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NANCY SWEENEY
CLERK DISTRICT COURT

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DEPUTY

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

<p>COLUMBIA FALLS Elem. School 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; GENE JARUSSI; PETER & CHERYL MARCHI; and MICHAEL AND SUSAN NICOSIA, for themselves and as parents of their minor children,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">THE STATE OF MONTANA,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: right;">Cause No. BDV-2002-528</p> <p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</p>
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Trial in this matter occurred from January 20 to February 4, 2004. The Court received numerous exhibits and heard the testimony from a large number of witnesses. Plaintiffs were represented by James P. Molloy of Helena and Brian K. Gallik of Bozeman. The State of

1 Montana was represented by Brian M. Morris and Ali N. Bovington, both of Helena.

2 The Court would take this opportunity to tip its judicial hat to all of the attorneys
3 involved in this case for the excellent job they have done in presenting their cases and assisting
4 the Court. The Court hereby enters the following:

5 **FINDINGS OF FACT**

6 1. This case involves a challenge to the constitutionality of Montana's current
7 system for funding its public elementary and secondary schools. The constitutional provision
8 involved reads as follows:

9 **Educational goals and duties.** (1) It is the goal of the people to establish
10 a system of education which will develop the full educational potential of each
11 person. Equality of educational opportunity is guaranteed to each person of the
12 state.

13 (2) The state recognizes the distinct and unique cultural heritage of the
14 American Indians and is committed in its educational goals to the preservation of
15 their cultural integrity.

16 (3) The legislature shall provide a basic system of free quality public
17 elementary and secondary schools. The legislature may provide such other
18 educational institutions, public libraries, and educational programs as it deems
19 desirable. It shall fund and distribute in an equitable manner to the school districts
20 the state's share of the cost of the basic elementary and secondary school system.

21 Mont. Const. art. X, § 1.

22 2. Montana's public school system is governed by legal requirements and
23 mandates imposed upon school districts by virtue of state and federal law. These requirements
24 include Montana's accreditation standards, content and performance standards, legal mandates
25 for special education, and, most recently, the federal No Child Left Behind Act.

26 3. Plaintiffs in this case include 11 Montana public school districts (6
27 elementary and 5 high school districts) from six communities through Montana. The high school
28 and elementary districts in Columbia Falls, Helena, Billings, White Sulphur Springs and Troy
29 operate as single administrative units. East Helena Elementary District No. 9 is an independent
30 elementary district.

1 4. Plaintiff Montana Education Association–Montana Federation of Teachers
2 (MEA-MFT) is a labor organization with more than 16,000 members, including teachers in
3 Montana’s public schools.

4 5. Plaintiff Montana School Boards Association (MTSBA) is a statewide
5 association of public school boards whose membership encompasses virtually all the state’s
6 locally elected boards of trustees.

7 6. Plaintiff Montana Rural Education Association (MREA) is an organization
8 of public elementary and secondary school districts located in rural communities in Montana.

9 7. Plaintiff School Administrators of Montana (SAM) is a coalition of
10 educational organizations whose memberships include public school administrators and educators
11 throughout Montana. The organizations include the Montana Association of School
12 Superintendents, the Montana Association of Secondary School Principals, the Montana
13 Association of Elementary and Middle School Principals, the Montana Council of Administrators
14 of Special Education, and the Montana Association of County Superintendents of Schools.

15 8. Six individually named individuals sue on behalf of themselves and their
16 children who presently attend school in Helena (Nicholsons), Columbia Falls (Nicosias) and
17 White Sulphur Springs (Marchis).

18 9. Defendant State of Montana is a duly established state within the United
19 States of America.

20 10. With leave of Court, an *amicus curiae* brief was filed by the Montana
21 Indian Education Association, in conjunction with the Blackfeet Tribe, the Assiniboine and Sioux
22 Tribes of the Fort Peck Indian Reservation, the Gros Ventre and Assiniboine Sioux Tribes of the
23 Fort Belknap Indian Reservation, the Crow Tribe, the Confederated Salish and Kootenai Tribes,
24 the Northern Cheyenne Tribe, and the state-recognized Little Shell Tribe, as co-signers, as well
25 as the Indian Law Resource Center of Helena, the Montana Indian School Board Caucus, the

1 Montana Association of Bilingual Education, the Indian Impact Aid Schools, the Blackfeet
2 Community College, the Lame Deer Public Schools, the Browning Public Schools, the Harlem
3 Public Schools, the Lame Deer School Parent Indian Education Committee, the Colstrip School
4 Parent Indian Education Committee, and the Montana Peoples Action and Indian Peoples Action.

5 **I. Montana's Public School System**

6 **A. Basic Facts**

7 11. During the 2002-03 school year, 440 school districts operated in Montana,
8 with a total student enrollment of 149,936, and a total "average number belonging" (ANB) of
9 151,511.

10 12. The term "average number belonging" (ANB) is the enrollment measure
11 used for calculating a school district's budget and for allocation of state revenue for education.
12 A school district's ANB results from the application of a statutory formula to the enrollment,
13 attendance and absence of regularly enrolled full-time pupils during the school term. *See* Section
14 20-9-311, MCA. The ANB for a given year is based on the attendance record of the preceding
15 fiscal year.

16 13. Of the 440 school districts in Montana, 275 were elementary districts, with
17 a total ANB of 89,251, representing approximately 59 percent of the total Montana ANB. An
18 elementary school district provides public education for all grades up to and including grade 8,
19 including, where provided, preschool and kindergartens. Section 20-6-101(2)(a), MCA.

20 14. There were 110 secondary districts, with a total ANB of 43,751, or 29
21 percent of the total Montana ANB. A secondary or "high school" district provides public
22 education for all grades beyond grade 8, including post-secondary programs, except community
23 college districts or the Montana University System. Section 20-6-101(2)(b), MCA.

24 15. There were also 55 K-12 districts with a total ANB of 18,472, or 12.2
25 percent of the total Montana ANB. A K-12 school district means a high school district with an

1 elementary district that has been attached to the high school district under the procedures allowed
2 by law. Section 20-6-701, MCA.

3 16. The 2002-03 enrollments for school districts in Montana ranged from 2
4 ANB in Knees and Warrick Elementary Districts located in Chouteau County to 9,974 ANB in
5 the Billings Elementary District. At the high school level, enrollments ranged from 22 ANB in
6 Willow Creek High School in Gallatin County to 5,630 ANB in the Billings High School District.
7 Among K-12 districts, enrollments ranged from 29 ANB in the Flaxville K-12 School District
8 to 1,845 ANB in the Libby K-12 School District.

9 **B. Governance**

10 17. Responsibility for governance of Montana's public elementary and
11 secondary schools is vested in entities and officials at both the state and local levels.

12 18. The State Board of Public Education, together with the Board of Regents
13 of Higher Education, are responsible for long-range planning and for evaluating policies and
14 programs for the state's educational systems. Mont. Const. art. X, § 9. The Board of Public
15 Education consists of seven members appointed by the governor, and confirmed by the senate,
16 to overlapping terms as provided by law. *Id.* The Governor, Commissioner of Higher Education
17 and State Superintendent of Public Instruction are ex-officio non-voting members of the board.
18 *Id.* The State Board of Education reviews and unifies budget requests of education entities
19 assigned by law to the Board of Public Education, the Board of Regents or the State Board of
20 Education and submits unified budget requests with recommendations to the appropriate state
21 agency. Section 20-2-101, MCA. In addition, upon recommendations of the Superintendent of
22 Public Instruction, the Board of Public Education also adopts standards of accreditation for all
23 schools in the state of Montana. Section 20-7-101, MCA.

24 19. The Superintendent of Public Instruction has the general supervision of the
25 public schools and districts of the state, and powers and duties which are set by law, generally

1 found within Title 20, Chapter 3, Part 1, Sections 105-106 of the Montana Code Annotated. The
2 Superintendent supervises the school budgeting procedures prescribed by law, has supervisory
3 authority over school financial administration provisions, estimates the statewide equalization
4 level for base amount for school equity (BASE) funding program, and distributes BASE aid and
5 special education allowable cost payments in accordance with set provisions. *See generally*
6 Section 20-3-106(1) - (29), MCA.

7 20. County Superintendent of Schools are elected in each county of the state
8 unless a county manager form of government has been organized in that county. Section 20-3-
9 201(1), MCA. The county superintendent has general supervision of the schools of the county
10 and duties which relate primarily to administrative, organizational and budgetary matters between
11 the state superintendent and local school districts. Duties and powers are generalized in Montana
12 Code Annotated Title 20, Chapter 3, Part 2, and Section 205.

13 21. Article X, Section 8 of the Montana Constitution vests supervision and
14 control of school districts in a locally elected board of trustees.

15 22. Local boards of trustees are separate governing entities for elementary and
16 high school districts. Section 20-6-101(3), MCA. Their powers and duties include, but are not
17 limited to, employing the district superintendent and teachers and assistants upon
18 recommendation by the district superintendent, and conducting the fiscal business of the district.
19 A general list of powers and duties of trustees of a school district can be found in Sections 20-3-
20 324(1)-(29), MCA (general powers and duties) and 20- 9-213(1)-(9), MCA (financial duties of
21 trustees).

22 **II. Montana's School Funding System**

23 **A. Sources of Revenue**

24 23. The funding for Montana public elementary and secondary schools comes
25 from three general sources: state, local and federal revenues.

1 24. There are two principal sources of state revenue specifically earmarked for
2 schools. The first of these state sources is a property tax of 95 mills levied statewide. Fifty-five
3 of the 95 mills are actually "County Equalization Aid." Sections 20-9-331, -333, MCA. Each
4 county in Montana levies 55 mills on all taxable property within the district and that money is
5 then applied to the BASE budget funding levels for all districts in the county (as more fully
6 described below). If the amount of revenue raised by the 55 mills exceeds what is necessary to
7 meet the BASE funding programs of all elementary and secondary schools in the county, the
8 county remits the surplus to the Montana Department of Revenue for deposit into the State's
9 general fund.

10 25. The second source of state revenues are revenues derived from school trust
11 lands. Sections 20-9-331, MCA (33 mill county-wide tax for elementary districts); 20-9-333,
12 MCA (22 mill county-wide tax for high school districts); 20-9-343, MCA (Definition of and
13 revenue for State equalization aid); 20-9-360, MCA (40 mill State equalization aid levy); and 20-
14 9-342, MCA (Deposit of interest and income money by state board of land commissioners).

15 26. Local revenues for school districts are derived primarily from local
16 property taxes and fees in lieu of taxes. Sections 20-9-308(4)(5), -353, MCA.

17 27. The largest single source of federal funds received by Montana school
18 districts is P.L. 874 money, which is explained in greater detail below. The other significant
19 sources of federal revenues are Title I funds and School Foods funds. Some districts also obtain
20 revenues through federal grants, based upon application and selection procedures that apply to
21 these various grants.

