



LEGISLATIVE FINANCE COMMITTEE

66th Montana Legislature

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TO: LFC Education Subcommittee (HB 657)
FROM: Pad McCracken, LSD Research Analyst
RE: Special education funding
DATE: March 1, 2020

At your January 14, 2020, meeting you directed staff to:

1. proceed with a bill draft to establish a mechanism to determine the special education allocation as part of BASE aid, and have the allocation receive inflationary adjustments as well as adjustments related to changes in statewide ANB (the draft, PD 0001, is attached and has been reviewed by various individuals familiar with special education funding and school funding generally);
2. provide background info on previous legislative proposals to allow certain 19-year-old (and older) special education students enrolled at the discretion of local trustees to be included in ANB counts and thereby triggering state funding (the first three documents that follow the bill draft were previously prepared by staff on this issue; the fourth and final document is produced by the Office of Special Education Programs at the federal Department of Education and shows the age ranges for special education services in all 50 states); and
3. examine any implications related to the proposals under #2 and vocational rehabilitation (Voc Rehab) services that assist individuals with disabilities in finding employment.

Here's the nutshell on voc rehab. Staff will ask Chanda Hermanson-Dudley, administrator of Disability Employment and Transitions Division at DPHHS, to be present during this agenda item at your March meeting or send another individual knowledgeable about Voc Rehab to answer any additional questions you have.

- Voc Rehab's mission is: *To maximize access to in-demand and high-quality careers by Montanans with disabilities seeking dignity through choice, integration, and self-reliance.*
- Voc Rehab is funded and governed under the federal *Workforce Innovation and*

Opportunity Act (WIOA) which was reauthorized in 2014 and included many changes to Voc Rehab. There is a roughly 4:1 (fed:state) match required. Federal funding to Montana is driven by state population and per capita income. It is generally about \$10 million a year.

- Among the changes to Voc Rehab under WIOA 2014 is an emphasis on serving new groups of individuals with disabilities, including youth. There is a new 15% set aside specifically for voc rehab to collaborate with high schools through a program called Pre-Employment Transition Services (Pre-ETS).
- In part due to the expanded services and set aside, Voc Rehab has not had the capacity to serve all eligible individuals and has utilized what is called *Order of Selection* to prioritize individuals with the most significant disabilities (Category 1). In short, there is a waitlist for Voc Rehab services for Category 1, and the prospects for individuals with less significant disabilities (Categories 2 & 3) receiving services seem unlikely.

It seemed at your January meeting that your main concern was whether having older students with disabilities remain in high school longer would impede their progress through Voc Rehab, or decrease available federal funding for Voc Rehab. Based on my emerging understanding of Voc Rehab, the answer to both those questions is no. In fact, the new WIOA emphasis on serving youth in high school through Pre-ETS, may help students with disabilities achieve their transition goals earlier and alleviate some of the current overburden on Voc Rehab for individuals with disabilities who have exited high school. Students with disabilities remaining in high school an additional year or two might leverage the collaboration between schools and Voc Rehab required under WIOA 2014.

An additional question that has been raised previously is whether having older students with disabilities remain in high school longer would lead to an increase in federal IDEA funding for the state as a whole or to the district. The short answer to that question is no. Federal IDEA grants to states are based on a complex formula¹, largely driven by previous allocations and population and poverty measures, not enrollment. State subgrants of IDEA funds² to districts are similarly calculated, but do utilize enrollment numbers. A district that currently enrolls 19- or 20-year old students with disabilities would see no change in IDEA funding (those students are currently included in enrollment counts just not in ANB calculations). It's possible that a district that currently does not enroll 19- and 20-year-old students with disabilities that chooses to enroll these students due to a change in law that allows them to be included in ANB counts might see a slight increase in its subgrant, but the total state grant would not increase.

¹ See: <https://fas.org/sgp/crs/misc/R44624.pdf>

² See: <https://cifw.wested.org/wp-content/uploads/2017/09/CIFR-ORG-LEA-Allocations.pdf>

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SPECIAL EDUCATION FUNDING; INCLUDING THE
6 SPECIAL EDUCATION ALLOWABLE COST PAYMENT IN THE DEFINITION OF "BASE AID"; ESTABLISHING
7 A METHOD FOR CALCULATING THE TOTAL SPECIAL EDUCATION ALLOCATION; APPLYING THE
8 INFLATION FACTOR CALCULATED UNDER 20-9-326 TO THE TOTAL SPECIAL EDUCATION ALLOCATION
9 FOR DETERMINING THE PRESENT LAW BASE CALCULATED UNDER TITLE 17, CHAPTER 7, PART 1,
10 MCA; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 20-9-306 AND 20-9-326, MCA; AND
11 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 **Section 1.** Section 20-9-306, MCA, is amended to read:

16 **"20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the
17 following definitions apply:

- 18 (1) "BASE" means base amount for school equity.
- 19 (2) "BASE aid" means:
 - 20 (a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for
21 the general fund budget of a district;
 - 22 (b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement,
23 up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the
24 special education allowable cost payment;
 - 25 (c) the total quality educator payment;
 - 26 (d) the total at-risk student payment;
 - 27 (e) the total Indian education for all payment;
 - 28 (f) the total American Indian achievement gap payment; **and**

1 (g) the total data-for-achievement payment; and

2 (h) the special education allowable cost payment.

