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

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

Plaintiffs,

v.

THE STATE OF MONTANA,

Defendant.

Cause No. BDV-2002-528

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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3 This matter was heard September 22 through 26, 2008, and on
4 October 22, 2008. Plaintiffs, except for Plaintiff Montana Rural Education
5 Association (MREA), were represented by James P. Molloy and Brian K. Gallik.
6 Richard Batterman represented MREA. Ali Bovington and Anthony Johnstone
7 represented Defendant State of Montana.

8 **NOTICE TO THE CASUAL READER**

9 The casual reader is directed to page 48, which is a summary of this
10 Court=s decision.

11 **BACKGROUND**

12 This constitutional challenge to Montana=s school funding system
13 originally came before this Court for trial from January 20 through February 4,
14 2004. On April 15, 2004, this Court entered its Findings of Fact, Conclusions of Law
15 and Order. The case was appealed to the Montana Supreme Court, which issued a
16 summary opinion on November 9, 2004. The supreme court issued its full
17 opinion on March 22, 2005. *Columbia Falls Sch. Dist. v. State*, 2005 MT 69, 326
18 Mont. 304, 109 P.3d 257.

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

23 Plaintiffs filed a renewed motion for supplemental relief and an order to
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1 show cause dated February 5, 2008. Following briefing, the Court heard argument on
2 the renewed motion on April 4, 2008. The Court issued its Order rejecting the State=s
3 mootness arguments and setting the matter for a hearing to determine whether
4 supplemental relief should be granted and placed the burden of proof on Plaintiffs.

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

18 The issues addressed by this Court and the Montana Supreme Court
19 were:

- 20 1. Definition of a quality education.
- 21 2. The number of school districts budgeting at their maximum
22 authority.
- 23 3. Problems with accreditation standards.

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1 **Legislative Actions**¹

2 1. 2005 Regular Legislative Session B General

3 a. In the 2004 regular session, the legislature enacted Senate Bill
4 152, which is now codified at Section 20-9-309, MCA.

5 i. Subsection (2) of Section 20-9-309, MCA, defines the
6 Abasic system of free quality public elementary and secondary schools.@

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

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

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

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

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23 ¹ Findings of Fact 1 through 8 are based on the parties= agreed facts in the
24 Pre-Hearing Order.

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

5 2. 2005 Regular Legislative Session: Appropriations

6 a. Ongoing Appropriations

7 i. Based on the actions taken with respect to ANB averaging,
 8 adjustments in the Basic and per-ANB entitlements, and inflationary adjustments,
 9 state funding for the Basic and per-ANB entitlements increased by the following
 10 amounts and percentages in fiscal year (FY) 2006 and FY 2007:

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

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

17 ii. In the 2005 regular session, the legislature increased state
 18 funding for special education block grants and reimbursement for disproportionate
 19 costs by the following amounts and percentages for FY 2006 and 2007:

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

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

2 iii. The actions of the legislature in its regular session in 2005
3 resulted in the appropriations for general tax base (GTB) aid that increased by the
4 following amounts and percentages in FY 2006 and 2007:

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

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

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

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

19 b. One-Time Only Appropriations

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

23 ii. The legislature appropriated approximately \$3.4 million

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1 for the 2007 biennium to provide funding for school districts for purposes of
2 implementing Indian Education for All programs.

3 3. Quality Schools Interim Committee

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

7 4. 2005 Special Session B General

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

9 b. The legislature enacted legislation that created four new
10 components to be included in the funding formula for school districts= general fund
11 budgets:

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

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

14 iii. American Indian Achievement Gap payment (Section 20-
15 9-330, MCA); and

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

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

22 d. The legislature also enacted legislation to commission the
23 Department of Administration to pay for an inventory and assessment of public school

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1 facilities throughout the State, with a deadline of July 1, 2008 for the completion of
2 inventory and assessment.

3 5. 2005 Special Session B Appropriations

4 a. Ongoing Appropriations

5 i. In the December 2005 special session, the legislature
6 retained the increases in the Basic and per-ANB entitlements, and the ANB averaging
7 provisions by removing sunset provisions that had been included in the legislation
8 enacted in the 2005 regular session.

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

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

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

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

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

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

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

8 b. One-Time Only Appropriations

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

12 ii. The legislature appropriated \$2.5 million to fund the
13 facilities inventory and assessment.

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

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

19 6. 2007 Legislature B General

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

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

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1 c. The legislature created a new middle school basic entitlement for
2 school districts that operate an accredited middle school program. The new
3 entitlement was revenue neutral,⁶ and was designed to assure that accredited middle
4 school programs did not incur a reduction in funding as a result of the addition of
5 students in full-time kindergarten and the effect of that addition on the pro rata
6 formula for middle school programs.

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

9 7. 2007 Special Session

10 a. Ongoing Appropriations

11 i. Based on its statutory formula, the 2007 legislature
12 provided inflationary adjustments in the Basic and per-ANB entitlement for the 2009
13 biennium (covering fiscal years 2008 and 2009).

