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Honorable Mike McGrath
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Dear Attorney General McGrath:

I am writing to provide you an updated status report concerning the actions taken by the State of Montana since the Montana Supreme Court issued its decision in *Columbia Falls Elementary School District No. 6 v. State of Montana*, 2005 MT 69. In order to comply with the court's decision and the mandates of Article X, section 1 of the Montana Constitution, and consistent with sound public policy, the 2005 Legislature, meeting in both regular and special sessions, has enacted various policy measures and appropriated significant new money to fund Montana's public elementary and secondary schools.

Before detailing those specific measures, I take this opportunity to thank all those who worked so hard to achieve these measurable results and to express to you my own satisfaction that the State of Montana has

- taken action to comply with the Montana Supreme Court's decision;
- honored its commitment to preserve the cultural integrity of American Indians in its educational curricula;
- honored its commitment to the children of Montana to increase school funding aimed at providing students with a quality education;
- honored its commitment to the teachers of Montana to increase funding to better recruit, retain, and compensate them; and
- honored the desires of Montanans that the state live within a properly balanced budget.

I. Court Decision

On March 22, 2005, the Montana Supreme Court issued its opinion in *Columbia Falls Elementary School District that* Montana's system for funding its K-12 schools was constitutionally deficient in that the state: 1) had failed to "provide a basic system of free

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quality public elementary and secondary schools," as required by Article X, section 1(3) of the Montana Constitution; and 2) had failed to recognize the distinct and unique cultural heritage of American Indians, as required by Article X, section 1(2) of the constitution. Concerning the former, the court held that in order to establish a system for funding Montana's public elementary and secondary schools which satisfied the constitutional standard of a "basic system of free quality . . . schools," the state had to, first, enact a definition of "quality" education, and, second, devise and fund a system that correlated with and was grounded in principles of quality.

II. 2005 Legislature Meeting in Regular Session

A. Definition of Quality Education Enacted

During its regular session, the 2005 Legislature passed Senate Bill No. 152 ("SB 152"), 2005 Mont. Laws Ch. 208, which, among other things, defined a "basic system of free quality public elementary and secondary schools." [The definition is now codified at Mont. Code Ann. § 20-9-309(2).] This legislation was in direct response to the supreme court's holding that, absent a "threshold definition of quality," Montana's system for funding public education could not be found constitutional under Article X, section 1(3). *Columbia Falls*, 2005 MT 69 at ¶ 27 and 25, 27, and 31. The definition of a "basic system of free quality public elementary and secondary schools," set forth in SB 152, includes:

- an educational program specified by accreditation standards;
- educational programs to provide for students with "special needs," meaning
  - students with disabilities
  - at-risk students
  - students with limited English proficiency
  - students qualified for services under 29 U.S.C. 794
  - gifted and talented students;
- educational programs to implement Montana's constitutional requirement of preserving the "distinct and unique cultural heritage of the American Indians";
- qualified and effective teachers, administrators, and staff;
- student transportation;
- facilities and distance learning technologies associated with meeting accreditation standards;
- measurements of student achievement; and
- preservation of local control.

As determined by the Legislature, these features comprise a quality educational system. They are consistent with the Montana Supreme Court's statement in *Columbia Falls* that the cornerstones of a quality education require a funding system that relates to needs

"such as academic standards, teacher pay, fixed costs, costs of special education, and performance standards." *Id.* at ¶ 26.

B. Devise Funding System Grounded in Principles of Quality Education

The second of the tasks identified by the Montana Supreme Court was to devise a funding system grounded on principles of quality education. In that regard, SB 152 took the initiative by not only defining the "basic system of free quality public elementary and secondary schools," but also defining "educationally relevant factors" to which a funding system may be adjusted. [The educationally relevant factors are now codified at Mont. Code Ann. § 20-9-309(3).] The educationally relevant factors include:

- the number of students in a district;
- the needs of isolated schools with low population density;
- the needs of urban schools with high population density;
- the needs of students with special needs;
- the needs of American Indian students; and
- the ability of schools to recruit and retain qualified educators and other personnel.

