



HJ 1 STUDY OF FUNDING FOR EDUCATIONAL PROGRAMS SERVING STUDENTS WITH SPECIAL NEEDS FINAL REPORT

September 2018

Education Interim Committee

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FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

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Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Education Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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This report is a summary of the work of the Education Interim Committee, specific to the Education Interim Committee’s 2017-2018 House Joint Resolution No. 1 (HJ 1) study as outlined in the Education Interim Committee’s 2017-18 work plan and HJ 1 (2017). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Education Interim Committee in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the Education Interim Committee website: <http://leg.mt.gov/edic>.

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OVERVIEW

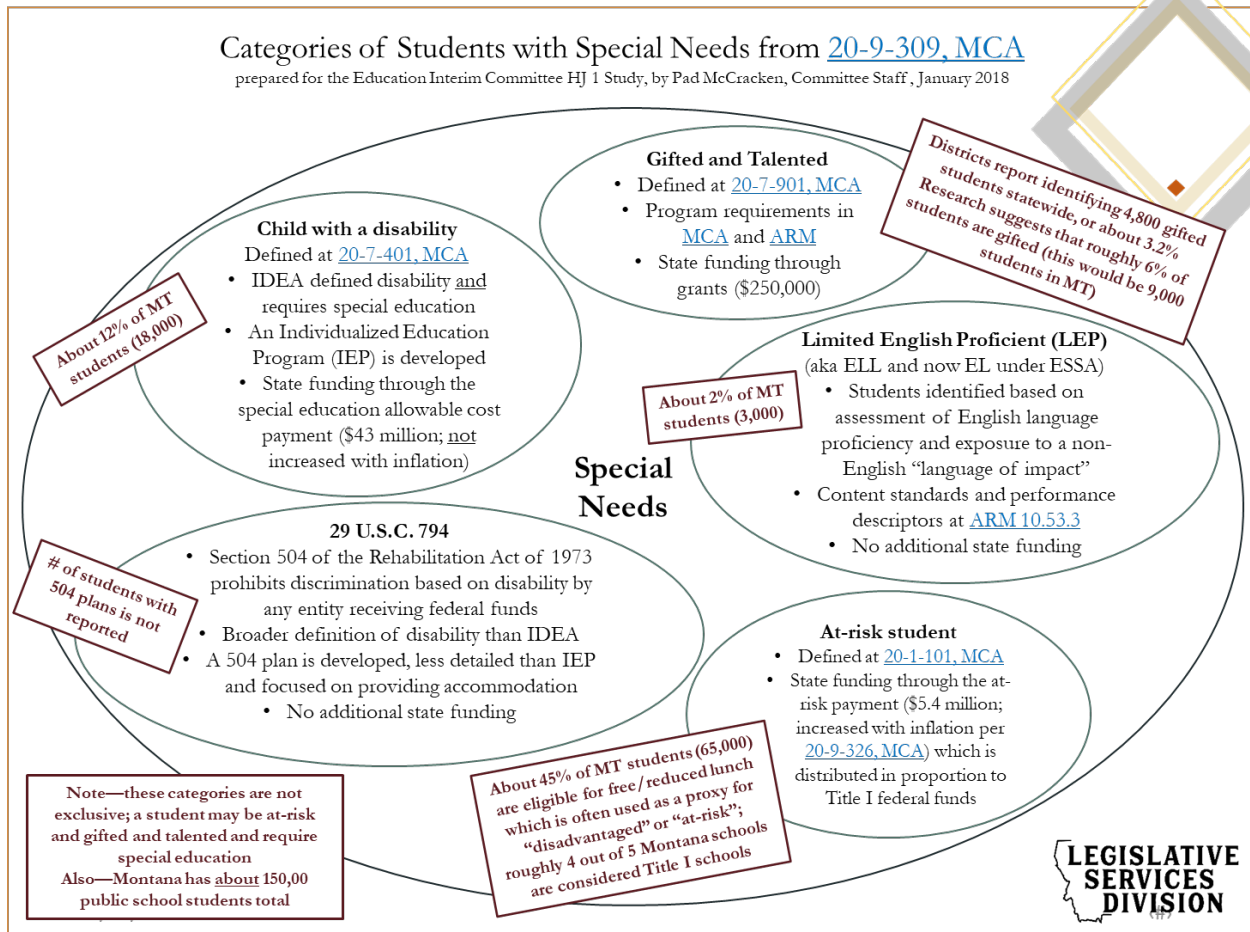
[House Joint Resolution No. 1](#) (2017; Kelker) was one of 11 legislative recommendations to come out of the [2015-2016 School Funding Interim Commission](#), three of which were enacted. When the commission conducted a statewide survey in the fall of 2015, special education funding was one of the top four areas of concern that emerged. As the commission conducted its work, additional concerns about funding for programs serving gifted and talented students were raised. Ultimately, the commission determined that further study of funding for all types of students with special needs was warranted, resulting in HJ 1 being recommended. Fundamentally, the Commission wanted to examine more closely whether Montana's current school funding formula is aligned with the needs and costs of programs to serve students with special needs. HJ 1 asked that an interim committee look at current best practices for serving special needs students and compare those practices with what is happening in Montana schools. The resolution also requested an examination of the various ways that funding for programs to serve students with special needs is structured in other states and an evaluation of whether Montana's existing funding structure requires modification.

