher and the attorney. Each area of coding met the a priori level set at 80 percent per item on the Litigation Documentation Form.

Procedures

The first step was to garner a collection of hearing decisions in Montana seeking data over the course of five years to include 1999, 2000, 2001, 2002, and 2003. Gathering data for a five-year period would provide longitudinal information about what type of lawyer was utilized and his/her success rate.

The source for this information came from the State Reporter CD-ROM which contains legal briefs. All cases have legal briefs filed in one of the respective venues (Montana State Supreme Court, Montana State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry, and Montana Workers Compensation Court) and included in the are of public record. The names of minors are abbreviated to maintain confidentiality. Gay (1996) additionally reinforced this aspect of confidentiality, stating "It must be kept in mind, however, that even if the documents are 'public record,' the anonymity of those involved in their contents should be protected, for ethical, if not legal reasons" (p. 222).

Each reported court case was scrutinized by the researcher and the attorney with expertise in educational law utilizing the Litigation Documentation Form. The form was pilot tested and inter-rater reliability was established. Ninety-seven percent accuracy was established during the pilot study. In addition to each reported court case, information was garnered from attorney specialization lists to be provided from: School Law Section of the Montana Bar Association, Legal Databases, FindLaw, Martindale, and Lawyers.com. Student enrollment was analyzed by district classification along with sports classification, utilizing the guidelines set forth in Montana Code Annotated and the

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Montana High School Association Handbook. The final item recorded was the gender of the attorney representing the school entity. This was inferred from attorneys' names.

Treatment of Data

After the data were collected, this study reported the frequency and percentages for the variables. The frequency is expressed as the actual number that occurs for each of the hearing locales (Montana State Supreme Court, Montana State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry, and Montana Workers Compensation Court). The data collected using the Litigation Documentation Form were categorical data described by the use of frequency counts and percentages in each category.

Summary

This study utilized descriptive research to examine identified independent variables and their ex post facto relationships to a dependent variable. The independent variables are the type of attorney selected by the district, the type of cases selected, the inclusive years of the study, and the limiting factor of education litigation. The dependent variable is the win or loss result of the litigation. The sample of the study was, comprised of the 89 cases heard in all venues for the years of the study. There were 23 cases heard in both the Montana State Supreme Court and Montana State Judicial District Courts, 17 cases heard in the Montana Office of Public Instruction, 21 adjudicated in the Montana Department of Labor and Industry and five in the Workers Compensation Court.

A Litigation Documentation Form was developed and modified for this study based on the original form from Lupini (2000), with permission of the author. The form consists of: (a) name of the case, (b) an assigned number for the case, (c) the time period

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of the decision, (d) the deciding authority for the case, (e) the school district classification as defined by Montana Code Annotated, (f) the school district classification as defined by the Montana High School Association, (g) the gender of the attorney representing the school, (h) the specialization of the attorney representing the district, (i) the number of the issue, (j) the category and subcategory for each case, and (k) the outcome for the issue at the particular forum. Categorization and analysis of these data are depicted in the next chapter.

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CHAPTER FOUR

RESULTS

The primary purpose of this research was to ascertain what factors or characteristics are associated with the most successful attorneys representing school districts, students, employees and others in Montana K-12 lawsuits during the years from 1999 to 2003. The secondary questions explored were: (a) Was the attorney public or private who represented the educational entity? (b) What types of actions have been brought against Montana School Districts? (c) Which classification (first, second, or third class) of school districts have been involved in the most litigation? and (d) Did the attorney representing the entity specialize in education law?

The sample population for this study was comprised of reported education litigation decisions from 1999 through 2003. Specifically, there were 89 decisions all together, adjudicated by: the Montana State Supreme Court, Montana State Judicial District Courts, Montana Office of Public Instruction, Montana Department of Labor and Industry, and Montana Workers Compensation Court. Decisions were published by the State Reporter Company, Education Law Reporter, and the Montana State Supreme Court.

This study identified a sample of 89 cases for the defined period. The cases were distributed as follows among the five venues: Montana State Supreme Court 23 cases, Montana State Judicial District Court 23 cases, Montana Office of Public Instruction 17 cases, Montana Department of Labor and Industry 21 cases, and Montana Workers Compensation Court 5 cases. Using the Litigation Documentation Form to analyze the cases elicited 135 issues. The issues broken down by forum for the cases heard are as follows: Montana Workers Compensation Court, seven issues; Montana Department of Labor and Industry, 26 issues; Montana Office of Public Instruction, 36 issues; Montana State Judicial District Court, 31 issues; and Montana Supreme Court, 35 issues.

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Presentation of Data

This research reflected data in the following major groupings: (a) overall outcome results; (b) outcome results by category; (c) outcome results by court forum; (d) outcome results by category and court forum; and (e) outcome results by subcategory.

Table 1

Distribution of Montana Education Litigation Cases 1999-2003

	1999	2000	2001	2002	2003
Montana State Supreme Court	4	6	3	5	5
Montana State Judicial District Court	4	6	4	1	9
Montana Office of Public Instruction	2	4	5	2	4
Montana Department of Labor and Industry	1	2	5	5	9
Montana Workers Compensation Court	1	3	0	1	0
Total	12	21	17	14	27

Table 1 illustrates the number of litigation cases decided throughout the time period defined during this study. The highest total number of cases for a year occurred in 2003 with 27 cases. The two highest incidences of cases in a particular forum occurred during the year 2003 with nine cases each in the Montana State Judicial District Court and Montana Department of Labor and Industry. For the year 2001 and 2003, the Montana Workers Compensation Court decided no cases.

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Figure 1 Total Cases Per Year

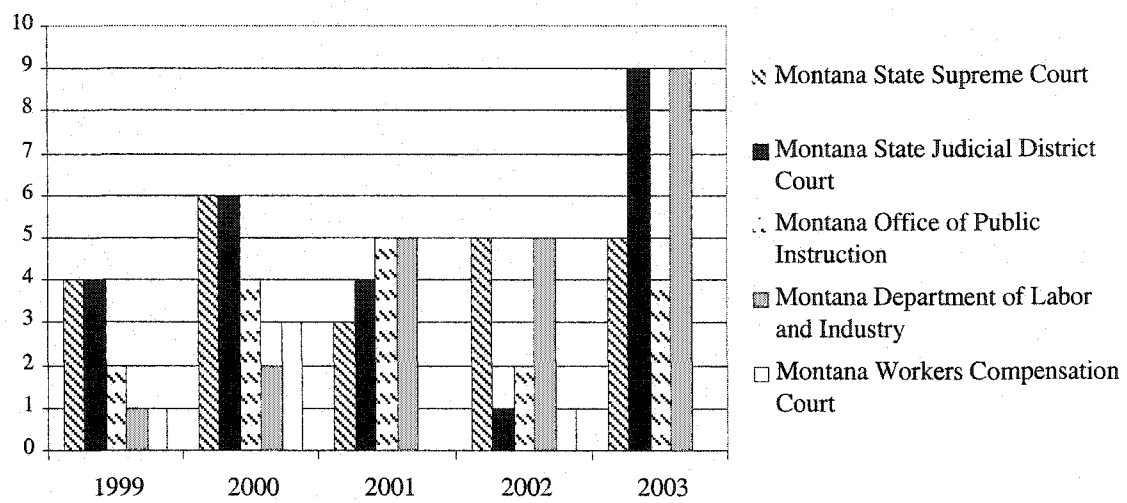

Figure 1. During 2003 Montana State Judicial District Courts and Montana Department of Labor and Industry decided the largest number of issues each for the time period defined for this study.

Table 2 describes the total number of issues litigated during the allotted period of this study.

Table 2

Distribution of Montana Education Litigation Issues 1999-2003

	1999	2000	2001	2002	2003
Montana State Supreme Court	7	6	5	10	7
Montana State Judicial District Court	9	7	4	1	10
Montana Office of Public Instruction	3	12	13	2	6
Montana Department Labor and Industry	1	2	7	6	10
Workers Compensation Court	1	5	0	1	0
Total	21	32	29	20	33

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The highest total number of issues for one year was 33 during 2003, the fewest issues (20) decided in one year was 2002. The Montana Office of Public Instruction decided the largest number of issues (13) during the period studied.

Figure 2 Montana Education Litigation Issues 1999-2003

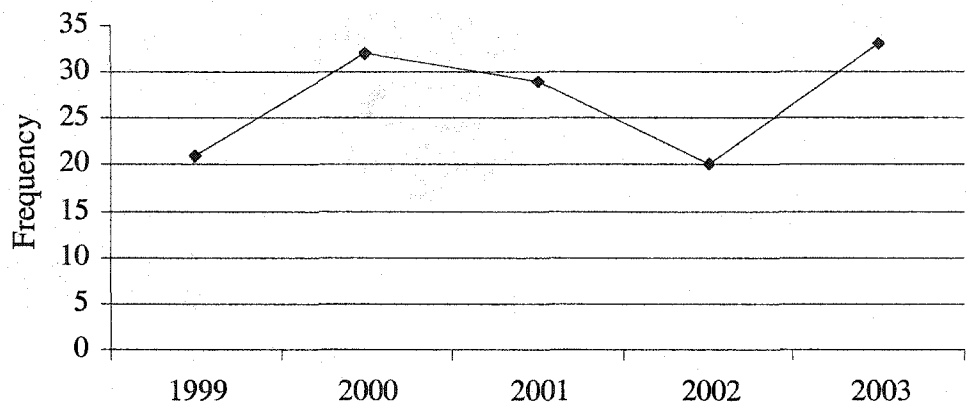

Figure 2. In 2000 Montana had an increased number of decision in education litigation. The number of decisions declined from 2000 until 2002. The year 2003 had 13 additional decisions more than the previous year.

Table 3

Legal Representation of Montana Public School Districts 1999-2003

	Private Attorney	Public Attorney	No Attorney
All Forums	87.4% (97)	3.6% (4)	9.0% (10)

Table 3 represents the specialization of attorneys as either, private, public or no attorney. For the time period studied private attorneys represented 87.4% cases. Nine percent of all cases no attorney represented the interests of the school authority.

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Figure 3 Percentage Representation by Attorney Type

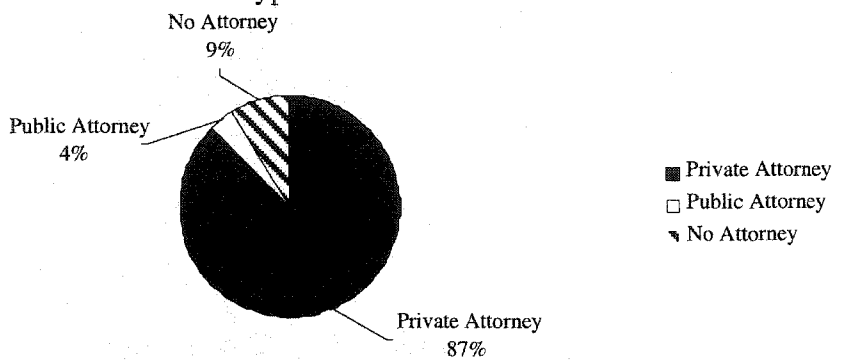

Figure 3. Eighty seven percent of Montana school districts involved in education litigation employed the services of a private attorney during the years 1999-2003. While 3.6% of school districts involved in litigation utilized the services of a public attorney.

Table 4 illustrates the legal representation of Montana School Districts by forum. Six cases were decided by the Montana Workers Compensation Court with private attorney representation in all six cases. At the Montana State Supreme Court, county attorneys represented school districts in three cases or 10.0% of the total number decided.

Table 4
Legal Representation of Montana School Districts 1999-2003 by Forum

	Private Attorney	Public Attorney	No Attorney
Montana State Supreme Court	90.0% (27)	10.0% (3)	0.0% (0)
Montana State Judicial District Court	92.9% (26)	3.6% (1)	3.6% (1)
Montana Office of Public Instruction	94.4% (17)	0.0% (0)	5.6% (1)
Montana Department of Labor and Industry	70.8% (17)	0.0% (0)	29.2% (7)
Montana Workers Compensation Court	100.0% (6)	0.0% (0)	0.0% (0)

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Figure 4 Representation by Forum

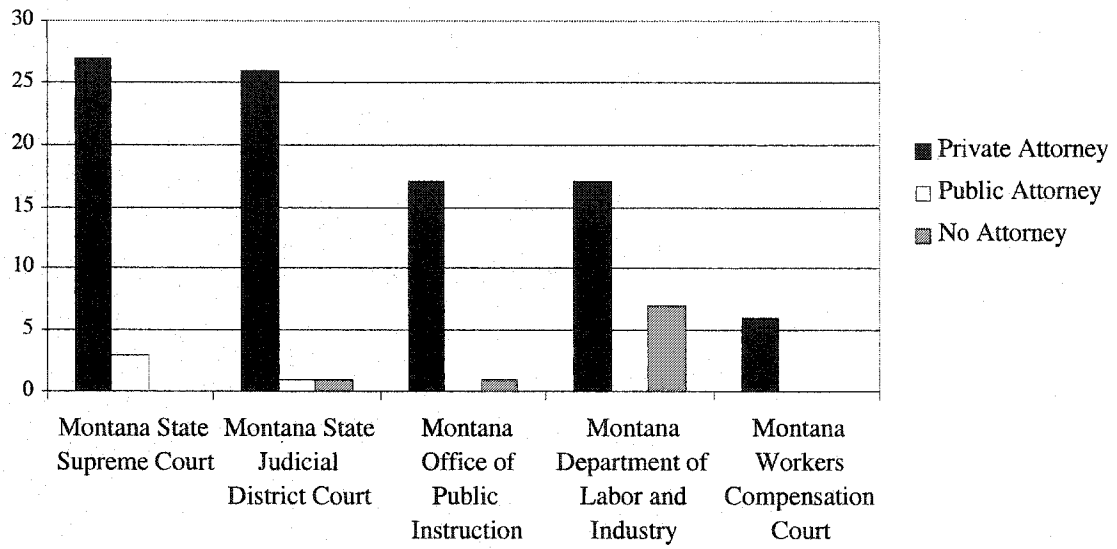

Figure 4. Public attorneys were utilized at the Montana State Supreme Court and Montana State Judicial District Court. Districts not utilizing the services of an attorney during litigation were most evident at the Montana Department of Labor and Industry.

Table 5 delineates the legal representation of Montana School Districts by Attorney Specialization. Of the cases decided by the Montana Office of Public Instruction, 12 or 66.7% were represented by school law attorneys. Similarly, private attorneys represented 19 cases or 67.9% of cases before Montana State Judicial District Court.

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Table 5

Legal Representation of Montana School Districts 1999-2003 by Attorney Specialization

	School Law Attorney	Public Attorney	Private Attorney	No Attorney
Montana State Supreme Court	50.0%(17)	10.0% (3)	40.0%(12)	0.0% (0)
Montana State Judicial District Court	25.0% (7)	3.6% (1)	67.9%(19)	3.6% (1)
Montana Office of Public Instruction	66.7%(12)	0.0% (0)	27.8% (5)	5.6% (1)
Montana Department Of Labor and Industry	50.0%(12)	0.0% (0)	20.8% (5)	29.2% (7)
Montana Workers Compensation Court	0.0% (0)	0.0% (0)	100.0% (6)	0.0% (0)

Figure 5. Attorneys who specialize in school law represent the number of cases at the Montana State Supreme Court, Montana Office of Public Instruction, and Montana Department of Labor and Industry. Private attorneys represent the largest number of cases at Montana State Judicial District Courts.

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Figure 5 Attorney Specialization by Case

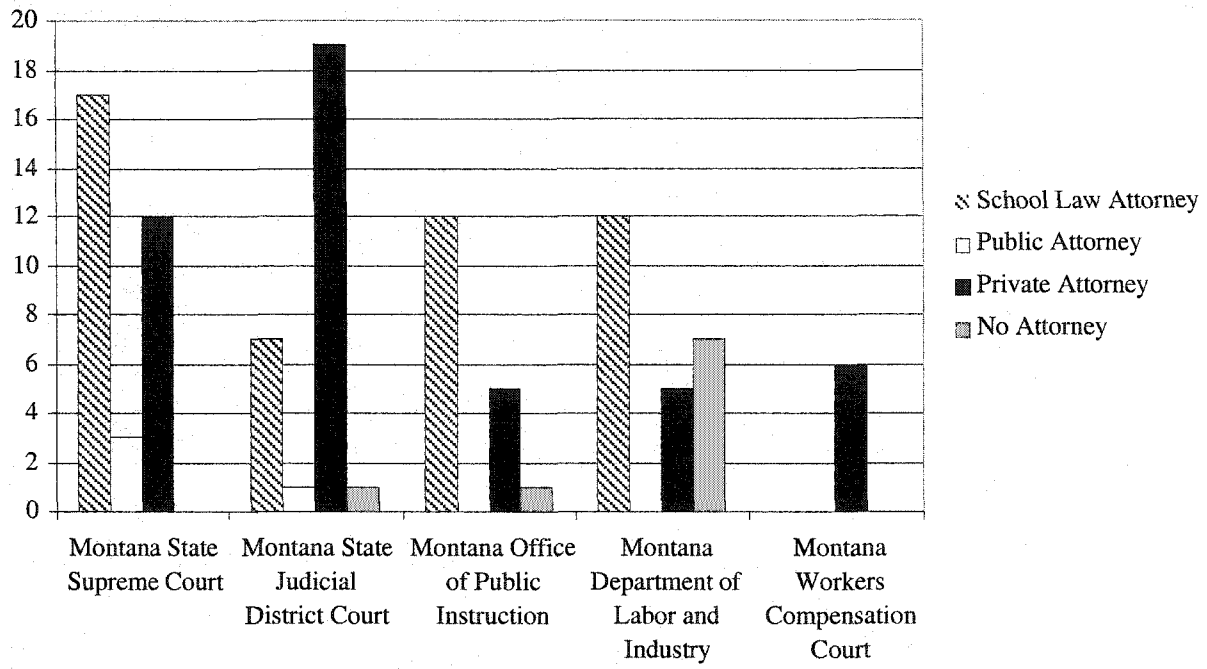

Table 6 illustrates the specialization of attorneys by school law firm, public attorney, private attorney, or no attorney. School law firms were most utilized in cases 83.3% of the time or five cases before the Montana Workers Compensation Court.

Table 6
Legal Representation of Montana School Districts 1999-2003 by Specialization

	School Law Firm	Public Attorney	Private Firm	No Attorney
Montana State Supreme Court	73.3% (22)	10.0% (3)	16.7% (5)	0.0% (0)
Montana State Judicial District Court	49.6% (12)	3.6% (1)	50.0% (14)	3.6% (1)
Montana Office of Public Instruction	72.2% (13)	0.0% (0)	22.2% (4)	5.6% (1)
Montana Department Of Labor and Industry	70.8%(17)	0.0% (0)	20.8% (5)	8.3% (2)
Montana Workers Compensation Court	83.3% (5)	0.0% (0)	16.7% (1)	0.0% (0)

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Figure 6 Attorney Specialization by Forum

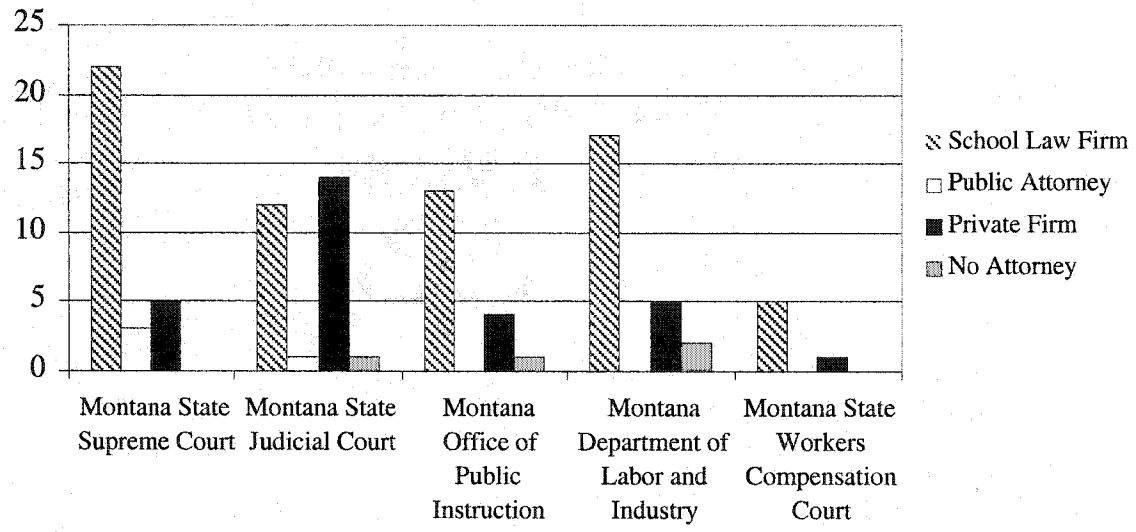

Figure 6. Firms that specialize in School Law represented the largest number of districts involved in litigation at the Montana State Supreme Court, Montana Office of Public Instruction, Montana Department of Labor and Industry, and Montana State Workers Compensation Court. Private attorneys represented the largest number of districts in Montana State Judicial District Courts and were also the next largest group represented across the remaining forums.

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Figure 7 Education Litigation by Montana County

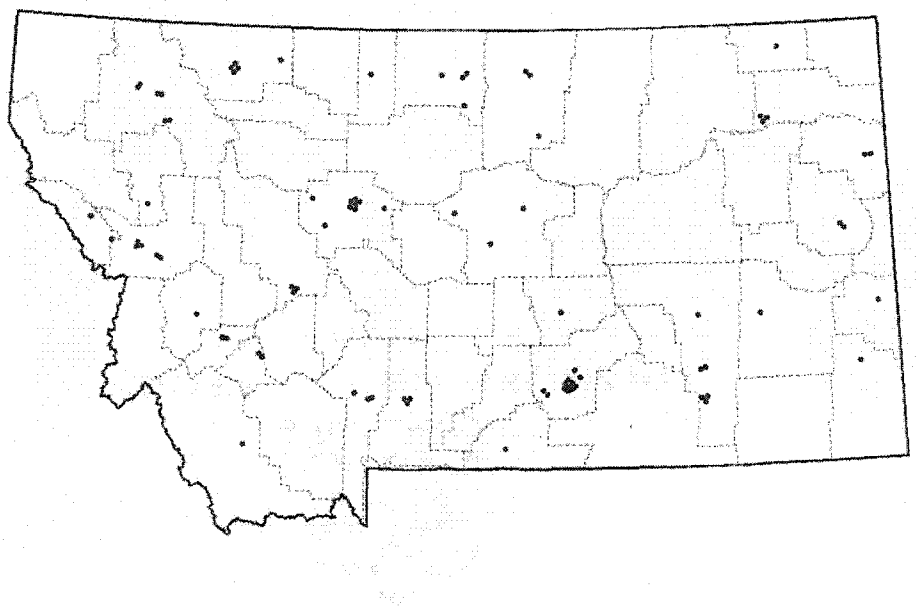

Figure 7. Represents a by county representation of Montana education litigation 1999-2003.

