



Highly Capable Students

Current Programs in Washington and Other States

Senate Committee Services

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September 24, 2009

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Table of Contents

Executive Summary.....	3
Part 1: Introduction.....	4
Part 2: Washington State.....	5
2.1 Current OSPI Program Requirements	5
2.1.1 Introduction.....	5
2.1.2 Definition of a Highly Capable Learner.....	5
2.1.3 Procedure for Identifying Highly Capable Learners	6
2.1.4 Program Design Requirements and Suggestions	7
2.1.5 Funding.....	7
2.2 Current District Highly Capable Programs - Aggregate.....	9
2.3 Programs Specifically Funded by the State Highly Capable Program Appropriation.....	11
2.3.1 Washington ImagiNation Network	11
2.3.2 Future Problem Solving	12
2.3.3 Centrum Program at Fort Worden State Park.....	12
2.4 Existing Program Case Studies	12
2.4.1 Bellevue Public Schools.....	13
2.4.2 Evergreen School District.....	14
2.4.3 Newport School District.....	15
2.4.4 Spokane School District	15
2.4.5 Wenatchee School District.....	16
Part 3: Other States.....	17
3.1 Introduction.....	17
3.2 Definitions of "Gifted".....	17
3.3 Policy and Program Options	20
3.4 Funding.....	21
3.5 Programs in Global Challenge States.....	23
3.5.1 California.....	24
3.5.2 Colorado	26
3.5.3 Connecticut	27
3.5.4 Maryland	27
3.5.5 Massachusetts	28
3.5.6 Minnesota	28
3.5.7 New Jersey.....	29
3.5.8 North Carolina.....	29
3.5.9 Virginia.....	30
Part 4: Judicial Review.....	31
4.1 Education as a Right.....	31
4.2 Individual Claims.....	31
4.3 Funding Adequacy Claims as applied to Highly Capable Programs	32
Part 5: Conclusion	35
Appendix A: Highly Capable Program Education Plan.....	36
Appendix B: OSPI Program Options Categorization & Description.....	40
Appendix C: District Application for Highly Capable Program Funds.....	42
Appendix D: Sample Checklist for Assessing Exceptional Creativity.....	52
Appendix E: Table of Profiled Districts' Highly Capable Programs.....	53
Appendix F: Full Text of State Gifted & Talented Definitions.....	55
Appendix G: Chart of Areas of Giftedness Included by State	69

Appendix H: State Funding Policies for Gifted and Talented Students	72
Appendix I: Summary of State Mandated Identification, Services and Funding	75
Appendix J: Global Challenge States' Gifted Programs (Including Washington).....	77
Endnotes	84

Figures

Figure 1: Highly Capable Program Legislative Appropriations FY 1999-2011	8
Figure 2: Highly Capable Program Legislative Allocation Per Student, School Years 2001-2011.....	8
Figure 3: Enrollment in Categorical-funded Highly Capable Programs by Grade, 2006-2007	10
Figure 4: Highly Capable Program Options by District, 2006-2007.....	11
Figure 5: Percent of Students Identified as Gifted by State, 2006.....	19
Figure 6: Gifted Education Programming Nationwide.....	20

Tables

Table 1: Multiple Criteria for Determination of Superior Intellectual Ability.....	5
Table 2: Standards for Assessment as a Highly Capable Student.....	6
Table 3: Summary of State Gifted & Talented Definitions	18
Table 4: Funding Level for Gifted Programs, 50 States and Washington, D.C.....	21
Table 5: Funding Levels for States that Mandate Services for Gifted Students	21
Table 6: Distribution of Funding Formulas for Gifted Programs, 1998-1999.....	22
Table 7: Global Challenge State Funding for Gifted Programs.....	24

Executive Summary

In 2009, the Legislature declared that for highly capable students, access to accelerated learning and enhanced instruction is part of a basic education. This section becomes effective September 1, 2011. The Governor vetoed a section of the bill that would have provided "safety net" funding for districts with a greater percentage of identified highly capable students than the allocation.

Programs for highly capable students in Washington State are currently optional. The Legislature appropriates a gross amount to the Office of the Superintendent of Public Instruction, with specific allocations to a few programs serving students statewide. The Legislature also specifies a maximum per-student allocation, and the maximum percentage of students in a district who can be supported with these funds.

Districts submit program proposals to the Office of the Superintendent to access funding. Programs must follow rules laid out in the Washington Administrative Code, and the proposals must outline student identification procedures, program options that will be provided, and a budget. Districts have wide latitude as to which program options they will provide their students. The rules require that districts provide educational opportunities which take into account students' unique needs.

Three-quarters of Washington State school districts applied for highly capable program funding in 2006-2007, and categorical highly capable program funding supported 23,641 students. The state provided just over \$7 million in funds for highly capable programs. Districts supplemented this with over \$35 million in local support.

Nationwide, thirty-six states require districts to identify highly capable students, and twenty-six require them to provide services. Almost all states leave identification and programming decisions up to the local districts, though most states have a legislative or administrative general definition of highly capable, as Washington does.

Funding for highly capable programs nationwide ranges from no state funding up to full state funding. Most states split support between state and local sources. Among Washington State's nine benchmark Global Challenge States, five do not provide any state-level funding for highly capable programs.

Defining programs for highly capable students as a part of basic education may have implications for court review of programs. The state constitution has been interpreted to require the Legislature to amply fund basic education. Beginning in September 2011, the legislature will be required to amply fund programs for highly capable students or potentially open itself to funding adequacy lawsuits. Statutory language declaring that access to accelerated learning and enhanced instruction through a program for highly capable students is not an individual entitlement may limit claims by individual students and parents.

Part 1: Introduction

In the 2009 legislative session, the House and Senate passed ESHB 2261, part of which expanded the program of basic education to include programs for highly capable students. The Legislature found that "for highly capable students, access to accelerated learning and enhanced instruction is access to a basic education,"¹ and allocated funding based on 2.314% of each school district's population.² The bill also stated that access to accelerated learning and enhanced instruction is not an individual entitlement for any particular student.³ The Governor vetoed a section of the bill that provided "safety net" funding and that implied highly capable programs ("HCP") were prioritized over other aspects of basic education, based on the phase-in timeline.⁴ HCP will become part of basic education effective September 1, 2011.⁵

This report summarizes current Washington laws and rules and funding regarding highly capable programs, provides an overview of programs statewide, and describes selected districts' current programs. It also summarizes programs for highly capable students nationwide, based on available information regarding definitions, rules, program policies and guidelines, and funding structures for highly capable students.

Part 2: Washington State

2.1 Current OSPI Program Requirements

2.1.1 Introduction

Currently, Washington school districts are not required to provide specific programs for highly capable learners.⁶ Districts that choose to have a program for these learners may apply to the state for funding support.⁷ Of the 295 school districts in Washington State, 222 (75%) received HCP funds in 2006-2007.⁸ Most of these districts supplemented State funds with local or other funds.⁹ If a district receives HCP funds from the state, it is bound by the Office of the Superintendent of Public Instruction's ("OSPI") rules for the program.¹⁰ The rules define highly capable learners,¹¹ establish multiple criteria on which to determine whether a student is a highly capable learner,¹² and describe highly capable program components.¹³ The rules also include a requirement that fund-receiving districts report annually to OSPI, so that OSPI can in turn report to the Legislature as required by law.¹⁴

2.1.2 Definition of a Highly Capable Learner

By current OSPI rule, a highly capable learner is defined as "a **student who has been assessed to have superior intellectual ability** as demonstrated by *one or more* of . . . multiple criteria."¹⁵ The multiple criteria must include cognitive ability, specific academic achievement in a specified content area, and exceptional creativity.¹⁶ OSPI's definitions of these criteria are provided in Table 1 below.

Table 1: Multiple Criteria for Determination of Superior Intellectual Ability¹⁷

Cognitive ability	"complete range of intellectual functions referred to as intellect, intelligence, or mental abilities, and includ[ing] such psychological concepts as thinking, abstract reasoning, problem solving, verbal comprehension, and numerical facility"
Specific academic achievement	"obtained results on an achievement test appropriate to discriminate academic performance at high levels of achievement in one or more of the following content areas:" reading, mathematics, social studies, language arts or science
Exceptional creativity	"demonstration of unique or outstanding creative products and/or the demonstration of unusual problem solving ability or other learning characteristics which indicate to teachers, parents, or classmates that the student has the intellectual potential to perform academically at a level significantly higher than the norm for chronological grade level."

Other sections of the laws and rules further describe highly capable learners outside of the delineated criteria. The law (amended in 2009 by ESHB 2261 with an effective date of September 1, 2011), states there are "multiple definitions of highly capable, from intellectual to academic to artistic."¹⁸ The rules additionally describe these students as those who "exhibit high capability in

intellectual and/or creative areas, possess an unusual leadership capability, or excel in specific academic fields."¹⁹ The rules also provide a description of the unique needs highly capable students present:

highly capable students generally possess these learning characteristics: (1) Capacity to learn with unusual depth of understanding, to retain what has been learned, and to transfer learning to new situations; (2) Capacity and willingness to deal with increasing levels of abstraction and complexity earlier than their chronological peers; (3) Ability to make unusual connections among ideas and concepts; (4) Ability to learn very quickly in their area(s) of intellectual strength; (5) Capacity for intense concentration and/or focus.²⁰

2.1.3 Procedure for Identifying Highly Capable Learners

The rules regarding state-funded HCP establish the procedure for identifying highly capable learners. Students must be nominated, assessed, and selected into a program.²¹ Districts may optionally screen out students for whom there exists clear, current evidence that the student will not qualify under assessment criteria, provided the screening is equitable.²² Students may be nominated by any source, including teachers, staff, parents, other students, and/or members of the community.²³ Parents must give consent for assessment.²⁴ Assessments, conducted by district personnel, must use at least one measure to assess each of the three required multiple criteria.²⁵ To be eligible for final selection, a student must meet specific standards in at least one of the criteria areas, as shown in Table 2 below.

Table 2: Standards for Assessment as a Highly Capable Student²⁶

Cognitive ability	Student must score in the top ten percent, as demonstrated by performance on a standardized test
Specific academic achievement	Student must score in the top five percent in one or more of the specified areas, as demonstrated by performance on a standardized test
Exceptional creativity	Student must demonstrate behavioral characteristics for exceptional creativity

Districts may choose what standardized test they use to assess each of the criteria areas.²⁷ Students who meet the standard for one or more of the multiple criteria areas are eligible for selection into the program.²⁸ A multidisciplinary committee makes the selections using policies and procedures adopted by the district school board.²⁹ This committee must include a classroom teacher who has experience working with highly capable learners, a psychologist with training to interpret cognitive and achievement test results, a district administrator with responsibility for supervision of a district's HCP, and any additional professionals the district determines.³⁰ District selection policies must be consistent with nondiscrimination and based on professional judgment as to which students will benefit the most from inclusion.³¹

2.1.4 Program Design Requirements and Suggestions

OSPI rules require districts to develop an education plan based on demonstrated academic abilities for each student or group of students with similar abilities selected into the highly capable program.³² The education plan outline provided by OSPI is provided in Appendix A: Highly Capable Program Education Plan. In addition to the resources mentioned in this plan, OSPI provides school districts with possible program options in their rules, forms, and resources available on their website.³³ Many districts employ more than one of the program options.³⁴ Districts may also choose to use separate options at different levels of schooling, or for different groups of students.³⁵ Program options should include:

- accelerated learning opportunities
- grouping arrangements that provide intellectual and interest peer group interactions
- cooperative agreements between K-12 schools and institutions of higher education (*e.g.* concurrent enrollment and dual credit)
- programs designed to coordinate, combine or share resources within a district, and
- mentorships and career exploration opportunities.³⁶

Districts' annual funding applications and end-of-year reports to OSPI must include a description of the district's program, and which program type it falls into.³⁷ The program option categories as delineated by OSPI and a brief description of each are included in Appendix B: OSPI Program Options Categorization & Description.

The law as amended in 2009 and effective September 1, 2011, notes that access to accelerated learning and enhanced instruction is access to a basic education, but that access to accelerated learning and enhanced instruction through the program for highly capable students does not constitute an individual entitlement for any particular student.³⁸ OSPI rules currently require that once services are started, a continuum of services be provided, possibly including services extending from kindergarten through twelfth grade.³⁹ These services are not necessarily required to be provided through programs specifically for highly capable students.⁴⁰ For example, a district that has honors or Advanced Placement courses at the junior high and high school level but does not have a separate program for highly capable students at this level might provide the continuum of services by providing academic counseling to students at the end of elementary school encouraging highly capable students to enroll in these higher-level courses.⁴¹

2.1.5 Funding

Currently, programs for highly capable students are funded by a specific legislative allocation to OSPI each biennium. For the 2009-2011 biennium, this funding totaled \$18,867,000, split approximately evenly between the two fiscal years.⁴² This appropriation caps allocations per school district at a maximum of \$401.08 per funded student, and caps the number of funded students at a maximum of 2.314 % of each district's full-time enrollment.⁴³

Districts request funds through an annual application submitted to OSPI.⁴⁴ A copy of this application is provided in Appendix C: District Application for Highly Capable Program Funds.

Highly Capable Students

The \$18.8 million appropriation also includes two specific allocations: \$90,000 in each fiscal year to the Washington Destination ImagiNation Network and Future Problem-Solving programs, and \$170,000 in each fiscal year to the Centrum Program at Fort Worden State Park.⁴⁵ These specific allocations account for approximately 2.75% of the total HCP allocation.

Figure 1 below shows the trend in legislative appropriations for HCP since fiscal year 1997. Figure 2 shows the legislative per-student allocation for HCP for the 2001-2002 through 2010-2011 school years.

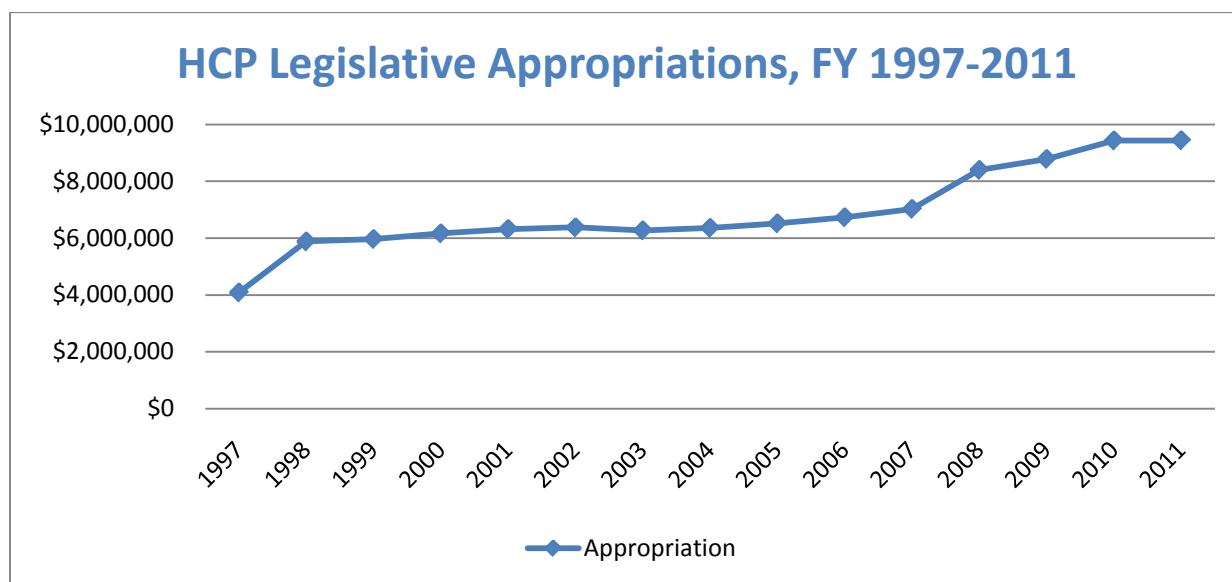


Figure 1: Highly Capable Program Legislative Appropriations FY 1999-2011⁴⁶

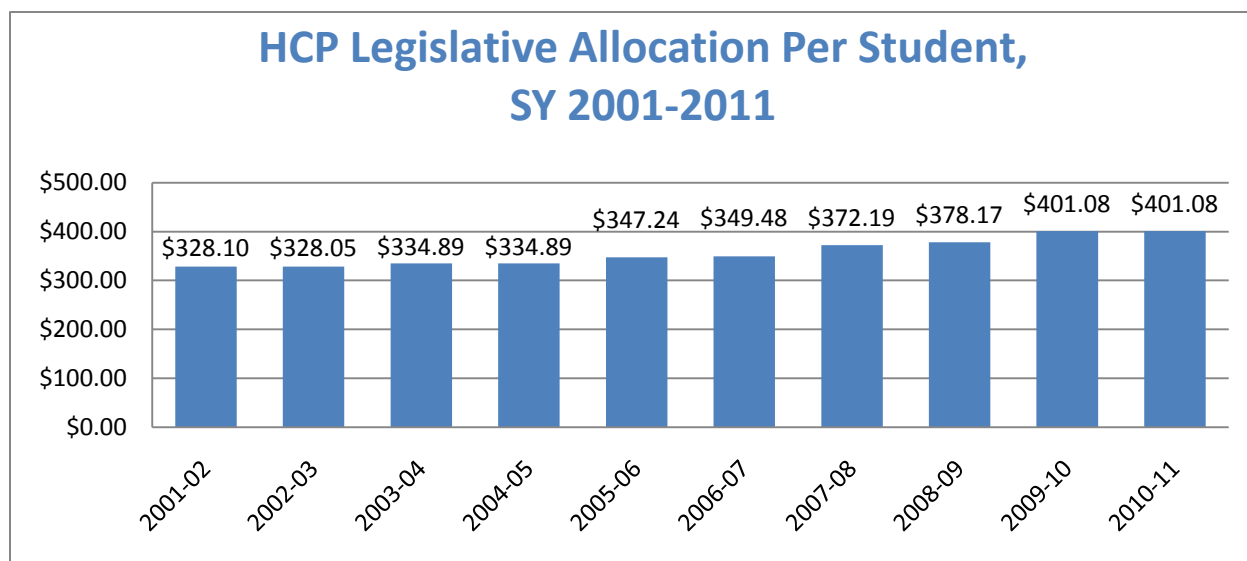


Figure 2: Highly Capable Program Legislative Allocation Per Student, School Years 2001-2011⁴⁷

2.2 Current District Highly Capable Programs - Aggregate

Districts that accept state funding for their highly capable program are required to complete an annual report to OSPI.⁴⁸ This report asks districts about programs that are funded by state HCP funds, as well as programs for highly capable students supported by other funds.⁴⁹ For example, a district may use state funds for its middle school HCP, but fund its high school Honors or Advanced Placement courses through district funds.⁵⁰

For the 2006-2007 school year, 222 school districts applied for HCP funding from OSPI.⁵¹ This continues a slight decrease in funded districts since 2002.⁵² Categorical funding supported 23,641 students, representing 2.37% of the total student population.⁵³ In the districts that reported, the actual number of students receiving HCP education supported by state categorical or other funds was 49,193.⁵⁴ This is more than twice the number of students served by categorical funds alone, and represents 4.93% of the total public school student population.⁵⁵ Nearly two-thirds (60%) of districts support more than half of their district's HCP with local or other funds.⁵⁶ **Categorical state funding provides less than 17% of what was spent on programs for highly capable students in 2006-2007.**⁵⁷

The grade distribution of categorical state-funded highly capable students shows a peak in late elementary school.⁵⁸ Many districts use their own funds to pay for high school Honors, Advanced Placement or International Baccalaureate courses. These courses are often open-enrollment and available for all students.⁵⁹ The grade distribution of state-supported HCP students is shown in Figure 3 below.

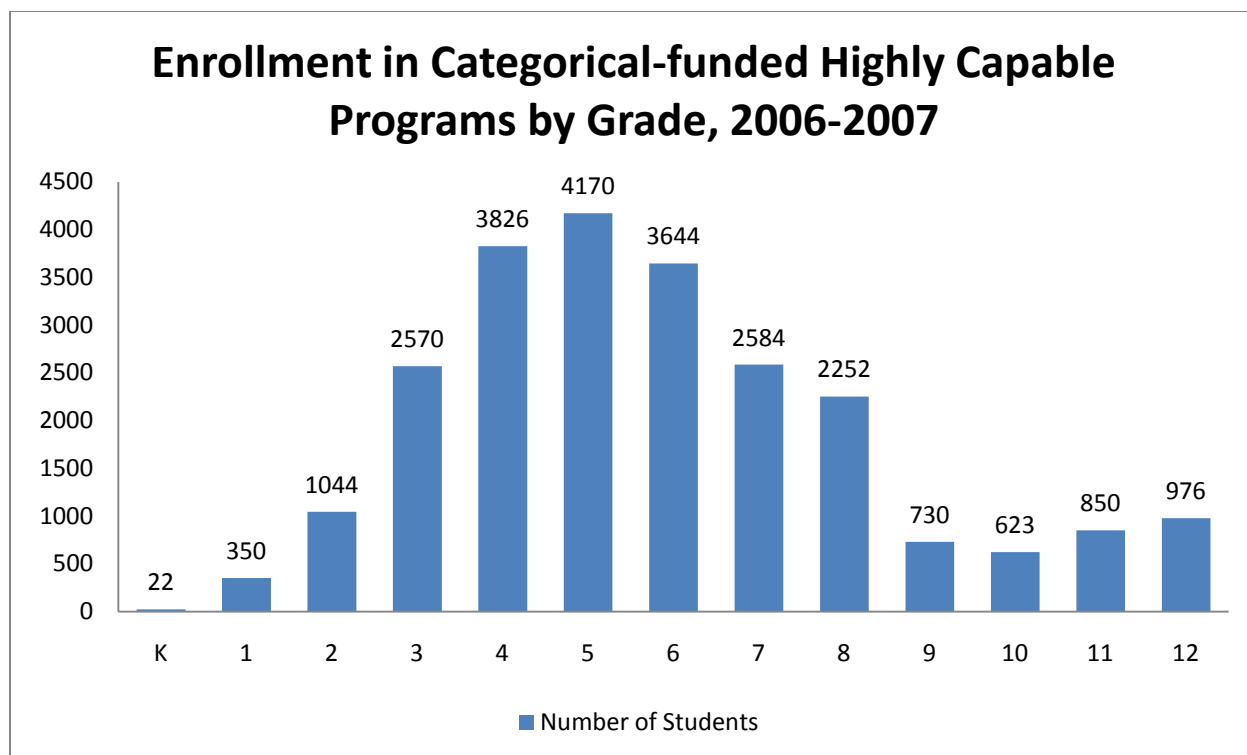


Figure 3: Enrollment in Categorical-funded Highly Capable Programs by Grade, 2006-2007⁶⁰

Assessments used to identify potential highly capable learners varied widely. Ninety-two districts (42%) use the Cognitive Abilities Test ("CogAT")ⁱ to assess cognitive ability.⁶¹ The most widely used test for assessing specific academic achievement is the Washington Assessment of Student Learning ("WASL"), used by 185 districts (84%).⁶² Exceptional creativity was most often assessed through use of district checklists or evaluation of student products, though the most popular answer for an assessment was "Other."⁶³ An example of a checklist used for assessing exceptional creativity is provided in Appendix D: Sample Checklist for Assessing Exceptional Creativity.

