

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON EDUCATION & CULTURAL RESOURCES

Call to Order: By Chairman Royal Johnson, on January 12, 1993,
at 8:10 a.m.

ROLL CALL

Members Present:

Rep. Royal Johnson, Chair (R)
Sen. Don Bianchi, Vice Chair (D)
Rep. Mike Kadas (D)
Sen. Dennis Nathe (R)
Rep. Ray Peck (D)
Sen. Chuck Swysgood (R)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Analyst
Skip Culver, Legislative Fiscal Analyst
Doug Schmitz, Office of Budget & Program Planning
Jacqueline Brehe, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: OFFICE OF PUBLIC INSTRUCTION AND OFFICE
OF PUBLIC INSTRUCTION BUDGET
MODIFICATIONS

Executive Action: NONE

HEARING ON OFFICE OF PUBLIC INSTRUCTION

Tape No. 1:A:000

Skip Culver, LFA, distributed **EXHIBIT 1** which listed the positions removed by the five percent reduction in personal services imposed by the 1993 Legislature and by the Swysgood motion. He explained that the positions were removed from the LFA current level and it would take a positive action by the committee to restore any of the positions. The Racicot Executive budget modification would restore all positions which were non-general fund based and which were removed by the five percent reduction. He noted that position 00140 had been removed from the base because its function had been removed in the budget. He said the dollars for the positions were in **EXHIBIT 3** of 1/11/93, but were not in the budget.

Greg Groepper, Office of Public Instruction, commented that Nancy Keenan, Superintendent of Schools, had stated that if five percent reductions were taken across all agencies, OPI would not resist that effort of the legislature to reduce expenses. However, there were positions which had been filled or for which firm commitments had been received which, because of bookkeeping procedures, showed as vacant and therefore susceptible to the Swysgood motion. OPI was prepared to discuss those positions. **SEN. CHUCK SWYSGOOD** explained it was the intent of his motion on this issue that agencies come to the appropriate committee and justify why positions should be restored. Until action was taken by the committee, the positions were not in the budget. **Mr. Groepper** said OPI would be prepared to discuss the positions at the next meeting of the committee.

HEARING ON OFFICE OF PUBLIC INSTRUCTION BUDGET MODIFICATIONS

Tape No. 1:A:320

Mr. Groepper distributed **EXHIBIT 2** which listed the modifications requested by OPI for inclusion in HB 2.

Jack Copps, Deputy Superintendent for OPI, explained the first budget modification which requested funding for the certification denial/revocation investigations. The money would be used for contracted services which would provide for a 0.5 FTE investigations officer (an attorney) who would assist the office in the investigations which might lead to the revocation or suspension of a teaching certificate. By statute, the superintendent had the responsibility not only to renew the certificates, but also to deny certificates. In the denial process, the superintendent had the responsibility to conduct investigations and, at hearings before the Board of Public Education, to serve as prosecutor. Because the responsibilities required knowledge of the law and because the number of cases was growing, this mod was being requested. **Mr. Copps** added that those parties who had been denied certificates, had the right to appear before an impartial hearings officer who would conduct an investigation and possible prosecution which could lead to a revocation of a certificate.

Mr. Copps explained that the mod was being requested at this time because greater responsibility was being placed on school districts to report incidences which could lead to revocation of licenses. The result was that the number of investigations has risen. In addition there was a significant number of active certified files in OPI (>23,000). To provide extra money for the increased demand on services, it was suggested that legislation be introduced which would increase the teacher certification fees to provide needed money for these activities. The legislation has been prepared and was presently under consideration.

Questions, Responses, and Discussion: **SEN. DON BIANCHI** asked for clarification of the responsibilities of the Board of Education and OPI in the area of certification revocation including the

areas of overlap. **Mr. Copps** explained that the responsibility to suspend or revoke a teacher's certification rests with the Board of Education. The superintendent had been charged with the responsibility to conduct the investigations and prosecutions. The board also had the power to conduct such investigations, but its resources were limited. **SEN. BIANCHI** noted that the committee approved a supplemental for the Board of Education to pay for attorney fees associated with revocation proceedings. He asked if the process could be handled by a single agency. **Mr. Copps** replied that it would require a change in statute. At present, the responsibility rested with both agencies. He noted that OPI conducted most of the investigations. However, the board often conducted investigations for the complaints made directly to them.

Mr. Culver said it was his understanding that the supplemental in the Board of Education budget was for the hearings conducted by the Department of Justice. The agency conducting the investigation could not also be the one conducting the hearing. OPI did the investigating while the board conducted the hearings, which were impartial. **REP. MIKE KADAS** commented that the current superintendent had decided to fully utilize the law by increasing the number of hearing investigations her office was undertaking. The result was the OPI mod request and the Board's supplemental request. He inquired as to the reason behind her decision. **Mr. Copps** replied that the responsibility which rested with the superintendent was clear and she intended to assume her obligation to carry out that responsibility.

REP. RAY PECK responded to **REP. KADAS'** question saying that in the past there had been teachers who were charged with sexual assault of students but who had not been suspended or had their certification revoked. The present superintendent was actively pursuing such cases. He felt that such enforcement from the superintendent's office was long overdue.

REP. KADAS asked what the most common justifications for revocation were. **Mr. Copps** replied the most common was the charge of child abuse or sexual abuse. Previously, these individuals would be fired, but would retain their teacher certifications. They could apply for teaching positions in other locations after a period of time had elapsed.

Tape No 1:B:000

CHAIRMAN ROYAL JOHNSON asked if there were other monies in the OPI budget beyond those requested in the mod to accomplish this task. **Mr. Copps** said there were no other monies specifically earmarked for investigations. In the past, OPI used legal counsel available to the office to pursue the investigations. **CHAIRMAN JOHNSON** inquired as to the number of cases investigated in the last year. **Mr. Copps** replied that the mod was based on the assumption that there would be one case per month which was the present rate. About 50% would advance to the Board of Education for its consideration. **CHAIRMAN JOHNSON** asked if the

Department of Justice had been notified of the cases involving sexual abuse. **Mr. Copps** answered that in most instances the cases were at some level within the Department of Justice already and defendants had been found guilty, but the certification had not been removed through the legal process. Revocation of certificates could only be done through the Board of Education.

SEN. BIANCHI asked the representative of the Montana Education Association for its position on the issue. **Eric Feaver, Montana Education Association (MEA)**, stated that the organization was not opposed to the modification. His organization was concerned with how the investigations were being initiated. He stated that statute provided that the investigations should only occur after a criminal proceeding had found the defendant guilty. It was not to be initiated after a complaint had been received. A judicial finding that there was wrong-doing was necessary before launching an investigation. He noted that there had been instances when the Board of Education conducted its investigations during its hearings. He said the MEA supported the appropriation but did not support the increase in teacher certification fees.

CHAIRMAN JOHNSON suggested a change in statute in which a person convicted of this type of crime would automatically lose his/her certification to teach. **Mr. Feaver** said he would consider that a violation of professional due process.