Overall Outcome Results

The outcomes for all forums according to the seven-point scale utilizing the Litigation Document Form, including the number of occurrences and the percentage compared to the total issues are presented in Table 7.

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Table 7

Distribution of Issue Subcategorization: All Forums 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	1	(0.7%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	2	(1.5%)
Attendance	0	(0.0%)
Search and Seizure	2	(1.5%)
Religious Activities	0	(0.0%)
School Program	3	(2.2%)
Special Education and Gifted Education	9	(6.7%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	10	(7.4%)
Lawsuits by Employees:		
Discrimination	11	(8.1%)
Other Employment Actions		
Termination	17	(12.6%)
Nonrenewal	1	(0.7%)
Transfer	1	(0.7%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	1	(0.7%)
Disability Benefits	9	(6.7%)
Unemployment Benefits	7	(5.2%)
Professional Negotiations	11	(8.1%)
Torts		
Negligence	2	(1.5%)
Defamation	0	(0.0%)
Other	14	(10.4%)
Lawsuits by Others:		
Contracts	6	(4.4%)
Fiscal Issues	8	(5.9%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	8	(5.9%)
Other	11	(8.9%)

In Table 7 the category Other Employee Actions - Termination contained in the section Lawsuits by Employees was the highest coded for all forums, it involved 17 issues and accounted for 12.7% of the total. Within the section Lawsuits by Students, the largest concentration of issues (10) occurred in the "other" category, totaling 7.4% of the total cases heard.

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Table 8

Distribution of Issue Subcategorization: Montana State Supreme Court 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	1	(2.9%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	0	(0.0%)
Attendance	0	(0.0%)
Search and Seizure	0	(0.0%)
Religious Activities	0	(0.0%)
School Program	1	(2.9%)
Special Education and Gifted Education	0	(0.0%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	3	(8.6%)
Lawsuits by Employees:		
Discrimination	3	(8.6%)
Other Employment Actions		
Termination	8	(22.9%)
Nonrenewal	0	(0.0%)
Transfer	0	(0.0%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	0	(0.0%)
Disability Benefits	2	(5.7%)
Unemployment Benefits	0	(0.0%)
Professional Negotiations	0	(0.0%)
Torts		
Negligence	0	(0.0%)
Defamation	0	(0.0%)
Other	3	(8.6%)
Lawsuits by Others:		
Contracts	6	(17.1%)
Fiscal Issues	1	(2.9%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	3	(8.6%)
Other	4	(11.4%)

The outcomes according to the seven-point scale, the number of occurrences and percentage compared to the total decided by the Montana Supreme Court, are in Table 8. The justices decided eight issues under the subcategory "termination" within the Lawsuits by Employees section or 22.9% of total. Within the section, Lawsuits by Others, the Montana Supreme Court decided six contract issues as illustrated in Table 8.

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Table 9

Distribution of Issue Subcategorization: Montana State Judicial District Court 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	0	(0.0%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	0	(0.0%)
Attendance	0	(0.0%)
Search and Seizure	0	(0.0%)
Religious Activities	0	(0.0%)
School Program	2	(6.5%)
Special Education and Gifted Education	1	(3.2%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	1	(3.2%)
Lawsuits by Employees:		
Discrimination	0	(0.0%)
Other Employment Actions		
Termination	5	(16.1%)
Nonrenewal	1	(3.2%)
Transfer	0	(0.0%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	0	(0.0%)
Disability Benefits	0	(0.0%)
Unemployment Benefits	0	(0.0%)
Professional Negotiations	5	(16.1%)
Torts		
Negligence	2	(6.5%)
Defamation	0	(0.0%)
Other	6	(19.4%)
Lawsuits by Others:		
Contracts	0	(0.0%)
Fiscal Issues	2	(6.5%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	1	(3.2%)
Other	5	(16.1%)

Of the issues decided by Montana State Judicial District Courts in Montana, the areas of termination and the category "Other" under Lawsuits by Employees each had five issues, accounting for 32.2% of the decisions as enumerated in Table 9. Also, Table 9 shows five issues were adjudicated in Lawsuits by Others the subcategory "Other."

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Table 10

Distribution of Issue Subcategorization: Montana Office of Public Instruction 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	0	(0.0%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	2	(5.9%)
Attendance	0	(0.0%)
Religious Activities	0	(0.0%)
School Program	0	(0.0%)
Special Education and Gifted Education	8	(23.5%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	5	(14.7%)
Lawsuits by Employees:		
Discrimination	0	(0.0%)
Other Employment Actions		
Termination	3	(8.8%)
Nonrenewal	0	(0.0%)
Transfer	1	(2.9%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	0	(0.0%)
Disability Benefits	0	(0.0%)
Unemployment Benefits	0	(0.0%)
Professional Negotiations	0	(0.0%)
Torts		
Negligence	0	(0.0%)
Defamation	0	(0.0%)
Other	4	(11.8%)
Lawsuits by Others:		
Contracts	0	(0.0%)
Fiscal Issues	5	(14.7%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	4	(11.8%)
Other	2	(5.9%)

Table 10 shows that the Montana Office of Public Instruction and in particular the Superintendent of Public Schools heard eight issues or 23.5% under the subcategory of Special Education and Gifted Education in Lawsuits by Students. In Table 10, Lawsuits by Employees had the largest numbers of issues in the subcategory of "Other" with four

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issues or 11.8%. In the category of Lawsuits by Others seven issues or 20.6% of the total issues were decided.

Table 11

Distribution of Issue Subcategorization: Montana Department of Labor and Industry 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	0	(0.0%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	0	(0.0%)
Attendance	0	(0.0%)
Search and Seizure	0	(0.0%)
Religious Activities	0	(0.0%)
School Program	0	(0.0%)
Special Education and Gifted Education	0	(0.0%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	1	(4.0%)
Lawsuits by Employees:		
Discrimination	8	(32.0%)
Other Employment Actions		
Termination	1	(4.0%)
Nonrenewal	0	(0.0%)
Transfer	0	(0.0%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	0	(0.0%)
Disability Benefits	0	(0.0%)
Unemployment Benefits	7	(28.0%)
Professional Negotiations	6	(24.7%)
Torts		
Negligence	0	(0.0%)
Defamation	0	(0.0%)
Other	2	(8.0%)
Lawsuits by Others:		
Contracts	0	(0.0%)
Fiscal Issues	0	(0.0%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	0	(0.0%)
Other	1	(3.8%)

Table 11 shows that within the Montana Department of Labor and Industry 24 of the 26 issues were in the section Lawsuits by Employees. In that section the largest

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concentration is in the subcategory "Discrimination" with eight issues or 32.0%. One issue or 3.8% as shown in Table 11 was decided within the section Lawsuits by Students under the subcategory "Other." An additional issue was decided within the section Lawsuits by Others under the subcategory "Other."

Table 12

Distribution of Issue Subcategorization: Montana Workers Compensation Court 1999-2003

	Number Adjudicated	Percentage of Total
Lawsuits by Students:		
Negligence	0	(0.0%)
Control of Behavior		
Expression	0	(0.0%)
Association	0	(0.0%)
Punishment	0	(0.0%)
Attendance	0	(0.0%)
Search and Seizure	0	(0.0%)
Religious Activities	0	(0.0%)
School Program	0	(0.0%)
Special Education and Gifted Education	0	(0.0%)
Other Equal Opportunity Issues	0	(0.0%)
Fiscal Issues	0	(0.0%)
Other	0	(0.0%)
Lawsuits by Employees:		
Discrimination	0	(0.0%)
Other Employment Actions		
Termination	0	(0.0%)
Nonrenewal	0	(0.0%)
Transfer	0	(0.0%)
Reassignment/Suspension	0	(0.0%)
Involuntary Leaves	0	(0.0%)
Retirement Benefits	0	(0.0%)
Disability Benefits	7	(100.0%)
Unemployment Benefits	0	(0.0%)
Professional Negotiations	0	(0.0%)
Torts		
Negligence	0	(0.0%)
Defamation	0	(0.0%)
Other	0	(0.0%)
Lawsuits by Others:		
Contracts	0	(0.0%)
Fiscal Issues	0	(0.0%)
Negligence	0	(0.0%)
Religious Activities	0	(0.0%)
Territory Transfer	0	(0.0%)
Other	0	(0.0%)

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In the venue of Montana Workers Compensation Court, all seven issues were in the area Lawsuits by Employees concerning Disability Benefits as shown in Table 12.

Overall Montana Education Litigation Outcome Results

Table 13 shows that 73 issues were decided conclusively in favor of school authorities, and only 37 issues or 27.4% of the total were decided conclusively favoring students, employees or others. Table 13 illustrates all 135 issues decided by all forums in the years specified by this study.

Table 13

Overall Issue Outcome Results – Montana Education Litigation 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	73	(54.1%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	9	(6.7%)
Conclusive or Inconclusive Split Decision	8	(5.9%)
Inconclusive Decision Favoring Students, Employees or Others	6	(4.4%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	2	(1.5%)
Conclusive Decision Completely Favoring Students, Employees or Others	37	(27.4%)

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Figure 8 Overall Issue Outcome

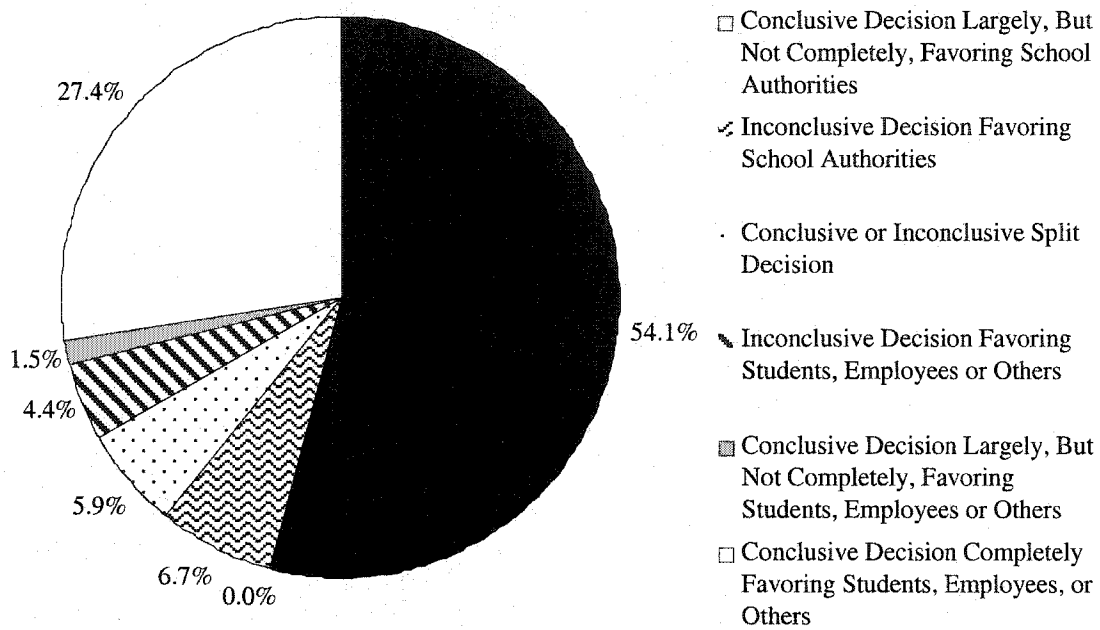

Figure 8. Fifty four percent of all outcome decisions conclusively decided in completely in favor of school authorities. Likewise, 27.4% were decided conclusively and completely in favor of students, employees, or others. While 5.9% were split decisions in favor of neither party.

Outcome Results for the Montana State Supreme Court

Tables 14 and 15 reflect the component results by category for the Montana State Supreme Court. Data is provided overall and for each of the three categories delineated in the study: (a) Lawsuits by Students, (b) Lawsuits by Employees, and (c) Lawsuits by Others.

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Overall Montana State Supreme Court Cases

Table 14 provides overall issue outcome results in the Montana State Supreme Court during 1999-2003. In 15 issues (42.9%), the court found conclusively in favor of students, employees or others. This court also conclusively decided 14 issues (40.0%) completely favoring school authorities.

Table 14

Montana State Supreme Court Overall Issue Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	14	(40.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	2	(5.7%)
Conclusive or Inconclusive Split Decision	2	(5.7%)
Inconclusive Decision Favoring Students, Employees or Others	1	(2.9%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	(2.9%)
Conclusive Decision Completely Favoring Students, Employees or Others	15	(42.9%)

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Figure 9 Montana State Supreme Court Overall Issue Outcome Results 1999-2003

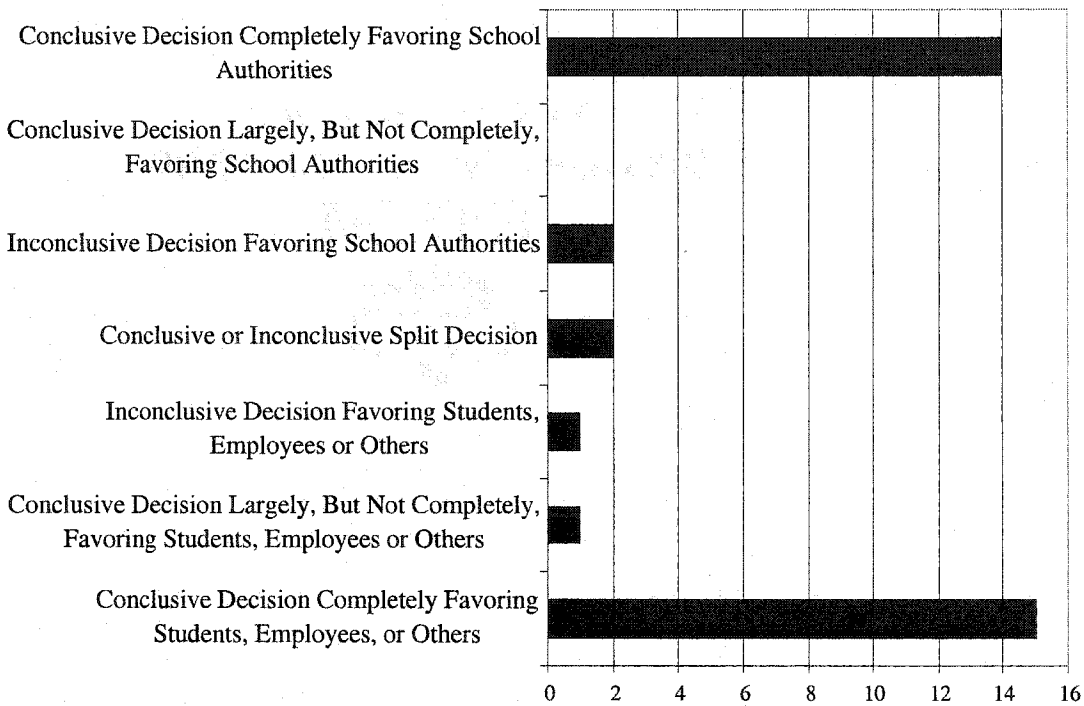

Figure 9. Fifteen issues were decided conclusively and completely in favor of students, employees or others during 1999-2003. While during the same period of time 14 issues were decided conclusively and completely in favor of school authorities.

Lawsuits by Students

Table 15 presents outcome results for the Lawsuits by Students' category before the Montana State Supreme Court during 1999-2003. The Supreme Court decided completely in favor of school authorities on three issues (60%). While the court decided completely in favor of students, employees or others on two issues (40.0%).

Lawsuits by Employees

The Montana State Supreme Court decided completely in favor of school authorities on eight issues (50%) as enumerated in Table 15. Also, Table 16 shows that five issues (31.3%) were decided completely favoring students, employees, or others.

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Lawsuits by Others

Table 15 summarizes the outcomes for Lawsuits by Others category in the cases heard by Montana State Supreme Court for 1999-2003.

Issue outcome results for Suits by Others heard by the Montana State Supreme Court show that 57.1% or eight issues were decided completely favoring the students, employees or others, as seen in Table 15. Further, 21.4% or three issues heard were decided conclusively, but not completely, favoring school authorities, two issues or 14.3 % were conclusive or inconclusive split decisions and one issue was an inconclusive decision favoring the school authority.

Table 15

Montana State Supreme Court Issue Outcome Results for Lawsuits by Students, Employees and Others

	Students	Employees	Others
Conclusive Decision Completely Favoring School Authorities	3 (60.0%)	8 (50.0%)	3 (21.4%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	1 (6.3%)	1 (7.1%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)	2 (14.3%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	1 (6.3%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	1 (6.3%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	2 (40.0%)	5 (31.3%)	8 (57.1%)

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Figure 10 Montana State Supreme Court Issue Outcome Results for Lawsuits by Students, Employees and Others

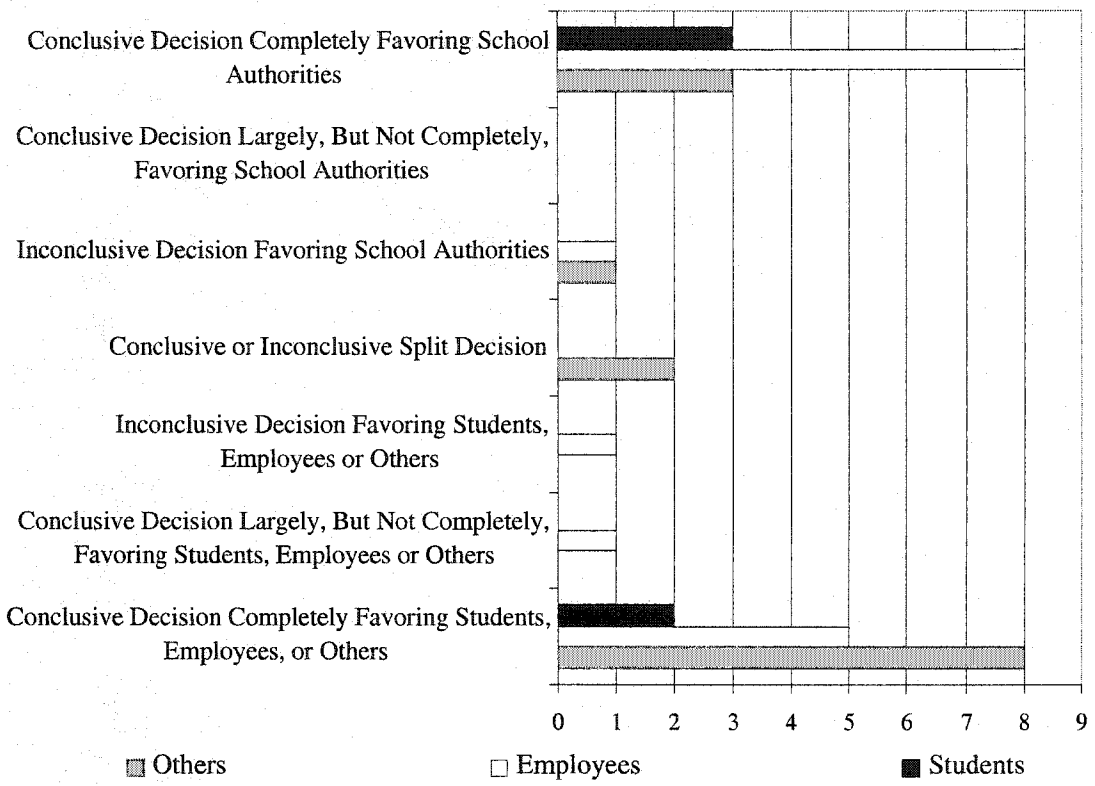

Figure 10. At the Montana State Supreme Court eight issues were decided conclusively and completely in favor of students, employees or others in the category Lawsuits by Others. An additional eight issues were decided conclusively and completely in favor of school authorities in the category Lawsuits by Employees. School authorities prevailed in three issues conclusively and completely in their favor in lawsuits by students.

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Overall Outcome Results for Montana State Judicial District Court

Table 16 reports the outcome of all the issues heard and decided by the 22 state district court judges in Montana.

Table 16

Montana State Judicial District Court Overall Issue Outcome Results 1999 – 2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	17	(54.8%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	3	(9.7%)
Conclusive or Inconclusive Split Decision	2	(6.5%)
Inconclusive Decision Favoring Students, Employees or Others	1	(3.2%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	(3.2%)
Conclusive Decision Completely Favoring Students, Employees or Others	7	(22.6%)

In all issues examined by the judges, there was a predominance of decisions completely favoring school authorities in 17 issues, or 54.8% shown Table 16.

