



Board of Public Education

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August 24, 2018

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Education Interim Committee
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Dear Madam Chair McClafferty and Members of the Education Interim Committee:

Thank you for inviting the Board of Public Education and the Certification Standards and Practices Advisory Council to participate in a dialogue regarding concerns expressed to the Education Interim Committee by advocates for gifted and talented education in Montana. In order to adequately address the two questions posed by the Education Interim Committee on gifted and talented education, it is important to begin by providing an historical context for this discussion by reviewing a district court declaratory judgement from 1992, with relevant excerpts quoted below:

“In 1989, the Board of Public Education adopted 10.55.804, ARM. That rule, in pertinent part, provided as follows: Beginning 7-1-92 the school shall make an identifiable effort to provide educational services to gifted and talented students, which are commensurate with their needs and foster a positive self-image. The Administrative Code Committee felt that the aforementioned rule was in contravention of Section 20-7-902(1), MCA which provides: A school district may identify gifted and talented children and devise programs to serve them. (emphasis added).”

“The Board would not change its rule. Thereafter, at the request of the Administrative Code Committee, the 1991 Legislature passed House Bill 116 which states as follows:

Whereas, the Legislature, not the Executive Branch, is the lawmaking branch of the state government under the Montana Constitution; and

Whereas, the Legislature may delegate its power to pass laws to the Executive Branch, which may then, within certain limits, adopt administrative rules that have the force and effect of law; and

Whereas, a rule may not conflict with a statute and is invalid if it does; and

Whereas, Section 20-7-902 (1), MCA, provides that “a school district may identify gifted and talented children and devise programs to serve them” and Rule 10.55.804 ARM mandates a gifted and talented children program in each school, thereby directly and clearly conflicting with the statute, and

Whereas, the Legislature has made a gifted and talented program discretionary, at the choice of each local school board, the Legislature nonetheless affirms its support of gifted and talented education and encourages local school districts to identify gifted and talented students and design and implement programs that meet the needs of those students.

Be it enacted by the Legislature of the State of Montana: Section 1. Rule 10.55.804, ARM is repealed. This Act is effective July 1, 1991.”

“The Board felt that it had the authority to promulgate the aforementioned rule pursuant to Article X, Section 9(3)(a), of the Montana Constitution of 1972, which provides:

There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as provided by law. Other duties of the board shall be provided by law.”

“Based on the above, the Court hereby enters its declaratory ruling as follows:

The Board of Public Education, pursuant to Article X, Section 9(3), of the Montana Constitution, is vested with constitutional rule-making authority. This provision is self-executing and independent of any power that is delegated to the Board by the Legislature. The Board’s rule mandating gifted and talented programs is within the purview of the Board’s constitutional power of general supervision pursuant to Article X, Section 9(3), of the Montana Constitution. House Bill 116, to the extent that it interferes or conflicts with the Board’s constitutional rule-making power, is in violation of the separation of powers doctrine of Article III, Section 1, of the Montana Constitution, and is therefore invalid and of no further force or effect.”

Dated March 12, 1992

Hon. Jeffrey Sherlock, District Court Judge

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Since the declaratory judgement affirmed the Board’s constitutional rule-making authority in 1992, the Board has periodically reviewed and updated the administrative rules for gifted and talented education in the accreditation standards, for both K-12 schools and educator preparation programs in Montana. The impact of these updates to the Board’s accreditation standards for gifted and talented education over the years have been relatively modest for two very good reasons:

1. The Board of Public Education exercises general supervision over the education system and purposefully avoids adding overly proscriptive language to the accreditation standards out of respect for the constitutional authority of locally elected school trustees to “supervise and control” local school district programs per Article X, Section 8, of the Montana Constitution.

In developing accreditation standards, the Board carefully considers the potential economic and staffing impacts of new standards on schools of all sizes and locations across the state. Likewise, the Board accredits 10 educator preparation programs that are housed in public, private and tribal colleges in Montana. Our small educator preparation programs must meet the same accreditations standards as the flagship colleges in Bozeman and Missoula.

2. The Board is well aware that increasing requirements in the accreditation standards in an attempt to improve consistency and accountability for gifted and talented education outcomes, could result in unfunded state mandates that would be passed to the local school districts and teacher education programs. The Board is very cautious about adopting any accreditation standards that require additional personnel or financial resources and place new burdens on our education system.

Despite the challenges delineated above, the Board of Public Education and the Certification Standards and Practices Advisory Council share the Legislature's desire to improve the quality, consistency and accountability of gifted and talented education programs in Montana. The Board and CSPAC welcome the opportunity to work with the Legislature and our partners in P-12 and Post-Secondary education to review Montana's administrative rules and educator preparation program standards, to determine how these standards may be improved to better serve the gifted and talented students in our state.

The Board and CSPAC also believe now is an opportune time to study the administrative rules for gifted and talented education, as well as educator preparation standards from other states, in conjunction with a review of the educational resources, training and financial investments other states make in gifted and talented education programs. By working together, the Board, CSPAC, education advocates, parents and the Legislature can ensure that Montana's gifted and talented students are identified early in their education careers and provided with the best opportunities and pathways to develop their myriad of special talents.

Sincerely,



Sharon Carroll, Chair

Board of Public Education



Kelly Elder, Chair

Certification Standards and Practices Advisory Council