REP. KADAS asked **Mr. Copps** for his response to **Mr. Feaver's** concerns that OPI could not legally investigate unless criminal charges had been proven. **Mr. Copps** stated that OPI did not believe a judicial decision was needed before the superintendent had the authority to initiate an investigation. He gave examples of how investigations might be started: some began as a result of a newspaper story regarding judicial action; some were initiated because a school board had notified the OPI of a termination due to sexual abuse. At times a series of complaints reached OPI from a school district regarding the improper conduct of an individual.

SEN. SWYSGOOD asked for clarification regarding the executive budget recommendation which requested the same amount of money as the mod, for the same purpose, be funded from an increase in teacher certification fees. **Mr. Copps** said HB 106 was requesting an increase in teacher certification fees which would cause the certification function of the office to be self-supporting and would provide monies for the investigative operations. **CHAIRMAN JOHNSON** asked why general funding was being requested in the mod. **Mr. Groepper** explained that to raise the teacher's fees, legislation was needed. Until a bill passed, the OPI had to meet the obligation through a general fund request through a budget mod. If a bill passed, the funds would be earmarked.

Gail Gray, OPI, explained the rationale behind the second budget modification in **EXHIBIT 2**. OPI wanted authority to spend more money in the advanced drivers education program because of the

growth of the program.

Kathy Fabiano, OPI, explained the reason for the third modification in **EXHIBIT 2**. In explaining the fourth modification, she referred the committee to Table B on page E6 in the LFA Budget Analysis. She explained that OBPP had agreed to allow OPI to put all of its increases in federal funds into one budget modification. This request was entirely federally funded. She reviewed the federal programs in Table B on page E6.

CHAIRMAN JOHNSON asked for more information regarding the Chapter I program in Table B which designated \$100,000 while paragraph 11 on the same page discussed a figure of \$320,000. **Ms. Fabiano** explained that Table B listed money that stayed within the OPI office to administer the funds. The \$320,000 was an increase in flow through monies that were distributed to the districts. The \$100,000 was an increase in federal funding for the administration of the program.

SEN. DENNIS NATHE asked what type of services were supplied to the 874 schools. **Ms. Fabiano** replied that OPI acted as a resource conducting workshops, assisting with applications, giving advice on accounting procedures etc.

Ms. Fabiano explained the rationale behind the fifth budget modification. **EXHIBIT 2** She said the program had grown and more money was needed for operational costs. The mod would be funded through a fee charged the schools who participated in the program. The program saved schools money in purchasing food. She noted that part of the increase would be used to fund an upgrade in the position of the individual who ran that program.

Ms. Gray explained the sixth modification **EXHIBIT 2** which resulted from an increase in the requests for materials. **Ms. Fabiano** reviewed the seventh modification **EXHIBIT 2** and referred the committee to Table B on E6 of the LFA Budget Analysis. The request was for spending authority for the increased revenue coming in as indirect costs associated with the increased federal funding for some programs.

Tape 2:A:000

SEN. NATHE asked why OPI needed additional FTEs for mail service requested in the mod if OPI used the Department of Administration mail service. **Mr. Groepper** explained the DoA mail service delivered the mail to the Capitol, but then it had to be picked up by OPI and distributed among four locations twice a day. **SEN. SWYSGOOD** asked how many FTEs were being added by the mod. **Ms. Fabiano** said four: one administrative assistant, two word processors and one mail clerk. **REP. PECK** asked for clarification regarding the position of OBPP. He noted that they refused to endorse the request for the FTEs, but encouraged OPI to try to get the money. **Ms. Fabiano** said OBPP put the money in the budget but would not approve the FTEs because they felt it was contrary to the five percent reduction in personal services. **Doug**

Schmitz, OBPP, concurred.

CHAIRMAN JOHNSON asked if OPI could use contractual services to carry out the work and thereby avoid increasing FTEs. **Mr. Groepper** explained that it was difficult to use contracted help for these types of positions because by law contracted help was not allowed to use OPI equipment or facilities to carry out their tasks, otherwise they could not be called contracted workers. He added that word processing was less expensive to accomplish with one's own employees than with contracted help. He reminded the committee that the positions were federally funded. **CHAIRMAN JOHNSON** asked to what benefits part-time employees were entitled. **Mr. Groepper** replied that medical benefits were given to those who worked at least 20 hours per week. Other benefits associated with salary only accrued based on the number of hours worked, such as vacation.

SEN. SWYSGOOD stated that the mod would not be needed if OPI did not get approval for the FTEs. **Mr. Groepper** agreed. **SEN. BIANCHI** asked what would happen to the money if the mod was not approved. **Ms. Fabiano** replied she had to draw the indirect costs by law, and they would accumulate in the account. However, in two years, the indirect cost rate for Montana would be lowered by the federal government if the money was not spent. **CHAIRMAN JOHNSON** asked if there was a chance that the federal government would decrease the program. **Ms. Fabiano** said she did not think so.

SEN. SWYSGOOD referred the committee to page E5 of the LFA Budget Analysis where it stated that the indirect cost pool was funded from indirect costs applied against the general fund and federal and state special accounts. He asked how much of the indirect costs were part of the general fund. **Ms. Fabiano** responded that none of the modification, **EXHIBIT 2, #7**, was funded by the general fund. The federal government required that when indirect costs were being drawn off federal programs, they must also be drawn off general fund programs. For ease of accounting, OPI draws it as a transfer. She added that she reverted any general fund not expended at year end.

REP. PECK asked if the general fund indirect costs were kept separate from the federal funds. **Ms. Fabiano** explained that the general fund and the indirect draws off the federal funds and the state special revenue funds were just placed as revenue into the pool where it was commingled in the account. At the end of the year, if there was a fund balance, it would be returned to the general fund. The law required that non-general fund money be spent first.

Ms. Gray explained the eighth modification which was an elected official budget modification for the audiology hearing conservation program. U S West had supported the program with a private grant, but would no longer do so. The funding was being requested because OPI had been unsuccessful in obtaining other

private grants. The mod was needed to make up the shortfall left by the termination of U S West funding. **REP. PECK** asked if the program would become a local district obligation if the state did not fund the program. **Ms. Gray** said yes. **SEN. SWYSGOOD** noted that \$136,000 was already in the LFA base for the program. He asked why the request was being made to increase the funding for the program. **Ms. Gray** explained that the \$82,000 was just for one year. The \$136,000 was a biennial amount.

CHAIRMAN JOHNSON asked if the program was really important, because the private sector did not think it important enough to fund. **Ms. Gray** responded that U S West had changed its funding priorities. Many of the foundations did not fund the program because they felt it was a state obligation. **REP. KADAS** asked for more information on the cost effectiveness of the program. **Ms. Gray** explained that the earlier a hearing problem was detected, the better education the child could receive. She added that the screenings were actually paid by local schools. The program paid for the audiological evaluations required after the hearing impairment was detected during screenings. The evaluation determined the level of impairment and resulted in recommendations for educational programs and for any apparatus which would be helpful. If the program were eliminated, the evaluations would be paid for by the local schools. In response to a question from **CHAIRMAN JOHNSON**, **Ms. Gray** said that most audiology evaluations were done by professionals in the private sector.

