MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

MONTANA QUALITY EDUCATION COALITION and DISABILITY RIGHTS MONTANA; Plaintiffs, v. STATE OF MONTANA, GREG GIANFORTE, in his official capacity as GOVERNOR OF THE STATE OF MONTANA; and SUSAN HEDALEN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION, Defendants, And SUE VINTON, in her official capacity as a member of the Montana House of Representatives and Sponsor of HB 393, Intervenor-Defendant.	Cause No. ADV-2024-44 **ORDER – MOTIONS FOR SUMMARY JUDGMENT**

Before the Court are Plaintiffs Montana Quality Education Coalition and Disability Rights Montana's (collectively "Disability Rights") motion for summary judgment and Intervenor-Defendant Sue Vinton's (Vinton) cross-motion for summary judgment. Defendants State of Montana, Governor Greg Gianforte and Superintendent of Public Instruction Susan Hedalen (collectively "State") oppose Disability Rights' motion for summary judgment and support Vinton's motion for summary judgment. Rylee Sommers-Flanagan and Molly E. Danahy represent Montana Quality Education Coalition and Disability Rights Montana. Tal M. Goldin also represents Disability Rights Montana. Thomas M. Fisher, Bryan G. Cleveland, Dale Schowengerdt, and Timothy Longfield represent Vinton. Montana Attorney General Austin Knudsen, Alwyn Lansing, Michael Russell and Thane Johnson represent the State.

In support of its motion for summary judgment, Disability Rights filed a brief regarding Counts I, III & IV. The State filed a combined response in opposition to Plaintiffs' motion for summary judgment and brief in support of Intervenor-Defendant's motion for summary judgment. Vinton filed a response in opposition to Plaintiffs' motion for summary judgment. Disability Rights filed a reply in support of Plaintiffs' motion for summary judgment.

Vinton filed a brief in support of her motion for summary judgment. Disability Rights filed a brief in opposition to Intervenor-Defendant's motion for summary judgment. As noted previously, the State filed a combined response in opposition to Plaintiffs' motion for summary judgment and brief in support of Intervenor-Defendant's motion for summary judgment. Vinton filed a

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reply in support of her motion for summary judgment.[1] On August 28, 2025, the parties appeared for oral argument on the motions, which are now fully briefed and submitted for the Court's decision.

STATEMENT OF FACTS

The 68th Montana Legislature adopted House Bill 393 (HB 393) during the 2023 session. Governor Gianforte signed the bill into law on May 18, 2023. HB 393 creates an Education Savings Account Program for any student with a disability as defined by the Individuals with Disabilities Education Act and who wishes to participate in the program and (1) was a public-school student the previous school year; (2) did not reside in the state the previous school year; or (3) is eligible to enter kindergarten the current year. Parents may use these special-needs Education Savings Account (ESA) to pay for private school tuition, hybrid programs, online programs, homeschool, supplemental courses and services, or any educational expense approved by the superintendent of public instruction. The Office of Public Instruction (OPI) has published a parent handbook explaining ESA program eligibility, listing examples of generally allowable expenses and generally unallowable expenses, and describing processes for renewal and withdrawal. No family is compelled to use the ESA.

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[1] The State filed a reply in support of Intervenor-Defendant's motion for summary judgment. Montana Uniform District Court Rule 2(b) provides:

> The moving party shall file with the court a supporting brief upon filing a motion. The brief may be accompanied by appropriate supporting documents. Except as provided in M. R. Civ. P. 56(c), within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within fourteen days after service of the opposing party's answer brief, the movant may file a reply brief or other appropriate responsive documents.

Because Vinton, not the State, was the moving party, the State is not permitted to file a reply brief. Consequently, the Court will not consider the arguments raised in the State's reply brief.

Parents dissatisfied with the special needs services offered at their children's school can seek to use an interdistrict transfer. *See* Mont. Code Ann. §§ 20-5-320 –20-5-324. This transfer process allows a student whose needs are not met in one school district to transfer to another school district, with tuition paid by the original school and the state. *See* Mont. Code Ann. §§ 20-5-320 –20-5-324. A parent's request for an interdistrict transfer, however, is not automatic and may not be granted.

