



3 of 3 DOCUMENTS

COLUMBIA FALLS Elem. School Dist. No. 6 and H.S. Dist. No. 6; EAST HELENA Elem. Dist. No. 9; HELENA Elem. Dist. No. 1 and H.S. Dist. No. 1; BILLINGS Elem. Dist. No. 2 and H.S. Dist. No. 2; WHITE SULPHUR SPRINGS Elem. Dist. No. 8 and H.S. Dist. No. 8; TROY Elem. Dist. No. 1 and H.S. Dist. No. 1; MEA-MFT; MONTANA SCHOOL BOARDS ASSOCIATION; MONTANA RURAL EDUCATION ASSOCIATION; SCHOOL ADMINISTRATORS OF MONTANA; ALAN & NANCY NICHOLSON; PETER & CHERYL MARCHI; MICHAEL & SUSAN NICOSIA, for themselves and as parents of their minor children, Plaintiffs, v. THE STATE OF MONTANA, Defendant.

Cause No. BDV-2002-528

FIRST JUDICIAL DISTRICT COURT OF MONTANA, LEWIS AND CLARK COUNTY

*2008 Mont. Dist. LEXIS 483***December 15, 2008, Decided**

PRIOR HISTORY: *Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257, 2005 Mont. LEXIS 79 (2005)*

CORE TERMS: funding, school districts, teacher, formula, at-risk, entitlement, budget, elementary, special education, educator, session, salary, gifted, talented, accreditation, appropriation, inflation, general fund, maximum, fiscal year, educationally, achievement, funded, appropriated, gap, estimate, isolated, enrollment, estimated, superintendent

JUDGES: [*1] JEFFREY M. SHERLOCK, District Court Judge.

OPINION BY: JEFFREY M. SHERLOCK**OPINION****FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

P1. This matter was heard September 22 through 26, 2008, and on October 22, 2008. Plaintiffs, except for Plaintiff Montana Rural Education Association (MREA), were represented by James P. Molloy and Brian K. Gallik. Richard Batterman represented MREA. Ali Bovingdon

and Anthony Johnstone represented Defendant State of Montana.

NOTICE TO THE CASUAL READER

P2. The casual reader is directed to page 48, which is a summary of this Court's decision.

BACKGROUND

P3. This constitutional challenge to Montana's school funding system originally came before this Court for trial from January 20 through February 4, 2004. On April 15, 2004, this Court entered its Findings of Fact, Conclusions of Law and Order. The case was appealed to the Montana Supreme Court, which issued a summary opinion on November 9, 2004. The supreme court issued its full opinion on March 22, 2005. *Columbia Falls Sch. Dist. v. State, 2005 MT 69, 326 Mont. 304, 109 P.3d 257.*

P4. Plaintiffs filed a motion for supplemental relief and order to show cause dated June 13, 2006, requesting that the Court set a show cause hearing [*2] on a date following the adjournment of the 2007 legislature. Following briefing, this Court issued its Order dated August 22, 2006, denying the motion as being premature.

P5. Plaintiffs filed a renewed motion for supplemental relief and an order to show cause dated February 5,

2008. Following briefing, the Court heard argument on the renewed motion on April 4, 2008. The Court issued its Order rejecting the State's mootness arguments and setting the matter for a hearing to determine whether supplemental relief should be granted and placed the burden of proof on Plaintiffs.

P6. In their pre-trial order, the parties set forth what they felt were the pertinent questions. Many of these questions concern this Court's interpreting statutes that were passed after this Court and the Montana Supreme Court ruled in this matter. This Court does not feel that the primary scope of this supplemental review should involve its interpretation of whether the legislature has complied with statutes that were enacted after its decision. In the view of this Court, if that were the scope of this case, then this would be a new proceeding and would not concern supplemental relief. By their motion dated February [*3] 5, 2008 in requesting supplemental relief, Plaintiffs request a declaration as to whether the State is complying with its constitutional obligations. The issue before the Court, then, is to what extent has the legislature complied with the order of the Montana Supreme Court in *Columbia Falls* and the earlier Order of this Court? This Court's answer is the same regardless of how the question is asked.

P7. The issues addressed by this Court and the Montana Supreme Court were:

P8. 1. Definition of a quality education.

P9. 2. The number of school districts budgeting at their maximum authority.

P10. 3. Problems with accreditation standards.

P11. 4. Problems attracting and retaining teachers.

P12. 5. Cutting of educational programs.

P13. 6. Deterioration of buildings.

P14. 7. Increasing competition over general fund dollars between special education and general education.

P15. 8. Lack of an inflationary provision in the school funding formula.

P16. 9. Whether the funding provided by the State relates to the needs of providing a quality education.

P17. 10. Failure to have a study to determine the costs of providing a quality education.

P18. 11. Ability to provide a quality education.

P19. 12. Implementation [*4] of *Article X, section 1(2), of the Montana Constitution*.

P20. 13. Declining share of the State's contribution to school districts.

P21. 14. Provision for at-risk and gifted students.

P22. The parties have agreed that two issues are no longer at issue. The parties agree that the legislature has properly defined the basic system of free quality public elementary and secondary schools, as codified at *Section 20-9-309(2), MCA*. Further, as will be noted in this document, the State has met its obligations under *Article X, section 1(2), of the Montana Constitution* by providing adequate funds for Indian Education for All Montana students.

FINDINGS OF FACT

Legislative Actions

1

1 Findings of Fact 1 through 8 are based on the parties' agreed facts in the PreHearing Order.

P23. 1. 2005 Regular Legislative Session _ General

a. In the 2004 regular session, the legislature enacted Senate Bill 152, which is now codified at *Section 20-9-309, MCA*.

i. *Subsection (2) of Section 20-9-309, MCA*, defines the "basic system of free quality public elementary and secondary schools."

ii. *Subsection (3) of Section 20-9-309, MCA*, identifies educationally relevant factors that the legislature, at a minimum, is to consider [*5] in developing a funding system for the basic system of free quality public elementary and secondary schools.

iii. *Subsection (4) of Section 20-9-309, MCA*, mandates that by July 1, 2007, the legislature was to establish a funding formula that satisfied several criteria set forth in the statute.

iv. *Subsection (3) of Section 20-9-309, MCA*, requires the legislature, at least every ten years, to authorize a study to reassess the sufficiency of the school funding formula.

b. The 2006 legislature amended the student count provisions of *Section 20-9-311, MCA*, to base a school district's average number belonging (ANB) count on the larger of the actual count or three-year historical average count. This provision is referred to as "ANB averaging."

c. In setting the appropriation levels for the "per-ANB" component of the school funding formula, the legislature increased the elementary per-ANB entitlement by \$ 250 and the high school per-ANB entitlement by \$ 100 above the inflationary adjustment provided for in *Section 20-9-326, MCA*.

P24. 2. 2005 Regular Legislative Session: Appropriations

a. Ongoing Appropriations

i. Based on the actions taken with respect to ANB averaging, adjustments in the Basic and [*6] per-ANB

entitlements, and inflationary adjustments, state funding for the Basic and per-ANB entitlements increased by the following amounts and percentages in fiscal year (FY) 2006 and FY 2007:

	\$ increase over prior FY	% increase over prior FY
FY 2006	\$ 21,569,864	6.61 %
FY 2007	\$ 3,133,560	0.9 %

(Ex. 22-08, l. 7.)

ii. In the 2005 regular session, the legislature increased state funding for special education block grants

and reimbursement for disproportionate costs by the following amounts and percentages for FY 2006 and 2007:

P25.

	\$ increase over prior FY	% increase over prior FY
FY 2006	\$ 1,831,141	5.7 %
FY 2007	\$ 780,634	2.3 %

(Ex. 22-08, l. 8.)

iii. The actions of the legislature in its regular session in 2005 resulted in the appropriations for general tax base

(GTB) aid that increased by the following amounts and percentages in FY 2006 and 2007:

	\$ increase over prior FY	% increase over prior FY
FY 2006	\$ 7,107,818	6.94 %
FY 2007	\$ 816,584	0.75 %

(Ex. 22-08, l. 9.)

iv. The legislature increased the appropriations to the facility reimbursement program to maintain the State's share at approximately 25 percent for the districts that qualify for the reimbursement program, at a 2007 biennial [*7] cost of approximately \$ 2 million in the ongoing appropriations for the K-12 budget.

v. The legislature appropriated approximately \$ 200,000 for the 2007 biennium for gifted and talented grants to school districts and the creation of a part-time position within the Office of Public Instruction (OPI) to assist school districts with gifted and talented programs.

b. One-Time Only Appropriations

i. In its regular session in 2005, the legislature provided approximately \$ 1.9 million in a one-time only appropriation for the facility reimbursement program.

ii. The legislature appropriated approximately \$ 3.4 million for the 2007 biennium to provide funding for school districts for purposes of implementing Indian Education for All programs.

P26. 3. Quality Schools Interim Committee

P27. In order to fulfill the requirements of *Section 20-9-309, MCA*, the 2005 legislature enacted legislation (Senate Bill 525) that created the Quality Schools Interim Committee (QSIC).

P28. 4. 2005 Special Session _ General

a. The legislature met in special session on December 14 and 15, 2005.

b. The legislature enacted legislation that created four new components to be included in the funding formula for school districts' [*8] general fund budgets:

i. Quality Educator payment (*Section 20-9-327, MCA*);

ii. At-Risk Student payment (*Section 20-9-328, MCA*);

iii. American Indian Achievement Gap payment (*Section 20-9-330, MCA*); and

iv. Indian Education for All payment (*Section 20-9-329, MCA*).

c. Each of the four new formula components are funded entirely with State funds and are included in a school district's BASE and maximum budget amounts for its general fund budget.

d. The legislature also enacted legislation to commission the Department of Administration to pay for an inventory and assessment of public school facilities throughout the State, with a deadline of July 1, 2008 for the completion of inventory and assessment.