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

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

19 iv. For the American Indian Achievement Gap payment, the
20 legislature retained the same level of funding as that provided for FY 2007, resulting
21 in appropriations of approximately \$3.28 million for FY 2008 and \$3.28 million for
22 FY 2009.

23 v. For the Indian Education for All component, the

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1 legislature retained the same level of funding as that provided for FY 2007, resulting
 2 in appropriations of approximately \$3 million for FY 2008 and \$3 million for FY 2009.

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

6 vii. As a result of the actions the 2007 legislature, ongoing
 7 State aid for school districts= general fund budgets increased by the following
 8 amounts and percentages in FY 2008 and FY 2009 (projected):

	FY 2008	FY 2009
DSA \$ Change	\$15,790,198	<\$3,025,786>
% Change	4.5 %	-1 %
Special Education \$	\$963,173	\$1,076,860
%	2.8 %	3 %
GTB Aid \$	\$17,121,413	\$128,543
%	15.5 %	1 %
Quality Educator \$	\$13,588,926	\$74,995
%	55.8 %	0.2 %
Achievement Gap \$	\$14,200	<\$12,600>
%	0.4 %	0 %
Indian Education \$	\$63,938	<\$131,076>
%	2.1 %	-4.5 %
At-Risk \$	<\$109>	\$0
%	0 %	0 %
Kindergarten \$	NA	\$1,975,610
%	NA	15 %
Total State Aid \$	\$47,541,738	\$13,228,858
%	8.9 %	2.3 %

23 (Ex. 22-08, ll. 7 - 17.)

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b. One-Time Only Appropriations

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

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

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

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

Summary

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

a. ANB averaging.

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

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

d. Elimination of the maximum budget Asoft-caps@ that required a district with declining enrollment to reduce to the maximum budget within

1 five years.

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

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

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	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Elementary % Change	\$19,456 1.1 %	\$19,859 2.1 %	\$20,275 2.1 %	\$20,718 2.2 %	\$21,290 2.8 %	\$21,922 3 %
Middle School % Change	NA	NA	NA	NA	\$60,275 NA	\$62,083 3 %
High School % Change	\$216,171 1.1 %	\$220,646 2.1 %	\$225,273 2.1 %	\$230,199 2.2 %	\$236,552 2.8 %	\$243,649 3 %

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

15 g. The following table summarizes the amounts of the per-ANB
16 entitlements (without including the decrements of .20 per elementary ANB up to
17 1,000 ANB, and .50 per high school ANB up to 800 ANB) for each fiscal year in the
18 past three biennia, with the percentage change from the previous fiscal year:

	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
Elementary % Change	\$3,949 1.1 %	\$4,031 2.1 %	\$4,366 8.3 %	\$4,456 2.1 %	\$4,579 2.8 %	\$4,716 3 %
High School % Change	\$5,262 1.1 %	\$5,371 2.1 %	\$5,584 4 %	\$5,704 2.1 %	\$5,861 2.8 %	\$6,037 3 %

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

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

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

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11 i. The following table summarizes the total amounts of State aid for
 12 school districts= general fund budgets for each fiscal year in the past three biennia:

Total State Aid	\$456.5 M	\$460.6 M	\$491.1 M	\$531.5 M	\$579.1 M	\$592.3 M
Change- State Aid	\$1 M	\$4.2 M	\$30.5 M	\$40.4 M	\$47.5 M	\$13.2
% Change	0.2 %	0.9 %	6.6 %	8.2 %	8.9 %	2.3 %

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

19 **Quality Schools Interim Committee**

20 9. The 2005 legislature created the Joint Select Committee on
 21 Education Funding, whose purpose was to develop an education funding formula
 22 based on the definition and the educationally relevant factors in Senate Bill 152. The
 23 select committee met three to four days every week through the 2005 legislative

1 assessment. (Ex. 721.)

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

7 17. R.C. Wood conducted an evidence-based analysis to determine
8 the cost of the educational strategies and concepts that appear to be most successful in
9 improving achievement in the public elementary and secondary schools. The analysis
10 identified several such educational strategies: preschool, small schools, reduced class
11 size, full-time building principals, family outreach, professional development,
12 technology, and trained teachers. The analysis found approximately \$20.6 million of
13 increased costs, plus the cost of recruiting and retaining trained teachers. The analysis
14 also recommended that these new programs be implemented on a pilot basis so they
15 may be evaluated.

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

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

8 20. The Court notes that at the hearing in 2004, it received a
9 professional judgment study prepared by Augenblick & Myers. (Ex. 702.) The Court
10 would have to agree with Defendants= expert Richard Seder, who indicated that there
11 is little or no consensus in the education community around a preferred method to
12 determine costs given the wide variance in estimates generated. At page 18 of Exhibit
13 813, Seder notes that costing-out studies were done in California, yielding cost
14 estimates ranging from \$1.5 billion to \$1.5 trillion in additional money. It appears that
15 none of these tests is particularly scientific or reliable in that there is little or no ability
16 to come to similar answers when the exercise is repeated. For our purposes, the
17 results of the statistical analysis, evidence-based analysis, and successful schools
18 analysis are within some proximity to each other.