OPI accepted applications for the ESA program from May 1 to June 1, 2024 and again from November 1 to December 1, 2024. During the first round, thirteen students were approved, signed a contract, and participated in the program. After the second round of applications, additional students were approved and signed a contract, leading to a total of forty-seven participants.

When a student enrolls in the ESA program, the student's state-assigned residential boundary school redirects part of the per-student money from the public-school funding formula to the ESA program. The funding formula provides nine categories of state grants to public school districts: (1) basic entitlement, (2) enrollment entitlement, (3) special education payments, (4) guaranteed taxbase aid, (5) data-for-achievement payment, (6) Indian education for all payment, (7) quality educator payment, (8) at-risk student payment, and (9) American Indian achievement gap payment. *See* Mont. Code Ann. § 20-9- 306(2). Several of these categories are funded by both state and local tax dollars as required by the state funding formula. Most of these funds are allocated based on Average Number Belonging (ANB), a measure of the enrollment on two fixed days in the previous school year. Districts with declining enrollment have an additional option of using the average of the three

prior years of ANB rather than the immediate past year's ANB when determining enrollment for funding. The state's biennial appropriations bill appropriates a specific dollar amount of K-12 BASE funding for distribution to public schools but does not set a fixed number for the local contribution. Local school districts must make up the difference between K-12 BASE funding provided by the state and their local budget using local tax dollars. For an ESA student, the legislature redirects most of the state and local revenue from the first six categories of the funding formula (excepting the basic entitlement and reimbursement for disproportionate special education costs). The ESA program leaves the remaining three categories of aid entirely with the ESA student's district. The result of HB 393's ESA formula is that districts retain part of the per-student funds when a student enrolls in an ESA. For example, Great Falls would retain $63 from the per-student funds for each elementary student who enrolls in ESAs and retain $242 per high-school student. The legislature requires local school districts to pay the ESA amounts to OPI. OPI distributes money from the Trust solely under state contracts between OPI and families. Because ESA students are counted in the district's ANB while they are participating in the ESA program, districts with declining enrollment that participate in three-year averaging will not receive the partial payments in years one and two when a student enrolls in the ESA program. Rather, the district receives those three-year averaging payments when the student graduates or otherwise leaves the ESA program.

Plaintiffs argue the ESA program harms traditional public schools because it funds ESAs for students who were previously fractional (part-time) public school students. Funding for fractional students is determined by the public-school funding formula, not the ESA program. The public-school funding

formula grants specified dollars to each school district per student enrolled during the prior school year, not the current school year. *See* Mont. Code Ann. §§ 20-9-306, 20-9-311. When a part-time homeschooled student enrolls full time in a public school, that school receives funds only for a fractional student for the first year because the funding formula relies on prior year enrollment instead of current year enrollment. *See* Mont. Code Ann. § 20-9-311. The public school must educate the formerly fractional student full time despite only receiving fractional revenue. Like the funding formula, the ESA program funds students based on prior year enrollment. The amount of formula funding for a student is the same regardless of whether the fractional student enrolls full time in a public school or in the ESA program. ESA students receive full ANB funding even if they were counted only as a fractional ANB in the prior year. Similarly, a student who is new to Montana or just entering kindergarten will take funds from their residential school district even though they generated no ANB in the prior year.

The Superintendent, through her staff, reviews reimbursements. A team from the Superintendent's staff has reviewed all reimbursement requests and issued approvals or denials. The team consists of Assistant Program Chief Christy Mock-Stutz, the ESA specialist, a special education consultant, and a representative from the Superintendent's executive staff. The Superintendent makes the final decisions on implementation. Christy Mock-Stutz has prior experience as a K-12 teacher, an education professor, a learning coach and literacy coordinator, and as a manager of education programs. The special education consultant, John Gorton, has served for thirty years in public education with roles in K-12 special education, including as a special education director,

and with roles in administration as a principal. The Superintendent advises parents that she does not reimburse expenses like day care fees, home furnishings, playground equipment, or real property. She has denied purchases for items when they do not fall within the authorized categories of eligible expenses. OPI enters contracts with parents that requires parents to submit all reimbursement requests to the Superintendent in the form required by the Superintendent.