P29. 5. 2005 Special Session _ Appropriations

a. Ongoing Appropriations

i. In the December 2005 special session, the legislature retained the increases in the Basic and per-ANB

entitlements, and the ANB averaging provisions by removing "sunset" provisions that had been included in the legislation enacted in the 2005 regular session.

ii. The legislature based funding for the new Quality Educator payment upon a \$ 2,000 payment for each full-time equivalent licensed educator and other qualified professionals [*9] employed by a school district. This resulted in an appropriation of approximately \$ 24.4 million for FY 2007, the first year of funding for the new Quality Educator payment.

iii. The legislature appropriated \$ 5 million to fund the new At-Risk payment for FY 2007.

iv. The legislature based funding for the new American Indian Achievement Gap payment upon a \$ 200 payment for each American Indian enrolled in a school district. This resulted in an appropriation of approximately \$ 3.28 million for FY 2007.

v. The legislature appropriated \$ 3 million to fund the Indian Education for All payment for FY 2007.

vi. Based on the actions of the legislature in its regular and special sessions in 2005, total State aid for school districts' general fund budgets increased by the following amounts and percentages in FY 2006 and FY 2007:

	\$ increase over prior FY	% increase over prior FY
FY 2006	\$ 30,508,732	6.6 %
FY 2007	\$ 40,368,313	8.2 %

(Ex. 22-08, ll. 16, 17.)

b. One-Time Only Appropriations

i. In the 2005 special session, the legislature appropriated \$ 7 million to fund start-up costs for implementing Indian Education for All in school districts and at OPI.

ii. The legislature appropriated \$ 2.5 million [*10] to fund the facilities inventory and assessment.

iii. The legislature appropriated \$ 23 million for weatherization and deferred maintenance on the basis of \$ 1,000 per district and \$ 150 per-ANB.

iv. The legislature appropriated \$ 2 million for energy costs relief to be used by school district for utilities or transportation costs only.

P30. 6. 2007 Legislature _ General

a. The regular session of the 2007 legislature adjourned without passing a budget and then reconvened in special session from May 10 through 15, 2007.

b. In special session, the 2007 legislature enacted legislation to provide full-time per-ANB funding for kindergarten children.

c. The legislature created a new middle school basic entitlement for school districts that operate an accredited middle school program. The new entitlement was "revenue neutral," and was designed to assure that accredited middle school programs did not incur a reduction in funding as a result of the addition of students in full-time kindergarten and the effect of that addition on the pro rata formula for middle school programs.

d. The legislature changed the statewide GTB ratio from 175 percent to 193 percent.

P31. 7. 2007 Special Session

a. Ongoing [*11] Appropriations

i. Based on its statutory formula, the 2007 legislature provided inflationary adjustments in the Basic and

per-ANB entitlement for the 2009 biennium (covering fiscal years 2008 and 2009).

ii. For the Quality Educator payment, the legislature increased the per-educator payment to \$ 3,036 for FY 2008 and \$ 3,042 for FY 2009.

iii. For the At-Risk payment, the legislature retained the same level of funding as that provided for FY 2007, resulting in appropriations of \$ 5 million for FY 2008 and \$ 5 million for FY 2009.

iv. For the American Indian Achievement Gap payment, the legislature retained the same level of funding as that provided for FY 2007, resulting in appropriations of

approximately \$ 3.28 million for FY 2008 and \$ 3.28 million for FY 2009.

v. For the Indian Education for All component, the legislature retained the same level of funding as that provided for FY 2007, resulting in appropriations of approximately \$ 3 million for FY 2008 and \$ 3 million for FY 2009.

vi. To fund the State's share of the cost of full-time kindergarten, the legislature appropriated approximately \$ 13.1 million for FY 2007 and \$ 15.1 million for FY 2009.

vii. As a result of the actions the [*12] 2007 legislature, ongoing State aid for school districts' general fund budgets increased by the following amounts and percentages in FY 2008 and FY 2009 (projected):

	FY 2008	FY 2009
DSA \$ Change % Change	\$ 15,790,1984.5 %	-1 %
Special Education \$ %	\$ 963,1732.8 %	\$ 1,076,8603 %
GTB Aid \$ %	\$ 17,121,41315.5 %	\$ 128,5431 %
Quality Educator \$ %	\$ 13,588,92655.8 %	\$ 74,9950.2 %
Achievement Gap \$ %	\$ 14,2000.4 %	0 %
Indian Education \$ %	\$ 63,9382.1 %	-4.5 %
At-Risk \$ %	0 %	\$ 00 %
Kindergarten \$ %	NANA	\$ 1,975,61015 %
Total State Aid \$ %	\$ 47,541,7388.9 %	\$ 13,228,8582.3 %

P32. (Ex. 22-08, II. 7 - 17.)

b. One-Time Only Appropriations

i. The legislature appropriated \$ 30 million to be distributed to school districts in FY 2008 for capital improvement and maintenance.

ii. The legislature appropriated \$ 10 million to provide funding for start-up costs for full-time kindergarten.

iii. The legislature appropriated \$ 1 million for FY 2008 and \$ 1 million for FY 2009 for grants to school districts for gifted and talented programs.

iv. The legislature appropriated \$ 1.5 million for FY 2008 and \$ 1.5 million for FY 2009 for Indian Education for All payments.

Summary

P33. 8. As a result of legislative actions [*13] in 2005 and 2007, the funding formula has been structurally modified by:

a. ANB averaging.

b. An initial decrease in the dollar difference between per-ANB entitlement at the elementary and high school levels, which has resulted in the per-ANB entitlement for elementary schools increasing from 75 percent to 78 percent of the high school per-ANB amount.

c. The new components for Quality Educator, At-Risk, American Indian Achievement Gap, and Indian Education for All.

d. Elimination of the maximum budget "soft-caps" that required a district with declining enrollment to reduce to the maximum budget within five years.

e. Increase of the GTB ratio from 175 percent to 193 percent.

f. The following table summarizes the amounts of the basic entitlement for each fiscal year in the past three biennia, with the percentage change from the prior fiscal year:

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	FY 04	FY 05	FY 06
Elementary % Change	\$ 19,4561.1 %	\$ 19,8592.1 %	\$ 20,2752.1 %
Middle School % Change	NA	NA	NA
High School % Change	\$ 216,1711.1 %	\$ 220,6462.1 %	\$ 225,2732.1 %

	FY 07	FY 08	FY 09
Elementary % Change	\$ 20,7182.2 %	\$ 21,2902.8 %	\$ 21,9223 %
Middle School % Change	NA	\$ 60,275NA	\$ 62,0833 %
High School % Change	\$ 230,1992.2 %	\$ 236,5522.8 %	\$ 243,6493 %

P34. Source: [*14] *Legislative Budget Analysis 2009 Biennium, p. 218; Section 20-9-306, MCA.*

g. The following table summarizes the amounts of the per-ANB entitlements (without including the decrements

of .20 per elementary ANB up to 1,000 ANB, and .50 per high school ANB up to 800 ANB) for each fiscal year in the past three biennia, with the percentage change from the previous fiscal year:

	FY 04	FY 05	FY 06
Elementary % Change	\$ 3,9491.1 %	\$ 4,0312.1 %	\$ 4,3668.3 %
High School % Change	\$ 5,2621.1 %	\$ 5,3712.1 %	\$ 5,5844 %

	FY 07	FY 08	FY 09
Elementary % Change	\$ 4,4562.1 %	\$ 4,5792.8 %	\$ 4,7163 %
High School % Change	\$ 5,7042.1 %	\$ 5,8612.8 %	\$ 6,0373 %

P35. Source: *Legislative Budget Analysis 2009 Biennium, p. 218; Section 20-9-306, MCA.*

h. The following table summarizes the amounts appropriated for each of the four new components, since their inception in FY 2007:

	FY 06	FY 07	FY 08	FY 09
Quality Educator: Per:	NA	\$ 2,000	\$ 3,036	\$ 3,042
Total:		\$ 24.4 M	\$ 37.9 M	\$ 38 M
At-Risk	NA	\$ 5 M	\$ 5 M	\$ 5 M
American Indian Achievement				
Gap	NA	\$ 3.28 M	\$ 3.28 M	\$ 3.28 M
Indian Education for All	NA	\$ 3 M	\$ 3 M	\$ 3 M

i. The following table summarizes the total amounts of State aid for school districts' general fund budgets for each fiscal year [*15] in the past three biennia:

	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Total State Aid	\$ 456.5 M	\$ 460.6 M	\$ 491.1 M	\$ 531.5 M	\$ 579.1 M	\$ 592.3 M
Change- State Aid	\$ 1 M	\$ 4.2 M	\$ 30.5 M	\$ 40.4 M	\$ 47.5 M	\$ 13.2
% Change	0.2 %	0.9 %	6.6 %	8.2 %	8.9 %	2.3 %

P36. (Ex. 22-08, ll. 15 - 17.)

Quality Schools Interim Committee

P37. 9. The 2005 legislature created the Joint Select Committee on Education Funding, whose purpose was to develop an education funding formula based on the definition and the educationally relevant factors in Senate Bill 152. The select committee met three to four days every week through the 2005 legislative session. It identified several funding components, but needed more time to continue its work.

P38. 10. The select committee proposed, the legislature adopted, and the Governor signed into law Senate Bill 525, creating the Quality Schools Interim Committee (QSIC), in April 2005. QSIC's duties included assessing the educational needs of Montana students, determining the costs of a basic system of quality schools, and constructing a funding formula that met the requirements of Senate Bill 152. The interim committee was to complete its tasks by December 1, 2005, in anticipation of [*16] a special legislative session in December to address school funding.