In Montana statute [20-9-309, MCA](#), the term “special needs” is an umbrella term that includes:

- Children with disabilities who require special education under an individualized education program (IEP);
- At-risk students;
- Students with limited English proficiency;
- Children who require accommodations under 504 plans; and
- Gifted and talented children.

Staff prepared the graphic on the following page to help committee members understand the basics of each category.

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The Education Interim Committee (EDIC) was assigned the HJ 1 study by Legislative Council at the beginning of the 2017-2018 Interim. HJ 1 was ranked 4th out of 20 study resolutions passed by the 2017 Legislature in a poll of legislators at the conclusion of session. The committee looked at each of the above categories of students with special needs, except for students with 504 plans. There is no reporting at the state level regarding these programs and no state has a funding formula that includes a specific mechanism for providing additional funding for programs serving students with 504 plans. The committee examined each of the other four categories of special needs individually and this report will be organized to reflect that approach.

The committee began its study by reviewing the work of previous K-12 funding studies related to funding for special needs, as well as court decisions. A [2-page compilation](#) prepared by committee staff displays a longstanding concern about the level of state support for school districts in providing educational programs to serve students with special needs.

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At its initial meeting in June 2017, the committee received extensive public comment relating to concerns about the how school districts are addressing the needs of students with dyslexia. There was some follow-up discussion on this topic in August, but the committee did not address dyslexia or any other specific types of disability within its HJ 1 study.

The HJ 1 study resolution directed the committee to investigate how other states approach funding for special needs. Staff prepared [this primer](#) for the committee’s January 2018 meeting on the four basic approaches used by states:

- Categorical payments
- Reimbursements
- Grant programs
- Weighted-student counts

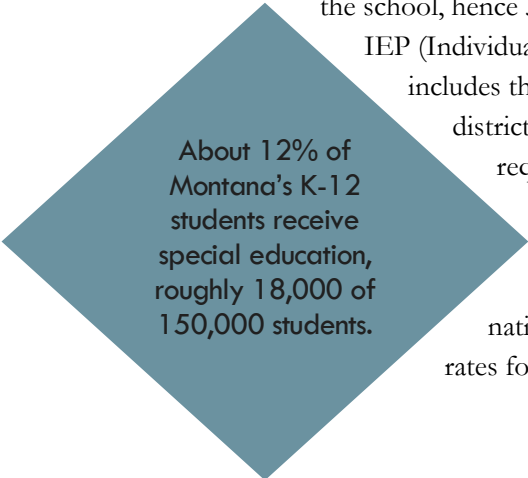
For its March 2018 meeting, the committee instructed staff to prepare a variety of options for making changes to the way the state provides funding for programs. Staff prepared [this memo](#) from which the committee selected several options to explore, focusing on possible changes to special education funding and addressing concerns about programs for gifted and talented students.

The committee acknowledged that a number of states are utilizing weighted-student counts to address the funding needs of various categories of students with special needs; however, the committee felt that moving to a weighted-student count formula would require a more comprehensive overhaul of Montana’s existing funding formula, something beyond the scope of HJ 1 and the capacity of the committee to undertake.