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Figure 11 Montana State Judicial District Court Overall Issue Outcome Results 1999-2003

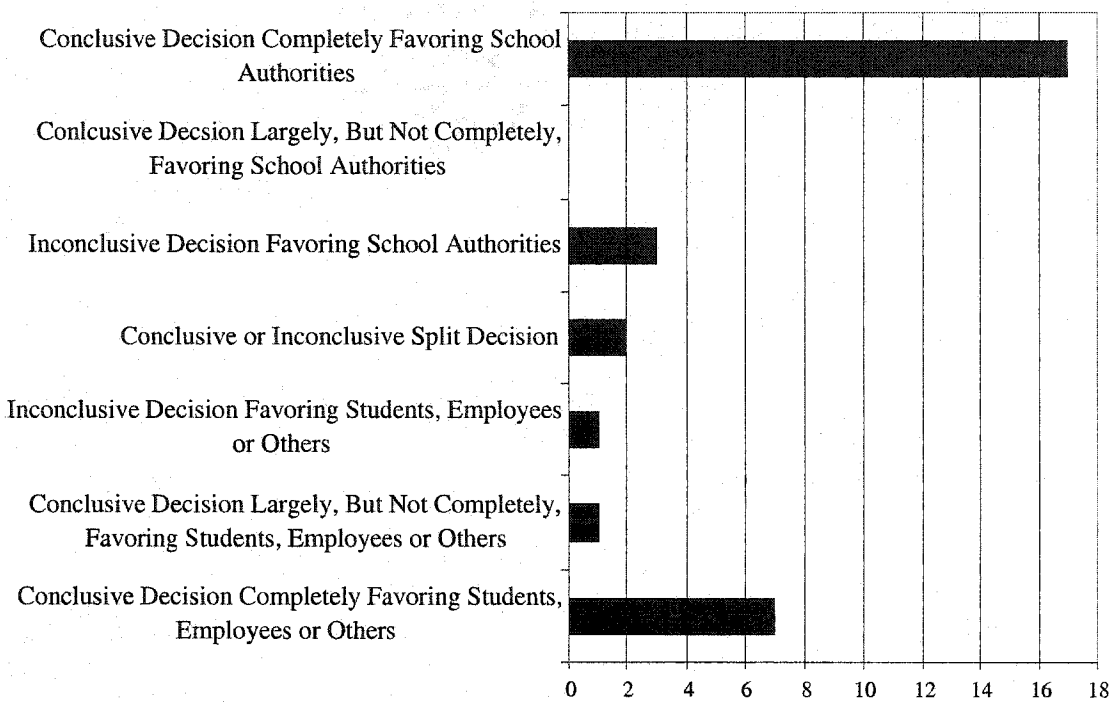

Figure 11. In Montana State Judicial District Courts, 17 issues were decided conclusively and completely in favor of school authorities. Whereas, seven issues were decided conclusively and completely in favor of students, employees or others.

Lawsuits by Students

Table 17 shows the outcomes results in the Lawsuits by Students in Montana State Judicial District Court for 1999-2003. In two of the four issues or 50%, judges decided completely in favor of students, employees or others. There also was an inconclusive decision favoring school authorities and a split decision.

Lawsuits by Employees

Table 17 is the compilation of the results in Lawsuits by Employees heard in the Montana State Judicial District Court during 1999-2003. The results in Lawsuits by

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Employees in state district court were decided 68.4% or 13 issues conclusively and completely favoring school authorities. There were three issues decided conclusively that favored the students, employees or others. One issue was inconclusively decided and favored the school authority according to the data in Table 17. There was one issue inconclusively decided that favored student, employees or others. Finally, in Table 17 one issue was decided largely conclusively but not completely favoring students, employees, or others.

Table 17 summarizes the results of the coding of issues in Lawsuits by Others in Montana State Judicial District Courts from 1999-2003. Lawsuits by others that were decided by the court in four of the issues or 66.7% were decided completely favoring school authorities.

Table 17

Montana State Judicial District Court Issue Outcome Results for Lawsuits by Students, Employees and Others

	Students	Employees	Others
Conclusive Decision Completely Favoring School Authorities	0 (0.0%)	13 (68.4%)	4 (66.7%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (25.0%)	1 (5.3%)	1 (16.7%)
Conclusive or Inconclusive Split Decision	1 (25.0%)	0 (0.0%)	1 (16.7%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	1 (5.3%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	1 (5.3%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	2 (50.0%)	3 (15.8%)	2 (33.3%)

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Figure 12 Montana State Judicial District Courts Issue Outcome Results for Lawsuits by Students, Employees and Others

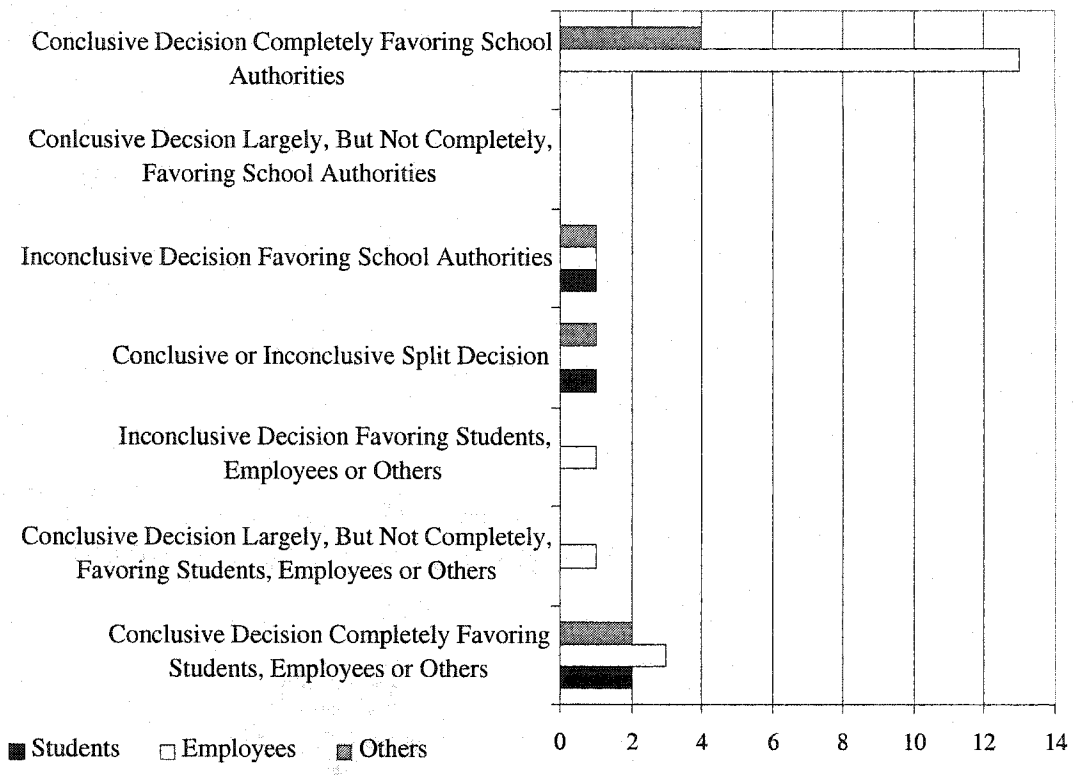

Figure 12. The Montana State Judicial District Courts in the category lawsuits by employees decided thirteen issues conclusively and completely in favor of school authorities. Two issues each for lawsuits by students and others were decided conclusively and completely in favor of students, employees or others. Three issues were similarly decided in lawsuits by employees.

Outcome Results for the Montana Office of Public Instruction

Tables 18 and 19 compile and summarize the issues decided by the Montana Office of Public Instruction for the years 1999-2003. Data is provided for all issues and then broken down for each of the three categories delineated in the study: (a) lawsuits by students, (b) lawsuits by employees, and (c) lawsuits by others.

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Overall Outcomes for the Superintendent of Public Instruction

Table 18 illustrates all issues decided by the Superintendent of Public Instruction.

Table 18

Montana Office of Public Instruction Overall Issue Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	24	(66.7%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	4	(11.1%)
Conclusive or Inconclusive Split Decision	1	(2.8%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	7	(19.4%)

The Office of Public Instruction heard a variety of issues with 24 (66.7%) being decided completely favoring school authorities.

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Figure 13 Montana Office of Public Instruction Overall Outcome Results 1999-2003

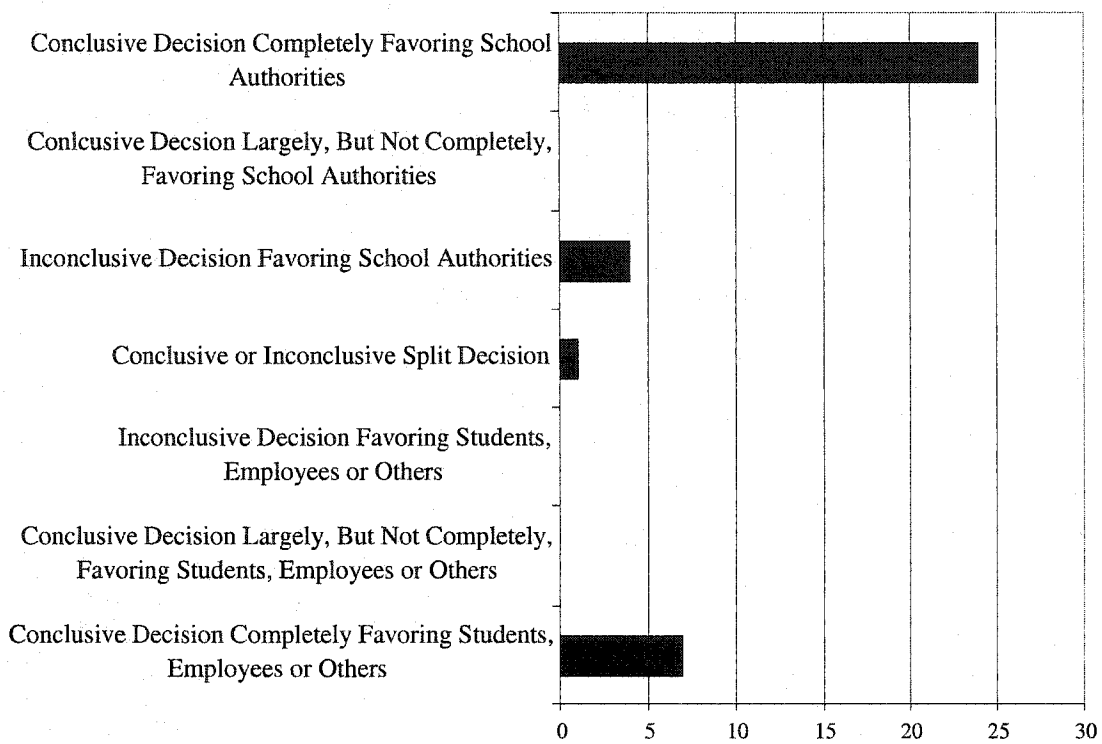

Figure 13. The Montana Office of Public Instruction overall decided 24 issues conclusively and completely in favor of school authorities. While seven were decided conclusively and completely in favor of students, employees or others.

Lawsuits by Students

Table 19 summarizes the Lawsuits by Students, Employees and Others issues decided by the Montana Office of Public Instruction from 1999-2003.

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Table 19

Montana Office of Public Instruction Issue Outcome Results for Lawsuits by Students, Employees and Others

	Students	Employees	Others
Conclusive Decision Completely Favoring School Authorities	14 (82.4%)	5 (62.5%)	5 (45.5%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (5.9%)	2 (25.0%)	1 (9.1%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	2 (11.8%)	0 (0.0%)	5 (45.5%)

Fourteen issues (82.4%) brought by students were unequivocally decided completely favoring school authorities.

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Figure 14 Montana Office of Public Instruction Issue Outcome Results for Lawsuits by Students, Employees and Others

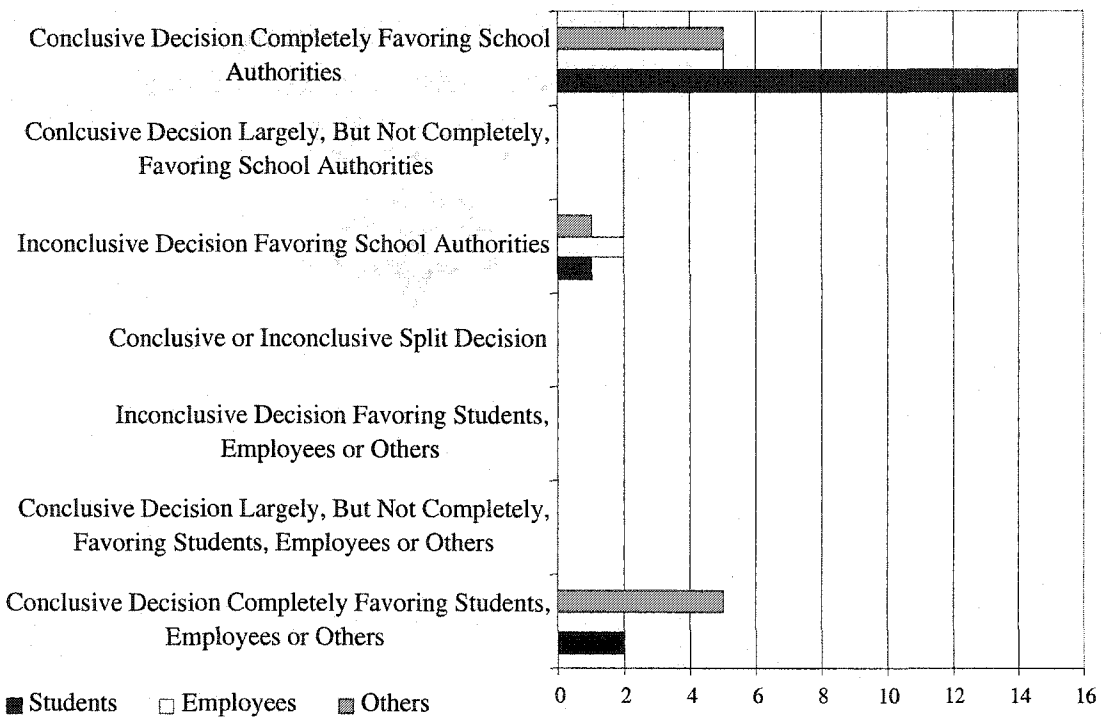

Figure 14. School authorities had the highest number of issues decided conclusively and completely in their favor in the area of lawsuits by students. Seven issues combined were decided conclusively and completely in favor of students, employees and others within the Lawsuits by Others and Students.

Overall Outcome Results for the Montana Department of Labor and Industry

Tables 20 and 21 are a compilation of the issues that were decided by the Montana Department of Labor and Industry. Data are provided for all issues delineated in each of the three categories elucidated in the study: (a) lawsuits by students, (b) lawsuits by employees, and (c) lawsuits by others.

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Table 20 is a summation of all issues decided by the Montana Department of Labor and Industry. Fifteen issues or 57.7% of the overall issues were found to be conclusive, with the decision completely favoring school authorities.

Table 20

Montana Department of Labor and Industry Overall Issue Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	15	(57.7%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	3	(11.5%)
Inconclusive Decision Favoring Students, Employees or Others	1	(3.8%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	7	(26.9%)

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Figure 15 Montana Department of Labor and Industry Overall Issue Outcome Results 1999-2003

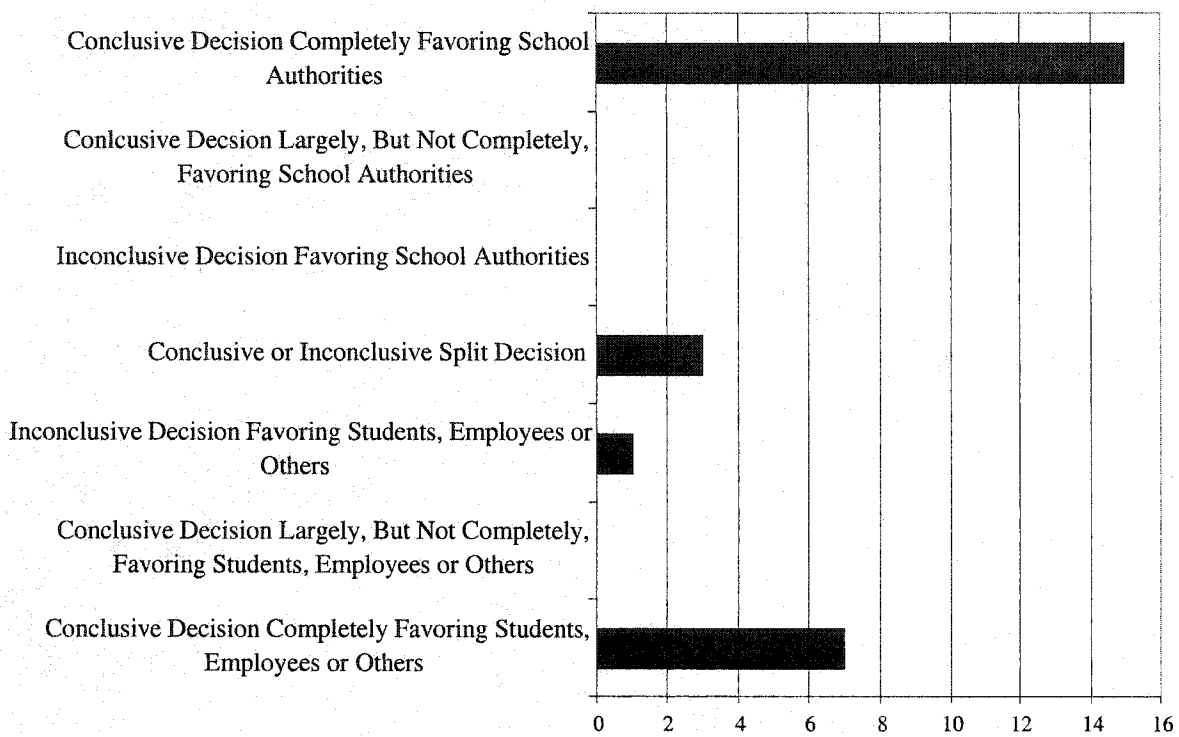

Figure 15. Overall, 15 issues were decided conclusively and completely in favor of school authorities by the Montana Department of Labor and Industry. Seven issues were decided conclusively and completely in favor of students, employees or others by the Montana Department of Labor and Industry.

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Lawsuits by Students, Employees and Others

Table 21 reviews the outcome results in Lawsuits by Students brought to the Montana Department of Labor and Industry from 1999-2003. There was only one issue and when it was decided the Montana Department of Labor and Industry completely favored school authorities. Table 21 reflects the results in the category of Lawsuits by Employees heard by the Montana Department of Labor and Industry from 1999-2003. In the category Lawsuits by Employees, the majority (54.2%) of the issues (13) were decided conclusively, completely favoring school authorities. For the time period delineated in this study there was one Lawsuit by Others in the Montana Department of Labor and Industry.

Table 21

Montana Department of Labor and Industry Issue Outcome Results for Lawsuits by Students, Employees and Others

	Students	Employees	Others
Conclusive Decision Completely Favoring School Authorities	1 (100.0%)	13 (54.2%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	3 (12.5%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	1 (4.2%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0 (0.0%)	7 (29.2%)	0 (0.0%)

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Figure 16 Montana Department of Labor and Industry Issue Outcome Results for Lawsuits by Students, Employees and Others

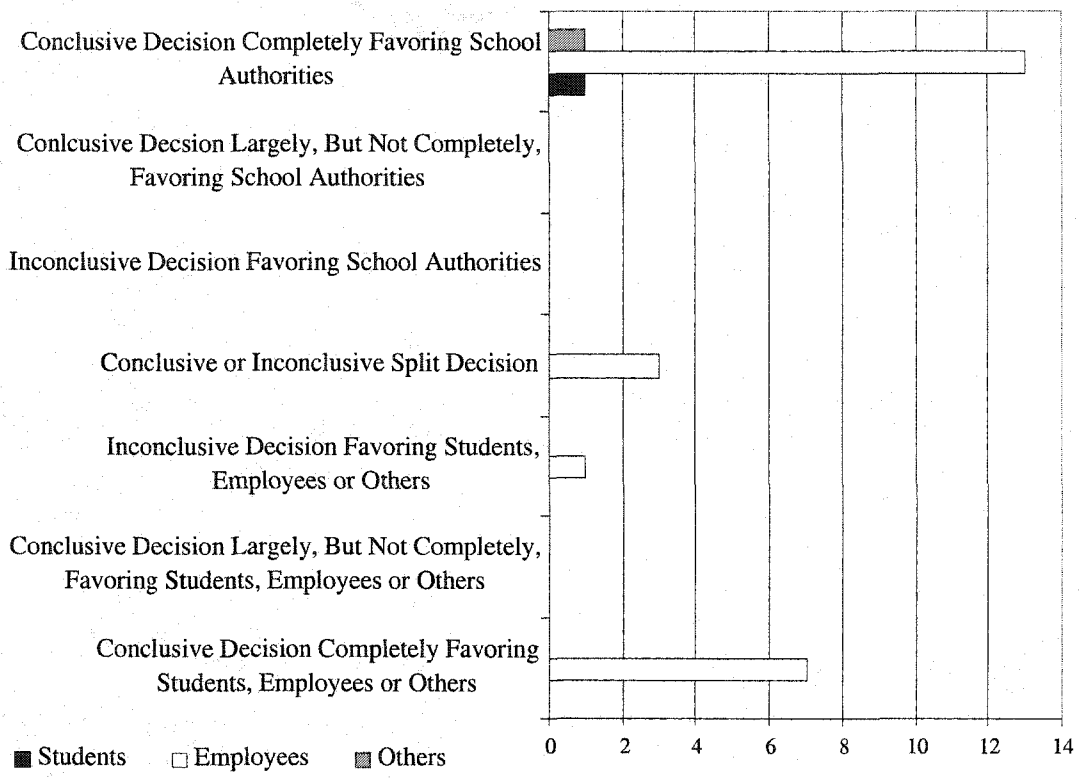

Figure 16. Lawsuits by employees dominated the Montana Department of Labor and Industry. Thirteen issues were decided conclusively and completely favoring school authorities. Seven issues were decided conclusively and completely favoring employees. Notably, one issue in each of the Lawsuits by Students and Others was decided conclusively and completely in favor of school authorities.

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Overall Outcome Results for Montana State Workers Compensation Court

Table 22 summarizes all issues from 1999-2003 for the Montana State Workers Compensation Court.

Table 22

Montana Workers Compensation Court Overall Issue Outcome Results 1999- 2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	3	(42.9%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	3	(42.9%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	1	(14.3%)

There remains a balance in the decisions of three issues or 42.9% in the two different outcomes of inconclusive decisions favoring students, employees or others and conclusive decision completely favoring school authorities.