P39. 11. QSIC was composed of eleven members, eight voting legislators and three non-voting representatives: Senator Dave Lewis, Senator Don Ryan; Senator Bob Ryan, Senator Jon Tester, Representative Bill Glaser, Representative Monica Lindeen, Representative Holly Raser, Representative Pat Wagman, Superintendent of Public Instruction Linda McCulloch, Chair of the Board of Public Education Dr. Kirk Miller, and Budget Director David Ewer (for the Governor).

P40. 12. QSIC was staffed by Connie Erickson, research analyst; Christopher Lohse, research analyst; Eddy McClure, attorney; Jim Standaert, fiscal analyst; and Fong Hom, secretary. In addition to the legislative staff, QSIC created a working group that included: Mike Burke, Amy Carlson, and Nancy Hall of the Governor's Office of Budget and Program Planning; Joan Anderson and Madalyn Quinlan of the Office of Public Instruction; Savage Public Schools Superintendent John McNeil; Helena Public Schools Superintendent Bruce Messinger; Poplar Public Schools Superintendent Ivan Small; and Kathy Fabiano for the Montana State Senate.

P41. 13. Between May 4, 2005 and December [*17] 5, 2005, QSIC held seventeen meetings, including two two-day meetings and one three-day meeting. In addition, the working group met on an almost weekly basis during that same period. QSIC's charge was to "assess the educational needs of children and determine the costs of providing the basic system of free quality public elementary and secondary schools" through studies authorized by or conducted by the committee and existing studies by reputable and reliable experts. In the end, QSIC received reports from more than a dozen expert consultants and legislative staff, and took testimony and exhibits from members of the public and education community, including Plaintiffs.

P42. 14. QSIC contracted with several professional consultants to assist in its work, including R.C. Wood & Associates, a school finance consultancy, that, in turn, formed a team of national and Montana education experts. R.C. Wood and others conducted and presented several different studies for QSIC. The full R.C. Wood report is contained in Defendants' Exhibit 740 and is dated October 15, 2005. The study referenced four types of studies that are generally accepted to determine the cost of educational needs. Those are: [*18] statistical analysis, evidence-based analysis, successful schools analysis, and professional judgment analysis.

P43. 15. Dr. Donald Robson of the University of Montana led a needs assessment based on a survey of 83 percent of the school districts in the state. The assessment led to findings of needs in several areas, particularly: the American Indian student achievement gap; Indian Education for All; a favorable school climate; compensation to recruit and retain qualified teachers; a facility condition inventory; elimination of the three-mile restriction on school transportation; and student assessment. (Ex. 721.)

P44. 16. Based on the needs assessment, Dr. Robson and Dr. Merle Farrier of the University of Montana conducted a statistical analysis that found the requirements of Senate Bill 152 could be met for the 2004-05 school year with approximately \$ 34 million in increased costs, plus an unspecified amount for recruitment and retention of qualified educators.

P45. 17. R.C. Wood conducted an evidence-based analysis to determine the cost of the educational strategies

and concepts that appear to be most successful in improving achievement in the public elementary and secondary schools. [*19] The analysis identified several such educational strategies: preschool, small schools, reduced class size, full-time building principals, family outreach, professional development, technology, and trained teachers. The analysis found approximately \$ 20.6 million of increased costs, plus the cost of recruiting and retaining trained teachers. The analysis also recommended that these new programs be implemented on a pilot basis so they may be evaluated.

P46. 18. R.C. Wood also conducted a successful schools analysis based on all public schools with regular accreditation status that met certain student achievement and graduation benchmarks. A wide variety of analyses to compare average per-pupil expenditures of successful and non-successful schools found a range of \$ 0 to approximately \$ 96 million of increased costs above overall expenditures for public schools in Montana, with most estimates on the lower end of the range.

P47. 19. R.C. Wood, with assistance of Montana education experts, also surveyed 122 school districts and convened an expert panel for a professional judgment analysis which built on the work of the 2002 Augenblick & Myers report presented at trial. The study noted that [*20] the professional judgment approach results in the highest cost estimate of the four cost analyses, and that the connection between resources and outcomes proposed in the professional judgment analysis is, at best, speculative. That analysis suggested approximately \$ 329 million in increased costs.

P48. 20. The Court notes that at the hearing in 2004, it received a professional judgment study prepared by Augenblick & Myers. (Ex. 702.) The Court would have to agree with Defendants' expert Richard Seder, who indicated that there is little or no consensus in the education community around a preferred method to determine costs given the wide variance in estimates generated. At page 18 of Exhibit 813, Seder notes that costing-out studies were done in California, yielding cost estimates ranging from \$ 1.5 billion to \$ 1.5 trillion in additional money. It appears that none of these tests is particularly scientific or reliable in that there is little or no ability to come to similar answers when the exercise is repeated. For our purposes, the results of the statistical analysis, evidence-based analysis, and successful schools analysis are within some proximity to each other.

P49. 21. Joyce Silverthorne, [*21] education director for Confederated Salish and Kootenai Tribes, convened an additional expert panel to analyze the education of American Indian students. This panel focused on closing the American Indian student achievement gap. The study noted that no other state has developed a gen-

eral model for closing the American Indian student achievement gap, and that costs of closing the gap could not be determined. It recommended several school and community pilot programs that ranged in cost from \$ 3.6 to \$ 5.1 million, and total \$ 15.7 million for all the pilot programs.

P50. 22. Christiana Stoddard and Douglas Young of Montana State University studied recruitment, retention, and salaries of teachers and other school staff. Their findings included: Montana teacher salaries have decreased relative to the national average, but that did not significantly change the fraction of Montana schools that report difficulty hiring; more isolated school districts tend to have the most severe recruitment and retention problems; and the pay gap between Montana and other states is similar in the school and non-school sectors. In general, they found that raising salaries for high- and medium-salary districts [*22] would not reduce any recruitment and retention problems that a district might have. Recruitment and retention problems appear to be concentrated in districts that are rural and isolated and pay lower salaries. Stoddard and Young cited the unavailability of data at the district level as a limitation of their study. (Ex. 738.) At page 2 of their report, Stoddard and Young noted "Montana's problems with turnover, difficulty hiring, and uncertified teachers and teaching out of field are all at or below national averages."

P51. 23. Michael Griffith, program director for the Education Finance Initiative of Education Commission of the States, studied the issues of small and isolated schools and districts. That study found that the disproportionately high number of small schools in Montana may be related to the State's current funding structure, in particular its basic entitlement. Griffith recommended lowering the high school basic entitlement to a number closer to the elementary entitlement; providing a financial incentive for voluntary school district consolidation; and created an "isolated school" entitlement that provides a large basic entitlement guarantee for small schools that meet [*23] the State's definition of isolated.

P52. 24. Mike Burke of the Office of Budget and Program Planning reviewed school facilities. The review found that Montana facility expenditures appear reasonable and adequate for schools and compare closely to or above what schools spend nationally and regionally. However, the review also noted that the Department of Administration's Architecture and Engineering Division estimated higher per-square-foot costs in its review of the state-operated Montana School for the Deaf and Blind. It found the School Facilities Reimbursement Program has been successful in allowing districts with low taxable value to improve facilities (although it lacks a means to determine if major maintenance needs are being met). Burke recommended several options to determine future

facilities funding, including a facility assessment that would cost an estimated minimum of \$ 2 million. (Ex. 724.)

P53. 25. Christopher Lohse of the legislature's Office of Research and Policy Analysis, performed several studies of at-risk funding, both for American Indian students and at-risk students generally. He developed a detailed index to estimate the numbers of at-risk students in each district [*24] and proposed adding 10 percent to a district's per-student component, so that each district could develop a comprehensive program for meeting the needs of at-risk students, plus an additional amount for districts with worse at-risk indices. He estimated the costs of the at-risk weighting mechanism to be \$ 7,485,091, and also estimated costs of a grant mechanism to be \$ 3,410,846. (Ex. 748.)

P54. 26. QSIC and its staff also studied health benefits, capital and risk management, options for restructuring revenues, and taxpayer equity issues.

Proposed Funding Components and Cost Estimates

P55. 27. Based on the work of the Joint Select Committee from the 2005 legislative session and the professional consultants, QSIC defined nine components that would comprise the new school funding formula. The components were directly related to the definition of a "basic system of free quality public elementary and secondary schools" contained in *Section 20-9-309, MCA*.

P56. 28. The components were: per-student; classroom; accredited program; building operations and maintenance; special education; transportation; capital projects; school facility payment/debt service; and Indian Education for All. The per-student [*25] and classroom components were further divided into six categories of elementary school sizes (ranging from fewer than 41 ANB to more than 2,500 ANB) and five classes of high school sizes (ranging from fewer than 75 ANB to more than 1,250).

P57. 29. QSIC estimated costs through a variation of the resource cost methodology, a recognized school funding methodology that identifies the education resources envisioned to deliver the program and then estimates the prices of those resources. QSIC identified the resources needed in each of the components and estimated the resources/prices of those components based on the most recent known expenditure data. With the exception of the capital projects and the Indian Education for All components, QSIC adopted a base level funding for each component (fiscal year 2004 expenditures inflated to fiscal year 2007) and then adjusted the funding based on the estimated costs of specific policy decisions.

P58. 30. **Per-Student Component.** The per-student component funded the costs of providing textbooks, supplies, and extracurricular activities, minus one-half of the extra-curricular athletics, for each student in the district. It ranged from \$ 145 to \$ 558 for [*26] small and large elementary districts, respectively, and from \$ 369 to \$ 1,442 for small and large high schools, respectively. Those amounts reflected the actual costs incurred and reported by districts for these expenditures.

P59. 31. The per-student component also added 10 percent to per-student funding for at-risk students based on Christopher Lohse's risk category index that included the following district factors: percentage of American Indian students, percentage of students eligible for free or reduced-price lunch, percentage of migrant students, percentage of limited English proficient students, the educational attainment of women, and the per-capita income.