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20 21. Joyce Silverthorne, education director for Confederated Salish
21 and Kootenai Tribes, convened an additional expert panel to analyze the education of
22 American Indian students. This panel focused on closing the American Indian student
23 achievement gap. The study noted that no other state has developed a general model

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

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

19 23. Michael Griffith, program director for the Education Finance
20 Initiative of Education Commission of the States, studied the issues of small and
21 isolated schools and districts. That study found that the disproportionately high
22 number of small schools in Montana may be related to the State=s current funding
23 structure, in particular its basic entitlement. Griffith recommended lowering the high

1 school basic entitlement to a number closer to the elementary entitlement; providing a
2 financial incentive for voluntary school district consolidation; and created an isolated
3 school entitlement that provides a large basic entitlement guarantee for small schools
4 that meet the State's definition of isolated.

5 24. Mike Burke of the Office of Budget and Program Planning
6 reviewed school facilities. The review found that Montana facility expenditures
7 appear reasonable and adequate for schools and compare closely to or above what
8 schools spend nationally and regionally. However, the review also noted that the
9 Department of Administration's Architecture and Engineering Division estimated
10 higher per-square-foot costs in its review of the state-operated Montana School for the
11 Deaf and Blind. It found the School Facilities Reimbursement Program has been
12 successful in allowing districts with low taxable value to improve facilities (although
13 it lacks a means to determine if major maintenance needs are being met). Burke
14 recommended several options to determine future facilities funding, including a
15 facility assessment that would cost an estimated minimum of \$2 million. (Ex. 724.)

16 25. Christopher Lohse of the legislature's Office of Research and
17 Policy Analysis, performed several studies of at-risk funding, both for American
18 Indian students and at-risk students generally. He developed a detailed index to
19 estimate the numbers of at-risk students in each district and proposed adding 10
20 percent to a district's per-student component, so that each district could develop a
21 comprehensive program for meeting the needs of at-risk students, plus an additional
22 amount for districts with worse at-risk indices. He estimated the costs of the at-risk

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1 weighting mechanism to be \$7,485,091, and also estimated costs of a grant
2 mechanism to be \$3,410,846. (Ex. 748.)

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

5 **Proposed Funding Components and Cost Estimates**

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

11 28. The components were: per-student; classroom; accredited
12 program; building operations and maintenance; special education; transportation;
13 capital projects; school facility payment/debt service; and Indian Education for All.
14 The per-student and classroom components were further divided into six categories of
15 elementary school sizes (ranging from fewer than 41 ANB to more than 2,500 ANB)
16 and five classes of high school sizes (ranging from fewer than 75 ANB to more than
17 1,250).

18 29. QSIC estimated costs through a variation of the resource cost
19 methodology, a recognized school funding methodology that identifies the education
20 resources envisioned to deliver the program and then estimates the prices of those
21 resources. QSIC identified the resources needed in each of the components and
22 estimated the resources/prices of those components based on the most recent known
23 expenditure data. With the exception of the capital projects and the Indian Education

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

10 34. The total estimated costs for the classroom component were
11 \$510,363,745, which included the estimated classroom personnel costs of the school
12 district size categories at calculated student-teacher ratios, plus \$32.9 million for a
13 \$4,000 per-teacher payment, \$2,460,000 for the \$800 professional judgment costs of
14 professional development, and \$5,642,983 million to provide health insurance at the
15 cost of the State employees= health insurance benefit.

16 35. **Accredited Program Component.** The accredited program
17 component funded the school district costs related to the district central office and
18 school-level administration and support services, including superintendents,
19 principals, curriculum and program coordinators, librarians, counselors, and other
20 district and school-level non-classroom staff. The component reflected the actual
21 costs incurred and reported by the districts for these expenditures. The component
22 also included professional development and insurance costs to the salaries and
23 benefits for certified and classified staff, and a \$4,000 payment for librarian and

1 counselor salaries.

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

6 ////

7 37. **Building Operations and Maintenance Component.** The
8 building operations and maintenance component funded those activities concerned
9 with keeping a school=s physical plan open, comfortable, and safe for use, and for
10 keeping the grounds, buildings, and equipment in working condition. Expenditures
11 for operations and maintenance include supervision of plan services, operations of
12 buildings, care and upkeep of grounds, care and upkeep of buildings, vehicle
13 operations and maintenance, and security services. The component reflected the
14 actual costs incurred and reported by the districts for these expenditures.

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

22 39. **Special Education Component.** The special education
23 component funded the cost of providing education and related services to children

1 with disabilities. The component includes personnel costs, supplies, textbooks,
2 equipment, assistive technology, contracted services, and travel costs. The component
3 reflected the actual costs incurred and reported by the districts for these expenditures.