SPECIAL EDUCATION

Special education is the term used to describe the services provided to a student with a disability who, because of the disability, requires an educational program different from the *regular* education program provided by

the school, hence *special* education. A student’s special education is dictated by an IEP (Individualized Education Program) that is developed by a team that includes the student, the student’s parents, teachers, and counselors, and a district-level special education administrator. A student’s IEP may require only modest accommodations or it may require extensive and expensive interventions. About 12% of Montana’s K-12 students receive special education, roughly 18,000 of 150,000 students. This statewide identification rate is on par with the national rate, but some districts in Montana report much higher rates for special education.

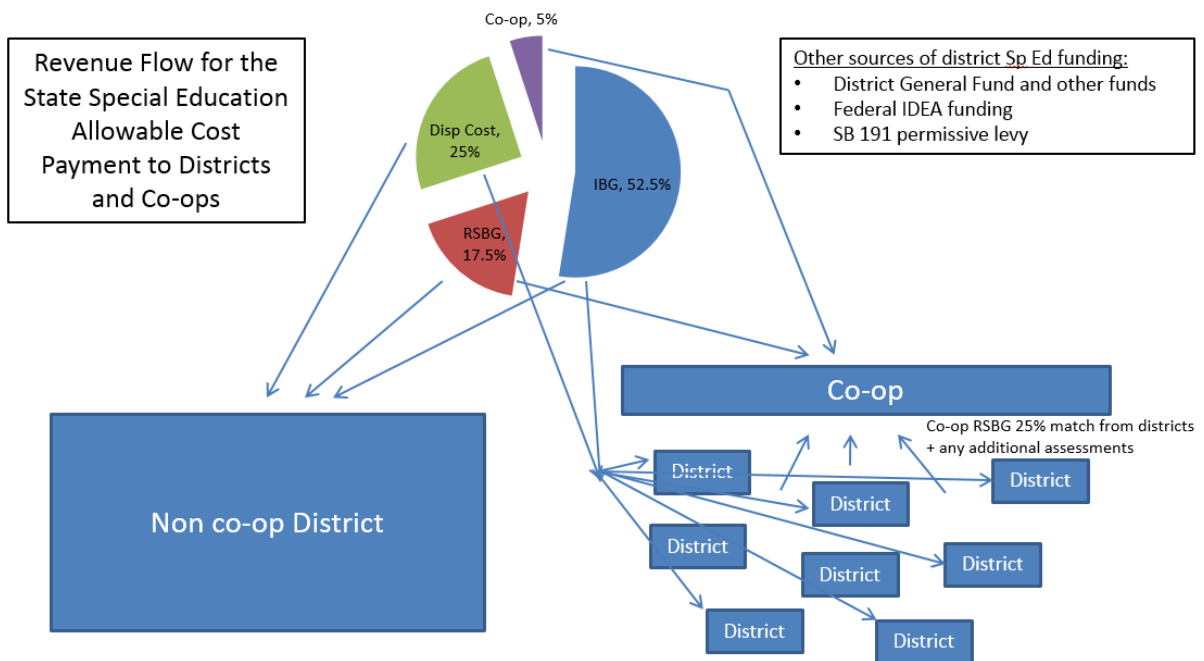


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Montana’s funding formula for special education is complicated, but state funding is largely distributed to school districts and special education cooperatives on a per-ANB basis. This type of distribution is referred to as capitation and is often used to address concerns that providing funding based on the number of identified students will lead to over-identification. One-fourth of Montana’s annual state special education allowable cost payment is reserved for disproportionate, or higher-than-anticipated, costs. This helps address the main shortcomings of capitation distributions—that some districts have higher rates of identification and that in small districts, one student with severe disabilities can require expenditures well beyond what the per-ANB distributions will generate. The graphic below illustrates how the state special education payment is divided up and distributed.