3 (3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the
4 basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of
5 the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American
6 Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special
7 education allowable cost payment.

8 (4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may
9 be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through
10 20-9-369.

11 (5) "BASE funding program" means the state program for the equitable distribution of the state's
12 share of the cost of Montana's basic system of public elementary schools and high schools, through county
13 equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in
14 support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-
15 321.

16 (6) "Basic entitlement" means:

17 (a) for each high school district:

18 (i) \$315,481 for fiscal year 2020 and \$321,254 for each succeeding fiscal year for school districts with
19 an ANB of 800 or fewer; and

20 (ii) \$315,481 for fiscal year 2020 and \$321,254 for each succeeding fiscal year for school districts with
21 an ANB of more than 800, plus \$15,774 for fiscal year 2020 and \$16,063 for each succeeding fiscal year for
22 each additional 80 ANB over 800;

23 (b) for each elementary school district or K-12 district elementary program without an approved and
24 accredited junior high school, 7th and 8th grade program, or middle school:

25 (i) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-
26 12 district elementary programs with an ANB of 250 or fewer; and

27 (ii) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-12
28 district elementary programs with an ANB of more than 250, plus \$2,630 for fiscal year 2020 and \$2,678 for

1 each succeeding fiscal year for each additional 25 ANB over 250;

2 (c) for each elementary school district or K-12 district elementary program with an approved and
3 accredited junior high school, 7th and 8th grade program, or middle school:

4 (i) for the district's kindergarten through grade 6 elementary program:

5 (A) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-
6 12 district elementary programs with an ANB of 250 or fewer; and

7 (B) \$52,579 for fiscal year 2020 and \$53,541 for each succeeding fiscal year for school districts or K-
8 12 district elementary programs with an ANB of more than 250, plus \$2,630 for fiscal year 2020 and \$2,678 for
9 each succeeding fiscal year for each additional 25 ANB over 250; and

10 (ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle
11 school:

12 (A) \$105,160 for fiscal year 2020 and \$107,084 for each succeeding fiscal year for school districts or
13 K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

14 (B) \$105,160 for fiscal year 2020 and \$107,084 for each succeeding fiscal year for school districts or
15 K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus \$5,258
16 for fiscal year 2020 and \$5,354 for each succeeding fiscal year for each additional 45 ANB over 450.

17 (7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to
18 20-9-311.

19 (8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB
20 entitlement for the general fund budget of a district and funded with state and county equalization aid.

21 (9) "Maximum general fund budget" means a district's general fund budget amount calculated from
22 the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator
23 payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian
24 achievement gap payment, the total data-for-achievement payment, and the greater of the district's special
25 education allowable cost payment multiplied by:

26 (a) 175%; or

27 (b) the ratio, expressed as a percentage, of the district's special education allowable cost
28 expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years

1 previous, with a maximum allowable ratio of 200%.

2 (10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted
3 that is above the BASE budget and below the maximum general fund budget for a district.

4 (11) "Total American Indian achievement gap payment" means the payment resulting from multiplying
5 \$216 for fiscal year 2020 and \$220 for each succeeding fiscal year times the number of American Indian
6 students enrolled in the district as provided in 20-9-330.

7 (12) "Total at-risk student payment" means the payment resulting from the distribution of any funds
8 appropriated for the purposes of 20-9-328.

9 (13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from
10 multiplying \$21.03 for fiscal year 2020 and \$21.41 for each succeeding fiscal year by the district's ANB
11 calculated in accordance with 20-9-311.

12 (14) "Total Indian education for all payment" means the payment resulting from multiplying \$21.96 for
13 fiscal year 2020 and \$22.36 for each succeeding fiscal year times the ANB of the district or \$100 for each
14 district, whichever is greater, as provided for in 20-9-329.

15 (15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations
16 and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

17 (a) for a high school district or a K-12 district high school program, a maximum rate of \$7,201 for
18 fiscal year 2020 and \$7,333 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents
19 per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving
20 the same amount of entitlement as the 800th ANB;

21 (b) for an elementary school district or a K-12 district elementary program without an approved and
22 accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of \$5,624 for fiscal
23 year 2020 and \$5,727 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per
24 ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving
25 the same amount of entitlement as the 1,000th ANB; and

26 (c) for an elementary school district or a K-12 district elementary program with an approved and
27 accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

28 (i) a maximum rate of \$5,624 for fiscal year 2020 and \$5,727 for each succeeding fiscal year for the

1 first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB for each additional ANB
2 up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the
3 1,000th ANB; and

4 (ii) a maximum rate of \$7,201 for fiscal year 2020 and \$7,333 for each succeeding fiscal year for the
5 first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7
6 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the
7 800th ANB.