C. Appropriations

In its regular session, the 2005 Legislature increased funding for Montana's K-12 schools by appropriating more than $90 million in new state funding for the biennium – an historic increase. Of this, $85.3 million is on-going increased funding for schools. Among the items included in the funding were:

- 3-year averaging of ANB (average number belonging) for the biennium, designed to alleviate concerns of fixed costs for schools with declining enrollments ($21.5 million);
- inflationary increases in entitlements for the biennium ($17.9 million);
- additional increases in entitlements above the inflationary increases, with greater increases to elementary schools in order to narrow the gap between funding for elementary and secondary schools – a concern of the district court ($33.4 million);
- increases for facility payments to maintain the State's share at approximately 25% ($4.3 million, of which $2.3 million is on-going);
- increases in special education funding above inflation (totaling 9.2% over the 2005 biennium) ($6.6 million);
- funding for a student education data system to monitor the efficacy of the education system ($2.8 million one-time only funding);
- increases in gifted and talented grants to the schools and the creation of a part-time position within the Office of Public Instruction for the specific purpose of assisting schools to provide gifted and talented education ($.2 million); and
- funding for Indian Education for All (discussed below) ($3.4 million).

D. Indian Education for All

As stated earlier, in addition to directing the legislature to define a "quality" education upon which a funding system must be based, the Montana Supreme Court affirmed the district court's conclusion in *Columbia Falls* that the State of Montana had failed to implement Article X, section 1(2) of the Montana Constitution to "recognize the distinct and unique cultural heritage of American Indians" and commit in its educational goals the "preservation of their cultural integrity."

As shown above, the definition of a "basic system of free quality public elementary and secondary schools" contained in SB 152 expressly includes educational programs to implement the constitutional provision, commonly referred to as the Indian Education for All provision. Additionally, the 2005 Legislature, for the first time in Montana history, appropriated money to fund the constitutional provision. The funding included $3.4 million to OPI for curriculum development and assistance to schools, along with "ready-to-go" grants to school districts, and $1 million for Montana's seven tribal colleges to prepare tribal stories for use by Montana's schools. (Additional funding was appropriated during the 2005 special session, as described later.)

III. Quality Schools Interim Committee

The work of the 2005 Legislature meeting in special session cannot be discussed without first mentioning the work of the Quality Schools Interim Committee, established in Senate Bill No. 525 ("SB 525") during the 2005 regular session. The Committee was composed of four members of the House of Representatives (two from each party), four members of the Senate (two from each party), the presiding officer of the Board of Public Education (or the officer's designee), the Superintendent of Public Instruction (or the Superintendent's designee), and the Governor (or the Governor's designee).

SB 525 directed the committee to, by December 1, 2005, assess the educational needs of Montana children, determine the costs of providing a quality education, determine the state's share of the costs, and construct a funding formula in accordance with requirements contained in the legislation. The Quality Schools Interim Committee met many times from adjournment of the 2005 regular session of the Legislature until its last meeting on December 5, 2005.

The Committee studied an array of subjects, including a needs assessment and cost analysis; teacher recruitment and retention; student achievement, including achievement of American Indian students; health benefits; school facilities; and specific issues related to school size, among others. Significantly, outside education consultants retained by the Committee opined that the State could achieve a "basic system of quality education" with new appropriations ranging from $2 million to $328 million.

The outcome of the Committee's hard work was the preparation of draft legislation that substantially revised Montana's school funding system. However, neither the Committee members nor the public were able to reach consensus in support of the proposed legislation. At the Committee's final meeting on December 5, 2005, only one member voted to support the proposed legislation.

That same day, using many findings and solutions adopted by the Committee, I presented a school funding proposal to the people of Montana and called the Legislature into special session for its consideration.

IV. 2005 Legislature Meeting in Special Session

In a two-day special session held on December 14-15, 2005, the Legislature passed and I signed into law Senate Bill 1 ("SB 1"), encapsulating new, critical components to Montana's school funding formula, along with an accompanying appropriation measure, House Bill No. 1 ("HB 1"). The school funding measure is based on a definition of quality education, is sustainable, is simple to understand and flexible, and is rooted in local control. Also included in HB 1 are one-time only appropriations to schools directed at targeted areas (discussed below), along with one-time only infusions of general fund money into Montana's Teachers' Retirement System ("TRS") and Public Employees' Retirement System ("PERS").

In total, the 2005 special session of the Legislature increased on-going expenditures to schools by $37.3 million for FY 2007 and appropriated $159.5 million of one-time only money (including the money directed to the retirement systems).