State Special Education Allowable Cost Payment Distribution



Component	Distribution	% of total Sp Ed approp	\$ Distribution
Instructional Block Grant	ANB (about \$150/ANB)	52.5%	\$ 22,728,260
Related Services Block Grant	ANB (about \$50/ANB)	17.5%	\$ 7,576,087
Reimbursement for Disproportionate Costs	Complex; high-cost students	25%	\$ 10,822,981
Co-op Admin and Travel	ANB, FTE, mileage	5%	\$ 2,164,596
Total State Special Education Approp FY 19		100%	\$ 43,291,924

One of the issues that has been repeatedly pointed out by special education advocates and education stakeholders is that the special education payment is the one component of the state’s funding formula that does not receive a statutory inflationary adjustment as part of the biennial budgeting process. Various legislatures have increased the payment in recent years, but inconsistently and less than the rate of inflation.

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Another (and related) issue that was brought to the School Funding Interim Commission in 2015-2016 and again to the committee this interim was that the relatively flat state support via the state special education payment has been particularly difficult for Montana’s 21 special education cooperatives. While school district general fund budgets and state funding have grown in the last decade, revenue to the co-ops has been mostly stagnant. Several co-ops reported during the 2015-2016 study that they were unsure about their financial viability going forward. The Office of Public Instruction formed a Special Education Cooperative Funding Task Force in 2015-2016 that [recommended](#) to the School Funding Interim Commission an increase in the state special education payment as well as a restructuring of the percentages shown in the table above to direct more state funding to the co-ops. This proposal was contained in House Bill No. 32, one of three options recommended by the Commission to the 2017 Legislature to address special education funding. None of the options was enacted.

The committee directed staff to prepare three possible bill drafts addressing special education funding for school districts and cooperatives for the committee to consider at its June 2018 meeting:

- [LC HB32](#) – increase the special education payment and direct more to co-ops (modeled on [HB 32](#) from 2017)
- [LC INFL](#) - add the special education payment to the other funding components that receive inflationary adjustments (identical to [HB 253](#) from 2017)
- [LC S191](#) - allow co-op member districts to permissively levy for co-op assessments

The committee requested one bill draft combining both LC HB32 and LC INFL for consideration at its final meeting in September 2018. This draft –[LC SPED](#)— was adopted by the committee.

AT-RISK STUDENTS

Montana statute at [20-1-101, MCA](#), defines “at-risk student” as “any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.” Staff prepared [this handout](#) outlining some of the different meanings “at-risk” can have. The 2005 Legislature, meeting in special session to address school funding in December 2005, added the at-risk payment to the funding formula at the same time as adding the Indian Education for All payment, the Quality Educator payment, and the American Indian Achievement Gap payment. The at-risk payment is distributed to districts in proportion with federal Title I-A funding which is targeted for the most part towards schools with high percentages of students from low-income families. Federal Title I-A funding brings in nearly \$50 million to Montana schools; the state at-risk payment adds about \$5.4 million to this amount.

At the committee’s January meeting, Jack O’Connor, Title I Director at OPI, presented to the committee information on some of the basics of Title I funding and the ways schools utilize this funding to serve at-risk students. Other OPI staff presented information on OPI’s “Early Warning System” and on the “Multi-tiered