The movement of funds through the ESA program involves the transfer of BASE aid funds: (1) from the state treasury to OPI; (2) OPI's transfer of those funds to local school districts where they are placed into the local school district's general fund; (3) the local school district's transfer of those funds from their general fund back to OPI; (4) OPI's placement of the funds into an individual trust account; and (5) OPI'S reimbursement to parents of qualified students for the purchase of allowable educational resources. A local school district's general fund is composed of state BASE aid funds and, if authorized, local taxes collected via a mill levy. Approximately 90% of local school districts receive local taxes which are included in the district's general fund.

PRINCIPLES OF LAW

Summary judgment is warranted when no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment must establish the absence of any genuine issue

of material fact and that the party is entitled to judgment as a matter of law. *Tin Cup County Water &/or Sewer Dist. V. Garden City Plumbing*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200 P.3d 60.

Once the moving party has met its burden, the party opposing summary judgment must present affidavits or other testimony containing material facts which raise a genuine issue as to one or more elements of its case. Id., ¶ 54 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997)). To avoid summary judgment, the opposing party's evidence "must be substantial, 'not mere denial, speculation, or conclusory statements.'" *Hadford v. Credit Bureau, Inc*., 1998 MT 179, ¶ 14, 962 P.2d 1198, 1201 (quoting *Klock* at 174).

A legislative enactment is presumed to be constitutional, and courts must attempt to construe them in a manner that avoids unconstitutional interpretation. *State v. Harrington*, 2017 MT 273, ¶ 12; 389 Mont. 236, 405 P.3d 1248; *State v. Trull*, 2006 MT 119, ¶ 30, 332 Mont. 233, 136 P.3d 551, citing *State v. Stanko*, 1998 MT 321, ¶ 15, 292 Mont. 192, 974 P.2d 1132. Any doubt is resolved in favor of an enactment's validity. *Harrington*, ¶ 12; *In re T.S.B.*, 2008 MT 23, ¶ 20, 341 Mont. 204, 177 P.3d 429; *GBN Inc. v. Montana Dept: of Revenue*, 815 P.2d 595, 597 (Mont. 1991). A party challenging a legislative enactment must prove, beyond a reasonable doubt, that the enactment is unconstitutional. *Harrington*, ¶ 12; *In re T.S.B*., ¶ 20; *Trull*, ¶ 30.

The rules of statutory construction are equally applicable to interpretation of the meaning of provisions in the Montana Constitution. In construing the meaning of a statute, the intent of the framers, i.e., the legislature, is paramount. In determining legislative intent, resort must first be made to the

plain meaning of the words used. In construing a statute, the function of the court is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted nor to omit what has been inserted. *State ex rel. Cashmore v. Anderson*, 160 Mont. 175, 184, 500 P.2d 921, 926 (1972). The Constitution must be considered as a whole. All of the provisions of the Constitution bearing on the same subject matter are to receive appropriate attention and construed together. *State ex rel. Racicot v. Dist. Ct.*, 243 Mont. 379, 395, 794 P.2d 1180 (1990). If a constitutional provision is ambiguous, the court may look to extrinsic rules of construction. *Keller v. Smith*, 170 Mont. 399, 406, 553 P.2d 1002 (1976). Those include the minutes and notes from the Constitutional Convention, legislative determination of constitutional intent, and the principle of reasonableness. *Id.* at 406-407.

Analysis of a facial challenge to a legislative enactment differs from an as-applied challenge. A facial challenge to a legislative enactment is the most difficult to mount successfully. In order to prevail on their facial challenge, Disability Rights must show that "no set of circumstances exists under which the [challenged legislation] would be valid." *Montana Cannabis Industry Ass. v. State*, 2016 MT 44, ¶ 14, 73, 382 Mont. 256, 368 P.3d 1131. "In other words, it must be demonstrated 'that the law is unconstitutional in all its applications." *City of Missoula v. Mountain Water Co.*, 2018 MT 139, ¶ 21, 391 Mont. 422, 419 P.3d 685. "That the challenged provision 'might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *Montana Cannabis Assn.* at ¶ 73 (citing *U.S. v. Salerno*, 481 U.S. 739,

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745 (1987). "Facial challenges do not depend on the facts of a particular case . . . A statute found to be facially unconstitutional cannot be enforced under any circumstances." *Mountain Water* at ¶ 21.