22 **B. School District Budgets and Funds**

23 28. Montana's school district accounting systems are organized and established
24 on a "fund" basis. Section 20-9-201(1), MCA. A "budgeted fund" means a separate detailed
25 account of receipts and expenditures for a specific purpose authorized by the legislature and for

1 which a budget must be adopted in order to spend money from the fund. Section 20-0-201(1)(a),
2 MCA. A budget must be adopted by a board of trustees in order to spend money from a budgeted
3 fund. *Id.*

4 29. Presently there are the following “budgeted funds” in Montana:

- 5 • General Fund (multiple statutes);
- 6 • Transportation Fund (Section 20-10-143, MCA);
- 7 • Bus Depreciation Fund (Section 20-10-147, MCA);
- 8 • Tuition Fund (Section 20-5-320 to -321, MCA);
- 9 • Retirement Fund (Section 20-9-501, MCA);
- 10 • Adult Education Fund (Section 20-7-705, MCA);
- 11 • Technology Acquisition and Depreciation Fund (Section 20-9-533, MCA);
- 12 • Flexibility Fund (Section 20-9-543, MCA);
- 13 • Debt Service Fund (Section 20-9-438, MCA);
- 14 • Non-Operating Fund (Section 20-9-505, MCA); and
- 15 • Building Reserve Fund (Section 20-9-502, MCA).

16 *See also* Section 20-9-201(1)(a), MCA (listing budgeted funds).

17 30. A non-budgeted fund is any fund for which an official budget is not
18 required to be adopted in order to spend money on deposit in the fund. Section 20-9-201(1)(b),
19 MCA. Expenditures from these funds are limited to the amount of cash balance in the fund.
20 Section 20-9-210, MCA. Examples of non-budgeted funds are:

- 21 • Food Service Fund (Section 20-10-207, MCA);
- 22 • Impact Aid Fund (Section 20-9-514, MCA);
- 23 • Building Fund (Section 20-9-508, MCA);
- 24 • Extracurricular Fund (Section 20-9-504, MCA);
- 25 • Lease or Rental Agreement Fund (Section 20-9-509, MCA);

- 1 • Endowment Fund (Section 20-9-604, MCA);
- 2 • Litigation Reserve Fund (Section 20-9-515, MCA);
- 3 • Traffic Education Fund (Section 20-9-510, MCA);
- 4 • Metal Mines Tax Reserve Fund (Section 20-9-231, MCA);
- 5 • Interlocal Cooperative Fund (Section 20-9-511, MCA);
- 6 • Internal Service Fund (Section 20-3-331(2), MCA);
- 7 • Miscellaneous Programs Fund (Section 20-9-507, MCA); and
- 8 • Compensated Absence Liability Fund (Section 20-9-512, MCA).

9 **C. The General Fund**

10 31. The general fund is the largest and most important fund for the vast
11 majority of public elementary and secondary school districts in Montana. The general fund is
12 used to finance “instructional, administrative, facility maintenance, and other operational costs
13 of a school district not financed by other funds established for special purposes. . . .” Section 20-
14 9-307(3), MCA. The general fund is funded from local, county and state sources as further
15 described below.

16 32. With limited exceptions, Montana’s present system of funding schools
17 requires schools to generally adopt general fund budgets within a range between a “BASE” and
18 “maximum” budget established by the legislature. Section 20-9-308(1), MCA (“The trustees of
19 a district shall adopt a general fund budget that is at least equal to the BASE budget established
20 for the district and, as except as provided in [Section 20-9-308(3), MCA], does not exceed the
21 maximum general fund budget established for the district.”) The BASE and maximum general
22 fund budget levels are calculated on state entitlements that are primarily driven by the student
23 enrollment in the elementary, high school or K-12 district.

24 **1. Minimum or BASE General Fund Budgets**

25 33. All Montana school districts must adopt a budget in an amount that equals,

1 at a minimum, that district's BASE budget, as defined by law. Section 20-9-308(1), MCA. A
2 district's minimum general fund budget, or "BASE budget," is calculated as follows:

- 3 80% of basic entitlement
- 4 + 80% of the per-ANB entitlement
- 5 + up to 140% of state special education allocation
- 6 + 40% of special education co-op allocation (if any).

7 Section 20-9-306(3), MCA.

8 **a. Basic Entitlement**

9 34. The "basic entitlement" is the first component used to calculate a district's
10 BASE budget amount. The amount of the basic entitlement is determined by the legislature.
11 Section 20-9-306(6), MCA. For the 2002-03 school year the basic entitlement for elementary
12 districts, regardless of size, was \$19,244. For high school districts, the basic entitlement was
13 \$213,819, again regardless of the size of the high school district. The basic entitlement is
14 scheduled to increase by \$212 to \$19,456 for elementary districts in 2004, and by another \$403
15 to \$19,859 in 2005. For high school districts, the basic entitlement is scheduled to increase by
16 \$2,352 to \$216,171 for 2004, and by another \$4,475 to \$220,646 for 2005.

17 **b. Per-ANB Entitlement**

18 35. The next component of a district's BASE general fund budget is the
19 district's "per-ANB entitlement." Section 20-9-306(10), MCA. The per-ANB entitlement, which
20 is added to the district's basic entitlement, is an additional amount of budget authority for
21 elementary and high school districts. It is based upon the total number of ANB in the elementary
22 or high school district. Again, the amount of the per-ANB entitlement is set by the legislature.

23 36. For elementary districts, the per-ANB entitlement in 2003 begins at \$3,906,
24 and decreases by \$.20 for each additional elementary ANB up to 1,000 ANB at which point the
25 decrease in funding for each additional ANB stops ("stop loss"). The per-ANB entitlement for
each ANB over 1,000 is \$3,706.20 in 2003. Section 20-9-306(10)(b), MCA. In FY 2004, the

1 per-ANB entitlement begins at \$3,949.00 and hits a stop loss level at \$3,747.20.

2 37. For high school districts, the per-ANB entitlement in 2003 begins at \$5,205
3 and decreases by \$.50 for each additional elementary ANB up to 800 ANB at which point the
4 decrease in funding for each additional ANB stops (“stop loss”). The per-ANB entitlement for
5 each ANB over 800 is \$4,805.50 in 2003. Section 20-9-306(10)(a), MCA. In FY 2004, the per-
6 ANB entitlement begins at \$5,262.00 and hits a stop loss level at \$4,862.50.

7 38. For elementary and K-12 districts with an approved junior high or middle
8 school program, the per-ANB entitlement formula works the same way, relying on a proration of
9 the foregoing entitlements. Section 20-9-306(10)(c), MCA.

10 39. In addition to the BASE entitlement and per-ANB entitlements, a district’s
11 BASE general fund budget is determined by the district’s special education entitlements.

12 **2. The Maximum General Fund Budget**

13 40. With limited exceptions, a school district’s maximum general fund budget
14 is defined by the Montana legislature. A district’s maximum general fund budget calculation is
15 determined, in general, by adding the following components:

- 16 100 % of the district’s basic entitlement
17 + 100% of the district’s per-ANB entitlement
18 + 175% to 200% of state special education entitlement
19 + 75% to 100% of special education cooperative entitlement

20 Sections 20-9-308, -321, MCA.

21 41. Subject to two exceptions described below, a district may not adopt a
22 general fund budget in excess of its maximum general fund budget amount as defined every two
23 years by the legislature. Section 20-9-308(1), (3), MCA.

24 **a. “Grandfathered Districts” - The 1992-93 General Fund
25 Budget Exception.**

26 42. The first exception to the maximum general fund budget concerns school

1 districts whose 1992-93 general fund budget exceeded its 1993-94 maximum general fund
2 budget, as defined by the school funding legislation implemented in that year. Section 20-9-
3 308(a)(ii), MCA. If the district's 1992-93 general fund budget exceeded the 1993-94 maximum
4 general fund budget, as defined by the legislature, that district's general fund budget was capped
5 at the 1992-93 level, or an equal amount over the maximum, whichever is less. Section 20-9-
6 308(3)(a)(ii)(A)(B), MCA. Some districts have remained capped at that level for the past ten
7 years. Voter approval is required each year for the amount over the maximum. Section 20-9-
8 353(1)(b), MCA.

9
10 ***b. "Soft Caps" - Declining Enrollments and the Maximum General
Fund Budget Amount Exception***

11 43. The second "exception" to the maximum general fund budget concerns
12 those districts with declining student enrollments. If a school district's student enrollment
13 declines from the prior year, its BASE and maximum budgets in the year of declining enrollment
14 may decrease from the prior year's BASE and maximum budgets because its per-ANB
15 entitlement decreases. This may cause the current year budget to exceed the district's maximum
16 general fund budget authority for the next school year. In such a situation, the district may
17 maintain, but may not raise, its budget over its current level (i.e. the budget in the year prior to
18 the decline in enrollment) and must reduce the general fund budget to the maximum allowed by
19 law, based upon its ANB, within five years. Section 20-9-308(3)(a)(I), MCA.

20 44. If a district's enrollment decrease is greater than 30 percent of its total
21 ANB population (primarily a small school issue), that district must reduce its general fund budget
22 to the maximum allowed by law within five years, using a formula mandated by the legislature
23 which requires the following budget reductions in each of the five years: 20 percent, 25 percent,
24 33.3 percent, 50 percent and 100 percent. Section 20-9-308(3)(a)(i)(A)-(E), MCA.

25 45. For those districts where the decline in student enrollment is less than 30

1 percent of the district's total ANB population, there is no formula outlining the amount or year
2 during which the budget must be reduced to the maximum amount allowed by law. Section 20-9-
3 308(3)(a)(i), MCA. Instead, the legislature simply commands the district to reduce its budget to
4 the maximum amount within five years. *Id.*

5 46. As more fully described below, districts may adopt a general fund budget
6 in excess of the BASE budget only with voter approval. This applies as well to budgets in excess
7 of the maximum general fund budget (as outlined above). Funding for the budgeted amount in
8 excess of the BASE is derived primarily from revenue generated from local property taxes in the
9 school district. Sections 20-9-308(2); -353, MCA.

10 **D. Funding the General Fund Budget**

11 **1. Sources of Funding the General Fund (Section 20-9-307(4), MCA)**

12 47. A school district funds its general fund budget from the following sources:

- 13 • *Direct State Aid* equal to 44.7 percent of the district's BASE and per-ANB
14 entitlements (Sections 20-9-306(2)(a), -307(4), MCA);
- 15 • *Special Education Allowable Cost Funding* from the state (Sections 20-
16 9-321, -307(4)(c), MCA);
- 17 • *Non-Levy Revenue and Reappropriated Funds* (Section 20-9-
18 141(1)(b)(I), MCA);
- 19 • *Non-Voted Local Levies Subsidized with Guaranteed Tax Base (GTB)*
20 aid to fund up to 35.3 percent of the district's basic and per-ANB
21 entitlement and 40 percent of its special education allowable cost payment
22 (Section 20-9-306(2)(b), MCA); and
- 23 • *Voted Levies*, with no GTB aid, for that portion of the general fund budget
24 that exceeds the district's BASE budget (Sections 20-9-307(4)(e), -308,
25 -353(2), MCA).

1 2. **Funding the BASE Budget - 80 Percent of the Maximum General**
2 **Fund Budget**

3 48. A district's BASE budget is funded by adding "direct state aid," local
4 revenue and state GTB aid, if applicable. Sections 20-9-306(2)(3), -307(4), MCA.

5 49. The State is responsible for funding 44.7 percent of the district's BASE
6 budget (i.e. 80 percent of the district's basic entitlement plus 80 percent of the district's per-ANB
7 entitlement). The 44.7 percent is referred to as "direct state aid." Section 20-9-306(2), MCA.
8 In addition, the State provides revenue for allowable costs of special education. Section 20-9-
9 321, MCA.