SCHOOL FUNDING – SPECIAL NEEDS

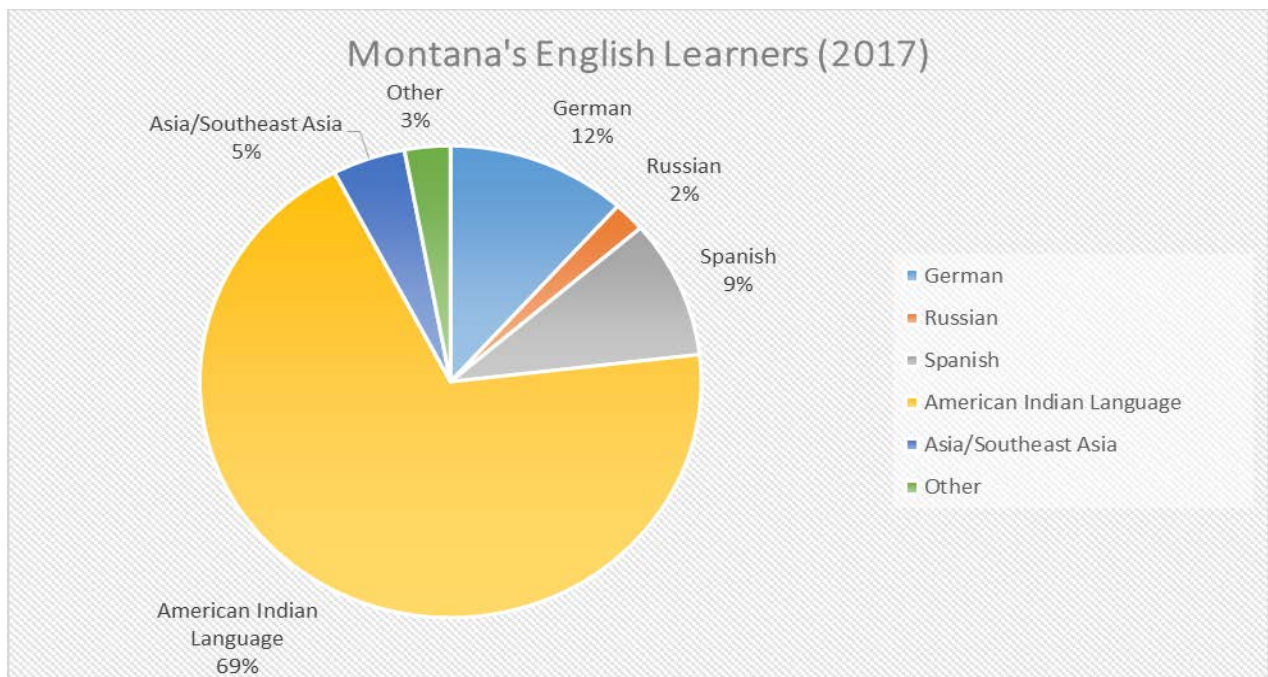
Systems of Support” approach for meeting student needs. Staff provided committee members with a policy analysis from the Education Commission of the States titled “[The Importance of At-Risk Funding](#)”, which describes the achievement gap that exists for students based on poverty and different approaches states take to providing extra funding and support for at-risk students.

The committee received very little public comment regarding funding for at-risk students and requested no further information or bill drafts to modify the current state at-risk payment.

ENGLISH LEARNERS

The term “English learner” is the newest way to describe a “student with limited English proficiency” or an “English language learner.” The latest federal reauthorization of the Elementary and Secondary Education Act is the Every Student Succeeds Act (ESSA), which was signed into law in December of 2015, and instituted the use of English Learner and, in its accountability requirements for states, emphasizes attention to the progress and achievement of this category of students.

Staff created [this short “story map”](#) as an introduction to English Learners in Montana for the committee. Montana is unusual in the small number of English Learners in our public school system and in that the two largest groups of English learners are students from families in which an American Indian language is used and Hutterite children for whom German dialects are the primary language.