8 (16) "Total quality educator payment" means the payment resulting from multiplying \$3,275 for fiscal
9 year 2020 and \$3,335 for each succeeding fiscal year by the number of full-time equivalent educators as
10 provided in 20-9-327.

11 (17) "Total special education allocation" means the state payment distributed pursuant to 20-9-321 that
12 is the greater of the amount resulting from multiplying \$298.32 for fiscal year 2022 and \$305.07 for each
13 succeeding fiscal year by the statewide current year ANB or the amount of the prior year total special education
14 allocation."

15 **NO CHANGES TO 20-9-321 -- FOR REFERENCE ONLY**

16 **Section 2.** Section 20-9-321, MCA, is amended to read:

17 **"20-9-321. Allowable cost payment for special education.** (1) As used in this section, "ANB"
18 means the current year ANB.

19 (2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and
20 distribution of state special education allowable cost payments provided for in this section.

21 (3) For the purpose of establishing the allowable cost payment for a current year special education
22 program for a school district, the superintendent of public instruction shall determine the total special education
23 payment to a school district or special education cooperative using the following factors:

24 (a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;

25 (b) a per-ANB amount for the special education instructional block grant;

26 (c) a per-ANB amount for the special education-related services block grant;

27 (d) an amount for cooperatives meeting the requirements of 20-7-457, to compensate for the
28 additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

1 and

2 (e) any other data required by the superintendent of public instruction to administer the provisions of
3 this section.

4 (4) (a) The total special education allocation must be distributed according to the following formula:

5 (i) 52.5% through instructional block grants;

6 (ii) 17.5% through related services block grants;

7 (iii) 25% to reimbursement of local districts; and

8 (iv) 5% to special education cooperatives for administration and travel.

9 (b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each
10 school district and cooperative with a special education program as follows:

11 (i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each
12 school district, based on the district ANB and the per-ANB special education instructional amount.

13 (ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be
14 awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB
15 special education-related services amount, or to a cooperative that meets the requirements of 20-7-457. The
16 special education-related services block grant amount for districts that are members of approved cooperatives
17 must be awarded to the cooperatives.

18 (iii) If a district's allowable costs of special education exceed the total of the special education
19 instructional and special education-related services block grant plus the required district match required by
20 subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure
21 that the total of reimbursements to all districts does not exceed 25% of the total special education allocation
22 limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a
23 threshold level calculated annually by the office of public instruction. The threshold level is calculated as a
24 percentage amount above the sum of the district's block grants plus the required district match.

25 (iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the
26 ANB count of the school districts that are members of the special education cooperative and two-fifths must be
27 distributed based on distances, population density, and the number of itinerant personnel under rules adopted
28 by the superintendent of public instruction.

1 (5) The superintendent of public instruction shall adopt rules necessary to implement this section.

2 (6) A district shall provide a 25% local contribution for special education, matching every \$3 of state
3 special education instructional and special education-related services block grants with at least one local dollar.
4 A district that is a cooperative member is required to provide the 25% match of the special education-related
5 services grant amount to the special education cooperative.

6 (7) The superintendent of public instruction shall determine the actual district match based on the
7 trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing
8 year's special education allowable cost payment.

9 (8) A district that demonstrates severe economic hardship because of exceptional special education
10 costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in
11 which the actual costs will be incurred."
12

13 **Section 3.** Section 20-9-326, MCA, is amended to read:

14 **"20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB**

15 **entitlements.** (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the
16 superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements,
17 the data-for-achievement payment, the per-ANB amount used to calculate the total special education allocation
18 in 20-9-306, and the general fund payments in 20-9-327 through 20-9-330 in each fiscal year of the ensuing
19 biennium. The inflation factor is calculated as follows:

20 (a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar
21 year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and
22 raise the resulting ratio to the power of one-third; and

23 (b) for the second year of the biennium, divide the consumer price index for July 1 of the current
24 calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar
25 year and raise the resulting ratio to the power of one-third.

26 (2) The present law base for the entitlements referenced in subsection (1), calculated under Title 17,
27 chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated
28 pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

AGE AND TIME IN SCHOOL

Overview

In recent sessions, the legislature has considered various proposals that all get at the question: at what age should public school start and finish? The 2019-2020 Education Interim Committee will explore preschool as a separate issue, so this brief will focus more on the question from the completion perspective. But first, let's take stock of where things are at now in terms of statute.

School district trustees are required to admit a child who has turned 5 on or before September 10. (Typically, this would be to kindergarten; trustees are required to provide at least half-day kindergarten.) Trustees obligation to admit a child ends for a child who has turned 19 on or before September 10. Trustees can admit children younger than 5 and older than 19 if there are exceptional circumstances, but children in preschool and students 19 or older are not included in ANB counts and do not generate state funding. These age requirements are found in [20-5-101, MCA](#); this section was amended by [SB 11](#) in 2019 to clarify that the age of admittance is 5, not 6.

