

HOUSE BILL NO. 206

INTRODUCED BY D. BEDEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TUITION AND IN-STATE TREATMENT LAWS; ESTABLISHING A TUITION PER-ANB AMOUNT THAT REFLECTS UPDATES TO THE SCHOOL FUNDING FORMULA; REQUIRING THE DISTRICT OF RESIDENCE TO CONTRIBUTE A PORTION OF THE TUITION COSTS FOR PUPILS PLACED IN GROUP HOMES OR FOSTER CARE AND FOR A PORTION OF THE EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC HOSPITALS AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; REVISING FUNDING FOR THE EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC HOSPITALS AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 20-5-323, 20-5-324, 20-7-403, 20-7-420, 20-7-435, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 20-5-323, MCA, is amended to read:

"20-5-323. Tuition and transportation rates. (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the ~~per-ANB maximum rate established in 20-9-306~~ tuition per-ANB amount for the year of attendance.

(2) ~~The EXCEPT FOR THE TUITION PAID BY THE DISTRICT OF RESIDENCE UNDER 20-5-324(2)(B), THE~~ tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils. THE RULES MUST PROVIDE:

(I) THAT TUITION AMOUNTS MUST BE REDUCED BY THE FUNDING GENERATED BY THE DISTRICT OF ATTENDANCE DUE TO THE CHILD'S ATTENDANCE; AND

(II) 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, person, or entity responsible for the tuition payments shall approve an agreement ~~with the district of attendance~~ for the tuition cost;

(b) for a Montana resident student, ~~80% of the maximum per-ANB rate established in 20-9-306~~ 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 section may not exceed \$2,500 per ~~ANB~~ 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:

(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 20-5-314;

(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 making the placement is responsible for the education costs resulting from the placement.

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

- 1 (a) the data for achievement payment rate under 20-9-306;
2 (b) the Indian education for all payment rate under 20-9-306; and
3 (c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-
4 321."

5
6 **Section 2.** Section 20-5-324, MCA, is amended to read:

7 **"20-5-324. Tuition report and payment provisions.** (1) ~~Following the close of each school fiscal~~
8 ~~year,~~ In order to be eligible to receive payment under subsection (2), the trustees of a district shall report to the
9 superintendent of public instruction by June 30 of each fiscal ~~THE FOLLOWING INFORMATION FOR THE CONCLUDING~~
10 SCHOOL FISCAL year:

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

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

15 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-
16 323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

17 (d) the names, districts of attendance, and amount of tuition paid by the district for resident students
18 attending public schools out of state ~~in the previous school year;~~ and

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

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

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

25 ~~(b)(ii)~~ determine the total per-ANB entitlement for which the district OF RESIDENCE would have been
26 eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the
27 prior year; and

28 ~~(c)(iii)~~ reimburse the district of residence for the state portion of the per-ANB entitlement for each

1 student reported in subsections (1)(d) and (1)(e), not to exceed the district's actual payment of tuition or fees for
2 service for the student in the previous year.

3 (b) The district of residence for each child reported under the provisions of subsection (1)(a) of this
4 section shall pay the district of attendance TWICE the MAXIMUM tuition rate under 20-5-323(1) PRORATED FOR THE
5 ACTUAL DAYS OF ENROLLMENT. The superintendent of public instruction is only responsible for any additional
6 tuition amount pursuant to 20-5-323(2) and (3).

7 (3) By August 15 following the year of attendance, the district of attendance shall notify the district of
8 residence of an obligation under subsection (2)(b). By December 31 following the year of attendance, the
9 district of residence shall pay at least one-half of any tuition obligation established under subsection (2)(b) out
10 of the money realized to date from the district tuition fund levy OR FROM THE DISTRICT'S GENERAL FUND OR ANY
11 OTHER LEGALLY AVAILABLE FUND IN THE DISCRETION OF THE TRUSTEES. The remaining tuition obligation must be
12 paid by June 15 of the school fiscal year following the year of attendance.

13 ~~(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of~~
14 ~~attendance shall submit the report required by subsection (1) within the school fiscal year following the year of~~
15 ~~attendance.~~

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

18 (5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the
19 resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has
20 approval to attend a day-treatment program under an approved individualized education program at a private,
21 nonsectarian school located in or outside of the child's district of residence, the district of residence shall
22 finance the tuition amount from the levy authorized to support the district tuition fund OR FROM THE DISTRICT'S
23 GENERAL FUND OR ANY OTHER LEGALLY AVAILABLE FUND IN THE DISCRETION OF THE TRUSTEES and any transportation
24 amount from the levy authorized to support the transportation fund OR FROM THE DISTRICT'S GENERAL FUND OR
25 ANY OTHER LEGALLY AVAILABLE FUND IN THE DISCRETION OF THE TRUSTEES.

26 (ii) By December 31 of the school fiscal year following the year of attendance, the district of residence
27 shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) ~~out~~
28 ~~of the money realized to date from the district tuition or transportation fund levy.~~ The remaining tuition and

1 transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

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

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

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

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

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

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

14 (b) When a child has approval to attend a school outside the child's district of residence because of a
15 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
16 child shall finance the tuition and transportation amount.

17 (6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts
18 to the district general fund and transportation receipts to the transportation fund.

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

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

27 (d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts
28 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.

(7) The reimbursements paid under subsection (2)~~(e)~~(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.

