

HOUSE BILL NO. 314
INTRODUCED BY E. BUTCHER

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING A "BASIC SYSTEM OF FREE QUALITY PUBLIC ELEMENTARY AND SECONDARY SCHOOLS"; DEFINING COMPONENTS OUTSIDE THE BASIC SYSTEM; OUTLINING THE RESPONSIBILITIES OF PARENTS, LOCAL SCHOOL DISTRICTS, AND THE STATE FOR DEFINING AND FUNDING THE COMPONENTS OF THE BASIC SYSTEM; PROVIDING THAT THE ACCREDITATION STANDARDS ARE ADVISORY; PROVIDING FOR A STANDARDIZED ACHIEVEMENT TEST FOR MAINTAINING QUALITY EDUCATION WITHIN THE BASIC SYSTEM; REQUIRING TEST RESULTS TO BE PUBLISHED BY CLASS AVERAGE FOR EACH TEACHER; PROVIDING FOR STATE PAYMENT OF TUITION TO ALLOW STUDENTS WITH SPECIAL NEEDS WHOSE RESIDENT SCHOOLS HAVE LESS THAN 25 STUDENTS IN EACH CLASS TO ATTEND SCHOOL OUTSIDE THEIR RESIDENT DISTRICTS FOR CLASSES THAT EXCEED THE REQUIREMENTS OF THE BASIC SYSTEM; REQUIRING A PARENT OR GUARDIAN TO FINANCE THE TRANSPORTATION COSTS OF SPECIAL NEEDS STUDENTS ATTENDING SCHOOL OUTSIDE THEIR RESIDENT DISTRICTS; AMENDING SECTIONS 20-1-101, 20-2-121, 20-3-205, 20-3-324, 20-5-102, 20-5-321, 20-5-324, 20-7-101, 20-7-111, 20-7-402, 20-7-411, 20-7-412, 20-7-420, 20-9-212, 20-9-307, AND 20-9-335, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Responsibility for achieving basic education -- examinations to ensure quality education. (1) The parent or guardian of each student is responsible for ensuring that the student achieves proficiency in each subject within the basic system of free quality public and elementary schools.

(2) To ensure that each child achieves a quality education within each subject in the basic system, the county superintendent in each district shall, beginning with students in grade 3, administer a standardized achievement test restricted to subjects within the basic system. A student may not be promoted to the next grade level for a subject within the basic system unless the student scores at or above the state average on each test.

(3) The results of each examination:

(a) must be provided to the public by class average for each teacher to provide accountability for quality instruction; and

(b) may be used by the local boards of trustees in teacher performance evaluations.

(4) The state's constitutional obligation to provide a basic system of free quality public elementary and secondary schools is fulfilled when each student successfully completes grade 12.

(5) All education and training opportunities beyond the basic system, including elected curricula and career education, must be defined by local boards of trustees, after consultation with locally selected specialists, to meet the additional educational goals and needs of the district's students. A school district shall receive its share of educational funding without the restrictions of accreditation mandates.

Section 2. Section 20-1-101, MCA, is amended to read:

"20-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agricultural experiment station" means the agricultural experiment station established at Montana state university-Bozeman.

(2) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils attending the public schools of a district.

(3) "Basic system of free quality public elementary and secondary schools" or "basic system" means a system that provides an opportunity for each child in Montana to achieve grade-level command of basic mathematics, reading fluency, and writing proficiency appropriate for each grade level in grades 1 through 12.

~~(3)~~(4) "Board of public education" means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

~~(4)~~(5) "Board of regents" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(6) "Career education" means specialized programs and curricula that exceed the requirements of the basic system of free quality elementary and secondary schools and that are determined by the local boards of trustees to meet local needs for academic and vocational training.

~~(5)~~(7) "Commissioner" means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(8) "Core curricula" means those courses in extended education that exceed the basic system of free public elementary and secondary schools and that are included in the graduation recommendations by the board of public education and accepted by the local board of trustees.

