

## **Introduction**

The School Funding Interim Commission has made a good-faith effort to propose changes that will improve the adequacy and equity of funding for Montana's system of free, quality public education. We are proud to have been a part of that effort and the consensus report that culminates it. However, the Commission as a whole has declined to make a finding or a recommendation on the overall adequacy and equity of Montana's current approaches to funding its public schools. Mindful of the legislative and judicial history on this subject, as well as the intent of the statute that mandated the decennial commission, we believe that the following observations provide an important complement to the Commission's consensus report that may be helpful to the public, future sessions of the legislature, and future commissions re-assessing school funding in Montana.

## **The Quality Schools Interim Committee and the School Funding Interim Commission**

The Quality Schools Interim Committee (QSIC), formed in 2005, was commissioned by the Montana legislature to study school funding in Montana and recommend funding approaches that would provide adequate and equitable support for a system of free, quality public education. With a budget of over \$200,000, the committee contracted with school finance consultants to conduct four studies that would inform the development of measures of adequacy and the related costs in order to provide a cost-based foundation for adequately and equitably funding Montana's public schools. Although members were ultimately unable to agree on a comprehensive proposal that would premise school funding on established costs of quality, a special session of the Montana legislature in late 2005 enacted several elements of their work. The legislature also made significantly greater allocations to public education in the aftermath of QSIC, enough to satisfy a 2008 court that the State was making satisfactory progress. However, even that court expressed concern about the lack of a "bright line" between allocations and determined costs.<sup>1</sup> Without an agreement on an evidence-based definition of "adequacy," the legislature continued to define the term within the parameters of what legislators perceived as available resources and prioritized needs.

Ten years after QSIC adjourned, the legislature enacted SB 128, establishing this Commission in response to the requirement for a decennial study codified in 20-9-309 MCA. With a budget of \$55,000, this Commission has contracted no external studies regarding measures of overall adequacy and the costs of education. An accurate summary of the committee's activity can be found in the consensus report. As it documents, the Commission chose not to examine the adequacy of school funding from a holistic approach, but to focus on specific areas of need within the educationally relevant factors identified by the courts and stipulated in 20-9-309 MCA.

Even with this more targeted focus, the Commission's findings and recommendations, and particularly the deliberations that led to them, show that the historic approach to funding Montana's public schools, continued after QSIC's failed effort at defining "adequacy," drives decision-making today. Cost-based standards of adequacy -- and to a lesser extent, equity across districts -- do not drive legislative decision-making on school funding. Existing and projected revenues do. Because state revenues and the priorities for their use wax and wane, adequate funding for Montana's schools and equality of educational opportunity for Montana's schoolchildren continue to be contingent on the vagaries of the state's fiscal picture. Perhaps more importantly, without a fixed end-goal based on standards of adequacy in funding high-quality public education in Montana, the Commission has essentially made repairs to the vehicle in transit, hoping that it will get us to an acceptable destination.

The following review of the Commission's areas of focus supports these conclusions.

### **School Facilities**

One element of adequacy listed in 20-9-309 MCA is "facilities associated with meeting the accreditation standards." In response to the QSIC recommendations, the 2005 special session of the Montana legislature made significant allocations to provide state-level assistance for local facilities problems. These included an infusion of approximately \$25 million for weatherization, deferred maintenance, and a statewide facilities assessment. Based on the information gleaned from the assessment inventory, the 2007 legislature set up a \$40 million facilities improvement account to be allocated by the 2009 legislature for district needs identified in the inventory.<sup>2</sup>

Ten years later, state support for school facilities has diminished. The statewide facilities inventory funded in 2005 is now out of date. While increased funding in 2005 boosted the state's portion of facilities debt service in 2006 to 25.3% of eligible school districts' bonded indebtedness, that portion has declined steadily and significantly since. In 2016, the state's portion of the total is 6.808%, less than half of what it was in the early 2000s. To be sure, total indebtedness has nearly doubled since 2006, but the legislative appropriation was 2.6 times higher in 2006 than in 2016. In addition, after significant state-level investments to provide assistance with improving schools facilities between 2007 and 2015, the projected state assistance levels for FY16 and FY17 have returned to pre-2006 levels.<sup>3</sup> Moreover, many of the revenue sources for this assistance in the last decade have been one-time-only or market-sensitive. This variability in available assistance discourages long-range planning and renders the assistance available to a particular district to the lucky -- or unlucky -- circumstance of available revenues during a particular biennium.