ANALYSIS

Disability Rights alleges HB 393 is facially unconstitutional. They seek summary judgment on Counts I, III, and IV of their complaint, a declaration that HB 393 is unconstitutional, and a permanent injunction. Count I alleges HB 393 violates Montana Constitution, Article V, Section 11(5); Count III alleges HB 393 violates Montana Constitution, Article VIII, Section 14 and Article V, Section 1; and Count IV alleges HB 393 violates Montana Constitution, Article X, Section 8.

Vinton seeks summary judgment on all four counts of the complaint, including Count II. Count II alleges HB 393 violates Montana Constitution, Article X, Section 1(1). The Court will address the parties' arguments in the following order: Count III, Count I, Count IV and Count II.

In consideration of the parties' arguments, the Court is guided by the overarching educational goals and duties set forth in the Montana Constitution:

> **Section 1. Educational goals and duties.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
>
> (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
>
> (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other

> educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Mont. Const., Art X, Sec. 1.

Count III

In Count III, Disability Rights alleges HB 393 violates Montana Constitution, Article VIII, Section 14 and Article V, Section 1.[2] Article VIII, Section 14 provides: "[N]o money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof." Specifically, Disability Rights alleges HB 393 violates Article VIII, Section 14 because it (1) does not "appropriate" the ESA money;[3] and (2) it does not contain a sum certain or maximum amount that may be spent on the ESA program.

An appropriation is the setting aside or designating the purpose for which public money may be used, and which is "made by law." *State ex rel. Toomey v. Bd. Of State Examiners*, 74 Mont. 1, 7, 238 P. 316, 320 (1925). The phrase contained in the constitutional provision, "appropriations made by law," does not require any specific language to make an appropriation. Rather, "the test is as to whether or not the people have expressed an intention that the money in question be paid." *State ex rel. Dean v. Brandjord*, 108 Mont. 447, 454, 92 P.2d 273, 276 (1939).

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[2]While Disability Rights alleged in Count III that HB 393 violates Article V, Section 1, they did not brief the issue in their motion for summary judgment.

[3] The parties do not dispute there was a valid appropriation for the administrative costs of the program.

Montana Code Annotated § 17-7-501 provides:

> **17-7-501. Appropriations -- type**. There are three types of appropriations within the meaning of "appropriation made by law" as used in Article VIII, section 14, of the Montana constitution:
>
> (1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills;
>
> (2) temporary appropriations made by valid budget amendment; and
>
> (3) statutory appropriations made by permanent law in conformance with 17-7-502.

Mont. Code Ann. § 17-7-501

Vinton argues the ESA program's funding mechanism is constitutional because it "creates a statutorily appropriated trust administered by OPI . . ." *Intervenor-Defendant's Brief in Support of Summary Judgment*, p. 23. "The legislature has required local school districts to pay the ESA amounts to OPI and has enacted a statutory appropriation of those funds to the 'special needs equal-opportunity education savings trust[4] ." *Id*. at p. 11. "HB 393 expressly applies this (statutory) appropriation framework to ESA funds." *Intervenor-Defendant's Response in Opposition to Plaintiffs' Motion for Summary Judgment*, p. 5.

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[4] Intervenor-Defendant and Defendants make a summary argument that the ESA funds were appropriated in House Bill 2. They fail to identify where in HB 2 those funds were appropriated. The only reference to HB 393 in HB 2 is the following statement: "If HB 393 is passed and approved, OPI Administration is increased by $17,544 general fund in FY 2024 and $25,241 general fund in FY 2025, and the Office of Public Instruction may increase full-time equivalent positions authorized in HB 2 by 1.00 FTE in FY 2024 and 1.00 FTE in FY 2025." *Exhibit M, HB 2 p. E-4, Intervenor-Defendant's Brief in Support of Summary Judgment.* That reference is to the administrative funds—not the ESA funds.