10 50. Direct state aid and allowable special education revenue is derived from
11 a combination of sources. These include:

12 a. **County Equalization Aid.** First, each county in the state must levy
13 an annual basic county tax (33 mills for elementary and 22 mills for high school) on the dollar
14 of the taxable value of all taxable property (with certain exceptions) within the county for the
15 purpose of elementary and high school equalization aid and state BASE funding program support.
16 Section 20-9-331, MCA (elementary districts) and Section 20-9-333, MCA (high school districts).
17 The revenue generated by these mills, together with other sources of revenue, including Taylor
18 Grazing Act funds, federal flood control funds, fines for violations of law, federal and state
19 payments in lieu of taxes, gross proceed taxes from coal, and local government severance taxes
20 are referred to as "county equalization aid." Sections 20-9-331(2), -333(2). MCA.

21 b. **State Equalization Aid.** Next, revenue from various sources,
22 including income from State school lands, United States mineral royalties, surplus revenues from
23 county equalization, interest income, and a 40 mill state equalization levy are paid into a
24 "guarantee account" for purposes of providing revenue to school districts in support of the BASE
25 budget. Section 20-9-343, MCA.

1 51. **Local Revenue and GTB Aid.** The remaining sources of revenue for a
2 school district's BASE budget are local revenue and guaranteed tax base (GTB) aid, if a district
3 qualifies. Sections 20-9-308, -353, MCA (local); Sections 20-9-366 to -369, MCA (GTB). The
4 revenue for this portion of the BASE budget equals 35.3 percent of the basic entitlement, 35.3
5 percent of the per-student entitlement and 40 percent of special education allowable cost funding.
6 Section 20-9-367(1), MCA. The local revenue portion of the BASE budget is funded through a
7 local permissive (non-voted) tax levy, non-tax revenue sources available to a district, and for
8 districts that qualify, GTB aid. Section 20-9-308(5), MCA.

9 52. In order to determine the amount of the mandatory local levy to support
10 the district's BASE budget (i.e., "BASE mill levy"), the county superintendent starts with a
11 district's BASE budget and subtracts from that budget amount all non-tax revenue sources
12 available to the district, including state funding, non-levy revenues such as HB 124 block grant
13 revenue, coal gross proceeds taxes, tuition, investment earnings, fund balance reappropriated, and
14 others. Section 20-9-141, MCA. The remainder of the BASE budget must be funded with the
15 BASE mill levy. Section 20-9-141(1)(c), MCA. The state subsidizes the BASE mill through
16 GTB aid for districts that qualify. Section 20-9-367, MCA.

17 53. GTB aid is a state subsidy for BASE mills and is a state revenue source
18 that helps school districts reach the minimum BASE budget level. Section 20-9-367(1), MCA.
19 If a district's taxable value, compared to the locally funded part of the BASE budget is below the
20 comparable statewide ratio, the district receives GTB aid to assist in funding up to the BASE
21 budget level. Section 20-9-368, MCA. A district's GTB ratio is the ratio of the district's taxable
22 valuation to its GTB budget area. *Id.*

23 3. **Funding the Over-BASE Portion of the General Fund Budget**

24 54. If a district adopts a general fund budget over the BASE minimum budget,
25 that amount of the budget is called the "over-BASE" budget. Section 20-9-353(1), MCA. The

1 over-BASE budget, in general, represents the amount of the budget between the district's BASE
2 budget and the district's maximum budget. *Id.*

3 55. Any amount of a school district's budget that exceeds the BASE is funded
4 primarily by a local over-BASE tax levy (non-levy revenue, to the extent it is available, can also
5 be used to fund this portion of the budget). Sections 20-9-306(9), -353, MCA. GTB aid does not
6 apply to the over-BASE tax levy.

7 56. A district must seek and obtain voter approval from the residents of the
8 district for an over-BASE tax levy or an over-maximum budget amount. Section 20-9-353(2)(3),
9 MCA. Trustees adopt a resolution calling for an election and if the voters do not approve the
10 budget, the district may adopt a budget that is no greater than its "highest budget without a vote."
11 For a district with a prior year's budget between the BASE and maximum, the budget cannot
12 exceed the BASE budget amount plus the prior year's over-BASE levy. For a district whose prior
13 year budget exceeded the maximum budget, that district's budget cannot exceed the maximum.

14 **D. Funding For Other Budgeted Funds**

15 57. Although the general fund is the most significant fund for public school
16 districts, as described above, there are other budgeted funds that districts use to operate their
17 programs.

18 58. The revenue sources and expenditures in these other budgeted funds vary
19 and were fully described at trial. Districts may assess non-voted (i.e. permissive) tax levies in
20 funding the transportation, bus depreciation, tuition, retirement, and adult education funds. Voter
21 approval is required, however, for local tax levies to support building reserve, debt service,
22 technology, and flexibility funds.

23 59. Districts may finance capital projects by selling school bonds for up to 20
24 years and/or by establishing a building reserve to finance a building project on a pay-as-you-go
25 basis. Both of these financing mechanisms require voter approval. There is limited state aid

1 available to reimburse eligible districts for a portion of their debt payments on school bonds.

2 **III. Background and Historical Facts**

3 60. In 1985, a lawsuit was filed challenging Montana's then-existing school
4 funding system in this Court bearing the caption, *Helena Elementary School District No. 1, et al.*
5 *v. State*, Cause No. ADV-85-370. At the time, funding for school districts' general funds was
6 provided through the Montana Foundation Program.

7 61. In January 1988, the Honorable Henry Loble, District Judge, declared
8 Montana's system of school finance unconstitutional. *Helena Elem. Sch. Dist. No. 1 v. State*, No.
9 ADV-85-370 (Mont. 1st Jud. Dist., Jan. 13, 1988).

10 62. In that order, Judge Loble issued the following findings of fact concerning
11 the importance of education. These findings remain accurate and applicable:

12 13. The importance of education is universally recognized in our
13 society. In an often-quoted passage from *Brown v. Board of Education*, the United
States Supreme Court aptly described the role of education:

14 Today, education is perhaps the most important function of state
15 and local governments. Compulsory school attendance laws and
16 the great expenditures for education both demonstrate our
17 recognition of the importance of education to our democratic
18 society. It is required in the performance of our most basic public
responsibilities, even service in the armed forces. It is the very
19 foundation of good citizenship. Today, it is a principal instrument
20 in awakening the child to cultural values, in preparing him for later
professional training, and in helping him to adjust normally to his
environment. In these days, it is doubtful that any child may
reasonably be expected to succeed in life if he is denied the
opportunity of an education. Such an opportunity, where the state
has undertaken to provide it, must be made available to all on
equal terms.

21 *Brown of Board of Education*, 347 U.S. 483, 493 (1954).

22 14. Contemporary society demands increasing levels of sophistication,
23 and increased knowledge and understanding of technology. Education plays the
central role in developing a person's abilities to achieve that sophistication,
24 knowledge and understanding. Consequently, the quality of an individual's life is
25 increasingly dependent on the level and quality of that individual's education.

24 ////

25 ////

1 15. Public education is, without doubt, a fundamental and most
2 important function of the State of Montana and its political subdivisions. It is a
State and local responsibility jointly shared.

3 *Helena Elem. Sch. Dist. No. 1 v. State*, No. ADV-85-370, at 10-11 (Mont. 1st Jud. Dist., Jan.13,
4 1988).

5 63. The importance of education is also recognized by the Montana Supreme
6 Court's decision in *Helena Elem. Sch. Dist. No. 1 v. State*, 236 Mont. 44, 769 P.2d 684 (1989),
7 *modified by* 236 Mont. 44, 784 P.2d 412 (1990) (hereinafter "*Helena Elementary I*"). The
8 supreme court noted that equality of educational opportunity is the only right that is expressly
9 guaranteed in the Montana Constitution. *Helena Elementary I*, 236 Mont. at 53, 769 P.2d at 689.

10 64. On appeal, the Montana Supreme Court held that Montana's then-existing
11 school finance system violated Article X, Section 1 of the Montana Constitution. In arriving at
12 its holding, the supreme court focused in part on historically declining levels of state support for
13 elementary and secondary education:

14 The evidence shows that, in 1985-86, most school districts. . .utilized a
15 third stage of funding under which monies were obtained primarily from property
16 tax levies voted by each school district [and other, less significant sources]. By
17 1985-86, 35% of all General Fund budgets were obtained from this level of
funding. In contrast, in 1950, the Foundation Program furnished 81.2% of all
general fund revenues in Montana, leaving less than 20% of revenues to be
obtained by local levies and other sources.

18 . . .
19 In 1972, when our Constitutional Convention met, approximately 65% of
20 General Fund revenues were funded through the Foundation Program. Con.Con.
Tr. 2157. The transcript of the debate on Art. X, § 1(3), Mont. Const. clearly
expresses the delegates' concern with the level of funding. See, for example,
Con.Con. Tr. 1981-86, 2152-59.

21 *Id.*, at 48, 54-55, 769 P.2d at 686, 690.

22 65. In addition, the supreme court expressly addressed the relationship (or lack
23 thereof) between state funding and the mandated educational program as established by minimum
24 accreditation standards:

25 The evidence presented at the trial of this case clearly and unequivocally

1 established large differences, unrelated to “educationally relevant factors,” in per
2 pupil spending among the various school districts of Montana. . . . There was also
3 un rebutted testimony that the Foundation Program funding [i.e. state support for
general fund expenditures] falls short of even meeting the costs of complying with
Montana’s minimum accreditation standards.

4 *Id.*, at 53-54, 769 P.2d at 690.

5 66. In holding that the system was unconstitutional, the court focused on the
6 lack of adequate state funding:

7 We conclude that as a result of the failure to *adequately fund* the
8 Foundation Program, forcing an excessive reliance on permissive and voted
levies, the State has failed to provide a system of quality public education granting
9 to each student the equality of educational opportunity guaranteed under Art. X,
§ 1, Mont. Const.

10 *Id.*, at 55, 769 P.2d at 690 (emphasis added).

11 67. The Montana Legislature, in a special session in 1989, adopted new school
12 funding legislation through House Bill 28.

13 68. In 1991, two companion lawsuits were filed, challenging the
14 constitutionality of the revised system of school finance. *Helena Elem. Sch. Dist. v. State*, No.
15 BDV-91-1334 (Mont. 1st Jud. Dist.), and *Mont. Rural Educ. Ass'n v. State*, No. BDV-91-2065
16 (Mont 1st Jud. Dist.). These lawsuits came before this Court for trial in the early months of 1993,
17 while the 1993 Montana Legislature was in session.

18 69. In 1993, the Montana Legislature adopted House Bill 667 (HB 667).
19 Through that legislation, the legislature changed from the Foundation Program to the BASE
20 budgeting system for funding general funds in Montana’s public elementary and secondary
21 schools. As a result of the changes in the finance system, the pending lawsuits were ultimately
22 dismissed on mootness grounds.

23 **IV. House Bill 667**

24 70. As a result of the 1991 lawsuits mentioned in the above Finding of Fact
25 No. 68, the 1993 Montana Legislature adopted HB 667.