Ms. Gray explained the need for the elected official budget modification for curriculum specialists, **EXHIBIT 2B**, and supplied written testimony. **EXHIBIT 3**

SEN. SWYSGOOD asked if the general funds being requested were to replace federal funds being withdrawn. **Ms. Gray** explained that the federal funds had not been withdrawn, but were being used for a purpose for which they were not meant. **SEN. SWYSGOOD** asked if the basic educational specialists cost \$281,360 per year. **Ms. Gray** said yes. **SEN. SWYSGOOD** asked what the early childhood development specialist cost. **Ms. Gray** replied it would entail another \$45,000 per year. She added that the remainder of the requested amount would be used for the production of curriculum guides not covered by federal funding. **SEN. SWYSGOOD** noted that the reasons were not listed for the remaining \$21,000 above the cost of the early childhood specialist and he requested a reason for the omission. **Ms. Gray** explained that the remaining money would be used for work done by the specialists involved.

REP. PECK noted that according to the LFA Budget Analysis the Chapter II money (\$281,636) freed up by this modification would then go to targeted areas. He asked what the targeted areas were and what did OPI do in this area two years ago. **Ms. Gray** responded that two years ago there were insufficient funds to maintain staffing and carry-over money had to be utilized in the area of Chapter II. With the freeing up of present Chapter II

funds, there would probably be additional money available to schools. Last session the legislature gave OPI one half of what was needed to fund the specialists. She said this request represented the other half of what was needed to fully fund the basic education specialists out of the general fund.

SEN. SWYSGOOD asked what would happen if the mod was not approved. **Ms. Gray** said OPI would continue to risk using Chapter II funds inappropriately. She noted that the federal government had not cited OPI yet, but had indicated what the spirit of the law was.

Ms. Gray explained the need for the elected official budget modification for accreditation. **EXHIBIT 2B** The funds would provide travel per diem, lodging for peer reviewers and the production of a handbook. An additional support staff was also requested to coordinate the accreditation on-site reviews, prepare the pre and post-review information, and process written reports. **CHAIRMAN JOHNSON** asked for the number of FTEs currently involved in the accreditation area. **Ms. Gray** replied that there was an accreditation specialist and an administrative assistant. The on-site accreditation process was so extensive, another non-professional staff member was necessary.

Mr. Groepper noted that some explanation of the need for the modification for attorney fees had been given the previous day. These litigation costs were for the 75% of the \$38,000; 25% was to be paid by the OCHE. **EXHIBIT 2B**

Mr. Schmitz referred to the first budget modification, **EXHIBIT A**, and noted that the executive had recommended that the funding come from the state special revenue account rather than from the general fund as OPI presented it.

Ms. Gray began the OPI presentation on Program 9 budget modifications. **EXHIBIT 2C** She stated that the first mod covered the educational costs of children at Shodair Hospital and had been explained the previous day. **SEN. NATHE** asked if facilities such as Shodair use the local school districts for educating clients. **Ms. Gray** said the facilities used their own staff. **SEN. NATHE** asked if it would be less expensive to have a cooperative program with the local schools. **Ms. Gray** explained that the children involved were severely emotionally disturbed and were not successful in the public school system. The funding requests were for educational costs being supplied at the facilities. **SEN. NATHE** noted that the Yellowstone Treatment Center was a school district in itself. **Ms. Gray** explained that YTC was a public elementary school and that it was not receiving any special education money at the present time.

In reply to a question from **SEN. SWYSGOOD**, **Ms. Gray** explained that the children at Shodair were mostly elementary-aged rather than high school or pre-school. The occasional pre-school child was eligible for special education under federal statute.

CHAIRMAN JOHNSON asked what type of measure was used to determine whether the educational efforts were actually of benefit to the children in the facilities who were so emotionally disturbed.

Ms. Gray explained that if a child was to succeed in the outside world, an education was necessary. However, there were no follow-up studies yet because the phenomenon of children in psychiatric hospitals was rather new. As yet there was no proof that the education was helpful. **CHAIRMAN JOHNSON** asked if educational services were helpful for children placed in the centers for a short stay of 30 days for intensive medical treatment. **Bob Runkel, OPI**, responded that the educational services provided the environment in which the treatment could occur. School was the normal environment for children and if behavior was a problem, the best setting in which to help the child make the proper adjustments was the school setting.

Tape No. 3:B:000

SEN. SWYSGOOD asked what would happen if the mod was not approved. **Ms. Gray** replied that the facilities would commence with legal action against OPI. Some appropriation was necessary unless the legislature decided to have the local school districts bear the burden. **REP. KADAS** asked if the local districts could apply for Medicaid to help pay the educational costs of the children in these facilities. **Ms. Gray** said she expected an answer from Medicaid on this issue. She noted that since the paperwork involved was complex, the local school districts may not find it worthwhile to apply. She reiterated that an appropriation at some level would be necessary because there was still a Medicaid match of about 28%.

SEN. SWYSGOOD asked if OPI had been supplying funding for the educational costs at these facilities out of the budget, and if so, was the mod for additional funds. **Ms. Gray** answered that OPI has used the appropriation for this area provided by the last legislative session to pay the educational costs for the children in all but one of the facilities. The contract for the Shodair Residential Treatment Center was subject to funding by the legislature. They have not received funding as yet. YTC was not receiving sufficient funding because of the increased number of students, which was the reason for the supplemental.

SEN. SWYSGOOD asked if there was any limitation or prohibition on institutions implementing services and then demanding funding for the educational costs involved. **Ms. Gray** replied that the only limitation she was aware of was a license requirement from SRS. She added that OPI was hoping to find a sponsor for a bill that they would like to introduce which imposed significant limitations on the process. **SEN. NATHE** asked if OPI would have objections to the insertion of language in the mods, **EXHIBIT 2C, #1 and #3**, which stipulated the reversion to the general fund of money equal to the reimbursement from Medicaid. **Ms. Gray** said OPI would have no objections.

CHAIRMAN JOHNSON noted that one of the major problems for the state was the increase in Medicaid payments. He mentioned that Rivendell advertises for clients which were first paid for privately or through insurance. When the private funding was terminated and the Rule of One was applied, the children were funded through Medicaid and the educational costs had to be carried by the state. **Ms. Gray** noted that the facilities indicated there were medical reasons for the placement of the children in the facilities and a substantial review process was involved. However, the number of children in the facilities was escalating at an alarming rate. She reviewed the history behind the care of emotionally disturbed children in Montana, and noted that when residential treatment centers and hospitals became eligible for Medicaid, they expanded their services and the cost per student rose dramatically. The difference between what the state was paying for educational costs prior to the building of a children's center in Billings and what was being paid now was enormous.

REP. KADAS inquired as to the average educational cost per student in the facilities. **Ms. Gray** said it was approximately \$10,000/student. **REP. KADAS** noted that the average cost per student in public school was \$5-6,000. He asked if some of the \$10,000 was treatment costs. **Mr. Runkel** explained that because treatment was carried out within the educational environment and because the two were interdependent, Medicaid may cover the cost of the education under the ruling announced in the federal register. An interpretation from HCFA was still forthcoming.

Ms. Fabiano explained the need for the school food services modification. **EXHIBIT 2C** She said the federal law demanded a 30% state match for the school lunches served. The number of children being served was increasing and, therefore, the state's share of the cost was increasing.

