

HOUSE BILL NO. 250

INTRODUCED BY D. BEDEY, L. JONES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EDUCATION LAWS RELATED TO OUT-OF-DISTRICT ATTENDANCE; CLARIFYING THE TUITION AND TRANSPORTATION RESPONSIBILITIES OF A DISTRICT OF RESIDENCE FOR A CHILD WITH A DISABILITY; CLARIFYING AND CONSOLIDATING PROVISIONS RELATED TO TRANSPORTATION RESPONSIBILITIES; ALLOWING TRUSTEES TO DENY AN OUT-OF-DISTRICT ATTENDANCE REQUEST IF ACCEPTING THE REQUEST WOULD JEOPARDIZE THE DISTRICT'S ACCREDITATION STATUS AND FOR STUDENTS WHO HAVE BEEN SUSPENDED; CLARIFYING THE TUITION RESPONSIBILITIES FOR A NONOPERATING SCHOOL DISTRICT; CLARIFYING PRORATED TUITION FOR PARTIAL-YEAR ATTENDANCE; REVISING THE OUT-OF-DISTRICT REPORTING REQUIREMENTS BY SCHOOL DISTRICTS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING REMOTE INSTRUCTION FOR STUDENTS ATTENDING OUT-OF-DISTRICT; REMOVING THE REQUIREMENT THAT A STUDENT SEEK REMOTE INSTRUCTION FROM THE NEAREST SCHOOL DISTRICT OFFERING THE REMOTE INSTRUCTION; AMENDING SECTIONS 20-5-320, 20-5-322, 20-5-323, 20-5-324, 20-7-118, 20-7-421, AND 20-9-505, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

1 to attend.

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

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

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

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

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

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

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

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

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

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

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

28 (iii) the approval would risk jeopardizing the educational quality within the district because the

1 nonresident child who is applying was:

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

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

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

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

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

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

20

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

22 **"20-5-322. Residency determination -- notification -- appeal for attendance agreement.** (1) For
23 the purposes of 20-5-320 through 20-5-324, except as provided in 20-9-707, a child's district of residence must
24 be determined on the basis of the provisions of 1-1-215.

25 (2) Within 10 days of the initial application for an agreement, the trustees of the district of
26 attendance shall notify the parent or guardian of the child and the trustees of the district of residence involved in
27 the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

28 (3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the

1 trustees of the district of attendance shall:

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

5 (b) for an approved agreement, provide a copy of the completed agreement to the county
6 superintendent of schools of the county of residence, and the county superintendent of schools of the county of
7 attendance, ~~and the superintendent of public instruction.~~

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

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

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

17 **"20-5-323. Tuition and transportation -- ~~rates~~ -- transportation.** (1) (a) Except as provided in
18 subsections (1)(b), (1)(c), and (2) through (5), whenever a child enrolls in and attends a school outside of the
19 child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall pay the
20 district of attendance a percentage equal to the lesser of the percentage of either school district's adopted
21 general fund budget funded by BASE and over-BASE property tax levies in the year of attendance not to
22 exceed 35.3% of the tuition per-ANB amount for the year of attendance as described in 20-5-324.

23 (b) If the district of residence is a nonoperating district, the required tuition is the percentage of the
24 adopted general fund budget funded by BASE and over-BASE property taxes in the district of attendance in the
25 year of attendance, not to exceed 35.3% of the tuition per-ANB amount for the year of attendance as described
26 in 20-5-324.

27 (c) Tuition amounts for partial-year attendance, including midyear changes in residency under 1-1-
28 215, must be prorated for the portion of the year the student is enrolled as a nonresident student, based on the

percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction days scheduled by the school district of attendance in the year of attendance.

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

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

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

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

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

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

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

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

- 1 (a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;
- 2 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-
- 3 314;
- 4 (c) an order issued under Title 40, chapter 4, part 2; or
- 5 (d) out-of-state placement by a state agency.
- 6 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency
- 7 making the placement is responsible for the education costs resulting from the placement.
- 8 (6) (a) An attendance agreement established under 20-5-320 or 20-5-321 must set forth the
- 9 financial obligations, if any, for costs incurred for transportation as provided in this subsection (6) and Title 20,
- 10 chapter 10.
- 11 (b) If the attendance agreement is for a child with a disability who has transportation included in
- 12 the child's individualized education program, transportation or the costs of transportation must be paid by the
- 13 child's district of residence.
- 14 (c) Except as provided in subsection (6)(b) and unless otherwise agreed to in the out-of-district
- 15 attendance agreement:
- 16 (i) when a child has approval to attend a school outside the child's district of residence because of
- 17 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
- 18 the child is responsible for transportation and the child is not an eligible transportee as defined in 20-10-101.
- 19 The district of attendance may discretionarily provide transportation for a child who is not an eligible transportee
- 20 pursuant to 20-10-122.
- 21 (ii) when a child attends a school outside the child's district of residence under the provisions of
- 22 20-5-321(1)(a) or (1)(b), the district of residence is responsible for transportation; and
- 23 (iii) when a child attends a school outside the child's district of residence under the provisions of
- 24 20-5-321(1)(d) or (1)(e), the district of attendance is responsible for transportation consistent with and subject to
- 25 the provisions of 20 U.S.C. 6312(c)(5).
- 26 (d) The amount, if any, charged for transportation may not exceed the lesser of the average
- 27 transportation cost for each student in the child's district of residence or 35 cents a mile. The average
- 28 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by

