

School choice scholarships

## Flathead families say school choice scholarships fill gap

HOLLY MICHELSON holly.michelson@lee.net, Updated Apr 9, 2016



Kendra Espinoza leaves Stillwater Christian School on Thursday evening after play practice with her daughters Naomi, 10, center, and Sarah, 8.

**KALISPELL** – Jeri Anderson was unemployed when she made the decision to enroll her daughter Emma, now 8, at Stillwater Christian School.

Emma was in preschool, attending just three days a week so she could spend some time with children her own age.

“She immediately fell in love,” Anderson said. “It was her home away from home. She would say, ‘If I can’t be with you, Mom, at least I can be with my family at school.’”

Anderson, along with two other mothers of children who attend Stillwater, filed a lawsuit last December to gain access to scholarship funds administered through the state Department of Revenue. A law passed by the 2015 Legislature created a \$150 income tax credit for donations that support nonprofit scholarship organizations that help pay for students to attend private schools.

Because the department collects the money, it wrote the administrative rules that dictate who can receive the scholarships. One of the rules excluded religiously affiliated schools from receiving

the money. This was necessary, the department said, because the Montana Constitution prohibits “any direct or indirect appropriations or payment” from the government to religious institutions or religiously affiliated schools.

On April 1, in Flathead County District Judge David Ortley granted the mothers an injunction, saying the department must operate as if the rule didn’t exist. That could open the door for parents like Anderson to apply for a scholarship to pay for some of Emma’s tuition.

Stillwater is a place where Emma, a second-grader who is really into the solar system and doesn't go anywhere without a book, feels safe, Anderson said.

“There’s usually three of them,” Anderson says of the books Emma reads, “all in various stages of done.”

Anderson said she depleted her savings to pay for Emma’s first two years at Stillwater before she found a job. Emma also received an ACE Scholarship, which provides up to \$2,000 for elementary students. About 800 students applied for those scholarships the first year they were offered, and 300 ended up on a wait list.

Tuition is about \$6,600 a year for elementary students at Stillwater. “Every year it’s a step out on faith that we can do this, we can pull this off,” Anderson said.

Anderson, Kendra Espinoza and Jaime Schaefer were contacted by Stillwater about working with the Institute for Justice, a Virginia-based law firm that calls itself the “nation’s pre-eminent courtroom defender of school choice,” last fall about the possibility of filing a lawsuit.

The Institute had been keeping a close eye on Montana, said one of its attorneys, Erica Smith, who testified at a public hearing last fall on the department's rules.

Smith said after the rules were adopted, she emailed every private school in Montana to start coordinating a lawsuit, and Stillwater replied first.

Anderson and Espinoza said they weren’t aware of the rule-making process or the law before the school contacted them.

\*\*\*

**So far**, just one organization has signed up with the Department of Revenue to provide scholarships – Big Sky Scholarships, which incorporated Jan. 11.

Its registered agent is Sen. Kristin Hansen, R-Havre, who is consulting attorney for the organization and filed its paperwork. Hansen said she couldn't disclose the names of the organization's five board members. They also aren't listed in filings with the Secretary of State's Office; the three director lines say, "none stated."

According to the department, \$1,350 has been pledged from donors to the scholarships and \$3,000 has been pledged toward public school programs, out of \$3 million available for each. The department's education donations website went live Jan. 1.

Parents approach schools for scholarships, and the schools make the connection with organizations like Big Sky Scholarships. Hansen said about 34 schools are going through the affiliation process, and once that's complete parents can start applying for funds.

An estimated 8,119 students attended private school in Montana during the 2014-15 school year, which is up from 7,757 in 2012-13. There were 144,532 students enrolled in public schools in 2014-15, up from 142,908 in 2012-13.

Not everyone agrees with Ortleby's decision on the rule.

Eric Feaver, president of the MEA-MFT union that represents teachers and other public employees, said the rule is "exactly" what the law requires. He said the ruling has a "political flavor" and said the institute, a group he calls "hard edged and determined," could have picked the venue for the judge.

"District Court opinions get appealed all the time," he said. "If you're talking about a constitutional question, you don't want it to stop there."

Feaver compared the injunction to "winning the first quarter. There's a whole game yet to be played."

Ortleby's ruling said a tax credit is not an appropriation and therefore can go to a religious school. But Feaver said because the credit results in a reduction in the state's revenue stream, it is an appropriation.