Ms. Gray discussed the rationale for the modification request for secondary vocational education, **EXHIBIT 2C**. **Jim Fitzpatrick**, Executive Director, Montana Council on Vocational Education, supported the approval of the modification and supplied written testimony, **EXHIBIT 4**. **REP. PECK** asked if there was a maintenance of effort issue involved with the mod. **Mr. Fitzpatrick** said there was a maintenance of effort for participation in vo-ed funding. **Jim Whealon**, Director of Vo-Ed, OPI, explained that the requirement imposed by the federal government stated that the state could spend no less than it had spent the previous year for vo-ed.

REP. KADAS stated that the last special session cut the program by eight percent. He asked how much federal funding would be lost if the mod were not approved. **Mr. Whealon** said that potentially the Carl Perkins' funding of approximately \$5 million could be lost. It depended on the enforcement of the regulations. He noted that the law went into effect in 1991.

REP. KADAS noted that the decision to reduce the budget by eight

percent last year was then possibly illegal. Mr. Whealon said it had not yet been reported.

Tape No. 4:A:000

Ms. Gray stressed that the vo-ed program had been ignored in the past and it was a good program, helping children to succeed.

SEN. SWYSGOOD agreed that the effort in vo-ed had been less than adequate in the past and there was a need to continue vo-ed in the secondary schools.

Mr. Runkel began the presentation on the modification for state special education funding, **EXHIBIT 2C**, by giving the committee historical background on the status of special education in Montana. He referred the committee to the first page of **EXHIBIT 5** showing how the state share of allowable costs would drop from 86.9% in FY90 to 63.8% in FY94 and 59.8% in FY95 if appropriations were not increased. He reviewed the graphs in **EXHIBIT 5B** showing the increase in the number of children needing special education. The chart on the third page of **EXHIBIT 5** listed special education children by category. **Mr. Runkel** explained that the graph on the last page compared state funding with the estimate of approved allowable costs. He said the shortfall for the biennium at the present growth rate would be \$44 million.

Dori Nielson, OPI, explained the need for the \$22 million being requested in the modification for state special education funding. She noted that the amount of the request was half of what originally had been requested due to the activity of the Special Education Commission chaired by **REP. PECK** which met for almost a year. She noted that there were three major concerns of people working in the field of special ed. The first was the uncertainty of the funding level from year to year which impeded the planning process. The second was the need for appropriate special ed identification so that over or under identification did not occur because of funding situations. The third was that funding was equitable.

Ms. Nielson said the bill incorporating recommendations of the commission had not been finished, but she reviewed some of the highlights. She noted that the \$22 million in the modification carried with it a recommendation from the commission that special education ANB figures be put back into the foundation calculations. She said of the 17,000 children identified as special education children, 2400 were full-time (51% of classroom time in special education), and were not counted in the ANB figures.

Ms. Nielson informed the committee the other major points in the bill included the requirement that special education funds be distributed in two types of block grants based on the ANB count, the requirement that district match the monies received from the state, a mechanism to reimburse districts whose costs in the area

of special education were especially high, and a stipulation that all districts be included. The \$22 million of the mod would be distributed according to the mechanisms provided in the bill.

REP. KADAS asked for the rationale for not including the full-time special education children in the ANB count. **Ms. Gray** explained that prior to 1979 there was no cap for special education monies which went to the districts. In 1979, the legislature established a cap and removed the indirect costs of the full-time special education students, but did not stipulate they would count for ANB calculations. She commented that most legislators agreed that every student should generate basic ANB funding, but it had been difficult to get the appropriation in the past because of the expense involved. **Ms. Nielson** added that it would cost \$5.6-5.8 million per year to have the full-time special education students qualify for ANB funding.

REP. PECK informed the committee that there were over 20 people on the special education commission and they were unanimous in agreeing that full-time special education children should get ANB funding, despite the high cost to the state which was involved.

CHAIRMAN JOHNSON asked if the commission had issued a report. **Mr. Runkel** said the OPI staff was working on the final draft of the report.

SEN. SWYSGOOD asked how many of the 2,400 full-time special education children would be receiving services from a facility such as Shodair or Rivendell. **Ms. Nielson** explained that the money in the modification was for the children in public schools, not those in treatment centers. There was no overlap. **Ms. Gray** added that the children in the treatment centers were there for a brief period because of emotional disturbances. Most of the 2,400 students who were full-time special education students had multiple handicaps including both retardation and physical handicaps. **SEN. SWYSGOOD** noted that this was an effort to mainstream children from an institutionalized setting to a public school setting. **Ms. Gray** agreed.

SEN. NATHE asked what percentage of the 2,400 came out of group homes. He noted that children under 21 who were in group homes received supplemental social security and SRS funding. **Ms. Gray** said she would return with the figures at another meeting. **SEN. NATHE** voiced a concern that children in group homes were being enrolled in the public school system to save staffing costs. **Ms. Gray** said that when deinstitutionalization occurred the educational costs were absorbed by the public schools and the ANB funding for the full-time special education students was not available. She acknowledged the frustration of the districts which had to deal with multiple group homes with children who did not even come from the districts.

SEN. SWYSGOOD noted he had also received complaints regarding the issue. He asked why the ANB funding wasn't added in the 1981

legislature when economic times were better. **Ms. Gray** explained that the 1979 and 1981 Legislatures were paying such a large percentage of the allowable costs for special education, that the local school districts were not impacted as much as they are now. Because the number of children in special education has increased and because it costs more to serve the children, the state now funds a lower percentage of the allowable costs. The consequence was that now the basic ANB funding became significant in the support of the educational costs of the children. **REP. PECK** added that when special education first began, few children were identified and 100% of the educational costs was picked up by government. As more children were identified, funding decreased on both the state and federal level. As the districts picked up more of the costs, it seemed even more unfair that full-time special education children were not counted for basic ANB money.

CHAIRMAN JOHNSON asked if the \$22 million requested in the mod would be used for the 17,000 special education students which were previously referred to. **Ms. Nielson** explained that one half of the \$22 million would be used for the foundation addition to accommodate the added ANB count for full-time special education children. The other half of the \$22 million would be used to implement the directions of the new bill which was presently being completed and dealt with all the special education programs in the school districts. She added the money would still be needed in the present structure even if the new bill failed to pass.

CHAIRMAN JOHNSON asked if counting the 2,400 full-time special education children for ANB funding would cost \$5.6 million per year. **Ms. Nielson** agreed and added that if the new bill did not pass, the \$22 million would be funding special education at approximately the same rate that regular education was funded at the present time.

CHAIRMAN JOHNSON asked what percentage of allowable costs the state would be funding if real program growth and inflation were not considered. **Mr. Runkel** said he had not worked it out.

SEN. NATHE asked how the under-funding of special education affected 874 schools. **Ms. Nielson** replied she was not sure how the figures intertwined. **REP. PECK** informed the committee that he was in contact with staff in OPI who has been trying to get the federal government to supply figures on the breakdown of money coming into Montana in terms of regular students and special education students. The figures were forthcoming. He voiced concern that children were being over identified as qualifying for special education.

Tape No. 4:B:000

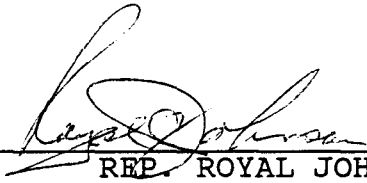
Ms. Gray commented that under the system recommended by the commission in the new bill, incentives would be taken away for identifying children for special education. OPI totally concurred with **REP. PECK'S** concern.

