

**Section 1.** Section 20-5-320, MCA, is amended to read:

**"20-5-320. Out-of-district attendance by parent or guardian request with no extenuating**

**circumstances.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence at the request of the child's parent or guardian as described in this section. If the trustees of the district of attendance approve of the child's attendance in a school of the district, the parent or guardian may be responsible for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the

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1 provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes  
2 to attend.

3 (b) The application must be made on an out-of-district attendance agreement form supplied by the  
4 district and developed by the superintendent of public instruction.

5 The attendance agreement must set forth the financial obligations, if any, for costs incurred for  
6 transporting the child under as provided in 20-5-323 and Title 20, chapter 10. Unless otherwise agreed by the  
7 ~~district of residence and the district of attendance, the family of a nonresident child whose application for~~  
8 ~~attendance has been approved is responsible for transportation of the child and the child is not an eligible~~  
9 ~~transportee as defined in 20-10-101. The district of attendance may discretionarily provide transportation~~  
10 ~~pursuant to 20-10-122.~~

11 (c) The trustees of the district of attendance may adopt policies for the application process,  
12 including but not limited to reasonable timelines for the submission of applications.

13 (d) The trustees of the district of attendance shall serve children who are residents of the district  
14 and nonresident children seeking enrollment under 20-5-321 prior to enrolling children under this section.

15 (e) In reviewing and determining whether to approve an application for attendance by a  
16 nonresident child, the trustees of the district of attendance shall approve the application unless the trustees find  
17 that the impact of approval of the application will negatively impact the quality of education for resident pupils by  
18 grade level, by school, or in the district in the aggregate in one or more of the following ways:

19 (i) the approval would result in exceeding limits of:

20 (A) building construction standards pursuant to Title 50, chapter 60;

21 (B) capacity and ingress and egress elements, either by individual room or by school building, of  
22 any fire code authorized by Title 50, chapter 3; or

23 (C) maximum student contact hours for a teacher of the class or maximum class sizes under  
24 accreditation standards of the board of public education; or

25 (C)(D) evacuation elements of the district's adopted school safety plan;

26 (ii) the approval would impede meeting goals, standards, or objectives of quality that the trustees  
27 have previously adopted in a plan for continuous educational improvement required under rules adopted by the

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1 board of public education; or

2 (iii) the approval would risk jeopardizing the educational quality within the district because the  
3 nonresident child who is applying was:

4 (A) truant as defined in 20-5-106 in the last school district attended;

5 (B) expelled by another school district at any time; or

6 (C) suspended in another school or out of school in any school district in which the nonresident  
7 child was enrolled in any of the 3 school fiscal years preceding the school fiscal year for which attendance is  
8 requested. This subsection (2)(e)(iii)(C) does not apply to a student who is eligible for special education or  
9 related services.

10 (f) The trustees of a district that receives more applications than the district can accommodate  
11 under subsections (2)(e)(i) and (2)(e)(ii) may adopt and implement policy providing priority among the  
12 applications on any rational basis that prioritizes the quality of education for students who are residents of the  
13 district of attendance and the obligations of resident taxpayers.

14 (3) This section does not preclude the trustees of a district from approving an attendance  
15 agreement for educational program offerings not provided by the resident district, such as the kindergarten or  
16 grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and  
17 any transportation requirement. The tuition requirements under 20-5-323 and 20-5-324 apply to agreements  
18 under this subsection. For purposes of this subsection, the trustees of the resident district shall initiate the out-  
19 of-district agreement.

20 (4) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as  
21 provided in Title 72, chapter 5, part 2."

22

23 **Section 2.** Section 20-5-322, MCA, is amended to read:

24 **"20-5-322. Residency determination -- notification -- appeal for attendance agreement.** (1) For  
25 the purposes of 20-5-320 through 20-5-324, except as provided in 20-9-707, a child's district of residence must  
26 be determined on the basis of the provisions of 1-1-215.

27 (2) Within 10 days of the initial application for an agreement, the trustees of the district of

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1 attendance shall notify the parent or guardian of the child and the trustees of the district of residence involved in  
2 the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

3 (3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the  
4 trustees of the district of attendance shall:

5 (a) provide copies of the approved or disapproved attendance agreement to the parent or guardian  
6 and to the child's district of residence. In the case of a disapproval, the trustees shall provide the specific  
7 allowable reason for the disapproval pursuant to 20-5-320(2)(e) or 20-5-321(4) and supporting documentation.