The chart to the right shows how this typically works. If a child starts kindergarten at age 5, the child will have 14 “funded” years in which to complete 13 grades, K through 12, including something of a “cushion year” in case the child needs more time for any number of reasons. If a child does not start kindergarten until age 6, there is no cushion year, and it is up to trustees to determine whether exceptional circumstances exist warranting admittance past age 18 if the child has not graduated.

Recent legislative proposals have been to:

1. Increase the age of compulsory education from 16 or completion of 8th grade to 18 or graduation;
2. extend the age of ANB funding from 18 to 19 for all students who are still working to meet the district's graduation requirements; and
3. extend the age of ANB funding from 18 to 20 (or 21) for students with significant disabilities who are still working to meet the goals established in their IEP (Individualized Education Program).

The committee expressed interest in examining #2 and #3.

Funding for 19-year-olds

Several proposals in recent years have sought to extend ANB funding to 19-year-olds. None of the legislation was enacted. All the proposals

How this typically works:

If a child is _____ years old on or before Sept 10, the child is eligible to enroll in _____ grade.

5	Kindergarten
6	1st
7	2nd
8	3rd
9	4th
10	5th
11	6th
12	7th
13	8th
14	9th
15	10th
16	11th
17	12th
18	an additional year “cushion”
19 - 21	no ANB funding; trustees can continue enrolling, but are not required to

AUGUST 1, 2017

Education Interim Committee
Pad McCracken, Research Analyst

included a limitation that only students who had not yet graduated and were enrolled for the purpose of earning credits to meet district graduation requirements were eligible.

Year	Bill # (Sponsor)	Outcome	ANB increase; state cost *	Other
2013	SB 14 (Wanzenried)	Tabled in House Ed	100 ANB; \$450,000/year	District can include up to greater of 3 additional ANB or 103%; no district can exceed 40 additional ANB.
2015	SB 12 (Moe)	Tabled in House Ed	60 ANB; \$275,000/year	District can include up to greater of 3 additional ANB or 103%; no district can exceed 40 additional ANB.
2017	HB 178 (Price)	Tabled in House Ed	70 ANB; \$325,000	No cap or district limit

* Estimates from fiscal notes; ongoing costs rounded. The variations in ANB and cost estimates reflect fluctuations in the enrollment of 19-year-olds in the preceding years.

Funding for older special education students

Several proposals in recent years have sought to extend ANB funding to older special education students. None of the legislation was enacted. All the proposals included a limitation that only students who had not yet graduated were eligible.

Year	Bill # (Sponsor)	Outcome	ANB increase; state cost*	Other
2015	HB 451 (Pope)	Tabled in House Appropriations	38 ANB; \$180,000/year	Extended age to 21 (not yet 22 by September 10)
2017	HB 274 (Kelker)	Tabled in House Ed	40 ANB; \$190,000/year	Extended age to 21; significant disability; IEP transition goals focused on living and working in community
2019	HB 298 (Pope)	Tabled in Senate Ed	27 ANB; \$140,000/year	Extended age to 20; significant disability; IEP transition goals focused on living and working in community

* Estimates from fiscal notes; state cost reflects estimated ongoing costs rounded.

The 2015-2016 School Funding Interim Commission looked at special education funding and requested a summary of HB 451; the [brief](#) includes a breakdown of the number of students with disabilities age 19-21 served from FY 09 to FY 15. Because much of the debate on these proposals has centered on questions regarding the estimates of ANB increases and state costs in the fiscal notes, staff has submitted an information request to the Education Commission of the States for the percentages of students aged 19 and above served in states where funding is provided.

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EXHIBIT 1
DATE 02/25/19
HB 298

HB 298 Data Note

The data used for preparing the Fiscal Note for HB 298 were drawn from the OPI Child Count database. These data are reported annually to the US Department of Education (ED) as a requirement under the Individuals with Disabilities Education Act (IDEA).

The OPI maintains a statewide student database system known as Achievement in Montana (AIM). This system collects student-level data from each school district across the state. The AIM system was brought online in 2008 and has been the official data system for the OPI since that time.

Within the AIM system there is a module that contains all of the student-level special education data for every school in Montana. School districts have been required to use the AIM Special Education Module since 2010 for all special education documentation. This requirement helps to ensure the OPI has access to accurate data regarding students with disabilities in our state.

Each year the OPI is required to report to the ED data regarding the number of students with disabilities in the state who are eligible for special education and receiving services on the first Monday in October. This is known as the Child Count.