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Figure 17 Montana State Workers Compensation Court Overall Issue Outcome Results 1999-2003

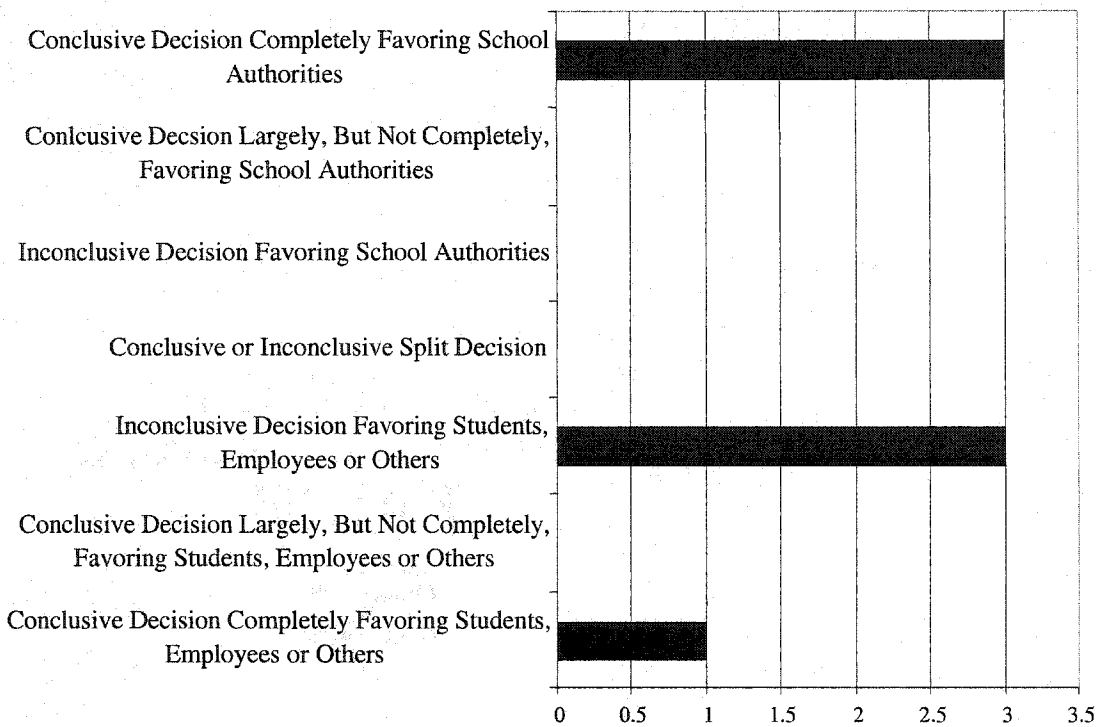

Figure 17. Three issues were decided conclusively and completely in favor of school authorities. Three issues were decided inconclusively in favor of employees, and one issue was decided conclusively and completely in favor of employees.

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Issue Results

Table 23

Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	74	54.0%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	9	6.6%
Conclusive or Inconclusive Split Decision	8	5.8%
Inconclusive Decision Favoring Students, Employees or Others	6	4.4%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	2	1.5%
Conclusive Decision Completely Favoring Students, Employees or Others	38	27.7%

Table 23 represents the issue outcome results for all venues. This table includes lawsuits where school districts have filed lawsuits against other school districts thereby accounting for the difference in the number adjudicated.

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Figure 18 Overall Outcome Results 1999-2003

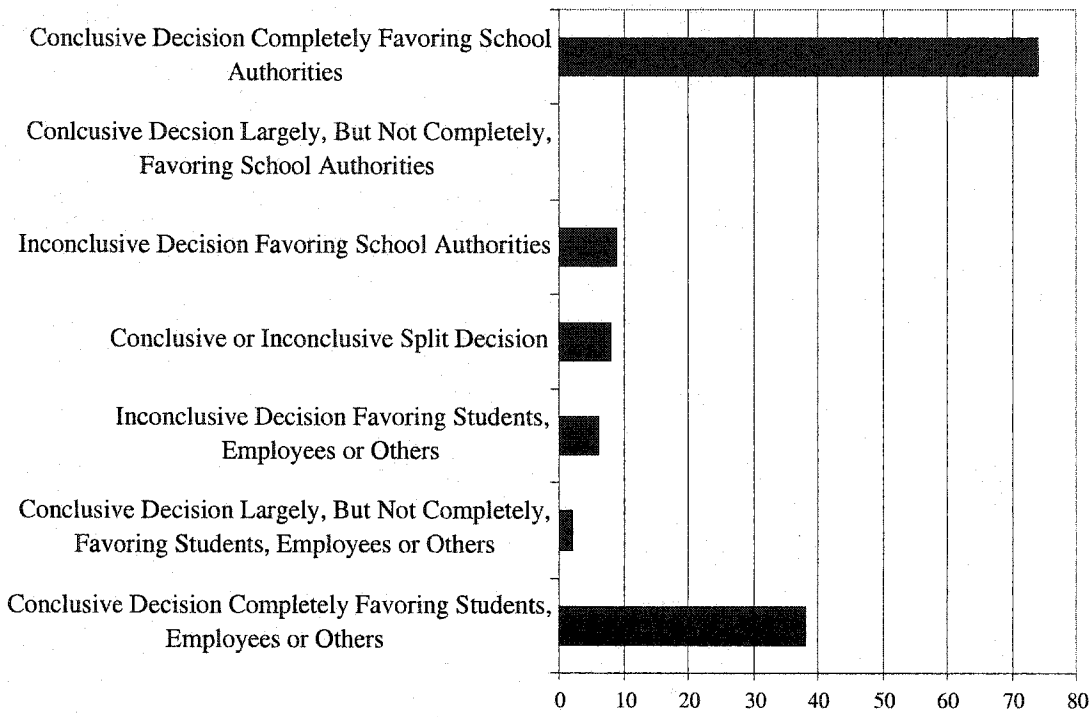

Figure 18. Across all of the forums, 74 issues were decided conclusively and completely in favor of school authorities. In addition, 38 were decided conclusively and completely in favor of students, employees or others during the same period of time.

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Table 24

Overall Outcome Results By Attorney Representation Schools Utilizing a School Law Attorney/Firm, Private Attorney/Firm, Public Attorney, or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	Public Attorney	No Attorney
Conclusive Decision Completely Favoring School Authorities	58 (55.8%)	12 (48.0%)	2 (50.0%)	2 (50.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	5 (4.8%)	4 (16.0%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	6 (5.8%)	1 (4.0%)	1 (25.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	5 (4.8%)	1 (4.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	2 (1.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	28 (26.9%)	7 (28.0%)	1 (25.0%)	2 (50.0%)

Table 24 represents the overall outcome results for all forums during the 1999-2003 time period. For schools utilizing school law attorneys or firms, 58 or 55.8% of the outcomes were conclusively decided completely in favor of the school authorities. Further, 28 or 26.9% were decided conclusively and completely in favor of students, employees or others.

Public attorneys represented school districts on two outcomes or 50.0% of the total received decisions which conclusively and completely favored school authorities. One outcome accounting for 25.0% of the total was conclusively and completely decided in favor of students, employees or others.

Private attorneys or firms represented 12 issues or 48% of the decisions that were rendered conclusively and completely in favor of school authorities, and seven issues or 28.0% of the occurrences were decided conclusively and completely in favor of students, employees or others. Four issues decided during the period of this study for school districts were heard without the school having an attorney present. Two issues, or 50% of the issues were decided conclusively and completely in favor of school entities. The remaining two issues, or 50.0% were decided conclusively and completely in favor of students, employees or others.

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Figure 19 Overall Outcome by Attorney Representatin

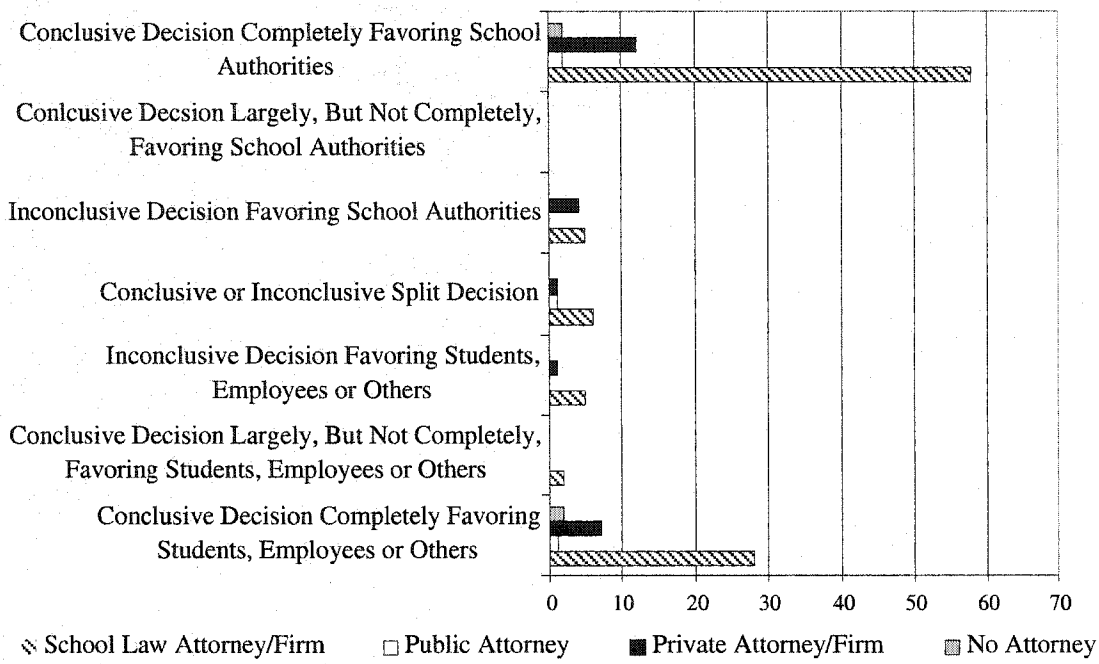

Figure 19. School districts represented by school law attorneys/firms had 58 issues decided conclusively and completely in their favor during 1999-2003. Two issues were decided conclusively and completely in favor school districts who utilized a public attorney. School law attorneys/firms had 28 issues decided conclusively and completely in favor of students, employees or others.

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Table 25

Montana State Supreme Court Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	15	41.7%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	2	5.6%
Conclusive or Inconclusive Split Decision	2	5.6%
Inconclusive Decision Favoring Students, Employees or Others	1	2.8%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	2.5%
Conclusive Decision Completely Favoring Students, Employees or Others	15	41.7%

Table 25 represents the overall outcome results of the Montana State Supreme Court, 1999-2003. The court decided 15 issues or 41.7% conclusively and completely favoring school authorities. The same number of cases were also decided conclusively and completely favoring students, employees and others.

Illustrated in Table 26 are the outcome results based on the specialization of attorneys representing school districts at the Montana State Supreme Court. In cases or issues where school attorneys or firms represented school districts, on 11 issues the court decided conclusively and completely in favor of school authorities. On two issues or 66.7%, where public attorneys represented school authorities, the court ruled conclusively and completely in favor of school authorities. Where private attorneys represented school authorities before the court, two issues or 50.0% were decided conclusively and completely in favor of school authorities. Similarly, the court on 12

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issues or 41.4% of the total decided conclusively and completely in favor of students, employees or others. One issue was decided conclusively and completely in favor of students, employees or others where a public attorney represented the schools. The court also decided two issues or 50.0% conclusively and completely in favor of students, employees or others.

Table 26

Montana State Supreme Court Outcome Results by Attorney Representation
1999-2003 School Law Attorney/Firm, Public Attorney and Private Attorney/Firm

	School Law Attorney/Firm	Public Attorney	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	11 (37.9%)	2 (66.7%)	2 (50.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	2 (6.9%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	2 (6.9%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (3.4%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1 (3.4%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	12 (41.4%)	1 (33.3%)	2 (50.0%)

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Figure 20 Montana State Supreme Court Overall Outcomes by Attorney Representation

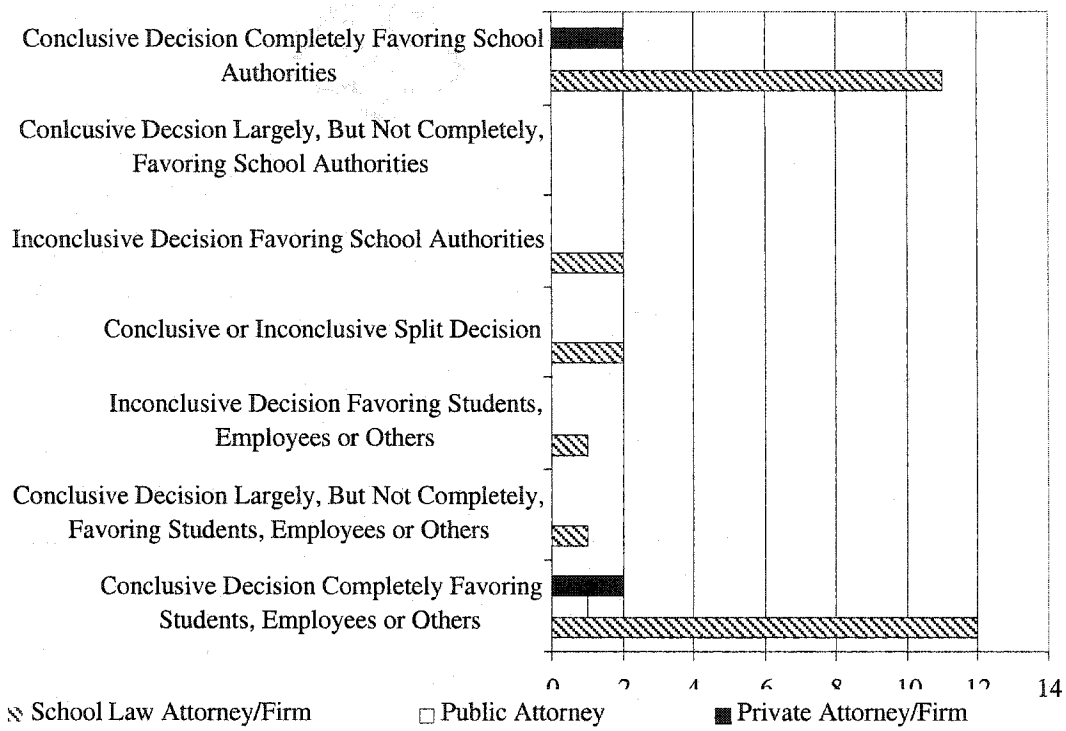

Figure 20. During 1999-2003 at the Montana State Supreme Court, 12 issues were decided conclusively and completely in favor of students, employees or others. Conversely, the court decided 11 issues conclusively and completely in favor of school authorities. Public attorneys represent schools in three issues, two were decided conclusively and completely in favor of school authorities and one was decided conclusively and completely in favor of students, employees or others. Private attorneys represented schools in four issues total with two decided conclusively and completely in favor of school authorities and the remaining two conclusively and completely in favor of students, employees or others.

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Table 27

Montana State Judicial District Court Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	17	53.1%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	3	9.4%
Conclusive or Inconclusive Split Decision	2	6.3%
Inconclusive Decision Favoring Students, Employees or Others	1	3.1%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	3.1%
Conclusive Decision Completely Favoring Students, Employees or Others	8	25.0%

Table 27 illustrates the overall outcomes for Montana State Judicial District Courts. The state judicial district courts adjudicated 17 issues or 53.1% of the total conclusively and completely in favor of school authorities, while eight issues or 25.0% were decided conclusively and completely in favor of students, employees or others.

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Illustrated in Table 28 are the overall outcomes based on legal representation of school authorities by either a school law attorney/firm, private attorney/firm, public attorney or no attorney. School law attorney/firm represented the school entity in 11 issues or 64.7% of the issues that were decided completely and conclusively in favor of the schools. Five issues or 38.5% were decided conclusively and completely in favor of school authorities with private attorney/firm or no attorney. Interestingly enough this court found conclusively and completely in favor of the students, employees, or others in five issues or 38.5% of the issues heard. A public attorney represented schools with one issue in state district court which rendered a decision that was an inconclusive or split decision. Three issues or 17.6% were decided conclusively and completely in favor of students, employees or others when school law attorneys or firms represented school authorities. School districts choosing not to utilize the services of an attorney had one issue decided by the state judicial district court which adjudicated it conclusively and completely in favor of school authorities.

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Table 28

Montana State Judicial District Court Outcome Results By Attorney Representation 1999–2003 Schools Utilizing a School Law Attorney/Firm, Private Attorney/Firm, Public Attorney, or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	Public Attorney	No Attorney
Conclusive Decision Completely Favoring School Authorities	11 (64.7%)	5 (38.5%)	0 (0.0%)	1(100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	3 (23.1%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	1 (5.9%)	0 (0.0%)	1(100.0%)	0 0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (5.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1 (5.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	3 (17.6%)	5 (38.5%)	0 (0.0%)	0 (0.0%)

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Figure 21 Montana State Judicial District Courts Outcomes by Attorney Specialization

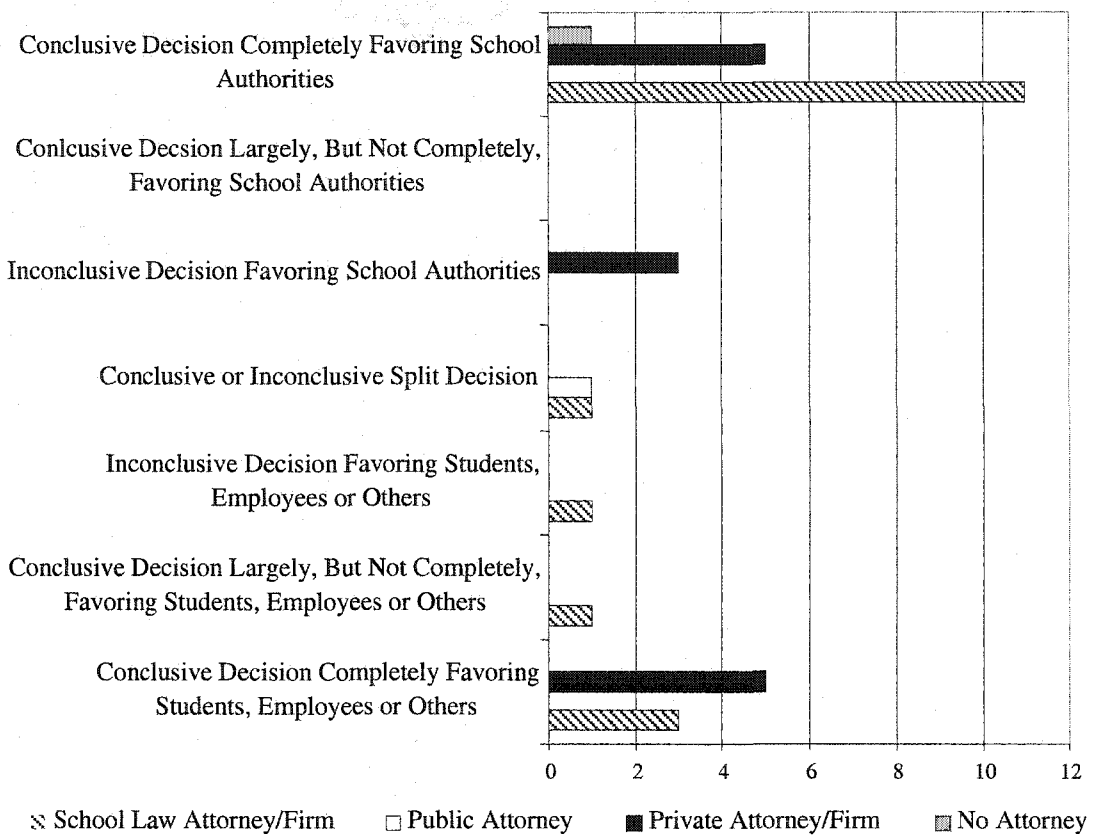

Figure 21. School law attorneys received 11 decisions from Montana State Judicial District Judges conclusively and completely favoring schools. Also, three issues were decided conclusively and completely in favor of students employees or others as seen in Figure 21. Private attorneys represented five issues which were decided conclusively and completely in favor of school authorities. Likewise, they also represented schools with five issues that were decided conclusively and completely in favor of students, employees, or others.

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Table 29 reports the outcome results by attorney representation on issues before the Montana Office of Public Instruction. Twenty four issues or 66.7% were adjudicated by the Montana Office of Public Instruction conclusively and completely in favor of school authorities. Seven issues or 19.4% were decided conclusively and completely in favor of students, employees or others as illustrated in Table 31.

Table 29

Montana Office of Public Instruction Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	24	66.7%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	4	11.1%
Conclusive or Inconclusive Split Decision	1	2.8%
Inconclusive Decision Favoring Students, Employees or Others	0	0.0%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	0.0%
Conclusive Decision Completely Favoring Students, Employees or Others	7	19.4%

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Table 30 elucidates the outcome results by specific attorney specialization on issues before Montana Office of Public Instruction. School law attorneys or firms represented schools in cases with 22 issues or 71.0% of the decisions and these were conclusively and completely resolved in favor of the school entities. Two issues were adjudicated conclusively and completely favoring school authorities when private attorneys represented school authorities. There was one issue before the Montana Office of Public Instruction where the issue was decided conclusively and completely in favor of students, employees or others and the district was not represented by legal counsel.

Table 30

Montana Office of Public Instruction Outcome Results By Attorney Representation 1999–2003 Schools Utilizing a School Law Attorney/Firm, Private Attorney/Firm, or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	No Attorney
Conclusive Decision Completely Favoring School Authorities	22 (71.0%)	2 (50.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	3 (9.7%)	1 (25.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	1 (25.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	6 (19.4%)	0 (0.0%)	1(100.0%)

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Figure 22 Montana Office of Public Instruction Outcome Results by Attorney Representation

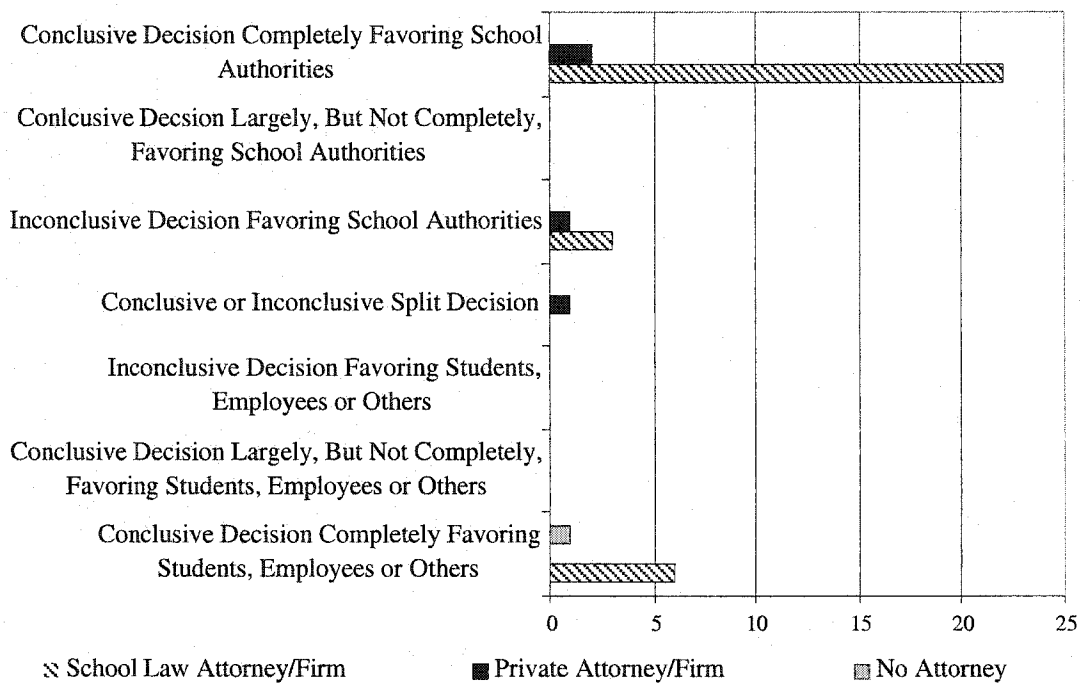

Figure 22. While representing school authorities, school law attorneys/firms received 22 decisions conclusively and completely favoring school authorities. Private attorneys/firms, represented districts in six issues before the Superintendent of Public Instruction and had two of these issues decided conclusively and completely in favor of schools.