He also questioned the power of a poll of state legislators last fall that laid the groundwork for a lawsuit. After the department published its draft rules, more than 20 legislators objected to the first rule. That triggered a poll, the first since 2005, and the results found 88 lawmakers agreed the department's rule doesn't fit the intent legislators had when they passed the law. Fifty-one said the rules were fine and 11 didn't respond.

The poll couldn't change the rule, but it was published with the rule and its results could be – and were – used as evidence in a lawsuit.

Feaver said the bill was rushed through and it was never clear the Legislature knew what its intent was. State Sen. Llew Jones, R-Conrad, who wrote the bill, said the rule didn't meet what he intended.

"How powerful is a post-legislative survey of intent?" Feaver asked. "It leads to corruption of the legislative process, indicating legislative intent after the fact."

For Feaver, the argument comes down to whether Montana will support and enhance public schools or “support sectarian schools at the expense of public schools.”

“There’s leavening power in public schools, where you have rich and poor, well-dressed and not, black and white, all religions,” he said.

\*\*\*

**Anderson argued** the tax credit doesn’t take away from public schools, but just builds the pool for scholarships.

“I think people realized we’re just asking to be included,” Anderson said. “They meet the criteria to be eligible and they just want to have their place.”

Espinoza enrolled her daughters when she was employed part time, and had to work several different jobs and hold yard sales to pay tuition.

“I remember driving up to the school (to an informational meeting) and thinking, ‘Why am I even doing this?’ I want this so bad, but there’s no way I can afford this. And for two kids,” she said. “I knew what it was going to cost. But I sat through that presentation and I felt God saying, ‘Go for it, just walk on faith.’ And I said ‘OK, we got this.’ ”

This is the first year Naomi, 10, and Sarah, 8, have attended Stillwater. They were in public school before, and Espinoza had done some home-schooling with Naomi.

Espinoza said the school has a "family atmosphere" and is more challenging academically.

“From a values perspective, what I teach them at home ... I wanted that reflected in what they learn at school, too,” Espinoza said. “I knew my kids needed to be pushed a little. ... I can see what they are learning now and it is much more advanced than it would be if they were in public school.”

Sarah is in the second grade. After school she practices for the school play – "Rapunzel" – and has an analytical mind Espinoza thinks will serve her well in math class. Naomi is a fourth-grader who loves to read and write stories.

When Naomi attended public school, Espinoza picked up her backpack and found it overly heavy. She had been bringing her Bible to school and doing Bible study with kids on her own.

“She wants to be a missionary, that’s her big goal in life, and to nurture that here while she’s little means so much to us,” Espinoza said.

Re-enrollment was in February, so the countdown is on for Espinoza and Anderson – who signed up for next year – to come up with tuition for next year. Espinoza just started a new job, but paying tuition is still a reach and she doesn't view public school as an option.

“The thought of now going back to public school, it’s like deflating a balloon,” she said.

\*\*\*

**Feaver said he** questions why parents who filed the suit need scholarships if their children are already enrolled in Stillwater. "Obviously, they can afford it," he said.

He said he doesn't oppose parents sending their children to private schools, but he doesn't want taxpayers helping foot the bill. He objected to claims that private schools offer a better education.

"A parent who says their kid is not getting what they want in public school, I can believe that. But to say that somehow none of those schools can work for their children – just can't and there's no way it ever possibly could – I don't buy that, not for a second."

Espinoza said scholarships help bridge the gap.

“We still have to come up with a pretty sizable chunk of cash even with a scholarship,” she said, “but this makes it doable.”

The Department of Revenue hasn’t yet said if it will appeal, but Feaver believes it will.

After the decision, the department said it was reviewing the court order. It was still in the review process as of Friday, said spokeswoman Mary Ann Dunwell. The department has 45 days to respond to the ruling.

The department said that its premise for administering the rules is still the same, and believes the Constitution prohibits direct or indirect payments or appropriation to religious or sectarian schools.

Espinoza and Anderson are hoping the department will decide it's not worth going to trial, but they're ready for an appeal.

“There’s no reason to back down,” Espinoza said. “We’re ready to take it all the way.”

Emma wants to attend Stillwater all 12 years. So do Naomi and Sarah.

“I’m like, ‘If we can swing it, if we can swing it,’ ” Anderson said.