A. Policy Measure Grounded in Principles of Quality Education

SB 1 contains six components, two of which are based on existing statutes and four of which are new. As stated, the work of the Quality Schools Interim Committee laid the foundation for these new components. The components direct new general fund money to targeted areas of need, identified both by the district court in the*Columbia Falls* case and through the work of the Interim Committee. The six components are:

- retention of the basic entitlement component to every public school and removal of the "sunset" of the entitlement increase contained in House Bill No. 63 ("HB 63"), passed by the 2005 Legislature in regular session;
- retention of the per-ANB entitlement component and removal of the "sunset" of both the per-ANB entitlement increase and the three-year averaging feature contained in HB 63, passed by the 2005 Legislature in regular session;
- a new "quality educator" component;
- a new "at-risk student" component;
- a new "Indian Education for All" component; and
- a new "American Indian achievement gap" component.

The basic entitlement component consists of an entitlement to elementary and high school districts, regardless of size. During the regular session, the Legislature, through passage of HB 63, increased the basic entitlement, but scheduled those increases to terminate (or "sunset") on June 30, 2007. SB 1 of the special session eliminated the sunset provisions. One effect of this component is to narrow the gap between funding for elementary and secondary schools, a concern that was expressed by the district court in its decision.

The per-ANB entitlement component consists of an entitlement to the schools tied to the number of students in a school district. During the regular session, also through passage of HB 63, the Legislature increased the per-ANB entitlement and enacted a provision granting schools the option of averaging their per-ANB entitlement over a three year period, in order to ease the budgetary impacts to schools with declining enrollments. Both the increase in the entitlement and the three-year averaging provision were scheduled to sunset on June 30, 2007. SB 1 of the special session eliminated the sunset provisions.

The new "quality educator" component provides a funding provision tied to the number of quality educators in a school district. The component consists of a $2,000 payment from the state general fund for every full-time equivalent licensed educator and other licensed professionals employed by the school district, including registered nurses, licensed practical nurses, physical therapists, speech language professionals, counselors, occupation therapists, and nutritionists. The "quality educator" component might be considered like a third leg to the stool of Montana's school funding system. Now, not only will Montana schools receive a basic entitlement, regardless of size, and a per-ANB entitlement, calculated based on the number of students, they also will receive a "quality educator" payment, based on the number of quality educators in the district.

The new "at-risk student" component recognizes the special needs of at-risk students and the schools that educate these students. The Legislature appropriated $5 million for FY 2007 for this component. The money must be distributed to public school districts by the Office of Public Instruction using the same allocation method as is used to distribute money under Title I, a federal program for disadvantaged public school children.

The new "Indian Education for All" component is intended to implement Montana's constitutional directive that the state is "committed in its educational goals to the preservation of [the] cultural integrity" of the American Indians. It also implements Montana's statutory commitment to Indian Education for All, found at Mont. Code Ann. Title 20, chapter 1, part 5. The "Indian Education for All" payment is the greater of $100 for each district or $20.40 for each ANB for each fiscal year, or $3 million statewide.

The new "American Indian achievement gap" component was designed specifically to address and help close the identifiable achievement gap that currently exists between

American Indian and non-Indian students in Montana's schools. The payment is $200 for each American Indian student enrolled in a school district.

Additionally, the Legislature amended into SB 1 a provision to increase the statutory reimbursement rates for individual transportation of students.

B. Appropriations

1. On-going funding measures

The special session of the Legislature increased expenditures in the amount of $37.3 million to fund the provisions of SB 1 for FY 2007. These expenditures will be on-going. When combined with the $85.3 million of increased on-going state funding for the biennium approved during the regular session, Montana public schools have obtained an increase of $122 million for the FY 2006-2007 biennium. Of this amount, $81.4 million is designated for FY 2007. Thus, as a result of actions taken by Montana's 59th Legislature, meeting in special and regular sessions, state funding for Montana's public K-12 schools has increased annually by $81.4 million.

Also of significance is that the four *new* components to Montana's school funding formula contained in SB 1 are not only fully funded through state general funds, they do not increase required or optional local mill levies for the district general fund. While we anticipate a minor impact to county property taxpayers if districts spend the new state funds on employees' salaries, districts will receive the benefit of significant additional spending authority and the burden placed on local government property taxpayers will be minimal.