The Child Count data includes information regarding the student's age, grade, sex, identified disabilities, and the setting in which they receive their services. The Child Count data are compiled through a verification process in which each school district Authorized Representative validates that the data that are in the AIM system are correct and then submits those data to the OPI. In this process, the district representative runs a report from the AIM system that contains a list of all students that will be reported as students with disabilities based on the current data in the AIM system. This report also provides information on students who have some special education information in the AIM system, but for whom all of the required information is not available. The district representative then is able to correct the data in the system, and when all information is correct the representative certifies to the OPI that the data are accurate and the district data are imported into the Child Count database.

This process occurs in every district throughout the state and results in very accurate data. Once all of the districts have certified their Child Count data, the OPI Part B Data Manager conducts quality assurance testing on the database to further ensure the accuracy of the data. Once the quality assurance testing is completed, the data are certified by the OPI and reported to the ED as required. The Child Count data are not used for any purpose until they have been certified for reporting to the ED.

As was stated earlier, it is this validated data that was used in preparing the Fiscal Note for HB 298. The OPI was able to use the data provided by the school districts to estimate the number of students that would qualify under the requirements of HB 298 to received special education and related

services at age 19 and 20. The estimate was based on the number of students with significant disabilities who were receiving services in October 2018 who will be age 19 prior to September 10, 2019 along with the historical pattern of the numbers of students who have been allowed to continue in school at age 19 and 20.

HB 451: Extending State Funding for Special Education Students Age 19-21

prepared for the School Funding Interim Commission
by Pad McCracken, Research Analyst, March 2016

At the commission's initial meeting in September 2015, a number of people provided public comment urging the commission to extend state funding for students with individual education programs, or IEPs, beyond age 18. This was proposed in House Bill No. 451 during the 2015 Session and sponsored by Rep. Chris Pope. This brief is in response to the commission's request for background information on HB 451 and additional questions about the number of students aged 19-21 currently receiving special education services in Montana public schools.

Rule and statute overview

Minimum graduation requirements (units of credit in different subject areas) are established by the Board of Public Education in [ARM 10.55.905](#). Individual school districts determine additional requirements beyond these. There is no "graduation age" in Montana.

State law establishes compulsory enrollment requirements for age 7 through age 16 or completion of eighth grade in [20-5-102, MCA](#).

State law, [in 20-5-101, MCA](#), requires school trustees to admit children who are 6 years of age or older, but who have not reached 19 years of age, on September 10 of the year of enrollment. The same section allows trustees to admit "at their discretion" children under age 6 or over age 19 if "exceptional circumstances" warrant.

The term "pupil" is defined at [20-1-101\(16\), MCA](#), and mirrors the requirements and allowances under 20-5-10 and allows students who have not turned 19 by September 10 of the school year to be considered pupils for the purposes of ANB calculations. So, a student who turns 19 after September 10 and has not graduated must be admitted and receives state funding, a student who turns 19 on or before September 10 can only be enrolled at trustees' discretion under "exceptional circumstances" and is not eligible for state funding. Does Montana provide state school funding for 19-year-olds? It depends on the student's birthday.

The right of a child with a disability to a free appropriate public education in the least restrictive environment is established in [20-7-411, MCA](#). This section requires the trustees of every district to provide special education services to students who are age 6 or older and under age 19 (as well as to preschool children with disabilities ages 3 through 6). Trustees are allowed to provide special education programs to children under age 3 and to 19-, 20-, and 21-year-olds. The section also states in subsection (4)(b) that a district that decides to extend special education services to these age groups is not obligated to provide regular education programs to similar age groups unless specifically provided by law.

[20-9-311, MCA](#), governs the calculation of ANB for school funding and in subsection (7) prohibits preschool students from being included in ANB calculations.

HB 451

Mechanically, HB 451 amended the definition of pupil in 20-1-101 to remove language regarding the 19-year-old age limit for ANB calculations, and added language in 20-9-311 allowing 19-, 20-, and 21-year-old students with disabilities who have not graduated and are receiving special education services at the discretion of district trustees to be counted for ANB. This would generate additional district general fund revenue from the state and the local district through the funding formula. The [fiscal note](#) accompanying HB 451 estimated a state general fund cost of \$340,000 for the 2017 biennium and a local tax impact of about \$30,000 per year. These estimates were based on the most recent numbers of students aged 19-21 receiving special education services from school districts, which would generate an additional 38 ANB statewide.

House Ed

Rep. Pope presented [HB 451](#) to the House Education Committee on February 16, 2015, emphasizing that the bill is about extending opportunities to those young people who need more time to develop their educational potential and stating that Montana is one of only two states (Maine is the other) that do not provide state funding through age 21 for students with disabilities.

A number of the 20 proponents who testified were parents of children with disabilities who asked the committee to consider this change an investment with great payoff in terms of increasing human dignity for their children as well as decreasing future state financial outlay, as their children would be able to live more independently with the additional years of schooling. In addressing concerns about the increase in state funding required, Walker Asserson pointed to Montana's neighboring states, who have managed to "figure it out." Karen Graf spoke about her son's desire to work and earn a paycheck like his fellow students and of his need for extra assistance in preparing for the workplace.

