

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

prepared for the School Funding Interim Commission
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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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