4 40. The total estimated costs for the special education component
5 were \$66,825,252, which included the preexisting formula of instructional block
6 grants and related services block grants to districts based on enrollment and partial
7 reimbursement for disproportionately high special education costs, plus \$3,215,895
8 ////

9 for a per-educator entitlement of \$4,000, \$6,378 per educator for health insurance, and
10 \$800 per educator for professional development.

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

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

23 43. To address the immediate needs of school districts, QSIC

1 recommended a one-time only appropriation of \$23 million to be used for deferred
2 maintenance and weatherization.

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

6 **45.** The total estimated costs for the debt service component were
7 \$39,375,797, which included the preexisting level and formula for distributing the
8 State=s funding in support of bond payments for school facilities (purchase and
9 construction) in the debt service fund.

10 //

11 **46. Total Cost Estimate.** In total, QSIC estimated costs of
12 \$875,241,336 in fiscal year 2007 for the ANew General Fund@ components (per-
13 student, classroom, accredited program, operations and maintenance, special
14 education, and Indian Education for All, or \$987,815,044 taking into account QSIC=s
15 recommended removal of the retirement fund. This amounted to per-student spending
16 of \$7,146. Transportation (\$45,379,948) and debt service (\$39,375,797) components
17 were retained in their preexisting amounts. (See Ex. 751 for a summary of
18 QSIC=s work as of Nov. 14, 2005.)

19 **47.** Among other documents prepared in and used by QSIC in the
20 process are the following: Exhibit 728 B accredited entitlement; Exhibit 729 B
21 operations and maintenance; Exhibit 730 B basic entitlement; Exhibit 732 B
22 transportation; Exhibit 737 B teacher ratios; Exhibit 741 B per-student entitlements;
23 Exhibit 755 B at-risk amounts in the per-student component; Exhibit 743 B comparing

1 teacher salaries; Exhibit 745 B special education entitlement; Exhibit 746 B capital
2 projects component; and Exhibit 749. According to Nancy Hall, the aforementioned
3 documents were all used by QSIC to figure costs of the associated component.

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

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

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

20 **What the Legislature Did**

21 51. **Inflation.** Pursuant to Section 20-9-326, MCA, the legislature
22 requires the Superintendent of Public Instruction to determine the inflation factor for
23 the basic entitlement and per-ANB entitlement in each fiscal year. Inflation is capped

1 at 3 percent, but this 3 percent seems to be based on the historical inflation rate since
2 1991 of 2.7 percent. A problem that arises with this portion of the funding system is
3 that the legislature must estimate inflation for school budgets adopted many months
4 later. For example, the 2009 regular session of the Montana legislature will fund
5 school district budgets adopted in 2010 and 2011. Clearly this action by the
6 legislature addresses this Court=s earlier Order about the previous lack of any
7 automatic inflation adjustment at all.

8 52. Exhibit 784 shows State appropriations for K-12 for fiscal year
9 2002 through 2009. During that time, State aid, excluding one-time only money, has
10 increased 25.8 percent, or 8 percent above inflation. Further, Exhibit 821 shows State
11 funding for K-12 education from 1991 through 2007, and shows that actual State
12 spending has exceeded inflation. This does include one-time only expenditures. To
13 counter this, Plaintiffs have presented Exhibit 554, which excludes one-time only
14 money and purports to show that actual State spending has fallen behind inflation.

15 53. While these dueling charts are interesting, they merely point out a
16 source of discomfort to this Court. It appears, to some degree, that the very complex
17 numbers involved in this case can be modified to reflect a desired outcome. Variables
18 include what rate of inflation one uses, whether one uses all State funding or excludes
19 one-time only money, and so on. This Court is unsure which chart or graph is more
20 accurate. The nature of these dueling charts causes the Court to question many of the
21 statistics contained therein.

22 54. Although current inflation has nearly doubled with a 2.3 percent
23 increase not seen in nearly three decades, this unusual price spike is a departure from

1 the historical trend for which a legislature that met in spring of 2007 cannot be held
2 accountable. The volatility in actual inflation cannot be smoothed in a biennial
3 legislative cycle without some years falling behind actual inflation and, equally
4 important, some years outpacing actual inflation. In these circumstances, districts=
5 ability to earmark an operating reserve of 10 percent each year and draw on other fund
6 balances, enables them to respond to spikes in actual inflation during the biennium.

7 55. The 2005 special session provided a quality educator payment of
8 \$2,000 for each full-time equivalent. This was increased in the 2007 special session
9 to \$3,036 for FY 2008 and to \$3,042 for FY 2009. In their post-hearing
10 memorandum, Plaintiffs complain that the legislature increased the quality educator
11 payment by substantially more than inflation from 2007 to 2008, but then by only 0.2
12 percent from 2008 to 2009. The quality educator payment went up by almost 50
13 percent from 2007 to 2008. It is true that the increase from 2008 to 2009 is minor.
14 However, one could also argue that the very generous increase from 2007 to 2008 was
15 far in excess of any inflationary standard, and perhaps the State should be given some
16 credit for many future years for far exceeding inflation with this increase.