~~(6)~~(9) "County superintendent" means the county government official who is the school officer of the county.

~~(7)~~(10) "District superintendent" means a person who holds a valid class 3 Montana teacher certificate with a superintendent's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(11) "Elected curricula" means those classes in extended education that exceed the basic system of free quality elementary and secondary schools, that are defined by the local board of trustees in consultation with parents and students, and that may be fulfilled through distance learning or other delivery systems.

(12) "Extended education" means those classes that exceed the requirements of the basic system of free quality public elementary and secondary schools and includes all other academic and training classes in the core curricula and elected curricula as suggested by the board of public education and accepted by the local board of trustees.

(13) "Human development education" means all areas of special education resources, including remedial assistance to aid students with special needs, that are necessary to fulfill the requirements of a basic system of free quality elementary and secondary schools in small schools and that are available along with specialized support that exceeds the basic system of free quality public elementary and secondary schools in public schools that have a minimum of 25 students in each class.

~~(8)~~(14) "K-12 career and vocational/technical education" means organized educational activities that have been ~~approved~~ recommended by the office of public instruction and approved by local school boards that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

~~(9)~~(15) "Principal" means:

(a) a person who holds a valid class 3 Montana teacher certificate with an applicable principal's endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal; or

(b) in schools with less than 25 students in each class, a teacher serving with the discretion of the local board of trustees as school administrator. For the purposes of this title, any reference to a teacher must be construed as including a principal.

~~(10)~~(16) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

~~(11)~~(17) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(18) "Quality" means a level of student achievement in the subject areas required in the basic system of free quality public elementary and secondary schools that is equal to or above the state average as measured by county-administered, standardized achievement examinations that measure fundamental knowledge within the basic system of free quality public elementary and secondary schools.

~~(12)~~(19) "Regents" means the board of regents of higher education.

~~(13)~~(20) "School food services" means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

~~(14)~~(21) "State board of education" means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

~~(15)~~(22) "State university" means Montana state university-Bozeman.

~~(16)~~(23) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

~~(17)~~(24) "System" means the Montana university system.

~~(18)~~(25) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

~~(19)~~(26) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

~~(20)~~(27) "Textbook dealer" means a party, company, corporation, or other organization selling, offering

to sell, or offering for adoption textbooks to districts in the state.

~~(24)~~(28) "Trustees" means the governing board of a district.

~~(22)~~(29) "University" means the university of Montana-Missoula.

~~(23)~~(30) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents."

Section 3. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education -- powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt advisory standards of accreditation ~~and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102 to be accepted at the discretion of individual boards of trustees;~~

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the

provisions of 20-7-903 and 20-7-904;

(12) adopt rules for student assessment in the public schools; and

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 4. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript of the district boundaries of the county;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the

provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; ~~and~~

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed; and

(27) administer achievement examinations in grades 3 through 12 on subject matter required in the basic system of free quality public elementary and secondary schools."

Section 5. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial

administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title, including special education programs to provide special education classes in subjects beyond those required in the basic system of free quality public elementary and secondary schools in schools that have a minimum of 25 students in each class and to provide services to children with disabilities attending those schools pursuant to 20-5-321;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or

guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(27) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(28) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; ~~and~~

(29) publish the results of achievement examinations in each subject required in the basic system of free quality public elementary and secondary schools administered pursuant to [section 1]; and

~~(29)~~(30) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 6. Section 20-5-102, MCA, is amended to read:

"20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), ~~any~~ a parent, guardian, or other person who is responsible for the care of ~~any~~ a child who is 7 years of age or older prior to the first day of school in any school fiscal year shall ~~cause~~ ensure that the child ~~to be~~ is instructed in the

~~program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:~~

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when ~~he~~ the parent, guardian, or other person establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;
- (c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;
- (d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or
- (e) enrolled in a nonpublic school or home school that complies with the provisions of 20-5-109. For the purposes of this subsection ~~(e) (2)(e)~~, a home school ~~is the means that~~ instruction is provided by a parent of ~~his~~ the parent's child, stepchild, or ward in ~~his~~ the parent's residence and a nonpublic school includes a parochial, church, religious, or private school."