Districts may choose the program options to make available to their highly capable learners. The most popular program option was content-specific part-time grouping, used by 143 districts (65%).⁶⁴ The distribution of program options used in 2006-2007 is shown in Figure 4 below. Districts often have more than one type of program.

ⁱ The CogAT is published by Riverside Publishing Company. Versions for grades K-12 are available, with national comparative data norms available for 2000 and 2005. The test measures students' learned reasoning abilities in three areas most linked to academic success: verbal, quantitative, and nonverbal.

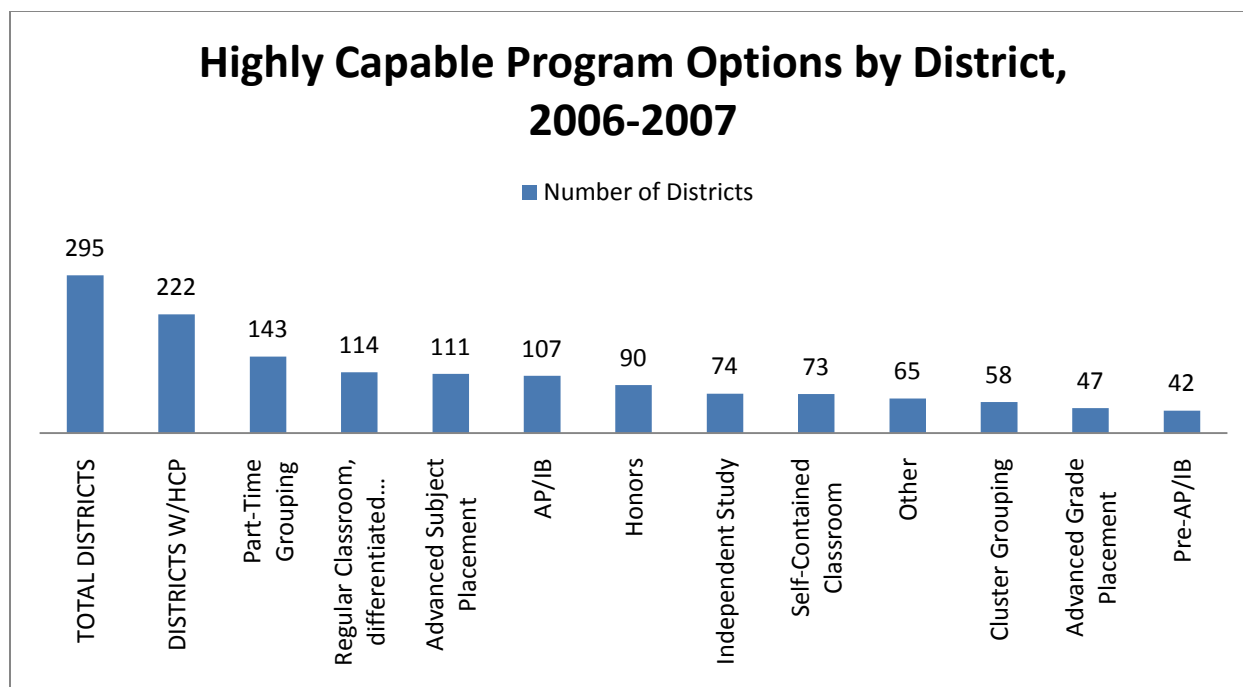


Figure 4: Highly Capable Program Options by District, 2006-2007⁶⁵

2.3 Programs Specifically Funded by the State Highly Capable Program Appropriation

The 2009-2011 appropriation to the Superintendent of Public Instruction's programs for highly capable students includes specific appropriations for three programs: Washington Destination ImagiNation Network, Future Problem Solving, and the Centrum Program at Fort Worden State Park.⁶⁶ Together, the Destination ImagiNation network and Future Problem Solving were appropriated \$90,000 in each of 2010 and 2011, accounting for approximately 0.95% of total highly capable student program funding in each year.⁶⁷ The Centrum Program was appropriated \$170,000 in both 2010 and 2011, accounting for 1.8% of total highly capable student program funding in each year.⁶⁸ These specific allocations account for approximately 2.75% of the total HCP appropriation.⁶⁹ Some districts use Destination ImagiNation or Future Problem Solving as the entirety or a component of their highly capable program.⁷⁰ These programs are described below.

2.3.1 Washington ImagiNation Network

Destination ImagiNation is a national and international nonprofit organization that aims to build creativity, teamwork, and problem solving skills.⁷¹ Programs range from pre-school to university-level, and involve teams of two to seven members.⁷² Teams work on pre-determined challenges in preparation for presentation at a regional competition.⁷³ At the competition, teams also compete in Instant Challenges, which must be solved in less than eight minutes.⁷⁴ Regional competitions can lead to state, national, and international competitions.⁷⁵

Washington State's affiliate of the national Destination ImagiNation organization is the Washington ImagiNation Network ("WIN").⁷⁶ WIN's mission is to provide creative problem-solving opportunities for the youth of Washington State.⁷⁷ WIN provides training for team managers and volunteers, and coordinates regional and state tournaments.⁷⁸ WIN also coordinates training and practice days and provides resources and support for team managers and teams.⁷⁹ Allocated funding for WIN supports the network and the resources it provides.⁸⁰

2.3.2 Future Problem Solving

Future Problem Solving ("FPS") is an international organization that engages students in creative problem solving through stimulating critical and creative thinking skills and encouraging students to develop a vision for the future.⁸¹ FPS can be curricular or co-curricular, and involves competitive and non-competitive activities.⁸² OSPI funding for FPS provides support for the statewide network supporting local district programs.⁸³

2.3.3 Centrum Program at Fort Worden State Park

The Centrum Program at Fort Worden State Park outside of Port Townsend has a 35-year partnership with OSPI.⁸⁴ OSPI contracts with Centrum to provide specific programs in the arts, music, dance, theater, and marine science for students in grades 5-12.⁸⁵ In 2009, these included junior high Explorations programs focusing on creative writing, movement, theater, music and visual art; a middle school Water World program exploring marine ecosystems and creative self-expression; a summer high school Arts Camp; and summer high school dance workshop.⁸⁶ Programs are advertised to students, parents and schools.⁸⁷ Students sign up in groups of 4-6 chaperoned by an adult for middle school and junior high programs, and sign up individually for high school programs.⁸⁸ Programs are approximately a week long, and students stay at Fort Worden State Park.⁸⁹

2.4 Existing Program Case Studies

In order to provide a better picture of how highly capable programs are instituted in districts, several districts are profiled in brief below. In alphabetical order, the profiled districts are: Bellevue, Evergreen (Vancouver), Newport, Spokane, and Wenatchee.⁹⁰ These profiles are additionally presented in table form in Appendix E: Table of Profiled Districts' Highly Capable Programs.

Though programs vary significantly by district there are some common threads. All of the profiled districts have non-HCP funded opportunities for highly capable and other students supported by local or other funds. All of the profiled districts also provide additional local support to HCP-funded programs. Four of the five profiled districts have highly capable-identified students whose education is supported by local or other funds.

2.4.1 Bellevue Public Schools⁹¹

The Bellevue Public Schools serve nearly 17,000 students in 16 elementary schools, seven middle schools (five regular and two alternative) and six high schools (four regular and two alternative). Bellevue Public Schools use their HCP funds to support three separate programs: Enrichment, PRISM, and the Gifted High School Program. Bellevue supports 380 students (2.311%) of its students in HCP with state funds, and 807 students in HCP overall, comprising 4.908% of the total district student population.⁹²

Students in grades 1-9 may apply for testing in the fall of each year for the following year. Bellevue uses the CogAT to assess cognitive ability, the Iowa Test of Basic Skills ("ITBS") to measure academic achievement, and teacher/parent input to determine exceptional creativity.⁹³ If a student meets the eligibility requirements based on testing, he or she may be placed in a gifted program by the multidisciplinary selection committee. The eligibility requirements for PRISM and GHSP are higher than those for Enrichment.

Enrichment opportunities are available to students in grades 2-5, and consist of a 5-hour per week pull-out program. Enrichment programs are available at four of Bellevue's 16 elementary schools; eligible students at other elementary schools are provided transportation to a school with an Enrichment program. Approximately 270 students total take part in Enrichment, with larger participation in higher grades.⁹⁴ Most of Bellevue's HCP funding goes towards the Enrichment program, and these funds support 80% of program costs.⁹⁵ In middle school, when the Enrichment program ends, students usually pursue honors level classes, which are open-enrollment.⁹⁶

PRISM opportunities are available to students in grades 2-8 who show exceptionally high academic and intellectual ability. The PRISM program is offered in single and multi-grade classrooms at one elementary and one middle school in the district. The elementary program works with approximately 20-25 students starting in second grade, with enrollment building year by year to reach the mid-70s by late elementary school.⁹⁷ The middle school program continues with 65-75 students in each grade level.⁹⁸ PRISM is mainly funded through Bellevue's general education funds, though 20% of costs are supported by HCP funds.⁹⁹

The **Gifted High School Program** ("GHSP") groups cohorts of exceptionally high academic and intellectual ability students in a cohort for core courses. The goal of the program is for students to complete International Baccalaureate degrees by the end of 11th grade and spend the 12th grade year completing internships, independent study, research projects and college coursework at the University of Washington. The 2009-2010 school year will be the fourth year of the GHSP program.¹⁰⁰ GHSP is available at Interlake High School, and current PRISM students are automatically accepted into the program at registration. GHSP is mainly funded through Bellevue's general education funds, with 20% of costs supported by HCP funds.¹⁰¹

In addition to these programs specifically for highly capable students, Bellevue encourages all students to pursue challenging coursework, including Honors, Advanced Placement and International Baccalaureate courses. Honors courses are available at the middle school level as well as in high school. Advanced Placement courses are offered at all traditional Bellevue high schools.

2.4.2 Evergreen School District¹⁰²

The Evergreen School District serves approximately 26,500 students in 21 elementary schools, six middle schools, and five high schools (four traditional and one alternative) in Vancouver, Washington. Evergreen Public Schools use their HCP funds to support the Evergreen's eXplorations in Creativity, Excellence, and Leadership ("EXCEL") program in grades 2-8.¹⁰³ EXCEL consists of three main programs: EXCEL Pull-Out for grades 2-5, EXCEL Full-Time for grades 3-5, and EXCEL Blocks for grades 6-8. Evergreen supports 552 (2.314%) of its students in HCP with state funds, and supports 801 students in HCP over, comprising 2.941 % of the total district student population.¹⁰⁴

Evergreen students may be referred to testing by anyone. The referral packet, available in English, Spanish, and Russian, includes sections for parents (regardless of referring person), the student, and the teacher. Students are assessed in English, though they are allowed to use a "language to English" dictionary. Evergreen uses the CogAT to assess cognitive ability, the ITBS to determine academic achievement, and a version of the Renzulli Checklist to assess exceptional creativity.¹⁰⁵ The checklist is included in the referral packet, and is completed by both the parent and the teacher. Students may also gain eligibility through a private IQ test. Eligible students are then placed into a program by the Multidisciplinary Selection Committee based on test scores, space available in individual programs, teacher recommendations, and parent preferences.

EXCEL Pull-out is based on an enrichment-model program coupled with cluster grouping. Students are bussed to one of the elementary schools for one-day-per-week classes. The program is project-oriented, and integrates a focus on critical and creative thinking skills with content knowledge. In addition, students are cluster grouped in their home classrooms and provided with differentiated instruction. The cluster grouping portion of this program is supported entirely by non-HCP funds.¹⁰⁶

EXCEL Full-Time is a magnet acceleration program where students are grouped in an EXCEL classroom. Programs operate at two elementary schools, and students are bussed based on their residence. Students in this program must demonstrate high academic achievement at least one year above grade level. EXCEL Full-Time curriculum is both differentiated and accelerated. This program is supported by both non-HCP funds (87%) and HCP funds (13%).¹⁰⁷ Three hundred twenty-eight students were served by the EXCEL programs (pull-out and full-time) in grades 2-5.¹⁰⁸

EXCEL students in grades 6-8 are grouped together for Language Arts and Social Studies "blocks". In addition, all district fifth graders are assessed and placed at the appropriate levels for math instruction. Four middle schools provide **EXCEL Blocks** classes; students at the other two middle schools are bussed if eligible and participating in the program. The EXCEL Blocks program is entirely supported by HCP funding.¹⁰⁹

Evergreen additionally allows double promotion (*i.e.* "skipping a grade") in grades K-2.¹¹⁰ District funds also support middle-school pre-AP courses in eighth grade, as well as high school honors and AP classes.¹¹¹

2.4.3 Newport School District¹¹²

The smallest district profiled here, the Newport School District serves approximately eleven hundred students in one elementary school (pre-K-4), one middle school (5-8) and one high school. State HCP funds support 26 of the 121 students (10.960% of the district population) identified as highly capable.¹¹³

Newport's program for highly capable students consists of enrichment programs for grades 3-6 and advanced subject placement in grades 7-8. Both programs are taught by a dedicated enrichment teacher. Students may be nominated for testing by anyone. Newport assesses cognitive ability using the CogAT and the Wechsler Intelligence Scale for Children, and measures academic achievement using a variety of tests, including the WASL and the ITBS. Exceptional creativity is assessed using the Renzulli checklist.

In grades 3-6, enrichment consists of a three-hour enrichment block once a week that involves in-depth interdisciplinary units incorporating the arts. The program also includes logic and math problems. This program is mainly funded through the local maintenance and operations levy, receiving only 7% of its funds from the state's HCP funds.¹¹⁴

In grades 7-8, students spend two hours a day in an integrated advanced humanities program combining social studies and language arts. Students who are highly capable in math may additionally apply to advance a level in math. Only five percent of this program's costs are covered by state HCP funding.¹¹⁵

Newport High School also has Advanced Placement classes for students in 11th and 12th grade that are supported by non-HCP funds.

2.4.4 Spokane School District¹¹⁶

The Spokane School District is the largest school district in Eastern Washington, serving over 29,000 students in 35 elementary schools, six middle schools, and six high schools. Spokane has two programs for highly capable students, Tessera and Odyssey. Both programs are run at the Libby Center, which provides programs for special education students, highly capable students, and a technology center. Spokane reports HCP funds supporting 663 students (2.314%).¹¹⁷

All students are screened in first grade using the Raven group test. Students who score in the top 3% are reported to the school, and teachers are asked to fill out a staff information form for each potentially highly capable student. When students are in second grade, all students are assessed again using a series of thinking skills lessons. Students who demonstrate potential giftedness based on these lessons or based on the first-grade Raven assessment are given the CogAT as second graders. Students who remain in the top 3% after parent and teacher information forms have been combined with the three test scores qualify for Tessera. The Tessera program begins a few weeks into the third-grade year.

Tessera is a full-day one day a week pull-out program for students in grades 3-6. Transportation to the program is provided from all public elementary schools. Tessera serves approximately 400 students. The curriculum focuses on promoting intellectual development based on each student's individual strengths, and includes curriculum goals in higher-level thinking skills, self-concept, and

communication. The four Tessera teachers are trained in gifted education. Tessera is supported by approximately 35% HCP funds, and 65% other funds.¹¹⁸

Odyssey is a full-time acceleration and enrichment program available to students in grades 5-8. Students who qualify for Tessera may apply for Odyssey. Parents must provide transportation to the program. The Odyssey curriculum includes large and small group instruction, special projects, individualized programs, project-based units, field trips, volunteer work, guest speakers, and potentially travel. Odyssey is supported by approximately 35% HCP funds, and 65% other funds.¹¹⁹

Spokane also provides honors and AP courses for high school students, supported by district funds.

2.4.5 Wenatchee School District¹²⁰

The Wenatchee School District serves just over 7,000 students in seven elementary schools, three middle schools and two high schools (one traditional and one alternative). Wenatchee uses its HCP funds to support programs in 4th and 5th grade, serving 166 students (2.314%).¹²¹ District-wide, 864 students are identified as highly capable, comprising 12.062% of the student enrollment.¹²²

All Wenatchee students are screened for initial eligibility for HCP in third grade using standardized tests. Teachers may add to the pool of initially eligible students based on a Creativity Checklist. Fourth grade students new to the district are considered using scores from their previous district, but must be nominated by a parent, teacher, other student, or community member. After September 25th, a Multidisciplinary Selection Committee meets to select students into the program. Initial services begin in October of fourth grade.

Wenatchee's highly capable program is a 4th and 5th grade pull-out enrichment program. Students attend enrichment classes in their area of high capability (*e.g.* reading, math) once a week for 30 minutes to an hour and a half, depending on the subject of the pull-out.¹²³ Students, if eligible, may attend pull-outs in more than one subject.¹²⁴ Approximately 160 students are involved in 4th and 5th grade pull-outs, which receive 16% of their funding from state HCP funds.¹²⁵

In middle school, students are eligible for limited-enrollment honors courses in English, math, and health.¹²⁶ High school honors and advanced placement classes are open enrollment.

Part 3: Other States

3.1 Introduction

There are no federal mandates requiring states or districts to provide special programs for highly capable or "gifted"ⁱⁱ students. At the federal level, gifted students are not considered special education students.¹²⁷ Some states have declared that under state law, programs for gifted students are comparable to or a part of special education.¹²⁸ Federal funding specifically for gifted education programs is limited to Javits grants. These grants can be made to state or local educational agencies, higher education institutions, or other public or private agencies to carry out programs or projects designed to meet the educational needs of gifted students and to use gifted and talented services, materials, and methods for all students.¹²⁹ The Federal definition of gifted and talented as applied to children for purposes of Javits funding is "[s]tudents, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services and activities not ordinarily provided by the school in order to fully develop those capabilities."¹³⁰ States are not required to use this definition in other programming.

State policies regarding highly capable students vary widely. Thirty-five states mandate identification and services, while others have no official definition and provide no funding.¹³¹ Some states have 15% or more of their student population identified as "gifted," while others have 2% or less.¹³² Approximately 2.37% of Washington elementary and secondary school students were served by highly capable funds in 2006-2007, but districts report 4.93% of students were identified as highly capable.¹³³ The National Association of Gifted Educators estimates that 6% of the nationwide student population is gifted.¹³⁴

3.2 Definitions of "Gifted"

Forty-six states have official definitions of gifted adopted by their state legislature (25 states) or by a state agency (21 states).¹³⁵ Full definitions and citations can be found in Appendix F: Full Text of State Gifted & Talented Definitions. A summary of definition characteristics is provided in Table 3 below.

ⁱⁱ Nearly all other states and the federal government call what Washington defines as a "highly capable" student a "gifted" or "gifted and/or talented" student. This section will refer to students as "gifted" or "gifted and talented" to reflect this national trend.

Table 3: Summary of State Gifted & Talented Definitions¹³⁶

	Cognitive Ability	Specific Academic Achievement	Exceptional Creativity	Talent (Arts/Theater)
All States (46)	40	25	24	23
Global Challenge States (9)*	7	6	3	4
Washington	Yes	Yes	Yes	No [†]

* Two of the Global Challenge States, Massachusetts and Minnesota, do not have legislative or agency mandatory definitions of gifted.

† OSPI's definition of a highly capable student does not include talented students, though 2009 ESHB 2261 noted that there were "multiple definitions of highly capable, from intellectual to academic to **artistic**." (emphasis added).

Thirteen states also recognize students as gifted if they demonstrate exceptional ability or potential for leadership.¹³⁷ A few states recognize a student as gifted if he or she shows exceptional psychomotorⁱⁱⁱ skills.¹³⁸

How a state defines "gifted" can affect how many students in a state are identified as gifted or served by gifted programs. Including "talents" in addition to academic or intellectual "gifts" may also increase student participation numbers.¹³⁹ The percent of students identified as gifted by state are shown in Figure 5 on page 19, below.

ⁱⁱⁱ Merriam-Webster's dictionary defines psychomotor as: "of or relating to motor action directly proceeding from mental activity." Hawaii describes psychomotor skills in part as: aptitude displayed through body movements with demonstrated high ability in either gross or fine manipulative activities. It may be demonstrated in areas such as gymnastics, dance, crafts, or through manual dexterity in individualized activities such as sculpturing and fine mechanical skills."

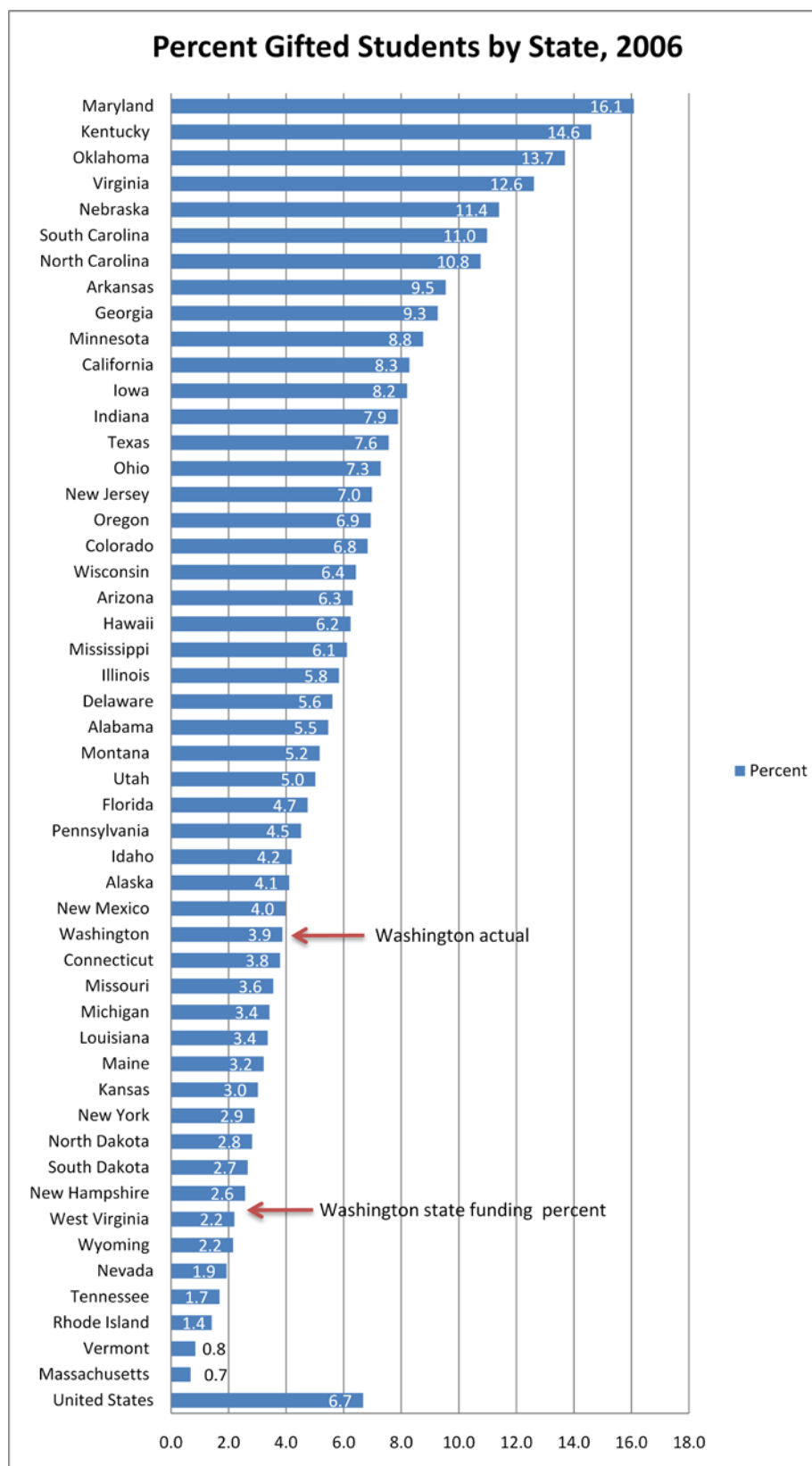


Figure 5: Percent of Students Identified as Gifted by State, 2006¹⁴⁰

3.3 Policy and Program Options

Thirty-five states mandate identification of gifted students, and thirty-six require districts to provide services for identified students.¹⁴¹ The map in Figure 6, taken from the Davidson Institute for Talent Development website, shows which states require programming, and to what extent they fund gifted programs. Please note that the links in this image are not active.