The Commission has recommended some measures to assist local districts with their infrastructure problems and has been especially innovative in identifying funding sources to provide meaningful state assistance in this area so fundamental to a quality education. However, the amounts and the variability of the proposed revenue sources force the Commission to continue to limit the schools benefiting from these approaches to a prioritized few – and, depending on the health of the general fund, possibly none. As one Commissioner stated about the level and tenuousness of the funding sources for his facilities proposal, "It's probably not enough, but it's the best we can do."

### **Special Education Funding**

In 1990 the state assumed 81.66% of the total special education expenditure; the federal government, 11.49%; and local districts, 7.09%. Between 1990 and 2014, special education funding at the federal, state, and local levels more than tripled to meet costs, increasing from \$40.9 million to \$131.2 million. By 2014, the state's share of total special education funding was 32.69% of the total allocation; federal share, 26.14% and local share, 41.15%.<sup>4</sup>

In short, the costs of special education, a federally mandated service as well as an implicit requirement of Montana's constitution, have increased dramatically. While the federal government has more than doubled its percentage portion of those costs in Montana, the state government's percentage has shrunk by 48.97%, to a portion that has remained essentially flat for the past decade. The result: Local school districts and taxpayers now assume the largest portion of special education costs. In 2008, in *Columbia Falls Elementary II*, Sherlock expressed concern about this cost-shifting.<sup>5</sup> Eight years later, it remains essentially unchanged.

Adding to this difficulty at the local level has been the decision of the legislature in recent years not to provide inflationary increases either for special education or for the special education co-ops, with two results: (1) Local districts must shift general education dollars to fund mandated levels of special education, and (2) Montana's special education co-ops are struggling to provide services and in some cases are barely sustainable.

The Commission has taken some steps to address this problem, but they are baby steps. In spite of the fact that funding for special education programming has been a concern of both major court decisions on the adequacy of school funding in Montana, including the aforementioned 2008 Sherlock decision which held for the State, no serious attention has been given by the Commission to a more holistic approach to the cost-shifting that local school districts tell us has become a significant drain on their general education funds.

One of the larger groups to testify before the Commission were advocates of expanding state ANB funding to include special education students aged 19 – 21 with IEPs recommended continuing services. Montana is the only state in the nation that does not provide such funding. As the consensus report notes, ultimately the Commission took no action on the issue because some Commissioners were concerned about the unpredictability of the numbers to be served and the concomitant costs.

Although it is difficult to know how many more districts might choose to provide special educational services to these students, it is possible for the legislature to manage predictability by requiring, for instance, a five-year history of a district's providing these services before becoming eligible and allocating funding based on the average number enrolled over those five years, or the current number enrolled, whichever is fewer. Moreover, because the ANB funding would provide districts with an increase of only \$4,000 to \$6,000 for each student, any cost above that amount would continue to be borne by districts choosing to provide this opportunity. Because the costs of providing services for this student population typically exceed the ANB amount, often substantially so, it is unlikely that the number of districts providing this opportunity will increase dramatically.

Other Commissioners expressed doubt that teaching basic life skills is the responsibility of the K-12 public education system. It must be pointed out that K-12 schools have done just that for decades for K-12 students under the age of 19. It clearly falls within the mandate of the Montana constitution to "develop the full educational potential of each person." The question is whether the state should encourage investing in a population of delayed students whose transition into adulthood – and lifelong dependence on other tax-funded public services – will be eased by participation in an effective educational program at the ages of 19 and 20.

### **Gifted and Talented Education**

Advocates for gifted and talented education have followed and participated in the work of the Commission perhaps more than any other group. Their testimony over the past year provides a portrait of deficits in gifted and talented education in Montana that not only fail to capitalize on this intellectual capital, but leave high-ability students in too many Montana schools frustrated, bored, and disenfranchised by their educational experiences.