P60. 32. The total estimated costs for the per-student component were \$ 62,480,293, which included the estimated average costs of the per-student component for the school district size categories, plus \$ 7,735,553 for at-risk funding under the 10 percent weighting mechanism, including approximately two-thirds general student at-risk funding and one-third American Indian at-risk funding.

P61. 33. **Classroom Component.** The classroom component funded the costs in the classroom, namely teachers and paraprofessionals. The component [*27] included salaries, benefits, health insurance, professional development, and an allowance for substitute teachers, based on class size accreditation standards, district size, and total enrollment in each sized district. The component reflected the actual costs incurred and reported by districts for those expenditures. In order to reflect the additional instruction time necessary for certain students, the classroom calculation also included an ANB weighting factor for gifted and talented students and an ANB weighting factor for at-risk students. QSIC added \$ 4,000 to the inflation-adjusted salary calculated per teacher to provide for improved recruitment and retention at a salary level higher than the regional average.

P62. 34. The total estimated costs for the classroom component were \$ 510,363,745, which included the estimated classroom personnel costs of the school district size categories at calculated student-teacher ratios, plus \$ 32.9 million for a \$ 4,000 per-teacher payment, \$ 2,460,000 for the \$ 800 professional judgment costs of professional development, and \$ 5,642,983 million to provide health insurance at the cost of the State employees' health insurance benefit.

P63. 35. [*28] **Accredited Program Component.** The accredited program component funded the school district costs related to the district central office and school-level administration and support services, includ-

ing superintendents, principals, curriculum and program coordinators, librarians, counselors, and other district and school-level non-classroom staff. The component reflected the actual costs incurred and reported by the districts for these expenditures. The component also included professional development and insurance costs to the salaries and benefits for certified and classified staff, and a \$ 4,000 payment for librarian and counselor salaries.

P64. 36. The total estimated costs for the accredited program component were \$ 220,738,018, which included the estimated staff costs at each school district based on the accreditation standards and district enrollment, plus \$ 4,240,000 for the professional development, insurance, and librarian and counselor salary costs.

P65. 37. **Building Operations and Maintenance Component.** The building operations and maintenance component funded those activities concerned with keeping a school's physical plan open, comfortable, and safe for use, and for keeping [*29] the grounds, buildings, and equipment in working condition. Expenditures for operations and maintenance include supervision of plan services, operations of buildings, care and upkeep of grounds, care and upkeep of buildings, vehicle operations and maintenance, and security services. The component reflected the actual costs incurred and reported by the districts for these expenditures.

P66. 38. The total estimated costs for the operations and maintenance component were \$ 106,048,143, which included the average actual expenditures for elementary and high school districts, plus \$ 15,884,421 to bring operations and maintenance funding up to the \$ 4.50 per-squarefoot based on the State's long range building program estimate for the Montana School for the Deaf and Blind and national averages for square footage per elementary and high school students (137 square feet and 178 square feet, respectively).

P67. 39. **Special Education Component.** The special education component funded the cost of providing education and related services to children with disabilities. The component includes personnel costs, supplies, textbooks, equipment, assistive technology, contracted services, and travel costs. [*30] The component reflected the actual costs incurred and reported by the districts for these expenditures.

P68. 40. The total estimated costs for the special education component were \$ 66,825,252, which included the preexisting formula of instructional block grants and related services block grants to districts based on enrollment and partial reimbursement for disproportionately high special education costs, plus \$ 3,215,895 for a per-educator entitlement of \$ 4,000, \$ 6,378 per educator for health insurance, and \$ 800 per educator for professional development.

P69. 41. **Capital Project Component.** The capital projects component funded the State's share of the costs for capital outlay, including certain costs related to buildings and major capital assets. Expenditures in this component included land acquisition and improvement, architecture and engineering services, education-specific development, building acquisition and construction, and building improvement.

P70. 42. Because there was a lack of data at the state level as to the number and condition of school district facilities across Montana, QSIC recommended that a facilities condition inventory be conducted or administered by the Architecture [*31] and Engineering Division of the Department of Administration. QSIC recommended an appropriation of \$ 2 million to conduct the inventory, based on the cost estimate in Burke's facilities report.

P71. 43. To address the immediate needs of school districts, QSIC recommended a one-time only appropriation of \$ 23 million to be used for deferred maintenance and weatherization.

P72. 44. **Debt Service Component.** The debt service component funded the State's share of the principal and interest on school district general obligation bonds.

P73. 45. The total estimated costs for the debt service component were \$ 39,375,797, which included the preexisting level and formula for distributing the State's funding in support of bond payments for school facilities (purchase and construction) in the debt service fund.

P74. 46. **Total Cost Estimate.** In total, QSIC estimated costs of \$ 875,241,336 in fiscal year 2007 for the "New General Fund" components (per-student, classroom, accredited program, operations and maintenance, special education, and Indian Education for All, or \$ 987,815,044 taking into account QSIC's recommended removal of the retirement fund. This amounted to per-student spending of \$ 7,146. [*32] Transportation (\$ 45,379,948) and debt service (\$ 39,375,797) components were retained in their preexisting amounts. (See Ex. 751 for a summary of QSIC's work as of Nov. 14, 2005.)

P75. 47. Among other documents prepared in and used by QSIC in the process are the following: Exhibit 728 _ accredited entitlement; Exhibit 729 _ operations and maintenance; Exhibit 730 _ basic entitlement; Exhibit 732 _ transportation; Exhibit 737 _ teacher ratios; Exhibit 741 _ per-student entitlements; Exhibit 755 _ at-risk amounts in the per-student component; Exhibit 743 _ comparing teacher salaries; Exhibit 745 _ special education entitlement; Exhibit 746 _ capital projects component; and Exhibit 749. According to Nancy Hall, the aforementioned documents were all used by QSIC to figure costs of the associated component.

P76. 48. It appears that certain members of the education community turned against the contemplated overhaul of funding components proposed by QSIC. This is especially troubling to the Court, since the State has been faulted for not changing the funding formula. For example, Exhibit 727 is a letter from Plaintiffs dated September 21, 2005. In it, it is stated "[i]t is not necessary that [*33] the existing distribution formula be entirely abandoned in order to comply with the Court decision."

P77. 49. QSIC met on December 5, 2005. Its recommendations were contained in a draft bill known as LC0001. (Ex. 757.) The draft bill was not adopted. After learning that the Governor was to call a special session, the committee reconvened and unanimously voted to adjourn.

P78. 50. Plaintiffs seem to suggest that the efforts of QSIC, although substantial, do not provide a "costing out" of the cost of education. This Court disagrees. Although QSIC did not adopt a proposed bill for the legislature, the work it did and the various studies presented to it, do present a reasonable estimate of the cost of education in Montana.

What the Legislature Did

P79. 51. **Inflation.** Pursuant to *Section 20-9-326, MCA*, the legislature requires the Superintendent of Public Instruction to determine the inflation factor for the basic entitlement and per-ANB entitlement in each fiscal year. Inflation is capped at 3 percent, but this 3 percent seems to be based on the historical inflation rate since 1991 of 2.7 percent. A problem that arises with this portion of the funding system is that the legislature must estimate [*34] inflation for school budgets adopted many months later. For example, the 2009 regular session of the Montana legislature will fund school district budgets adopted in 2010 and 2011. Clearly this action by the legislature addresses this Court's earlier Order about the previous lack of any automatic inflation adjustment at all.

P80. 52. Exhibit 784 shows State appropriations for K-12 for fiscal year 2002 through 2009. During that time, State aid, excluding one-time only money, has increased 25.8 percent, or 8 percent above inflation. Further, Exhibit 821 shows State funding for K-12 education from 1991 through 2007, and shows that actual State spending has exceeded inflation. This does include one-time only expenditures. To counter this, Plaintiffs have presented Exhibit 554, which excludes one-time only money and purports to show that actual State spending has fallen behind inflation.

P81. 53. While these dueling charts are interesting, they merely point out a source of discomfort to this Court. It appears, to some degree, that the very complex numbers involved in this case can be modified to reflect a desired

outcome. Variables include what rate of inflation one uses, whether one uses [*35] all State funding or excludes one-time only money, and so on. This Court is unsure which chart or graph is more accurate. The nature of these dueling charts causes the Court to question many of the statistics contained therein.

P82. 54. Although current inflation has nearly doubled with a 2.3 percent increase not seen in nearly three decades, this unusual price spike is a departure from the historical trend for which a legislature that met in spring of 2007 cannot be held accountable. The volatility in actual inflation cannot be smoothed in a biennial legislative cycle without some years falling behind actual inflation and, equally important, some years outpacing actual inflation. In these circumstances, districts' ability to earmark an operating reserve of 10 percent each year and draw on other fund balances, enables them to respond to spikes in actual inflation during the biennium.

P83. 55. The 2005 special session provided a quality educator payment of \$ 2,000 for each fulltime equivalent. This was increased in the 2007 special session to \$ 3,036 for FY 2008 and to \$ 3,042 for FY 2009. In their post-hearing memorandum, Plaintiffs complain that the legislature increased the quality [*36] educator payment by substantially more than inflation from 2007 to 2008, but then by only 0.2 percent from 2008 to 2009. The quality educator payment went up by almost 50 percent from 2007 to 2008. It is true that the increase from 2008 to 2009 is minor. However, one could also argue that the very generous increase from 2007 to 2008 was far in excess of any inflationary standard, and perhaps the State should be given some credit for many future years for far exceeding inflation with this increase.