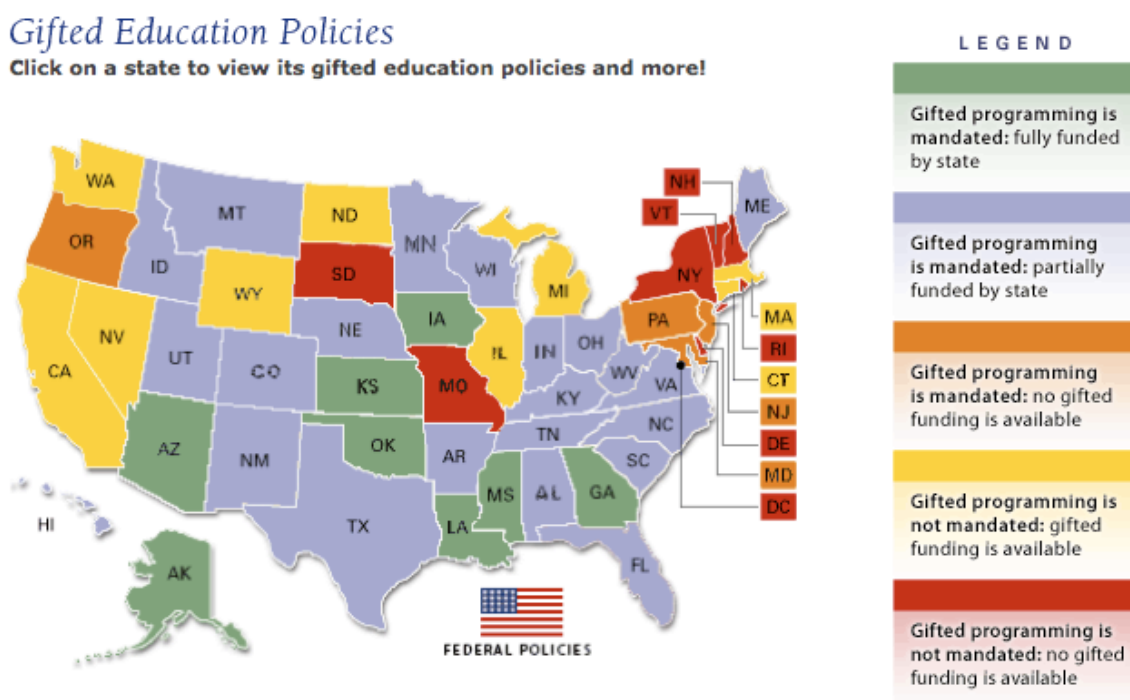


Figure 6: Gifted Education Programming Nationwide¹⁴²

States vary widely in the level of direction provided at the state level. Maryland requires that programming for gifted students be part of a district's master plan.¹⁴³ Colorado requires that districts periodically prepare a plan specifically on gifted programming.¹⁴⁴ Other states provide minimal, if any, direction to districts.¹⁴⁵

A survey of selected state policies suggests that states which do provide direction to districts or require that districts submit a plan seem to require procedures for student identification and assessment, procedures for appealing an assessment or placement, and means to evaluate both student success in the program and program success overall. Actual curriculum or program structure is most often left up to the district, with states typically providing a variety of options from which the district may choose, and offering technical assistance or suggestions as requested or required by law. Some states specifically prohibit certain approaches, for example, early entrance to kindergarten.¹⁴⁶

3.4 Funding

Funding levels for gifted student programs range from no funding provided to full funding. Some states include gifted programs in their base grant to schools, while others provide a per-student amount. The funding data from Figure 6: Gifted Education Programming Nationwide above is summarized in Table 4 below.

Table 4: Funding Level for Gifted Programs, 50 States and Washington, D.C.¹⁴⁷

FUNDING LEVEL	NUMBER OF STATES
Full Funding	8
Partial Funding	22
Funding Available	9
No Funding Available	12

According to the Davidson Institute, eight states provide full funding: Alaska, Arizona, Georgia, Iowa, Kansas, Louisiana, Mississippi and Oklahoma.¹⁴⁸ "Full funding" does not necessarily mean that all gifted program costs are covered by the state, however. The difference between a green "full" funded state and a blue "partial" funded state in Figure 6 may be that in a green state, funding for programming is enforced across all districts while in a blue state, funding varies across the state.¹⁴⁹ In addition, this considers what laws and policies states have on the books without concern for whether or how a state carries through.¹⁵⁰

The funding levels for the 36 states that require services for gifted students are summarized in Table 5 below. As illustrated, most states that require services be provided to gifted students do not fully fund gifted student programs.

Table 5: Funding Levels for States that Mandate Services for Gifted Students¹⁵¹

FUNDING LEVEL	NUMBER OF STATES
Mandated and full funding	8
Mandated and partial funding	22
Mandated and funding available	2
Mandated and no funding available	4
TOTAL MANDATED	36

Four common funding formulas for supporting gifted education are:

- Weighted funding (pupil weights)
- Flat grants
- Resource-based funding
- Discretionary grants.¹⁵²

Weighted funding systems allocate supplemental state aid based on a funding weight associated with a specific type of student.¹⁵³ This funding is allocated on a per-student basis.¹⁵⁴ For example, Texas weights a gifted child at 1.12, so that a district receives an additional 12% of the basic aid allocation for each gifted child identified.¹⁵⁵ Potential drawbacks of weighted funding systems include that smaller districts may have too few students to generate useful funding levels, and that if funding is not specifically allocated to these students, it may go toward supporting other school activities.¹⁵⁶ A potential advantage is that with pupil weighting, funding automatically increases as per-student allocations increase.¹⁵⁷

Flat grants provide a fixed amount of funding per student.¹⁵⁸ These grants can be allocated per individual identified student, per identified student up to a certain percent of the student body, or based on a percentage of the total student population.¹⁵⁹ Flat grants can be capped at a percentage of district students, essentially creating a census-based grant.¹⁶⁰ Potential drawbacks of flat grants are that they may disadvantage districts that have a higher rate of giftedness.¹⁶¹ They may also fail to provide sufficient funds for small districts.¹⁶² In addition, these grants do not necessarily increase automatically with increases in other per-pupil or education funding.¹⁶³

Resource-based funding is based on an allocation of specific resources, for example, teaching staff.¹⁶⁴ This structure doesn't strictly imply a percentage of students who are gifted or should be served, though sometimes allocations are on a census-basis. Virginia, for example, allocates one gifted specialist per one thousand pupils. Once resources are allocated, a district may choose how to use that personnel or that resource. This funding structure may ignore costs beyond what resources are allocated,¹⁶⁵ and may also disadvantage small districts.

Discretionary grants are application-based grants.¹⁶⁶ These programs have a limited pot of money that is either divided evenly between applicants, or divided based on applications' merit and project proposals.

Washington State currently employs a hybrid of the discretionary grant policy and a flat grant. Districts must apply for HCP funding annually, but are guaranteed funding if they fully complete the application and their program meets the requirements of the rules.¹⁶⁷ Funding per district is capped at \$401 per student up to 2.314% of a district's enrollment equivalent.¹⁶⁸ A compilation of the 1998-1999 funding formulas from 41 states found the distribution of policies in Table 6 below.

Table 6: Distribution of Funding Formulas for Gifted Programs, 1998-1999¹⁶⁹

Funding Formula	Number of States
Pupil Weights	9
Flat Grant	13
Resource-Based	8
Discretionary Grants	11

Half of the eight states the Davidson Institute considers to fully fund gifted education allocate funding by pupil weights. The table in Appendix H: State Funding Policies for Gifted and Talented

Students summarizes state funding formula types in 1998-1999, and estimated expenditures in 1995-1996. Though this data is dated, it provides an overview of what states have done in the past to fund their programs for gifted students.

The table in Appendix I: Summary of State Mandated Identification, Services and Funding provides a reference chart of states with regard to whether they mandate identification, require gifted programming, have a statewide definition of gifted, and the funding level and allocation method used.

3.5 Programs in Global Challenge States

Washington's Global Challenge States were identified by Washington Learns, a legislatively-created steering committee that conducted an 18-month review of Washington's K-20 education system.¹⁷⁰ The Global Challenge States are a group of benchmark states chosen based on their similar positioning as potential leaders in the modern world-based economy.¹⁷¹ The Global Challenge states are the eight highest-scoring states on the 2002 New Economy Index ("NEI"), including Washington, and two states with lower NEI rankings but similar economic characteristics to Washington.¹⁷² Washington State ranked second on the NEI.¹⁷³ Washington's Global Challenge States are: California, Colorado, Connecticut, Maryland, Massachusetts, Minnesota, New Jersey, North Carolina, and Virginia.¹⁷⁴

The Global Challenge States' policies are no more uniform than the nationwide landscape of gifted legislation, funding, and programming. However, there are some similarities between programs in Washington's nine Global Challenge States:

- Five states mandate programming for gifted students. In addition, Minnesota, which does not mandate services, provides funding for all districts that is restricted to gifted programs. Connecticut mandates identification but not services. Two states do not mandate services for gifted students.
- Seven states allow districts to define and identify gifted students locally, within state definitions and guidelines. Two, Massachusetts and Minnesota, allow districts to define gifted locally, but do not have a mandatory statewide definition or guide.
- Of the seven states with mandatory statewide criteria, all seven define gifted as including students with high cognitive ability. Six allow giftedness based on academic achievement in specific subject areas. Three allow identification of giftedness based on creative thinking, and four include talents and the arts.
- Three states, California, Colorado and Connecticut, identify two levels of gifted.
- All states allow local decisions with regard to services and programming available to gifted-identified students. Some states provide suggestions or guidelines for excellent programs, and/or technical assistance.

Highly Capable Students

The funding allocations for the nine Global Challenge States and Washington's current allocation structure are shown below in Table 7. Note that until 2009, California appropriated funding and divided it between districts that applied for funds based on district attendance. This funding has been suspended until the 2013 fiscal year. Due to data availability, not all information is from the most recent fiscal year, or from the same fiscal years.

Table 7: Global Challenge State Funding for Gifted Programs¹⁷⁵

State	State Funding for Gifted Program	Notes
California	None	Until 2009, appropriated funds and divided between applying districts based on enrollment. Funding suspended until 2013.
Colorado	\$7.4 million	State allocation is approximately 18.4% of program costs
Connecticut	None	In the past, small allocation (\$100,000) for statewide staff and training/professional development.
Maryland	None	
Massachusetts	None	Funding eliminated in FY 2010. Prior years had limited application-based funding for professional development.
Minnesota	\$12 multiplied by total enrollment	Categorical funding received by all districts and charter schools.
New Jersey	None	
North Carolina	\$1,163 per eligible pupil up to 4% enrollment	All districts receive funds regardless of number of identified students.
Washington	\$401.08 per eligible student up to 2.314% enrollment	Districts must apply for funding.
Virginia	\$26 million	Significant local match (\$20.7 million)

The summaries below describe each Global Challenge State's program in more detail, including information on student eligibility, program administration, and funding structures. Washington is not included, as it is described in detail in Part 2: Washington State above. The table in Appendix J: Global Challenge States' Gifted Programs (Including Washington) provides a summary the information below.

3.5.1 California

California does not require districts to identify or provide services for gifted students.¹⁷⁶ Until 2009, California provided categorical, application-based funding for districts that chose to provide gifted programs.¹⁷⁷ In 2008-2009, the budget for these programs was \$53.7 million.¹⁷⁸ *In 2009, due to budget concerns, gifted funding was frozen (i.e. no new applicant districts), and districts currently receiving gifted program funding were released from all program requirements and allowed to spend gifted program funds on other programs.*¹⁷⁹ This suspension will last five years, until 2013.¹⁸⁰

California defines two levels of gifted students, "gifted and talented pupils" and "highly gifted pupils."¹⁸¹ Gifted and talented students are "identified as possessing demonstrated or potential abilities that give evidence of high performance capability."¹⁸² Capability shall be measured in relation to student's chronological peers.¹⁸³ Districts must identify students as having extraordinary capability in one or more of the following areas:

- Intellectual Ability
- Creative Ability
- Specific Academic Ability
- Leadership Ability
- High Achievement (consistently advanced ideas or exceptionally high scores on achievement tests)
- Visual and Performing Arts Talent¹⁸⁴

A district may choose which areas it chooses to identify students on and provide support for.¹⁸⁵

Highly gifted students are gifted and talented students who have IQs above 150, as assessed by qualified personnel, or who have demonstrated extraordinary aptitude in an academic subject as evaluated and confirmed by the student's teacher and principal.¹⁸⁶ The law additionally states that highly gifted students generally constitute no more than 1% of the population.¹⁸⁷

Prior to the budget crisis, districts could apply for funding from the State of California to support gifted education. Similar to Washington State, if a district applied for funding, it was bound by rules established by the California State Board of Education, including the definitions of gifted above.¹⁸⁸ Based on the quality and comprehensiveness of the program application, a district would receive 1, 2, or 3-year approval and funding.¹⁸⁹

District plans were required to include a statement of the program's philosophy, goals, and standards.¹⁹⁰ Programs were required to include:

- ongoing K-12 nomination & referral
- appropriate assessment
- multiple services options
- differentiated curriculum in place, supported by resources, and commensurate with students' particular abilities/talents
- articulation with general education programs
- administrative groupings and structures appropriate for gifted education and available to all gifted learners, including alternative learning environments
- elements that address the affective needs of gifted students, and help gifted pupils develop
 - sensitivity and responsibility to others,
 - a commitment to constructive ethical standards,
 - self-generating problem solving abilities,
 - awareness of choices for satisfying contributions to environment, and
 - realistic, healthy self-concepts.
- professional development and role-specific training

- open communication with parents/community
- an active advisory committee for gifted programs; and ongoing student and program assessment consistent with program's philosophy.¹⁹¹

Programs were required to complete an annual review of student progress and of the program to determine compliance with law and regulation.¹⁹² The State Board of Education publishes recommended standards as a reference for districts applying for funding.¹⁹³

3.5.2 Colorado

Since 2007, Colorado has required districts to provide programming for gifted students.¹⁹⁴ In order to be eligible for funding, administrative units must submit a gifted education program plan to the Colorado Department of Education on an annual basis.¹⁹⁵ The Department reviews all program plans for completeness.¹⁹⁶ If a district does not submit a program plan, funding will be withheld, and a request for technical assistance will be entered.¹⁹⁷ In 2007-2008, Colorado provided \$7.4 million in support for gifted student programs, approximately 18% of total expenditures on gifted programs.¹⁹⁸

Colorado defines gifted students as those "those persons between the ages of four and twenty-one whose abilities, talents, and potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs."¹⁹⁹ Students may be deemed gifted based on the following areas of giftedness:^{iv}

- General or specific intellectual ability
- Specific academic aptitude
- Creative or productive thinking
- Leadership
- Visual Arts, Performing Arts, Musical or Psychomotor Abilities²⁰⁰

Colorado also defines a category of children as "highly advanced gifted," those children whose demonstrate exceptional ability or potential compared to same-age gifted children.²⁰¹

District programs plans are required to:

- Define "gifted and talented student" substantially based on the state definition
- Establish a communication/outreach
- Outline a procedure for identifying students and their needs that
 - Is equal access and equitable,
 - Involves referral, screening, and multiple sources of data,
 - Has criteria for determining exceptional ability/potential,
 - Has a review team procedure, and
 - Involves parent communication
- Describe programming, evaluation, and accountability

^{iv} Colorado updated its definition of gifted student in 2008. This text reflects this change, not reflected in the Education Commission of the States sheet in Appendix F: Full Text of State Gifted & Talented Definitions, which is frozen in 2004.

- Identify the personnel involved, and
- Establish the program's budget.²⁰²

State funding, once received, may only be used to support salaries for personnel serving primarily gifted students; gifted education-related professional development or training; activities associated with gifted programming options; supplies for gifted education; and technology and equipment for gifted student education.²⁰³

Program options are not limited by the state, though certain strategies are provided as examples in the rules.²⁰⁴ The End-of-Year Report describes grouping strategies and differentiated instruction strategies. Grouping strategies include: flexible, cross-grade, and cluster, resource room, magnet classrooms, schools for gifted students, school within a school, online courses, and an online school for gifted students.²⁰⁵ Differentiated instruction strategies include curriculum compacting, subject or grade-based acceleration, content extension, targeted critical and/or creative thinking skills development, and specific programs for the arts.²⁰⁶

Districts are additionally required to file a report in September of each year, covering extensive financial, demographic, and programmatic information.²⁰⁷

3.5.3 Connecticut

Connecticut requires districts to identify gifted students, but does not require them to provide services.²⁰⁸ Until the early 1990s, Connecticut funded district gifted programs based on a sliding scale reimbursement plan, initially reimbursing 30-70% of program costs, which decreased to 5% to 35% of program costs before funding was eliminated entirely in 1992.²⁰⁹

Connecticut considers gifted and talented similar to special education, but specifically notes that it considers only the state special education provisions to apply.²¹⁰ Connecticut defines two levels of gifted students, those who are “gifted and talented”, and those who represent the top five percent of gifted or talented-identified students, recognized as having either extraordinary learning ability or outstanding talent in the arts.²¹¹ Gifted and talented students are those students who are identified as having demonstrated or potential abilities that show very superior intellectual, creative, or specific academic capacity and who need differentiated services to achieve their potential.²¹²

The State Board of Education does not outline requirements for identification procedures beyond procedural safeguard guarantees for parents.²¹³ The Board’s website includes suggestions for how districts can make their programs defensible and foster parent communication, but these are suggestions only and are not binding.²¹⁴ Similarly, the Board supports districts using regular classroom curricular or instructional modifications as part an integrated approach to meeting the needs of students, and supports a “range of placement settings” for specialized instruction.²¹⁵

3.5.4 Maryland

Maryland impliedly requires districts to identify gifted students, and to provide services for them.²¹⁶ The annotated code of Maryland includes a theoretical definition of gifted,²¹⁷ but individual definitions are left to local control.²¹⁸ As part of their annual report, school systems are required to state what they are doing for gifted education, but there is no law or rule explicitly requiring identification or services for gifted students.²¹⁹ All of Maryland's 24 school systems do

identify and provide services for gifted students, but the programs and funding are entirely local.²²⁰ School systems are provided general education funding that they can apply towards gifted education, but no state categorical funds are provided for gifted education.²²¹

Maryland's Department of Education does provide suggested guidelines, "Criteria for Excellence: Gifted and Talented Education Program Guidelines," but these are not mandatory.²²² The guide suggests that school systems identify both students who already achieve at high levels and those who have the potential to achieve, employ broad-based screening followed by in-depth assessment to identify students, and differentiate identification procedures specific to grade and age level.²²³ The guide also suggests including gifted and talented in the management structure, and ensuring that gifted student program services meet students' needs and be differentiated from traditional instruction.²²⁴

Maryland does not provide any categorical or restricted funding specifically for programs and services for gifted students.²²⁵ Districts may use their general education funding for gifted student services, but are not required to.²²⁶

3.5.5 Massachusetts

Massachusetts does not require districts to identify gifted students or provide services for them.²²⁷ State funding was eliminated in 2010.²²⁸ Prior to elimination, the funding was a discretionary grant for professional development.²²⁹ Several years ago, funding was available for student programs.²³⁰ Funding was very limited, however, and restricted to programs that served students scoring three or more standard deviations above the mean on an aptitude test (approximately the top 1/8th % of students), had demonstrated or potential ability to perform at two or more grades above chronological age, or had scored higher than the average for college-bound high school juniors on the math or verbal section of the SAT at or before age 13.²³¹ The focus for Massachusetts' statewide programs was programs that encouraged dual enrollment, expanded AP/Honors classes to low-income students, and assisted low-income students with AP testing fees.²³²

3.5.6 Minnesota

Education reform legislation in 2005 and 2007 provides ongoing funding for gifted programs for all Minnesota school districts and charter schools. This legislation also directed school districts to adopt procedures for academic acceleration of gifted and talented.²³³ The funding, \$12 multiplied by the district's adjusted marginal cost pupil unit, is categorical, and is automatically computed and allocated to the districts.²³⁴ The funding must be spent on identification of gifted and talented students, provision of education programs for gifted and talented students, or staff development to prepare teachers to best meet the needs of gifted and talented students; however districts and charter schools are not required to identify or provide services for gifted students beyond the required procedures for academic acceleration.²³⁵

Minnesota districts may choose their own definitions of gifted, identification procedures, and programming level.²³⁶ Guidelines for each of these areas are provided by the Minnesota Department of Education, but are not binding.²³⁷ Minnesota's suggested definition of gifted is a student with

outstanding abilities, . . . capable of high performance when compared to others of similar age, experience and environment, . . . whose potential requires differentiated

and challenging educational programs and/or services beyond those provided in the general school program. Students [may] demonstrate achievement or potential ability in any one or more of the following areas: general intellectual, specific academic subjects, creativity, leadership and visual and performing arts.²³⁸

Sample identification protocols are provided in the 2007 revision of the Strategic Plan for Improving Minnesota's Gifted and Talented Education Services for Students, emphasizing multiple and objective criteria aligned with services.²³⁹ These protocols are suggestions only. The strategic plan also provides examples of program services that can be provided.²⁴⁰

3.5.7 New Jersey

New Jersey mandates identification of gifted students and that districts provide services for them.²⁴¹ The statewide definition of gifted and talented is broad, identifying only "exceptionally able students" who require modification of their educational program to achieve according to their capabilities, as demonstrated by high ability in one or more content areas as compared to local, chronological peers.²⁴² There are no state-level criteria, though districts are encouraged to set policies that identify 3-5% of students.²⁴³

All public schools must have a board-approved gifted and talented program serving K-12.²⁴⁴ Districts must develop appropriate curricular and instructional modifications for gifted students.²⁴⁵ State frameworks include strategies for providing services for gifted students.²⁴⁶ Districts must make provisions for ongoing K-12 identification process using multiple measures including achievement test scores, grades, student performance or products, intelligence testing, parent, student, or teacher recommendation.²⁴⁷

New Jersey suggests program options including acceleration strategies, enrichment strategies, and various grouping options.²⁴⁸ Suggestions for gifted student programming are included in the general curriculum frameworks for individual subject areas.²⁴⁹ Suggestions not found in other Global Challenge States' suggestions include exchange programs and cluster scheduling. New Jersey does not provide specific funding for gifted and talented programs.²⁵⁰

3.5.8 North Carolina

North Carolina requires all local educational agencies to identify and serve academically or intellectually gifted students.²⁵¹ Local education districts are required to use the state's definition, and to follow state guidelines adopted in July 2009.²⁵² Local districts are required to draft a plan, which must be approved by the local school board.²⁵³ This plan is then sent to the State School Board/Department of Public Instruction for comment (not approval).²⁵⁴ Plans must be revised every 3 years.²⁵⁵

Plans are required to provide clear, equitable and comprehensive student identification procedures that lead towards appropriate educational services.²⁵⁶ Local education agencies are required to recruit and retain highly qualified professionals and provide professional development.²⁵⁷ Local districts must also ensure ongoing and meaningful participation of stakeholders, and implement, monitor and evaluate a program for gifted students.²⁵⁸

Specific program components are left up to districts, but the new guidelines require an array of programs that is challenging, rigorous and relevant.²⁵⁹ Programming also must accommodate a range of academic, intellectual, social and emotional needs of gifted learners.²⁶⁰

Districts receive funding based on their enrollment up to 4%.²⁶¹ All districts receive these funds, regardless of the number of identified gifted students.²⁶² The statewide average of identified gifted students is 11%.²⁶³

3.5.9 Virginia

Virginia requires districts to identify and provide services for gifted students.²⁶⁴ Gifted students are defined as those students whose abilities and potential for accomplishment are so outstanding that they require special programs.²⁶⁵ Areas of accomplishment include:

- Intellectual aptitude(s)
- Specific academic aptitude
- Technical and practical arts aptitude
- Visual or performing arts aptitude.²⁶⁶

Local districts submit a local plan to the Department of Education for approval.²⁶⁷ The plan is required to include a statement of philosophy, program goals and objectives; identification procedures in at least one of the 4 areas of giftedness; parent notification procedures regarding program change or exit, student record maintenance; and procedures for identifying and evaluating student outcomes, matching service options to student needs (instructional approaches, settings, and staffing), selecting and training personnel, and evaluating the program.²⁶⁸ Each school district must also establish a local advisory committee.²⁶⁹ This plan must be resubmitted every 5 years.²⁷⁰ A separate report, mostly dealing with program enrollment and staff, is submitted to the Department each year.²⁷¹

Criteria for screening and eligibility are established by the school district, but must include at least four means of assessment from a list of eight, including assessment of student product, performance or portfolio, record of observation of in-class behavior, individual interviews, and individual or group aptitude tests.²⁷²

Programs strategies identified in the annual report include a magnet school, individual acceleration, Advanced Placement, honors or International Baccalaureate classes in specific areas, center-based programs, dual enrollment, in-class differentiation, independent study, mentorship, special seminars, Saturday or summer school, and talent pools.²⁷³

The state provides categorical funding based on a resource allocation model.²⁷⁴ This support is matched with local funds.²⁷⁵

Part 4: Judicial Review

Including programs for highly capable students as part of basic education in Washington is at first glance likely subject to two main lines of judicial review: individual claims and funding adequacy claims. Both of these lines of cases are affected by the status of education as a right.