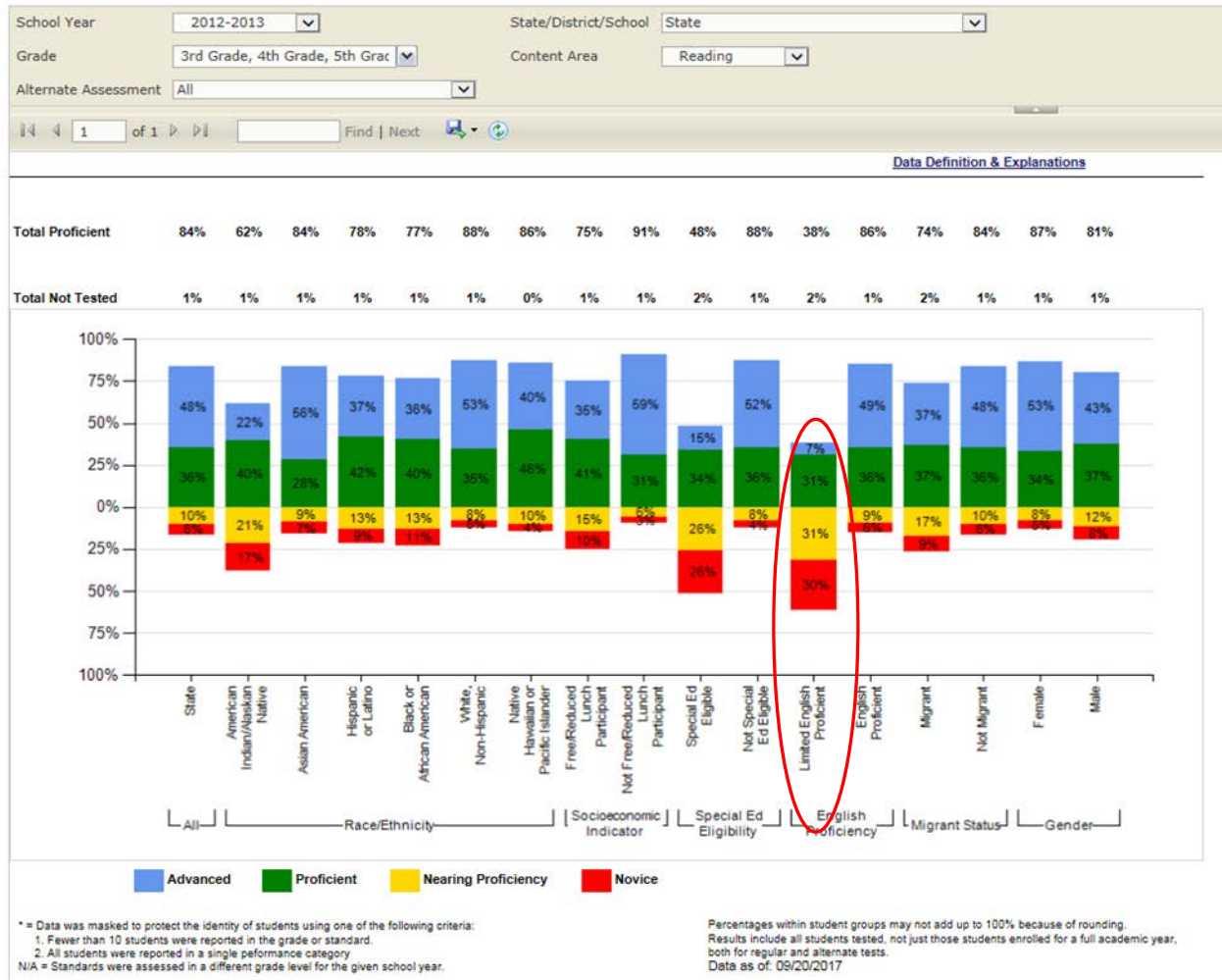


From OPI data

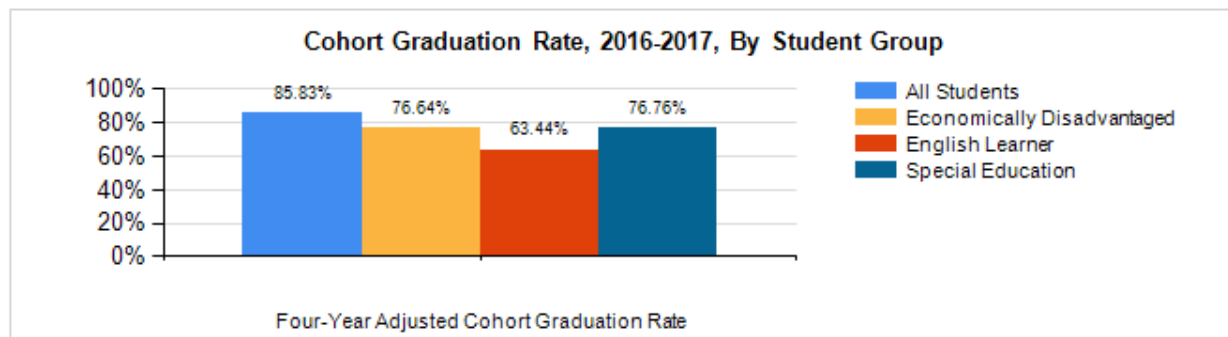
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What is not unusual is that English Learners in Montana, like English Learners in all states, struggle academically, recording the lowest achievement and graduation rates of any student subgroup.

MontCAS (CRT) Proficiency Comparisons by Subgroup



<https://gems.opi.mt.gov/StudentAchievement/Pages/CRTProficiencyComparisons.aspx>



<http://gems.opi.mt.gov/StudentCharacteristics/Pages/FourYearAdjustedCohortGraduationReport.aspx>

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Montana is one of four states that do not provide state funding for English Learners. Staff provided the committee with a [policy brief](#) from the Education Commission of the States that describes the various approaches states take in providing funding for English Learners.