P84. 56. It is true that when funding levels were being determined for the basic and per-ANB entitlements for 2007 (to apply to 2008 and 2009), the computation set forth resulted in an inflation adjustment in excess of 3 percent, but the adjustment was automatically capped at 3 percent because of the statute. (J. Standaert Test.) During the 2007 session, the legislature did not inflation adjust any of the four new components. Further, funding for the at-risk and American Indian Achievement Gap remain the same for 2008 and 2009 as they were originally established in 2007. Although these findings do reflect some problems with the current inflationary adjustment provided by the State, it must [*37] be also found that having an automatic inflationary adjustment as currently provided by the legislature is a dramatic improvement of the situation earlier found by this Court in 2004.

P85. 57. **Buildings and Capital Investment.** At Finding of Facts 132 through 135 of this Court's earlier Order, the Court detailed various deficiencies related to school buildings in Montana. As noted earlier, the legis-

lature appropriated \$ 30 million to be distributed to school districts in FY 2008 for capital improvements and maintenance. The money was for deposit in the miscellaneous programs fund for capital investment and deferred maintenance, which includes the purchase of textbooks and classroom equipment necessary to provide an accredited program.

P86. 58. The Court has already referred to Michael Burke's final report on school facilities presented to QSIC on September 1, 2005. (Ex. 724.) As a result of QSIC process, the 2005 special session appropriated approximately \$ 2 million for a facility inventory. This figure comes from page 22 of Exhibit 724, where Burke suggests approximately \$ 1.9 million for his facility inventory. Also, please refer to Exhibit 751, wherein QSIC recommended \$ 2 million [*38] for a study of the State's facilities. This investigation had some 42 inspectors visiting 240 towns throughout Montana. These inspectors looked through some 2,100 buildings. Prior to this, there was no real information on the condition of the total square footage of Montana's schools. This is clearly an example of the use of a study to support the cost of a certain project. The study found that 95 percent of school facilities were in good or fair condition. Further, the study, which concluded in April 2008, provided detailed cost estimates for each district by deficiency area. The 2007 special session of the Montana legislature set up \$ 40 million in a school facility improvement account to be distributed by the 2009 legislature based on the report just mentioned.

P87. 59. Further, the 2005 legislature appropriated \$ 23 million to school districts for weatherization and deferred maintenance. Again, reference to Exhibit 751, under item 8 - capital projects, shows this \$ 23 million cost allocation. This again shows the legislature using QSIC's cost estimate to fund Montana schools on an educationally relevant basis.

P88. 60. It is true that these payments are one-time payments, but the [*39] Court recognizes them as an appropriate response to immediate capital needs within the overall school funding formula.

P89. 61. The legislature funded a one-time energy cost relief payment of \$ 2 million for facility and transportation energy costs, distributed on a per-ANB basis. This payment reflected recent increases in energy costs.

P90. 62. **Special Needs and At-Risk Students.** The legislature funded the creation of six curriculum specialists with the Office of Public Instruction to help school districts develop programs. These specialists help address the educationally relevant needs of at-risk students in isolated schools in districts that do not employ dedicated curriculum development staff. According to Madalyn Quinlan, the cost of these six curriculum specialists is approximately \$ 900,000. (See Ex. 790.)

P91. 63. The legislature added full-time kindergarten and three new State-funded components for "educational programs to provide for students with special needs." *Section 20-9-309(2)(b), MCA.* The legislature funded full-time kindergarten on an equal basis with other grades. *Section 20-9-311(4)(d), MCA.* The funding included \$ 10 million for start-up costs based on the cost estimates [*40] of a focus group of five school districts, four of whom had implemented full-time kindergarten. Full-day versus half-day programs is an effective way to reduce the number of children who are held back a grade or referred to special education programs. In addition, full-day kindergarten particularly benefits disadvantaged students and is effective in reducing achievement gaps between students of different economic and racial groups. The state-wide full-time kindergarten program addressed the educationally relevant needs of all categories of special needs students. All witnesses who testified stated that full-time kindergarten is very effective in addressing the needs of at-risk students.

P92. 64. Ninety-two percent of eligible Montana students are expected to enroll in full-time kindergarten this year, up from 23 percent in 2007. While it has been in place for only one year statewide, full-time kindergarten is an important strategy for addressing the needs of special needs children.

P93. 65. Since 2003, Montana school districts have hired 125 (1 percent) more full-time equivalent teachers, while enrollment has decreased by 6,250 (4 percent). Montana public schools' pupil-teacher ratio [*41] is lower now than at any time in the past decade and is significantly lower than most states in the region. Average class sizes in Montana are smaller than every state in the region in high schools, and smaller than all but the Dakotas in elementary schools. As the R.C. Wood study and others have recognized, these small class sizes are an important strategy for addressing the needs of special needs students.

P94. 66. Student achievement by students in at-risk groups has increased every year since 2004. American Indian student proficiency has increased by more than 20 percent in reading and 10 percent in math. Reading score proficiency has increased by 20 percent and has doubled for special education and limited English proficient students. Math score proficiency also has increased for all special needs groups.

P95. 67. The legislature funded two complementary payments targeted to the needs of at-risk students. The at-risk student payment allocates supplemental funds to districts based on the Title I formula (*Section 20-9-328, MCA*), and the American Indian Achievement Gap component allocates an additional payment for American Indian students. *Section 20-9-330, MCA.* The dual pay-

ments address [*42] the dual achievement gaps that exist between at-risk students and students in general, and between American Indian students and at-risk students in general. American Indian students also make up most of the limited English proficient student population that suffers from an even greater achievement gap than American Indian students in general. Under this formula, districts serving American Indians who are living in poverty receive funds from both sources recognizing the educationally relevant needs of these students.

P96. 68. The total amount allocated for these components is \$ 8,281,200 annually, \$ 5 million for general at-risk, and the balance for the American Indian Achievement Gap, which is higher than both QSIC's \$ 7,735,553 recommendation (see Ex. 751) for at-risk funding and the Lohse study's similar cost estimate. The dual components reflect QSIC's weighting of American Indian students in a separate component at half the total of the general at-risk component. For both of these at-risk components, the legislature provided for review in two years of the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk and American Indian students, at [*43] which time the payments can be recalibrated based on the evidence. *Sections 20-9-328(3), -330(4), MCA.*

P97. 69. In addition to the American Indian Achievement Gap component, the legislature provided \$ 1,665,570 of ongoing funding for the Indian Education Division of the Office of Public Instruction, where bilingual and Indian education and achievement specialists assist school districts in providing services to American Indian students.

P98. 70. The legislature included in the quality educator payment, discussed in detail below, several areas of special needs area teachers beyond licensed educators in the regular classroom setting, including: all holders of an educator license, nurses, nutritionists, physical therapists, occupational therapists, speech pathologists, audiologists, psychologists, social workers, and professional counselors. *Section 20-9-327(3)(b), MCA.* These payments reflect QSIC's recommendation to fund special education teachers on the same per-educator basis as other teachers, and amount to more than \$ 3 million for special education alone (QSIC recommended \$ 3.2 million). The payments also extend beyond QSIC recommendation to other licensed professionals who serve [*44] special needs students, including at-risk, limited English proficiency, and gifted and talented students. The extension of quality educator payments to special needs teachers and professionals addresses students' educationally relevant needs, as well as the needs of isolated schools with low population density due to its payment on an employee rather than enrollment basis.

P99. 71. The legislature funded outreach consultants through the School for the Deaf and Blind to provide free technical assistance to school districts educating sensory-impaired students. These six outreach consultants address the educationally relevant needs of special education students (including blind or low-vision, deaf or hard-of-hearing students, and other sensory-impaired students) as well as the educationally relevant needs of isolated schools with a low population density in districts that do not employ dedicated staff for sensory-impaired students.

P100. 72. There appears to be some problems specifically related to special education. In this Court's Findings of Fact 160.f and 99 in its earlier Order, it noted a growing competition for general fund dollars between general and special education. According [*45] to Madalyn Quinlan, the formula for special education funding is the same now as it was in 2004 and is based on a distribution system per-ANB and not on the number of children with disabilities. According to Quinlan, the State's funding has not kept up with costs. This is borne out in Exhibit 549, which is the Special Education Report to the Board of Public Education, dated July 2008. At page 10, it is stated that "State appropriations for special education have fallen far short of the growth in costs." That same page notes the continued competition for dollars between special and general education demands. According to Exhibit 541, the State share of special education funding in 2004 and 2005 was 36.61 percent, and as of 2006 and 2007, it was 36.02 percent. The local share, according to Exhibit 541, has grown concomitantly. The Court also notes that QSIC recommended keeping the current formula. (Ex. 767, at 25.) According to Superintendents Miller, Messinger, and Capps, the State contribution towards special education does not keep up with increasing costs. This testimony is in accord with the testimony of Quinlan.

P101. 73. The Court notes that the legislature has appropriated to [*46] the Office of Public Instruction approximately \$ 2,826,000 for a data system. (Ex. 790.) This system allows school district personnel and individualized education plan teams to manage plans for special education students. This new data system addresses the educationally relevant needs of students with special needs by allowing for the analysis and refinement of special education, gifted and talented, and at-risk programs.

P102. 74. The Court notes a flaw in the State's argument as to its contribution to special education. For example, in Exhibit 813, the State uses federal Medicare dollars as part of the State contribution to special education, which does not seem appropriate to this Court.

P103. 75. The Court also notes that the number of special education students has decreased by 1,357 (13 percent) since 2005, while the number of special education teachers has increased by 44.

P104. 76. Superintendent McNeil, who was a member of QSIC, testified that the QSIC work concerning at-risk students did transfer to legislative provisions for at-risk and special needs students.