4.1 Education as a Right

At the federal level, education is not a constitutionally guaranteed fundamental right.²⁷⁶ The Washington State Constitution establishes that it is the "paramount duty of the state to make ample provision for the education of all children residing within its borders."²⁷⁷ The Legislature is additionally constitutionally required to "provide for a general and uniform system of public schools."²⁷⁸ The Washington State Supreme Court has interpreted the "paramount duty" language to create a right for children residing within the state's borders and a corresponding duty of the Legislature to provide public K-12 education.²⁷⁹

At least eight states, including Washington, have declared education to be a fundamental right based on state constitutional protections: Kentucky, Montana, New Jersey, North Carolina, Washington, West Virginia, Wisconsin, and Wyoming.²⁸⁰ The strength of each state's protections varies depending on the actual language of the state constitution.²⁸¹

Montana, our nearest geographical neighbor of the states with a fundamental right to education, must provide "a basic system of free quality public elementary and secondary schools," and distribute funding in "an equitable manner."²⁸² New Jersey and North Carolina, Global Challenge States, require the state to "provide for the maintenance and support of a thorough and efficient system of free public schools..."²⁸³ and "a general and uniform system of free public schools . . . wherein equal opportunities shall be provided,"²⁸⁴ respectively.

No other state uses the "paramount duty" language, though many other states have a requirement that the state provide various levels of funding or support.²⁸⁵ Since Washington's mandate is unique, looking to other states to determine how Washington State courts may decide cases on highly capable programs as part of basic education may not provide much guidance.

4.2 Individual Claims

Much of the case law around gifted education centers around individual eligibility for gifted services.²⁸⁶ Gifted education law professor Perry Zirkel has identified 125 hearing/review officer and court decisions dealing with gifted education nationwide over forty years - a relatively small number compared to litigation in other areas of education.²⁸⁷ Courts have typically deferred to districts in decisions as to individual eligibility for gifted education, or in the choice of services provided.²⁸⁸

Neither education generally nor gifted education is a fundamental right at the federal level.²⁸⁹ Federal legislation also does not provide any entitlement to gifted students.²⁹⁰ As discussed above, state constitutions vary with respect to whether education is considered a fundamental or even

lesser right. State constitution and/or common law claims for educational malpractice or implied educational contract have typically not been successful on behalf of gifted students.²⁹¹

Gifted students have been most successful litigating state law claims.²⁹² Zirkel has grouped gifted education statutes into three categories: silent, weak, and strong.²⁹³ "Silent" statutes have no specific gifted education provisions, and challenges have come under general statutes (*e.g.* entrance to kindergarten).²⁹⁴ Courts in these states have been deferential to districts.²⁹⁵ "Weak" statutes are specific to gifted education, but are not mandatory, and/or do not require individualization.²⁹⁶ Courts interpreting these statutes have also tended to favor school districts.²⁹⁷ "Strong" statutes may require an individualized program, consider gifted education as identical or similar to special education under the Individuals with Disabilities Education Act ("IDEA"), and/or establish an impartial review process.²⁹⁸ Individual substantive or procedural rights exist in twelve states, though these may not translate into individualized education or rights to impartial review.²⁹⁹ Zirkel asserts the states with the "strongest" statutes are Alabama, Florida, Kansas, Louisiana, New Mexico, Pennsylvania, Tennessee, and West Virginia.³⁰⁰ Tennessee considers programs for gifted students to be identical to those for students with disabilities.³⁰¹ Pennsylvania requires individualized programming, procedural safeguards in identification, and impartial review hearings.³⁰² Even in states with "strong" statutes, decisions often favor districts if they have followed a state-mandated, equitable process.³⁰³ Individual claims have been most successful in challenging the level of individualization in states that require individualized programming.³⁰⁴

ESHB 2261 likely made Washington a somewhere between a "weak" and a "strong" state. Programs for highly capable students became part of basic education and therefore mandatory, however, the language of the statute specifically notes that access to a program is not an individual entitlement for any particular student. There is some indication that the Legislature considered HCP similar to programs for students with disabilities,³⁰⁵ however, the safety net section was vetoed, and there is no specific language acknowledging a similarity, if any. The explicit language indicating no individual entitlement also suggests HCP may be different from programs for students with special needs.

Individual claims on behalf of gifted students may be brought on a combination of state constitutional and statutory guarantees, since the state constitution has been interpreted as requiring the Legislature to define basic education, and to amply fund what it defines. Claims might be based on eligibility determinations, or on services provided once a student has been identified. The current rules require an education program plan for "each identified highly capable student" or "group of students with similar academic abilities . . . based on the results of the assessed academic need of that student or group of students."³⁰⁶

4.3 Funding Adequacy Claims as applied to Highly Capable Programs

Whereas some states have determined that adequacy of funding for elementary and secondary education is a political question that cannot be decided by the courts,³⁰⁷ Washington State allows cases challenging the adequacy of state support for basic education.³⁰⁸ Washington stands in the majority among states that have considered these questions, allowing judicial review of education funding and funding legislation.³⁰⁹

Once HCP becomes part of basic education, funding challenges specifically toward HCP allocations might be treated identically to general funding adequacy claims, or similarly to allocations to a specific program, *e.g.* special education or bilingual education. With regard to education funding generally and special education funding in particular, Washington precedent includes the Doran decisions.³¹⁰ The requirements for general funding adequacy may soon be further expanded by Washington State Supreme Court decisions,³¹¹ and a case currently being heard in King County Superior Court.³¹²

If HCP are considered fundamentally different from special education or are considered a unique aspect of basic education, there is less guidance in Washington jurisprudence and from cases nationwide as to how the courts may decide. Very few education funding cases nationwide have focused on programs for gifted or highly capable students. Those that mention gifted education may use it as one of several examples of disparity between districts.³¹³ A few cases may be relevant:

In *Leandro v. State of North Carolina*, the court upheld an allocation very similar to Washington's proposed system based on a percentage of enrollment.³¹⁴ North Carolina has found education to be a fundamental right and explicitly requires local districts contribute to education.³¹⁵ The allocation was upheld in part based on the local district contribution and the emphasis on providing a sound basic education to all students, which necessarily might require rational differences in funding between districts.³¹⁶

Abbot v. Burke, a New Jersey case, dealt with funding allocated to "special needs districts," mostly poor urban districts.³¹⁷ Though this case did not deal specifically with gifted education, it involved a funding allocation that did not have any demonstrable connection to the needs in the special needs districts, which the court had previously ordered be studied.³¹⁸ The court found the funding allocated bore "no demonstrable relationship to the real needs of the disadvantaged children attending school in the special needs districts. Those needs must be met to provide students in the deprived districts with the opportunity to achieve a thorough and efficient education."³¹⁹

Washington State is required to amply provide for a program of basic education through regular and dependable tax sources - *i.e.*, without relying on excess levies.³²⁰ Excess levies could be used to support "enrichment" programs. Prior to ESHB 2261 in 2009, programs for highly capable students in Washington were considered enrichment programs.³²¹ ESHB 2261 established highly capable student programs as part of basic education, effective September 1, 2011.³²² Therefore, in its new funding formula, the state will be required to amply fund highly capable programs as it does all other aspects of basic education.

As passed the Legislature, ESHB 2261 required "safety net" funding for HCPs. If a district identified more than 2.314% of the student population as highly capable, it could apply to the state for additional funding.³²³ This structure of allocation by percent and a safety net for districts whose population of eligible students was greater than the allocation was based on special education allocations. In the special education context, a per-student grant up to a certain percent of district population was held unconstitutional absent an ability for districts that show underfunding to access additional funding.³²⁴

Governor Gregoire vetoed the safety net section of the bill. Her veto message expressed concern that local school districts would be making the determination as to qualifications for highly capable programs and programming offered and forwarding these costs to the state without regard to other basic education funding needs.³²⁵ Her second concern was with the existence of a safety net itself.³²⁶ Her message indicated that since the section clearly stated that access to a highly capable program was not an individual entitlement, the safety net was unnecessary.³²⁷

How courts will interpret the responsibilities of the State towards highly capable programs in the future remains an open question.

Part 5: Conclusion

On September 1, 2011, access to accelerated learning and enhanced instruction will become part of basic education for highly capable students. In Washington State currently, programs for highly capable students are provided at a district's discretion, with access to state funding made available by submitting a program plan and application to the Office of the Superintendent of Public Instruction. The Legislature currently funds districts a set amount per student up to 2.314% of district enrollment. In 2006-2007, state funding of just over \$7 million supported 23,600 students in 222 school districts. These districts, representing three quarters of Washington's districts, supplemented state funds with over \$35 million in local support.

The majority of states require districts to identify highly capable students and to provide services for them. Almost all states leave specific identification criteria and programming decisions to local control, as long as districts meet the requirements of a general statewide definition and/or overall programming requirements such as parent notification, or differentiated instruction. Some states, including five of Washington's Global Challenge States, provide no state-level funding specifically for highly capable student programming. Most states provide some state-level funding and ask local districts to provide the balance.

Few courts have considered cases involving highly capable student programs or funding. As a part of basic education beginning in 2011, funding adequacy might be challenged in the same way as other basic education funding has been challenged. The legislature's declaration that access to highly capable program services is not an individual entitlement for any specific student may limit claims by individual students and parents disagreeing with local eligibility, placement, and programming decisions.

Appendix A: Highly Capable Program Education Plan

NOTE: This document is provided to districts by OSPI in order to aid preparation of education plans for highly capable students. Formatting changes only.

The purpose of this document is to aid local school districts in preparing Highly Capable Educational Program Plans in accordance with the Washington Administrative Code (WAC) 392-170-078 and 392-170-080.

WAC 392-170-078 – Program Services. Education program plans for each identified highly capable student or plans for a group of students with similar academic abilities shall be developed based on the results of the assessed academic need of that student or group of students. A variety of appropriate program services shall be made available. Once services are started, a continuum of services shall be provided and may include kindergarten through twelfth grade.

[Statutory Authority: RCW [28A.300.070](#), 06-18-105, § 392-170-078, filed 9/6/06, effective 10/7/06. Statutory Authority: Chapter [28A.185](#) RCW, 98-12-002 (Order 98-07), § 392-170-078, filed 5/20/98, effective 6/20/98.]

WAC 392-170-080 – Educational Program for Highly Capable Students. Each student identified as a highly capable student shall be provided educational opportunities which take into account such students' unique needs and capabilities. Such program shall recognize the limits of the resources provided by the state and the program options available to the district, including programs in adjoining districts and public institutions of higher education. Districts shall keep on file a description of the educational program provided for each student selected.

[Statutory Authority: Chapter [28A.185](#) RCW, 98-12-002 (Order 98-07), § 392-170-080, filed 5/20/98, effective 6/20/98. Statutory Authority: Chapter [28A.16](#) RCW, 84-14-037 (Order 84-20), § 392-170-080, filed 6/28/84.]

The outline suggests elements to include in the Highly Capable Educational Program Plan. The plan may be developed for an individual student or a group of students with similar strengths.

A plan shall be developed annually for an individual student or group of students with similar academic needs. At program onset each year, the plan shall be reviewed with the parent or legal guardian at which time parent or legal guardian signature shall be obtained indicating plan agreement. Throughout the year, the plan shall be updated with evidence of student success and parents shall be notified with documentation of student success. At the conclusion of the year, the plan shall be reviewed and signed by parent or guardian. At year's end, the plan shall be placed in the student's Highly Capable program file.

Confidential student data, such as assessment results and parental permission records, shall be kept in the Highly Capable Program file which may be housed at the building or central office.

[continues on following page]

SAMPLE OUTLINE

STUDENT INFORMATION																			
<ul style="list-style-type: none"> • Date • Student Name • Date of Birth • Grade Level 																			
PROGRAM SELECTION INFORMATION																			
IDENTIFICATION INFORMATION:																			
<ul style="list-style-type: none"> • Area(s) of strength 																			
STUDENT PROGRAM PLACEMENT INFORMATION																			
INDIVIDUAL PLACEMENT OPTIONS:																			
<ul style="list-style-type: none"> • Indicate option(s) selected for the student (can be a check list) • Record any changes to placement option 																			
INDIVIDUAL/GROUP PLAN																			
AREA(S) OF ASSESSED STRENGTH / ADVANCED CONTENT KNOWLEDGE AREA: Plan of action <ul style="list-style-type: none"> • Target concepts – <i>specific concept to be learned</i> • General strategies – <i>see attached list</i> • Pre-Assessment – <i>assessment used to gauge concept knowledge prior to instruction</i> • Plan – <i>actual steps taken in the learning/teaching process</i> • Results/Summary/Evaluation – <i>evidence of student success and outcomes</i> 																			
PLAN AGREEMENT																			
<ul style="list-style-type: none"> • Parent Signature and Date • Student Signature and Date • Teacher Signature and Date 																			
DOCUMENTATION OF STUDENT SUCCESS																			
<ul style="list-style-type: none"> • Record dates and methods used for sharing student progress. Example: <table border="1"> <tr> <th>DATE</th> <th>LETTER</th> <th>PROGRESS REPORT</th> <th>REPORT CARD</th> <th>OTHER (Specify)</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>					DATE	LETTER	PROGRESS REPORT	REPORT CARD	OTHER (Specify)										
DATE	LETTER	PROGRESS REPORT	REPORT CARD	OTHER (Specify)															
PLAN REVIEW AGREEMENT																			
<ul style="list-style-type: none"> • Parent Signature and Date • Student Signature and Date • Teacher Signature and Date 																			

GENERAL STRATEGIES

1. Cluster grouping (content and instructional level specific)
Highly capable students in mixed-ability classrooms are grouped or “clustered” to learn together in their area of strength for part of the school day. (Winebrenner and Devlin 2001)
2. Curriculum compacting
Streamlining the regular curriculum for students who are capable of mastering it at a faster pace. (Reise, et al. 1992)
3. Content enrichment
Enrichment activities expand on students' learning in ways that differ from the methods used during the school day. They often are interactive and project-focused. They enhance a student's education by bringing new concepts to light or by using old concepts in new ways. These activities are fun for the student, but they also impart knowledge. They allow the participants to apply knowledge and skills stressed in school to real-life experiences. (Learning Point 2006)
4. Problem-based learning
An instructional method that compels student to think critically, analytically, and cooperatively, individually or in groups, toward finding solutions to real-world problems or imaginary scenarios (based in truth) using appropriate learning resources. (Delisle and Lewis 2003)
5. Learning contract
“Agreements between students and the teacher regarding tasks or projects that a student will work on independently and with some freedom. Contracts often provide some degree of choice regarding specific tasks to be completed and the order in which they will be accomplished. This element of choice can help teachers address differences in students' interests and learning profiles. Effective contracts address key understandings and skills while focusing on criteria for quality work.” (Guy B. Phillips Middle School 2006)
6. Tiered assignments
Varied levels of activities to ensure that students explore ideas at a level that builds on prior knowledge and prompts continued intellectual growth. (Delisle and Lewis 2003)
7. Learning centers/Interest centers
“Classroom stations or collections of materials students can use to explore new areas or to reinforce earlier lessons. For gifted students, interest centers should offer greater depth, breadth, and sophistication of materials.” (Delisle and Lewis 2003)
8. Differentiated instruction/content
“Modify, adapt, or design new approaches to instruction in response to students' needs, interests, and learning preferences. Differentiated instruction typically involves modification in one or more of the following areas: content, process, and product.” (Heacox 2002)
9. Flexible grouping
“Grouping students based on interests and abilities on an assignment-by-assignment basis.”

(Delisle and Lewis 2003)

10. Flexible pacing

“Flexible pacing includes any program in which students are taught material that is appropriately challenging for their ability and allows them to move forward in the curriculum as they master content and skills. For able or gifted learners, flexible pacing generally means some form of acceleration, accomplished by moving the student up to advanced content or by moving advanced content down to the student. The rate of progress can be varied in either direction.” (Daniel and Cox 1988)

11. Flexible scheduling

Modifying students' regular schedules in order to connect them with instruction that is more appropriate to their assessed or demonstrated needs. (Madison Metropolitan School District 2006)

12. Content acceleration

The faster presentation of curriculum to more closely match the speed at which a gifted student learns. (Delisle and Lewis 2003)

13. Advanced grade level or subject placement

An HCP student or small group of students who have demonstrated that they are achieving at a higher rate than their age peers are placed into an appropriate grade level or into a content area at a different grade level. (Pauley and Johnstone 2006)

14. Independent study

A student or a small group of students do an in-depth study in an area of interest. (Pauley and Johnstone 2006)

15. Collaborative and/or cooperative arrangements

Programs designed to coordinate, combine and/or share resources, people and facilities to maximize access to and utilization of available resources for supporting students' learning. (Chapter 392-170 WAC 2006)

Appendix B: OSPI Program Options Categorization & Description

NOTE: This is an excerpt from OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, EDUCATING HIGHLY CAPABLE STUDENTS IN WASHINGTON STATE, SCHOOL YEAR 2006-2007: ANNUAL REPORT OF THE HIGHLY CAPABLE LEARNERS PROGRAM 25-28 (2008).

Descriptions of Program Options

Program models describe the setting or circumstances in which HCP services are delivered. Districts report according to 12 categories of program models, which are defined below. . . .

1. Self-Contained Classroom: Students are in a HCP classroom that offers accelerated instruction. Identified HCP students from a specific grade level or from a range of grades make up the class enrollment. Elementary students work with the same teacher for all content area instruction. Middle and high school students may be placed into “block scheduled courses.” Example: HCP students in seventh grade are placed into a reading/social studies and/or math/science block to receive appropriate level instruction.

2. Part-Time Grouping (Content Specific): Students are provided with time to meet together with their intellectual peers before, during, or after the regular school day. Instruction provides special experiences which enrich the regular school program in order to accommodate the special educational needs of HCP students. Example: Middle School HCP students meet with a math coach to prepare for the Math Olympiad contest. Students who excel in mathematics are coached by an expert in mathematics to further advance their math interests and abilities.

3. Advanced Subject Placement: An HCP student or small group of students who have demonstrated that they are achieving at a higher level than their age peers are placed into an appropriate grade level or into a content area at a different grade level. Example: A second grade student is reading at an eighth grade level. The school has a cluster group of fourth grade HCP students working with their reading specialist. The second grade student meets with this reading group four times a week to receive appropriate level instruction.

4. Advanced Grade Placement: An HCP student who has demonstrated that he or she is achieving at a higher level than age peers is placed into an appropriate grade level. Example: A first grade student is reading at the fourth grade level, is performing in mathematics at the third grade level, and is socially very mature. A school team, including parents, may decide that such a student would best be served by accelerating him/her to the second grade.

5. Independent Study: A student or a small group of students do an in-depth study in an area of interest. Example: A high school HCP student has a keen interest in marine biology. She has taken the two biology classes offered in her high school and has proposed to study orca whales as an independent study project for additional credit. She will work with the local university’s expert on marine mammals and will prepare a week-long course on orca whales. She will then teach the unit in a ninth grade high school biology class demonstrating her knowledge.

6. Regular Classroom with Differentiated Instruction: HCP students remain in their regular classroom after identification. Assessment data is shared with the classroom teachers to drive the

learning opportunities for the students. Curriculum and instructional strategies are differentiated to meet the academic needs of the students. Example: There are ten fifth grade HCP students that are placed in the regular fifth grade classrooms. The fifth grade teachers have received professional development in differentiation and will be able to work effectively with these students in the regular classroom setting.

7. Honors: HCP students are offered the opportunity to work in accelerated classes in specific content areas. Example: A high school HCP has adopted AP and/or IB courses in mathematics, literature and world languages. Students who excel in one or more of these areas participate in the AP/IB courses, take an exam, and may receive both high school and college credits.

8. Advanced Placement/International Baccalaureate: HCP secondary students are offered the opportunity to enroll in AP and/or IB designated courses in specific content areas. Courses designated as AP must be approved by the College Board, and courses designated as IB must be approved by the International Baccalaureate Organization. AP and IB courses are designed to offer college level instruction, curriculum and content. Each AP and IB course has a culminating exam which students may take to earn advanced college placement or college credit. Example: A high school HCP has adopted Advanced Placement (AP) and/or International Baccalaureate (IB) courses in mathematics, literature and world languages. Students who excel in one or more of these areas participate in the AP/IB courses, take an exam, and may receive both high school and college credits

9. Pre-Advanced Placement/International Baccalaureate: HCP students are served in classes with teachers who have received training in pre-AP/IB instructional strategies. Strategies emphasize critical thinking skills, increased content knowledge, and study skills necessary for college level work. Such courses may be designated as “advanced” or “honors.” For example, a seventh grade HC student may be registered in Advanced English where pre-AP instructional strategies are used by the teacher.