CHAIRMAN JOHNSON distributed copies of two letters he had written to the legislative auditor and to the chairman of the Board of Regents requesting specific information. **EXHIBITS 6 and 7**

EXHIBIT 8 had been distributed by **Mr. Groepper** and supplied background information on the local government severance tax litigation.

ADJOURNMENT

Adjournment: 11:45 a.m.



REP. ROYAL JOHNSON, Chair



JACQUELINE BREHE, Secretary

jb/

HOUSE OF REPRESENTATIVES

EDUCATION

SUB-COMMITTEE

ROLL CALL

DATE

1-12-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ROYAL JOHNSON, CHAIRMAN	✓		
SEN. DON BIANCHI, VICE CHAIRMAN	✓		
REP. MIKE KADAS	✓		
SEN. DENNIS NATHE	✓		
REP. RAY PECK	✓		
SEN. CHUCK SWYSGOOD	✓		

Positions Removed by Joint Committee Action
House Appropriations & Senate Finance and Claims
January 6, 1993

		Total Personal Services		FTE		Total FTE Removed	Non—Approp. FTE
Position #	Position Description	Fiscal 1994	Fiscal 1995	Removed by 5% Reduction	Removed by Being Vacant		
<i>All or Partial General Fund Positions</i>							
00068	Education Program Rep	37,113	37,423	1.00		1.00	
00029	Administrative Assistant ✓	20,929	20,951		1.00	1.00	
00124	Education Program Rep	25,107	25,130	0.50		0.50	
00650	Systems Specialist ✓	33,003	33,039		1.00	1.00	
00651	Systems Specialist ✓	34,371	34,409		1.00	1.00	
01571	Education Program Rep	9,005	9,013	0.25		0.25	
Sub—Total		159,528	159,965	1.75	3.00	4.75	0.00
<i>Non—General Fund Positions</i>							
00027	Film Library Clerk	9,635	9,644		0.50	0.50	
00035	Education Program Rep	46,231	46,272	1.00		1.00	
00140	A/V Library Suprvisor	30,639	30,679	1.00		1.00	
00603	Program Officer II	35,209	35,349	1.00		1.00	
00617	Equip/Supply Tech	11,604	11,615	0.50		0.50	
00622	Education Program Rep	5,601	5,606		0.15	0.15	
01223	Program Assistant	7,309	7,341		0.25	0.25	
01572	Education Program Rep	37,568	37,599	0.75		0.75	
Sub—Total		183,796	184,105	4.25	0.90	5.15	0.00
TOTAL		343,324	344,070	6.00	3.90	9.90	0.00

01/12/93

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EXHIBIT 1
DATE 1-12-93

OFFICE OF PUBLIC INSTRUCTION

SUGGESTED AMENDMENTS TO HB2

PROGRAM 06 - MODIFIED LEVEL ISSUES

Executive Budget Modifications

1. CERTIFICATION DENIAL/REVOCATION INVESTIGATION - Motion appropriating **general funds** of \$47,640 in both FY94 and FY95 for costs associated with contracting an impartial third-party to investigate complaints and requests from districts for the revocation/suspension of certificates.
2. ADVANCED DRIVERS EDUCATION - Motion appropriating additional **state special revenue funds** of \$11,127 in FY94 and \$26,127 in FY95 for costs resulting from an anticipated growth in the number of students trained each year.
3. SCHOOL FOOD COMMODITIES - Motion appropriating additional **state special revenue funds** of \$55,000 in both FY94 and FY95 for increased costs associated with warehousing, processing and shipping USDA donated foods to schools.
4. FEDERAL SERVICES ADMINISTRATION - Motion authorizing an additional 5.0 FTE and appropriating **federal special revenue funds** of \$914,299 in FY94 and \$1,155,559 in FY95 for increases to existing and adding new federal education programs administered by OPI.
5. COOPERATIVE PURCHASE AID PROGRAM - Motion appropriating additional **state special revenue funds** of \$8,900 in FY94 and \$18,200 in FY95 for increased operating costs resulting from program growth.
6. RESOURCE & PUBLICATIONS ACCOUNT - Motion appropriating \$15,000 in **state special revenue funds** in both FY94 and FY95 for increases in the purchase/reproduction and sale of educational materials that result from changes in assessment practices and accreditation standards.
7. INDIRECT COST POOL - Motion appropriating additional **proprietary Fund** revenues of \$110,000 in both FY94 and FY95 for workload increases in central areas providing services to OPI's state and federal programs, such as wordprocessing and mail delivery.

EXHIBIT 2
DATE 1-12-93

OFFICE OF PUBLIC INSTRUCTION

SUGGESTED AMENDMENTS TO HB2

PROGRAM 06 - MODIFIED LEVEL ISSUES

Elected Official Budget Modifications

8. AUDIOLOGY HEARING CONSERVATION PROGRAM - Motion for a **general fund** biennial appropriation of \$146,000 to pay program costs previously funded through private grants.
9. CURRICULUM SPECIALISTS - Motion authorizing an additional 1.0 FTE and appropriating **general funds** of \$346,467 in FY94 and \$342,967 in FY95 to replace federal chapter 2 funding of curriculum specialists and to hire an early childhood specialist.
10. ACCREDITATION - Motion authorizing an additional 1.0 FTE and appropriating **general funds** of \$50,000 in FY94 and \$52,000 in FY95 for on-site accreditation reviews of schools.
11. ATTORNEY FEES - Motion for a biennial **general fund** appropriation of \$28,500 to pay attorney fees associated with the Phillips County LGST lawsuit.

AMOUNT 2B
1-12-93

OFFICE OF PUBLIC INSTRUCTION

SUGGESTED AMENDMENTS TO HB2

PROGRAM 09 - MODIFIED LEVEL ISSUES

Executive Budget Modifications

1. IN-STATE RESIDENTIAL SERVICES - Motion for a biennial **general fund** appropriation of \$376,471 to pay the educational costs of children placed in Shodair Hospital.
2. SCHOOL FOOD SERVICES - Motion for a **general fund** appropriation of \$29,940 in FY94 and \$45,673 in FY95 to meet federal matching requirements for Section 4 general assistance paid for school lunches served.

Elected Official Budget Modifications

3. IN-STATE RESIDENTIAL SERVICES - Motion for a **general fund** biennial appropriation of \$2,719,269 to pay the increase in educational costs that results from growth in the number of children placed in in-state residential treatment facilities.
4. STATE SPECIAL EDUCATION FUNDING - Motion for a **general fund** appropriation of \$11,000,000 in both FY94 and FY95 to pay the projected costs resulting from a recommended change in the method used to fund special education.
5. SECONDARY VOCATIONAL EDUCATION - Motion for a **general fund** biennial appropriation of \$410,400, restoring the 8% reduction to current level funding imposed during the special session and to provide an inflationary increase.