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Table 31 enumerates the overall outcomes for the Montana Department of Labor and Industry1999-2003. Of the issues before the department, 15 or 57.7% were decided conclusively and completely in favor of school authorities. While seven issues or 26.9% were decided conclusively and completely in favor of students, employees or others.

Table 31

Montana Department of Labor and Industry Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	15	57.7%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	0	0.0%
Conclusive or Inconclusive Split Decision	3	11.5%
Inconclusive Decision Favoring Students, Employees or Others	1	3.8%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	0.0%
Conclusive Decision Completely Favoring Students, Employees or Others	7	26.9%

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Table 32 represents the issue break down by attorney specialization at the Montana Department of Labor and Industry 1999-2003. Issues represented by school law attorneys or firms were decided 52.4% conclusively and completely in favor of school authorities. Private attorneys or firms represented districts adjudicating three issues or 100% that were adjudicated conclusively and completely in favor of the schools. In addition, two issues were decided by the department where the schools had no legal representation. Also, one issue was litigated and the finding was conclusively and completely in favor of schools and another was adjudicated conclusively and completely in favor of students, employees or others.

Table 32

Montana Department of Labor and Industry Outcome Results By Attorney Representation 1999–2003 Schools Utilizing a School Law Attorney/Firm, Private Attorney/Firm, or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	No Attorney
Conclusive Decision Completely Favoring School Authorities	11 (52.4%)	3 (100.0%)	1 (50.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	3 (14.3%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (4.8%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	6 (28.6%)	0 (0.0%)	1 (50.0%)

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Figure 23 Montana Department of Labor and Industry Outcome Results by Attorney Representation

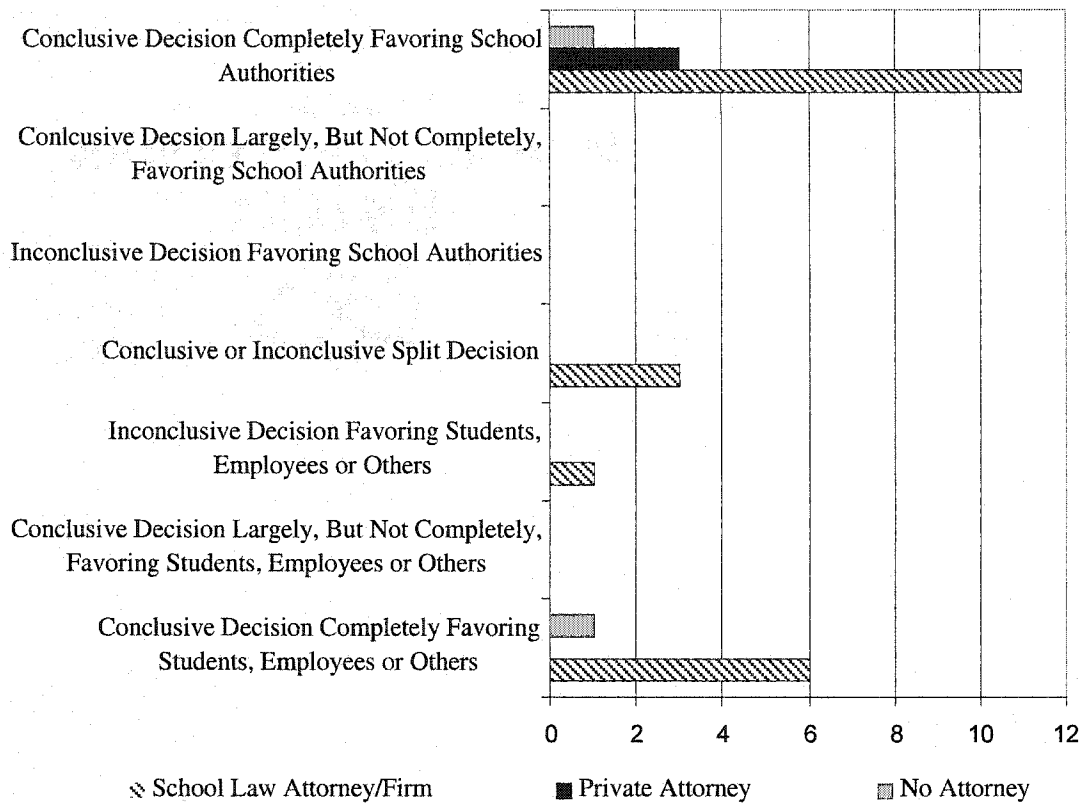

Figure 23. In Figure 23 it shows that school law attorneys/firms when representing schools received decisions which conclusively and completely favored the schools on 11 occasions. While on six issues school law attorneys/firms when representing the education entities received decisions that conclusively and completely favor students, employees, or others. Private attorneys/firms who represented schools received three decisions which conclusively and completely favored those districts.

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Table 33 illustrates the outcomes for school districts in issues heard by the Montana Workers Compensation Court 1999-2003. This court found on three issues or 42.9% of the total adjudicated conclusively and completely in favor of school entities three issues or 42.9% they decided inconclusively favoring students, employees or others.

Table 33

Montana Workers Compensation Court Overall Outcome Results 1999-2003

	Number Adjudicated	Percentage of Total
Conclusive Decision Completely Favoring School Authorities	3	42.9%
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	0.0%
Inconclusive Decision Favoring School Authorities	0	0.0%
Conclusive or Inconclusive Split Decision	0	0.0%
Inconclusive Decision Favoring Students, Employees or Others	3	42.9%
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	0.0%
Conclusive Decision Completely Favoring Students, Employees or Others	1	14.3%

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Table 34 illustrates the outcome results by attorney specialization for cases litigated by the Montana Workers Compensation Court 1999-2003. In Table 36 it indicates that three issues or 60% adjudicated by the Montana Workers Compensation Court were adjudicated conclusively and completely in favor of school authorities. Private attorneys or firms represented schools for one issue, and the decision was inconclusive favoring students, employees or others.

Table 34

Montana Workers Compensation Court Outcome Results 1999–2003 Schools Utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	3 (60.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (20.0%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	1 (20.0%)	0 (0.0%)

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Figure 24 Montana Workers Compensation Court Outcome Results by Attorney Specialization

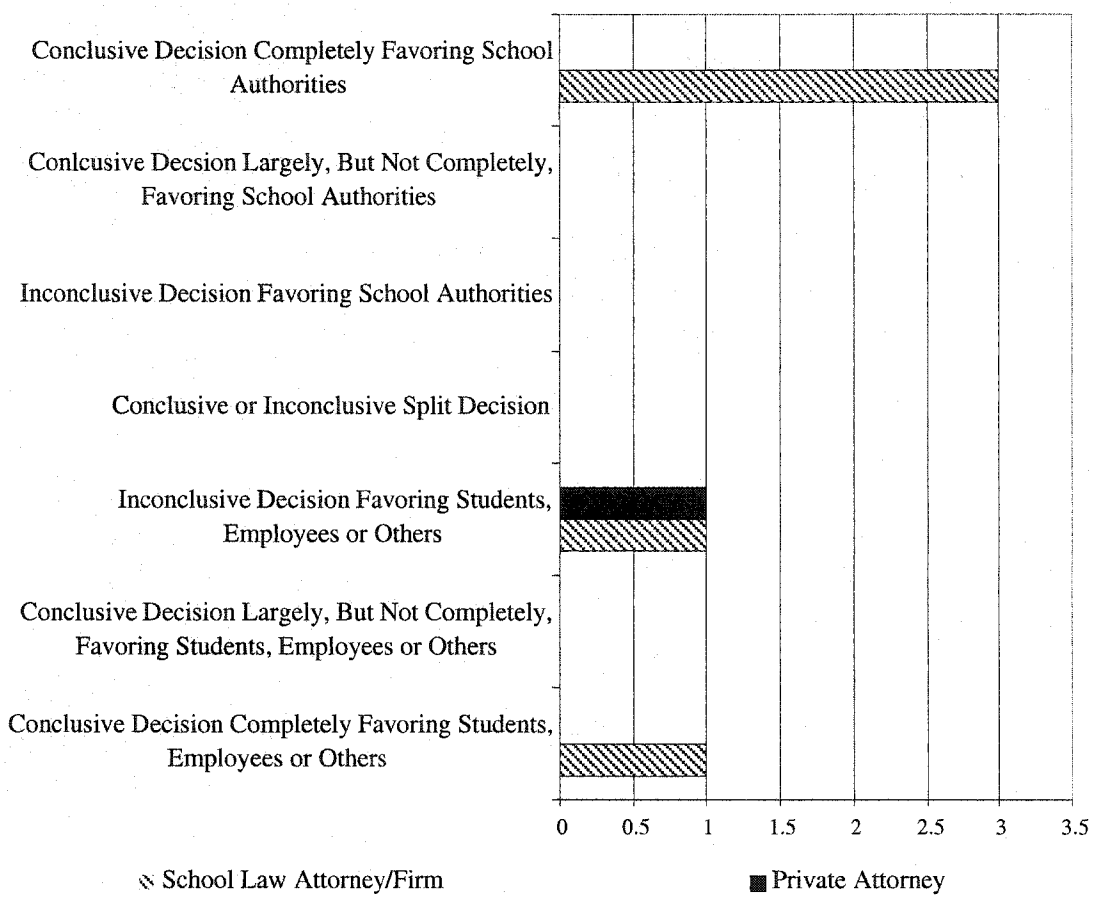

Figure 24. Seven issues were heard or litigated before the Montana State Workers Compensation Court during 1999-2003. Six of the seven cases had school law attorneys/firms representing the school entity. Three were decided conclusively and completely in favor of schools. While one issue was decided conclusively and completely in favor of the employee.

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Table 35 represents the outcome results by attorney specialization for lawsuits involving students adjudicated at the Montana State Supreme Court 1999-2003. Two issues or 50.0% were adjudicated by the Montana State Supreme Court where a school law attorney or firm represented school authorities and the court conclusively and completely favoring school authorities. Private attorneys represented a district with one issue or 100% of the issues using private representation was conclusively and completely decided favoring the school entity.

Table 35

Montana State Supreme Court Outcome Results 1999-2003 By Attorney Representation Lawsuits by Students utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	2 (50.0%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	2 (50.0%)	0 (0.0%)

Table 36 enumerates the outcome results by attorney representation for lawsuits by employees for cases adjudicated by the Montana State Supreme Court. The three

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types of attorneys representing schools were: school law, public, and private attorneys. Six issues or 42.6% of the lawsuits by employees represented by school law attorneys or firms were decided conclusively and completely favoring school districts. One issue was adjudicated conclusively and completely favoring school authorities while being represented by a public attorney. Private attorneys represented one issue or 50.0% which was decided conclusively and completely in favor of school authorities. One issue or 50% was also represented by a private attorney or firm and the decision was conclusively but not completely in favor of school authorities. Four issues or 30.8% were represented by school law attorneys or firms and the decisions were conclusively and completely favoring students, employees or others.

Table 36
Montana State Supreme Court Outcome Results 1999-2003 By Attorney Representation – Lawsuits by Employees utilizing a School Law Attorney/Firm Public Attorney or Private Attorney/Firm

	School Law Attorney/Firm	Public Attorney	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	6 (42.6%)	1(100.0%)	1 (50.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	1 (50.0%)
Inconclusive Decision Favoring School Authorities	1 (7.7%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (7.7%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1 (7.7%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	4 (30.8%)	0 (0.0%)	0 (0.0%)

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Figure 25 Montana State Supreme Court Outcome Results for Lawsuits by Employees by Attorney Representation

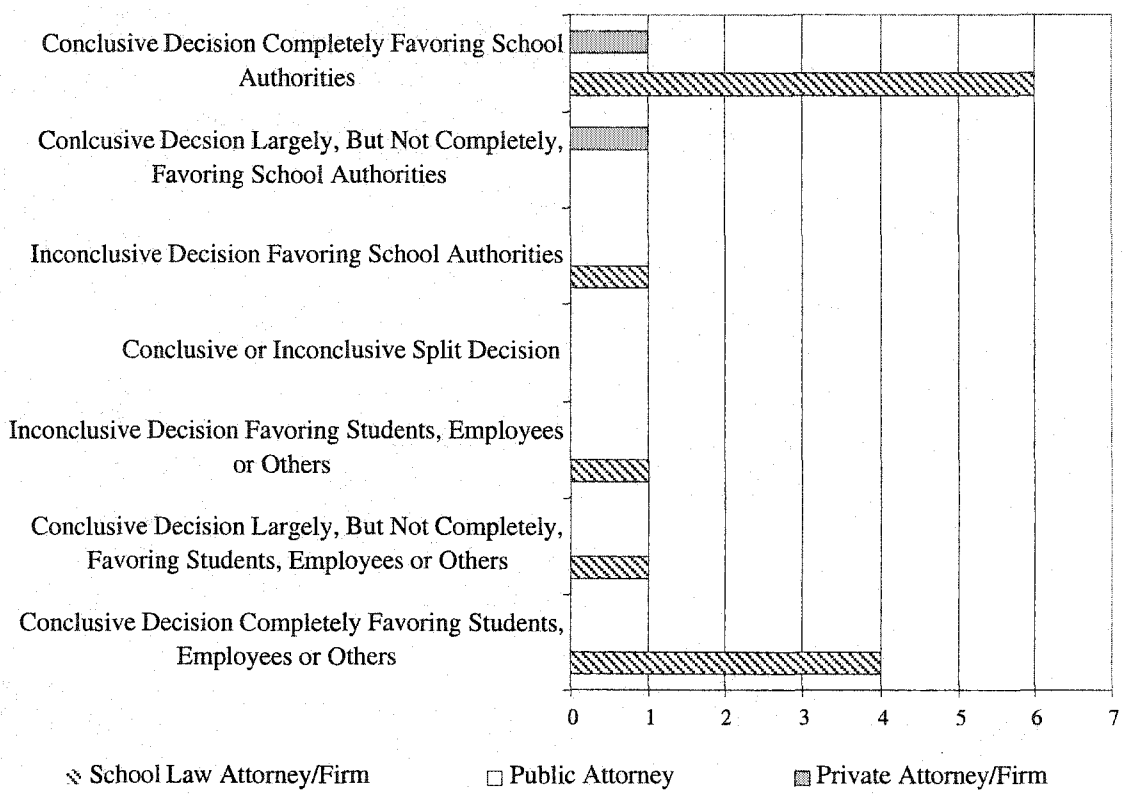

Figure 25. For the category Lawsuits by Employees six issues litigated by the Montana State Supreme Court were decided conclusively and completely in favor of the school. Four issues adjudicated when the district were represented by school law attorneys/firms were decided conclusively and completely favoring employees. Public attorneys represented schools in one issue before the Montana State Supreme Court and that court decided conclusively and completely in favor of the school district.

Table 37 delineates the outcome results by attorney representation, by school districts for cases adjudicated by the Montana State Supreme Court 1999-2003. School law attorneys represented districts with 12 issues before the Court. Three issues or 25.0% were adjudicated conclusively and completely favoring school authorities. Six issues or

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50.0% were adjudicated conclusively and completely favoring students, employees or others. Public attorneys represented schools on two issues and one issue or 50.0% was adjudicated conclusively and completely favoring school authorities. The other issue litigated and the court found conclusively and completely favoring students employees, or others. Private attorneys or firms represented school authorities for one issue and the State Supreme Court found conclusively and completely favoring students, employees or others.

Table 37

Montana State Supreme Court Outcome Results 1999-2003 By Attorney Representation Lawsuits by Others utilizing a School Law Attorney/Firm Public Attorney or Private Attorney/Firm

	School Law Attorney/Firm	Public Attorney	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	3 (25.0%)	1 (50.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (8.3%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	2 (16.7%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	6 (50.0%)	1 (50.0%)	1 (100.0%)

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Figure 26 Montana State Supreme Court Outcome Results for Lawsuits by Others by Attorney Representation

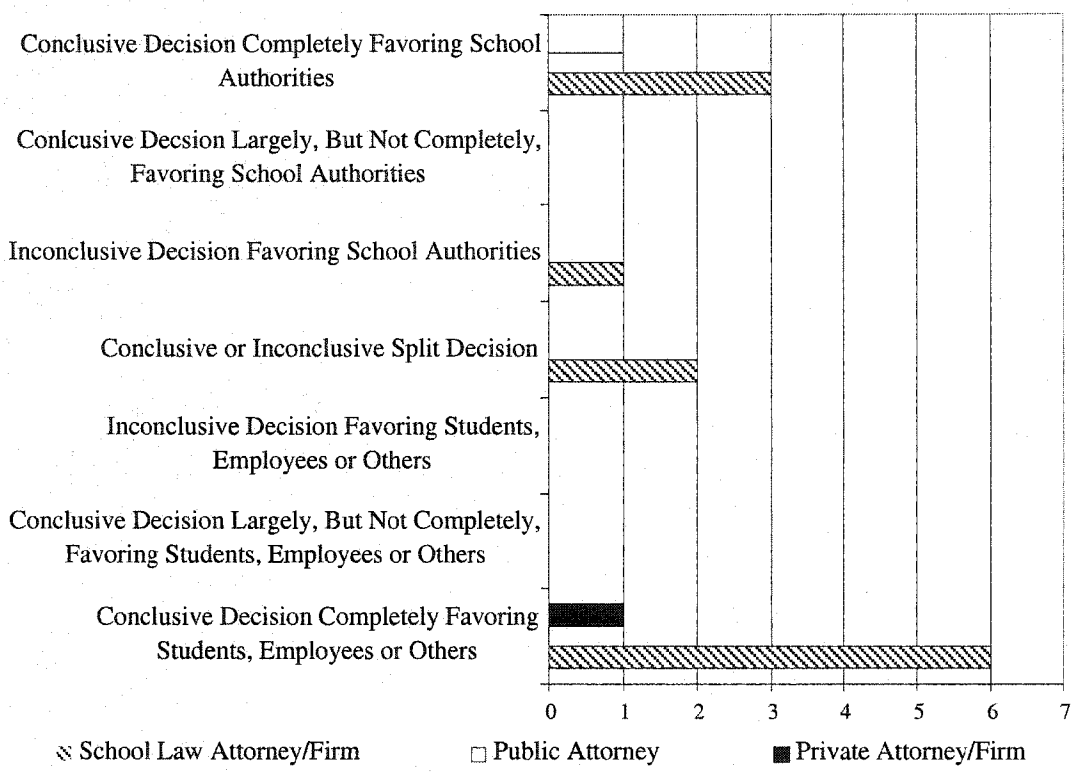

Figure 26. The Montana State Supreme Court decided conclusively and completely in favor of others on six issues before them during 1999-2003 when a school law attorney/firm represented the school authorities as illustrated in Figure 26. Similarly, three issues represented by school law attorneys/firms saw those three issues decided conclusively and completely in favor of the schools.

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Table 38 illustrates the outcome results for attorney specialization on issues adjudicated by the Montana State Judicial District Court with school authorities represented by school law attorneys or firms or private attorneys or firms. School law attorney/firm represented school districts that had three issues litigated and the Montana State Judicial District Courts decisions were conclusive or inconclusive split decision. While private attorneys or firms represented three issues before the courts, two of those issues (66.7%) were adjudicated conclusively and completely favoring students, employees or others.

Table 38

Montana State Judicial District Court Outcome Results 1999-2003 By Attorney Representation Lawsuits by Students utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	1 (33.3%)
Conclusive or Inconclusive Split Decision	1 (100.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0 (0.0%)	2 (66.7%)

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Table 39 enumerates the outcome results by attorney specialization for the Montana State Judicial District Court 1999-2003 for Lawsuits by Employees. This table contains information regarding school law attorneys or firms and private attorneys or firms. Nine issues or 64.3% where a school law attorney represented the interests of the school authorities were decided conclusively and completely favoring schools. Also, three issues or 21.4% were decided conclusively and completely favoring students employees, or others when school law attorneys represented school authorities. Four issues or 80% of issues represented by private attorneys or firms for school districts were decided conclusively and completely favoring school authorities.