For an appropriation to be a valid statutory appropriation, it must be made "in conformance with 17-7-502." Montana Code Annotated § 17-7-502 provides, in relevant part:

> **17-7-502. Statutory appropriations -- definition -- requisites for validity.**
>
> . . . .
>
> (2) to be effective, a statutory appropriation must comply with both of the following provisions:
>
> (a) The law containing the statutory authority must be listed in subsection (3).
>
> (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.
>
> (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-316; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-142; 15-1-143; 15-1-218; 15-1-2302; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-128; 15-70-131; 15-70-132; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-6-214; 17-7-133; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-3-369; 20-7-1709; 20-8-107; 20-9-250; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-4-1506; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-

> 1006; 81-1-112; 81-1-113; 81-2-203; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.
>
> (4) There is a statutory appropriation to pay the principal, interest, premiums, and any costs or fees associated with issuing, paying, securing, redeeming, or defeasing all bonds, notes, or other obligations, as due in the ordinary course or when earlier called for redemption or defeased, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments.

Mont. Code Ann. § 17-7-502.

To be effective, the law containing a statutory appropriation (1) must be listed in Montana Code Annotated § 17-7-502(3); and (2) must specifically state a statutory appropriation is made as provided in Montana Code Annotated § 17-7-502. Section 11 of HB 393 amends the statutory appropriation statute to include "section 9" of HB 393in Montana Code Annotated §17-7-502(3). Thus, it meets the first requirement necessary for an effective statutory appropriation. However, Montana Code Annotated § 17-7-502(2) also requires that HB 393 "specifically state that a statutory appropriation is made as provided in § 17-7-502." Vinton argues HB 393 meets that requirement because Section 11 of HB 393 includes subsection (4) of Montana Code Annotated § 17-7-502, which provides: "[t]here is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes or other obligations . . ."

Vinton's argument is unpersuasive for three reasons. First, subsection (4) by its terms concerns "bonds, notes or other obligations." The ESA funds are not "bonds, notes or other obligations." Second, by its terms, subsection (2) expressly excepts subsection (4). Third, if simply reciting subsection (4) was all that was necessary, the language in Montana Code Annotated § 17-7-502(2)(b) would be superfluous.

The legislature clearly knows how to enact a statutory appropriation as evidenced by its appropriation of the administrative fee in HB 393. The legislature listed "section 9" of the bill in Section 11, amending subsection (3) of Montana Code Annotated § 17-7-502(3), and in Section 9 it provided in subsection (7)(b) that funds in the "ESA administration account are statutorily appropriated, as provided in 17-7-502 . . ."

The Montana Constitution, Article VIII, Section 14 states "no money shall be paid out of the treasury unless upon an **appropriation made by law** . . ." [emphasis added]. Statutory appropriations must, by law, be made in accordance with Montana Code Annotated § 17-7-502. HB 393 violates Article VIII, Section 14 because it does not meet the requirements of Montana Code Annotated § 17-7-502 and therefore is not an appropriation "made by law."

Count I

Count I of Plaintiff's complaint alleges HB 393 violates Montana Constitution, Article V, Section 11(5), which provides that "[n]o appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state." Disability Rights argues that even if there was a valid appropriation, HB 393 violates Article V, Section 11(5) because ESA

expenditures lack state control and exclusively benefit private individuals. Article V, Section 11(5) restricts the use of appropriations for some purposes. Because the Court has concluded there was no valid appropriation, this argument is moot.

Count IV

Count IV alleges HB 393 violates the Montana Constitution, Article X, Section 8, which provides "[t]he supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law." Specifically, Disability Rights argues district trustees are responsible for conducting the fiscal business of the district and they must authorize expenditures of district money. HB 393 eliminates local school board control because trustees have no control over how ESA money is spent once it is sent from the district to OPI. According to Vinton, the legislature has the authority to enact laws that affect local school boards, and local school boards are subject to legislative control.

School districts are public corporations with limited powers, exercising through their board only such authority as is conferred by law, either expressly or by necessary implication. Local boards of trustees have always been held subject to legislative control. Local boards have been subject to statutory requirements—although the Supreme Court has held that where the legislature has failed to prescribe policy, the local boards have inferred general powers to act. *School Dist. v. Hughes*, 170 Mont. 267, 273-4, 552 P.2d 328 (1976) [citations omitted].