1 71. Testifying at trial in this matter was James Gillett, an auditor with the
2 Montana Legislative Auditor's Office. Gillett indicated that in creating what has become HB 667
3 in Montana's current finance system, his office analyzed school spending data for the year 1991.
4 The Legislative Auditor's Office used a statistical analysis known as a regression analysis.

5 72. The purpose of the regression analysis, which was later reflected in HB
6 667, was to design a system that addressed the issues of spending and taxpayer disparities among
7 similarly sized school districts. This purpose was generally accomplished by HB 667, which
8 prevented wide spending differences among similarly sized elementary and high school districts.

9 73. The evidence appears clear that HB 667 eliminated the wide spending
10 disparities that existed in prior law. However, some of the inherent problems that exist in the
11 construction of HB 667 are the problems that bedevil us today.

12 74. First, the school financing scheme evidenced by HB 667 is clearly
13 complicated and hard to understand. Not only is that the opinion of the numerically-challenged
14 author of this opinion, but also the opinion of well-respected national and state education leaders.
15 (*See e.g. Myers Test.; Miller Test.*)

16 75. The major problems of HB 667 are as follows:

17 a. HB 667 provided no mechanism to deal with inflation. John L.
18 Myers found this particularly alarming.

19 b. HB 667 did not base its numbers on any study of teacher pay, the
20 cost of meeting accreditation standards, the fixed costs of school districts, or the costs of special
21 education.

22 c. Any increases allowable to school districts under HB 667 were in
23 no way tied to the costs of increased accreditation standards or content and performance
24 standards.

25 d. The information upon which HB 667 relied was already two years

1 old when it was enacted into law.

2 e. HB 667 did not conduct any study to justify the disparity in ANB
3 dollars provided for high school and elementary students. (*See* Quinlan Test.)

4 76. Shortly after enacting HB 667, the legislature met in special session and
5 enacted House Bill 22 (HB 22). (*See* Pls.' Ex. 5.) HB 22 reduced state support of public
6 education by 4.5 percent, or \$19 million to the state general fund.

7 **V. Developments Since 1993**

8 **A. Technology Fund**

9 77. The Montana Legislature enacted a technology fund in 1995 to allow
10 school districts to spend funds outside a district's general fund for the purchase and maintenance
11 of technology-related equipment, especially computers. The problem with the State's contribution
12 to the technology fund is that it is not predictable. For example, in 2002, the State funding to the
13 technology funding was put on hold for two years. It may or may not be reinstated.

14 78. Some districts have been able to raise additional revenues for their
15 technology funds, while other districts have not. GTB aid does not apply to the technology fund,
16 and the amount of money raised for this fund is dependent upon the property wealth of the school
17 district.

18 **B. The Flex Fund**

19 79. The "School Flexibility Fund" (flex fund) was created by the legislature
20 in 2001. This fund allows yet another means for school districts to shift expenditures for
21 expenses outside the general fund. *See* Section 20-9-542 to -544, MCA. In general, the flex fund
22 was designed to allow school districts to spend money outside the spending caps imposed by HB
23 667. Again, since GTB aid does not apply to the flex fund, the revenue a school district is able
24 to raise in support of the flex fund is dependent upon the wealth of the district.

25 80. As far as the State contribution goes, the 2001 legislature appropriated

1 money for this fund, and some districts raised additional revenue through voted levies. The 2003
2 legislature, however, did not appropriate any money to the flex fund for the 2004-05 biennium.

3 **C. House Bill 424**

4 81. House Bill 424 (HB 424) was enacted by the Montana Legislature and
5 found its way into law as Section 20-9-501, MCA. The issue with this enactment is that,
6 beginning in 2005, school district employees whose salaries are funded with federal revenues may
7 not have their retirement benefits paid from the district retirement funds. The costs of these
8 retirement benefits will have to be funded either by federal dollars or general fund dollars.

9 **VI. Mandates and Standards**

10 82. A central issue in this case has been the legal requirements imposed on
11 school districts both by the federal government and the State of Montana. In almost every
12 instance, the mandates, whether they be federal or state, impose financial requirements on the
13 school districts without providing a funding source.

14 **A. Montana School Accreditation Standards**

15 83. The Court viewed the accreditation standards that have been established
16 by the constitutionally-established Board of Public Education. (*See generally* Pls.' Ex. 82.)
17 Generally, these accreditation standards are found at ARM 10.55.601. The accreditation
18 standards are enforced by the Office of Public Instruction (OPI).

19 84. The accreditation standards require school districts to offer certain
20 programs and classes; hire and train licensed teachers, administrators, counselors, and library
21 personnel; have certain class size limitations; provide for professional development; provide
22 adequate text books; and provide buildings that meet or exceed the accreditation standards.

23 85. The Board of Public Education has recently established certain content and
24 performance standards. These content and performance standards can be found at ARM
25 10.54.2501-10.54.9598. The content standards describe what students are expected to know in

1 certain content areas. Progress towards meetings these standards is measured at the end of grade
2 4, the end of grade 8 and upon graduation.

3 86. Pursuant to ARM 10.55.601(7), on or before July 1, 2004, each Montana
4 school district must align its curriculum to the State's content and performance standards. The
5 accreditation standards have increased over the years. For example, Defendants' Exhibit 685A
6 shows the 1989 accreditation standard requirements versus current requirements. In the high
7 school program for 1989, the basic program was to consist of at least 16 units, while under
8 current requirements, the basic program must include at least 20 units.

9 87. Another example of the problems imposed by increasing accreditation
10 standards was testified to by Rodney Svee, Superintendent of Billing School District. Svee
11 discussed Plaintiffs' Exhibit 149, which is the Billings Public Schools facility planning document.
12 At page 11, it is indicated that the two Billings high schools will require approximately 57 new
13 classrooms. According to Svee, most of these new classrooms are required because of increased
14 federal and state mandates. However, no funding is provided despite the imposition of the
15 increasing mandates.

16 88. According to Dr. Kirk Miller (Chairman of the Board of Education and
17 Superintendent of Schools in Havre), Rodney Svee and Charles Brown (Superintendent of
18 Schools in Lewistown), the accreditation standards do not define a quality education, but, rather,
19 set forth the basic or minimum standards that schools must provide. Indeed, the Montana
20 Supreme Court agreed with the concept that the accreditation standards do not fully define a
21 quality education, but, rather, are minimum standards. *See Helena Elementary I*, 236 Mont. at
22 57, 769 P.2d at 692.

23 89. Each year, school districts submit their reports to OPI. Based upon those
24 reports, OPI then makes a recommendation to the Board of Public Education as to whether a
25 school district has met the standards. This then results in a school being placed in certain

1 categories of accreditation.

2 90. Exhibits 85, 613 and 685C show the schools accredited under advice or
3 deficiency criteria. These schools are below the acceptable accreditation or accreditation with
4 minor deviation standards. In 1994-95, about four percent of Montana's elementary, middle and
5 high schools were accredited under advice or deficiency status. However, in fiscal year 2002-03,
6 that number had risen to over 18 percent. (Pls.' Ex. 85.)

7 91. Complying with the accreditation standards has imposed additional
8 financial burdens on school districts without corresponding increases in state aid to meet the new
9 standards. This and the lack of any inflationary component in HB 667 has resulted in many of
10 the accreditation problems shown on Exhibit 685C.

11 92. According to Dr. Miller, the money problems inherent in HB 667's scheme
12 has resulted in many teachers leaving Montana and teachers teaching without full endorsements
13 in specialized areas such as special education, math, science, and counseling.

14 **B. No Child Left Behind Act**

15 93. The No Child Left Behind Act of 2001 (NCLB) makes federal financial
16 aid for schools conditional on schools meeting certain academic standards and abiding by policies
17 set by the federal government.

18 94. Pursuant to the NCLB, every classroom must be staffed by a teacher
19 qualified to teach in his or her subject area. Further, the states must improve the quality of their
20 schools from year-to-year by achieving "Adequate Yearly Progress" (AYP). The percentage of
21 students proficient in reading and math must continue to grow, and the test score gap between
22 advantaged and disadvantaged students must narrow.

23 95. The exact impact of the NCLB is unknown. However, it would be safe to
24 say that there will be a financial impact on Montana schools for having to meet the NCLB
25 mandates. Unfortunately, it does not appear that the costs associated with compliance with the

1 NCLB are being paid by the state or federal governments. Although the federal government may
2 provide some of the necessary revenue, it will be insufficient to cover all the costs associated with
3 NCLB mandates. (See, e.g., McCullough Test.) According to Superintendent McCullough,
4 Montana now broadly endorses teachers so that, for example, a teacher with a general science
5 background could teach botany. On the other hand, under the NCLB's requirement for highly
6 qualified teachers, a botany teacher would have to have a major or certificate in botany in order
7 to teach that class.

8 C. Special Education

9 96. Under the "block grant" system, the legislature appropriates a set amount
10 of funding to the Office of Public Instruction to be distributed to school districts and special
11 education cooperatives for approved allowable special education costs.

12 97. State special education monies are then distributed by OPI to districts
13 through a system of block grants and reimbursements. The block grants include an instructional-
14 services grant and a related-services grant. Both of these grants are distributed based on the
15 number of students (ANB) in the district. For every \$3 a district expends in state special
16 education block grant monies, the district matches the state payment with \$1 of special education
17 expenditures paid from local sources. If a district's special education expenditures exceed the
18 state and local match requirement by more than ten percent, the district then becomes eligible for
19 a reimbursement from the state ("disproportionate reimbursement").

20 98. School districts must provide special education and related services to all
21 eligible students with disabilities. Eligibility is determined under the terms of the Federal
22 Individual with Disabilities Education Act (IDEA). Special education mandates are imposed on
23 school districts by both federal and state laws. Individuals with disabilities receive a wide range
24 of services that are individually determined based upon their educational needs.

25 99. Although both state and federal governments mandate school districts to

1 provide the sometime considerable services necessary for each individual child, neither
2 government provides the necessary funds to fully pay the costs of providing the required services.
3 As will be noted elsewhere, there is a significantly increasing reliance upon local school districts
4 to cover the costs of necessary services. This creates a competition for dollars between regular
5 and special education programs.

6 **VII. Funding Trends**

7 **A. State Funding Trends**

8 100. At trial, Plaintiffs introduced Exhibit 22 which shows school district
9 general fund budget trends from fiscal year 1991 through fiscal year 2003. Although student
10 enrollment is declining, the ANB count in fiscal year 2003 is 3,541 higher than in fiscal year
11 1991. (Pls.' Ex. 22, l. 2.) The state share of the general fund budget has dropped from 71.44
12 percent in fiscal year 1991 to 60.95 percent in 2003. *Id.*, l. 29. During the same time period, the
13 local share of the general fund budget has gone from 28.91 percent to 39.30 percent. *Id.* ¶ 31
14 at 1. Adjusted for inflation, the total state aid for the same time period has gone down by 17
15 percent. *Id.* ¶ 41 at 2. During the same time period, school district local property taxes have
16 increased 120.5 percent. *Id.* ¶ 47 at 2. And, according to line 52 of Exhibit 22, state support for
17 ANB has gone from \$2,751 in fiscal year 1991 to \$2,230 in fiscal year 2003 - a drop of 18.9
18 percent.