dividing the transportation fund expenditures by the October 4-enrollment count for the preceding fiscal year.

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

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

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

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

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

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

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

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

(2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

(i) except as provided in subsection (2)(b) of this section, pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c) of this section, prorated for the actual days of enrollment;

(ii) determine the total per-ANB entitlement for which the district of residence would have been eligible if the students reported in subsections (1)(d) and (1)(e) of this section had been enrolled in the resident district in the prior year; and

(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each student reported in subsections (1)(d) and (1)(e) of this section, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(b) The district of residence for each child reported under the provisions of subsection (1)(a) of this section shall pay the district of attendance the tuition rate under 20-5-323(1) prorated for the actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition amount pursuant to 20-5-323(2) and (3).

(3) Whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, by July 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under 20-5-323.

(4) (a) (i) When a child attends a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321 or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance any tuition amount required under 20-5-323 from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees and any transportation amount from the levy authorized to support the transportation fund or from the district's general fund or any other legally available fund in the discretion of the trustees. If the district of residence is a nonoperating school district, the district shall use the nonoperating fund and impose applicable levies required to satisfy any tuition and transportation obligations.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (4)(a)(i) this part. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(iii)(b) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability

under this subsection ~~(4)(a)(iii)~~ ~~(4)(b)~~ is limited to the actual cost of service under the child's individualized education program minus:

~~(A)(i)~~ the student's state special education payment;

~~(B)(ii)~~ the student's federal special education payment;

~~(C)(iii)~~ the student's per-ANB amount;

~~(D)(iv)~~ the prorated portion of the district's basic entitlement for each qualifying student; and

~~(E)(v)~~ the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

~~(b) — When a child has approval to attend a school outside the child's district of residence because 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 the child is responsible for transportation unless otherwise agreed to in the out-of-district attendance agreement.~~

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

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

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

programs at private, nonsectarian schools at district expense.

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

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

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

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

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

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

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

"20-7-118. Remote instruction. (1) A school district may provide remote instruction, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for remote instruction. The provision of remote instruction by a district is limited to pupils:

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

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

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

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

credit, advanced placement, and career certification.

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

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

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

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

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

"20-7-421. Arranging attendance in another district in lieu of a special education program -- tuition. (1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) ~~Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420~~ Financial obligations for tuition and transportation for a child with a disability attending a school district other than the child's resident school district are governed by Title 20, chapter 5, part 3."

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

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

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may

1 earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they
2 anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more
3 than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school
4 is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund
5 operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the
6 levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following
7 school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund
8 operating reserve must be restored as the general fund operating reserve.

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

- 11 (a) ~~elementary~~ tuition obligations to other districts;
12 (b) transportation of the resident pupils;
13 (c) maintenance of district-owned property; and
14 (d) any other nonoperating school function of the district considered necessary by the trustees or
15 required by law.

16 (4) Any expenditure of nonoperating fund money must be made in accordance with the financial
17 administration provisions of this title for a budgeted fund."
18

19 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2025.
20

21 **COORDINATION SECTION. SECTION 9. COORDINATION INSTRUCTION.** IF HOUSE BILL NO. 156 AND [THIS
22 ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 3(1)(B) OF THIS ACT], AMENDING 20-5-323, IS VOID AND MUST
23 BE REPLACED WITH:

24 "(B) IF THE DISTRICT OF RESIDENCE IS A NONOPERATING DISTRICT, THE REQUIRED TUITION IS THE
25 PERCENTAGE OF THE ADOPTED GENERAL FUND BUDGET FUNDED BY OVER-BASE PROPERTY TAXES IN THE DISTRICT OF
26 ATTENDANCE IN THE YEAR OF ATTENDANCE, NOT TO EXCEED 20% OF THE TUITION PER-ANB AMOUNT FOR THE YEAR OF
27 ATTENDANCE AS DESCRIBED IN 20-5-324."
28

1 NEW SECTION. **Section 10. Applicability.** [This act] applies to out-of-district attendance

2 agreements for school fiscal years beginning on or after July 1, 2025.

3 - END -