8 (b) for an approved agreement, provide a copy of the completed agreement to the county  
9 superintendent of schools of the county of residence, and the county superintendent of schools of the county of  
10 attendance, and the superintendent of public instruction.

11 (4) If an out-of-district attendance agreement is disapproved or no action is taken, the parent or  
12 guardian may appeal the disapproval or lack of action to the county superintendent of the district of attendance  
13 and, subsequently, to the superintendent of public instruction under the provisions for the appeal of  
14 controversies pursuant to 20-3-107 and 20-3-210.

15 (5) For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by  
16 reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for  
17 the duration of the student's enrollment in the district for that school year."

18

19 **Section 3.** Section 20-5-323, MCA, is amended to read:

20 **"20-5-323. Tuition and transportation -- rates -- transportation.** (1) (a) Except as provided in  
21 subsections (1)(b), (1)(c), and (2) through (5), whenever a child enrolls in and attends a school outside of the  
22 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall pay the  
23 district of attendance a percentage equal to the lesser of the percentage of either school district's adopted  
24 general fund budget funded by BASE and over-BASE property tax levies in the year of attendance not to  
25 exceed 35.3% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

26 (b) If the district of residence is a nonoperating district, the required tuition is the percentage of the  
27 adopted general fund budget funded by BASE and over-BASE property taxes in the district of attendance in the

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1     year of attendance, not to exceed 35.3% of the tuition per-ANB amount for the year of attendance as described  
2     in 20-5-324.

3           (c)     Tuition amounts for partial-year attendance, including midyear changes in residency under 1-1-  
4     215, must be prorated for the portion of the year the student is enrolled as a nonresident student, based on the  
5     percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction  
6     days scheduled by the school district of attendance in the year of attendance.

7           (2)    Except for the tuition paid by the district of residence and the superintendent of public  
8     instruction under 20-5-324(2)(b), the district of residence shall pay the district of attendance as described in 20-  
9     5-324 the tuition for a child with a disability, and the amount of tuition must be the regular rate under subsection  
10    (1), plus the special education tuition rate determined by the district of attendance under rules adopted by the  
11    superintendent of public instruction for the calculation of tuition for special education pupils. The rules must  
12    provide:

13          (a)    that tuition amounts must be reduced by the funding generated by the district of attendance  
14    due to the child's attendance; and

15          (b)    an option for tuition set at the actual unique costs of providing a free appropriate public  
16    education.

17          (3)    The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in  
18    addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who  
19    requires a program with costs that exceed the average district costs must be determined as the actual  
20    individual costs of providing that program according to the following:

21          (a)    the district of attendance and the district or entity responsible for the tuition payments shall  
22    approve an agreement for the tuition cost;

23          (b)    for a Montana resident student, 120% of the tuition per-ANB amount, received in the year for  
24    which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana  
25    resident student; and

26          (c)    the maximum tuition rate paid to a district under this subsection (3) may not exceed \$2,500 per  
27    student.

(4) When a child attends a public school of another state or province, the amount of daily tuition  
it be greater than the average annual cost for each student in the child's district of residence. This  
tion for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted  
or the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding  
fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-

(c) an order issued under Title 40, chapter 4, part 2; or

(d) out-of-state placement by a state agency.

(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency the placement is responsible for the education costs resulting from the placement.

(6) (a) An attendance agreement established under 20-5-320 or 20-5-321 must set forth the obligations, if any, for costs incurred for transportation as provided in this subsection (6) and Title 20, § 10.

(b) If the attendance agreement is for a child with a disability who has transportation included in the child's individualized education program, transportation or the costs of transportation must be paid by the district of residence.

(c) Except as provided in subsection (6)(b) and unless otherwise agreed to in the out-of-district  
nace agreement:

(i) when a child has approval to attend a school outside the child's district of residence because of  
it's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of  
and is responsible for transportation and the child is not an eligible transportee as defined in 20-10-101.  
district of attendance may discretionarily provide transportation for a child who is not an eligible transportee  
ent to 20-10-122

(ii) when a child attends a school outside the child's district of residence under the provisions of 21(1)(a) or (1)(b), the district of residence is responsible for transportation; and

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1                   (iii) when a child attends a school outside the child's district of residence under the provisions of  
2                   20-5-321(1)(d) or (1)(e), the district of attendance is responsible for transportation consistent with and subject to  
3                   the provisions of 20 U.S.C. 6312(c)(5).