Many proponents mentioned the interruptions to schooling that their children experience due to medical appointments and procedures and the extra time their children require to develop. Others discussed the gap that is created when public school services end at age 19 and adult services often have a waiting list, explaining the regression they have witnessed due to this gap. Several proponents explained how desperately they needed this bill as parents of students on the verge of being "exited out" of the public school system. One mother questioned the wisdom of investing so much in these children only to allow that investment to diminish during these transition years. Deputy Superintendent of Public Instruction Dennis Parman voiced the support of Superintendent Denise Juneau.

There were no opponents.

Jim Marks, the state director of Vocational Rehabilitation Services within the Department of Public Health and Human Services, was the lone informational witness, and mentioned that recent federal law changes would strengthen the partnership between Voc Rehab and K-12 schools in providing transitional services. [Mr. Marks will present to the commission in April.]

During his closing remarks, Rep. Pope explained that the bill did not mandate that districts provide special education services to older students—that decision would still be at the trustees’ discretion and dependent on each student’s IEP.

The committee recommended the bill to the full House on a 9-6 vote.

HB 451 on the House Floor

The second reading of HB 451 took place on February 20, 2015. During floor debate, concerns were voiced that the bill removed all reference to age limitations in the definition of pupil and that the bill would inadvertently open a door to state funding for preschool.

Rep. Kathy Kelker explained that HB 451 is about dignity and increased independence for these children and their families and cost savings to the state by decreasing their reliance on state services down the road.

Rep. Nancy Ballance spoke of her experience as a school district trustee and voiced concerns that opening up services to some older students would legally oblige districts to serve all older, non-graduated students. She also questioned the fiscal note estimate of an additional 38 ANB, suggesting the number would grow much higher and that because the costs of special education students is twice that of regular education students, the state simply could not afford this bill.

Rep. Jessica Karjala responded that the bill would in actuality save the state money as these students would require fewer services because of their extended schooling.

Rep. Geraldine Custer stated that this seemed like a small price to pay for a “godsend to parents” of special needs children in rural Montana who would otherwise struggle to secure services for their children, possibly forcing them to quit their own jobs.

Rep. Nicholas Schwaderer clarified that the age limit in the bill would allow a student age 22 years 8 months to be included in ANB funding because of the September 10 cutoff date. [This is accurate; however, 20-7-411 allows trustees to establish and provide special education services only to students under 22 years of age, but, under 20-5-101, trustees have the authority to admit an adult 19 years of age or older (no upper age limit) under exceptional circumstances. The consistency and coordination of these interrelated statutes could certainly be improved, regardless of policy changes.]

In his closing, Rep. Pope reiterated that this bill was about increasing the independence of a “special group of young men and women” and maintaining local control.

The bill failed on second reading 49-51.

On the following day, Rep. Pope requested that the House reconsider its previous action and place HB 451 on second reading the following day, promising to keep it brief. The House indulged his request 51-49.

On February 24, 2015, following Rep. Pope's opening, Rep. Keith Regier moved an amendment that would return stricken language to the definition of pupil in 20-1-101 regarding age limitations, in an effort to allay fears that the bill would open a "back door" to preschool funding. The amendment passed 99-1.

In discussion on the bill as amended, Rep. Ballance voiced concern that an earlier fiscal note for a bill related to special education mentioned 16,000 special education students statewide, and she questioned the veracity of HB 451's fiscal note estimate of only 38 additional ANB.

Rep. Greg Hertz asked that if a district opted in to this program by offering services to older special education students, would they be able to opt out. Rep. Pope responded that he couldn't answer that question.

There continued to be questions about just how old a student could be and be eligible for ANB under the bill, as well as about how 3-year averaging of ANB would be affected.

The do pass motion on the bill as amended carried 53-47 and was referred to House Appropriations.

House Appropriations

On February 25, 2015, HB 451 was heard in House Appropriations. Rep. Pope emphasized in his opening that the fiscal impact of the bill was dependent on how many school districts decide to provide services to older special education students and that there was a cost benefit not quantified in the fiscal note in that students served would be able to live more independently with less reliance on other public services.

There were no proponents. Rep. Hertz reluctantly stood in opposition and shared that he had received a message from Montana School Boards Association Executive Director Lance Melton that a district that decided to provide these services would have no reasonable way of discontinuing the provision of these services.

Frank Podobnik, director of special education at the Office of Public Instruction, provided informational testimony on how the figures in the fiscal note were calculated.

Mr. Podobnik explained that of the 926 students with disability in grade 12 counted in October 2013, 438 were aged 18 and 49 had significant disabilities and therefore were the group most likely to benefit from additional schooling. In October 2014, the annual count of students showed 32 19-year-olds receiving special education services and seven 20-year-olds receiving services. He explained that many students will benefit from one additional year of schooling and that the numbers of 20- and 21-year-old students drops away significantly. (While the exact numbers don't match up for school year 2015, this assertion is borne out by the data included at the end of this report.)