Funding for gifted and talented education has also been a continuing concern of the courts over the years as they addressed complaints about the adequacy and equity of school funding in Montana. In response, the 2007 legislature allocated \$2,500,000 to address gifted and talented

education for the next biennium. This five-fold increase was noted approvingly in the 2008 Sherlock decision,<sup>6</sup> but it disappeared the following year. In the next biennium and ever since, the allocation has remained at the 2006 level -- \$250,000/year, an amount that equates to \$28 per high-ability student in Montana (as opposed to the amount of \$139 per student that impressed the court in 2008). This amount funds a program allocating grants that tend to be so small many school districts reportedly don't even apply for them.

Providing pre-service training and ongoing professional development so that teachers can identify and differentiate instruction for high-ability students seems to be the most practical solution for providing adequate gifted and talented programming equally available to students in a state like Montana. Currently, Montana does not have the infrastructure to provide this basic component of adequacy. Only one university program is dedicated to gifted and talented teacher education, and that program would not exist but for a private endowment. Few teacher preparation programs require significant and sustained content in this area. As for professional development opportunities for practicing teachers, they are extremely limited and are generally not provided through state funding. A more effective model can be found in the Comprehensive System of Professional Development (CSPD) for special education. Through federal funding, five Montana regions each receive \$120,000 annually to provide free professional development for all teachers to help them respond more effectively to the needs of special needs students.

The proposal of Rep. Kelker to provide funding for high-ability students on the basis of numbers of high-ability students identified in Montana school districts is the most substantial response to the needs of this long-neglected student population. As yet, the Commission has not acted on that proposal. The Commission has recognized that many of the solutions to these problems lie in the hands of other public bodies – notably, the Board of Regents of Higher Education and the Board of Public Education. Although the Commission has made recommendations to those bodies, their ability to implement meaningful changes will require additional state-level funding. None of the Commission's current recommendations on gifted and talented education include a funding component.

### **Recruiting and Retaining Qualified Teachers**

The difficulty Montana schools have in recruiting and retaining qualified teachers was a major focus of the Quality Schools Interim Committee and the legislative actions associated with it. One finding of the Stoddard & Young study informing QSIC's recommendations was that salary was a key factor in improving the recruitment and retention of teachers in Montana, especially rural Montana. The Quality Educator component of the school funding formula was enacted by the special session of the legislature in 2005 to improve salary levels, and as early as 2007, salary levels had increased. The Quality Educator Loan Repayment Program (QELRP) was in place by 2008, tailored to retain teachers in geographic areas or with endorsement areas experiencing recruitment difficulties.

Ten years later, recruiting and retaining qualified teachers remains a problem, particularly in Montana's isolated school districts. However, the problem is not confined to those districts, as evidenced by the history of districts served by QELRP in the past 10 years, as well as the testimony received over time by the Board of Public Education, the Board of Regents, and this Commission. In addition, all testimony received by the Commission acknowledged that a variety of factors affect teacher recruitment and retention, echoing the QSIC expert studies and the findings of *Columbia Falls Elementary II*.<sup>7</sup> Nonetheless, the Commission has focused legislative action and state resources only on the loan repayment program and, concerned about

budgetary impacts, has narrowed eligible recipients to prioritize isolated and special-needs schools. The larger issues of recruitment and retention – and the larger population of school districts - remain largely unaddressed.

## The Language of Limitations

Although the Commission has declined to consider a statement on the overall adequacy and equity of Montana’s approach to school funding, over the course of its deliberations, Commissioners have repeatedly made or received statements that indicate an acceptance of the unavailability (inadequacy) of funding to meet the needs. Without attribution, here is a short list of such statements from Commissioners or Commission staff:

- “The current [revenue] stream has led to reduced assistance [in the Quality Schools Grant Program]. It’s always been by priority, based on how much money we had.”
- “Let’s just imagine we have enough funding to provide the full continuum of [special education] services.”
- “I don’t want to steal money from ....”
- “Before we’re done, we’re going to invade something somewhere.”
- “We could get money from the lottery ....”
- “I just wish that the funding for special ed reflected the true costs.”
- “If you revise [that program], you’ll have to find a way to fund it. Good luck trying to sell it.”
- [We can’t afford to do more.] “We can only go so far with this particular program.”
- “Can you [narrow the list of eligible schools]? We can’t fund that many.”
- “It’s probably not enough, but it’s the best we can do.”
- “There are simply too many straws sipping out of a nearly empty cup.”