19 101. At the time Montana's constitution was adopted in 1972, state support for
20 general fund budgets was approximately 65 percent. According to Plaintiffs' Exhibits 32 and 33,
21 when all budgeted funds are considered, the same trends mentioned in Finding No. 100 continue.
22 State support for all funds fell from 54.29 percent in 1993 to 42.59 percent in 2002, while local
23 support increased from 36.68 percent in 1993 to 44.40 percent in 2002.

24 102. These same trends hold true for state support for special education.
25 Plaintiffs' Exhibit 115 is a document prepared by the Montana School Renewal Commission on

1 September 8, 2003. That exhibit deals with special education finance. At page 11, it is noted that
2 in 1989-90, the state share of special education costs was 81.49 percent, while the local share was
3 7.12 percent. By 2001-02, the state share had dropped to 41.49 percent, while the local share had
4 risen to 38.13 percent. These same trends are also shown on Plaintiffs' Exhibit 111.

5 103. According to various school district officials, over time the requirements
6 of federal law concerning services to disabled students have increased. The state's contribution
7 has declined over time, while the local contribution has increased. The extra money that the local
8 districts need is taken out of their regular funding sources, which creates a competition between
9 the general fund and funding for special education. (*See e.g., Johnson Test.; Svec Test.; Brown*
10 *Test.; Nicosia Test.*) This testimony was also echoed by Dr. William Hickey, Executive Director
11 of Special Services for Anaconda Public Schools, who testified that recent increases in state
12 funding towards special education are lost by the increased costs of providing services to disabled
13 students. Hickey testified that, in his opinion, the State of Montana was not funding its share of
14 special education costs, which adversely affected all school district children due to the
15 competition for dollars mentioned above.

16 **B. Increasing Trends Towards Budget Maximums**

17 104. When HB 667 was enacted, it implemented the mandatory BASE budget
18 amount (80 percent of the maximum). The purpose of establishing the BASE budget amount was
19 to assure all districts budgeted at a minimum level – a level that would presumably be adequate
20 to meet minimum standards. The concept was then to allow local districts the option of adopting
21 additional budget authority, up to the maximum general fund budget allowed by law (the 100
22 percent level).

23 105. Since 1991, the number of districts and ANB at or above the budget
24 maximum have increased. In fiscal year 1994, a total of 75 districts and 7,971 ANB were at 100
25 percent of the maximum general fund budget allowed by law. (Pls.' Ex. 49.) By fiscal year 2003,

1 the number of districts had increased to 172 and the ANB to 35,495. *Id.* This trend seems to be
2 more marked for elementary districts than high school districts.

3 106. When considering the number of districts and ANB at 98 percent or more
4 of maximum general fund budget allowed by law, we find that in 1994, 92 districts representing
5 12,511 ANB were at 98 percent of maximum general fund budget allowed by law. (Pls.' Ex. 49.)
6 By 2003, the number of districts had increased to 220, and the total students increased
7 to 81,915. *Id.*

8 107. The information shown in Plaintiffs' Exhibit 49 indicates that the budget
9 maximums established by HB 667 are not related to the costs that districts must incur to deliver
10 quality education programs and that state funding for public schools is inadequate.

11 108. Districts that are currently operating above the caps face serious difficulties
12 as they approach the five-year deadline for returning to the budget maximums. Trustee Peter
13 Marchi from the White Sulphur Springs District explained, for example, that his district has two
14 years left before it must return to the budget maximum, but they "really don't have anything to
15 cut as far as staff members or programs." (Marchi Test.) Under current law, however, they must
16 find a way within two years to implement additional "substantial cuts" that will adversely affect
17 the quality of the program. *Id.* This is in a district that already has accreditation problems due
18 to its inability to hire a language instructor to offer foreign language. This raises concern that the
19 state funding of public education is not based on educationally-relevant factors.

20 **VIII. Problems Related to Funding**

21 **A. Violations of Accreditation Standards**

22 109. Earlier this Court discussed the increasing number of school districts that
23 are having problems meeting Montana's accreditation standards. (*See* Pls.' Ex. 85; Miller Test.)
24 According to Dr. Miller, the rising number of schools failing to meet accreditation standards is
25 tied to the failure of the funding mechanism of HB 667 to keep up with inflation.

1 110. It should be kept in mind that the accreditation standards are duly adopted
2 by the State of Montana. Thus, any suggestion raised by the State at the trial of this matter that
3 the violation of the accreditation standards is not serious is rejected by the Court. If the State is
4 going to require schools to meet the accreditation standards, the State cannot say that violations
5 of those standards are not a serious issue.

6 111. The increasing violation of minimum accreditation standards is evidence
7 to this Court that Montana's quality public education system is being damaged and that it is
8 related to a decreasing supply of funds provided by the State of Montana.

9 **B. Teacher Salaries and Benefits**

10 112. According to Dr. Linda Darling-Hammond of Stanford University, quality
11 teachers are essential for successful students and a quality education. According to Dr. Darling-
12 Hammond, adequate salaries, working benefits and conditions are a big factor in getting and
13 maintaining a teacher corp.

14 113. It is undisputed that Montana teachers' salaries have been lagging behind
15 national averages. For example, the average salary for a beginning teacher in the United States
16 is \$32,000, while in Montana it is \$22,000. (Pls.' Ex. 72.) The average salary for an experienced
17 teacher in the United States is \$44,000, while in Montana it is \$34,000. *Id.*

18 114. In fiscal year 1992, Montana teachers' average salaries were 39th in the
19 country, while in fiscal year 2003, Montana ranked 47th in the amount it pays its average teacher.
20 (Pls.' Ex. 34.)

21 115. Plaintiffs' Exhibit 36 graphically shows the declining trend of the average
22 salary paid to Montana's teachers. In approximately fiscal year 1980, Montana's teachers were
23 28th in the nation and now they are 47th.

24 116. There also appears to be a clear trend of decreasing benefits for teachers.
25 For example, Charles Brown, Superintendent of Schools in Lewistown, testified that his district

1 is shifting more and more health insurance costs to the employees.

2 117. Many superintendents and other school officials testified at the trial
3 regarding this matter. Most testified to a noticeable decline in the number and quality of
4 applicants applying for job openings. In some areas, such as special education, music, language,
5 and science, school districts have difficulties finding qualified candidates. For example,
6 Superintendent McCullough indicated that 70 percent of the graduates getting a B.A. degree in
7 education from the Montana University System leave the state. According to McCullough, other
8 states offer signing bonuses, repayment of student loans and financial help with advanced
9 degrees, none of which are offered in Montana.

10 118. Dr. Miller indicated that in 1996 a job opening in the Havre School District
11 would attract 60 to 100 applications. He testified that a job opening last year garnered 15
12 applications, of whom he would classify 5 as being good. Dr. Miller noted that the quality of the
13 pool of applicants is decreasing, and that the State of Montana is not adequately funding a quality
14 education. (*See also* Cameron Test.; Marchi Test.; Schmidt Test.)

15 119. Roger Armstrong, Superintendent of Schools in White Sulphur Springs,
16 testified that at one job fair he went to, not one application was received for an opening in his
17 district. Indeed, Armstrong indicated that he intended to retire soon from the Montana system
18 and move to Washington state to regain employment, all strictly for financial reasons.

19 120. John McNeil, Superintendent of Schools in Savage, indicated that when
20 his district had an opening for a music teacher, the only applicant was a 70-year-old individual.

21 121. According to Dr. Bruce Messinger, Superintendent of the Helena School
22 District, the State is not supplying adequate resources for schools to do their job. Dr. Messinger
23 agreed that the number of applicants is down, especially now that regional competition for
24 teaching candidates is becoming a factor. Dr. Messinger noted that the Helena School District
25 was not able to use general fund monies for professional development, but is looking to federal

1 grants for that type of program.

2 122. Michael Nicosia, Superintendent of Columbia Falls School District,
3 indicated that his district uses retirement incentives to lure older, higher paid teachers to retire so
4 that they may be replaced by lower paid, inexperienced teachers.

5 123. It cannot be said that the State does not recognize the problems that exist
6 in recruiting and retaining teachers. Plaintiffs' Exhibit 75 is the Governor's Task Force on
7 Teacher Shortage and Teacher Salaries Final Report prepared in September 2000 at the request
8 of Governor Marc Racicot. Although identifying the problems and some solutions, few of the
9 solutions recommended in the task force report have been implemented.

10 124. In addition, the Montana Board of Public Education commissioned Dr.
11 Dori Burns Nielson to conduct a study on the teacher problem in Montana. Dr. Nielson's
12 document entitled "Who will Teach Montana's Children?" was received into evidence. (Pls.' Ex.
13 78.) This document is dated February 2001. The 2002 follow-up study was received as Exhibit
14 79. According to Dr. Nielson, Montana is projected to need approximately 900 new teachers per
15 year. Although Montana's university system produces about 900 students finishing education
16 programs each year, only about 29 percent of those students stay in Montana. (Pls.' Ex. 78 at 1.)
17 Dr. Nielson's report noted shortages in subject areas, as noted above, in special education, music
18 and the sciences. She also noted the decline in applications in even some of the more attractive
19 parts of Montana. Where some of these school districts once had 115 applicants for a position,
20 those districts now only receive about 40. *Id.* at 5.

21 125. Dr. Nielson also noted that not only it is difficult to recruit teachers, but
22 retaining them is a growing problem since as many, especially in smaller districts, are required
23 to accomplish multiple assignments. Dr. Nielson also noted the powerful competition from out
24 of state where new teachers are offered high salaries, bonuses and moving expenses. Dr. Nielson
25 noted that some school districts in Montana provide no benefits for their teachers.

1 126. In Dr. Nielson's follow-up study in 2002 (Pls.' Ex. 79), she noted no
2 improvement. Dr. Nielson noted that the number one reason certified staff leave their positions
3 in Montana is to obtain higher salaries. *Id.* at 7. Factors that might improve staff retention and
4 recruitment are ranked in order of importance from higher salary and better benefits to mentoring
5 programs and smaller classrooms. *Id.* at 10.

6 127. Dr. Nielson also surveyed Montana superintendents and principals. (Pls.'
7 Ex. 81.) Dr. Nielson noted that approximately 48 percent of the administrators surveyed indicated
8 that they planned to retire within the next five years. *Id.* at 1. Almost one-half of that group is
9 expected to leave Montana and continue working out of state as either a teacher or administrator.

10 128. This trend, both as to teachers and administrators, is alarming in light of
11 the testimony of Dr. Darling-Hammond, who testified that proven research establishes a
12 significant relationship between teacher quality and student achievement and gains. According
13 to Dr. Darling-Hammond, if it is difficult to recruit and retain teachers, the entire education
14 system at risk.

15 129. Dr. Darling-Hammond also noted that the recent economic changes to
16 which our economy has been subjected place an increasing demand for skill and training on the
17 workforce. The standard-based movement, through criteria reference tests, allows educators to
18 see if their students are meeting expected progress. This allows educators to determine if students
19 are meeting the new demands of society and allows educators to measure and allocate resources
20 as appropriate.