4                   (d) The amount, if any, charged for transportation may not exceed the lesser of the average  
5                   transportation cost for each student in the child's district of residence or 35 cents a mile. The average  
6                   expenditures for the district transportation fund for the preceding school fiscal year must be calculated by  
7                   dividing the transportation fund expenditures by the October 1 enrollment count for the preceding fiscal year.

8                   (7) As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate  
9                   established in 20-9-306, plus the per-ANB amounts of the instructional block grant and related services block  
10                  grant under 20-9-321."

11

12                  **Section 4.** Section 20-5-324, MCA, is amended to read:

13                  **"20-5-324. Tuition payment provisions -- state obligations -- district obligations -- financing --**  
14                  **reporting.** (1) In order to be eligible to receive state reimbursement or payment under subsection (2)(a), the  
15                  trustees of a district shall report to the superintendent of public instruction by June 30 the following information  
16                  for the concluding school fiscal year:

17                  (a) the name and district of residence of each child who attended a school of the district under a  
18                  mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);

19                  (b) the number of days of enrollment for each child reported under the provisions of subsection  
20                  (1)(a);

21                  (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of  
22                  20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

23                  (d) the names, districts of attendance, and amount of tuition paid by the district for resident  
24                  students attending public schools out of state; and

25                  (e) the names, schools of attendance, and amount of tuition to be paid by the district for resident  
26                  students attending day-treatment programs under approved individualized education programs at private,  
27                  nonsectarian schools.

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5           ~~(iii)(b)~~ In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil,  
6   a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a  
7   free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in  
8   the district. The amount of the levy imposed for the costs associated with educating each child with a disability  
9   under this subsection ~~(4)(a)(iii)-(4)(b)~~ is limited to the actual cost of service under the child's individualized  
10   education program minus:

- 11           (A)(i) the student's state special education payment;
- 12           (B)(ii) the student's federal special education payment;
- 13           (C)(iii) the student's per-ANB amount;
- 14           (D)(iv) the prorated portion of the district's basic entitlement for each qualifying student; and
- 15           (E)(v) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for
- 16           each qualifying student.

17 (b) When a child has approval to attend a school outside the child's district of residence because  
18 of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of  
19 the child is responsible for transportation unless otherwise agreed to in the out-of-district attendance  
20 agreement.

21 (5) (a) Except as provided in subsection (5)(b), the district of attendance shall anticipate and credit  
22 tuition receipts to the district general fund, to reduce the general fund net levy requirement first to the BASE  
23 budget and any remaining to the over-BASE budget pursuant to 20-9-141, and transportation receipts to the  
24 transportation fund. In order to provide local property tax reduction for the tuition amount received under 20-5-  
25 323(1), the amount of the reduction in the BASE budget mills levied as a result of anticipated tuition payments  
26 must be calculated as a final step in computing the district's general fund net BASE levy requirement pursuant  
27 to the procedure set forth in 20-9-141(2) and the district's guaranteed tax base aid must be calculated prior to

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1 the reduction in BASE mills.

2 (b) Any tuition receipts received for a pupil who is a child with a disability under 20-5-323(2) or for  
3 a student without disabilities who requires a program with costs that exceed the average district costs under 20-  
4 5-323(3) that exceed the tuition amount received for a pupil without disabilities must be deposited in the district  
5 miscellaneous programs fund and must be used in the manner provided for in 20-9-507 to support the costs of  
6 the program for which the tuition was received.

7 (6) The reimbursements paid under subsection (2)(a)(iii) must be deposited into the district tuition  
8 fund and must be used by the district to pay obligations for resident students attending public schools out of  
9 state or for resident students attending day-treatment programs under approved individualized education  
10 programs at private, nonsectarian schools at district expense.

11 (7) The provisions of this section do not apply to out-of-state placements made by a state agency  
12 pursuant to 20-7-422.

13 (8) (a) In accordance with 5-11-210, the superintendent of public instruction shall report annually to  
14 the education interim committee on out-of-district attendance under 20-5-320 through 20-5-324 in the prior  
15 school fiscal year. The report must include the following for each school district:

16 (a)(i) the total enrollment of the district;

17 (b)(ii) the number of nonresident students served by the district under out-of-district attendance  
18 agreements, broken down by district of residence; and

19 (c)(iii) the number of resident students served by other school districts under out-of-district attendance  
20 agreements, broken down by district of attendance.