17 56. It is true that when funding levels were being determined for the
18 basic and per-ANB entitlements for 2007 (to apply to 2008 and 2009), the
19 computation set forth resulted in an inflation adjustment in excess of 3 percent, but the
20 adjustment was automatically capped at 3 percent because of the statute. (J. Standaert
21 Test.) During the 2007 session, the legislature did not inflation adjust any of the four
22 new components. Further, funding for the at-risk and American Indian Achievement
23 Gap remain the same for 2008 and 2009 as they were originally established in 2007.

1 cost estimates for each district by deficiency area. The 2007 special session of the
2 Montana legislature set up \$40 million in a school facility improvement account to be
3 distributed by the 2009 legislature based on the report just mentioned.

4 59. Further, the 2005 legislature appropriated \$23 million to school
5 districts for weatherization and deferred maintenance. Again, reference to Exhibit
6 751, under item 8 - capital projects, shows this \$23 million cost allocation. This again
7 shows the legislature using QSIC=s cost estimate to fund Montana schools on an
8 educationally relevant basis.

9 60. It is true that these payments are one-time payments, but the
10 Court recognizes them as an appropriate response to immediate capital needs within
11 the overall school funding formula.

12 61. The legislature funded a one-time energy cost relief payment of
13 \$2 million for facility and transportation energy costs, distributed on a per-ANB basis.
14 This payment reflected recent increases in energy costs.

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

21 63. The legislature added full-time kindergarten and three new State-
22 funded components for Aeducational programs to provide for students with special
23 needs.@ Section 20-9-309(2)(b), MCA. The legislature funded full-time kindergarten

1 on an equal basis with other grades. Section 20-9-311(d), MCA. The funding
2 included \$10 million for start-up costs based on the cost estimates of a focus group of
3 five school districts, four of whom had implemented full-time kindergarten. Full-day
4 versus half-day programs is an effective way to reduce the number of children who are
5 held back a grade or referred to special education programs. In addition, full-day
6 kindergarten particularly benefits disadvantaged students and is effective in reducing
7 achievement gaps between students of different economic and racial groups. The
8 statewide full-time kindergarten program addressed the educationally relevant needs
9 of all categories of special needs students. All witnesses who testified stated that full-
10 time kindergarten is very effective in addressing the needs of at-risk students.

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

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

23 66. Student achievement by students in at-risk groups has increased

1 components, the legislature provided for review in two years of the change in status of
2 standardized test scores, graduation rates, and drop-out rates of at-risk and American
3 Indian students, at which time the payments can be recalibrated based on the evidence.
4 Sections 20-9-328(3), -330(4), MCA.

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

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

1 increasing costs. This testimony is in accord with the testimony of Quinlan.

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

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

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

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

18 77. The legislature increased ongoing gifted and talented funding to
19 \$250,000 annually, funded a gifted and talented specialist at the Office of Public
20 Instruction, and provided \$1 million in grant money for gifted and talented services
21 and program planning in both years of the 2009 biennium. As QSIC recognized in
22 weighting ANB for extra gifted and talented instructional time in the classroom
23 component, most of the services for gifted and talented students are offered by

1 existing staff. The \$250,000 of ongoing school district funding and \$1 million of
2 grant money for the approximately 9,000 identified gifted and talented students in
3 Montana public schools provides substantial additional resources to address each
4 student=s educationally relevant needs.

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8 **Provisions for Teachers**

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

12 79. The legislature funded a quality educator payment for all certified
13 and licensed educators in Montana schools. Section 20-9-327, MCA. The payment is
14 \$3,042 per educator in 2009 and reflects the costs of raising the average Montana
15 teacher salary to the regional average, adjusted for inflation since the last reported
16 regional salary data. In 2009, the total quality educator payment to school districts
17 amounts to \$37,964,447. This reflects QSIC=s estimated costs of a \$4,000 per-
18 teacher payment (a total of \$32.9 million in 2007), except it is calibrated to actual
19 salary data and provided to all licensed educators and other licensed professionals.
20 The quality educator payment fundamentally addresses the educationally relevant
21 ability of school districts to attract and retain qualified educators and other personnel.
22 The quality educator payment also addresses the educationally relevant needs of
23 isolated schools with low population density because it funds a classroom-based cost

1 regardless of enrollment, as well as urban schools with high population density
2 because it is based on salary data weighted towards larger districts in Montana and
3 more urbanized regional states.

4 80. The initial special educator payment was set at \$2,000 by the
5 2005 special session. In the 2007 special session, the quality educator payment was
6 increased to \$3,036 for fiscal year 2008 and to \$3,042 for fiscal year 2009.