10. Cluster Grouping: HCP students are grouped or “clustered” together in a regular mixed-ability classroom for all or part of a school day. Cluster grouping of HCP students provide those students an opportunity to work with other students of similar strengths, abilities and/or interests. For example: Seven HCP students were identified in third grade. There are three third grade classrooms at the school. The school has arranged schedules so that one teacher has the seven identified HCP students in his classroom. This teacher has received professional development in cluster grouping and will be able to work effectively with these students.

11. Mentorships: HCP students are provided with the opportunity to work with an expert in an academic or job related area. They receive academic credit for their work. Example: A middle school HCP has arranged for a student who excels in mathematics to work with a local architect. The school counselor, architect, and student work together to design a plan in which the student will demonstrate his ability to apply his knowledge of mathematics while working on projects with the architect. The architect will evaluate the students work and will meet with the middle school math teacher to determine the student’s grade.

12. Other: This category is listed for districts to check for the many other types of activities they provide for their students. In some cases districts have checked this category because their students are participating in courses or competitions provided by Centrum, Destination Imagination or Future Problem Solving activities.

Appendix C: District Application for Highly Capable Program Funds

NOTE: This is a copy of a web form that districts complete to apply for Highly Capable Student Program funds. The end-of-year report requires similar information.

217 Highly Capable Students Program

Fiscal Year: 09-10

Milestone:

District:

Organization Code:

ESD:

Page 1

Highly Capable Program Assurances

Each Local Education Agency (LEA) plan shall provide assurance the LEA will ensure that:

1. The application and program plan are approved annually by the school board;
2. A written program description including, but not limited to, procedures for notification, nomination, assessment, selection, placement procedures, and program options is on file;
3. Parental permission is obtained in writing prior to conducting assessment(s) unique to the HC program identification process and providing special services and programs (WAC 392-170-047);
4. Parental notice includes a full explanation of the procedures for identification and program options, and provides an explanation of the appeal process (WAC 392-170-047);
5. The screening and/or identification process for determining student eligibility for highly capable program adheres to the use of:
 - a. Equitable accessibility for all nominated students,
 - b. Multiple criteria for determination of superior intellectual ability (WAC 392-170-040),
 - c. Nondiscrimination in the use of tests (WAC 392-170-060),
 - d. Nondiscrimination in the review of testing results (WAC 392-170-065);
6. The process and policies for selection of the most highly capable include procedures as defined in WAC 392-170-075;
7. Quality assurance measures are in place for coding students who have been assessed and identified as highly capable on the WASL;
8. The district program evaluation plan includes monitoring for the program components as defined in WAC 392-170-087;
9. The district will fulfill all responsibilities consistent with WAC 392-170;

10. The district will submit the annual application (217) and end of year report (250) by July 1, 2009.

(check this
box)



District officials have read and understand these assurances.

Name of Authorized Representative:



Position/Title of Authorized Representative:



Date: (example 6/5/09)



Highly Capable Program Coordinator

Name:

Title:

Location:

Email Address:

Phone Number:

Fax Number:

Highly Capable Parent Organization

Is there a parent organization in your area?:



Contact Name:

Organization:

Email Address:

Phone Number:

Alert! The application is due July 1, 2009. The application will not be reviewed until the 2008-09 End of Year Report is approved

Estimated Allocation

NOTE: The Estimated Allocation is for planning purposes only; funding will depend upon actual district FTE enrollment.

Projected district's total basic education FTE enrollment:

Estimated Allocation:

 \$

Students Projected to Serve by Grade Level

The total number of students to be served with the State HCP grant allocation **must be 2.314-3% of the district's FTE enrollment**. Additional students served with district, federal or other funds are not reported in this application.

2.314% of District's Total Basic Education FTE:

K	1	2	3	4	5	6	7	8	9	10	11	12	Total
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Annual Notification of HC Testing Activity (WAC 392-170-042)

Identify method used to circulate annual notification of HC testing for program identification to parents and students throughout the community: Enter date for each type of notification. (example 6/5/09)

District publications

School publications

Newspapers

District website

Other

Specify Other:

Student Nomination

With regard to the district's nomination process, identify the location where

Highly Capable Students

teachers, other staff, parents, students, members of the community, and other sources may submit a student referral/nomination. (WAC 392-170-045)

- ☐ District Office
- ☐ School Offices
- ☐ Classroom Teachers
- ☐ Highly Capable Program Coordinator
- ☐ Specialists
- ☐ Other

Specify Other:

Assessment Instruments (WAC 392-170-040; 055)

Multiple Criteria/assessments are required for determination of HC students (WAC 392-170-040; 055).

If "other" is selected, provide the name of the assessment instrument used.

Referral and/or nomination does not qualify as an assessment instrument.

Cognitive Ability:

- ☐ Cognitive Ability Test (COGAT)
 - ☐ Raven
 - ☐ WISC
- (Enter WISC Version)

- ☐ Otis-Lennon
- ☐ Other

Specify Other:

Specific Academic Achievement:

- ☐ State Assessment
- ☐ NWEA MAP
- ☐ ITBS
- ☐ ITED
- ☐ Other

Specify Other:**Exceptional Creativity (e.g., check list or test):**

- ☐ Structure of Intellect-Divergent Thinking Short Form (SOI)
- ☐ Structure of Intellect-Form L, (SOIL)
- ☐ Torrance Test of Creative Behaviors
- ☐ Renzulli Checklist
- ☐ Other

Specify Other:

Teacher/Parent input

Multidisciplinary Selection Committee Members (WAC 392-170-070)

- ☐ Classroom or Gifted Program Teacher
- ☐ Psychologist or Qualified Practitioner
- ☐ District Administrator
- ☐ Other

Specify Other:**Professional Development**

Indicate planned professional development activities. (Check all that apply)

- ☐ Identification Procedures
- ☐ Program Options
- ☐ Curriculum and Instruction
- ☐ Student Assessment
- ☐ Developing Highly Capable Educational Plans
- ☐ Program Evaluation
- ☐ Other

Specify Other:**Identification Process Evaluation Plan (RCW 28A.185; WAC 392-170-087)**

Indicate the data collected and processes reviewed to evaluate effectiveness of the identification process:

Highly Capable Students

NOTE: This is an ongoing evaluation plan.

DATA:

- ☐ Data for Nominated Students (age, gender, ethnicity, etc.)
- ☐ Data for Individuals Nominating Students (parents, teachers, community members, etc.)
- ☐ Data for Identified Students (age, gender, ethnicity, etc.)
- ☐ Data for Selected Students (age, gender, ethnicity, etc.)
- ☐ Other Data

Specify Other:

PROCESSES:

- ☐ Notification of Testing Process
- ☐ Nomination Procedures
- ☐ Screening Tools and Procedures
- ☐ Parental Permission
- ☐ Appeals Process
- ☐ Multiple Criteria for Determination
- ☐ Tests Used
- ☐ Assessment Process
- ☐ Selection Committee Representation
- ☐ Selection Process
- ☐ Non-discrimination in the use of Tests
- ☐ Non-discrimination in the review of Testing Results
- ☐ Other Process

Specify Other:

HCP Student Academic Achievement Evaluation (RCW 28A.185; WAC 392-170-087)

Indicate the data collected to evaluate and measure the academic achievement (growth and progress) of highly capable students.

- ☐ Teacher Observation
- ☐ Classroom Based Assessment
- ☐ District Assessment
- ☐ State Assessment
- ☐ Other

Specify Other:

Fiscal - Expenditure Evaluation (RCW 28A.185; WAC 392-170-087)

Indicate the individual(s) responsible for reviewing HCP expenditures.

- ☐ Superintendent
- ☐ District Administrator
- ☐ District Business Manager
- ☐ School Administrator
- ☐ HCP Teacher/Coordinator
- ☐ Other

Specify Other:

Page 3

State Funded HC Program Options - Continuum of Services (WAC 392-170-070)

State Grant Funded HC Program Only - Identify the program option(s) available to identified HC students by grade.

Option	K	1	2	3	4	5	6	7	8	9	10	11	12
Self-Contained Gifted Classroom	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Part-Time Grouping (Content Specific)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advanced Subject Placement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advanced Grade Placement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Independent Study	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Regular Classroom with Differentiated Instruction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Honors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advanced Placement (AP)/International Baccalaureate (IB)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pre-AP/IB	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cluster Grouping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mentorships	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Specify Other:

Written Program Option(s) Description

Name and describe the program option(s) listed above. Include curriculum, instruction, and classroom assessment practices that address the unique academic needs of highly capable students. (WAC 392-170-036)

Page 4

Annual School Board Approval of the HCP Application (WAC 392-170-025)

Enter Date of Board Approval:

Written Program Documentation Location

Identify location of Required Written Documentation for State Funded Highly Capable Program:

Written Documentation	District Files	School Files	HC Coordinator Office/Files	HC Teacher Files	Other (Specify Location)
Identification Process					
Nomination Procedures (WAC 392-170-045)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Assessment Process-including multiple criteria for determination and non-discrimination practices (WAC 392-170-040; 055; 060; 065)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Highly Capable Students

Screening of Nominees & Selection Process (WAC 392-170-050; 075)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Multidisciplinary Selection Committee (WAC 392-170-070)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Parent Permission					
Parent Permission to conduct assessments (WAC 392-170-047)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Parent Permission to place student in Program (WAC 392-170-047)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Parent Permission Notice including: Full Explanation of Identification Procedures, Program Options, and Appeals Process (WAC 392-170-047)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Program Services					
Program Options, Services and Educational Program for HC students (WAC 392-170-037; 078; 080)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
HC Student Educational Program Plans (WAC 392-170-078)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
Program Evaluation and Monitoring					
District Identification Evaluation Process (WAC 392-170-087)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>
HC Student Academic Achievement Evaluation Plan (WAC 392-170-087)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<div></div>

Highly Capable Students

Program Expenditures Evaluation Plan (WAC 392-170-087)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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Appendix D: Sample Checklist for Assessing Exceptional Creativity

NOTE: This checklist was provided by a district and is based on the Renzulli Hartman Scale's section on Creativity Characteristics.

**Please assess student characteristics in creativity as follows:
(Consider each item separately.)**

- 1---if you have seldom or never observed this characteristic
 - 2---if you have observed this characteristic occasionally
 - 3---if you have observed this characteristic to a considerable degree
 - 4---if you have observed this characteristic almost all the time.
- If the behavior has not been observed, leave the line blank.

CREATIVITY (On a scale of 1-4 as described above.)

- ☐ Is individualistic; isn't afraid to be different.
- ☐ Fantasizes, imagines, builds on ideas.
- ☐ Has a keen sense of humor.
- ☐ Predicts from present information.
- ☐ Is curious about many things.
- ☐ Can think of many ideas or solutions to problems and questions.
- ☐ Responds emotionally to stories, events, and needs of others.
- ☐ Creates stories, plays, written expression.
- ☐ Demonstrates artistic appreciation and understanding.
- ☐ Is sensitive to melody, rhythm, and other qualities showing music appreciation.
- ☐ Demonstrates unusual ability in the fine arts, such as, painting, drama, music.
- ☐ Shows interest in unusual careers.
- ☐ Improvises with commonplace materials.

- ☐ Average score (please add scores and divide by number of scores)

Comments on this student's motivation or task commitment:

Appendix E: Table of Profiled Districts' Highly Capable Programs

<i>School District</i>	<i>Size in FTE & Schools</i>	<i>Identification Procedures</i>	<i>State-Funded Programs (grades, type)</i>	<i>State-Funded HC Students (%)</i>	<i>Other HC Students (%)</i>	<i>State HCP \$ (% total)</i>	<i>Total \$ spent on HCP</i>	<i>Other non-HCP-funded Opportunities</i>
Bellevue School District	16,441 student FTEs	Students apply for testing.	Enrichment (2-5, pull-out)	380 (2.311%)	807 (4.908%)	\$156,000 (78%)	\$200,000	Middle-school Honors
	16 elementary 7 middle 6 high	CogAT (cognitive), ITBS (reading), Teacher/parent input assesses creativity	PRISM (2-8, gifted classroom) Gifted High School Program (9-12)					High School AP, IB
Evergreen School District	23,838 student FTEs	Students referred by anyone. Parents, student, teacher fill out packet.	EXCEL (2-5, pull-out with cluster group or magnet classroom)	552 (2.314%)	701 (2.941%)	\$237,552 (28%)	\$848,400	K-2 double acceleration
	21 elementary 6 middle 5 high	CogAT (cognitive); ITBS (academic); Renzulli (creativity)	EXCEL (6-8, magnet classroom)					Middle School pre-AP
								High School Honors & AP
Newport School District	1,104 student FTEs	Students referred by anyone.	Enrichment (3-6, pull-out)	26 (2.314%)	121 (10.960%)	\$10,431 (12%)	\$86,933	High School AP (11th & 12th)
	1 elementary 1 middle 1 high	CogAT (cognitive); WASL, ITBS and others (academic); Renzulli (creativity)	Advanced subject placement (7-8)					
Spokane School District	27,837 student FTEs	All students screened in 1st and 2nd grade.	Tessera (3-6, pull-out)	663 (2.382%)	663 (2.382%)	\$268,765 (35%)	\$767,900	High School Honors & AP
	35 elementary 6 middle 6 high	Raven, NET, CogAT (cognitive); WASL, ITBS (academic); Renzulli (creativity).	Odyssey (5-8, full-time magnet)					

Highly Capable Students

<i>School District</i>	<i>Size in FTE & Schools</i>	<i>Identification Procedures</i>	<i>State-Funded Programs (grades, type)</i>	<i>State-Funded HC Students (%)</i>	<i>Other HC Students (%)</i>	<i>State HCP \$ (% total)</i>	<i>Total \$ spent on HCP</i>	<i>Other non-HCP-funded Opportunities</i>
Wenatchee School District	7,193 student FTEs 7 elementary 3 middle 2 high	All students screened in 3rd grade, teachers may add to pool based on creativity checklist. Students selected into program by committee. CogAT (cognitive); NWEA MAP (academic); Renzulli (creativity)	Pull-out enrichment based on area of capability (reading, math, etc). 4th & 5th grade, .5-1.5 hrs/week.	166 (2.314%)	864 (12.062%)	\$68,248 (16%)	\$426,533	Double acceleration (K-12) Pre-AP (6-9) Advanced subject placement (6-12) Independent study, honors, AP (9-12)

Appendix F: Full Text of State Gifted & Talented Definitions

Source: Education Commission of the States, StateNotes: Gifted and Talented (2004), *available at* <http://www.ecs.org/clearinghouse/52/28/5228.htm>. Formatting changes only. Changes in state law after June 2004 will not be reflected.

Key		
Definition from State Legislature	25	
Definition from State Agency	21	
No State Definition	4	

