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Education Interim Committee

67th Montana Legislature

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TO: Education Interim Committee and Education Interim Budget Committee
FROM: Pad McCracken, Committee Staff
RE: Three- and four-year-olds in special education programs and state funding
DATE: March 1, 2022

The 2019-2020 Education Interim Committee looked at this issue and recommended [House Bill No. 16](#) to the 2021 Legislature. The bill was tabled in House Education, perhaps due to the [fiscal note](#) and the estimated state cost of roughly \$3 million/year.

The rationale for the bill is outlined in the preamble:

WHEREAS, Montana law at [20-7-411\(3\)](#), MCA, obligates school districts to provide a special education program for each child with a disability beginning at age 3;

WHEREAS, the prohibition on including preschool pupils in annual number belonging (ANB) counts under [20-9-311\(7\)](#) applies specifically to preschool programs created at trustees' discretion under [20-7-117\(2\)](#); and

WHEREAS, if preschool-aged children with disabilities receiving special education from a school district are not included in ANB counts, there is no mechanism for state financial support for their education.

So, we have a statutory mandate and a lack of state funding, but this was not always an unfunded mandate.

Prior to 1993 and the restructuring of school funding generally in HB 667 and of special education funding in SB 348, state support for special education was based on special education budgets submitted by districts for allowable costs associated with providing special education to children with disabilities, including three- and four-year-olds. So, prior to 1993, these preschool-aged kids in school district special education programs did generate state funding along with older students receiving special education, outside of Montana's enrollment-driven school funding formula.¹ Students receiving special education prior to the 1993 changes were not included in ANB counts.

Following the enactment of HB 667 and SB 348, Montana moved to what is known as a *capitation* model for special education funding, in which a large portion of the state appropriation for special education is

¹ For an artifact of this funding era, see [20-7-443](#) – Financial assistance special education services for children under 6 years of age. This section may be worth reexamining if the committee wants to again pursue a committee bill similar to HB 16.

distributed based on the district's total enrollment (in Montana, on a per-ANB basis). With these changes, Montana began including special education students in ANB counts, but not preschool students.

It was at this point that three- and four-olds receiving mandated special education services became (unintentionally I believe) invisible in our school funding regime, and the previously *funded* mandate became an *unfunded* one.

House Bill No. 16 attempted "to *clarify* that 3- and 4-year old children with disabilities participating in school district special education programs are eligible for inclusion in ANB calculations" under the same time parameters as other enrolled pupils under [20-9-311](#):

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an **education program**:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

While it is true that trustees could admit these preschool-aged children with disabilities under the "exceptional circumstances" provision under [20-5-101](#), it seems beneficial to make it clear and explicit that the legislature intends to allow these kids to be included in ANB counts, so that any other administrative rules, regulations, or guidance are brought into alignment to meet this intention.

If the committee wants to pursue a committee bill similar to HB 16, the committee may want to amend 20-5-101 to clarify that these three- and four-year-olds in special education programs do not need to be admitted under "exceptional circumstances." Additionally, the committee may want to examine an implementation contingency placed on the 1987 Act (HB 511; Ch. 258) that is based on a method of federal funding no longer in use. See below.

From the Compiler's Comments for [20-7-411, MCA](#):

Implementation Contingency: Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act[, which inserted subsection (3),] if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child [now preschool child with disabilities] for school fiscal year 1991 and beyond."