7 81. Montana=s teachers are among the most highly qualified teachers
8 in the nation, with 99.4 percent of teachers licensed and endorsed in their subject
9 ////
10 areas. In all, 98.5 percent of all Montana classes are taught by properly credentialed
11 and assigned teachers.

12 82. At the hearing dedicated to the supplemental proceedings, the
13 Court did not hear the same sort of widespread difficulties school districts were
14 having in recruiting and retaining teachers as it heard in 2004. In Exhibit 813, page
15 97, it is noted that A[w]hen adjusted for regional cost differences, Montana teachers
16 had the highest average teacher salaries in 2005-06 at \$53,842 and the second highest
17 average teachers salaries at \$55,724 in 2006-07. Only Wyoming offered higher
18 unadjusted and adjusted average teacher salaries in 2006-07 than Montana among the
19 comparison states.@ This comparison compared Montana teacher salaries with
20 neighboring states and adjusted them for regional cost differences. Exhibit 784 shows
21 that average statewide teacher salaries have increased from \$37,184 in 2004 to
22 \$41,146 in 2007.

23 83. Exhibit 779 shows that from 2004 to 2008, the enrollment in

1 Montana school districts has dropped by approximately 4,000 students, while the
2 number of teachers has increased in excess of 200.

3 84. In Exhibit 813, page 66, we see that, of the Plaintiff districts,
4 Billings, Bozeman, and Helena all substantially increased their beginning teacher
5 salaries and their maximum teacher salaries. All added new teachers, while the
6 number of students decreased. In Helena, salaries have increased 33 percent over the
7 past five years. The Helena School District has a pool of 600 applicants from which
8 to draw, and a beginning teacher starts at \$34,000 (a 41 percent increase), with a
9 \$72,000 annual maximum, which is a 33 percent increase over the prior maximum
10 figure. Dr. Kirk Miller, superintendent of the Bozeman School District indicated that
11 his school district had no trouble hiring teachers last year.

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

21 86. This situation was recognized in the Stoddard and Young study,
22 wherein it is noted that isolated districts have the most severe recruitment and
23 retention problems. (Ex.738, at 29.) Again, the Stoddard and Young study indicates

1 **State Contribution**

2 88. At Findings of Fact 100 and 101 of its 2004 Order, this Court
3 noted that, at the time the Montana Constitution was enacted in 1972, State support for
4 general fund budgets was approximately 65 percent. However, at the time of trial, that
5 had slipped to 60.5 percent. (Ex. 28-08.) Due to many of the funding mechanisms
6 noted earlier, this share increased to 63.5 percent in fiscal year 2008, and 63.11
7 percent in fiscal year 2009. Thus, it appears that the State is heading in the right
8 direction. Total ongoing State aid for K-12 education has increased from \$553 million
9 in fiscal year 2004 to \$701 million in fiscal year 2009. This is an increase in ongoing
10 State aid of approximately \$148 million. During the same time period, the State has
11 contributed one-time only money in excess of \$76.5 million. This has come at a time
12 when enrollment has decreased, during the same time period, by approximately 7,000
13 students. (Ex. 784.)

14 89. Further, ongoing State aid per-pupil has increased from \$3,738 in
15 2004 to \$4,947 in 2009. According to Plaintiffs= Exhibit 509, the annual inflation
16 adjusted State funding per-ANB for Montana school general funds from 2004 through
17 2009 is in excess of inflationary trends.

18 90. The legislature has adjusted the elementary and high school basic
19 entitlements for inflation. Section 20-9-306(6), -326, MCA. The retention of the
20 basic entitlement, although a relatively small share of overall funding, addresses the
21 educationally relevant needs of isolated schools with low population density by
22 providing a base of financial support to every school district regardless of enrollment,
23 as well an additional basic entitlement for isolated schools provided by Section 20-9-

1 311(8), MCA. The basic entitlement also reflects the increased costs, recognized by
2 QSIC=s base-level cost estimates, for several components of operating a high school
3 district.

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

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

21 93. The legislature revised the Asoft caps@ on district maximum
22 general fund budgets by allowing a district to adopt a general fund budget up to the
23 maximum general fund budget or the previous year=s general fund budget, whichever

1 more than half of those districts budget at or under 97 percent of the maximum.

2 **Accreditation Standards**

3 100. In its decision, the Montana Supreme Court noted increasing
4 problems with accreditation standards were evidence of inadequate funding.

5 *Columbia Falls Sch. Dist. v. State*, & 29. In Exhibit 794, at page 7, we see that from
6 2004 to 2007, the number of schools in Montana with deficiency in their accreditation
7 standards has grown from 9 percent to 15 percent, while the numbers with advice has
8 remained at about 10 percent. In total, the number of schools with regular
9 accreditation has slipped from 81 percent to 75 percent. The Court notes that many of
10 the superintendents representing the Plaintiff districts testified that they could not
11 meet the accreditation standards based on the Abase@ funding provided by the State.