State	Gifted and Talented Definition/Citation
Alabama	<p>"Intellectually gifted children and youth are those who perform at high levels in academic or creative fields when compared to others of their age, experience, or environment. These children and youth require services not ordinarily provided by the regular school program. Children and youth possessing these abilities can be found in all populations, across all economic strata, and in all areas of human endeavor."</p> <p>ALA. ADMIN. CODE r. 290-8-9-.14</p>
Alaska	<p>"'[G]ifted' means exhibiting outstanding intellect, ability, or creative talent;"</p> <p>ALASKA ADMIN. CODE §52.890</p>
Arizona	<p>"'Gifted child' means a child who is of lawful school age, who due to superior intellect or advanced learning ability, or both, is not afforded an opportunity for otherwise attainable progress and development in regular classroom instruction and who needs special instruction or special ancillary services, or both, to achieve at levels commensurate with the child's intellect and ability."</p> <p>ARIZ. REV. STAT. §15-761(8)</p>
Arkansas	<p>"Gifted and talented children and youth are those of high potential or ability whose learning characteristics and educational needs require qualitatively differentiated educational experiences and/or services. Possession of these talents and gifts, or the potential for their development, will be evidenced through an interaction of above average intellectual ability, task commitment and/or motivation, and creative ability."</p> <p>ARK. REG., GIFTED AND TALENTED: RULES AND REGULATIONS: PROGRAM APPROVAL STANDARDS.</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
California	<p>“Each district shall use one or more of these categories in identifying pupils as gifted and talented. In all categories, identification of a pupil’s extraordinary capability shall be in relation to the pupil’s chronological peers.</p> <ul style="list-style-type: none"> (a) Intellectual Ability: A pupil demonstrates extraordinary or potential for extraordinary intellectual development. (b) Creative Ability: A pupil characteristically: <ul style="list-style-type: none"> (1) Perceives unusual relationships among aspects of the pupil’s environment and among ideas; (2) Overcomes obstacles to thinking and doing; (3) Produces unique solutions to problems. (c) Specific Academic Ability: A pupil functions at highly advanced economic levels in particular subject areas. (d) Leadership Ability: A pupil displays the characteristic behaviors necessary for extraordinary leadership. (e) High Achievement: A pupil consistently produces advanced ideas and products and/or attains exceptionally high scores on achievement tests. (f) Visual and Performing Arts Talent: A pupil originates, performs, produces, or responds at extraordinarily high levels in the arts. (g) Any other category which meets the standards set forth in these regulations.” <p>CAL. CODE REGS. title 5, § 3822</p>
Colorado	<p>“‘Gifted and talented student’ means a secondary school student who possesses one or more of the following qualities or attributes:</p> <ul style="list-style-type: none"> (a) Is intellectually gifted; (b) Is outstanding in school achievement; (c) Is outstanding in particular areas of human endeavor, including the arts and humanities.” <p>COLO. REV. STAT. § 22-26-102</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Connecticut	<p>“‘Extraordinary learning ability’ and ‘outstanding creative talent’ shall be defined by regulation by the commissioner...”</p> <p>CONN. GEN. STAT. 10-76a</p> <p>“‘Extraordinary learning ability’ means a child identified by the planning and placement team as gifted and talented on the basis of either performance on relevant standardized measuring instruments, or demonstrated or potential achievement or intellectual creativity, or both. The term shall refer to the top five per cent of children so identified.”</p> <p>“‘Gifted and talented’ means a child identified by the planning and placement team as</p> <ol style="list-style-type: none"> (1) possessing demonstrated or potential abilities that give evidence of very superior intellectual, creative or specific academic capacity and (2) needing differentiated instruction or services beyond those being provided in the regular school program in order to realize their intellectual, creative or specific academic potential. <p>The term shall include children with extraordinary learning ability and children with outstanding talent in the creative arts as defined by these regulations.”</p> <p>“‘Outstanding talent in the creative arts’ means a child identified by the planning and placement team as gifted and talented on the basis of demonstrated or potential achievement in music, the visual arts or the performing arts. The term shall refer to the top five per cent of children so identified.”</p> <p>CONN. AGENCIES REGS. § 10-76a-2</p>
Delaware	<p>“‘Gifted or talented person’ means a person in the chronological age group 4 through 20 years inclusive, who by virtue of certain outstanding abilities is capable of high performance in an identified field. Such an individual, identified by professionally qualified persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to realize his or her full contribution to self and society. A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination.</p> <ol style="list-style-type: none"> a. General intellectual ability b. Specific academic aptitude c. Creative or productive thinking d. Leadership ability e. Visual and performing arts ability f. Psychomotor ability” <p>DEL. CODE ANN. tit. 14, § 3101</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Florida	<p>“(1) Gifted. One who has superior intellectual development and is capable of high performance.</p> <p>(2) Criteria for eligibility. A student is eligible for special instruction programs for the gifted if the student meets criteria under (2)(a) or (b) of this rule.</p> <p>(a) The student demonstrates: 1. Need for a special program. 2. A majority of characteristics of gifted students according to a standard scale or checklist, and 3. Superior intellectual development as measured by an intelligence quotient of two (2) standard deviations or more above the mean on an individually administered standardized test of intelligence.</p> <p>(b) The student is a member of an under-represented group and meets the criteria specific in an approved school district plan for increasing the participation of under-represented groups in programs for gifted students.</p> <ol style="list-style-type: none"> For the purpose of this rule, under-represented groups are defined as groups: a. Who are limited English proficient, or b. Who are from low socio-economic status family. The Department of Education is authorized to approve school district plans for increasing the participation of students from under-represented groups in special instructional programs for the gifted... <p>(3) Procedures for student evaluation. The minimum evaluations for determining eligibility are the following: (a) Need for a special instruction program, (b) Characteristics of the gifted, (c) Intellectual development, and (d) May include those evaluation procedures specified in an approved district plan to increase the participation of students from under-represented groups in programs for the gifted.”</p> <p>FLA. ADMIN. CODE ANN. r. 6A-6.03019</p>
Georgia	<p>“Gifted Student – a student who demonstrates a high degree of intellectual and/or creative ability(ies), exhibits an exceptionally high degree of motivation, and/or excels in specific academic fields, and who needs special instruction and/or special ancillary services to achieve at levels commensurate with his or her abilities.”</p> <p>GA. COMP. R. & REGS. r. 160-4-2-.38</p>
Hawaii	<p>“‘Gifted and talented children’ means students residing in the State who are of compulsory school age and are enrolled in, and attending, a public school, and whose superior performance or potential ability or talent may occur singly in or in combination with any of the following areas: intellectual, creative or specific academic abilities, leadership capabilities, psychomotor abilities, or abilities in the performing or visual arts.”</p> <p>HAW. REV. STAT. § 302A-101.</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Idaho	<p>“‘Gifted/talented children’ mean those students who are identified as possessing demonstrated or potential abilities that give evidence of high performing capabilities in intellectual, creative, specific academic or leadership areas, or the ability in the performing arts or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities.”</p> <p>IDAHO CODE § 33-2001</p>
Illinois	<p>“‘Gifted and Talented Children’ means those children who consistently excel or show the potential to be consistently superior in one or more of the following areas of human endeavor.”</p> <p>“General Intellectual Ability. The child possesses general intellectual ability, High Level thought processes (<i>e.g.</i>, the ability to make valid generalizations about events, people and things), or divergent thinking (<i>e.g.</i>, the ability to identify and consider multiple, valid solutions to a given problem) which is consistently superior to that of other children to the extent that he or she needs and can profit from specially planned educational services beyond those normally provided by the standard student program.”</p> <p>“Specific Aptitude/Talent. The child possesses a specific aptitude/talent in a specific academic area, creativity or the arts which is consistently superior to the aptitudes of other children to the extent that he or she needs and can profit from specifically planned educational services beyond those normally provided by the standard school program.”</p> <p>ILL. ADMIN. CODE tit. 23, § 227.10</p>
Indiana	<p>“As used in this chapter, ‘high ability student’ means a student who:</p> <ol style="list-style-type: none"> 1. performs at, or shows the potential for performing at, an outstanding level of accomplishment in at least one (1) domain when compared to other students of the same age, experience, or environment. 2. is characterized by exceptional gifts, talents, motivation, or interests.” <p>IND. CODE § 20-10.1-5.1-2</p> <p>“As used in this chapter, ‘domain’ includes the following areas of aptitude and talent:</p> <ol style="list-style-type: none"> 1. General intellectual. 2. General creative. 3. Specific academic. 4. Technical and practical arts. 5. Visual and performing arts. 6. Interpersonal.” <p>IND. CODE § 20-10.1-5.1-1</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Iowa	<p>“<i>Gifted and talented children</i>’ are those identified as possessing outstanding abilities who are capable of high performance. Gifted and talented children are children who require appropriate instruction and educational services commensurate with their abilities and needs beyond those provided by the regular school program.</p> <p>Gifted and talented children include those children with demonstrated achievement or potential ability, or both, in any of the following areas or in combination:</p> <ol style="list-style-type: none"> 1. General intellectual ability. 2. Creative thinking. 3. Leadership ability. 4. Visual or performing arts ability. 5. Specific ability aptitude.” <p>IOWA CODE § 257.44</p>
Kansas	<p>“‘Gifted’ means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience, and environment.”</p> <p>KAN. ADMIN. REGS. 91-40-1</p>
Kentucky	<p>“‘Gifted and talented student’ means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts.”</p> <p>KY. REV. STAT. ANN. § 157.200</p>
Louisiana	<p>“<i>Gifted children and youth</i> are students who demonstrate abilities that give evidence of high performance in academic and intellectual aptitude.”</p> <p>LA. ADMIN. CODE tit. 28, § 909. (Defined in the “Pupil Appraisal Handbook”)</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Maine	<p>“Gifted and Talented Children: ‘Gifted and talented children’ shall mean those children in grades k-12 who excel, or have the potential to excel, beyond their age peers, in the regular school program, to the extent that they need and can benefit from programs for the gifted and talented. Gifted and talented children shall receive specialized instruction through these programs if they have exceptional ability, aptitude, skill, or creativity in one or more of the following categories:</p> <ol style="list-style-type: none"> 1. General Intellectual Ability as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in all academic areas. 2. Specific Academic Aptitude as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in one of more academic area(s) 3. Artistic Ability as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in the literary, performing, and/or visual arts <p>NOTE: Children with exceptional General Intellectual Ability and/or Specific Academic Aptitude usually comprise five percent of the school population. Students with exceptional Artistic Ability usually comprise five percent of the school population. Children in the top two percent of the school population may be considered highly gifted.”</p> <p>CODE ME. R. § 5-071-104.02</p>
Maryland	<p>“In this subtitle, ‘gifted and talented student’ means an elementary or secondary student who is identified by professionally qualified individuals as:</p> <ol style="list-style-type: none"> (1) Having outstanding talent and performing, or showing the potential for performing, at remarkably high levels of accomplishment when compared to other students of a similar age, experience or environment; (2) Exhibiting high performance capability in intellectual, creative, or artistic areas; (3) Possessing an unusual capacity; or (4) Excelling in specific academic fields.” <p>MD. CODE ANN., EDUC. § 8-201</p>
Massachusetts	<p>There is no gifted definition from the legislature although recent bills have been introduced to add a definition. (For example see 2004 H.R. 4845).</p>
Michigan	<p>“The ‘gifted and/or academically talented’ means elementary and/or secondary school students who may be considered to be (1) intellectually gifted, (2) outstanding in school achievement, and/or (3) those who have outstanding abilities in particular areas of human endeavor, including the arts and humanities.”</p> <p>MICH. COMP. LAWS § 388.1092</p>
Minnesota	<p>There is no gifted definition nor mandate from the legislature that gifted students be provided special services.</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Mississippi	<p>“‘Gifted children’ shall mean children who are found to have an exceptionally high degree of intellect, and/or academic, creative or artistic ability.”</p> <p>MISS. CODE ANN. §37-23-175</p>
Missouri	<p>“‘Gifted children’, children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent the continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum.”</p> <p>MO. REV. STAT. § 162.675</p>
Montana	<p>“‘Gifted and talented children’ means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.”</p> <p>MONT. CODE ANN. § 20-7-901</p>
Nebraska	<p>“Learner with high ability means a student who gives evidence of high performance capability in such areas as intellectual, creative, or artistic capacity or in specific academic fields and who requires accelerated or differentiated curriculum programs in order to develop those capabilities fully.”</p> <p>NEB. REV. STAT. § 79-1107</p>
Nevada	<p>“‘Gifted and talented pupil’ means a person under the age of 18 years who demonstrates such outstanding academic skills or aptitudes that he cannot progress effectively in a regular school program and therefore needs special instruction or special services.”</p> <p>NEV. REV. STAT. § 388.440</p>
New Hampshire	There is not a definition of gifted children, nor is there any funding for gifted programs.
New Jersey	<p>“‘Gifted and talented students’ means those exceptionally able students who possess or demonstrate high levels of ability, in one or more content areas, when compared to their chronological peers in the local district and who require modification of their educational programs if they are to achieve in accordance with their capabilities.”</p> <p>N.J. ADMIN. CODE tit. 6A, § 8-1.3</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
New Mexico	<ol style="list-style-type: none"> 1. “‘Gifted child’ means a school-age person as defined in Sec. 22-1-2U NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted IEP team decides special education services are required to meet the child’s educational needs. 2. ‘Intellectual ability’ means performance in the very superior range as defined by the test author on a properly administered intelligence measure. 3. ‘Subject matter aptitude/achievement’ means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources... 4. ‘Creativity/divergent thinking’ means outstanding performance on a test of creativity/divergent thinking, or in creativity/divergent thinking as documented by information from other sources... 5. ‘Problem-solving/critical thinking’ means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources...” <p>N.M. ADMIN. CODE tit. 6, § 31.2.12</p>
New York	<p>“As used in this article, the term ‘gifted pupils’ shall mean those pupils who show evidence of high performance capability and exceptional potential in areas such as general intellectual ability, special academic aptitude and outstanding ability in visual and performing arts. Such definition shall include those pupils who require educational programs or services beyond those normally provided by the regular school program in order to realize their full potential.”</p> <p>N.Y. EDUC. LAW § 4452</p>
North Carolina	<p>“The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared to others of their age, experience and environment. Academically or intellectually gifted students exhibit high performance capability in intellectual areas, specific academic fields, or in both intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor.”</p> <p>N.C. GEN. STAT. § 115C-150.5</p>
North Dakota	<p>“‘Student who is gifted’ means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.”</p> <p>N.D. CENT. CODE § 15.1-32-01</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Ohio	<p>“‘Gifted’ means students who perform or show potential for performing at remarkably high levels of accomplishment when compared to others of their age, experience, or environment and who are identified under division (A), (B), (C), or (D) of section 3324.03 of the revised code.”</p> <p>OHIO REV. CODE ANN. § 3324.01</p>
Oklahoma	<p>“‘Gifted and talented children’ means those children identified at the preschool, elementary and secondary levels as having demonstrated potential abilities of high performance capability and needed differentiated or accelerated education or services. For the purpose of this definition, ‘demonstrated abilities of high performance capability’ means those identified students who score in the top three percent (3%) on any national standardized test of intellectual ability. Said definition may also include students who excel in one or more of the following areas:</p> <ol style="list-style-type: none"> creative thinking ability, leadership ability visual and performing arts ability, and specific academic ability. <p>A school district shall identify children in capability areas by means of multicriteria evaluation. Provided, with first and second grade level children, a local school district may utilize other evaluation mechanisms such as, but not limited to, teacher referrals in lieu of standardized testing measures;”</p> <p>OKLA. STAT. tit. 70, § 1210.301</p>
Oregon	<p>“‘Talented and gifted children’ means those children who require special educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society and who demonstrate outstanding ability or potential in one or more of the following areas:</p> <ol style="list-style-type: none"> General intellectual ability as commonly measured by measures of intelligence and aptitude. Unusual academic ability in one or more academic areas. Creative ability in using original or nontraditional methods of thinking and producing. Leadership ability in motivating the performance of others either in educational or noneducational settings. Ability in the visual or performing arts, such as dance, music or art.” <p>OR. REV. STAT. § 343.395</p>
Pennsylvania	<p>“Mentally gifted – Outstanding intellectual and creative ability the development of which requires specifically designed programs or support services, or both, not ordinarily provided in the regular education program.”</p> <p>22 PA. CODE § 16.1</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Rhode Island	<p>“Criteria for Identification</p> <ol style="list-style-type: none"> A. The local school district shall determine: <ol style="list-style-type: none"> 1. The categories of gifted/talented to be addressed by the program... 2. Grade, age, level, or special population to be served by the program... B. The local district shall specify the philosophy and general goal(s) of the program prior to the establishment of the selection criteria. C. The local district shall establish selection criteria in writing before students are screened and selected. D. The local district shall indicate a direct relationship between the criteria for selection and category of giftedness/talent to be addressed. E. The local district shall apply selection criteria to all students in the target group within the district and establish norms which have at the minimum a system-wide comparative group. F. The local school district shall use procedures, methods, techniques, and materials which are unbiased insofar as possible and which are appropriate to each age level. There shall be evidence that efforts were made to identify gifted and talented students from special populations, such as non-English speaking, disadvantaged, and handicapped.” <p>R.I. CODE R. 08 020 005</p>
South Carolina	<ol style="list-style-type: none"> 1. “Gifted and talented students are those who are identified in grades 1-12 as demonstrating high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that normally provided by the general school program in order to achieve their potential. 2. Gifted and talented abilities for these regulations include: <ol style="list-style-type: none"> a. Academic and Intellectual Ability: Students who have the academic and/or intellectual potential to function at a high level in one or more academic areas. b. Visual and Performing Arts: Students who have the artistic potential to function at a high performance level in one or more of the fine arts.” <p>43 S.C. CODE ANN. REGS. 220</p>
South Dakota	<p>South Dakota’s legislature has instructed the South Dakota Board of Education to promulgate rules related to the identification, program standards, and placement (S.D. CODIFIED LAWS § 13-33-16). However, the South Dakota State Board of Education has yet to promulgate those rules.</p>
Tennessee	<p>“‘Intellectually Gifted’ means a child whose intellectual abilities and potential for achievement are so outstanding that special provisions are required to meet the child’s educational needs.”</p> <p>TENN. COMP. R. & REGS. 0520-1-9-.01</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Texas	<p>“‘[G]ifted and talented student’ means a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who:</p> <ul style="list-style-type: none"> (1) exhibits high performance capability in an intellectual, creative, or artistic area; (2) possesses an unusual capacity for leadership; or (3) excels in a specific academic field.” <p>TEX. EDUC. CODE ANN. § 29.121</p>
Utah	<p>“‘Gifted and talented students’ means children and youth whose superior performance or potential for accomplishment requires a differentiated and challenging education program to meet their needs in any one or more of the following areas:</p> <ul style="list-style-type: none"> (1) general intellectual: students who demonstrate a high aptitude for abstract reasoning and conceptualization, who master skills and concepts quickly, and who are exceptionally alert and observant; (2) specific academic: students who evidence extraordinary learning ability in one or more specific disciplines; (3) visual and performing arts: students who are consistently superior in the development of a product or performance in any of the visual and performing arts; (4) leadership: students who emerge as leaders, and who demonstrate high ability to accomplish group goals by working with and through others; (5) creative, critical or productive thinking: students who are highly insightful, imaginative, and innovative, and who consistently assimilate and synthesize seemingly unrelated information to create new and novel solutions for conventional tasks.” <p>UTAH ADMIN. CODE § 277-771-1</p>
Vermont	<p>“‘Gifted and talented children’ means children identified by professionally qualified persons who, when compared to others of their age, experience and environment, exhibit capability of high performance in intellectual, creative or artistic areas, possess an unusual capacity for leadership or excel in specific academic fields.”</p> <p>VT. STAT. ANN. tit. 16, § 13</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
Virginia	<p>“Gifted students’ means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified persons through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance or capabilities, which may include leadership, in one or more of the following areas:</p> <ol style="list-style-type: none"> 1. Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts and creative expression in multiple general intellectual ability or in specific intellectual abilities. 2. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and the creative expression in those areas. 3. Technical and practical arts aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience. 4. Visual or performing arts aptitude. Students with specific aptitudes in selected or visual performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience.” <p>8 VA. ADMIN. CODE § 20-40-20</p>
Washington	<p>“As used in this chapter, the term highly capable student shall mean a student who has been assessed to have superior intellectual ability as demonstrated by one or more of the multiple criteria in WAC 392-170-040.</p> <p>These students exhibit high capability in intellectual and/or creative areas, possess an unusual leadership capacity, or excel in specific academic fields, thereby requiring services beyond the basic programs provided by schools. Outstanding abilities are present in students from all cultural groups, across all economic strata, and in all areas of human endeavor.”</p> <p>WASH. ADMIN. CODE § 392-170-035</p>

Highly Capable Students

State	Gifted and Talented Definition/Citation
West Virginia	<p>"A. Giftedness is exceptional intellectual abilities that are evidence of outstanding capability and require specially designed instruction and/or services beyond those normally provided by the regular school program.</p> <p>B. For gifted students, grades one (1) through eight (8), documentation that a student meets both of the following:</p> <ol style="list-style-type: none"> Intellectual Ability ... Achievement/Performance ... <p>C. For exceptional gifted, grades 9 through 12, documentation that a student meets the eligibility criteria for gifted and one or more of the following:</p> <ol style="list-style-type: none"> the eligibility criteria for one or more of the disabilities as defined in this section; and/or the definition for economically disadvantaged; and/or the definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or the definition for psychological adjustment disorder as documented by a comprehensive psychological evaluation." <p>W. VA. CODE ST. R. § 126-16-4.1.3</p>
Wisconsin	<p>"[G]ifted and talented pupils' means pupils enrolled in public schools who give evidence of high performance capability in intellectual, creative, artistic, leadership or specific academic areas and who need services or activities not ordinarily provided in a regular school program in order to fully develop such capabilities."</p> <p>WIS. STAT. § 118.35</p>
Wyoming	<p>"Gifted and talented students identified by professionals and other qualified individuals as having outstanding abilities, who are capable of high performance and whose abilities, talents and potential require qualitatively differentiated educational programs and services beyond those normally provided by the regular school program in order to realize their contribution to self and society."</p> <p>WYO. STAT. ANN. § 29-9-101</p>

Appendix G: Chart of Areas of Giftedness Included by State

This chart is based on an analysis of the definitions compiled in 2004 by the Education Commission of the States, and provided in Appendix F: Full Text of State Gifted & Talented Definitions above. This analysis is based on information gathered in 2004, and *does not reflect changes since June 2004, with the exception of those in Washington State.*

State	Cognitive Ability	Specific Academic Ability	Creative Thinking	Talent (Art/Theater)	Other
ALABAMA	Yes	No	Yes	No	
ALASKA	Yes	No	Yes	Yes	
ARIZONA	Yes	No	No	No	
ARKANSAS	Yes	No	Yes	No	
CALIFORNIA	Yes	Yes	Yes	Yes	leadership, high achievement, visual and performing arts
COLORADO	Yes	No	Yes	Yes	outstanding in particular areas of human endeavor, including arts and humanities
CONNECTICUT	Yes	Yes	Yes	Yes	
DELAWARE	Yes	Yes	Yes	Yes	leadership ability, visual and performing arts ability, psychomotor ability
FLORIDA	Yes	No	No	No	
GEORGIA	Yes	Yes	Yes	No	
HAWAII	Yes	Yes	No	Yes	leadership, psychomotor
IDAHO	Yes	Yes	Yes	Yes	leadership
ILLINOIS	Yes	Yes	Yes	Yes	(creative and the arts rolled into specific achievement)
INDIANA	Yes	Yes	Yes	Yes	technical and practical arts, interpersonal
IOWA	Yes	Yes	Yes	Yes	leadership ability
KANSAS	Yes	No	No	No	
KENTUCKY	Yes	Yes	Yes	Yes	psychosocial or leadership
LOUISIANA	Yes	No	No	No	
MAINE	Yes	Yes	No	Yes	
MARYLAND	Yes	Yes	No	No	able to perform at high levels of achievement
MASSACHUSETTS	No	No	No	No	
MICHIGAN	Yes	No	No	Yes	
MINNESOTA	No	No	No	No	
MISSISSIPPI	Yes	Yes	Yes	Yes	

Highly Capable Students

State	Cognitive Ability	Specific Academic Ability	Creative Thinking	Talent (Art/Theater)	Other
MISSOURI	No	No	No	No	precocious development of mental capacity and learning potential
MONTANA	No	No	No	No	demonstrated achievement or potential ability in variety of worthwhile human endeavors
NEBRASKA	Yes	No	Yes	Yes	
NEVADA	Yes	No	No	No	
NEW HAMPSHIRE	No	No	No	No	
NEW JERSEY	Yes	Yes	No	No	
NEW MEXICO	Yes	Yes	Yes	No	must have intellectual ability <i>and</i> specific academic or creative thinking. Problem solving/critical thinking
NEW YORK	Yes	Yes	No	Yes	
NORTH CAROLINA	Yes	Yes	No	No	
NORTH DAKOTA	No	No	No	No	capable of high performance
OHIO	No	No	No	No	
OKLAHOMA	Yes	Yes	Yes	No	leadership
OREGON	Yes	Yes	Yes	Yes	leadership ability
PENNSYLVANIA	Yes	No	Yes	No	
RHODE ISLAND	No	No	No	No	under control of local school district
SOUTH CAROLINA	Yes	No	No	Yes	
SOUTH DAKOTA	No	No	No	No	
TENNESSEE	Yes	No	No	No	
TEXAS	Yes	Yes	Yes	Yes	leadership
UTAH	Yes	Yes	Yes	Yes	leadership
VERMONT	Yes	Yes	Yes	Yes	unusual capacity for leadership
VIRGINIA	Yes	Yes	No	Yes	technical and practical arts
WASHINGTON	Yes	Yes	Yes	No	leadership mentioned, but not in the WAC that defines highly capable. Artistic added in 2009 ESHB 2261.

Highly Capable Students

State	Cognitive Ability	Specific Academic Ability	Creative Thinking	Talent (Art/Theater)	Other
WEST VIRGINIA	Yes	No	No	No	must have intellectual ability <i>and</i> achievement or performance
WISCONSIN	Yes	Yes	Yes	Yes	leadership
WYOMING	No	No	No	No	outstanding abilities, capable of high performance
TOTALS	40	25	24	23	

Appendix H: State Funding Policies for Gifted and Talented Students

Brief Definitions of Formula Types

Pupil Weight: allocation of funding based on a “funding weight” associated with a specific type of student, *e.g.* Texas’ system where a gifted student is weighted as 1.12 so that a district receives an additional 12% of basic aid funding allocation.

Flat Grant: allocation of funding based on fixed amount of funding per student. May be allocated per identified student, per identified student up to a certain percentage of the student body, or based on percentage of total student population.

Resource-Based: allocation based on resources rather than on funding, *e.g.* Virginia’s allocation of one gifted specialist per thousand pupils.

Discretionary Grant: application-based grants that can be based on per-student allocation, equal division of funding, or merit of application and/or proposed program.

On the basis of these definitions, Washington's current program is a hybrid of a discretionary grant program and a flat grant. Districts must apply, but are granted funding at a set rate per identified student up to 2.314% of the student population if their application meets requirements established by OSPI.

Washington (2009-2010 School Year)	Hybrid Discretionary/Flat Grant	\$401.08 per identified student up to 2.314% district FTE if apply for funds
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Source for definitions above and table below: Bruce D. Baker, Policy Brief on State Funding for Programs for the Gifted and Talented (Feb. 17, 2002) (draft). Formatting changes only. Policy information is from 1998-1999; funding data are from 1995-1996.

State	Formula Type ⁽¹⁾	Allocation Basis ⁽²⁾	GT Aid per Pupil '95 - '96	Gifted Aid per 5% Pupils	% of Core Expenditures per Pupil
Alaska	Pupil Weight	Eligible Pupil			
Arizona	Flat Grant	\$55 per 3% pupils or \$1000 (greater of two)	\$2.48	\$50	1.8%
Arkansas	Pupil Weight	Up to 5% ADA	\$0.44	\$9	0.3%
California	Flat Grant (varied by pupil count & fiscal capacity)	Eligible Pupil	\$7.95	\$159	4.1%

Highly Capable Students

State	Formula Type ⁽¹⁾	Allocation Basis ⁽²⁾	GT Aid per Pupil '95 - '96	Gifted Aid per 5% Pupils	% of Core Expenditures per Pupil
Colorado	Flat Grant	\$6,500 per district + Flat grant per 7% enrolled pupils + other special purpose grants			
District of Columbia	Pupil Weight				
Florida	Pupil Weight	Eligible pupil	\$22.59	\$452	16.0%
Georgia	Pupil Weight	1.64 or 64% per eligible pupil			
Hawaii	Resource Based		\$19.62	\$392	10.9%
Idaho	Flat Grant	Enrollment			
Illinois	Flat Grant/Resource	Either grant per 5% FTE pupils or \$5,000 per teacher	\$9.68	\$194	6.5%
Indiana	Discretionary Grant	Support for program planning, implementation or continuation	\$8.65	\$173	5.9%
Kansas	Resource Based	Number of staff			
Kentucky	Resource Based	Teachers & Coordinators			
Louisiana	Pupil Weight	.6 x eligible pupils			
Maine	Percentage Reimbursement	Approved Costs			
Maryland	Discretionary Grant ⁽³⁾	Program improvement plans	\$1.50	\$30	0.8%
Massachusetts	Discretionary Grant				
Michigan	Resource Based	Teachers in districts; Summer institutes; Comprehensive service centers	\$1.83	\$37	1.1%
Minnesota	Discretionary Grant ⁽⁴⁾				
Mississippi	Flat Grant (general fund add-on)				
Missouri	Discretionary Grant	Reimbursement of approved program costs			
Montana	Discretionary Grant	Support for teacher training, innovation & program continuation	\$1.16	\$23	0.6%
Nebraska	Discretionary Grants	Approved programs			
New Mexico	Flat Grant				
New York	Flat Grant	\$196 per 3% ADA			
Nevada	Discretionary Grant				
North Carolina	Flat Grant	For 4% ADM			

Highly Capable Students

State	Formula Type ⁽¹⁾	Allocation Basis ⁽²⁾	GT Aid per Pupil '95 – '96	Gifted Aid per 5% Pupils	% of Core Expenditures per Pupil
North Dakota	Discretionary Grant				
Ohio	Resource Based	Salary allowance and per pupil cost allowance (Classroom Unit)			
Oklahoma	Pupil Weight	.34 per eligible pupil			
Oregon	Discretionary Grant		\$0.10	\$2	0.0%
South Carolina	Flat Grant	per eligible pupil for a) academic, b) artistic and c) advanced placement programs	\$30.94	\$619	21.6%
South Dakota	Repealed		\$8.12	\$162	5.3%
Tennessee	Resource Based	Allowable costs of service option selected			
Texas	Pupil Weight	.12 per 5% ADA	\$16.08	\$322	9.1%
Utah	Flat Grant	Eligible Pupil	\$12.36	\$247	9.3%
Virginia	Resource Based	1 instructional positions per 1000 eligible students (cost share)	\$18.86	\$377	13.8%
Washington	Flat Grant	\$320 per 2% FTE	\$3.52	\$70	1.9%
West Virginia	Discretionary Grant				
Wyoming	Flat Grant		\$2.77	\$55	1.3%

(1) *Source:* Seilke et al. (2001) Public School Finance Programs of the United States and Canada. National Center for Education Statistics. www.nces.ed.gov/edfin.