Rep. Mike Cuffe asked Mr. Podobnik to address a concern he had heard that this extra time in school amounted to babysitting. Mr. Podobnik explained that the IEP process establishes

educational goals and transition plans for each student and students receiving services are working towards those goals.

Rep. Randy Brodehl asked about any additional grant funds that would become available if schools offered these services. Mr. Podobnik mentioned the reauthorization of the federal Workforce Investment and Opportunity Act, which requires Vocational Rehab programs to spend 15% of their allocations on transitional services for high school students with disabilities and that this partnership might assist school districts in providing services aimed at helping prepare these students for the workforce.

Rep. Kimberly Dudik asked about who makes the educational decisions and sets the educational goals for these students. Mr. Podobnik explained that a student's IEP team composed of teachers, administrators, the student, and the student's parents makes those decisions throughout the student's education years. He further explained that districts currently offering these services to 19- to 21-year-olds are doing so with federal IDEA funds and local tax funds and that HB 451 simply allows the state formula funding to flow by including these students in ANB calculations.

Rep. Robert Mehlhoff clarified with Mr. Podobnik that federal IDEA and Vocational Rehab funds were not sufficient to cover the costs of providing services to these students and that the state funding was necessary.

Rep. Jones sought clarification that these students would be working towards graduation. Mr. Podobnik explained that any student with a disability, once they reach age 16, has a transition plan that includes a graduation plan as part of their IEP, and that therefore it was implied that a student still receiving services was working toward that graduation plan.

In his closing, Rep. Pope talked about HB 451 as a means of helping kids reach their goals despite obstacles and delays.

Immediately after the closing, Rep. Kelly McCarthy requested that the committee delay executive action until that afternoon as he wanted to discuss a possible amendment addressing several concerns with the sponsor. Chair Ballance explained that the impending transmittal deadline precluded that possibility.

Following a separate bill hearing, House Appropriations tabled the bill 11-9.

Additional Information

I asked the following question of Frank Podobnik, director of special education at OPI. His answer follows.

At what point is the determination made on a student's IEP that the student would benefit from receiving school services beyond age 18?

The determination of a student's need for services beyond age 18 would be made by the student's IEP team during the IEP meeting during the senior year. IEP teams are required to notify the parent if the student will graduate by meeting the regular requirements, graduate by meeting the goals in their IEP, or not graduate and continue to need special education and related services. At that point, a request would have to be made to the local school board to allow the student to attend beyond age 19, or the student would age out of services.

Attached is a table with data from OPI showing the numbers and ages of students with disabilities ages 19-21 receiving special education services in school fiscal years 2009 through 2015. The data shows that the number of students being served has declined in recent years and that the majority of students served are age 19, with less than 3% age 21. That individual school districts might provide services one year and not the next likely reflects the needs of individual students from year to year.

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Year of Age Cohort (for years of age 3 through 21) for Which FAPE is Ensured (01-01-2020)

State	Years of Age Cohort	Description of Upper Age Limit
AK	3 through 21	At least 3 but less than 22 years of age. If a student turns 22 during school year (July 1-June 30) they can complete that school year.
AL	3 through 20	If you turn 21 on or after August 1, you can begin and complete the school year.
AR	3 to 21	3 to end of the school year in which a student turns 21.
A Sam	N/A	
AZ	3 through 21	At least 3 but less than 22. Note: If a student with a disability turns 22 during the school year, the entitlement to FAPE extends to the end of the school year.
BIE	N/A	
CA	3 through 18	<ul style="list-style-type: none"> • Between 19 & 21 if enrolled in special ed PRIOR to age 19. • Turns 22 Jan-June inclusive can continue for remainder of fiscal year including ESY. • If turns 22 during Oct, Nov, or Dec can go until Dec 31. • If 22 during July, Aug or Sept not allowed to begin a new fiscal year unless in a year round program; can complete the term that crosses the fiscal year.
CNMI	N/A	
CO	3 through 20	Between ages of 3 and 21. If turn 21 during school year can complete that semester.
CT	3 through 20	3 to end of school year when turns 21.
DC	3 through 21	End of semester in which turns 22.
DE	3 through 20	DB, HI, VI and autistic: 0 through end of school year when turn 21 after August 31st. Other categories 3 through end of school year when turns 21 after August 31st.
FL	3 through 21	<p>Between the ages of 3 and 21, inclusive.</p> <p>For students with disabilities who have not graduated with a standard diploma, the district will:</p> <ul style="list-style-type: none"> • Provide services until the day the student turns twenty-two (22) • Provide services until the end of the semester in which the student turns twenty-two (22) • Provide services through the last instructional day of the school year for all students in the district in which the student turns twenty-two (22), provided that the student was twenty-one (21) years old on the first instructional day of school for all students in the district
GA	3 through 21	If student turns 22 after September 1, services cease at birth date, end of semester or end of school year dependent upon LEA policy. If the student is receiving services upon reaching 22, the LEA shall have a written procedure that identifies a process for completing services. The LEA shall state whether the services will cease on the 22nd birthday, or will continue until the end of the semester or until the end of the current school year.
Guam	N/A	
HI	3 through 21	Age 3 to the student's twenty-second birthday.