From testimony to the Commission:

- A school superintendent: “We were at the bottom of the [block grants] list, but attending those sessions, I heard 51 stories [from other schools districts]. My reaction was ‘Wow, they’re worse off than we are!’ ... I’d rather not compete with neighbors over a small pool of funds.”
- A school facilities consultant: “Many of our school buildings show incremental thinking.” [For example, one school building has undergone 13 additions.] With enough funding, “districts could think big.”
- A former QSIC member, on state support for facilities: “Since you have limited money, you don’t want to spend it wide and thin. Target a few things and do it right.”
- A special education co-op director: “Co-ops must meet these [very high-cost] needs ... so regular education funds are ‘borrowed’ to cover them.”
- A former QSIC member on special education co-ops: “When scarcity exists and there’s only a certain amount available, it’s hard to turn over your money to others [but because the co-ops] are so important, districts are for supporting the co-ops.”
- A sixth-grader on the lack of funding for gifted education: “I understand that it isn’t because you don’t care about me. It’s because you don’t have the money.”

## Overall Adequacy and Equity

As noted in the introduction, we believe this Commission has made a good-faith effort to patch prioritized holes in the fabric of Montana's school funding system. We also believe the legislature has made changes in the past decade that have improved school funding. However, anyone engaged in the Commission's work over the last year would conclude that inadequacies do exist. In many ways, the incremental thinking a consultant exemplified through the school building with 13 additions applies to the work we are about to complete. Perhaps minor adjustments are all that Montana's blueprint for school funding needs. The cramped expectations of our statements and the narrowness of our solutions argue otherwise.

Because the Commission's approach to providing adequate and equitable school funding continues an approach that essentially tailors notions of adequacy and equity to fit within the parameters of biennial resources, the following inadequacies and inequities, at a minimum, can be projected as the Commission ends its work:

- Debt service for facilities bonds and state assistance for major maintenance of facilities will be available only on a prioritized basis and only as available funds allow.
- School districts will continue to bear the major share of providing special education.
- School districts will continue to use funds intended for the general student population to meet mandates for special education students.
- The opportunity for IEP-recommended adult transition programs for special education students over the age of 19 will not be equally available in Montana's schools – and will require school districts that do provide them to shift even more of their general fund dollars to special education.
- Opportunities for high-ability students to receive instruction appropriate to their abilities will not be equally available in Montana's schools, and most classroom teachers will not have the training to differentiate instruction for this student population.
- Unless allocations far exceed current levels, school districts experiencing teacher recruitment and retention problems in communities that are not defined as "isolated/special needs" will have to dedicate their own general fund dollars to address the issue without the assistance that other communities receive from the state.

We believe that these and other inadequacies and inequities can only be prevented by a legislative commitment to establishing cost-based, rather than resource-based, standards for adequacy of the state's role in funding of a system of free, quality public schools in Montana. Once in place, over time those standards will drive the allocation of resources to ensure adequacy, instead of our historic approach, wherein available resources tend to define "adequacy" as "the best we can do."

We Montanans, especially we legislators, have a constitutional obligation to provide a level of funding that ensures a system of free, quality public education. Some Commissioners believe that this constitutional goal is a lofty aspiration, never intended to be reached. Respectfully, we disagree. We believe that our constitution's framers used the word "goal" to indicate the end-product that concerted efforts of the legislature, other state officials, local school boards, and taxpayers are expected to achieve.