(2) *Source:* Baker (2001a) [Living on the edges of school funding policies: The plight of at-risk, limited English proficient and gifted children. *Educational Policy* 15 (5) 699-723.]

(3) Phased out to be integrated into district general funds in future years.

(4) No longer available.

Appendix I: Summary of State Mandated Identification, Services and Funding

NOTE: This table compiles information from the Davidson Institute's online database of gifted programming, the Education Commission of the States StateNotes publication on state definitions, and Baker's 2001 article on gifted program funding. These data are from different years, and have not been updated even in places where information has since changed (*e.g.* California no longer has funding available).

State	Requires Identification	Requires Services	Mandatory State Definition	Funding Amount	Funding Type
ALABAMA	Yes	Yes	Yes	Partial	
ALASKA	Yes	Yes	Yes	Full	Pupil Weight
ARIZONA	Yes	Yes	Yes	Full	Flat Grant
ARKANSAS	Yes	Yes	Yes	Partial	Pupil Weight
CALIFORNIA	No	No	Yes	Available	Flat Grant
COLORADO	Yes	Yes	Yes	Partial	Flat Grant
CONNECTICUT	Yes	No	Yes	Available	
DELAWARE	No	No	Yes	None	n/a
DISTRICT OF COLUMBIA	No	No	Yes	None	Pupil Weight
FLORIDA	Yes	Yes	Yes	Partial	Pupil Weight
GEORGIA	Yes	Yes	Yes	Full	Pupil Weight
HAWAII	Yes	Yes	Yes	Partial	Resource-Based
IDAHO	Yes	Yes	Yes	Partial	Flat Grant
ILLINOIS	No	No	Yes	Available	Flat Grant/Resource-Based
INDIANA	No	Yes	Yes	Partial	Discretionary Grant
IOWA	Yes	Yes	Yes	Full	
KANSAS	Yes	Yes	Yes	Full	Resource-Based
KENTUCKY	Yes	Yes	Yes	Partial	Resource-Based
LOUISIANA	Yes	Yes	Yes	Full	Pupil Weight
MAINE	Yes	Yes	Yes	Partial	Percentage Reimbursement
MARYLAND	Yes	Yes	Yes	None	Discretionary Grant
MASSACHUSETTS	No	No	No	Available	Discretionary Grant
MICHIGAN	No	No	Yes	Available	Resource-Based
MINNESOTA	No	Yes	No	Partial	Discretionary Grant
MISSISSIPPI	Yes	Yes	Yes	Full	Flat Grant
MISSOURI	No	No	Yes	None	Discretionary Grant
MONTANA	Yes	Yes	Yes	Partial	Discretionary Grant

Highly Capable Students

State	Requires Identification	Requires Services	Mandatory State Definition	Funding Amount	Funding Type
NEBRASKA	Yes	Yes	Yes	Partial	Discretionary Grant
NEVADA	No	No	Yes	Available	Discretionary Grant
NEW HAMPSHIRE	No	No	No	None	n/a
NEW JERSEY	Yes	No	Yes	None	n/a
NEW MEXICO	Yes	Yes	Yes	Partial	Flat Grant
NEW YORK	No	No	Yes	None	Flat Grant
NORTH CAROLINA	Yes	No	Yes	Partial	Flat Grant
NORTH DAKOTA	No	Yes	Yes	Available	Discretionary Grant
OHIO	Yes	No	Yes	Partial	Resource-Based
OKLAHOMA	Yes	Yes	Yes	Full	Pupil Weight
OREGON	Yes	Yes	Yes	None	Discretionary Grant
PENNSYLVANIA	Yes	Yes	Yes	None	
RHODE ISLAND	Yes	No	Yes	None	
SOUTH CAROLINA	Yes	Yes	Yes	Partial	Flat Grant
SOUTH DAKOTA	No	No	No	None	
TENNESSEE	Yes	No	Yes	Partial	Resource-Based
TEXAS	Yes	Yes	Yes	Partial	Pupil Weight
UTAH	No	Yes	Yes	Partial	Flat Grant
VERMONT	No	No	Yes	None	
VIRGINIA	Yes	No	Yes	Partial	Resource-Based
WASHINGTON	No	No	Yes	Available	Flat Grant
WEST VIRGINIA	Yes	Yes	Yes	Partial	West Virginia
WISCONSIN	Yes	Yes	Yes	Partial	
WYOMING	Yes	Yes	Yes	Available	Flat Grant

Appendix J: Global Challenge States' Gifted Programs (Including Washington)

State & Definition	Standards	Program Options Suggested	Funding
CALIFORNIA <i>Gifted student:</i> demonstrated or potential abilities showing high performance capability in one or more of the following areas of ability: <ul style="list-style-type: none"> • Intellectual • Creative • Specific Academic • Leadership • High Achievement • Visual or Performing Arts <i>Highly Gifted:</i> IQ above 150 or "extraordinary aptitude"	<p>Programming is optional. Districts choose to apply for funding, if approved, must follow State Board of Education rules. 1, 2 or 3 year approval based on quality and comprehensiveness of program.</p> <p>Extensive requirements for program approval, spanning nomination, assessment, programming and student goals, administrative organization, professional development, community interface, and program assessment.</p> <p>Annual review assessed student progress and program compliance with rules, regulations, and provisions.</p>	<p>Special day classes Part-time groupings Cluster groupings</p> <p>Must be planned and organized as integrated, differentiated learning experiences within the regular school day.</p> <p>May be augmented or supplemented with: Independent study Acceleration Postsecondary education Enrichment.</p>	<p>Current funding is frozen (no new applicants), and is no longer categorical due to the budget shortfall. This provision will last 5 years, until 2013.</p> <p>\$53.7M in state funds in 2008-2009.</p> <p>District funding = (Total gifted funding) ÷ (attendance units for all participating districts)</p> <p>No school district with fewer than 1,500 in attendance units receives less than \$2,500 or the amount it received in 1998-99, whichever is greater.</p> <p>The approved indirect rate may not exceed 3%.</p>

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
COLORADO <i>Gifted and talented student:</i> a student who scores "advanced" on relevant performance assessment or 95th percentile on relevant standardized test in the following areas: <ul style="list-style-type: none"> • General or specific intellectual ability • Specific academic aptitude • Creative or productive thinking • Leadership • Visual arts, performing arts, musical or psychomotor abilities.ⁱ <i>Highly advanced gifted:</i> child, who demonstrates exceptional ability or potential compared to same-age gifted children.	<p>Administrative Units are required to provide services for gifted students. Administrative Units apply for funding annually by filing a program plan. If a district does not submit a program plan, funding will be withheld.</p> <p>Requirements for program approval include definition, communication plan, identification procedure, program description with evaluation and accountability measures, personnel identification, and budget.</p> <p>2002 Attorney General opinion declared gifted education to be like special education, and therefore that it must be administered through Colorado's Administrative Units.</p> <p>5.7% of Colorado students were identified as gifted in 2007-2008.</p>	<p>Program options not suggested by state. Common practices include Grouping:</p> <ul style="list-style-type: none"> • classroom with flexible or cross-grade; • General education with cluster grouping or resource room; • magnet classrooms, • school for gifted students, school within a school, • online courses, • online school for gifted students. <p>Differentiated instruction strategies:</p> <ul style="list-style-type: none"> • curriculum compacting, • subject- or grade-based acceleration, • content extension, • targeted critical and/or creative thinking skills development, • programs available for the arts. 	<p>State -\$7.4 million, 18.4% of program costs</p> <p>Local - 32.4 million, 81.3 % of program costs</p> <p>Federal - \$110k, 0.3% of program costs</p> <p>State funding withheld if administrative units do not submit a program plan.</p> <p>State funding may only be used for specific purposes.</p>
CONNECTICUT <i>Gifted and talented:</i> identified as having demonstrated or potential abilities that show very	<p>Identification is required, programming and services are permissive. Districts individually define giftedness.</p> <p>Included under CT special education law.</p>	<p>The board supports regular-classroom curricular and instructional modifications as part of a systematically integrated approach to meeting the needs of all students, and that "a range of placement settings</p>	<p>\$100K funding in 2006-2007.</p> <p>Funded on sliding scale reimbursement plan until 1992 (ending at 5%-35% reimbursement), then eliminated funding.</p>

ⁱ Colorado updated its gifted students definition in 2008. This text reflects this change.

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
<p>superior intellectual, creative, or specific academic capacity and needing differentiated services in order to reach potential.</p> <p><i>Extraordinary learning ability or Outstanding talent in the arts:</i> the top five per cent of children identified as gifted or talented, respectively</p>	<p>Parents must be notified of referral to evaluation (unless group procedures are used). Parents have right to challenge decisions, including right to request mediation or due process hearing to challenge refusal to evaluate, and to evaluation at public expense if they disagree with initial evaluation.</p> <p>No binding policy or guide regarding evaluation or programming, though suggestions available on state Board of Education website.</p>	<p>should be available for specialized instruction."</p>	<p>In 2002, received Javits grant to build curriculum models for all students, but that would particularly include activities for students with greater initial knowledge, and quick learning.</p>
<p>MARYLAND</p> <p><i>Gifted and talented:</i> identified by a professional as having outstanding talent and performing, or showing the potential for performing, at remarkably high levels of accomplishment when compared with other students of a similar age, experience or environment. Areas of giftedness:</p> <ul style="list-style-type: none"> • Intellectual, creative, or artistic areas; • Unusual leadership capacity; or • Specific academic fields. 	<p>School systems are required to state in their annual report what they are doing to provide services for gifted students. Beyond this requirement, it is entirely local control.</p> <p>"Criteria for Excellence" program guide for gifted student programs suggests:</p> <ul style="list-style-type: none"> • Identifying students who already achieve at high levels, and those who have the potential to • Broad-based screening of total school population, followed by in-depth assessment of students meeting initial criteria. • Identification procedures and criteria specific to different areas of giftedness. Identification is ongoing process, K-12. • Management structure which clearly delineates roles and responsibilities for gifted and talented programs and services at the system and school levels. 	<p>"Criteria for Excellence" program guide for gifted student programs suggests services:</p> <ul style="list-style-type: none"> • Meet advanced academic needs of gifted and talented students, and • Be differentiated. <p>Suggested learning environments include:</p> <ul style="list-style-type: none"> • Homogeneous grouping (content-area, or flexible), • Cluster grouping, • Cross-grade grouping, and • Independent study. 	<p>No state categorical funding provided for programs or services for gifted students.</p> <p>In 2002 education financing reform legislation, all state funding streams were consolidated into 4 categories. General funding may be used to support gifted students, but is not required to.</p>

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
MASSACHUSETTS No statewide definition of gifted.	Massachusetts does not require districts to identify gifted students, or to provide services for them.	When funding was available for student programs, preferences were for: <ul style="list-style-type: none"> • dual enrollment • expansion of AP/Honors classes and advanced middle-school coursework for low-income students • fee-reduction program for low income students taking AP exams 	No funding in FY 2010. Prior funding limited to discretionary state grants for professional development in recent years. Grants used to be available for student programming, but the amount of funding was so low that districts weren't applying for it. Restrictions on student eligibility were also very high. Districts <1000 students must partner with other districts to apply for funds.
MINNESOTA No statewide required definition.	Districts are not required to identify students or to provide services. No statewide requirements for definitions, identification of students, program components, or reporting. Guidelines are provided by the Minnesota Department of Education and a strategic plan for improving gifted education. Assessment and identification should include multiple and objective criteria, procedures and assessments that are valid and reliable, fair, and based on current theory and research. Sample identification protocols available.	No specific program model endorsed.	All districts and charter schools receive funding automatically. District funds = (\$12) X (marginal cost pupil units) This funding is considered part of the general education revenue for a district. This legislation was enacted in 2005. Funding must be spent on identification, provision of education programs, and provision of staff development.

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
NEW JERSEY <i>Gifted and talented:</i> exceptionally able students who possess or demonstrate high levels of ability, in one or more content areas, when compared to their chronological peers in the local district and who require modification of their educational programs if they are to achieve in accordance with their capabilities. No state-level criteria for giftedness; districts are encouraged to set policies that identify 3-5% of students.	Students must be compared with peers in local school district. All public schools must have a board-approved gifted and talented program serving K-12. Districts must develop appropriate curricular and instructional modifications for gifted students. State frameworks include strategies for providing services for gifted students. Districts must make provisions for ongoing K-12 identification process using multiple measures (achievement test scores, grades, student performance or products, intelligence testing, parent, student, or teacher recommendation).	Acceleration strategies: flexible pacing, content acceleration, early entrance to school, multiage classrooms, curriculum compacting, college coursework or early entrance to college, advanced placement. Enrichment: alternate learning activities/units, independent study, advanced thinking processes, guest speakers, mentors/internships, alternate resources (e.g. materials from higher grade level), exchange programs. Grouping options: self-contained classes, pullout programs, cluster grouping or scheduling, honors or enrichment classes, seminars, resource centers.	No specific funding provided by the state; however, districts are required to allocate funds to meet the requirements of the Administrative Code. Per-capita categorical allocation has been suggested, but not enacted, in part because of challenges with districts individually defining gifted and talented.
NORTH CAROLINA <i>Academically or intellectually gifted:</i> students who perform or show the potential to perform at substantially high levels compared to others of their age, experience, or environment. Exhibit high performance capability in: <ul style="list-style-type: none"> • intellectual areas and/or • specific academic fields 	State standards adopted July 2009. Local districts draft plan, approved by local school board. Send to the State School Board/Department of Public Instruction for comment (not approval). Plans must be revised every 3 years. Student ID procedures are clear, equitable, and comprehensive, and lead towards appropriate educational services. Local Education Agencies are required to: recruit and retain highly qualified professionals and provide professional development; ensure	No suggestions for specific program components. Array of programs is required by the new guidelines, as is challenging, rigorous and relevant curriculum instruction K-12 that accommodates a range of academic, intellectual, social and emotional needs of gifted learners. Technical assistance is available.	The General Assembly funds all districts for gifted programming. Districts receive funds based on 4% of average daily membership at \$1,163.07 per pupil. All districts receive these funds regardless of the number of identified gifted students. These funds are allocated as part of the general student allocation from Department of Public Instruction. Even though the state funds 4% of

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
WASHINGTON <i>Highly capable:</i> student assessed to have superior intellectual ability as demonstrated by one or more of: <ul style="list-style-type: none"> • cognitive ability • specific academic achievement • exceptional creativity 	ongoing and meaningful participation of stakeholders; implement, monitor and evaluate program. Districts apply to the Office of the Superintendent of Public Instruction for funding, submitting a plan for identification, programming, and evaluation of programming to the Office.	Options suggested include: <ul style="list-style-type: none"> • Accelerated learning opportunities • Grouping arrangements that provide intellectual an interest-group peer interactions • Cooperative agreements between K-12 and higher education • Programs designed to coordinate, combine or share resources within a district • Mentorship and career exploration opportunities 	student population, the statewide average of identified students is 11.06%. The state supplies \$401 per eligible student up to 2.314% of student enrollment. Districts currently supplement state funds. In 2006-2007, the state provided \$7 million in funds, and districts supplemented with \$35.2 million.
VIRGINIA <i>Gifted students:</i> K-12 students whose abilities and potential for accomplishment are so outstanding that they require special programs. Areas of accomplishment include: <ul style="list-style-type: none"> • Intellectual aptitude(s) • Specific academic aptitude • Technical and practical arts aptitude • Visual or performing arts aptitude. 	Each school division must submit local plan to Department of Education for approval. Resubmitted every 5 years, with annual reports submitted yearly. Student eligibility based on multiple criteria for screening/eligibility established by school division, and must include at least 4 of the following: assessment of appropriate student products, performance, portfolio; record of observation of in-class behavior; appropriate rating scales, checklists, or questionnaires; individual interview; individual or group aptitude tests; individual or group achievement tests; record of previous accomplishments; additional valid and reliable measures or procedures. Certain assessments may be required depending on the type of program the district has.	Categories identified in annual report survey: <ul style="list-style-type: none"> • Governor's School, • Individual acceleration, • Advanced/honors classes in specific area, • Advanced Placement/Cambridge, • Center-based program, • Dual enrollment, • In-class differentiation by regular classroom teacher (incl. cluster grouping, heterogeneous, and homogeneous grouping), • Independent study, • International Baccalaureate, • Mentorship, • Resource teacher (including pull-out), 	State categorical funding + local match; additional funding for Governor's Schools. In 2005-2006, \$26m state funds, \$20.7m local match, \$7.7m Governor's Schools.

Highly Capable Students

State & Definition	Standards	Program Options Suggested	Funding
	Local plan must include: statement of philosophy, program goals and objectives; identification procedures in at least one of the 4 areas of giftedness; parent notification procedures regarding change or exit, student record maintenance; procedures for identifying and evaluating student outcomes, matching service options to student needs (instructional approaches, settings, and staffing), selection and training of personnel, and evaluating the program. Each district must establish local advisory committee.	<ul style="list-style-type: none">• Special seminars,• Saturday or summer school,• Talent pool	

Endnotes

¹ ESHB 2261 was codified as Laws of 2009, ch. 548. Laws of 2009, ch. 548 § 708.

² *Id.*

³ *Id.*

⁴ Governor's Veto Message, May 19, 2009, ESHB 2261 [Laws of 2009, ch. 548].

⁵ Laws of 2009, ch. 548 § 804.

⁶ WAC 392-170-015 ("The offering of a program by a school district to serve highly capable students with categorical state funds is optional."). *See also* RCW 28A.185.030 (local authority to establish and operate programs for highly capable students), *amended by* Laws of 2009, ch. 380 (enacting the Interstate Compact on Educational Opportunity for Military Children).

⁷ *See* WAC 392-170-020 (establishing a district application for districts seeking an allocation of state funds to support highly capable programs).

⁸ OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, EDUCATING HIGHLY CAPABLE STUDENTS IN WASHINGTON STATE, SCHOOL YEAR 2006-2007: ANNUAL REPORT OF THE HIGHLY CAPABLE LEARNERS PROGRAM 1 (2008) [hereinafter OSPI, ANNUAL REPORT].

⁹ *See* OSPI, ANNUAL REPORT 17.

¹⁰ WAC 392-170-015.

¹¹ WAC 392-170-035.

¹² WAC 392-170-040.

¹³ WAC 392-170-037.

¹⁴ WAC 392-170-090 (requiring districts to submit a report to OSPI at the close of the fiscal year); RCW 28A.185.050 (requiring the Office of the Superintendent of Public Instruction to submit a report on the Highly Capable Program to the Education Committees of the House of Representatives and the Senate every five years).

¹⁵ WAC 392-170-035 (both emphases added).

¹⁶ WAC 392-170-040.

¹⁷ All definitions from *Id.*

¹⁸ RCW 28A.185.020, *as amended by* Laws of 2009 ch. 548 § 708, effective Sept. 1, 2011.

¹⁹ WAC 392-170-035.

²⁰ WAC 392-170-036 (definition of unique needs, line break formatting removed).

²¹ WAC 392-170-045 (nomination process); WAC 392-170-055 (assessment process); WAC 392-170-075 (selection process).

²² WAC 392-170-050.

²³ WAC 394-170-045.

²⁴ WAC 392-170-047.

²⁵ WAC 392-170-055.

²⁶ *Id.*

²⁷ *See* OSPI, ANNUAL REPORT 21.

²⁸ WAC 392-170-055.

²⁹ WAC 392-170-070; WAC 392-170-075.

³⁰ WAC 392-170-070.

³¹ WAC 392-170-075.

³² WAC 392-170-078; WAC 392-170-080.

³³ *See, e.g.,* WAC 392-170-037 (describing learning opportunities that have been shown to be especially effective with highly capable students); Office of the Superintendent of Public Instruction Application for Highly Capable Funds, Fiscal Year 2009-2010 (requiring districts to check which of several program model options they are providing); Office of the Superintendent of Public Instruction, Highly Capable Program General Information - Program Development, <http://www.k12.wa.us/HighlyCapable/ProgDevEval.aspx> (providing several reports addressing program development, some for special situations such as rural schools) (last visited Sept. 22, 2009).

³⁴ *See* OSPI, ANNUAL REPORT 25.

³⁵ Interview with Kritstina Johnstone, Program Supervisor, Highly Capable Program, Superintendent of Public Instruction; and Gayle Pauley, Director, Title I/Learning Assistance Program and Title V - Special Programs, Superintendent of Public Instruction, in Olympia, Wash. (Aug. 10, 2009) [hereinafter Interview with OSPI (Aug. 10, 2009)].

³⁶ WAC 392-170-037.

³⁷ Office of the Superintendent of Public Instruction Application for Highly Capable Funds, Fiscal Year 2009-2010; Office of the Superintendent of Public Instruction Highly Capable End-of-Year Report Fiscal Year 2009-2010.

³⁸ RCW 28A.185.020, *as amended by* Laws of 2009 ch. 548 § 708, effective Sept. 1, 2011.

³⁹ WAC 392-170-078.

⁴⁰ Interview with OSPI (Aug. 10, 2009).

⁴¹ *Id.*

⁴² Laws of 2009 ch. 564 § 511.

⁴³ *Id.*

⁴⁴ WAC 392-170-020.

⁴⁵ Laws of 2009 ch. 564 § 511.

⁴⁶ Data through fiscal year 2007 from OSPI, ANNUAL REPORT. Data for fiscal years 2008-2011 from the biennial budgets as passed by the Legislature from FY 2008-2011, Laws of 2007 ch. 522 § 511 and Laws of 2009 ch. 564 § 511.

⁴⁷ Data from capital budgets as passed Legislature, 2001-2009. Laws of 2001 2nd Ex. Sess. ch. 7 § 512; Laws of 2003 ch. 25 § 511; Laws of 2005 ch. 518 § 511; Laws of 2007 ch. 522 § 511 and Laws of 2009 ch. 564 § 511.

⁴⁸ WAC 392-170-090.

⁴⁹ *See* OSPI, ANNUAL REPORT 10-12.

⁵⁰ *See, e.g.,* Bellevue School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

⁵¹ *See* OSPI, ANNUAL REPORT 1.

⁵² Based on comparison of the number of funded programs in each of the annual reports on Highly Capable Programs from 2002-2007.

⁵³ OSPI, ANNUAL REPORT 9.

⁵⁴ OSPI, ANNUAL REPORT 12.

⁵⁵ *Id.*

⁵⁶ *Id.* at 1.

⁵⁷ *See id.*

⁵⁸ *Id.* at 10.

⁵⁹ *E.g.,* Telephone interview with Kari DeMarco, Enrichment Supervisor, Wenatchee Public Schools (Aug. 25, 2009) (describing opportunities for highly capable-identified students in high school in the Wenatchee School District).

⁶⁰ Chart created from data in OSPI, ANNUAL REPORT 10.

⁶¹ OSPI, ANNUAL REPORT 21.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 25.

⁶⁵ Adapted from *id.* at 29.

⁶⁶ Laws of 2009 ch. 564 § 511.

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ Interview with OSPI (Aug. 10, 2009).

⁷¹ Destination Imagination website, <http://www.idodi.org> (last visited Sept. 22, 2009).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Washington Imagination Network website, <http://www.wa-di.org/> (last visited Sept. 22, 2009).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Interview with OSPI (Aug. 10, 2009).

⁸¹ Future Problem Solving Program International, Inc. website, <http://www.fpspi.org/> (last visited Sept. 22, 2009).

⁸² *Id.*

⁸³ Interview with OSPI (Aug. 10, 2009).