The legislature determines the method by which tax revenues are collected and directed towards public education and how local districts spend

their education dollars. (*See* e.g. Mont. Code Ann. §§ 20-9-331, 20-9-308, 20-9-353). The state also redirects local revenue to other educational programs in the same manner as HB 393 redirects funds to the ESA program. Mont. Code Ann. §§ 20-5-323, 20-5-324. The legislature has the authority to direct general fund money from the school districts to the ESA program.

Disability Rights further argues HB 393 conflicts with other statutes related to the school district's responsibilities for fiscal management. To the extent HB 393 conflicts with other statutory requirements, general rules of statutory construction resolve the conflict. To the extent possible, where there are several provisions or particulars, such a construction is to be adopted as will give effect to all. Mont. Code Ann. § 1-2-101. When general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general intent that is inconsistent. Mont. Code Ann. § 1-2-102. Where a more recent statute conflicts with an earlier one, the conflicting provisions of the earlier statute are repealed. *State v. Langan*, 151 Mont. 558, 564, 445 P.2d 565 (1968). Thus, the more specific and recent provisions of HB 393 control over the general provisions related to the school board's responsibility for fiscal management. Thus, HB 393 does not violate Article X, Section 8 of the Montana Constitution.

Count II

Count II alleges HB 393 violates Montana Constitution, Article X, Section 1(1), and implementing statutes, including Mont. Code Ann. § 1-2-133. Article X, Section 1 provides:

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> **Section 1. Educational goals and duties.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
>
> (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.
>
> (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Mont. Code Ann. § 17-7-502.

In Count II, Disability Rights alleges HB 393 violates equality of educational opportunity because (1) the state must distribute funding to school districts equitably; and (2) it takes general fund dollars from school districts and passes the money into private hands through reimbursement payments. This results in less funds being available for school districts to pay fixed costs such as teacher salaries and building maintenance. Disability Rights further alleges HB 393 violates Montana Code Annotated § 1-2-113 because the legislature failed to provide a source of funds to pay for the costs of the ESA program to school districts.

Equality of educational opportunity in Article X, Section 1(1) must be read in conjunction with Article X, Section 1(3)'s requirement that the legislature shall fund and distribute the state's share of the cost of a basic public school system in an equitable manner. *Columbia Falls Elementary School Dist.*

v. State, 2005 MT 69, ¶ 19, 326 Mont. 304, 109 P.3d 257. Spending disparities among school districts constitute a denial of equality of educational opportunities guaranteed by Article X, Section 1(1) of the Montana Constitution. *Helena Elementary School Dist. No.1 v. State*, 236 Mont. 44, 55, 769 P.2d 684, 690 (1989).

When a child enrolls in the ESA program, the school district is required to remit district general fund dollars to OPI, which utilizes the remitted dollars to reimburse parents for costs incurred in educating the child. The parents are responsible for making payments to private providers for costs associated with the education expenses. School district general fund dollars include both state aid funds and local funds raised through property tax levies.

The Montana Constitution, Article X, Section 1(3) states: "[t]he legislature shall provide a basic system of free quality public elementary and secondary schools" and to "fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic (public) elementary and secondary school system." When funds are transferred from OPI to the school district's general fund, the funds constitute the "state's share of the cost" of the district's public school system. However, when OPI requests a school district to remit general fund dollars back to OPI for the ESA program, those dollars no longer fund the cost of the public school system. Rather, these funds are used to pay for the costs of private education for children enrolled in the program[5]. Because participation in the ESA program is voluntary, one school district may

[5] Article X, Section 1(3) implicitly recognizes both public and private educational opportunities and programs. The first sentence of subsection (3) states the legislature *shall* provide a basic system of free public schools, while the second sentence states the legislature *may* provide "other" (i.e. not "public") educational programs. The State and Vinton assert the ESA program was established pursuant to the permissive authority in the second sentence, and thus the program is not part of the public school system contemplated in the first sentence.

have five participants in the program and another district may have none. The school district with five participants will see a reduction in its state's share of public education costs while the other district will not see any reduction in the state's share of public education costs. Consequently, the state would not be equitably funding the districts and not providing equitable educational opportunities to students enrolled in public elementary and secondary schools.