Section 7. Section 20-5-321, MCA, is amended to read:

"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

- (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation; or
- (b) (i) the child resides in a location where, due to geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:
 - (A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;
 - (B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt

road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(6) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; ~~or~~

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state; or

(f) the child's resident school has less than 25 students in each class and the child attends school in a district outside the child's district of residence in order to receive human development education services.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

Section 8. Section 20-5-324, MCA, is amended to read:

"20-5-324. Tuition report and payment provisions -- exemption. (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

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

(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 reported child;

(d) the names, districts of attendance, and amount of tuition to be 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) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsections (1)(d) and (1)(e) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) 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 the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(b) When a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) When a child has mandatory approval under the provisions of 20-5-321(1)(d) or (1)(e), the tuition and transportation obligation for an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the district of residence by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(7) (a) When a child has mandatory approval to attend a school outside of the child's district of residence under the provisions of 20-5-321(1)(f), the tuition obligation for:

(i) an elementary school child attending a school outside of the child's district of residence must be financed by the basic county tax for elementary equalization, as provided in 20-9-331, for the child's county of residence; or

(ii) a high school child attending a school outside the child's district of residence must be financed by the basic county tax for high school equalization, as provided in 20-9-333, for the child's county of residence.

(b) The parent or guardian is responsible for financing the transportation amount for a child with mandatory approval under 20-5-321(1)(f) to attend a school outside of the child's district of residence.

~~(7)~~(8) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate elementary or high school county equalization fund provided for in 20-9-335 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection ~~(9)~~ (10), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts

must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

~~(8)(9)~~ The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

~~(9)(10)~~ (a) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

~~(10)(11)~~ The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."

Section 9. Section 20-7-101, MCA, is amended to read:

"20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools ~~shall be adopted by the board of public education upon the recommendations of the superintendent of public instruction~~ recommended by the board of public education are advisory in nature and may not:

(a) restrict the local boards of trustees from implementing local curricula; or

(b) impose funding obligations on the legislature beyond those required for the basic system of free quality public elementary and secondary schools.

(2) Standards for the retention of school records must be as provided in 20-1-212."

Section 10. Section 20-7-111, MCA, is amended to read:

"20-7-111. Instruction in public schools. The board of public education shall ~~define and specify~~ recommend to local boards of trustees the basic instructional program for pupils in public schools, and ~~such the~~

program ~~shall~~ must be set forth as advisory in the standards of accreditation. Other instruction may be given when approved by the board of trustees."

Section 11. Section 20-7-402, MCA, is amended to read:

"20-7-402. Special education to comply with -- board policies recommendations. (1) The conduct of special education programs ~~shall~~ must comply with the policies recommended by the superintendent of public instruction and ~~adopted by~~ the board of public education. These policies ~~shall assure~~ must ensure and include but are not limited to:

(a) placement of a child with a disability in the least restrictive alternative setting in a school in the child's district of residence for courses required to complete the requirements of the basic system of free quality public elementary and secondary schools and in a school either within or outside of a district of residence that has a minimum of 25 students in each class for courses beyond those required by the basic system of free quality public elementary and secondary schools;

(b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;

(c) use of child study teams to identify a child with a disability and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each child with a disability; and

(e) other policies needed to ensure a free appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education."

Section 12. Section 20-7-411, MCA, is amended to read:

"20-7-411. Regular classes preferred -- obligation to establish special education program. (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) ~~The~~ Except as provided in subsection (4), the board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability between the ages of 6 and

18, inclusive.