21 **C. Other Consequences of Dwindling Funding**

22 130. As noted above, more and more school districts are reaching budget caps.
23 When that occurs, the only options available are to reduce budgets, cut programs and reduce staff.
24 (*See Miller Test.*) Some of these problems have already been mentioned, such as difficulty in
25 paying for professional development programs. For example, Kent Kultgen, Superintendent of

1 Choteau School District, indicated that next year his district will eliminate all non-instructional
2 aides. Richard Cameron, Superintendent of Glendive School District, indicated that, in violation
3 of the accreditation standards, his district does not have a curriculum coordinator. Ron
4 Whitmoyer, Superintendent of East Helena Elementary School District, indicated that his district
5 does not have a gifted and talented program as required under the accreditation standards. He
6 added that his district has also cut programs in art, computer education and Spanish. Charles
7 Brown, Superintendent in Lewistown, indicated that in some of his schools, the supplies for
8 elementary students are furnished by parents as opposed to the school district. According to
9 Brown, the Lewistown School District is slowly dismantling its school system under the current
10 funding formulas.

11 131. The Court has already mentioned the trouble created when there is
12 competition for dollars within school districts where general fund dollars are being diverted to
13 pay for special education programs.

14 **D. Facilities, Construction and Maintenance**

15 132. Adequate and safe school facilities are an essential component of a quality
16 education system. This is specifically addressed in Montana's accreditation standards.

17 130. Richard A. Whitney, Director of Billings School District Facilities
18 Services, presented a list of building projects that his district needs to undertake over the next two
19 years in order to meet various building and safety codes. (Pls.' Ex. 147.) Whitney indicated that
20 approximately \$64 million is required for these projects. *Id.* at 2.

21 133. Due to lack of classroom space in Billings schools, the Billings School
22 District was forced to resort to a program called "Teachers on Carts." These teachers have no
23 classrooms assigned to them, but carry their instructional supplies on a cart while they roam to
24 a vacant room. (Pls.' Ex. 149 at 7-8.)

25 134. The Court has already referenced the testimony of Rodney Svee, wherein

1 he indicated that Billings High Schools needs 57 new classrooms resulting from increased federal
2 and state requirements.

3 135. The Court heard evidence that both Eureka and Livingston recently had
4 school buildings that were deemed unsafe and were either condemned or are on the verge of being
5 condemned. While a new building was being built, students in Eureka were educated in various
6 building around town, including a church building and part of a high school.

7 **E. Other Problems with the School Finance System**

8 136. Montana, like many other states, is implementing a standards-based
9 approach to education, as part of an effort to improve student performance. The Court has already
10 mentioned the implementation of the NCLB, Montana's accreditation standards, and performance
11 and content standards.

12 137. In implementing a standards-based approach, a state needs to do three
13 things: (1) specify its expectations for student performance; (2) develop procedures to measure
14 how well students are meeting those expectations; and (3) hold providers of education services
15 (school districts, schools, teachers) accountable for student performance. The logic of the
16 approach implies that a state will assure that sufficient resources are available in all school
17 districts, if not in all schools, so that they can reasonably be expected to meet state standards.
18 (Pls.' Ex. 68 at 2.)

19 138. A discussion of adequacy involves a determination of funding necessary
20 to produce a specific level of student performance. *Id.* at 1. For the standards-based approach
21 to have any chance of success, the state must assure that districts have sufficient resources
22 available so that they can reasonably be expected to meet the state's standards concerning student
23 performance. This requires that the foundation or base level of funding should reflect the
24 expenditures a district must make to enable students without special needs to meet state
25 performance expectations. The foundation or base level funding should also be adjusted to reflect

1 increased costs associated with special needs characteristics of students or districts.

2 139. In school finance terminology, a school finance system should satisfy
3 principles of equity and adequacy. That is, it should provide adequate funding to allow districts
4 to meet the expectations established under state law, and the funding should be allocated in an
5 equitable manner to assure equal opportunities for all students in the state. Significantly, experts
6 for both Plaintiffs and the State were in complete agreement on these fundamental principles.
7 The State's primary expert, Dr. Thomas Downes, for example, agreed that to define adequacy,
8 one must ask what resources are necessary for a school district to achieve the standards
9 established by a state.

10 140. In drafting Montana's constitution, it appears that the framers were
11 concerned that the needs of a basic quality system of education be realistically assessed. *See* Con.
12 Con. Tr., Vol. II, 725 (Educ. and Pub. Lands Comm. comment).

13 141. In *Helena Elementary I*, the Montana Supreme Court also recognized the
14 importance of relating the school finance system to the educational programs and opportunities
15 made available in Montana's elementary and secondary schools. The supreme court concluded
16 that expenditure disparities among Montana schools were not related to "educationally relevant
17 factors." Based in part on this conclusion, the court declared the funding system unconstitutional
18 under Article X, Section 1 of the Montana Constitution. *Helena Elementary I*, 236 Mont. at 55,
19 769 P.2d at 690.

20 142. One of the main problems with Montana's current school funding system
21 is that it is not based upon educationally relevant factors, nor is it based upon a determination of
22 the funding levels that are necessary to meet the standards required for public education. Rather,
23 it was designed to be a mathematical, statistical regression analysis based on previous expenditure
24 patterns. According to Superintendent McCullough in designing the current funding system, the
25 State made no effort to determine the components of a basic system of quality education, nor did

1 it make any attempt to relate the funding formula to the cost of providing that education or to
2 meet the requirements of its accreditation standards. According to Rodney Svee, the base amount
3 of funding under HB 667 is not tied to the actual cost of providing an education.

4 143. The base amounts allowable under HB 667 were never based on a
5 determination of the costs of meeting mandates and expectations. Any number of superintendents
6 testified that the base amounts would not allow their districts to meet minimum accreditation
7 standards. (Svee Test.; Whitmoyer Test.; Armstrong Test.; McNeil Test.; Kultgen Test.)

8 144. As noted earlier, the funding formula allows for different funding between
9 elementary and high schools. However, it appears that there was no study or research done that
10 would indicate that these funding differentials accurately reflect any cost differences that may
11 exist. Dr. Messinger indicated that the inadequacies and differences in the elementary funding
12 level have caused the Helena School District to take money out of its middle school program to
13 make up for shortfalls at the elementary level. According to Dr. Messinger, this has harmed the
14 quality of education in Helena's middle school program.

15 145. Other evidence points to the fact that HB 667's funding formula may not
16 be based on educationally relevant factors. HB667's formula provides for decreasing general fund
17 budget authority as ANB may decrease. This decline in general fund budget authority as a result
18 of declining enrollment, however, does not appear to be rationally related to the economic reality
19 of operating a school district.

20 146. Ron Whitmoyer of East Helena indicated that as enrollment in his district
21 has dropped, the district loses money under the funding formula, but costs do not go down
22 because many of the costs are fixed. A school district must continue with the same physical plant,
23 heating bills and electrical bills. (*See also* Armstrong Test.; Quinlan Test.)

24 147. After continued, unsuccessful attempts to convince the State to undertake
25 an effort to correlate funding to educational costs and needs, the Montana School Boards

1 Association, in conjunction with other interested groups, commissioned a study of the cost of
2 providing an adequate education in Montana. The study was performed by the nationally-
3 recognized school finance consulting firm of Augenblick & Myers (A&M). Plaintiffs' Exhibit
4 68 is the resultant study which looked to determine the adequacy of school funding in Montana.
5 The study was designed to determine the funding levels necessary for different school districts
6 to produce a specific level of student performance or an adequate education. (Pls.' Ex. 68 at 1.)

7 148. A&M's finance experts utilized a "professional judgment" approach to
8 studying the costs of education in Montana. This is one of four methods that have been
9 developed to study the costs of education. In conjunction with the national experts,
10 approximately 80 educators from Montana participated in the study process,. These Montana
11 educators include well-recognized and respected educators and leaders from throughout the State,
12 including several members of the Montana Board of Public Education, as well as award-winning
13 administrators, teachers and school trustees. Several educators who participated in the study
14 testified at trial. They consistently endorsed the methodology and results of the study, and stated
15 that the resources identified were not "pie in the sky" or ideal, but were instead realistic
16 assessments of the resources necessary to meet existing standards and requirements.

17 149. According to the study, the professional judgment approach asked
18 educators to specify the resource needs of quality schools. It asked educators to identify the
19 resources they feel need to be in place in prototype schools in order for students to achieve a
20 specific set of objectives. *Id.* at i.

21 150. A&M explained its procedure as follows: First, A&M created prototype
22 districts. Then, a school level panel of educators focused exclusively on estimating the resources
23 needed at the prototype school site. A school district level panel then reviewed the work of the
24 school level panel and estimated the resource needs of the prototype districts. Finally, one expert
25 panel reviewed the work of all the district panels and made choices regarding the price of

1 resources. *Id.* at ii.

2 151. According to the A&M study, Montana's school funding formula is not
3 currently providing adequate funding to allow school districts to meet the standards, expectations
4 and mandates that apply to public schools in Montana. This is consistent with the testimony of
5 Dr. Miller, Mr. McNeil, and Dr. Lawrence Picus, a nationally known school finance expert from
6 the University of Southern California.

7 152. The A&M study merely supports other evidence that shows that the State
8 of Montana is not adequately funding public education. Also, it demonstrates methods the State
9 could employ to analyze and construct a funding system that is rationally based on the costs that
10 must be necessarily incurred to meet the standards and requirements that govern public education
11 in Montana.

12 153. John Myers testified that the A&M study may not necessarily be the answer
13 for a new funding system for Montana. There are, for example, extra needs that have not been
14 factored in such as the unknown costs of the NCLB. Further, the A&M study does not deal with
15 building construction or transportation, nor does it have a built-in inflationary adjustment.

16 154. The Court notes that under Montana's current system, the average
17 expenditure per pupil is \$7,007, while the prototype districts had average expenditures per pupil
18 ranging from \$7,681 to \$9,954. *Id.* at 23.

19 155. This Court notes four deficiencies with the professional judgment
20 methodology as explained by Dr. Thomas Downes, an economics professor at Tufts University:
21 (1) the results cannot be duplicated; (2) the panel members have no incentive to think about
22 tradeoffs; (3) the process requires many panels members to predict out of samples beyond their
23 own experience; and (4) the process suffers from an inherent upward bias driven by self-serving
24 behaviors of even one panel member. In addition, one panel member expressed concern that the
25 plan may call for more than Montana's economy could support. (Defs.' Ex. 685KKK.)

1 156. There is no question that John Myers and his firm are nationally renowned
2 experts in the field of educational finance, and that their study, although not perfect, certainly is
3 a good start.

4 157. According to Dr. Larry Picus, there are four methods to test adequacy to
5 see if a state's educational system allows students to meet standards. The first is the professional
6 judgment study just mentioned. The second is the evidence-based approach, where evaluators
7 look at models of school systems, such as was done in Arkansas and Kentucky. The third is the
8 successful school model where evaluators identify good schools, and then determine the costs
9 associated with those schools and apply those costs to other schools. Finally, there is the cost
10 function approach, which, according to Dr. Picus, has not been used by any state.

11 158. As noted earlier, the A&M study does not address building costs. The
12 Montana Legislative Fiscal Analyst Office conducted a study in 1990 and found "the results
13 indicated that many of Montana's inadequate school buildings are concentrated in the state's
14 poorest districts and that 4 of every 10 districts will need a new facility or extensive remodeling
15 of existing facilities by fiscal year 1996." (Pls.' Ex. 160 at 23.)