P105. 77. The legislature increased ongoing gifted and talented funding to \$ 250,000 annually, funded a gifted and talented [*47] specialist at the Office of Public Instruction, and provided \$ 1 million in grant money for gifted and talented services and program planning in both years of the 2009 biennium. As QSIC recognized in weighting ANB for extra gifted and talented instructional time in the classroom component, most of the services for gifted and talented students are offered by existing staff. The \$ 250,000 of ongoing school district funding and \$ 1 million of grant money for the approximately 9,000 identified gifted and talented students in Montana public schools provides substantial additional resources to address each student's educationally relevant needs.

Provisions for Teachers

P106. 78. In this Court's earlier Order, it addressed various problems concerning the difficulty Montana school districts have in attracting and retaining teachers. (See Findings of Fact 112-29.)

P107. 79. The legislature funded a quality educator payment for all certified and licensed educators in Montana schools. *Section 20-9-327, MCA*. The payment is \$ 3,042 per educator in 2009 and reflects the costs of raising the average Montana teacher salary to the regional average, adjusted for inflation since the last reported regional [*48] salary data. In 2009, the total quality educator payment to school districts amounts to \$ 37,964,447. This reflects QSIC's estimated costs of a \$ 4,000 per-teacher payment (a total of \$ 32.9 million in 2007), except it is calibrated to actual salary data and provided to all licensed educators and other licensed professionals. The quality educator payment fundamentally addresses the educationally relevant ability of school districts to attract and retain qualified educators and other personnel. The quality educator payment also addresses the educationally relevant needs of isolated schools with low population density because it funds a classroom-based cost regardless of enrollment, as well as urban schools with high population density because it is based on salary data weighted towards larger districts in Montana and more urbanized regional states.

P108. 80. The initial special educator payment was set at \$ 2,000 by the 2005 special session. In the 2007 special session, the quality educator payment was in-

creased to \$ 3,036 for fiscal year 2008 and to \$ 3,042 for fiscal year 2009.

P109. 81. Montana's teachers are among the most highly qualified teachers in the nation, with 99.4 percent [*49] of teachers licensed and endorsed in their subject areas. In all, 98.5 percent of all Montana classes are taught by properly credentialed and assigned teachers.

P110. 82. At the hearing dedicated to the supplemental proceedings, the Court did not hear the same sort of widespread difficulties school districts were having in recruiting and retaining teachers as it heard in 2004. In Exhibit 813, page 97, it is noted that "[w]hen adjusted for regional cost differences, Montana teachers had the highest average teacher salaries in 2005-06 at \$ 53,842 and the second highest average teachers salaries at \$ 55,724 in 2006-07. Only Wyoming offered higher unadjusted and adjusted average teacher salaries in 2006-07 than Montana among the comparison states." This comparison compared Montana teacher salaries with neighboring states and adjusted them for regional cost differences. Exhibit 784 shows that average statewide teacher salaries have increased from \$ 37,184 in 2004 to \$ 41,146 in 2007.

P111. 83. Exhibit 779 shows that from 2004 to 2008, the enrollment in Montana school districts has dropped by approximately 4,000 students, while the number of teachers has increased in excess of 200.

P112. 84. [*50] In Exhibit 813, page 66, we see that, of the Plaintiff districts, Billings, Bozeman, and Helena all substantially increased their beginning teacher salaries and their maximum teacher salaries. All added new teachers, while the number of students decreased. In Helena, salaries have increased 33 percent over the past five years. The Helena School District has a pool of 600 applicants from which to draw, and a beginning teacher starts at \$ 34,000 (a 41 percent increase), with a \$ 72,000 annual maximum, which is a 33 percent increase over the prior maximum figure. Dr. Kirk Miller, superintendent of the Bozeman School District indicated that his school district had no trouble hiring teachers last year.

P113. 85. This is not the case in some of the smaller school districts. For example, Wade Johnson from Cut Bank indicated that his district has trouble attracting teachers. However, the Court notes that Cut Bank has teacher/student ratios one-half of those requested by the accreditation standards. Also, John McNeil, superintendent of Savage School District, indicated that his school district has continuing problems attracting applicants and that the number of teachers actually applying for [*51] open jobs has reduced. McNeil indicates that his school district starts teachers at only \$ 20,000 to \$ 22,000, and cannot compete with the larger school districts.

P114. 86. This situation was recognized in the Stoddard and Young study, wherein it is noted that isolated districts have the most severe recruitment and retention problems. (Ex.738, at 29.) Again, the Stoddard and Young study indicates that Montana's problems with turnover, difficulty in hiring, and uncertified teachers are at or below national averages. (Id., at 2.) The Stoddard and Young study goes on to note that increasing salaries for rural and isolated districts would have a noticeable impact on recruitment and retention problems. (Id., at 3.) However, it must be noted that non-salary factors are crucial in recruitment and retention issues as well. (Id., at 2.) The Stoddard and Young study recognized that increasing salaries of the lowest paid teacher would have favorable impacts on turnover rates, difficulty in hiring, and the number of schools with misassigned teachers. (Id., at 21.)

P115. 87. The legislature created a quality educator loan assistance program to repay up to \$ 3,000 of student loans annually, up to [*52] a maximum of four years, for quality educators who teach in schools that are impacted by critical quality educator shortages and that teach in licensure or endorsement areas these schools need most. *Section 20-4-501, MCA*. For 2008, \$ 350,000 was appropriated, and for 2009, \$ 700,000 was appropriated for this program for as many as 240 teachers each year. The funding was prioritized for the predominantly rural schools that are most impacted by quality educator shortages. These amounts reflect Stoddard and Young cost estimates for recruiting teachers to isolated school districts. This program addresses the educationally relevant ability of school districts to attract and retain qualified educators and other personnel. It also meets the educationally relevant needs of isolated schools with low population density experiencing critical teacher shortages. Further, the program addresses the educationally relevant needs of special needs students with teachers in special needs subjects, like special education and speech pathology.

State Contribution

P116. 88. At Findings of Fact 100 and 101 of its 2004 Order, this Court noted that, at the time the Montana Constitution was enacted in 1972, State [*53] support for general fund budgets was approximately 65 percent. However, at the time of trial, that had slipped to 60.5 percent. (Ex. 2808.) Due to many of the funding mechanisms noted earlier, this share increased to 63.5 percent in fiscal year 2008, and 63.11 percent in fiscal year 2009. Thus, it appears that the State is heading in the right direction. Total ongoing State aid for K-12 education has increased from \$ 553 million in fiscal year 2004 to \$ 701 million in fiscal year 2009. This is an increase in ongoing State aid of approximately \$ 148 million. During the same

time period, the State has contributed one-time only money in excess of \$ 76.5 million. This has come at a time when enrollment has decreased, during the same time period, by approximately 7,000 students. (Ex. 784.)

P117. 89. Further, ongoing State aid per-pupil has increased from \$ 3,738 in 2004 to \$ 4,947 in 2009. According to Plaintiffs' Exhibit 509, the annual inflation adjusted State funding per-ANB for Montana school general funds from 2004 through 2009 is in excess of inflationary trends.

P118. 90. The legislature has adjusted the elementary and high school basic entitlements for inflation. *Section 20-9-306(6)*, [*54] -326, *MCA*. The retention of the basic entitlement, although a relatively small share of overall funding, addresses the educationally relevant needs of isolated schools with low population density by providing a base of financial support to every school district regardless of enrollment, as well an additional basic entitlement for isolated schools provided by *Section 20-9-311(8)*, *MCA*. The basic entitlement also reflects the increased costs, recognized by QSIC's base-level cost estimates, for several components of operating a high school district.

P119. 91. The legislature increased the elementary and high school per-ANB entitlements by \$ 250 per elementary student and \$ 100 per high school student, provided for three-year averaging of per-ANB counts, and adjusted the amounts for inflation. *Sections 20-9-306(14)*, -311(13), -326, *MCA*. The increases to the per-ANB entitlement narrowed the gap between support for elementary and high school students, while the three-year averaging allows school districts to respond to declining enrollment more gradually. The per-ANB fundamentally addresses educationally relevant needs of isolated schools with low population density (whose ANB is calculated [*55] separate from the district), and of urban schools with high population density, by accounting for the high fixed costs of small school districts and the economies of scale of large school districts, as recognized by QSIC's decremental cost estimates for the per-student component.

P120. 92. The legislature has funded most increases in operating funds through school districts' general funds with no restrictions on use. The series of one-time facilities payments allow flexibility for school districts to fund maintenance, energy conservation, or even (in the case of the \$ 30 million capital investment) school supplies out of their miscellaneous programs fund.

P121. 93. The legislature revised the "soft caps" on district maximum general fund budgets by allowing a district to adopt a general fund budget up to the maximum general fund budget or the previous year's general fund budget, whichever is greater. *Section 20-9-308(1)(a)*, *MCA*. This revision allows school districts to both re-

spond to declining enrollment more gradually and to maintain and increase locally supported programs in general fund budgets despite declining enrollment. Also helping with the budgeting process is allowing three-year [*56] averaging for ANB.

P122. 94. The legislature funded the four new components (quality educator, at-risk, American Indian Achievement Gap, Indian Education for All) fully with State funds. This increased the relative share of general fund moneys funded by the State. The full State funding also increased the school districts' maximum budget ceiling on a one-to-one basis.

P123. 95. The legislature increased the guaranteed tax base aid, which assists districts with mill values lower than the statewide average, from a ratio of 175 percent to 193 percent. This amounted to \$ 10,969,795 that local school districts may provide in local property tax relief, while providing the same level of services with State support.

P124. 96. State support for the general fund is \$ 155,712,805 (16.7 percent) higher in 2009 than it would have been without the revisions to the formula. The increases include: \$ 48,886,540 (5.2 percent) in the four new components; \$ 8,979,745 (1 percent) in three-year per-ANB averaging; \$ 66,577,845 (7.1 percent) in basic and per-ANB entitlement increases (excluding full-time kindergarten); \$ 10,969,795 (1.2 percent) of increased guaranteed tax base aid; \$ 15,100,000 (1.6 percent) [*57] in full-time kindergarten funding; and \$ 5,198,879 (0.6 percent) in special education reimbursement. As a result of the State's share of the revised formula, total maximum general fund budgets are higher than they would have been without the revisions to the formula.