Table 39
Montana State Judicial District Court Outcome Results 1999-2003 By Attorney Representation Lawsuits by Employees utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	9 (64.3%)	4 (80.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	1 (20.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (7.1%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1 (7.1%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	3 (21.4%)	0 (0.0%)

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Figure 27 Montana State Judicial District Courts Outcome Results for Lawsuits by Employees by Attorney Representation

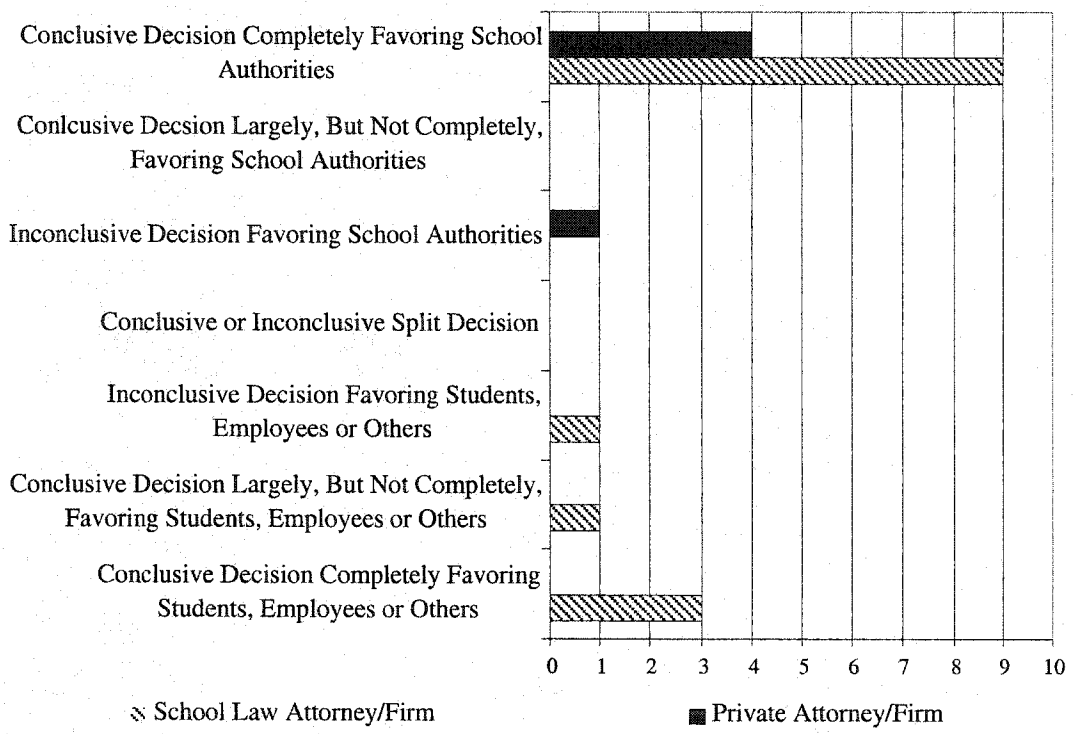

Figure 27. In Lawsuits by Employees, school law attorneys/firms represented 14 issues for school districts and nine of these were decided conclusively and completely in favor of the schools. There were also three issues that were decided conclusively and completely in favor of employees.

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Contained in Table 40 are the outcome results by attorney representation for Lawsuits by Others. Two issues or 100% represented by school law attorneys or firms were adjudicated conclusively and completely favoring school authorities. On issues represented by private attorneys, one issue or 20.0% were adjudicated conclusively and completely favoring school authorities and four issues or 80.0% when represented by private attorneys or firms were adjudicated conclusively and completely favoring students employees or others. A public attorney representing a school district on one issue or 100.0% resulted in an inconclusive decision favoring students, employees or others. Also when a school district had no attorney representation one issue or 100.0% resulted in a decision conclusively and completely favoring school authorities.

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Table 40

Montana State Judicial District Court Outcome Results 1999–2003 By Attorney Representation Lawsuits by Others utilizing a School Law Attorney/Firm, Private Attorney/Firm, Public Attorney, or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	Public Attorney	No Attorney
Conclusive Decision Completely Favoring School Authorities	2 (100.0%)	1 (20.0%)	0 (0.0%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	1 (20.0%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	1(100.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0 (0.0%)	3 (60.0%)	0 (0.0%)	0 (0.0%)

Table 41 illustrates the outcome results by attorney specialization for lawsuits brought by students to be adjudicated by the Montana Office of Public Instruction 1999-2003. School law attorneys or firms represented schools in 16 issues before the office and 13 issues or 81.3% were conclusively and completely decided favoring the schools. Similarly, one district issue or 100.0% was represented by private attorney or firm and the decision was conclusively and completely decided in favor of the schools.

Table 41

Montana Office of Public Instruction Outcome Results 1999–2003 By Attorney Representation Lawsuits by Students utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	13 (81.3%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (6.3%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	2 (12.5%)	0 (0.0%)

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Table 42 enumerates the outcome results by attorney specialization for Lawsuits by Employees adjudicated by the Montana Office of Public Instruction 1999-2003. There were five issues that districts were involved in that were conclusively and completely decided in favor of the schools before the Montana Office of Public Instruction. Four of these issues or 80% were conclusively and completely decided favoring the school authorities. Private attorneys represented three issues. One issue or 33.3% was adjudicated conclusively and completely favoring school authorities. The other one issue was adjudicated inconclusively favoring school authorities. Four of these issues were in cases that districts has school law attorney/firm and the other was litigated when the school district had a private attorney.

Table 42
Montana Office of Public Instruction Outcome Results 1999–2003 By Attorney Representation Lawsuits by Employees utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	4 (80.0%)	1 (33.3%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (20.0%)	1 (33.3%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	1 (33.3%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)

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There were two other issues that were brought before this hearing venue when districts had private attorneys: one issue was an inconclusive decision favoring schools and the other was conclusive or inconclusive split decisions. In table 45 the remaining case was an issue when the Montana Office of Public Instruction decided conclusively and completely in favor of the schools

Figure 28 Montana Office of Public Instruction Outcome Results for Lawsuits by Employees by Attorney Specialization

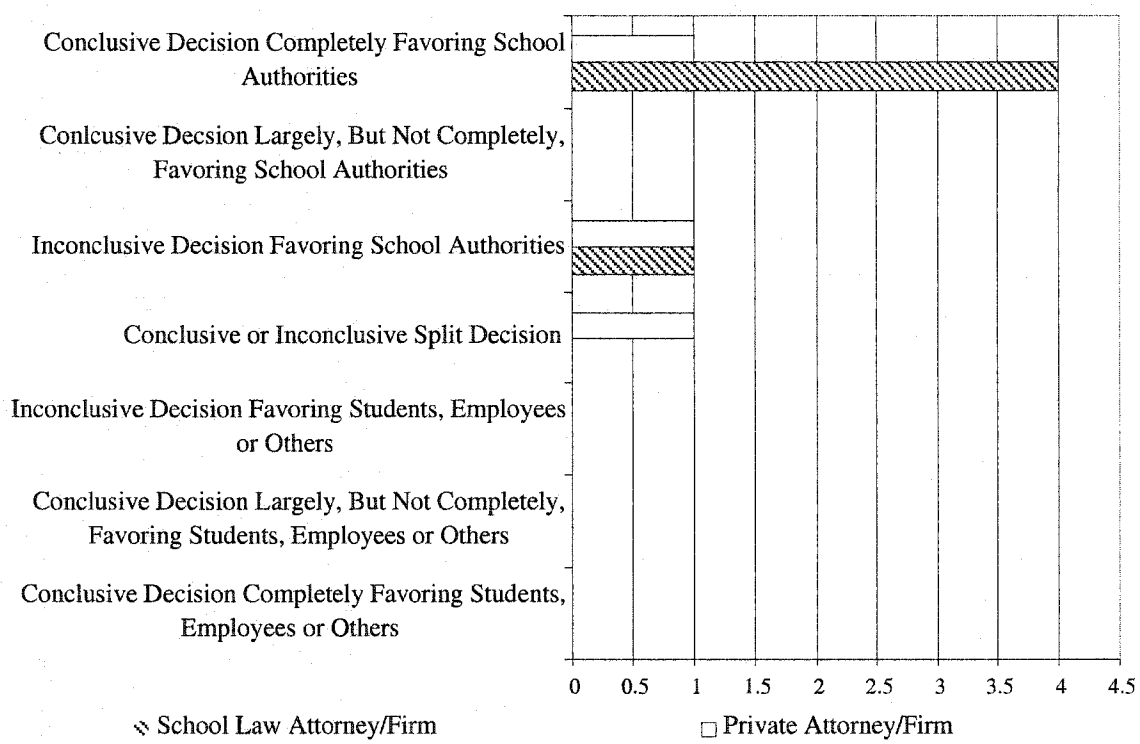

Figure 28. Five issues were litigated when school law attorneys/firms represented schools before the Montana Office of Pubic Instruction. Four of these issues were decided conclusively and completely in favor of school authorities and one was an inconclusive decision in favor of school entities. Three issues were adjudicated when districts were represented by private attorneys/firms: one issue was decided conclusively and completely in favor of school authorities, one was inconclusive favoring the schools and one was a decision that was conclusive or inconclusive split decision.

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Table 43 illustrates the outcome results by attorney specialization for Lawsuits by Others adjudicated by the Montana Office of Public Instruction. School authorities represented by a school law attorney or firm adjudicated 10 issues before the Montana Office of Public Instruction. Five issue or 50.0% were decided conclusively and completely favoring school districts. In addition, in this same forum four issues or 40% were adjudicated conclusively and completely favoring students, employees or others. School districts who were not represented by counsel when one issue was heard at the Montana Office of Public Instruction the decision conclusively and completely that favored students, employees, or others.

Table 43
Montana Office of Public Instruction Outcome Results 1999–2003 By Attorney Representation Lawsuits by Others utilizing a School Law Attorney/Firm or No Attorney

	School Law Attorney/Firm	No Attorney
Conclusive Decision Completely Favoring School Authorities	5 (50.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	1 (10.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	4 (40.0%)	1 (100.0%)

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Figure 29 Montana Office of Public Instruction Outcome Results for Lawsuits by Others by Attorney Representation

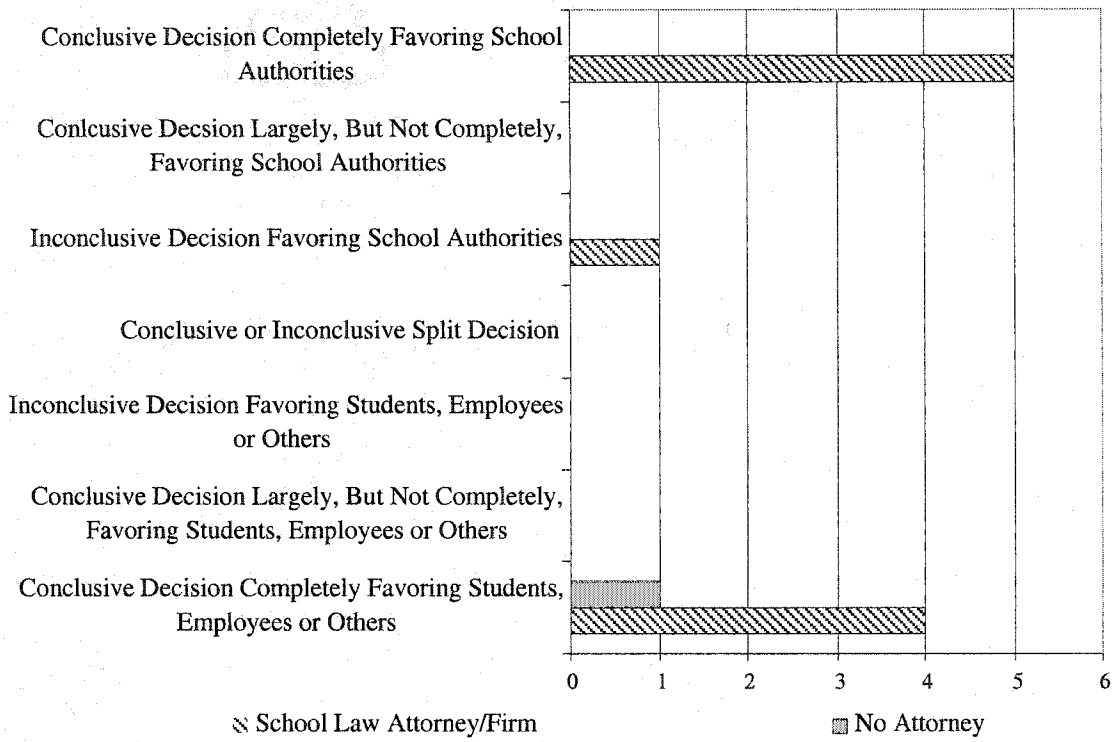

Figure 29. Lawsuits by others accounted for 11 issues that were brought against school districts and heard by the Superintendent of Public Instruction. School law attorneys/firms represented districts in ten of these issues. Five issues were decided conclusively and completely in favor of school authorities, while one was an inconclusive decision favoring the schools. Four issues were decided conclusively in favor of others by the Superintendent. Only one issue for a district was heard by the Montana Office of Public Instruction and the district had no representative attorney. This case was resolved with a conclusive decision completely favoring students, employees, or others as shown by Figure 29.

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Table 44 enumerates the outcome results for the Montana Department of Labor and Industry for Lawsuits by Students when districts utilized a private attorney or firm. The department resolved this issue conclusively and completely in favor of the school authorities.

Table 44

Montana Department of Labor and Industry Outcome Results 1999–2003 By Attorney Representation Lawsuits by Students utilizing a Private Attorney/Firm

	Private Attorney/Firm	
Conclusive Decision Completely Favoring School Authorities	1	(100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	0	(0.0%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0	(0.0%)

Table 45 represents the outcome results by attorney specialization for Lawsuits by Employees for 1999 - 2003. For districts utilizing a school law attorney or firm, 50.0% or ten issues were adjudicated by the department where the decision conclusively and completely favored school authorities. Six issues, or 30.0% of those cases heard by the Montana Department of Labor and Industry were adjudicated and the findings conclusively and completely favored students, employees, or others. Districts utilizing a

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private attorney or firm to defend two issues realized decisions that were conclusively and completely favored school authorities. Districts who did not utilize representation when the Montana Department of Labor and Industry had two issues litigated: one issues or 50.0% was adjudicated and had a conclusive decision completely favoring the schools while the other was a decision that conclusively and completely favored students, employees, or others.

Table 45

Montana Department of Labor and Industry Outcome Results 1999–2003 By Attorney Representation Lawsuits by Employees utilizing a School Law, Private Attorney/Firm or No Attorney

	School Law Attorney/Firm	Private Attorney/Firm	No Attorney
Conclusive Decision Completely Favoring School Authorities	10 (50.0%)	2 (100.0%)	1 (50.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	3 (15.0%)	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1 (5.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	6 (30.0%)	0 (0.0%)	1 (50.0%)

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Figure 30 Montana Department of Labor and Industry Outcome Results for Lawsuits by Employees by Attorney Representation

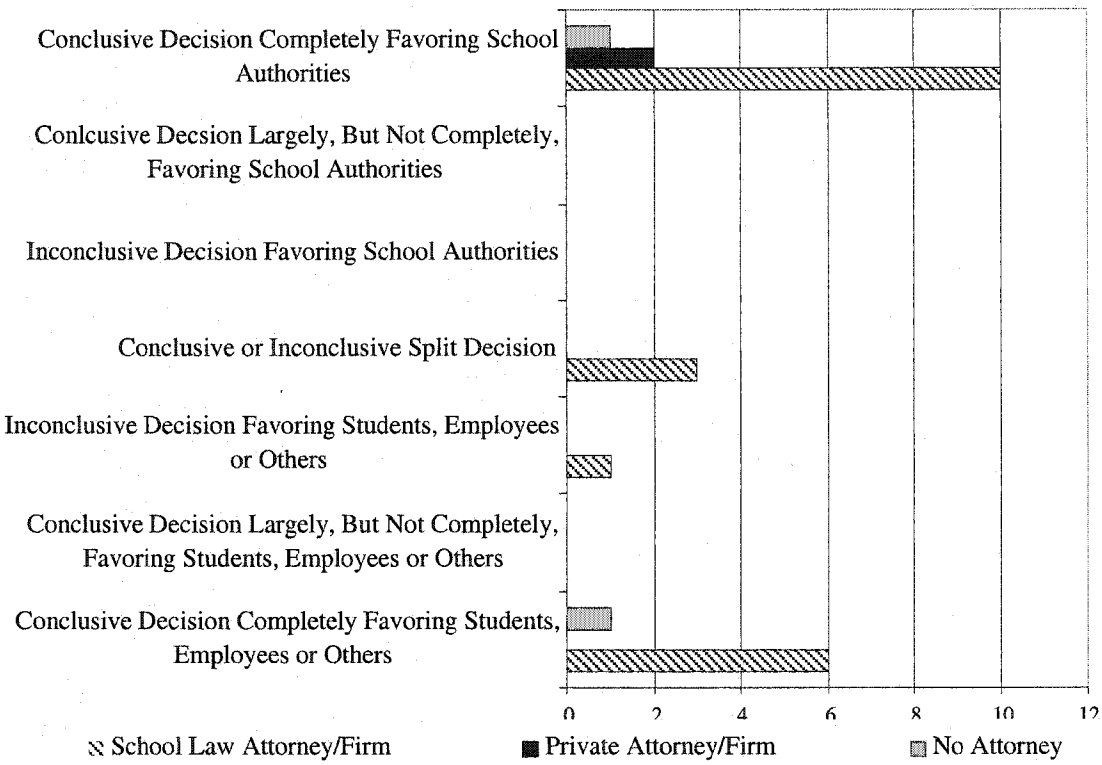

Figure 30. School law attorneys/firms represented twenty issues that were filed against districts. Ten of these issues involving Lawsuits by Employees were resolved with a decisive decision and completely favored school authorities, and of these issues six were decided conclusively and completely in favor of the students, employees, or others. There were four remaining issues with school law attorney/firm representation: (a) three of these cases had a conclusive or inconclusive decisions or split decisions and, (b) the final issue was resolved with an inconclusive decision favoring students, employees, or others.

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Table 46 presents the outcome results by attorney specialization on issues before the Montana Department of Labor and Industry for Lawsuits by Others. One issue was decided by the department when the school district was being represented by a school law attorney or firm. The decision conclusively and completely favored school authorities.

Table 46

Montana Department of Labor and Industry Outcome Results 1999–2003 By Attorney Representation Lawsuits by Others utilizing a School Law Attorney/Firm

	School Law Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	0 (0.0%)

Table 47 illustrates the outcome results for the Montana Workers Compensation Court by attorney representation for Lawsuits by Employees. School districts were represented by both school law and private attorneys or firms for issues before the Workers Compensation Court. School districts who utilized school law attorneys or firms had six issues before this court. Three of these issues, or 50.0% were adjudicated

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and the findings were conclusively and completely in favor of the school authorities. Two of these issues, or 33.3% were adjudicated inconclusively and the decisions were favored students, employees or others. The remaining issue in this hearing venue was given a conclusive decision completely favoring students, employees, or others. Districts which utilized the services of a private attorney or firm had one issue before this venue and it was r3esolved with an inconclusive decision favoring students, employees, or others.

Table 47
Montana Workers Compensation Court Outcome Results 1999–2003 By Attorney Representation Lawsuits by Employees utilizing a School Law Attorney/Firm or Private Attorney/Firm

	School Law Attorney/Firm	Private Attorney/Firm
Conclusive Decision Completely Favoring School Authorities	3 (50.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	2 (33.3%)	1 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	1 (16.7%)	0 (0.0%)

District Classification Montana Code Annotated Issue Results

Results are shown in Tables 48 through 53 and these were analyzed and reviewed according to their Montana Code Annotated § 20-6-201 district classifications. The

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research reflects these data overall and also in the following groupings: (a) first class district; (b) second class district; and (c) third class districts and broken down by forum.

Overall District Classification

Table 48 breaks down the different issues from the total 135 issues brought against school districts. These data are further identified by apportioning the issues among the Montana Code Annotated District Classifications to the districts against whom the litigation were filed. These available data are for the five year time span from 1999-2003.

Table 48

Issues by School District Classification Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	74	(54.4%)
Second Class District	48	(36.0%)
Third Class District	13	(9.6%)

The majority of issues 54.4% involved a first class district.

Montana State Supreme Court

Table 49 reveals the break down the issues litigated by the Montana State Supreme Court and are also enumerated by class of district for the years 1999-2003.

Table 49

Montana State Supreme Court Issues by School District Classification Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	24	(66.7%)
Second Class District	12	(33.3%)
Third Class District	0	(0.0%)

The majority of issues the Montana Supreme Court heard and decided were brought against first class districts.

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Montana State Judicial District Court

Table 50 summarizes the issues decided by the district court judges from 1999-2003.

Table 50

Montana State District Judicial Court Issues by School District Classification
Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	17	(53.1%)
Second Class District	13	(40.6%)
Third Class District	2	(6.3%)

The largest number of issues that were brought against schools and were decided by the state district courts involved first class districts.

Montana Office of Public Instruction

Table 51 showed the number of issues decided by the Montana Office of Public Instruction during the years 1999-2003. These data are categorized by Montana Code Annotated district classifications.

Table 51

Montana Office of Public Instruction Issues by School District Classification
Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	14	(38.9%)
Second Class District	12	(33.3%)
Third Class District	10	(27.8%)

The issues heard by the Montana Office of Public Instruction were distributed evenly between all three district classifications as shown in Table 54.

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Montana Department Labor and Industry

Table 52 summarizes the issues decided by the Montana State Department of Labor and Industry from 1999-2003 involving first, second, and third class school districts.

Table 52

Montana Department Labor and Industry Issues by School District Classification Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	14	(53.8%)
Second Class District	11	(42.3%)
Third Class District	1	(3.8%)

The 14 issues in the first class districts that were decided by the Department of Labor and Industry were 53.8% of the total heard by this venue is shown in Table 55.

Montana Workers Compensation Court

Table 53 reviews the issues apportioned to district classification that were heard in the Workers Compensation Court from 1999-2003.

Table 53

Montana Workers Compensation Court Issues by School District Classification Montana Code Annotated § 20-6-201

MCA School District Classification	Number Adjudicated	Percentage of Total
First Class District	5	(71.4%)
Second Class District	2	(28.6%)
Third Class District	0	(0.0%)

Although this venue had seven issues to litigate during the time frame of the study five of the seven or 71.4% were from cases brought against first class districts.

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District Classification by Montana High School Association (MHSA) Classifications

Tables 54 through 59 show the overall issues breakdown by Montana High School Association classifications during the years of 1999-2003. The tables show both the overall as well as the issues for each forum.

Overall Results

Table 54 summarizes all issues broken down by district size utilizing the Montana High School Association classifications during the 1999-2003 years.

Table 54

Issues by School District Classification by Montana High School Association Classification

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	43	(31.6%)
A	43	(31.6%)
B	26	(19.1%)
C	14	(10.3%)
N/A	10	(7.3%)

Table 54 shows that the District Classifications with the most issues heard in this judicial venue were: AA and A districts each with 43 issues or 63.2% of total issues litigated.

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Montana State Supreme Court

Table 55 reviews the number of issues brought against Montana school districts decided by the Supreme Court from 1999-2003 denoted the by Montana High School Association school district classification.

Table 55

Montana State Supreme Court Issues by School District Classification Montana High School Association

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	18	(50.0%)
A	6	(16.7%)
B	8	(22.2%)
C	3	(8.3%)
N/A	1	(2.8%)

The largest numbers of issues decided by the Montana State Supreme Court were from districts with the AA classification (50.0%).

Montana State Judicial District Court

Table 56 summarizes the issues involving school districts decided per Montana High School Association district classification by the state district court judges during the years of 1999-2003.