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

17 102. The Court also notes, however, that as of the date of the hearing
18 in this matter, Montana=s public schools continue to provide a quality education (see
19 the testimony of all the superintendents appearing at the hearing). Very few schools
20 are unable to provide the basic educational programs required by the accreditation
21 standards and Section 20-9-309(2)(a), MCA. In the most recent school year, out of
22 approximately 824 schools (the number changes during the year due to openings and
23 closures), there were only 48 schools in advice or deficiency status that did not

1 staff member. For example, Helena=s failure to obtain approval for the alternative
2 shared counseling plan it implemented in its eleven elementary schools counts for
3 eleven deficiency-qualifying deviations, which amount to nearly 10 percent of all
4 deficient schools statewide.

5 105. The question remains, however, whether these accreditation
6 problems would go away if the schools had more money. According to Defendant=s
7 expert Richard Seder, there is no clear correlation between the accreditation problems
8 and spending levels. (Ex. 814.)

9 106. The accreditation violations that continue to occur are a serious
10 problem because they are Athe minimum standards upon which a basic system of free
11 quality public elementary and secondary schools is built.@ Section 20-9-309(2)(a),
12 MCA. That does not mean that the State has failed to comply with its obligation to
13 establish a funding formula that reflects the costs of meeting the accreditation
14 standards, however, because the districts, not the State, decide how to allocate the
15 funds received under the formula. Most elementary and high schools in Montana, in
16 districts of every size, meet regular or regular with deviation accreditation status at
17 current spending levels regardless of budget maximum status. In other words, there is
18 no apparent correlation between accreditation status and the amount of funding now
19 available to schools and, therefore, there is no clear causation between Plaintiffs=
20 asserted need for even more funding and school districts= ability or inability to satisfy
21 accreditation standards. The availability of additional funding for higher salaries,
22 hiring additional staff, and other district investments suggests that accreditation is not
23 necessarily a resource issue because, if it were, districts would have invested in

1 addressing accreditation before making other investments.

2 **Gifted and Talented**

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

7 108. The legislature increased ongoing gifted and talented funding to
8 \$250,000 annually; funded a gifted and talented specialist at the Office of Public
9 Instruction; and provided \$1 million in grant money for gifted and talented services
10 and program planning in both years of the 2009 biennium. As QSIC recognized in
11 weighting ANB for extra gifted and talented instructional time in the classroom
12 component, most of the services for gifted and talented students are offered by
13 existing staff. The \$250,000 of ongoing school district funding and the \$1 million of
14 grant money for the approximately 9,000 identified gifted and talented students in
15 Montana public schools provides substantial additional resources to address each
16 student=s educationally relevant needs. At trial, Nancy Hall could not testify if the
17 above amounts were based on any Acosting-out@ of the cost of gifted and talented
18 programs.

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

22 110. The Court notes that, according to Dr. Kirk Miller of Bozeman
23 Public Schools, his district is reducing the number of gifted and talented offerings.

1 Apparently, in the past, students could take up to three units of gifted and talented
2 offerings, and now they will be limited to one.

3 **Cost-Based**

4 111. At Finding of Fact 195 of its earlier Order, this Court, in 2004,
5 found that the funding system must be based on the costs of meeting the standards that
6 govern the operation of Montana schools. See also, *Columbia Falls Sch. Dist.*, & 26.
7 At the hearing of this matter, the various superintendents who testified B Capps,
8 Johnson, Miller, Messinger, and McNeil B all felt that the current formula was not
9 cost-based. According to Plaintiffs= expert John Myers, the formula is just as it was
10 before and is not cost-based. According to Myers, the current formula adds money
11 without targeting any specific objective. He found the current funding formula to be
12 political and historical.

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

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

23 114. Madalyn Quinlan testified that special education funding in

1 Montana is not cost-based.

2 115. On the other hand, David Ewer, director of the Governor=s
3 budget office, felt that the experts relied on by QSIC did cost-out the various costs of
4 education. He points to the four studies done by R.C. Wood (Ex. 740) and the study
5 by Stoddard and Young (Ex. 738) as examples of the costing-out process undertaken
6 by the legislature. Further, Nancy Hall, who worked on QSIC committee, felt that
7 QSIC did, through these studies, determine the costs of the components of a quality
8 education. According to Hall, the current ANB and basic entitlement components are
9 reflected in QSIC per-student, classroom, accredited program, and operations and
10 maintenance costs shown on Exhibit 751. In this regard, the Court has reference to
11 Exhibit 767.A, which, according to Hall, is the per-student entitlement of an
12 elementary student in a district such as Helena. According to Hall, the per-student
13 entitlement garnered after QSIC study would be \$4,272, and when compounded by the
14 inflationary factor would equal \$4,532 for a Helena elementary student for fiscal year
15 2009. According to Hall, the current per-ANB allotment for a Helena elementary
16 student is \$4,516.