State	Years of Age Cohort	Description of Upper Age Limit
IA	3 through 20	Under 21 years of age. Student allowed to complete school year in which age 21 is reached. LEAs can request to serve to 24.
ID	3 through 20	3 through semester turns 21.
IL	3 through 20	Between the ages of 3 and 21. If turns 21 after beginning of school year can complete year and following summer if specified in the IEP.
IN	3 to 22	At least 3 but less than 22. Note: If a student with a disability turns 22 during the school year, the entitlement to FAPE extends to the end of the school year.
KS	3 through 20	Through the school year (ending June 30) in which the student reaches 21.
KY	3 through 20	Age 3 to 21
LA	3 through 21	3 to not more than 21 years, inclusive. If a student turns 22 after the first day of school, the student can complete the school year.
MA	3 through 21	3 through 21.
MD	3 through 20	Birth through the end of the school year in which the student turns 21 years old.
ME	3 through 20	Has not reached 20 at the start of the school year.
MI	3 through 21	Birth to 22. State law covers individuals who are determined eligible for special education until the age of 26.
MN	3 through 21	Birth until July 1 after child with a disability becomes 21 years old but shall not extend beyond secondary school or its equivalent, except as provided in state statute (see section 124D.68, subdivision 2).
MO	3 through 20	Between 3 and 21 years.
MS	3 through 20	Not yet reached 21 years by September 1. If turns 21 during school year, finishes the year.
MT	3 through 18	Between ages of 3 and 18, inclusive. Districts may serve through school year child turns 21.
NC	3 through 21	A student who reaches the age of twenty-two during the school year can complete that school year.
ND	3 through 20	Has not reached 21 by midnight of July 31st. Can complete school year in which turn 21 unless received a high school diploma.
NE	3 through 20	0 through school year reaches 21.
NH	3 through 20	3 years of age or older, but less than 21 years of age.
NJ	3 through 21	3 through 21. If turns 21 during the school year, finishes the year.
NM	3 through 21	Serves 3 year olds will serve if turns 22 after the school year begins.
NV	3 through 21	Under the age of 22.
NY	3 through 20	A student under 21 years of age who has not received a high school diploma is entitled to attend public school without payment of tuition. A student with a disability who reaches age 21 during the period commencing: <ul style="list-style-type: none"> • with July 1 and ending on August 31 is entitled to continue in a July and August program. • on September 1 and ending on June 30 is entitled to continue in such

State	Years of Age Cohort	Description of Upper Age Limit
		program until the end of the school year. (May 2009)
OH	3 through 21	Below age 22. Local school district policy determines whether students who turn 22 during the school year may finish the school year.
OK	3 through 21	Ages 3 through 21. If turns 22 during school year (after Sept. 1st) can complete that school year.
OR	3 through 20	Not yet reached 21 years by Sept. 1. If turns 21 during school year finishes year.
PA	3 through 20	Age 3 to 21. If turns 21 during school year finishes year.
PR	3 through 21	3 through 21 years.
RI	3 through 20	If turns 21 during last semester of school year can finish the balance of the school year; however, LEAs are able to terminate services as soon as 21 is attained.
SC	3 through 20	If the student turns age 21 after September 1 of the school year, the LEA must permit the student to enroll and complete the school year. If a student turns age 21 on or prior to September 1, the LEA is not required to permit the student to enroll.
SD	3 through 20	A student who is enrolled in school and becomes twenty-one during the fiscal school year shall have free school privileges until the end of the fiscal year. Fiscal year ends June 30th.
TN	3 through 21	3 through 21. If turns 22 during school year can complete that school year.
TX	3 through 21	3 through 21 (birth for VI and AI).
UT	3 through 21	(b) if a student with a disability turns 22 during the school year, the entitlement extends to the: (i) beginning of the school's winter holiday for those who turn 22 on or after the beginning of the school year and before December 31; and (ii) end of the school year for those who turn 22 after December 31 and before the end of the school year.
VA	3 through 21	Children whose second birthday falls on or before Sept 30 and who have not reached their 22nd birthday on or before Sept 30.
VI	N/A	
VT	3 through 21	3 up to 22nd birthday. If a student on an IEP turns 22 within 3 months of graduation, local education agencies may apply for a waiver to the Secretary of Education that allows the entitlement of FAPE to be extended to the graduation date.
WA	3 through 20	Between 3 and 21. If turns 21 after August 31 eligible for remainder of school year.
WI	3 through 20	3 to 21 unless turns 21 during school term (i.e., school year) then can finish the term. If 21 in Oct remains until June.
WV	3 through 20	Between 3 and 21 years of age prior to Sept. 1 of the school year.
WY	3 through 20	3 through the school year in which the child turns 21.