16 159. State funding for capital outlay costs is proportionately not large. For
17 example, Plaintiffs' Exhibit 56 shows the ratio of state revenue for debt service compared to total
18 expenditures for debt service by district level. The state share of the total debt service for
19 building construction ranges, for fiscal year 2002, from about 6.7 to 9.8 percent. The cost of
20 constructing and maintaining school facilities remain primarily a local burden, funded primarily
21 through local property taxes. (Pls.'s Ex. 56.)

22 160. In sum, evidence of the State's failure to adequately fund its share
23 of the elementary and secondary school system in Montana is evidenced by the following:

24 A. The growing number of school districts budgeting at or near their
25 maximum budget authority. (Picus Test.)

- 1 B. The increasing number of schools with accreditation problems.
- 2 C. The difficulty in attracting and retaining teachers, which is based,
3 to a large degree, on the decreasing salaries and benefits that are offered to Montana teachers
4 compared to their counterparts in the United States.
- 5 D. The large number of programs that have been cut in recent years
6 as evidenced by the testimony of numerous superintendents.
- 7 E. The increasing difficulties that schools are having constructing safe
8 and adequate buildings or maintaining the code compliance of the buildings that currently exist.
- 9 F. The increasing competition for general fund dollars between special
10 education and regular education, which lowers the available money to students in regular
11 education programs.
- 12 G. The results of the A&M study.
- 13 H. The testimony of various superintendents that, if they were forced
14 to provide their educational programs at the BASE general fund amount, they could not meet
15 accreditation standards or offer a quality educational program.
- 16 I. The declining share of the State's contribution to the general fund
17 budget of Montana's school districts.
- 18 J. The fact that Montana's funding formula is not reasonably related
19 to the costs of providing a basic system of quality public elementary and secondary schools.
20 Further, it is clear that the current funding system was not based on a study of the funding
21 necessary to meet what the state and federal governments expect of Montana's schools.
- 22 K. The fact that the Montana Supreme Court has stated that it is the
23 State's obligation to adequately fund its share of the school financing formula. *Helena*
24 *Elementary I*, 236 Mont. at 55, 769 P.2d at 690.
- 25 L. The fact that the Montana Supreme Court noted that “[i]n 1972,

1 when our Constitutional Convention met, approximately 65% of General Fund revenues were
2 funded through the Foundation Program. The transcript of the debate on Art. X, § 1(3), Mont.
3 Const. clearly expresses the delegates' concern with the level of funding." *Helena Elementary*
4 *I*, 236 Mont. at 48, 769 P.2d at 690.

5 **IX. Equity**

6 161. Dr. Picus, a nationally recognized expert in school finance and the author
7 of a leading text in the field, conducted an equity analysis of Montana's school funding system.
8 According to Dr. Picus' analysis, using recognized measures of equity, approximately one-third
9 of Montana's children live in school districts where there are substantial differences in
10 expenditures or revenues per-ANB. (Picus Test.) Dr. Picus testified that Plaintiffs' Exhibit 60,
11 on pages 1 and 2, shows that smaller elementary school districts are substantially unequal. In
12 addition, Dr. Picus felt that there was substantial inequity for K-12 districts as shown in Plaintiff's
13 Exhibit 43. Further, Dr. Picus noted that only the smallest high school districts shown on
14 Plaintiffs' Exhibit 62 had worrisome inequity problems.

15 162. On cross-examination, however, Dr. Picus conceded that he had conducted
16 equity studies in both Massachusetts and Kansas in which he had used identical methods as the
17 study he conducted in Montana. (Picus Test.) In both Massachusetts and Kansas, Dr. Picus
18 evaluated the equity of spending across school districts on a statewide basis due to the fact that
19 all districts in those states are consolidated K-12 types. (Picus Test.) Dr. Picus did not attempt
20 to break down the districts by size in either state. (Picus Test.)

21 163. In both Massachusetts and Kansas, Dr. Picus found acceptable levels of
22 inequality based upon a series of statistical measures used by researchers in the field of school
23 finance, including the Federal Range Ratio, the Coefficient of Variation, the Gini Coefficient, the
24 McLoone Index, and the Verstegen Index. (Picus Test.)

25 164. A comparison of these various indices between Montana and

1 Massachusetts and Kansas, however, undermines the credibility of Dr. Picus's conclusions
2 regarding the unacceptable levels of inequality in Montana. For example, according to Dr.
3 Picus's own analysis, Montana's elementary school districts showed higher levels of equality than
4 either Massachusetts and Kansas. (Defs.' Exs. 685EE, 685UU.)

5 165. Despite this result, Dr. Picus testified that Montana's elementary districts
6 show unacceptable levels of equality beginning in those districts with enrollments between 151
7 and 400 students and continuing through the smaller districts. (Picus Test.) A review of his
8 analysis for Montana's elementary districts with enrollments between 151 and 400 students
9 reveals that Montana exceeds Massachusetts in all measures of equity, except the Verstegen
10 Index. (Defs.' Ex. 685II.) Montana's Verstegen Index for these districts was 1.10, compared with
11 1.09 for Massachusetts. A comparison between these districts in Montana with Kansas results
12 in a similar outcome: Montana exceeds Kansas in all measures of equity except the Verstegen
13 Index. (Defs.' Ex. 685YY.)

14 166. A comparison of Montana's high school districts with enrollments of
15 between 201 and 400 students to Massachusetts and Kansas also calls into question Dr. Picus's
16 conclusions regarding Montana. These Montana high school districts exceeded Massachusetts
17 in all measures of equity. (Defs.' Ex. 685OO.) These Montana high school districts also
18 exceeded Kansas in all measures of equity except the Verstegen Index. (Defs.' Ex. 685CCC.)
19 Finally, with respect to K-12 districts, Montana's districts with more than 400 students show
20 higher levels of equity than Kansas in all categories except one. (Defs.' Ex. 685EEE.)

21 167. In an attempt to rehabilitate Dr. Picus's analysis, Plaintiffs asked him to
22 conduct a statewide analysis for Montana in order to get an "apples to apples" comparison with
23 the statewide equity analyses that he had conducted in Massachusetts and Kansas. According to
24 Dr. Picus, the levels of inequality in Montana on a statewide basis far exceed that found in
25 Massachusetts or Kansas on a statewide basis. (Picus Test.; Defs.' Ex. 166.)

1 168. As noted by Dr. Thomas Downes, who testified on behalf of the State, Dr.
2 Picus's "apples to apples" comparison of Montana on a statewide basis to Massachusetts and
3 Kansas on a statewide basis, fails to take into account important differences. For instance,
4 Massachusetts and Kansas have only K-12 districts. By contrast, Montana has elementary
5 districts, high school districts, and K-12 districts. More importantly, Montana's funding system
6 provides different levels of a base entitlement between the various types of districts and a
7 different level of ANB between elementary and high school students. (Downes Test.)

8 169. In light of Dr. Picus's conclusions that the levels of inequality found in
9 Massachusetts and Kansas were acceptable, the Court finds it difficult to suggest that similar
10 levels of inequality in Montana should be deemed unacceptable.

11 170. This leaves the Court in quite a conundrum, since both Dr. Picus and Dr.
12 Downes are well-respected scholars. Concerning this conundrum, the Court takes the suggestion
13 of Plaintiffs' counsel and calls this dispute a tie. The laws enacted by the legislature are presumed
14 constitutional unless proven otherwise beyond a reasonable doubt. *Zempel v. Uninsured*
15 *Employers Fund*, 282 Mont. 424, 428, 938 P.2d 658, 661 (1997). Since Plaintiffs have the
16 burden to show that a statute is unconstitutional, the Court must find that concerning school
17 equity issues, Plaintiffs have not met their burden.

18 171. Plaintiffs suggest two other areas of inequity. First, Plaintiffs suggest that
19 the burdens of paying for the construction of school facilities still fall primarily on local
20 taxpayers, which is true. According to Plaintiffs, since local taxpayers must pay virtually the
21 entire cost of constructing buildings, the poor districts are unable to construct badly needed
22 facilities. (See e.g., Quinlan Test.) Further, Plaintiffs suggest that the competition between the
23 special education funds and general education funds for non-special education students creates
24 equity issues.

25 172. Plaintiffs' factual assertions are correct in regard to construction and special

1 education. However, the Court disagrees with Plaintiffs' categorization of these matters as issues
2 of equity. Rather, the Court treats these two issues as further evidence of inadequacy rather than
3 inequity.

4 **XI. Indian Education**

5 173. As noted earlier, Article X, Section 1(2) of the Montana Constitution
6 provides: "The state recognizes the distinct and unique cultural heritage of the American Indians
7 and is committed in its educational goals to the preservation of their cultural integrity."

8 174. In *Helena Elementary I*, the Montana Supreme Court addressed this
9 subsection and held that "[T]he provision establishes a special burden in Montana for the
10 education of American Indian children which must be addressed as part of the school funding
11 issues." 236 Mont. 58, 769 P.2d at 693.

12 175. Despite this admonition by the supreme court, it would appear that nothing
13 has been done to effectuate subsection (2) of Article X, Section 1 of the Montana Constitution.
14 As shown on Plaintiffs' Exhibit 141 at page 53, the 1995 Montana Legislature adopted Senate
15 Joint Resolution No. 11, directing the committee on Indian Affairs to study issues relating to the
16 implementation of the Article X, Section 1(2) principles. The committee published its report to
17 the Fifty-Fifth Legislature in December 1996. The committee's conclusions included the
18 following:

19 1. The intent of Article X, section 1, subsection (2), of the Montana
20 Constitution is for **all** public schools to develop appropriate policies and programs
to recognize and preserve the value of the American Indian culture and traditions.

21 2. Many public schools are attempting to educate their students about
22 the role of Indians in the history of Montana and the nation by integrating Indian
history into the regular history and social studies curricula and by celebrating
Native American Day every September.

23 3. Many public schools do not provide any instruction or sponsor any
activities relating to Indian history and culture.

24 4. Very few school districts require any specific training in Indian
25 studies for their certified personnel, nor do they provide such instruction through
inservice training. . . .

(Pls.' Ex. 141 at 53.)

1 176. In 1999, the legislature enacted House Bill 528, which has come to be
2 known as the Indian Education for All Act. It is codified at Sections 20-1-501 to -503, MCA.
3 The law incorporates mandates that are intended to give effect to the constitutional principles of
4 subsection (2) of Article X, Section 1. (Juneau Test.; McCullough Test.; Silverthorne Test.)

5 177. To have any meaning or effect, the Indian Education for All Act requires
6 resources and programs, which, in turn, require funding. Despite this, the legislature has provided
7 no funding. In this regard, the Court relies on the testimony of two well-respected Native
8 American educators, Carol Juneau and Joyce Silverthorne, a member of the Montana Board
9 Public Education.

10 178. In reality, the State appears to be defenseless on Plaintiffs' claim that
11 Article X, Section 1(2) of the Montana Constitution has not been implemented by the State
12 despite the constitution's direction to do so.

13 **X. The State has Acknowledged a Problem**

14 179. The 2001 legislature created the Governor's K-12 Public School Funding
15 Study Advisory Council. That advisory council's report and recommendations is dated December
16 31, 2001. (Pls.' Ex. 96.) In that study, it is noted that "the Council concluded that an adequacy
17 study would have several benefits. . . ." *Id.* at 31. However, it appears that no adequacy study
18 was ever completed.