26
1-12-93

TESTIMONY ON CURRICULUM SPECIALIST MODIFICATION, GAIL GRAY, OFFICE OF PUBLIC INSTRUCTION, JANUARY 11, 1993

MODIFICATION SUMMARY: The office has 10 basic education curriculum specialists to provide instructional assistance, inservice training, maintain and publish curriculum guides, and perform mandatory accreditation visits as required by 20-7-102 MCA, 20-7-113 MCA, and 20-7-114 MCA. These staff provide services to over 9,500 teachers in 500+ school districts. Their workload is compounded by the fact that approximately half are elementary teachers requiring services in every elementary curriculum area. The total current level budget for this curriculum staff is \$803,788, of which \$281,630 is paid with federal money.

The federal funding is Chapter 2 money for effective schools with restrictions for use in targeted areas. The federal requirement is that these funds be used for **EXTRA** materials, workshops and travel to support and supplement the basic program of instruction. We fear requirements of the Chapter 2 law (P.L. 100-297) are currently not being met. Because our funding level does not provide even a basic program, it is questionable to use Chapter 2 funds for this effort.

The specialist positions are in mathematics, science, foreign language, social science, arts education, library media, gifted and talented, language arts, reading, and health enhancement.

It is difficult to have the federal dollar dictate our specialists' work product. If the office is going to provide the critical guidance necessary for the academic disciplines mentioned earlier, it is important the positions be divorced from the federal funding mechanism.

This is also a request to hire a Grade 16 early childhood specialist in OPI's Basic Education Division. The first of the National Education Goals established in 1989 by President Bush and the nation's Governors states that by the year 2000 all children in America will start school ready to learn. To date a general fund financial commitment to accomplish this goal has not been made. The Office of Public Instruction Early Childhood Specialist would provide technical assistance to child care providers and parents in order to realize the goal. The technical assistance would include literacy models and curriculum guidelines for child care providers and parents, assessment tools to identify children who are at risk of school failure, and information about exemplary programs and developmentally appropriate practices for preschool children.

A growing body of research over the past two decades clearly indicates a child's most productive and influential years of learning occur before the age of five. Experts generally agree that 50 percent of intelligence is formed by age four and the greatest portion of language is mastered by age three. These, along with the establishment of curiosity and social skills, lay the foundation for all further learning. Failure in the early

EXHIBIT 3
1-12-93

years to develop adequately in these areas has been shown to lead directly to underachievement in the elementary grades and beyond. The Early Childhood Specialist can assist in the prevention of that underachievement and provide vital resources necessary if all of Montana's children will be ready to learn when they enter school in the year 2000.

LIFE OF PROJECT: Permanent

EVALUATION: Continuous evaluation is done by program staff.

AGENCY CONTACT PERSON: Linda Vrooman Peterson -5726

PERSONAL SERVICES:	FY94	FY95
(1100) SALARIES -	\$216,855	216,855
(EARLY CHLDHOOD SPCLST)	35,226	35,226
(1400) BENEFITS -	64,775	64,775
(Spclst. benefits)	8,102	8,102
OPERATING:		
(2100) OTHER SERVICES -	12,279	12,279
(2200) SUPPLIES -	200	550
(2300) COMMUNICATIONS -	2,030	1,300
(2400) TRAVEL -	1,200	1,580
(2500) RENT -		
(2600) UTILITIES -		
(2700) REPAIR -		
(2800) OTHER EXPENSES -	2,300	2,300
EQUIPMENT:		
(3100) EQUIPMENT -	3,500	-0-
	-----	-----
	\$346,467	\$342,967113

EXHIBIT 36
1-12-93

MONTANA COUNCIL ON VOCATIONAL EDUCATION



EXECUTIVE MANAGEMENT BUILDING

1228 11TH AVENUE

STATE OF MONTANA

(406) 444-2964

HELENA, MONTANA 59620

JAMES W. FITZPATRICK
EXECUTIVE DIRECTOR

January 12, 1993

ENCL 4
1-12-93

TO: Chairman Royal Johnson
Education and Cultural Resources Subcommittee

FROM: Jim Fitzpatrick, Executive Director
Montana Council on Vocational Education

For the record, I am Jim Fitzpatrick, Executive Director, Montana Council on Vocational Education. There are many individuals across the state who could not be here this morning, however, I am confident they will submit written testimony.

A stable and equitable funding system for Montana's secondary vocational education programs is essential. Montana's secondary vocational education programs are served by 2,032 instructors in 623 state approved vocational education programs, in approximately 160 schools. Enrollment in these programs exceeds 30,500.

All of the appropriated funds are utilized to improve vocational education programs for students. These funds are not used for administrative purposes but are designated for: Supplies, Equipment, Maintenance and Repair, and other support areas.

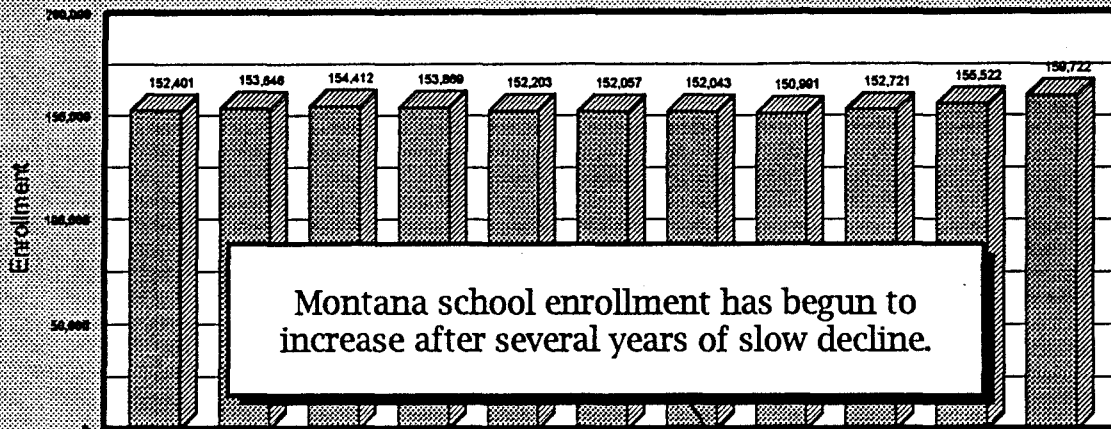
Secondary vocational education has received funding since 1917. During the '70's secondary schools received over \$2 million, however, in the late 1970's the federal funds were redirected to the secondary programs. As a result, the legislature enacted House Bill 618 which provided an appropriation to secondary vocational education in the amount of \$1.8 million. As you are aware, this appropriation has been reduced as a result of the last regular and special legislative sessions.

The Educational Reform Movement has emphasized academics and preparation for college. This has adversely affected secondary vocational education programs. Montana must give greater priority to the non-college bound students.

Thank you for your thoughtful consideration and support of continued funding for secondary vocational education.