P125. 97. Although the legislature did not adopt QSIC formula, the revised formula now in place reflects many of the costs determined in QSIC process.

P126. 98. In Findings of Fact 104 through 108 of its 2004 Order, this Court viewed with alarm the number of districts and ANB at or above budget maximums. The Court notes some improvement. The percentage of districts at or above 97 percent of budget maximum in 2004 was 58.6. In 2008, that figure was 57 percent, and by fiscal 2009, had declined to 56.08 percent. (Ex. 50-08.) On the other hand, while the percent of school districts at that budget maximum has actually decreased, the percentage of ANB has increased. In 2004, 60.2 percent of ANB were in districts at or above 97 percent of budget maximum, while in 2008, the figure was 65.1 percent, and in 2009, the figure increased to 68.7 percent. As noted earlier, some revisions to State funding have attempted to help in this [*58] regard, such as revising the "soft cap" limits. Further, the four new components are funded entirely with State money, and these increases allow school

district maximum budgets to increase on a one-to-one basis.

P127. 99. The question now exists, however, whether these trends are an indication of inadequate funding or more of a function of declining enrollment. More than 68 percent of the school districts' budgeting over 97 percent of the maximum have had declining enrollment over the past five years, and more than 70 percent of the school districts' budgeting over the maximum have had at least a 10 percent decline in enrollment in the past five years. Conversely, more than 87 percent of school districts with stable or increasing enrollment budget under the maximum, and more than half of those districts budget at or under 97 percent of the maximum.

Accreditation Standards

P128. 100. In its decision, the Montana Supreme Court noted increasing problems with accreditation standards were evidence of inadequate funding. *Columbia Falls Sch. Dist. v. State*, P29. In Exhibit 794, at page 7, we see that from 2004 to 2007, the number of schools in Montana with deficiency in their accreditation standards [*59] has grown from 9 percent to 15 percent, while the numbers with advice has remained at about 10 percent. In total, the number of schools with regular accreditation has slipped from 81 percent to 75 percent. The Court notes that many of the superintendents representing the Plaintiff districts testified that they could not meet the accreditation standards based on the "base" funding provided by the State.

P129. 101. The Court earlier noted that the legislature funded the creation of six curriculum specialists at the Office of Public Instruction. This was a substantial cost and was designed to help school districts develop programs in compliance with the accreditation standards. According to Exhibit 790, the cost of these curriculum specialists for fiscal 2008 is approximately \$ 960,000.

P130. 102. The Court also notes, however, that as of the date of the hearing in this matter, Montana's public schools continue to provide a quality education (see the testimony of all the superintendents appearing at the hearing). Very few schools are unable to provide the basic educational programs required by the accreditation standards and *Section 20-9-309(2)(a), MCA*. In the most recent school year, out [*60] of approximately 824 schools (the number changes during the year due to openings and closures), there were only 48 schools in advice or deficiency status that did not provide the basic education programs of world language, art, music, vocational education, science, and social studies required by the accreditation standards. Nearly all of those deviations, amounting to 41 schools, resulted from failure to offer a world language program, mostly in 27 middle schools.

Even fewer schools in advice or deficiency status experienced class size violations (22 schools).

P131. 103. The common deviations by schools in advice or deficiency status are non-licensed staff (76 schools) and misassigned teachers (65 schools). These problems are even more isolated, however, because one deviation in a school counts against the entire school regardless of the number of classes or students taught by a non-licensed or misassigned teacher. Out of 37,643 classes taught last year, the number of classes taught by misassigned or non-licensed teachers was 396 and 170, respectively. (See Ex. 797.) Out of 10,518 teachers last year, just 159 were misassigned and 48 nonlicensed. Many of these deviations were resolved [*61] within the school year.

P132. 104. The remaining accreditation categories relate to the status of district and school staff including superintendents, principals, librarians, and counselors. Most of the deviations in these categories occur in the librarian and counselor standards _ out of 830 schools, 91 had librarian-related deviations and 65 had counselor-related deviations. Schools may seek alternative standards to avoid deviations, and 15 percent of schools have done so, most commonly for the librarian (86 schools) and counselor (88 schools) standards. A deviation for district-level staff is reported as a deviation for every school in the district. Similarly, a deviation for staff shared among schools is reported as a deviation for every school employing that staff member. For example, Helena's failure to obtain approval for the alternative shared counseling plan it implemented in its eleven elementary schools counts for eleven deficiency-qualifying deviations, which amount to nearly 10 percent of all deficient schools statewide.

P133. 105. The question remains, however, whether these accreditation problems would go away if the schools had more money. According to Defendant's expert [*62] Richard Seder, there is no clear correlation between the accreditation problems and spending levels. (Ex. 814.)

P134. 106. The accreditation violations that continue to occur are a serious problem because they are "the minimum standards upon which a basic system of free quality public elementary and secondary schools is built." *Section 20-9-309(2)(a), MCA*. That does not mean that the State has failed to comply with its obligation to establish a funding formula that reflects the costs of meeting the accreditation standards, however, because the districts, not the State, decide how to allocate the funds received under the formula. Most elementary and high schools in Montana, in districts of every size, meet regular or regular with deviation accreditation status at current spending levels regardless of budget maximum status. In other words, there is no apparent correlation between accredi-

tation status and the amount of funding now available to schools and, therefore, there is no clear causation between Plaintiffs' asserted need for even more funding and school districts' ability or inability to satisfy accreditation standards. The availability of additional funding for higher salaries, [*63] hiring additional staff, and other district investments suggests that accreditation is not necessarily a resource issue because, if it were, districts would have invested in addressing accreditation before making other investments.

Gifted and Talented

P135. 107. One of the requirements of building a basic system of free quality public education is an educational program to provide for special needs students, such as at-risk, special education, and gifted and talented. *Section 20-9-309(2)(d), MCA*. The Court has already discussed at-risk and special education students.

P136. 108. The legislature increased ongoing gifted and talented funding to \$ 250,000 annually; funded a gifted and talented specialist at the Office of Public Instruction; and provided \$ 1 million in grant money for gifted and talented services and program planning in both years of the 2009 biennium. As QSIC recognized in weighting ANB for extra gifted and talented instructional time in the classroom component, most of the services for gifted and talented students are offered by existing staff. The \$ 250,000 of ongoing school district funding and the \$ 1 million of grant money for the approximately 9,000 identified gifted [*64] and talented students in Montana public schools provides substantial additional resources to address each student's educationally relevant needs. At trial, Nancy Hall could not testify if the above amounts were based on any "costing-out" of the cost of gifted and talented programs.

P137. 109. Plaintiffs are concerned that the gifted and talented allotments are not a part of any formula, but, rather, are a line item in the budget of the Office of Public Instruction.

P138. 110. The Court notes that, according to Dr. Kirk Miller of Bozeman Public Schools, his district is reducing the number of gifted and talented offerings. Apparently, in the past, students could take up to three units of gifted and talented offerings, and now they will be limited to one.

Cost-Based

P139. 111. At Finding of Fact 195 of its earlier Order, this Court, in 2004, found that the funding system must be based on the costs of meeting the standards that govern the operation of Montana schools. See also, *Columbia Falls Sch. Dist.*, P26. At the hearing of this matter, the various superintendents who testified _ Capps, Johnson,

Miller, Messinger, and McNeil _ all felt that the current formula was not cost-based. According [*65] to Plaintiffs' expert John Myers, the formula is just as it was before and is not cost-based. According to Myers, the current formula adds money without targeting any specific objective. He found the current funding formula to be political and historical.

P140. 112. However, as noted earlier in this decision, several of QSIC study elements were used by the legislature. For example, the \$ 2 million for the facilities study and \$ 23 million for weatherization are as recommended in QSIC's status sheet of November 14, 2005, shown in Exhibit 751. Further, some witnesses testified that the \$ 3 million added to quality education payments for special education professionals is reflective of the \$ 3 million in the special education component of Exhibit 751.

P141. 113. The superintendents also complain that the current formula is not self-sustaining and results in imbalanced budgets where school districts are forced to use one-time only funds for other purposes. They also complain that there is no predictability in the current formula.

P142. 114. Madalyn Quinlan testified that special education funding in Montana is not costbased.

P143. 115. On the other hand, David Ewer, director of the Governor's [*66] budget office, felt that the experts relied on by QSIC did cost-out the various costs of education. He points to the four studies done by R.C. Wood (Ex. 740) and the study by Stoddard and Young (Ex. 738) as examples of the costing-out process undertaken by the legislature. Further, Nancy Hall, who worked on QSIC committee, felt that QSIC did, through these studies, determine the costs of the components of a quality education. According to Hall, the current ANB and basic entitlement components are reflected in QSIC per-student, classroom, accredited program, and operations and maintenance costs shown on Exhibit 751. In this regard, the Court has reference to Exhibit 767.A, which, according to Hall, is the per-student entitlement of an elementary student in a district such as Helena. According to Hall, the per-student entitlement garnered after QSIC study would be \$ 4,272, and when compounded by the inflationary factor would equal \$ 4,532 for a Helena elementary student for fiscal year 2009. According to Hall, the current per-ANB allotment for a Helena elementary student is \$ 4,516.