21 (b) School districts shall provide the superintendent of public instruction with the information  
22 necessary to comply with this subsection (8) in a manner prescribed by the superintendent that must minimize  
23 the reporting burden on school districts."

24

25 **Section 5.** Section 20-7-118, MCA, is amended to read:

26 **"20-7-118. Remote instruction.** (1) A school district may provide remote instruction, including the  
27 provision of services through electronic means. A district shall comply with any rules adopted by the board of

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1        public education that specify standards for remote instruction. The provision of remote instruction by a district is  
2        limited to pupils:

3                (a)        meeting the residency requirements for that district as provided in 1-1-215;

4                (b)        living in the district and eligible for educational services under the Individuals With Disabilities  
5        Education Act or under 29 U.S.C. 794; or

6                (c)        enrolled in the district and physically attending a school or offsite instructional setting of the  
7        district under an attendance agreement pursuant to Title 20, chapter 5, part 3; or

8                (d)        seeking remote instruction in the nearest another district when the pupil's district of residence  
9        does not provide remote or in-person instruction in an equivalent course. A course is not equivalent if the  
10      course does not provide the same level of advantage on successful completion, including but not limited to dual  
11      credit, advanced placement, and career certification.

12                (2)        A school of a district providing remote instruction shall provide remote instruction to an out-of-  
13      district pupil under subsection (1)(c)-(1)(d) unless, because of class size restrictions, the accreditation of the  
14      school would be adversely impacted by providing remote instruction to the pupil.

15                (3)        (a) A district providing remote instruction shall include pupils in enrollment counts for ANB  
16      calculation purposes as described in 20-9-311.

17                (b)        Except as provided in subsection (1)(c) of this section, the provisions of out-of-district  
18      attendance and tuition laws under Title 20, chapter 5, part 3, do not apply to remote instruction.

19                (3)(4)        The superintendent of public instruction shall adopt rules for the administration and  
20      enforcement of this section."

21

22                **Section 6.** Section 20-7-421, MCA, is amended to read:

23                **"20-7-421. Arranging attendance in another district in lieu of a special education program --**

24      **tuition.** (1) In accordance with a placement decision made by persons determining an individualized education  
25      program for a child with a disability, the trustees may arrange for the attendance of a child in need of special  
26      education and related services in another district within the state of Montana.

27                (2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-

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1    420Financial obligations for tuition and transportation for a child with a disability attending a school district other  
2    than the child's resident school district are governed by Title 20, chapter 5, part 3."

3

4        **Section 7.** Section 20-9-505, MCA, is amended to read:

5            **"20-9-505. Purpose and establishment of nonoperating fund.** (1) The trustees of a district that will  
6    not operate a school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of  
7    the school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-  
8    the-year fund balance of each fund maintained by the district during the immediately preceding school fiscal  
9    year to the nonoperating fund. However, fund balances of the debt service fund and the miscellaneous  
10   programs fund, if any, must be maintained in their individual funds.

11            (2)      The trustees of a district establishing a nonoperating fund for the first year of nonoperation may  
12   earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they  
13   anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more  
14   than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school  
15   is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund  
16   operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the  
17   levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following  
18   school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund  
19   operating reserve must be restored as the general fund operating reserve.

20            (3)      The purpose of the nonoperating fund is to centralize the financing and budgeting for the  
21   limited functions of a district not operating a school. The functions include:

22            (a)     elementary tuition obligations to other districts;  
23            (b)     transportation of the resident pupils;  
24            (c)     maintenance of district-owned property; and  
25            (d)     any other nonoperating school function of the district considered necessary by the trustees or  
26   required by law.

27            (4)      Any expenditure of nonoperating fund money must be made in accordance with the financial

1 administration provisions of this title for a budgeted fund."

2

3 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2025.

4

5 **COORDINATION SECTION. Section 9. Coordination instruction.** If House Bill No. 156 and [this  
6 act] are both passed and approved, then [section 3(1)(b) of this act], amending 20-5-323, is void and must be  
7 replaced with:

8 (b) If the district of residence is a nonoperating district, the required tuition is the percentage of the  
9 adopted general fund budget funded by over-BASE property taxes in the district of attendance in the year of  
10 attendance, not to exceed 20% of the tuition per-ANB amount for the year of attendance as described in 20-5-  
11 324."

12

13 **NEW SECTION. Section 10. Applicability.** [This act] applies to out-of-district attendance  
14 agreements for school fiscal years beginning on or after July 1, 2025.

15

- END -