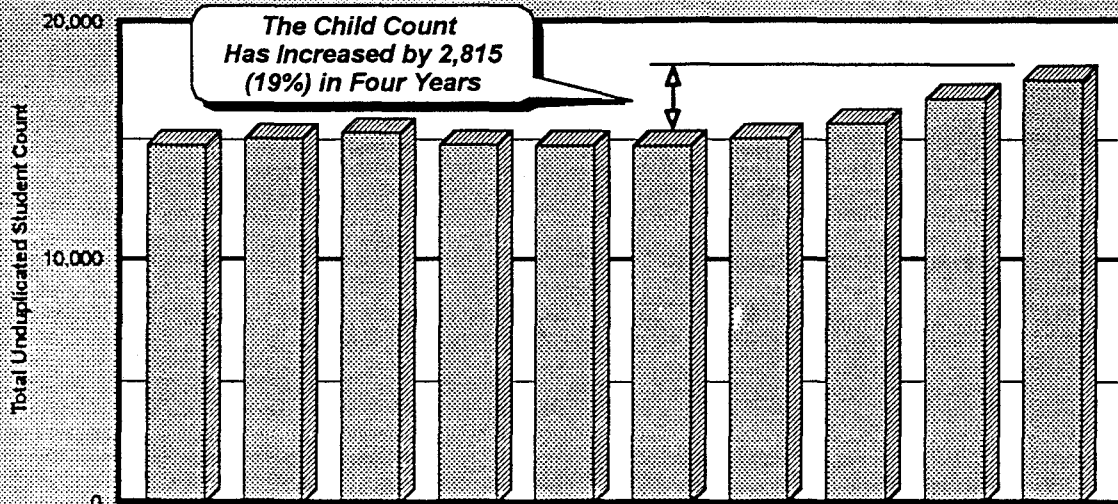
The Population

**Montana Public School Enrollment
School Year 1982-83 to 1991-92**



	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93
Total Enroll	152,401	153,646	154,412	153,869	152,203	152,057	152,043	150,991	152,721	155,522	159,722

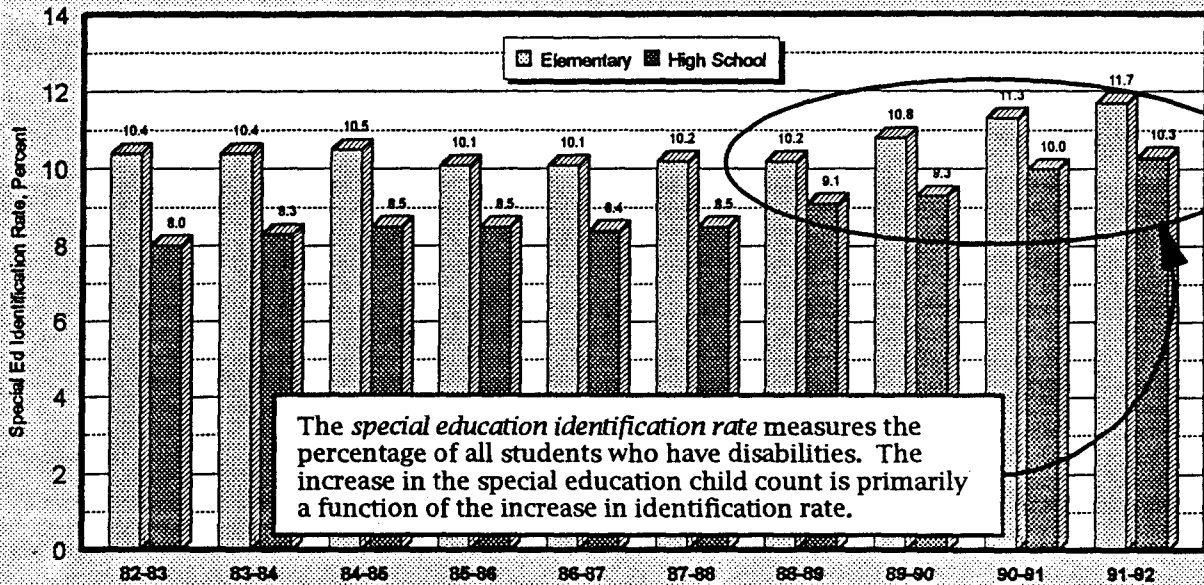
**Special Education Child Count
School Year 1982-83 through 1991-92**



Dec 1 Count	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92
	14,782	15,059	15,303	14,785	14,755	14,745	15,068	15,693	16,773	17,560

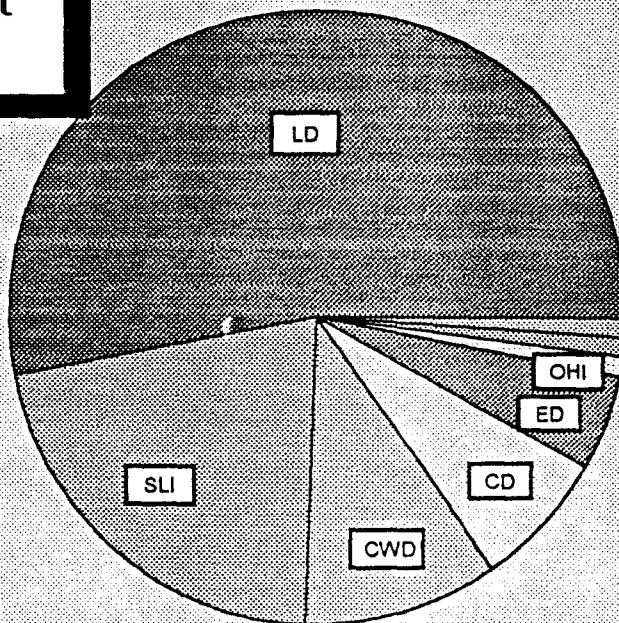
Student Identification

Special Education Identification Rates
School Years 1982-83 through 1991-92



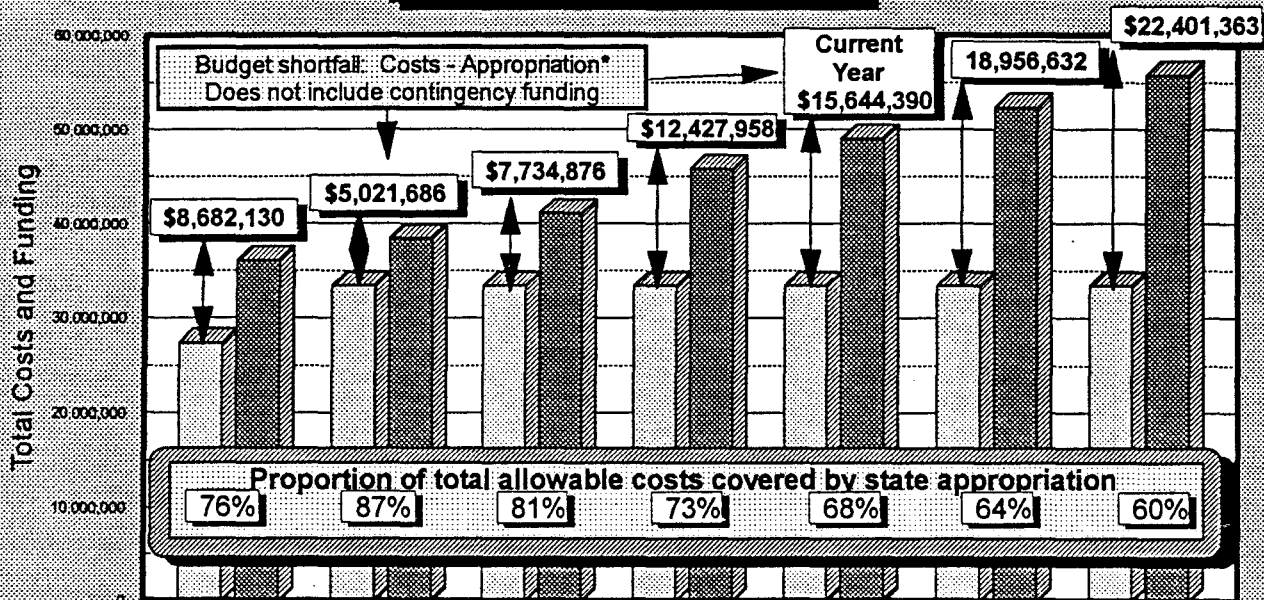
Special Education Child Count
12/01/91 By Disability