17 116. As noted earlier, the R.C. Wood study (Ex. 740) indicated that
18 there were four possible ways to cost-out the price of education. The cost determined
19 by the evidence-based method was \$20 million; by the statistic-based method B \$34
20 million; and by the successful schools model B \$96 million. The professional
21 judgment study relied on by Plaintiffs seeks in excess of \$300 million additional
22 dollars. When this Court held its original hearing in this matter in 2004, the only
23 study that had been done was a professional judgment study. Now, the Court notes

1 that the three other studies mentioned above have been done. This Court is not in a
2 position to tell the legislature which of the studies to choose. If the legislature were to
3 choose the costs based on any of the studies other than the professional judgment
4 study, all of which were under \$100 million, the legislature, since it has provided \$148
5 million in new ongoing State funding since 2005, has exceeded the costs of providing
6 an education as determined by the three studies other than the professional judgment
7 methodology.

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

15 **Discussion**

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

22 119. By and large, the Court finds that the State has done a good job
23 of addressing the problems earlier addressed. Following are some of the problems the

1 Court sees that could cause this Court=s conclusion to be reversed in the future.
2 According to Exhibit 784, the State has made excellent contributions to ongoing State
3 aid from 2005 through 2008. However, beginning in fiscal year 2009, the increase in
4 the amount of State aid will drop to 1.9 percent. In order to avoid future problems,
5 this figure should reflect to the trend of 2005-2008.

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

10 121. The costs of special education need to be addressed. This Court
11 noted in Finding of Fact 72, above, that Exhibit 549 shows that State appropriations
12 ////

13 for special education have fallen far short of the growth in costs. The increased
14 competition for general fund dollars between special and general education continues.

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

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

1 districts, is a guarantee of future disputes.

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

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

16 *////*

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

23 130. Also complicating this case is the fact that many of the problems

1 that this Court and the supreme court addressed in 2004 and 2005 have now been
2 mitigated. For example, Aquality education@ has been defined; the problems with
3 teacher salaries identified earlier by this Court have been alleviated in many cases; the
4 deterioration of buildings is being addressed; the lack of an inflationary adjustment
5 has been, to a great degree, remedied; and the share of the State contribution to
6 schools= general fund budgets has increased from what it was in 2004.

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

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

21 133. This Court feels it is appropriate to consider the substantial one-
22 time only funding provided by the State since this Court=s 2004 Order. Further, this
23 Court is of the view that the solution to Montana=s education funding problems is not

1 going to be addressed overnight. The process is going to take time, and the solution to
2 these problems will be need to be phased in.

3 From the foregoing Findings of Fact, the Court enters the following:

4 **CONCLUSIONS OF LAW**

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

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

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

17 4. This Court concludes that it is not the obligation of the legislature
18 to fully fund whatever programs the individual school districts have adopted. The
19 legislature is under no obligation to adopt an expenditure-based system in which the
20 legislature would be required to fund whatever the districts request. It is up to the
21 legislature to set the educational standards and provide an amount of funding equal to
22 what it determines is necessary to meets those standards. *See Campbell County Sch.*
23 *Dist. v. Wyo.*, 2008 Wyo. 2, && 74-75, 181 P.3d 43, && 74-75 (2008); *Montoy v. Kan.*

1 282 Kan. 9, 24, 138 P.3d 755, 765 (2006).

2 5. This Court concludes that the State is in the process of making a
3 good faith effort to preserve and protect Montana=s constitutional commitment to a
4 sound public education system. *Campbell, & 79.*

5 6. The legislative and executive branches have shown that they have
6 embarked on a long-term, orderly, and comprehensive process of reform, and have
7 shown every indication they will continue to do so. Courts are reluctant to become
8 involved in the legislature=s determinations. See *Hancock v. Comm=r of Educ.*, 443
9 Mass. 428, 822 N.E.2d 1134 (2005).

10 7. Although Plaintiffs have shown the existence of some continuing
11 problems, as addressed in this document, in this Court=s view, the magnitude of those
12 problems, as compared to the school funding system first encountered by this Court in
13 2004, does not warrant interference by this Court with the legislature=s
14 determinations at this time.

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

17 9. The funding formula established by the legislature is not, at this
18 time entirely, self-executing, even though it includes a mechanism for annual
19 inflationary adjustments.

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

22 ////

23 11. The legislature is in the process of establishing a funding formula

1 that distributes to school districts in an equitable manner the State=s share of the costs
2 of the basic system of free quality public elementary and secondary schools.

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

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

10 From the foregoing Findings of Fact and Conclusions of Law, the Court
11 enters the following:

12 **ORDER**

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

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

16 DATED this __ day of April 2016.

17

18

JEFFREY M. SHERLOCK
District Court Judge

19

20 pcs: Brian K. Gallik
21 Mike McGrath/Anthony Johnstone/Ali Bovingdon
22 Richard Batterman

21

22 T/JMS/columbia falls v state order.wpd

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