Disability Rights further argues the ESA program adversely and inequitably affects rural school districts disproportionately to urban school districts. They observe that Vinton's expert witness relied on out-of-state and statewide aggregate data to infer that per-student spending will not be affected by the ESA program. Nonetheless, their expert concluded the ESA program will negatively affect funding for smaller rural school districts. Conflicting expert testimony may be sufficient to defeat summary judgment, particularly on fact intensive claims such as this one. *Kipfinger v. Great Falls Obstetrical & Gynecological Assn.*, 2023 MT 44, ¶ 30, 411 Mont. 268, 525 P.3d 1183.

In support of her motion for summary judgment, Vinton argues the ESA program is constitutional because the program increases educational opportunities "which cannot amount to a denial of educational equality." *Intervenor's Brief in Support*, p. 15. However, the guarantee of educational equality in Article X, Section 1(1) must be read in conjunction with the requirement that the legislature provide "quality" educational opportunities in Article X, Section 1(3). One of the significant factual disagreements between the parties is whether the ESA program provides a quality educational experience for children enrolled in the program.

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Montana Code Annotated § 1-2-133 requires the legislature, when enacting a law "that requires a school district to . . . provide a service . . . that will require the expenditure of additional funds" to "provide a specific means to finance the . . . service." HB 393 requires school districts to provide several services, including providing school records to a "qualified school" [HB 393, Section 7]; remitting ESA funds to OPI; and accounting for the funds [HB 393, Section 9(3)]. HB 393 has not provided school districts with specific means to finance these additional services. Moreover, HB 393 requires school districts to expend additional money from their general fund to cover ESA program payments to parents for students who were not previously enrolled full-time in their districts, and thus not fully funded by the ANB allocation. Similarly, HB 393 does not provide school districts with specific means to finance these services.

CONCLUSION

The Montana Constitution, Article VIII, Section 14, provides that "no money shall be paid out of the treasury unless upon an appropriation made by law . . ." Statutory appropriations must, by law, be made in accordance with Montana Code Annotated 17-7-502. HB 393 violates Article VIII, Section 14 because it does not meet the statutory requirements set forth in Montana Code Annotated § 17-7-502. It is not an appropriation "made by law." Accordingly, Disability Rights is entitled to summary judgment on Count III of their complaint.

Because the Court concludes there was no valid appropriation, Count I of the complaint is moot.

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School districts are public corporations with limited powers, exercising through their board of trustees only such authority as conferred by law, either expressly or by necessary implication. Local boards of trustees have always been subject to legislative control. The legislature determines how tax revenues are collected and directed towards public education and how local districts spend their education dollars. (*See* Mont. Code Ann. §§ 20-9-331, 20-9-308, 20-9-353). The state also redirects local revenue to other educational programs in the same manner as HB 393 redirects funds to the ESA program. Mont. Code Ann. §§ 20-5-323, 20-5-324. Any statutory conflict between existing law and HB 393 is resolved by general rules of statutory construction. HB 393 does not violate Article X, Section 8 of the Montana Constitution. Disability Rights are not entitled to summary judgment on Count IV.

There are genuine issues of material fact which preclude summary judgement on Count II. Consequently, Vinton's motion for summary judgment is denied.

ORDER

IT IS HEREBY ORDERED:

1. Plaintiff Disability Right's motion for summary judgment on Count I is **DENIED**, as moot;

2. Plaintiff Disability Right's motion for summary judgment on Count III is **GRANTED**;

3. Plaintiff Disability Right's motion for summary judgment on Count IV is **DENIED**; and

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4. Intervenor-Defendant Vinton's motion for summary judgment on Count II is **DENIED**.

/s/ Mike Menahan
MIKE MENAHAN
DISTRICT COURT

Cc via email: Michael Russell
Alwyn Lansing
Dale Schowengerdt
Thomas M. Fisher
Tal M. Goldin
Thane P. Johnson
Molly Danahy
Rylee Sommers-Flanagan
Austin M. Knudsen
Timothy Longfield

MM/sm/ADV-2024-44 Ord Mot Summ Judgment

Electronically Signed By:
Hon. Judge Mike Menahan
Mon, Dec 08 2025 05:01:24 PM