Scholars of generational poverty caution that eventually the language of limitations becomes internalized, stunting aspirations and excusing weak efforts. The danger of not having standards of adequacy (which, as one Commissioner aptly noted, drives equity), not only overall but also

in each of the areas of focus in the consensus report, is that over time stunted aspirations, incremental thinking and continual tweaking that is, on its face, inadequate will result in the same inefficient hodgepodge for overall school funding represented by that school building with the 13 additions.

### ***Columbia Falls Elementary II Applied Today***

In *Columbia Falls Elementary II*, Sherlock found that the State had done “a good job of addressing the problems earlier addressed” in *Columbia Falls Elementary I*.<sup>8</sup> He expressed dissatisfaction with the State’s failure to connect allocations to established costs, but noting the dismaying variance in the cost studies, he concluded that the legislature had been presented with a smorgasbord of choices and had the latitude to select from that smorgasbord as it saw fit. The decision was rendered only three years after QSIC had completed its work and legislative efforts began, and Sherlock recognized that Montana’s education funding problems were not going to be accomplished overnight.

However, he also provided some cautionary notes, many of which have been summarized in this minority report. Eight years later, in each of the areas resulting in bill drafts from the Commission, either the progress noted approvingly by Sherlock has significantly stalled or the problems about which he expressed concern continue to exist. The steps we have taken to address them, by any objective measure, do not resolve them. They just lessen them. “Adequacy” and “equity” are absolute terms; they cannot be represented by fractions.

Would *Columbia Falls Elementary II* be decided differently on the basis of today’s data? Despite the deficits noted above, several improvements in adequacy noted by Sherlock have continued to increase since 2008.<sup>9</sup> However, the creation of the decennial retrospective was intended to be a tool to avert that question. This Commission has made a good-faith effort to address the problems that it was possible to address within the limits of time and revenues. In our view in retrospect, both time and funding were far too limited, and the legislature has within its power the ability to address both.

The time element is perhaps the easier of the two. Understanding school funding in Montana takes time. Arriving at a common understanding of the many formula variables and funding related education issues consumed at least half of this Commission’s time. Ten years from now, some future commission will face the same challenge. We believe that an ongoing Commission or interim legislative committee dedicated to studying the adequacy and equity of school funding would serve to institutionalize the knowledge and relationships fostered through Commission activities of the last year in ways that will broaden understanding and make legislative efforts at fine-tuning school funding more sustained and comprehensive -- and therefore more effective.

As for limitations on revenues, in the previous section, we have expressed our belief that cost-based norms for adequacy must drive school funding in Montana. People of good will may disagree on that point, as they have in Montana for at least three decades. However, on one final point we can all agree. The Montana constitution clearly places a high priority on a system of free, quality public education, as defined in accreditation standards and implemented by local school trustees. The constitution places the responsibility for adequately funding that system with the Montana legislature. That legislature is continually tempted to dedicate revenues that we all agree are not adequate to meet even the needs identified through our work to fund initiatives unassociated with the core responsibilities of providing a high-quality public education

system in Montana. These initiatives may have value, but when we cannot adequately meet our constitutional obligation, we cannot divert revenues to other education initiatives.

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<sup>1</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (P. 167, 4 and P. 157, 129)

<sup>2</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (P.86, 58)

<sup>3</sup> <http://leg.mt.gov/content/Committees/Interim/2015-2016/School-Funding/Meetings/Apr-2016/Facilities-assistance-2003-2017.pdf>

<sup>4</sup> <http://leg.mt.gov/content/Committees/Interim/2015-2016/School-Funding/Meetings/May-2016/SE-exp-funding-source-1990-2014.pdf>

<sup>5</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (P. 149, 121)

<sup>6</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (P. 105, 77)

<sup>7</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (PP. 114, 86 and 150, 122)

<sup>8</sup> <http://leg.mt.gov/content/Publications/fiscal/Education/CF-Decision-II.pdf> (P. 147, 119)

<sup>9</sup> According to the Montana Office of Public Instruction, state aid for general fund budgets in 2016 is 63.90%, up from 63.82% in 2009. Ongoing state aid for K-12 education is now \$813 million, up from \$701 million in 2009. Per-pupil aid is \$5633, as opposed to \$4947 in 2009.