(3) ~~The~~ Except as provided in subsection (4), the board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may ~~meet its obligation to~~ serve persons with disabilities by establishing its own special education program in schools with a minimum of 25 students in each class to provide special education services, by establishing a cooperative special education program, ~~or~~ by participating in a regional services program to provide classes required by the basic system of free quality public elementary and secondary schools, or for those schools with less than 25 students in each class, by enrolling students in another district pursuant to 20-5-321.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

Section 13. Section 20-7-412, MCA, is amended to read:

"20-7-412. Establishment of individual district special education program. (1) The trustees of a district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program in a school with a minimum of 25 students in each class whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of children with disabilities in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Programs may be established to provide the special education resources necessary to provide courses for a child with a disability, as required by the basic system of free quality public elementary and secondary schools, in schools with less than 25 students in each class or to provide special education resources to a child with a disability that are necessary to provide courses that exceed the requirements of the basic system of free quality public elementary and secondary schools in schools with a minimum of 25 students in each class for persons with disabilities between the ages of 0 and 21 when the superintendent of public instruction and the trustees have determined that the programs will:

(a) assist a person to achieve levels of competence that will enable ~~him~~ the person to participate in the

regular instruction of the district when ~~he~~ the person could not participate without special education;

(b) permit the conservation or early acquisition of skills that will provide the person with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages that will materially benefit the person.

(3) Approval and operation of programs established pursuant to subsection (2) do not obligate the state or a school district to offer regular educational programs to a similar age group unless specifically provided by law.

(4) When an agency that has responsibility for a person with disabilities ~~over~~ who is 21 years of age or older but not more than 25, ~~inclusive, years of age~~ cannot provide appropriate services to that person, the agency may contract with the local school district to provide the services."

Section 14. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements -- financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for the transportation under 20-5-323 and 20-5-324 for a child with a disability who attends school outside the district of residence to receive special education services that exceed the requirements of a basic system of free quality public elementary and secondary schools. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate

under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 15. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the ~~several~~ districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

- (a) the basic county tax for elementary equalization;
- (b) the basic county tax for high school equalization;
- (c) the county tax in support of the transportation schedules;
- (d) the county tax in support of the elementary and high school district retirement obligations; and
- (e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school

taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for tuition paid under the provisions of 20-5-324(6) ~~or (7)~~ through (8), in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 16. Section 20-9-307, MCA, is amended to read:

"20-9-307. BASE funding program -- district general fund budget -- funding sources. (1) ~~A Pursuant to Article X, section 1(3), of the Montana constitution the legislature is required to establish and maintain a basic system of free quality public elementary and secondary schools and high schools must be established and maintained throughout the state of Montana to provide equality of educational opportunity to all school-age children.~~

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of the cost of the basic ~~school~~ system of free quality public elementary and secondary schools through BASE aid to support the BASE funding program in the manner established in this title.

(3) The budgetary vehicle for achieving the financing system established in subsection (2) is the general fund budget of the school district. The purpose of the district general fund budget is to finance those instructional, administrative, facility maintenance, and other operational costs of a district not financed by other funds established for special purposes in this title.

(4) The BASE funding program for the districts in the state is financed by a combination of the following sources:

- (a) county equalization money, as provided in 20-9-331 and 20-9-333;
- (b) state equalization aid, as provided in 20-9-343, including guaranteed tax base aid for eligible districts as provided in 20-9-366 through 20-9-369;
- (c) appropriations for special education;
- (d) a district levy, as provided in 20-9-303, for support of a school not approved as an isolated school under the provisions of 20-9-302; and
- (e) district levies or other revenue, as provided by 20-9-308 and 20-9-353."

Section 17. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization money. (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

- (a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;
- (b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid after the deduction of the county's obligation for tuition paid under the provisions of 20-5-324(6) ~~and (7)~~ through (8).

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments."

NEW SECTION. **Section 18. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

NEW SECTION. **Section 19. Effective date -- applicability.** [This act] is effective July 1, 2005, and applies to school budgets for school fiscal years beginning on or after July 1, 2006.

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