Table 56

Montana State Judicial Court Issues by School District Classification Montana High School Association

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	4	(12.5%)
A	19	(59.4%)
B	7	(21.9%)
C	0	(0.0%)
N/A	2	(6.3%)

The largest number of issues for any classification was 59.4% or 19 cases. Montana State Judicial District Courts' judges for the years 1999-2003 heard more cases

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for class A districts than for any of the others as illustrated in Table 56. Nineteen issues or 59.4% of the total were heard by the judges and involved class A districts.

Montana Office of Public Instruction

Table 57 displays the number of issues decided by the Montana Office of Public Instruction during 1999-2003.

Table 57

Montana Office of Public Instruction Issues by School District Classification
Montana High School Association

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	7	(19.4%)
A	12	(33.3%)
B	4	(11.1%)
C	6	(16.7%)
N/A	7	(19.4%)

Class A districts were involved in 12 issues or 33.3% of the issues decided by the Superintendent of Public Instruction.

Montana Department of Labor and Industry

Table 58 examines the number of issues decided by the Montana Department of Labor and Industry during 1999-2003 and are delineated by Montana High School Association's district classification.

Table 58

Montana Department Labor and Industry Issues by School District Classification
Montana High School Association

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	10	(38.5%)
A	5	(19.2%)
B	8	(30.8%)
C	3	(11.5%)
N/A	0	(0.0%)

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Thirty-eight and a half percent or 10 issues as shown in Table 35that were decided by the Department of Labor and Industry involved class AA districts.

Montana State Workers Compensation

Table 59 reveals the total number of issues decided by the Workers Compensation Court during 1999-2003.

Table 59

Montana Workers Compensation Court Issues by School District Classification Using the Montana High School Association

Montana High School Association Classification	Number Adjudicated	Percentage of Total
AA	4	(57.1%)
A	1	(14.3%)
B	0	(0.0%)
C	2	(28.6%)
N/A	0	(0.0%)

Table 59 shows that the majority (57.1%) of issues (4) heard by the Montana State Workers Compensation Court involved Class AA districts.

Issue Outcome Results by Attorney Gender

The following Tables 60 through 63 show results of overall issue outcomes by attorney gender specific to: (a) school law attorneys/firms; (b) public attorneys; and (c) private attorneys/firms.

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Attorney Gender

Table 60

Issue Outcome Results by Attorney Gender and Specialization for Schools Utilizing School Law Attorney/Firm

	Male	Female
Conclusive Decision Completely Favoring School Authorities	39 (62.9%)	20 (80.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	4 (6.5%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	5 (8.1%)	1 (4.0%)
Inconclusive Decision Favoring Students, Employees or Others	2 (3.2%)	1 (4.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	12 (19.4%)	3 (12.0%)

Table 60 delineates the outcomes results by attorney gender. Males represented school authorities on 62 issues while females represented school authorities on 25 issues. Across the judicial forums during 1999-2003 female, school law attorneys/firms received decisions conclusively and completely in favor of school authorities on 20 issues or 80.0% of the time. Male, school law attorneys/firms while representing school authorities, received conclusive and completed decisions favoring school authorities on 39 issues or 62.9% of the time.

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Table 61

Issue Outcome Results by Attorney Gender and Specialization for Schools Utilizing School Law Attorney/Firm with a Male and Female Attorneys Working Collaboratively

	Male and Female	
Conclusive Decision Completely Favoring School Authorities	4	(33.3%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)
Inconclusive Decision Favoring School Authorities	1	(8.3%)
Conclusive or Inconclusive Split Decision	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1	(8.3%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	1	(8.3%)
Conclusive Decision Completely Favoring Students, Employees or Others	5	(41.7%)

Twelve issues were adjudicated across the forums during 1999-2003 where male and female school law attorneys/firms worked collaboratively on six cases. Table 61 presents the issue outcomes for this collaborative work, five issues or 41.7% were decided conclusively and completely in favor of students, employees or others when the school authorities were represented by school law attorneys/firms. Four issues or 33.3% were decided conclusively and completely in favor of school authorities when there were male and female attorneys working collaboratively.

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Table 62

Issue Outcome Results by Attorney Gender and Specialization for Schools Utilizing Public Attorney

	Male	Female
Conclusive Decision Completely Favoring School Authorities	0 (0.0%)	2 (100.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0 (0.0%)	0 (0.0%)
Inconclusive Decision Favoring School Authorities	0 (0.0%)	0 (0.0%)
Conclusive or Inconclusive Split Decision	1 (50.0%)	0 (0.0%)
Inconclusive Decision Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0 (0.0%)	0 (0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	1 (50.0%)	0 (0.0%)

Public attorneys in Montana education litigation represented four issues during 1999-2003. Table 62 indicates that female public attorneys in the two issues litigated received conclusive and complete decisions favoring school authorities. However, the two issues when male attorneys represented the school entity a conclusive or inconclusive split decision was made in one case, and a conclusive decision completely favoring students, employees, or others was determined.

For one issue a private attorney worked collaboratively with a school law attorney resulting in a conclusive decision conclusively and completely favoring students, employees or others. On another occasion when a private male and female attorney

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worked collaboratively on an issue the decision was conclusively and completely favoring students, employees or others.

Table 63

Issue Outcome Results by Attorney Gender and Specialization for Schools Utilizing Private Attorney/Firm

	Male		Female	
Conclusive Decision Completely Favoring School Authorities	11	(55.0%)	1	(25.0%)
Conclusive Decision Largely, But Not Completely, Favoring School Authorities	0	(0.0%)	0	(0.0%)
Inconclusive Decision Favoring School Authorities	2	(10.0%)	2	(50.0%)
Conclusive or Inconclusive Split Decision	1	(5.0%)	0	(0.0%)
Inconclusive Decision Favoring Students, Employees or Others	1	(5.0%)	0	(0.0%)
Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others	0	(0.0%)	0	(0.0%)
Conclusive Decision Completely Favoring Students, Employees or Others	5	(25.0%)	1	(25.0%)

Table 63 delineates the utilization of private attorneys/firms by attorney gender. Private male attorneys represented 20 issues while private female attorneys represented four issues. Eleven issues brought against the school districts or 55.0% of the issues heard were represented by private attorneys/firms were decided conclusively and completely in favor of school authorities. Female attorneys who represented the school authorities in one issue had the case decided conclusively in favor of school authorities. One case was reported where no specific attorney was assigned to represent the school district, so no gender information was available. Two issues were decided, with one

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decided conclusively but not completely favoring, students employees or others. The other issue was decided as an inconclusive decision favoring students, employees or others. For issues where no attorney was utilized, four issues were decided. Two were decided conclusively and completely in favor of school authorities, and two issues were decided conclusively and completely in favor of students, employees or others.

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CHAPTER FIVE

Summary, Conclusions, and Recommendations

This chapter will include a discussion of the findings and the appropriate conclusions to those findings. These conclusions will have implications for students, teachers, administrators, boards of trustees, special interest groups, school districts, practicing lawyers in Montana, and university professors. Additionally, there are recommendations for school districts and recommendations for further research.

Discussion and Findings

The primary purpose of this study was to determine what factors or characteristics were associated with the most successful attorneys representing school districts, students, employees and others in Montana K-12 lawsuits during 1999-2003. Secondary issues explored in this study were whether or not public schools utilized public or private attorneys in litigation; what types of actions have been brought against Montana School Districts during the 1999-2003 period in the: Montana State Supreme Court, Montana State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry and Montana Workers Court; which classification of school districts has been involved in the most litigation; and what percentage of school districts' attorneys specialize in school law. This study clarified and explained information acquired from the Litigation Documentation Form as adapted and refined by this researcher, using computation of frequency distributions and percentages for the desired research areas.

The sample and population for this study was comprised of 89 cases, with a total of 135 issues decided in the following forums: Montana State Supreme Court, Montana

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State Judicial District Court, Montana Office of Public Instruction, Montana Department of Labor and Industry and Montana Workers Compensation Court. The issues were distributed as follows: Montana State Supreme Court, 35 issues; Montana State Judicial District Court, 31 issues; Montana Office of Public Instruction, 36 issues; Montana Department of Labor and Industry, 26 issues; and Montana Workers Compensation Court, 7 issues. For purpose of more accurately reporting issue outcomes and cases, it is important to note that two cases involved litigation where one district was involved in a suit against another district. The outcomes data reports not only the issues involved but also the attorney representation for both sides.

Sub-question One: What type of (public/private) attorney was used for representation for education litigation for the period 1999-2003?

During this time frame, Montana school districts involved in litigation resulted in decisions, where 87.4% of school districts were represented by private attorneys, public attorneys represented school districts in 3.6% of the cases, and school districts did not utilize legal counsel in 9.0% of the cases. Upon analysis by forum, private attorneys represented school authorities in 90.0% of the cases before the Montana State Supreme Court, 92.9% in Montana State Judicial District Court, 94.4% at the Montana Office of Public Instruction, 70.8% at the Montana Department of Labor and Industry, and 100.0% in Montana Workers Compensation Court. Public attorneys were used in 10.0% of the cases before the Montana State Supreme Court and in 3.6% of the cases in Montana State Judicial District Courts. School districts not utilizing an attorney occurred most often at the Montana Department of Labor and Industry, in 29.2% of the cases adjudicated.

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An analysis of attorney specialization was conducted in several different manners. First, issues coded by attorney specialization, identified on the Litigation Documentation Form by membership in or registering with attorney referral services as a school law attorney. Second, firms which are registered as offering specialization in school were also coded accordingly. School law firms represented 22 issues or 73.3% at the Montana State Supreme Court; Montana State Judicial District Court decided 12 issues represented by school law firms or 49.6%; school law attorneys represented school authorities in 13 issues or 72.2% before Montana Office of Public Instruction; 17 issues were represented by school law firms at Montana Department of Labor and Industry; and in the Montana Workers Compensation Court 5 issues or 83.3% were decided when represented by school law firms. Four issues for 1999-2003 were represented by public attorneys in litigation; three issues or 10.0% were represented by public attorneys at Montana State Supreme Court and one issue or 3.6% was represented by public attorneys at Montana State Judicial District Court.

Sub-Question Two: What types of actions have been brought against Montana School Districts for the period of 1999-2003?

Analysis of litigation faced by Montana school districts concluded that 55.2% of the issues are in the category Lawsuits by Employees. The largest frequency occurring in this subcategory was Other Employment Actions–Termination with 17 issues: the next highest number was the subcategory Other with 14 issues, including such things as Emotional Distress, Hiring Procedures, Attorneys Fees and Constitutional Rights, and finally, Discrimination and Professional Negotiations each had 11 issues adjudicated. The category Lawsuits by Others saw 33 issues adjudicated (or 24.6% of the total), the

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largest number of issues was in the category Other, with 11 issues involving Attorneys Fees and Jurisdictional Problems. The subcategories Fiscal Issues and Territory Transfer each had eight issues heard. Lawsuits by Students had 27 issues, accounting for 20.1%. The highest frequency occurring in the subcategory Other with 10 issues included such items as Discrimination, Tuition, Jurisdiction, and Attorneys' Fees. Nine issues were decided in the subcategory for Special Education and Gifted Education.

Overall, issue outcomes analysis ascertained that 73 issues or 54.1% of the issues adjudicated were decided conclusively and completely in favor of school authorities. At the other end of the continuum, 37 issues or 27.4% were decided conclusively and completely in favor of school authorities. When the data were analyzed by venue, the Montana State Supreme Court decided 14 issues conclusively and completely in favor of school authorities and 15 issues or 42.9% of the issues heard conclusively and completely in favor of students, employees or others. Under further scrutiny, it was ascertained 50% of the 16 issues decided in Lawsuits by Employees at Montana State Supreme Court were conclusively and completely decided in favor of school entities. The Court decided 57.1% or 8 of 14 issues in the Lawsuits by Others conclusively and completely in favor of others.

In an overall issues analysis of the cases heard by the Montana State Judicial District Courts, 17 issues or 54.8% of the issues heard were decided conclusively and completely in favor of school authorities. Within the category Lawsuits by Employees, 68.4% or 13 issues were decided conclusively and completely in favor of school authorities. An overall analysis of issues decided before the Montana Office of Public Instruction yielded 24 issues or 66.7% were decided conclusively and completely in favor

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of schools. The issues analysis by subcategory found that 14 issues or 82.4% in the category of Lawsuits by Students were decided conclusively and completely in favor of school representatives. For the Montana Department of Labor and Industry an indepth analysis elicited that 57.7% or 15 issues were decided conclusively and completely in favor of school entities. Also in this venue within Lawsuits by Employees 13 of 24 issues or 54.2% were decided conclusively and completely in favor of school authorities. Within the Montana Workers Compensation Court seven issues total were decided; in these issues 3 or 42.9% were decided conclusively and completely in favor of the schools.

Sub-Question Three: Which classification (i.e. first class, second class, or third class) of school district has been involved most in litigation during the 1999-2003 time period?

Additional analysis was done regarding the number of issues that were brought against districts as classified by both Montana Code Annotated § 20-6-201 and Montana High School Association sports classifications.

Utilizing Montana Code Annotated district classification, first class districts were involved in 74 of the 135 issues that were litigated. In addition, second class districts were involved in the litigation of 48 issues and third class districts were involved in 13 issues of the 135 that were adjudicated. Frequency and percentages were also calculated for each forum.

Similarly, the analysis of issues by the Montana High School Association district classifications ascertained that Class AA and A districts were each involved in 43 issues that were brought to a judicial forum. This analysis also showed that Class B districts

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were involved in 26 issues, 14 issues were in Class C districts, and districts without district classifications were involved in 10 issues that were adjudicated. The analysis calculated for each forum by Montana High School Association district classification included frequency and percentages for the outcome data.

The final issue analyzed was the gender of legal representation by attorney specialization. Male attorneys who specialized in school law represented 62 issues while females who specialized in school law represented 25 issues. Male attorneys had 39 issues or 62.9% decided conclusively and completely in favor of the schools, while female school law attorneys had 20 issues or 80.0% decided conclusively and completely in favor of school entities.

Sub-Question Four: What percentages of school districts' attorneys specialize education law?

Another facet of this study analyzed the use of specialized attorneys or firms. When analyzing the attorney specialization of those attorneys who represented school districts this research data showed that 58 issues or 55.8% were decided conclusively and completely in favor of school authorities when a school law attorney/firm represented the interests of the school entity. These data also illuminated the fact that public attorneys represented four issues: two of these issues were decided conclusively and completely in favor of school authorities. Similarly, private attorney/firm represented 48% of the issues heard and the courts in these 12 issues decided conclusively and completely in favor of the schools.

By venue, the outcome results by attorney specialization are recapped in the following paragraph. The Montana State Supreme Court decided 11 issues conclusively

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and completely in favor of school authorities when school law attorney/firms represented the school. While 12 issues before this Court or 41.4% were decided conclusively and completely in favor of students, employees or others when represented by school law attorney/firms. School law attorney/firms while representing the interests of school authorities before Montana State Judicial Courts received 11 decisions which, were conclusively and completely resolved in favor of school authorities. The Montana Office of Public Instruction decided 22 issues, or 71.0% conclusively and completely in favor of school entities when school law attorney/firms represented the schools. Similarly, the Montana Office of Public Instruction decided 11 issues, or 52.4% conclusively and completely in favor of school authorities when education law/attorneys were the legal representatives for the schools. Three issues were decided conclusively and completely in favor of school entities by the Montana Workers Compensation Court when school law attorney/firms represented schools.

Conclusions

This research revealed some interesting selection patterns with regard to attorney choices on the part of school boards and administrators in Montana. It also illuminated the results of those choices, in some cases depicting what may be attributed to mere perceptions as opposed to known facts influencing the selection process.

The factors or characteristics associated with the most successful attorneys representing school districts 1999-2003 were delineated. Indeed, 87.4% of the cases were represented by private attorneys. Males litigated 62 issues, while females litigated only 25. However, the success rate of the women was much better in terms of achieving

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conclusive and complete decisions favoring school entities. Here they won 80% of the time, as opposed to a record of 62.9% of the time by the men.

In cases before the Montana State Supreme Court, attorneys representing school districts in adjudications were education law attorneys for 50% of the hearings. Private attorneys were used in the Montana State Judicial District Courts for 67.9% of the cases. For cases heard at the Montana Office of Public Instruction, education law attorneys were employed to represent schools at the rate of 66.7%. In issues heard at the Montana State Department of Labor and Industry, school districts were represented by education law attorneys 50% of the time. Interestingly when cases were heard by the Montana State Workers Compensation Court, 100% of the time school districts opted for private attorney representation.

Montana School districts are utilizing the services of school law attorneys/firms more often than the services of a public attorney such as the county attorney. For the 89 cases decided during the time period of this study, only four districts utilized the services of the county attorney. Those case were: *Arrowhead School Dist. No. 75 v. Klyap 2003 MT 294*, *Belgrade Elementary and High School District #44 v. Morris 2000 MT 347*, *Cut Bank School Dist. No. 15 v. Rummel 2002 MT* 248 and *School Dist. No. 1, Fergus Co., MT v. Wells-Norlin, 2003 ML 1652.* While these school districts utilized the services of the county attorney for the purposes of litigation, the vast majority of districts are not utilizing the services of the county attorney for "school law" issues but instead seek them out for contract issues.

Over the time period of 1999-2003, there were a total of 135 issues brought before all judicial venues. The most cases heard in the category Lawsuits by Employees

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was within the subcategory where 17 termination cases were adjudicated. The next category was Lawsuits by Others involving 33 issues. Other issues in Lawsuits by Students included: Control of Behavior-Punishment(2); Control of Behavior-Search and Seizure(2); School Program (3); Special Education and Gifted Education (9), Other (10). Lawsuits by Employees included: Discrimination (11), Other Employment Actions-Nonrenewal (1), Other Employment Actions-Transfer (1), Other Employment Actions-Retirement Benefits (1), Other Employment Actions-Disability Benefits (9), Other Employment Actions-Unemployment Benefits, Profession Negotiations (11), Torts-Negligence (2) and Other (14). Lawsuits by Others were Contracts (6), Fiscal Issues (2) and Territory Transfer (8).

Two areas that emerged from the data and are worth noting are Territory Transfers with eight issues, and Special Education and Gifted Education with nine issues. The subject of territory transfer was an area added to the Litigation Documentation Form due to the number of issues heard across all forums on this matter. During the time period of this study, the Montana State Supreme Court found Territory Transfers as defined by Montana Code Annotated were unconstitutional and most of these cases were affected by that Supreme Court ruling. The changes to Montana Code Annotated § 20-6-105 came into effect on March 27, 2003, designed to address the issues of territory transfers within the state of Montana as interpreted by the Montana State Supreme Court.

The findings of this study delineated 9 issues specific to special education. Of those nine issues, two cases (*Swecker v. School Dist. No. 2, Billings 2001 ML 1543* and *Swecker v. School Dist. No. 3, Blue Creek Elem 2001 ML 1544*) actually included eight of the issues heard. Then one additional issue emerged within the area of Special

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Education and Gifted Education. Several other cases which involved special education students were not coded as special education cases, due to the action taken by the parties. Such examples are: *Great Falls Public Schools v. Johnson 2001 MT 95* and *Morgan v. Great Falls School Dist. #1 2000 MT 28.* In *Johnson*, relief was sought under the *Montana Human Rights Act*, claiming discrimination for a physical disability. In *Morgan*, the plaintiffs appealed to the Montana State Supreme Court based on inconsistent witness testimony.

The different classifications of school districts have been represented all of these forums. The most frequent occurrences emerged from the First Class Districts (54.4%), with Second Class Districts accounting for 36% of the cases and the least (9.6%) from Third Class Districts. Similarly, when looking at the Montana High School Association district classification, AA and A districts both had 43 issues; Class B had 26 issues; Class C had 14 issues; and districts with no Montana High School classification had ten issues to resolve.

The outcomes of the decisions across all types of attorneys are comparable. In general, whether a district selects a county attorney, private attorney or education attorney, the likelihood of prevailing in the decision is equal. This fact leads to speculation as to the motive for school districts to seek private attorneys. It may well be merely a matter of inaccurate perception that leads the schools to distrust the county attorneys. In the alternate, despite language in the Montana Code Annotated outlining their roles for schools, it may be that the county attorneys themselves dissuade schools from using their services. Perhaps they feel ill-prepared in education law (in general, an

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accurate self-assessment). In addition, they may refer schools elsewhere out of a work overload, if they're devoting their time to other matters (e.g., criminal cases).

Special Education

School districts engaged in Montana Education litigation involving special education may want to consider in the last five years there were two cases were adjudicated at the Montana Office of Public Instruction. There were no special education cases heard by the Montana State Supreme Court, one by Montana State Judicial District Courts, and two by the Montana Office of Public Instruction.

Given special education children have access to substantial legal representation regarding disputes with school districts, it would appear that their legal advisors are willing to work out difficulties with schools at a lower level. This cooperation may be an important first step for legal representatives of school districts to consider when dealing with especially difficult legal issues in the special education arena.

For the small number of cases that proceed to the Montana Office of Public Instruction, school districts have prevailed in both cases and all eight issues with decisions that were conclusively and completely in favor of school authorities with 100% of these cases represented by school law attorney/firm. The single case that proceeded to the Montana State Judicial District Court level was decided inconclusively favoring school authorities with a private attorney representing the school district.

Employee Issues

Termination

Each year districts are faced with termination issues. The inability to resolve these disputes resulted in 23% or eight issues of the Montana State Supreme Court's

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caseload that were included in this study. These eight issues accounted for 47% of the Montana State Supreme Court's caseload in the area of termination. School law attorney/firms represented school districts is all of the termination cases before the Montana Supreme Court resulting in half or four of the issues decided conclusively and completely in favor of school authorities and 37.5% or three issues decided conclusively and completely in favor of employees.

On the other hand, at the Montana State Judicial District Court level five termination issues accounted for 16% of all issues before District Court Judges. School law attorney/firms represented four or 80% of the issues and a private attorney/firm represented one issue or 20% of the termination issues heard. The issue represented by a private attorney/firm was adjudicated conclusively and completely in favor of school authorities while issues represented by school law attorney/firms in four issues or 80% were decided conclusively and completely in favor of school authorities and one issue or 20% was adjudicated conclusively but not completely in favor of employees.