	Total Count	Percent of Total	Hours per Student
Learning Disability	9,201	52.4	7.6
Spch/Lang Impairmt	3,725	21.3	1.6
Child w/Disability	1,782	10.1	4.3
Cognitive Delay	1,123	7.1	17.1
Emotional Dist	808	4.6	13.8
Other Hlth Impairmt	216	1.3	7.8
Hearing Impairmt	146	0.9	6.1
Multiple Impairmt	366	1.1	20.2
Orthopedic Impairmt	81	0.5	6.7
Visual Impairmt	66	0.4	7.0
Deafness	44	0.3	11.7
Deaf Blindness	2	0.1	22.4



Budget and Funding

Special Ed Allowable Costs and Projection
School Year 1988-89 through 1994-95



* Costs are adjusted for real program growth and the inflation of teacher salaries.
The state appropriation is assumed to remain constant throughout the period.

ENVEST SD
DATE 1-12-93
BY



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3095

Nancy Keenan
Superintendent

Distribution of Funds Special Education Allowable Costs

While approved allowable costs have grown, state appropriations for special education have remained at \$33,361,646 (not counting contingency funds of \$0.5 million) since FY90. Adjusted for inflation, the shortfall in appropriations was \$4.8 million for FY90. At that time the state proportion of funding of special education covered 86.9 percent of allowable costs after adjusting for inflation. Without an increase in appropriations for FY94 and FY95, that shortfall is projected to grow to \$18,956,632 and \$22,401,363, respectively. Maintaining current appropriations would result in the state proportion of funding of special education dropping to 63.8 percent for FY94 and to 59.8 percent for FY95.

EXHIBIT SA
1-12-93

Scott A. Seacat
Legislative Audit Committee
State Capitol

Scott:

I have been discussing University funding issues with the budget director. There are two issues where I have questions that I would appreciate your help in answering.

The first issue deals with the peer institution comparisons used in the current university system funding structure. I have been told that the Montana University system may use more designated subfunds than our peer group universities. If this is true it could have a significant effect on the peer comparisons. We might need to consider including some or all of our designated subfunds when we compare our funding levels.

Second, the Board of Regents is proposing a "tuition indexing" plan which establishes tuition as a percentage of the cost of the students education. There are a number of "fees" which students currently pay which are deposited in funds other than the current unrestricted subfund which are used to pay a portion of the cost of the students education but which may not be included in the calculations for tuition indexing as proposed by the board.

The questions I have concerning these two issues are stated below:

1. What is the basis in accounting literature for the establishment of the designated subfund?
2. Do the other schools in our "peer" group use the designated subfund and is it authorized by law?
3. Does the percentage of current fund revenues and expenditures in the designated subfund differ significantly between Montana schools and our "peer" schools?
4. Have any studies been done in Montana or other states to compare the extent of use of the designated subfund among the states?

6A

1-12-93

January 9, 1993

William Mathers, Chairman
Montana Board of Regents of Higher Education
1105 S Merriam
Miles City, Montana 59301

Chairman Mathers:

We are beginning a very difficult legislative session. We are confronting a deficit of over \$200 million and must look carefully for efficiencies before increasing the burden on taxpayers. Governor Racicot in his budget identified several potential actions to generate savings within the University System. I want to pursue these further. In order to make informed decisions regarding these I am asking your assistance. In particular the following items of information and analysis will help us to accomplish our task.

- 1) The proposed allocation of the Governor Racicot lump sum appropriation to the Board of Regents for the entire system.
- 1) The potential cost savings which could be achieved by merging Eastern Montana College with the University of Montana.
- 2) The potential cost savings which could be achieved by merging Northern Montana College and Montana College of Mineral Science and Technology with Montana State University.
- 3) The potential cost savings which could be achieved by moving vocational-technical system governance out of the commissioner's office and each of the five centers and placing it in an academic division at Northern Montana College, or Montana State University.
- 4) Analysis of the cost and use of graduate programs. This would include comparison of per credit costs with undergraduate programs, the in-state versus out-of state origin of students, the placement of students upon graduation, and comments why the tuition is currently set at the same rate as that required for undergraduate education.
- 5) Analysis of the ratio of credit hours earned by graduating students compared to the number required. This should identify the ratio by discipline or degree and discuss the impact of charging full cost to students who take credits in excess of those required.
- 6) The potential cost savings from eliminating the Commissioner of Higher Education and replacing the position with an Executive Director and downsizing the staff and salaries to provide for coordination similar to that which existed prior to the adoption of the 1972 state constitution.

7A
1-12-93

I would appreciate receiving your response as soon as practical. If some of the information were available sooner than other portions please send it as it becomes available.

I have sent this letter to Commissioner Hutchinson as well as yourself. Thank you for your assistance and cooperation.

Representative Royal Johnson, Chairman
Joint Subcommittee on Education

BT 713
1-12-93

**OFFICE OF PUBLIC INSTRUCTION
JUSTIFICATION FOR SUPPLEMENTAL AND BIENNIAL BUDGET REQUEST
FOR DEFENSE OF LOCAL GOVERNMENT SEVERANCE TAX LITIGATION**

Saco and Whitewater School Districts in Phillips County have filed a declaratory judgment against the Office of Public Instruction. That declaratory judgment seeks to prohibit Local Government Severance Tax (LGST) revenue from being distributed to the 55 mill county equalization levy and the six mill university levy. At stake is approximately \$18,000,000 for county school equalization levies and \$2,000,000 for the six mill university levy.

Of the 17 counties that receive LGST revenue, to date, only one county is involved in the litigation. However, at least two other counties are considering joining the litigation.

The Department of Revenue was not named as a defendant and is unable to participate in the litigation. Although we are receiving some advisory help from the Department of Revenue, we have been required to retain an attorney with experience in this specialized field of litigation. The estimated cost of defending this litigation is \$10,000 from now until June 30, 1993, and an additional \$38,000 from July 1 through conclusion of the litigation assuming, in the worst case, that the decision is appealed to the Supreme Court.

The Office of Public Instruction and the Board of Regents are jointly paying for defense of the litigation. That split is 75 percent of the cost for the Office of Public Instruction and 25 percent of the cost for the Board of Regents.

The Office of Public Instruction is asking for \$7,500 as a line item supplemental appropriation and \$28,500 as a line item modification to our biennial budget to cover our share of the litigation expense. We would like the budget modification to be biennial, as we have no way of determining how quickly the lawsuit will progress through the courts.

Attached to this explanation is a letter from the law firm that has agreed to represent the state's interest in this case.

DATE 8
1-12-93

EDUCATION SUBCOMMITTEE DATE 1/12/93

DEPARTMENT(S) DIVISION

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.