P144. 116. As noted earlier, the R.C. Wood study (Ex. 740) indicated that there were four possible ways [*67] to cost-out the price of education. The cost determined by the evidence-based method was \$ 20 million; by the statistic-based method _ \$ 34 million; and by the successful schools model _ \$ 96 million. The professional judgment study relied on by Plaintiffs seeks in excess of \$

300 million additional dollars. When this Court held its original hearing in this matter in 2004, the only study that had been done was a professional judgment study. Now, the Court notes that the three other studies mentioned above have been done. This Court is not in a position to tell the legislature which of the studies to choose. If the legislature were to choose the costs based on any of the studies other than the professional judgment study, all of which were under \$ 100 million, the legislature, since it has provided \$ 148 million in new ongoing State funding since 2005, has exceeded the costs of providing an education as determined by the three studies other than the professional judgment methodology.

P145. 117. This Court finds that the State has determined the cost of providing an education in the state of Montana. That determination is not only in QSIC study, but it is also in the various studies mentioned [*68] in the R.C. Wood study and otherwise prepared in conjunction with the R.C. Wood study, and through the whole QSIC process. The legislature, then, had a smorgasbord of numbers from which to choose. Probably the biggest problem in this case is that there is not a bright line connecting many of the cost figures to the money actually allocated by the legislature.

Discussion

P146. 118. Throughout this document, the Court has noted many improvements to the situation that existed in 2004. The Court has also noted that some problems remain. As just noted, this Court, given the efforts of the State and the difficulty of providing an adequate remedy at this time, chooses not to grant any supplemental relief. However, as loath as this Court is to provide an advisory opinion, it will make a few comments so as to avoid future problems.

P147. 119. By and large, the Court finds that the State has done a good job of addressing the problems earlier addressed. Following are some of the problems the Court sees that could cause this Court's conclusion to be reversed in the future. According to Exhibit 784, the State has made excellent contributions to ongoing State aid from 2005 through 2008. However, beginning [*69] in fiscal year 2009, the increase in the amount of State aid will drop to 1.9 percent. In order to avoid future problems, this figure should reflect to the trend of 20052008.

P148. 120. Next, although the total State aid to the school districts' general funds has increased from 2004 until today, the Court notes a slight relapse in 2009, as set forth in Finding of Fact 88, above. In the view of this Court, this figure should not be declining, but should either be increasing or at least staying the same.

P149. 121. The costs of special education need to be addressed. This Court noted in Finding of Fact 72, above,

that Exhibit 549 shows that State appropriations for special education have fallen far short of the growth in costs. The increased competition for general fund dollars between special and general education continues.

P150. 122. In Finding of Fact 86, this Court noted the continuing problems with the recruitment and retention of teachers in isolated districts. While the State has made progress in this regard, it would be helpful if more could be done to ease these problems. As noted, increasing salaries for rural and isolated districts would have a noticeable impact on recruitment [*70] and retention problems.

P151. 123. The magnitude of these problems is far less than problems confronting this Court in 2004. In the view of this Court, the problems just mentioned in the preceding Findings do not warrant this Court's interference in the legislative process.

P152. 124. In reviewing the testimony in this case, the Court must reiterate the confounding complexity of Montana's school funding system. The Court concludes that there will always be tension between the education community and the legislature over the funding of Montana's schools. This results from many factors, but especially from the fact that the legislature meeting in 2009, for example, will be setting school budgets for fiscal years 2010 and 2011. With so many dynamic forces at play in the school funding process, it is difficult to see how the competing forces in a case such as this can ever agree on a proper funding amount.

P153. 125. Further, this Court must be mindful of the separation of powers. While this Court has the obligation and responsibility to determine whether the school funding system is appropriate, it should not be acting as a second Superintendent of Public Education or as a super-legislature. [*71] It is clear that some components in the formula are not based on costs, for example, the difference between a basic entitlement for an elementary school district with one school is the same as a basic entitlement for an elementary school district with fifteen schools. Nor is there any relevant study that justifies the difference in the basic entitlement between an elementary school and a high school district. Further, and also troubling, is the fact that, as mentioned above, there is no bright line connecting some of the determined costs to amounts allocated by the legislature.

P154. 126. Another complicating factor in Montana is the fact that the state of Montana has hundreds of school districts. Perhaps this is necessary and perhaps not, but the immense variety in the makeup of Montana school districts, from rural to non-rural, from east to west and north to south, along with a huge number of school districts, is a guarantee of future disputes.

P155. 127. The shortfalls predicted by some school superintendents are far short of the 30 percent increase in funding they seek. For example, the shortfall in Billings is anticipated to be 3 percent. If funding were increased 30 percent as [*72] requested by Plaintiffs, that would be far in excess of the predicted shortage. The Court is somewhat dismayed by the variance in the cost studies that have been done. As noted earlier, they range from \$ 20 million to \$ 300 million, and none of them would be the same if they were redone by another expert. Thus, the determinations of costs appear to be unreliable.

P156. 128. As a result of viewing all of the pie charts, bar graphs and other exhibits presented by the parties, often hashing over the very same numbers with very different results, the Court is unclear whether the problems currently experienced by the Plaintiff districts are a result of a constitutionally inadequate funding system or by choices made by the school districts. The answer to this question is most likely obscured by the competing interests earlier mentioned.

P157. 129. The Court also faces a conundrum in that it must presume the constitutionality of what the legislature has done. While in some cases, it may be relatively clear that no bright line exists between certain current funding components and the variety of studies mentioned earlier, this does not automatically mean that the funding is inadequate. The studies [*73] that were lacking earlier in this case have now been done.

P158. 130. Also complicating this case is the fact that many of the problems that this Court and the supreme court addressed in 2004 and 2005 have now been mitigated. For example, "quality education" has been defined; the problems with teacher salaries identified earlier by this Court have been alleviated in many cases; the deterioration of buildings is being addressed; the lack of an inflationary adjustment has been, to a great degree, remedied; and the share of the State contribution to schools' general fund budgets has increased from what it was in 2004.

P159. 131. The Court is also faced with what remedy to provide. The Court concludes that it will not order any supplemental or additional relief. This Court concludes that the legislature and the state of Montana have made a good faith attempt to address the various problems mentioned by this Court and the supreme court. Tens of millions of dollars of additional funding have been supplied to the school districts. Further, the exact remedy that this Court could provide is unclear. Given that lack of clarity and the good faith steps taken by the State, the Court concludes that [*74] the current problems do not warrant this Court to take any action at this time. This Court, as this opinion is being written, has no idea what the 2009 legislature has in store for the schools of Montana.

P160. 132. When the Court entered its Order in 2004, the constitutional problems facing Montana's educational system were numerous and clear. Now, the State has addressed many of those problems, and the relationship between the current problems and the level of funding provided by the State is not as clear as it was in 2004.

P161. 133. This Court feels it is appropriate to consider the substantial one-time only funding provided by the State since this Court's 2004 Order. Further, this Court is of the view that the solution to Montana's education funding problems is not going to be addressed overnight. The process is going to take time, and the solution to these problems will be need to be phased in.

P162. From the foregoing Findings of Fact, the Court enters the following:

CONCLUSIONS OF LAW

P163. 1. To the extent that any of the foregoing Findings of Fact incorporate Conclusions of Law or the application of law to fact, they are incorporated herein as Conclusions of Law.

P164. 2. The legislature [*75] has fulfilled its constitutional duty to define a basic system of free quality public elementary and secondary schools by enacting *Section 20-9-309, MCA*.

P165. 3. The legislature, through QSIC and the continuing studies mentioned in this document, has determined the cost of providing the basic system of free quality public elementary and secondary schools. The concept of cost is dynamic in the educational context and constantly changing due to factors such as student enrollment, educational standards, special needs of students, technology and efficiency, and prices in labor and resource markets.

P166. 4. This Court concludes that it is not the obligation of the legislature to fully fund whatever programs the individual school districts have adopted. The legislature is under no obligation to adopt an expenditure-based system in which the legislature would be required to fund whatever the districts request. It is up to the legislature to set the educational standards and provide an amount of funding equal to what it determines is necessary to meet those standards. See *Campbell County Sch. Dist. v. Wyo.*, 2008 Wyo. 2, PP74-75, 181 P.3d 43 (2008); *Montoy v. Kan.* 282 Kan. 9, 24, 138 P.3d 755, 765 (2006).

P167. [*76] 5. This Court concludes that the State is in the process of making a good faith effort to preserve and protect Montana's constitutional commitment to a sound public education system. *Campbell*, P79.

P168. 6. The legislative and executive branches have shown that they have embarked on a long-term, orderly,

and comprehensive process of reform, and have shown every indication they will continue to do so. Courts are reluctant to become involved in the legislature's determinations. See *Hancock v. Comm'r of Educ.*, 443 Mass. 428, 822 N.E.2d 1134 (2005).

P169. 7. Although Plaintiffs have shown the existence of some continuing problems, as addressed in this document, in this Court's view, the magnitude of those problems, as compared to the school funding system first encountered by this Court in 2004, does not warrant interference by this Court with the legislature's determinations at this time.

P170. 8. The legislature has established a funding formula that allows the legislature to adjust the formula based on educationally relevant factors.

P171. 9. The funding formula established by the legislature is not, at this time entirely, selfexecuting, even though it includes a mechanism for annual inflationary [*77] adjustments.

P172. 10. The legislature has established a funding formula that is based on State laws.

P173. 11. The legislature is in the process of establishing a funding formula that distributes to school districts in an equitable manner the State's share of the costs of the basic system of free quality public elementary and secondary schools.

P174. 12. The legislature has consolidated the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

P175. 13. The legislature continues to consider the programs and costs related to the basic system of free quality public elementary and secondary schools and can, if necessary, adjust the State's funding formula based on educationally relevant factors.

P176. From the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

P177. Based on the Findings of Fact and Conclusions of Law set forth above, this Court declines to award any supplemental relief sought by Plaintiffs.

P178. Each party shall bear their own attorney fees and costs.

DATED this 15th day of December, 2008.

JEFFREY M. SHERLOCK [*78] District Court Judge