2. One-time only funding

The special session of the Legislature also appropriated one-time only funding for schools from the general fund. The one-time only funding includes $2 millionfor energy cost relief to be used for utilities or transportation; $7 million for Indian Education for All; $23 million for weatherization or deferred maintenance; and $2.5 million to the Department of Administration to pay for a condition and needs assessment and energy audit of K-12 public school facilities. The public facility condition and needs assessment report must be completed by July 1, 2008.

Additionally, Montana's Public Employees' and Teachers' Retirement Systems currently are not funded on an actuarially sound basis. Actuary evaluations of June 30, 2005 indicated the TRS had an unfunded liability of $903 million and the PERS had an unfunded liability of $541 million. Through HB 1, the special session of the Legislature appropriated one-time only funding of $100 million to the TRS and $25 million to the PERS to help reduce the unfunded liabilities of those systems. By enhancing the

actuarial soundness of the retirement systems, which are part of a school employee's benefit package, these expenditures are intended to help attract and retain qualified educators and other personnel to work in Montana's schools.

Notably, even though appropriated on a one-time only basis, the vast majority of one-time only funding will provide an on-going benefit to Montana's public schools. This holds true for money appropriated for weatherization and deferred maintenance, the public facility and needs assessment study, and the infusion of funds into the retirement systems.

V. Indian Education for All Summarized

For the first time in its history, Montana has breathed life into its constitutional commitment to recognize the distinct and unique cultural heritage of American Indians. Through actions taken during the special session, combined with actions taken in the regular session, the Indian Education for All provision of the state constitution was funded with:

- $7 million for startup costs to develop an ongoing curriculum;
- $1 million for development of tribal histories to be used in the state's public schools;
- $2.3 million to OPI for curriculum development and assistance to districts;
- $1.1 million for "ready-to-go" grants to school districts; and
- $3 million for school implementation of the constitutional provision.

VI. Where We Stand Today

Attached to this letter are three tables which are helpful in identifying how the measures passed by the 2005 Legislature in both regular and special sessions, combined, work to satisfy the concerns of the Montana Supreme Court and comply with the constitutional mandates. The first table identifies the amount of money appropriated by the Legislature and the quality education components and aspects of the court decision to which the money is targeted. The second table summarizes the elements of a "basic system of free quality public elementary and secondary schools," as provided in SB 152, and identifies the funding sources that support each element. The third table summarizes the "educationally relevant factors" that may be considered in any funding formula, as provided in SB 152, and also identifies the funding sources that consider each factor.

From these tables, it is apparent that Montana has taken significant steps in the on-going process of funding its K-12 public schools in a manner consistent with the principles of "quality," as required by the Montana Constitution and as defined in SB 152 (now codified as Mont. Code Ann. § 20-9-309). Additionally, as shown above, Montana,

for the first time, has appropriated significant money to implement the constitutional commitment to Indian Education for All.

To summarize where we stand today, since the Montana Supreme Court issued its decision in *Columbia Falls Elementary School*, the Legislature has:

- defined what constitutes a quality education;
- defined educationally relevant factors for purposes of making adjustments to the funding system it enacts;
- for the first time in the state's history appropriated money to fulfill Montana's constitutional commitment in its educational goals to the preservation of the cultural integrity of the American Indians;
- enacted new provisions to broaden Montana's school funding system (the quality educator, at-risk students, Indian Education for All, and American Indian Achievement Gap components);
- increased the basic entitlement and per-ANB entitlement;
- enacted legislation to allow three-year averaging of the per-ANB entitlement for schools with declining enrollments;
- increased the state's on-going commitment to Montana's elementary and secondary schools by $81.4 million annually;
- appropriated $34.5 million in one-time only money to Montana's K-12 public schools, targeted at specific areas (a facilities study; Indian Education for All; energy costs relief, and weatherization and deferred maintenance); and
- directly infused $125 million into Montana's TRS and PERS to help reduce the unfunded liabilities of those systems and attract and retain qualified educators and other personnel to work in Montana schools.

In short, with the hard work of legislators, elected officials, the Quality Schools Interim Committee, their staffs, many interested organizations, and concerned citizens throughout Montana, I believe the requirements of the Montana Constitution and the Supreme Court's decision construing the constitution are satisfied.

We all know that the process of identifying and addressing the needs of Montana's K-12 public schools is one that is on-going. As I and members of my Administration continue to participate in that process, I reaffirm my commitment toward a strong, quality education system for Montana's children.

Sincerely,

BRIAN SCHWEITZER
Governor