19 180. The Office of Public Instruction is also on publicly on record in identifying
20 problems with Montana's school funding system. (See Pls.' Exs. 2, 2A, 98, 99, 111, 112, 113,
21 116-121.)

22 181. The Montana Board of Public Education is on record recognizing that there
23 are serious problems with Montana's school funding system through its Action Plan (Pls.' Ex. 84)
24 and Position Paper on Public School Funding and Structure (Pls.' Ex. 87.) Further, the Board, as
25 noted earlier, was the sponsor of the studies conducted by Dr. Nielson concerning problems with

1 attracting and retaining teachers and administrative staff. (Pls.' Exs. 78 through 81.)

2 182. Part of the State's defense seems to encompass a view that a lot of the
3 problems mentioned by the educators are future problems. However, the continued existence of
4 Montana's system of quality public schools is threatened. As Superintendent McCullough
5 testified:

6 If we don't seriously address the very real problems, such as a looming
7 educator shortage and adequate state support for state schools, we will very likely
8 see a decline in the quality of the education our children receive. We need to
9 address these problems now. Waiting will only create far worse and more costly
10 problems.

11 (McCullough Test.)

12 183. Dr. Miller stated: "If we fail to work together now to provide a quality
13 system of education in Montana, it will take a generation to recover from the erosion we are
14 currently facing. Our children, and our state, deserve our best effort!" (Pls.' Ex. 88 at 6.)

15 **XII. The State's Defenses**

16 184. The State urges three defenses of the current funding system: (1)
17 Montana's relative spending in light of its fiscal capacity compared to other states; (2) Montana's
18 ability to recruit and retain quality teachers; and (3) achievement levels of Montana students as
19 measured by available standardized tests.

20 185. The State produced two very impressive witnesses in Dr. Thomas Downes
21 of Tufts University and Dr. Susanna Loeb of Stanford University.

22 186. The fiscal capacity issue is essentially the same one that was advanced by
23 the State in *Helena Elementary I*. In that decision, the Montana Supreme Court held that state-
24 wide fiscal difficulties cannot justify an unconstitutional funding system. 236 Mont. at 54, 769
25 P.2d at 690. The constitution says what it says and does not allow for such a defense.

187. The State also relies on evidence that Montana's students do well on
standardized national tests. Defendants' Exhibit 685F sets forth various encouraging statistics

1 concerning Montana students' achievements on the National Assessment of Education Progress
2 (NAEP) test and on college entrance examinations. The State attempted this same defense in
3 *Helena Elementary I*, and it was rejected there. 236 Mont. at 54, 769 P.2d at 690.

4 188. The educators who testified at trial indicated that performance on
5 standardized tests, such as are mentioned in Exhibit 685F, are an incomplete measure of
6 adequacy. Indeed, Dr. Downes, the State's main expert, admitted that he was unable to draw any
7 conclusions one way or the other with respect to the adequacy of Montana's funding based upon
8 available test score data. Primarily, the Court would assume this is so because the tests here in
9 question, the NAEP and the Iowa Test of Basic Skills, are standardized norm tests, whereas a
10 better measure would be criteria tests, which are not yet in place. These criteria tests measure
11 how well a school is doing on the standards-based approach that was mentioned above.

12 189. The Court notes that Superintendent McCullough testified that there is
13 evidence suggesting Montana's relative ranking is stagnating, and Dr. Darling-Hammond testified
14 that Montana's ranking has actually declined on some tests. For example, the fourth grade NAEP
15 test for reading shows that Montana fell from fourth in 1998 to ninth in 2003. (Pls.' Ex. 173.)

16 190. Further, the Court must give some weight to the fact that neither Dr.
17 Downes nor Dr. Loeb strayed far from any statistical data, and neither one of them communicated
18 directly with educators in Montana. In this regard, the Court must find more credible the
19 overwhelming evidence that has been presented by Montana's leading educators.

20 **XIII. Suggested Remedies**

21 191. This Court does not find it necessary or proper to define or specifically
22 determine the components of a "basic system of free quality public elementary and secondary
23 schools." Also, it is unnecessary to declare a specified percentage that would be sufficient to
24 satisfy the State's share of the cost of this system. Suffice it to say, under the current system, the
25 Court concludes that the State is currently not meeting its obligation to fund its share of the costs

1 of the system as it is required to by Article X, Section 1 of the Montana Constitution.

2 192. In this regard, it is important to further recognize and find that the State's
3 constitutional obligations are not limited to general fund budgets. Rather, the cost of the basic
4 system includes all costs, whether funded through the general fund or other funds, including such
5 significant funds as capital outlay/debt service, retirement and transportation. When these
6 additional costs are considered, the State is funding an even smaller percentage of the total costs
7 of the basic system.

8 193. The Court notes that there are methods recognized by policy makers and
9 experts for identifying the costs of meeting standards established by the State for its system of
10 public education. One of these costing-out methodologies is the professional judgment approach,
11 such as the A&M study. The Court finds this approach to determine an adequate level of funding
12 is much more reliable and accurate than the approach that was used in formulating the current
13 system and the actions taken by the State in respect to funding since the enactment of HB 667.
14 However, for the reasons noted earlier in this decision, the Court finds it would be inappropriate
15 to rely entirely on a professional judgment approach.

16 194. As noted by the State in its proposed Finding of Fact No. 72, Plaintiffs'
17 own expert, Dr. Picus, has modified his future adequacy studies to combine the professional
18 judgment methodology with the cost-based approach.

19 195. A particular requirement is that the funding system must be based on
20 educationally-relevant factors. This requires that the funding system be based on the costs of
21 meeting the standards that govern the operation of Montana's schools. Once adequate levels of
22 funding are determined, the State must then fund its share of the cost of the system. The State's
23 share must be an amount that is adequate at the BASE or foundation levels to allow districts to
24 meet the standards. As previously established, this applies not only to general funds, but to the
25 overall costs of the elementary and secondary system. In accomplishing this, it would be

1 appropriate for the State to include a reasonable phase-in plan for implementing a new funding
2 system.

3 196. At trial, John Myers testified that it is difficult for any funding formula to
4 maintain itself over any period of time, especially without some provision for periodic review
5 and/or a provision for inflationary cost increases.

6 197. In view of the language of the constitution, this Court does not feel it
7 appropriate to tell the legislature how to design a system. However, hopefully the suggestions
8 given by the Court will help the legislature in avoiding some of the problems that currently exist.

9 198. The Court also notes that it would be appropriate for it to exercise
10 continuing jurisdiction over this case so as to avoid unnecessary, costly delays and complications
11 absent continuing jurisdiction.

12 199. For the same reasons that attorney fees were denied in *Helena*
13 *Education I*, this Court will deny attorney fees to Plaintiffs' attorneys. 236 Mont. at 59, 769 P.2d
14 at 693.

15 From the foregoing Findings of Fact, the Court hereby enters the following:

16 **CONCLUSIONS OF LAW AND ORDER**

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

20 2. Montana's current school funding system, described above, does not violate
21 the equal protection provisions of Article II, Section 4 of the Montana Constitution.

22 3. Article X, Section 1 of the Montana Constitution requires:

23 **Educational goals and duties.** (1) It is the goal of the people to establish
24 a system of education which will develop the full educational potential of each
25 person. Equality of educational opportunity is guaranteed to each person of the
state.

(2) The state recognizes the distinct and unique cultural heritage of the
American Indians and is committed in its educational goals to the preservation of

1 their cultural integrity.

2 (3) The legislature shall provide a basic system of free quality public
3 elementary and secondary schools. The legislature may provide such other
4 educational institutions, public libraries, and educational programs as it deems
5 desirable. It shall fund and distribute in an equitable manner to the school districts
6 the state's share of the cost of the basic elementary and secondary school system.

7 4. This Court concludes that the rights in Article X, Section 1 were very
8 important to the people who wrote the Montana Constitution. As noted by the Montana Supreme
9 Court, there is no other instance in the constitution where that document guarantees a particular
10 right. *Helena Elementary 1*, 236 Mont. at 53, 769 P.2d at 689. Further, the Montana
11 Constitution, in Article X, Section 1, imposes clear mandatory duties upon the Montana
12 Legislature. Among those duties is the requirement that the legislature fund the State's share of
13 the costs of the basic elementary and secondary school system.

14 5. This Court determines that a middle-tier analysis of the constitution is most
15 appropriate in this case. *Mont. Envtl. Info. Center v. Dep't of Envtl. Quality*, 1999 MT 248, ¶ 57,
16 296 Mont. 207, ¶ 57, 988 P.2d 1236, ¶ 57 (“*MEIC*”); *See also Kaptein v. Conrad Sch. Dist.*, 281
17 Mont. 152, 931 P.2d 1311 (1997).

18 6. Under such a test, where a constitutionally significant interest is
19 implicated, middle-tier scrutiny requires that the State demonstrate two factors: (1) that its
20 classification is reasonable, and (2) that its interest in classifying is more important than the
21 peoples' interest in obtaining constitutionally significant benefits. *MEIC*, ¶ 58.

22 7. Under this level of scrutiny, there is no question that the current funding
23 system is not reasonable, since the overwhelming evidence supports Plaintiffs' contention that the
24 funding system and the classifications contained therein are not based on educationally-relevant
25 factors. Further, there is no evidence that the State's interest in such classification is more
important than the peoples' interest in being guaranteed the rights set forth in Article X, Section
1 of the Montana Constitution.

1 8. This Court hereby rules that the current state funding system violates
2 Article X, Section 1(2) of the Montana Constitution in that the State has failed to recognize the
3 distinct and unique cultural heritage of American Indians and has shown no commitment in its
4 educational goals to the preservation of their cultural identity.

5 9. This Court hereby rules that the current Montana school funding system
6 violates Article X, Section 1 of the Montana Constitution in that it fails to provide adequate
7 funding for Montana's public schools.

8 10. This Court further rules that the State of Montana has violated Article X,
9 Section 1 of the Montana Constitution in that the State is not paying its share of the cost of the
10 basic elementary and secondary school system.

11 11. With respect to Montana's accreditation standards, this Court concludes
12 that certain Conclusions of Law found by the Montana Supreme Court in *Helena Elementary I*
13 remain accurate to this day. “Thus, the Montana School Accreditation Standards do not fully
14 define either the constitutional rights of students or the constitutional responsibilities of the State
15 of Montana for funding its public elementary and secondary schools.” 236 Mont. at 52, 769 P.2d
16 at 692.

17 12. This Court takes into account the fact that some of the damage that the
18 educators testified to at trial is prospective in nature. However, this evidence is persuasive and
19 relevant. Just as the Montana Supreme Court did not feel it necessary to wait for “dead fish [to]
20 float on the surface of our state's rivers and streams before its farsighted environmental
21 protections can be invoked” (*MEIC*, ¶ 77), this Court finds that it should not have to wait until
22 Montana's school system collapses in financial ruin prior to entering an order this case.

23 13. To satisfy Montana Constitution, the State's school finance system must
24 be based upon a determination of the needs and costs of the public school system, and the school
25 finance system must be designed and based upon educationally-relevant factors.