The committee received no public comment on programs or funding for English Learners and requested no further information or bill drafts. However, the State-Tribal Relations Committee examined American Indian Student Achievement during the 2017-2018 Interim and looked at various options for providing funding for English Learners; visit <http://leg.mt.gov/tribal> for more information.

GIFTED AND TALENTED STUDENTS

Montana statute at [20-7-901, MCA](#), defines “gifted and talented children” as “children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.”

The legislature created this statutory definition in 1979 as well as the framework for a grant program supporting district gifted and talented programs. OPI prepared [this synopsis](#) of the grant program for the committee, which shows the funding history going back to 1980. While statute *allows* school districts to identify and serve gifted and talented students, Board of Public Education accreditation standards *require* it under [ARM 10.55.804](#).¹

During each of the last two interims, the funding commission and the committee received testimony that the level of funding of the grant program (typically \$250,000/year statewide) is inadequate and so low in fact that many small districts do not feel it is worth applying. Gifted and talented advocates have requested an increase or a revamping of the grant program to provide more resources to support programming and have also questioned teachers’ preparedness to identify and served gifted and talented students as well as district and school commitment to do so. OPI reported that while nearly all districts report having a gifted and talented program through the accreditation process, a significant number report identifying no gifted and talented

¹ From Montana Code Annotated Case Notes: After the Board of Public Education refused to amend its rule requiring all districts to identify and provide programs for gifted and talented students, the Legislature, claiming the rule conflicted with 20-7-902, which authorized rather than mandated gifted and talented programs, enacted House Bill No. 116 (1991) at the request of the Administrative Code Committee (now appropriate administrative rule review committee) to repeal the rule. In invalidating House Bill No. 116, the District Court held that the Board, pursuant to its exercise of general supervision powers under Art. X, sec. 9(3), of the Montana Constitution, is vested with constitutional rulemaking authority that is self-executing and independent of any power delegated to the Board by the Legislature. Bd. of Pub. Educ. v. Administrative Code Comm., Cause No. BDV-91-1072 (1992), First Judicial District, Lewis & Clark County.

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students. This led committee members to question whether increased state funding is the sole solution to the problem of inconsistent programming for gifted and talented students across the state.

At the committee’s January meeting, professors from three teacher preparation programs shared their perspectives on best practices in identifying and serving gifted and talented students. Staff prepared [this brief](#) that describes how a number of states approach funding for gifted and talented students.

At the committee’s March meeting, the committee requested that staff draft a letter to several education entities communicating its concerns that:

1. Teachers were adequately prepared to identify and serve gifted and talented students; and
2. Schools were truly being held accountable for identifying and serving gifted and talented students through the accreditation process.

Staff presented a draft letter at the June meeting, which the committee decided to send with minor revisions and a request for written response to the committee’s concerns. The [signed letter](#) was sent out in early July 2018 and responses from the [Montana Council of Deans of Education](#), the [Board of Public Education and the Certification Standards and Practices Advisory Council](#), and the [Superintendent of Public Instruction](#) were received in August.

At the September 2018 meeting, the committee discussed the issue with representatives from the above entities and makes the following recommendations related to programs serving gifted and talented students:

1. The quality of school services to gifted and talented students around the state would benefit from a full-time gifted and talented specialist/coordinator position at the Office of Public Instruction.
2. The Legislature, Board of Public Education, and Office of Public Instruction should work to align statute and rule regarding gifted and talented programs and ensure that school districts have access to adequate funding to provide these programs and are held accountable to do so.
3. The Board of Public Education and the Certification Standards and Practices Advisory Council, along with the educator preparation programs, should continue examining program standards to ensure that future educators are prepared to identify and serve gifted and talented students, and school trustees and administrators should prioritize ongoing professional development to ensure that all educators utilize best practices in identifying and serving gifted and talented students.

CONCLUSION

In addition to LC SPED and the recommendations regarding gifted and talented mentioned above, the committee recommends that the Legislature continue to work collaboratively with all education entities and stakeholders to monitor the changing landscape of students with special needs and to examine modifications to our current funding mechanisms, paying close attention to the needs of districts of all sizes and in every region of the state.