⁸⁴ Centrum Young Artists Project, <http://www.centrum.org/youth/educators.html>, (last visited Sept. 22, 2009).

⁸⁵ Interview with OSPI (Aug. 10, 2009).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Centrum Young Artists Project, <http://www.centrum.org/youth/educators.html>, (last visited Sept. 22, 2009).

⁸⁹ *Id.*

⁹⁰ Profiled districts were suggested by the Office of the Superintendent of Public Instruction, in response to a request for district suggestions spanning Western and Eastern Washington, urban and rural districts, and districts whose programs were reasonably representative of programming around the state.

⁹¹ Unless otherwise indicated, all information in this section is gathered from the Bellevue School District website, www.bsd405.org (last visited Sept. 22, 2009).

⁹² Bellevue School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

⁹³ *Id.*

⁹⁴ Telephone interview with Carolyn Seit, Gifted Education Program Director, Bellevue Public School District (Aug. 25, 2009).

⁹⁵ Bellevue School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

⁹⁶ Telephone interview with Carolyn Seit, Gifted Education Program Director, Bellevue Public School District (Aug. 25, 2009).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Bellevue School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹⁰⁰ Telephone interview with Carolyn Seit, Gifted Education Program Director, Bellevue Public School District (Aug. 25, 2009).

¹⁰¹ Bellevue School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹⁰² Unless otherwise indicated, all information is gathered from the Evergreen School District website <http://www.egreen.wednet.edu>, (last visited Aug. 22, 2009).

¹⁰³ Evergreen School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Unless otherwise indicated, all information in this section is gathered from the Newport School District website, <http://newport.wa.schoolwebpages.com/education/district/district.php?sectiondetailid=1&> (last visited Sept. 22, 2009).

¹¹³ Newport School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Unless otherwise indicated, all information in this section is gathered from the Spokane School District website, www.spokaneschools.org (last visited Sept. 22, 2009).

¹¹⁷ Spokane School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Unless otherwise indicated, all information in this section is from the Wenatchee School District website, <http://home.wsd.wednet.edu/> (last visited Sept. 22, 2009).

¹²¹ Wenatchee School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹²² *Id.*

¹²³ Telephone interview with Kari DeMarco, Enrichment Supervisor, Wenatchee Public Schools (Aug. 25, 2009).

¹²⁴ *Id.*

¹²⁵ Wenatchee School District Highly Capable End of Year Report, Fiscal Year 2009-2010.

¹²⁶ Telephone interview with Kari DeMarco, Enrichment Supervisor, Wenatchee Public Schools (Aug. 25, 2009).

¹²⁷ *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 753 n.2 (3rd Cir. 1995) ("The IDEA does not include the concept of "mentally gifted" within its definition of "children with disabilities.")

¹²⁸ *E.g.*, KY. REV. STAT. 157-200(1) ("Exceptional children and youth" means persons under twenty-one (21) years of age who differ in one (1) or more respects from same-age peers in physical, mental, learning, emotional, or social characteristics and abilities to such a degree that they need special educational programs or services for them to benefit from the regular or usual facilities or educational programs of the public schools in the districts in which they reside. . . . Categories of exceptionalities include[] . . . gifted and talented student.")

¹²⁹ Jacob K. Javits Gifted and Talented Students Education Act of 2001, 20 U.S.C. § 7253, (2001).

¹³⁰ Elementary and Secondary Education Act, Pub. L. No. 103-382 (1994).

¹³¹ See Davidson Institute for Talent Development, Gifted Education Policies by State, <http://www.davidsongifted.org/db/StatePolicy.aspx> (last visited Sept. 22, 2009) [hereinafter Davidson Institute Database].

¹³² National Center for Education Statistics, Table 53. Number of gifted and talented students in public elementary and secondary schools, by sex, race/ethnicity, and state: 2004 and 2006 (2008), *available at* <http://nces.ed.gov/>.

¹³³ OSPI, ANNUAL REPORT 1.

¹³⁴ National Association for Gifted Children, FAQs. <http://www.nagc.org/index2.aspx?id=548> (last visited Sept. 22, 2009).

¹³⁵ Education Commission of the States, StateNotes: Gifted and Talented (2004), *available at* <http://www.ecs.org/clearinghouse/52/28/5228.htm> [hereinafter ECS StateNotes].

¹³⁶ Summary table based on staff analysis of the definitions *id.*, and how other states' definitions would compare with Washington's.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Interview with OSPI (Aug. 10, 2009).

¹⁴⁰ Chart created from data in National Center for Education Statistics, Table 54. Percentage of gifted and talented students in public elementary and secondary schools, by sex, race/ethnicity, and state: 2004 and 2006 (2008), *available at* <http://nces.ed.gov/>.

¹⁴¹ Davidson Institute Database.

¹⁴² Davidson Institute Database.

¹⁴³ Telephone interview with Dr. Jeanne Paynter, Specialist, Gifted and Talented Education, Maryland State Department of Education (Sept. 14, 2009).

¹⁴⁴ 1 COLO. CODE REGS. 301-8 2220-R-12.00 (Rules for the Administration of the Exceptional Children's Education Act).

¹⁴⁵ *E.g.* New Hampshire does not have any mention of gifted student programs. Perry Zirkel, *State Laws for Gifted Education: An Overview of the Legislation and Regulations* 27 ROEPER REV. 228, 229 (2005).

¹⁴⁶ *E.g.*, South Dakota does not allow early entrance to kindergarten. National Association of Gifted Children, Gifted by State Database, <http://www.nagc.org/index.aspx?id=680> (last visited Sept. 22, 2009) [hereinafter NAGC Database].

¹⁴⁷ Davidson Institute Database.

¹⁴⁸ *Id.*

¹⁴⁹ Email from Mark Dlugosz, Web Communications Specialist, Davidson Institute for Talent Development (Sept. 21, 2009).

¹⁵⁰ *Id.* Dlugosz shared a comment from an parent in Alaska who noted that though Alaska shows up as a gifted-friendly state, in reality gifted education is left up to local control, and what districts send to the state board may not be enforced or currently in effect.

¹⁵¹ Based on map data from Davidson Institute Database, View Your State's Policy on Gifted and Talented Education. <http://www.davidsongifted.org/db/StatePolicy.aspx>. Note that for certain states the coloring of the map does not match the more detailed information on the individual state's page (*e.g.* Indiana is blue on the map, indicating services are mandated and supported with partial funding. In the detailed state information page, Indiana does not require identification or services for gifted students, though it does provide funding. http://www.davidsongifted.org/db/state_policy_indiana_10016.aspx).

¹⁵² Bruce D. Baker, Policy Brief on State Funding for Programs for the Gifted and Talented (Feb. 17, 2002) (draft) [hereinafter Baker, Policy Brief on State Funding]. Baker mentions five formulas, but one, percentage reimbursement, was only used by the State of Maine.

¹⁵³ *Id.* at 2.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 3.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 4.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 5.

¹⁶⁶ *Id.* at 6.

¹⁶⁷ Interview with OSPI (Aug. 10, 2009).

¹⁶⁸ Laws of 2009 ch. 564 § 511.

¹⁶⁹ Summary table based on Baker, Policy Brief on State Funding.

¹⁷⁰ Washington Learns, About, <http://www.washingtonlearns.wa.gov/> (last visited Sept. 22, 2009).

¹⁷¹ WASHINGTON LEARNS: WORLD-CLASS, LEARNER-FOCUSED, SEAMLESS EDUCATION: FINAL REPORT 16 (2006).

¹⁷² Presentation on Washington Learns, Global Challenge States at Public Hearings, Sept. 12-21, 2006, *available at* <http://www.washingtonlearns.wa.gov/materials/GlobalChallengeStates.pdf>.

¹⁷³ WASHINGTON LEARNS: WORLD-CLASS, LEARNER-FOCUSED, SEAMLESS EDUCATION: FINAL REPORT 16 (2006).

¹⁷⁴ Presentation on Washington Learns, Global Challenge States at Public Hearings, Sept. 12-21, 2006, *available at* <http://www.washingtonlearns.wa.gov/materials/GlobalChallengeStates.pdf>.

¹⁷⁵ This table presents a summary of information presented in each state's individual summary. Full citations available in those sections.

¹⁷⁶ *See* CAL. EDUC. CODE § 52206.

¹⁷⁷ *See* California Department of Education, Gifted and Talented Education, <http://www.cde.ca.gov/sp/gt/> (last visited Sept. 22, 2009).

¹⁷⁸ California Department of Education, Past Funding Profile, Gifted and Talented Education Fiscal Year 2008-2009, <http://www.cde.ca.gov/fg/fo/profile.asp?id=1276> (last visited Sept. 22, 2009).

¹⁷⁹ Letter from Jack O'Connell, State Superintendent of Public Instruction, California Department of Education, to County and District Chief Business Officials and Charter School Administrators, Apr. 17, 2009, *available at* <http://www.cde.ca.gov/nr/el/le/2009budgetact.asp>.

¹⁸⁰ *Id.*

¹⁸¹ CAL. EDUC. CODE § 52201.

¹⁸² *Id.*

- ¹⁸³ California Department of Education, Gifted and Talented Education Program Resource Guide 10 (2005), available at <http://www.cde.ca.gov/sp/gt/gt/documents/guidebook.doc>.
- ¹⁸⁴ CAL. EDUC. CODE § 52202.
- ¹⁸⁵ *Id.*
- ¹⁸⁶ CAL. EDUC. CODE § 52201.
- ¹⁸⁷ *Id.*
- ¹⁸⁸ CAL. EDUC. CODE § 52206.
- ¹⁸⁹ CAL. EDUC. CODE § 52212.
- ¹⁹⁰ CAL. CODE REGS. tit. 5 §§ 3820-3870.
- ¹⁹¹ *Id.*
- ¹⁹² CAL. EDUC. CODE § 52202; CAL. CODE REGS. tit. 5 § 3831(j)(5).
- ¹⁹³ California Department of Education, Recommended Standards for Programs for Gifted and Talented Students(2005), available at <http://www.cde.ca.gov/fg/fo/r12/documents/gatestandards.doc>.
- ¹⁹⁴ COLO. REV. STAT. § 22-20-104.5; Colorado Department of Education Fast Facts: Gifted Education Program Plan (2009), available at http://www.cde.state.co.us/gt/download/pdf/FF_G-Ed_ProgramPlan.pdf.
- ¹⁹⁵ Colorado Department of Education, Rules for Gifted and Talented Student Programming, 2220-R-12.02, available compiled at http://www.cde.state.co.us/gt/download/pdf/gtECEA_RulesGiftedEd.pdf.
- ¹⁹⁶ *Id.*
- ¹⁹⁷ Colorado Department of Education Fast Facts: Gifted Education Program Plan (2009), available at http://www.cde.state.co.us/gt/download/pdf/FF_G-Ed_ProgramPlan.pdf.
- ¹⁹⁸ Colorado Department of Education, End-of-Year Gifted Education Report, 2007-2008 (2008), available at http://www.cde.state.co.us/gt/download/pdf/EOY_2007-08.pdf.
- ¹⁹⁹ Colorado Department of Education, Rules for Gifted and Talented Student Programming, 2220-R-12.01(12).
- ²⁰⁰ *Id.*
- ²⁰¹ *Id.* at 12.01(13).
- ²⁰² *Id.* at 12.02
- ²⁰³ *Id.*
- ²⁰⁴ *Id.*
- ²⁰⁵ Colorado Department of Education, End-of-Year Gifted Education Report, 2007-2008 6 (2008), available at http://www.cde.state.co.us/gt/download/pdf/EOY_2007-08.pdf.
- ²⁰⁶ *Id.* at 7.
- ²⁰⁷ Colorado Department of Education, Rules for Gifted and Talented Student Programming, 2220-R-12.03.
- ²⁰⁸ Davidson Institute Database.
- ²⁰⁹ Memorandum of Jennifer Gelb, Research Attorney, Office of Legislative Research (Conn.), Gifted and Talented Programs, Apr. 20, 2001, available at <http://www.cga.ct.gov/2001/rpt/olr/htm/2001-r-0387.htm>.
- ²¹⁰ Connecticut Department of Education, Gifted and Talented Law, <http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=320938>, (last visited Sept. 22, 2009).
- ²¹¹ CONN. AGENCIES REGS. § 10-76a-2.
- ²¹² *Id.*
- ²¹³ Connecticut Department of Education, Gifted and Talented Law, <http://www.sde.ct.gov/sde/cwp/view.asp?a=2618&q=320938>, (last visited Sept. 22, 2009).
- ²¹⁴ Connecticut State Board of Education, Position on the Education of Gifted and Talented Students (2003), available at http://www.sde.ct.gov/sde/lib/sde/PDF/Curriculum/gifted_and_talented/gt_position_statement.pdf.
- ²¹⁵ *Id.*
- ²¹⁶ Telephone interview with Dr. Jeanne Paynter, Specialist for Gifted Education, State of Maryland Department of Education, 14 Sept. 2009.
- ²¹⁷ MD. CODE REGS. 13A.01.04.02.
- ²¹⁸ Telephone interview with Dr. Jeanne Paynter.
- ²¹⁹ *Id.*
- ²²⁰ *Id.*
- ²²¹ *Id.*

²²² *Id.*

²²³ Maryland State Department of Education, Criteria for Excellence: Gifted and Talented Program Guidelines 2, 3 (2007), *available at* <http://www.marylandpublicschools.org/MSDE/programs/giftedtalented/criteria.htm>.

²²⁴ *Id.* at 4, 9.

²²⁵ Telephone interview with Dr. Jeanne Paynter.

²²⁶ *Id.*

²²⁷ NAGC Database.

²²⁸ Telephone interview with Janie Elbe, Massachusetts Department of Education, Aug. 20, 2009.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ CENTER FOR TEACHING AND LEARNING, MASSACHUSETTS DEPARTMENT OF EDUCATION, PROMOTING HIGH ACHIEVEMENT: POLICIES AND PROGRAMS FOR ACADEMICALLY ADVANCED STUDENTS IN MASSACHUSETTS 3 (2002), *available at* <http://www.doe.mass.edu/famcomm/AAEreport.pdf>.

²³² *Id.* at 5.

²³³ Minnesota Department of Education, Frequently Asked Questions about Minnesota's Gifted and Talented Legislation, *available at* http://education.state.mn.us/MDE/Academic_Excellence/Gifted_and_Talented/GT_Education_Resources/007377.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Minnesota Department of Education, Frequently Asked Questions about Identification and Services for Gifted and Talented Learners in Minnesota, *available at* http://education.state.mn.us/MDE/Academic_Excellence/Gifted_and_Talented/GT_Education_Resources/031060.

²³⁷ Minnesota Department of Education Strategic Plan for Improving Minnesota's Gifted and Talented Education Services for Students (2007), *available at* <http://education.state.mn.us/mdeprod/groups/GiftedTalented/documents/Report/030710.pdf>.

²³⁸ *Id.* at 3-4.

²³⁹ *Id.* at 5-10.

²⁴⁰ *Id.* at 16.

²⁴¹ State of New Jersey Department of Education Gifted and Talented Requirements, http://www.state.nj.us/education/aps/cccs/g_and_t_req.htm (last visited Sept. 22, 2009).

²⁴² N.J. ADMIN. CODE § 6A:8-1.3.

²⁴³ *See, e.g.* New Jersey Visual and Performing Arts Curriculum Framework, Ch. 5: Instructional Adaptations for Students with Diverse Needs 161 (1999), *available at* <http://www.nj.gov/education/frameworks/arts/index.html>.

²⁴⁴ State of New Jersey Department of Education Gifted and Talented Requirements, http://www.state.nj.us/education/aps/cccs/g_and_t_req.htm (last visited Sept. 22, 2009).

²⁴⁵ *Id.*

²⁴⁶ *See, e.g.* New Jersey Visual and Performing Arts Curriculum Framework, Ch. 5: Instructional Adaptations for Students with Diverse Needs 161 (1999), *available at* <http://www.nj.gov/education/frameworks/arts/index.html>.

²⁴⁷ State of New Jersey Department of Education Gifted and Talented Requirements, http://www.state.nj.us/education/aps/cccs/g_and_t_req.htm (last visited Sept. 22, 2009).

²⁴⁸ *See, e.g.* New Jersey Visual and Performing Arts Curriculum Framework, Ch. 5: Instructional Adaptations for Students with Diverse Needs 161 (1999), *available at* <http://www.nj.gov/education/frameworks/arts/index.html>.

²⁴⁹ *See, e.g., id.*

²⁵⁰ Davidson Institute Database.

²⁵¹ Public Schools of North Carolina, Academically or Intellectually Gifted, <http://www.ncpublicschools.org/academicservices/gifted/> (last visited Sept. 22, 2009).

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ North Carolina Academically or Intellectually Gifted Program Standards, as Approved by the State Board of Education on July 9, 2009, *available at* <http://www.ncpublicschools.org/docs/academicservices/gifted/aig-program-standards.pdf>.

²⁵⁷ *Id.* at 4.

²⁵⁸ *Id.* at 5-6.

²⁵⁹ *Id.* at 4.

²⁶⁰ *Id.*

²⁶¹ Public Schools of North Carolina, Academically or Intellectually Gifted, <http://www.ncpublicschools.org/academicservices/gifted/> (last visited Sept. 22, 2009).

²⁶² *Id.*

²⁶³ National Center for Education Statistics, Table 54. Percentage of gifted and talented students in public elementary and secondary schools, by sex, race/ethnicity, and state: 2004 and 2006 (2008), *available at* <http://nces.ed.gov/>.

²⁶⁴ NAGC Database.

²⁶⁵ 8 VA. ADMIN. CODE § 20-40-20.

²⁶⁶ *Id.*

²⁶⁷ 8 VA. ADMIN. CODE § 20-40-60.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Virginia Advisory Committee for the Education of the Gifted, Reference Guide for the Development and Evaluation of Local Plans for the Education of the Gifted iv (2006).

²⁷¹ Virginia Department of Education, Gifted Education and Governor's Schools, <http://www.doe.virginia.gov/VDOE/Instruction/Gifted/gifted.htm> (last visited Sept. 22, 2009).

²⁷² 8 VA. ADMIN. CODE § 20-40-50.

²⁷³ Virginia Department of Education, Annual Report for the Education of the Gifted (2008), *available at* http://www.doe.virginia.gov/VDOE/Publications/Gifted/2008_Gifted.pdf.

²⁷⁴ Baker, Policy Brief on State Funding.

²⁷⁵ Virginia Association for the Gifted, Presentation on Gifted Education in Virginia 12 (2006), *available at* <http://www.vagifted.org/VAG-GiftedEducationPresentation-May2006.ppt>.

²⁷⁶ San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973).

²⁷⁷ Wash. Const. art. IX, § 1.

²⁷⁸ Wash. Const. art. IX, § 2.

²⁷⁹ Seattle School Dist. v. State, 90 Wn.2d 476, 585 P.2d 71 (1978).

²⁸⁰ See Lobato v. State of Colorado, 2008 Colo. App. LEXIS 69 App. A. (2008).

²⁸¹ See *id.* at 15.

²⁸² Mont. Const. art. X, S 1.

²⁸³ N.J. Const. art. VIII S 4.

²⁸⁴ N.C. Const. art. IX, S 2(1).

²⁸⁵ See, e.g., Lobato v. State of Colorado, 2008 Colo. App. LEXIS 69 App. A. (2008).

²⁸⁶ See Perry A. Zirkel, Gifted Education, PRINCIPAL, May/June 2009 at 57, 58 (2009).

²⁸⁷ Perry A. Zirkel, The Case Law on Gifted Education: A New Look 48 GIFTED CHILD Q. 309 310 (2004).

²⁸⁸ *Id.* at 311.

²⁸⁹ *Id.* at 310.

²⁹⁰ *Id.*

²⁹¹ *Id.* at 310-311.

²⁹² *Id.* at 311.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*; Perry A. Zirkel, Gifted Education, PRINCIPAL, May/June 2009 at 57, 58 (2009).

²⁹⁹ Perry Zirkel, *State Laws for Gifted Education: An Overview of the Legislation and Regulations* 27 ROEPER REV. 228, 230 (2005).

³⁰⁰ Perry A. Zirkel, Gifted Education, PRINCIPAL, May/June 2009 at 57, 58 (2009).

³⁰¹ Perry Zirkel, *State Laws for Gifted Education: An Overview of the Legislation and Regulations* 27 ROEPER REV. 228, 239 (2005).

³⁰² Perry A. Zirkel, Gifted Education, PRINCIPAL, May/June 2009 at 57, 58 (2009).

³⁰³ Perry A. Zirkel, The Case Law on Gifted Education: A New Look 48 GIFTED CHILD Q. 309 311 (2004).

³⁰⁴ Perry A. Zirkel, Gifted Education, PRINCIPAL, May/June 2009 at 57, 58 (2009).

³⁰⁵ Compare ESHB 2261 § 709 (establishing a safety net) with Washington State Special Education Coalition v. State, Thurston County Super. Ct. No. 85-2-543-8 (1988) (requiring supplemental funding safety net if funding for special education is based on statewide averages) [Doran III].

³⁰⁶ WAC 392-170-078.

³⁰⁷ Lobato v. State of Colorado, 2008 Colo. App. LEXIS 69 14 (2008)

³⁰⁸ See, e.g. Seattle School Dist. v. State, 90 Wn.2d 476, 585 P.2d 71 (1978).

³⁰⁹ Lobato v. State of Colorado, 2008 Colo. App. LEXIS 69 15 (2008). States are: Kansas, Kentucky, Massachusetts, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, South Carolina, Texas, Washington, West Virginia, Wisconsin, Wyoming.

³¹⁰ Seattle School Dist. v. State, 90 Wn.2d 476, 585 P.2d 71 (1978); Seattle School Dist. v. State, Thurston County Super. Ct. No. 81-2-1713-1 (1983); Doran III.

³¹¹ Federal Way School District 210 v. State, No. 80943-7 (Wash. State Sup. Ct) (oral argument heard June 2009).

³¹² Linda Shaw, *School-funding issue back in court 30 years after landmark case*, SEATTLE TIMES, Aug. 31, 2009, available at: http://seattletimes.nwsources.com/html/education/2009776969_schoollawsuit31m.html.

³¹³ Derolph v. State, 98 Ohio Misc. 2d 1 (1999) (using disparities in gifted education funding as evidence of funding inadequacy).

³¹⁴ Leandro v. State, 346 N.C. 336 352-53, 488 S.E.2d 249 (1997).

³¹⁵ *Id.* at 347.

³¹⁶ *Id.* at 353.

³¹⁷ Abbot v. Burke, 149 N.J. 145; 693 A.2d 417 (1997).

³¹⁸ *Id.*

³¹⁹ *Id.* at 153.

³²⁰ Seattle School Dist. v. State, 90 Wn.2d 476, 585 P.2d 71 (1978).

³²¹ Seattle School Dist. No. 1 v. State, Thurston County Super. Ct. No. 81-2-1713-1 (1983).

³²² Laws of 2009 ch. 548 § 708.

³²³ ESHB 2261 § 709, passed by the Legislature but vetoed by the Governor.

³²⁴ Doran III.

³²⁵ Governor's Veto Message, May 19, 2009, ESHB 2261 [Laws of 2009, ch. 548].

³²⁶ *Id.*

³²⁷ *Id.*