Similarly, three termination issues were adjudicated at the Montana Office of Public Instruction. School law attorney/firms represented two of the issues while a private attorney represented the school on the remaining issue. The decisions for issues represented by school law attorney/firms netted the following conclusions, one was conclusively and completely favoring school authorities and one was inconclusive favoring school authorities. The issue represented by a private attorney/firm was adjudicated and resulted in a conclusive or inconclusive split decision.

The Montana Department of Labor of Industry adjudicated one issue during the period studied, a school law attorney/firm represented the school district and the decision

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rendered conclusively and completely favored the employee.

It would appear from these findings that for those termination cases by school districts at the Montana State Judicial District Court level, settlement should be considered and possibly agreed to in the absence of very compelling reasons to believe the Montana State Supreme Court would have grounds to overturn the District Court's decision upon appeal. In fact. given the win/loss ratio for school districts in this matter at the Montana State Supreme Court level, even a district victory that is to be appealed to the Montana State Supreme Court by the employee should be considered for negotiation and possible settlement as an alternative to a hearing in the higher Court.

Disability Benefits

For the time period studied, nine issues dealing with disability benefits were adjudicated. Two issues or 5.7% of these were heard at the Montana State Supreme Court. School districts were represented by school law/attorneys for both issues: one issue was adjudicated conclusively and completely in favor of employees and one issue conclusively but not completely favoring employees. Both of these issues were decided by this Court in the year 2003.

The Montana Workers Compensation Court adjudicated seven issues. One issue was adjudicated in 1999; Five issues in 2000; and one in 2002. These seven issues were 100% of the disability benefit issues brought to this court during the timeframe for this research. School districts were represented by school law attorney/firms in six of the issues that were decided as follows: three issues or 50.0% of all issues represented by school law attorney/firms were decided conclusively and completely in favor of school authorities; two issues or 33.3% received inclusive decisions favoring employees; and

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one issue or 16.7% was decided conclusively and completely in favor of employees. The remaining issue was represented by a private attorney/firm resulting in an inconclusive decision favoring employees.

For the years 1999-2002, no disability benefits cases or issues were adjudicated by the Montana State Supreme Court. Conversely, no cases or issues dealing with disability benefits were decided by the Montana Worker Compensation Court during 2003. Given the success of employees at the Montana State Supreme Court with disability benefits, districts should consider negotiating a possible settlement as an alternative to resolution in the high Court.

Discrimination

During the period this research studied 11 cases with a total of 11 issues were adjudicated between the Montana Department of Labor and Industry and the Montana State Supreme Court. Three issues involving discrimination were adjudicated by the Montana State Supreme Court accounting for 8.6% of the caseload before the court, two issues or 66.7% were adjudicated conclusively and completely favoring school authorities. Of these two cases a school law attorney/firm represented one district and the other issue was represented one by a private attorney/firm. The Montana State Supreme Court decided an additional issue with the school represented by a private attorney resulting in a decision that conclusively and completely favored students, employees or others.

The Montana Department of Labor of Industry adjudicated eight issues accounting for 30.7% of the department's decisions for the period studied. School districts were represented by school law attorney/firms in six of the issues. Four or

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66.7% were adjudicated conclusively and completely favoring school authorities and one issue or 16.7% was decided conclusively and completely favoring students, employees or others. One issue was adjudicated with an inconclusive decision. Private attorney/firms represented schools in two issues each resulting in conclusive decisions favoring the school authorities.

These findings illustrate a high incidence of litigation by students, employees or others in the area of discrimination. Through personal communications with Elizabeth Kaleva, former General Counsel for the Montana School Boards Association and current Director of Policy Services with Montana School Boards Association expressed her concern about the increases in cases of this type. She said that in the past eight years there has been a four fold increase in the amount of relief sought by individuals utilizing the Montana Human Rights Act through the Montana Human Rights Commission an agency within the Montana Department of Labor and Industry. This would account for the 30.7% of the caseload before the Montana Department of Labor and Industry. It appears districts are successful at both the Montana State Supreme Court and the Montana Department of Labor and Industry receiving decisions that conclusively and completely favor school authorities 66.7% of the time for issues involving discrimination.

Professional Negotiations

Nine cases encompassing 11 issues were adjudicated between the Montana Department of Labor and Industry and Montana State Judicial District Courts. Six issues or 23.1% of caseload before the Montana Department of Labor and Industry were adjudicated during the period of this study. School law attorney/firms represented school districts in all six issues resulting in 50.0% or three issues decided conclusively and

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completely in favor of school authorities; two issues or 33.3% were decided conclusively and completely favoring employees; and one issue adjudicated was inclusive favoring employees.

Likewise, five issues involving professional negotiations accounted for 15.1% of the cases studied that were brought before the Montana State Judicial District Court. Four issues involving professional negotiations were represented by school law attorney/firms resulting in two decisions conclusively and completely favoring school authorities and two issues decided conclusively and completely favoring employees. Private attorney/firms represented one issue regarding professional negotiations resulting in a conclusive decision completely favoring school authorities.

Given the win/loss ratio for professional negotiation issues school districts should consider negotiation and possible settlement as an alternate resolution to litigation in this area.

Recommendations for Further Research

As a result of this study, further outcomes research utilizing the Litigation Documentation should be conducted to ascertain whether or not Montana is changing in the amount of litigation it is experiencing. Likewise, with future research the Litigation Documentation Form could be reevaluated and further refined as a construct merely checking.

Additional research is needed to investigate how many cases are filed each year, rather than, the number decided. Underwood and Noffke (1990) clearly stated that school executives need to know the actual number of cases initiated and the outcome of those actions, not just the number of cases appealed and selected for publication. This

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would give administrators greater insight into the "hot button" issues. In addition, the schools could benefit from knowing if the actual number of cases or issues being brought to hearing is higher than the number of cases or issues being reported. Interestingly enough, although this information is not readily available, researching the number of cases settled prior to litigation is formally started or after the initiation of a lawsuit would be invaluable for school administrators and trustees alike.

Additional research must be completed with regard to Special Education if Montana administrators are ever to fully comprehend these complex issues and the impact upon children's lives. As with other categories the results of such litigation ultimately makes schools better and strengthens our understanding of "best practices" in education. This study did not include the outcome analysis of cases where the identity of the student was protected, and often special education fall under this protection. The total number of cases affected by this study was two per year. Additionally, research will need to further refine the Litigation Documentation Form as to ascertain which avenue special education litigants are utilizing to have their cases heard. Such examples are cases in Montana litigated through the *Montana Human Rights Act,* administered by the Human Rights Commission at the Montana Department of Labor and Industry. Earnst (1999) conducted a study of all 50 states with regard to due process hearings, and all states with the exception of Arizona participated the study. It was determined then that Montana along with South Carolina, had only three hearings in 1993, the year of the Earnst study. It ranked 39th in the nation with regard to due process, but additional research would provide a more, current picture of special education litigation in Montana. Finally,

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research into whether or not private schools in Montana experience litigation similar to, or at the same rate as public schools would be beneficial to all educators.

There are many opportunities for augment qualitative research would further add to the quantitative research already completed. The qualitative piece could provide insight into the perspective of the school law attorney, county attorney, private attorney, school trustees, and administrators. Their words could benefit the decision making processes of Montana school districts for future generations.

Recommendations for School Districts

School officials, when faced with difficult situations, should invest time and resources in attempts to resolve matters at the lowest possible level short of litigation. There is a crucial and compelling role for strong mediation skills, and we must focus on positive relationships to avoid unnecessary legal conundrums.

Administrators who face legal matters need to employ the services of the best attorneys for a particular case or issue. Specifically, schools need to have greater confidence in and utilize the services of the county attorney whenever appropriate. However, when the county attorney is not able to represent them, districts should utilize the services of an attorney/firm that specializes in school law. If administrators establish working relationships, with attorneys, these working relationship will aid in the administrators' abilities to apply solid decision making skills to the legal contact in their own graduate program. Hughes and Gordon (1980) promoted this type of working relationship when they stated, "You can't depend on the school attorney to keep you out of trouble; chances are he [she]doesn't know the school law as well as you do" (p. 25).

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Finally, school districts need to hire administrators who have a strong academic background in educational law supported by a willingness to continue studying it through their careers. While each and every decision a school administrator makes has a legal implication, it is imperative that administrators thoroughly understand the litigious issues and implications surrounding their decisions.

Recommendations for University Professors

As the literature points out, graduate students in administration sometimes have a limited exposure to laws and the significance of the law in their chosen field as professional Schools and Colleges of Education to help future school administrators become more knowledgeable. Therefore, it may be that the curriculum for school leaders should be expanded. Further, professors should use information of the type gleaned from this research to expand students' understanding of the context of law. In particular, this perspective would help professors better connect the theories of legal issues to the practice of litigation.

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APPENDIX A

MONTANA STATE SUPREME COURT

EDUCATION LITIGATION CASES

1999-2003

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MONTANA STATE SUPREME COURT DECSIONS

Arrowhead School Dist. No. 75 v. Klyap 2003 MT 294

Belgrade Elementary and High School District #44 v. Morris 2000 MT 347

Billings Education Assn. v. Billings Elem. School Dist. No 2

Braach v. Graybeal 1999 MT 031

Bryan v. Yellowstone County Elem. School Dist. No. 2 2002 MT 264

Butterfield v. Sidney Public Schools 2001 MT 177

Cut Bank School Dist. No. 15 v. Rummel 2002 MT 248

Grabow v. Montana High School Association 2002 MT 242

Great Falls Public Schools v. Johnson 2001 MT 95

Hayes v. Lame Deer High School District 2000 MT 342

Hickey v. Baker School Dist. No. 12 2002 MT 322

Hiett v. Missoula County Public Schools 2003 MT 213

Johnson v. Cascade County School Dist. No. 1

Lame Deer Public School Dist. No. 6 v. Keenan 1999 MT 286N

McKirdy v. Vielleux 2000 MT 264

Montana Vending, Inc. v. The Coca-Cola Bottling Co. 2003 MT 282

Morgan v. Great Falls School Dist. #1 2000 MT 28

Quick v. Bozeman School Dist. No. 7 1999 MT 175

Radakovich v. Daniels County School District No. 1 2000 MT 176N

Sanchez v. Great Falls Public Schools 2003 MT 301N

Small v. Glacier County School Dist. No. 9 2001 MT 181

Sun River Valley School Dist. No. 55F v. Eighth Jud. Dist. 2003 MT

Territory Transfer from School Dist. # 6 to School Dist. #1 1999 MT 286N

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APPENDIX B

MONTANA STATE JUDICIAL DISTRICT COURT

EDUCATION LITIGATION CASES

1999-2003

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MONTANA STATE JUDICIAL DISTRICT COURT DECIONS

Anderson v. St. Ignatius School District, 2000 ML 4117 (20th Jud. Dist.)

Board of Trustees Lame Deer School Dist. #6 v. Board of Trustees, Colstrip Elementary and High School District No. 19, 2000 ML 3158 (16th Jud. Dist.)

Chor v. Anaconda School District #10, 2003 ML 1441 (3rd Jud. Dist.)

Columbia Falls Elementary School Dist. No. 6 v. State, 2003 ML 2561 (1st Jud. Dist.)

Daughenbaugh v. Hill Co. SD #16, 1999 (12th Jud. Dist.)

Desmet School District v. County of Missoula, 2001 ML 2423 (4th Jud. Dist.)

Ellis v. Livingston School Dist. No. 4, 2003 ML 287 (6th Jud. Dist.)

Elwell v. Gus Leger Memorial Fund, 2003 ML 2334 (1st Jud. Dist.)

Foster v. Board of Trustees, 2000 ML 4237 (8th Jud. Dist.)

Frenchtown Ed. Assoc. v. Board of Trustees SD #40, (4th Jud. Dist.)

Glacier County School Dist. No. 9 v. Emerson, 2000 ML 0403 (9th Jud. Dist.)

Grogan v. Forsyth School Dist. #4 Board of Trustees, 2001 ML 304 (16th Jud. Dist.)

Herrmann v. Wolf Point School Dist., 2001 ML 2556 (17th Jud. Dist.)

Hinkle v. Shepherd School District #37, 2002 ML 4083 (13th Jud. Dist.)

In re petition of Whitefish School Dist. No. 44, 2000 (11th Jud. Dist.)

Palmer v. Frenchtown Public Schools, 1999 (4th Jud. Dist.)

Pannoni v. Browning Public School Dist. No. 9, 2003 ML 3070 (9th Jud. Dist.)

Peterson v. School District No. 44 (11th Jud. Dist.)

Pickart v. Dawson County High School, 1999 (1st Jud. Dist.)

Roos v. Board of Trustees, School District No. 3, Kircher, Montana, 2003 ML 1333 (16th Jud. Dist.)

School Dist. No. 1, Fergus Co., MT v. Wells-Norlin, 2003 ML 1652 (10th Jud. Dist.)

State ex rel. Haedt v. Scott, 2001 ML 1571 (22nd Jud. Dist.)

Svaldi v. Anaconda-Deer Lodge County, 2003 ML 1438 (3rd Jud. Dist.)

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APPENDIX C

MONTANA OFFICE OF PUBLIC INSTRUCTION

EDUCATION LITIGATION CASES

1999-2003

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MONTANA OFFICE OF PUBLIC INSTRUCTION

Board of Trustees of KG Public Schools v. Rambo (Ofc. of Pub. Inst.)

Board of Trustees, St. Ignatius Sch. Dist. No. 28 v. Nelson 2000 38072 (Ofc. of Pub. Inst.)

Casey v. Musselshell County School District No. 9 2001 ML 4426 (Ofc. of Pub. Inst.)

Denton Public School Dist. No. 84 v. Rebich 2003 ML 1259 (Ofc. of Pub. Inst.)

Ekalaka Public Schools v. Carter County Transportation 2002 ML 3893 (Ofc. of Pub. Inst.)

Frank v. Trustees, Superior School District No. 3 (Ofc. of Pub. Inst.)

Frenchtown K-12 School Dist. No. 40 v. Sunset West Homeowners (Ofc. of Pub. Inst.)

Gaynor v. Board of Trustees, School Dist. No. 38, Big Fork 2003 ML 1921 (Ofc. of Pub. Inst.)

Glacier County School Dist. No. 50 v. Henriksen (Ofc. of Pub. Inst.)

Michunovich v. Yellowstone County School Dist. No. 7 2002 ML 3892 (Ofc. of Pub. Inst.)

Roosevelt County, Frontier School v. Redkopp 2003 ML 1920 (Ofc. of Pub. Inst.)

Swecker v. School Dist. No. 2, Billings 2001 ML 1543 (Ofc. of Pub. Inst.)

Swecker v. School Dist. No. 3, Blue Creek Elem 2001 ML 1544 (Ofc. of Pub. Inst.)

Transfer of Territory from Roy Sch. Dist. To Grass Range Sc. 2000 ML 3815 (Ofc. of Pub. Inst.)

Wallace v. Glendive School District 2001 ML 4429 (Ofc. of Pub. Inst.)

Whitefish Softball Assoc. v. Bd. of Trustees, School Dist. No. 44 (Ofc. of Pub. Inst.)

Yellowstone County School Dist. No. 7-70 v. Michunovich 2001 ML 4427 (Ofc. of Pub. Inst.)

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APPENDIX D

MONTANA DEPARTMENT OF LABOR AND INDUSTRY

EDUCATION LITIGATION CASES

1999-2003

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MONTANA DEPARTMENT OF LABOR AND INDUSTRY

Beaverhead Federation of Teachers v. Beaverhead County HSD 2002 ML 7222 (Dept. of Labor & Ind.)

Billings Ed. Assoc. v. Billings School Dist. (Board of Personnel Appeals)

Boulder Elementary District v. Boulder Teaches Assoc. 2002 ML 3288 (Dept. of Labor & Ind.)

Boulder Teachers Assoc. v. Boulder Elementary District 2002 ML 3283 (Dept. of Labor & Ind.)

Campbell v. Helena SD #1 2001 ML 2083 (Dept. of Labor & Ind.)

Dale v. Colstip SD #19 (Human Rights Commission)

Forseth v. Billings SD 2001 ML 2087 (Dept. of Labor & Ind.)

Harlem Public Schools v. Harlem Classified Employees 2001 ML 2182 (Dept. of Labor & Ind.)

Hawley v. Hays Lodgepole School Dist. 1999 ML 77 (Dept. of Labor & Ind.)

In re Green 2002 ML 3274 (Dept. of Labor & Ind.)

In re Hale 2000 ML 2591 (Dept. of Labor & Ind.)

In re Sandoval 2001 ML 1742 (Dept. of Labor & Ind.)

In re White Eagle 2003 ML 7192 (Dept. of Labor & Ind.)

In re Writing Bird 2002 ML 2745 (Dept. of Labor & Ind.)

Lacroix v. Missoula Public Schools (Human Rights Commission)

Matter of Cannon 2003 ML 3284 (Dept. of Labor & Industry)

Matter of Lambert 2003 ML 3033 (Dept. of Labor & Ind.)

Rogers v. Huntley Project School (Human Rights Commission)

Stremcha v. Havre Public Schools (Human Rights Commission)

Thompson v. Helena School District #1 2001 ML 2084 (Dept. of Labor & Ind.)

Vercos v. Browning School District #9 (Human Rights Commission)

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Wombold v. Cascade School District No. 3 (Human Rights Commission)

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APPENDIX E

MONTANA WORKERS COMPENSTATION COURT

EDUCATION LITIGATION CASES

1999-2003

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MONTANA WORKERS COMPENSATION COURT

American Alternative Insurance Group v. Sorenson 2000 MTWCC 60

Corcoran v. Montana Schools Group Ins. Authority 2002 MTWCC 30

Kelly v. State Fund 1999 MTWCC 60

Montana Schools Group Ins. Authority v. Ellington 2000 MTWCC 47

Thune v. Montana School Group Ins. Authority 2000 MTWCC 30

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APPENDIX F

EXCLUDED
MONTANA EDUCATION LITIGATION CASES
1999-2003

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EXCLUDED MONTANA EDUCATION LITIGATION CASES, 1999-2003

Due Process Hearing 97-02 18 Ed. Law 62 (Ofc. of Pub. Inst.)

Due Process Hearing No. 99-02 19 Ed. Law 27 (Ofc. of Pub. Inst.)

Due Process Hearing No. 01-E04 21 Ed. Law 46 (Ofc. of Pub. Inst.)

Due Process Hearing 01-01 20 Ed. Law 375 (Ofc. of Pub. Inst.)

Final Report No. 2002-04 22 Ed. Law 10 (Ofc. of Pub. Inst.)

Final Report No. 2002-05 22 Ed. Law 13 (Ofc. of Pub. Inst.)

Special Education Compliance Complaint 01-02 20 Ed. Law 362 (Ofc. of Pub. Inst.)

Special Education Compliance Complaint 01-06 20 Ed. Law 382 (Ofc. of Pub. Inst.)

Student v. Board of Trustees 19 Ed. Law 256 (Ofc. of Pub. Inst.)

Wolf Point School Dist. Nos. 45 and 45A v. D.B. 21 Ed. Law 104 (Ofc. of Pub. Inst.)

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APPENDIX G

LITIGATION DOCUMENTATION FORM APPROVAL

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William H. Lupini, Ed.D.
8 Magnolia Street
Beverly, Massachusetts 01915

Don Wattam
P.O. Box 41
Simms, Montana 59477

Dear Don:

I am responding to your email request to utilize and make modifications to my Litigation Documentation Form, which was originally developed for use in the completion of my dissertation, "An Outcomes Analysis of Education Litigation."

Please send me a copy of your modification, your results and (if possible) your dissertation. Best of luck in your research.

Sincerely,

William H. Lupini, Ed.D.

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APPENDIX H

LITIGATION DOCUMENTATION FORM

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Outcome Analysis of Education Litigation
Litigation Documentation Form

Case Name:_____ Case Number:_____

Time Period:

_____ 1999 _____ 2000 _____ 2001 _____ 2002 _____ 2003

Deciding Authority

_____ Montana Supreme Court _____ Montana Judicial District Court
_____ Office of Public Instruction _____ Department of Labor and Industry
_____ Workers Compensation Court

School District Classification (Montana Code Annotated § 20-6-201)

_____ First Class _____ Second Class _____ Third Class

School District Classification (Montana High School Association)

_____ AA _____ A _____ B _____ C

Attorney Gender

Plaintiff	Defendant
_____ Male	_____ Male
_____ Female	_____ Female

Attorney Specialization

_____ School Law Section of Montana Bar Association
_____ Montana Council of School Attorneys
_____ Legal Databases
_____ Martindale
_____Findlaw
_____County Attorney
_____Private Attorney

Comments:

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Issue _____ of _____

Issue Categorization:

Suits by Students

_____ (1) Negligence (by teachers, administrators, or coaches)
_____ (2) Control of Behavior
- _____ (a) expression
- _____ (b) association
- _____ (c) punishment
- _____ (d) attendance
- _____ (e) search and seizure

_____ (3) Religious Activities
_____ (4) School Program (curriculum, grades, class materials, extra curricular activities)
_____ (5) Special Education and Gifted Education
_____ (6) Other Equal Opportunity Issues (race and ethnicity, sex)
_____ (7) Fiscal Issues
_____ (8) Other: _____

Suits by Employees

_____ (9) Discrimination
- _____ (a) race
- _____ (b) sex
- _____ (c) religion
- _____ (d) age
- _____ (e) disability

_____ (10) Other Employment Actions
- _____ (a) termination
- _____ (b) nonrenewal
- _____ (c) transfer
- _____ (d) reassignment/suspension
- _____ (e) involuntary leaves of absence
- _____ (f) disability benefits

_____ (11) Professional Negotiations
_____ (12) Torts
- _____ (a) negligence
- _____ (b) defamation

_____ (13) Other: _____

Suits by Others (parents, school districts, taxpayers, board members, etc.)

_____ (14) Contracts
_____ (15) Fiscal Issues
_____ (16) Negligence
_____ (17) Religious Activities
_____ (18) Territory Transfer
_____ (19) Other: _____

Outcome by Forum:

(7) Conclusive Decision Completely Favoring School Authorities _____

(6) Conclusive Decision Largely, But not Completely Favoring School Authorities _____

(5) Inconclusive Decision Favoring School Authorities _____

(4) Conclusive or Inconclusive Split Decision _____

(3) Inconclusive Decision Favoring Students, Employees or Others _____

(2) Conclusive Decision Largely, But Not Completely, Favoring Students, Employees or Others _____

(1) Conclusive Decision Completely Favoring Students, Employees or Others _____

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