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

Section 3. Section 20-7-403, MCA, is amended to read:

"20-7-403. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

(9) conducting conferences, offering advice, and otherwise cooperating with parents and other

1 interested persons;

2 (10) ensuring appropriate training and instructional material for persons appointed as surrogate
3 parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation
4 to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent
5 legal assistance in implementing hearing or appeal procedures;

6 (11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that
7 each educational program for a child with a disability, including a homeless child with a disability, administered
8 within the state, including each program administered by any other agency, is under the general supervision of
9 the superintendent of public instruction, meets the education standards of the board of public education, and
10 meets the requirements of the superintendent of public instruction, reserving to the other agencies and political
11 subdivisions their full responsibilities for other aspects of the care of children needing special education or for
12 providing or paying for some or all of the costs of a free appropriate public education to a child with a disability
13 within the state;

14 (12) contracting for the delivery of audiological services to those children allowed by Montana law in
15 accordance with policies of the board of public education; and

16 (13) ~~except for those children who qualify for residential services under the Montana public mental~~
17 ~~health program pursuant to Title 53, chapter 6, contracting, pursuant to 20-7-435, with a public school district or~~
18 ~~a private residential facility for the provision of appropriate educational opportunity, including provision of a free~~
19 ~~appropriate public education for a child placed in an in-state residential treatment facility or children's~~
20 ~~psychiatric hospital, INCLUDING THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION FOR A CHILD WITH A~~
21 ~~DISABILITY."~~

22
23 **Section 4.** Section 20-7-420, MCA, is amended to read:

24 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) Except
25 for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a
26 child's district of residence for special education purposes must be determined in accordance with the
27 provisions of 1-1-215.

28 (2) The superintendent of public instruction is financially responsible for a portion of tuition and

1 transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401,
2 who attends school outside the district ~~and county~~ of residence because the student has been placed in a foster
3 care or group home licensed by the state. The superintendent of public instruction is not financially responsible
4 for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an
5 out-of-state private residential facility.

6 ~~(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential~~
7 ~~treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are~~
8 ~~provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public~~
9 ~~instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant~~
10 ~~to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must~~
11 ~~be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate~~
12 ~~under 20-7-435(3) and any per ANB amount of direct state aid, the superintendent of public instruction shall~~
13 ~~pay the remaining balance from available funds. However, the amount spent from available funds for this~~
14 ~~purpose may not exceed \$500,000 during a biennium.~~

15 ~~(4)~~(3) A state agency that makes a placement of a child with a disability is responsible for the financial
16 costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement
17 of a child with a disability is responsible for the education fees required to provide a free appropriate public
18 education that complies with the requirements of Title 20, chapter 7, part 4."

19
20 **Section 5.** Section 20-7-435, MCA, is amended to read:

21 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-**
22 **state residential treatment programs for eligible children.** (1) (A) It is the intent of the legislature that eligible
23 children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an
24 appropriate educational opportunity in a cost-effective manner, ~~including the provision of a free appropriate~~
25 ~~public education for an eligible child with a disability that is consistent with state standards for the provision of~~
26 ~~special education and related services. General education programs for eligible children without disabilities~~
27 ~~must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.~~

28 (B) AS USED IN THIS SECTION, "APPROPRIATE EDUCATIONAL OPPORTUNITY" MEANS:

1 (I) FOR AN ELIGIBLE CHILD WITHOUT A DISABILITY:

2 (A) IF PROVIDED BY A NONPUBLIC SCHOOL, AN EDUCATION PROGRAM PROVIDED IN ACCORDANCE WITH THE
3 REQUIREMENTS FOR A NONPUBLIC SCHOOL UNDER THE PROVISIONS OF 20-5-109; AND

4 (B) IF PROVIDED BY A PUBLIC SCHOOL, AN EDUCATION PROGRAM CONSISTENT WITH ACCREDITATION
5 STANDARDS PROVIDED FOR IN 20-7-111; AND

6 (II) FOR AN ELIGIBLE CHILD WITH A DISABILITY, A FREE APPROPRIATE PUBLIC EDUCATION CONSISTENT WITH
7 STATE STANDARDS FOR THE PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES.

8 (2) ~~The~~ From appropriations provided for the purposes of this section, the superintendent of public
9 instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for
10 provision of an educational program for an eligible child in the hospital or treatment facility.

11 (3) (a) Whenever the superintendent of public instruction contracts with an in-state children's
12 psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in
13 the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

14 ~~(a) —ensure~~ establish a daily rate per eligible child FOR EACH HOSPITAL OR FACILITY THAT REFLECTS
15 ACTUAL DOCUMENTED COSTS OF PROVIDING AN APPROPRIATE EDUCATIONAL OPPORTUNITY AT THAT HOSPITAL OR
16 FACILITY AND THAT EXCLUDES THE COST OF SERVICES THAT ARE ELIGIBLE FOR REIMBURSEMENT UNDER ANY PROVISION
17 OF STATE OR FEDERAL LAW OR AN INSURANCE POLICY ~~the provision of a free appropriate public education and an~~
18 ~~education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the~~
19 ~~hospital or residential treatment facility not to exceed 120%~~ 100% of the tuition per-ANB amount pursuant to AS
20 DEFINED IN 20-5-323 divided by 180.

21 (b) For each eligible child, the superintendent of public instruction shall pay the hospital or treatment
22 facility the daily rate under subsection (3)(a).

23 (c) For each eligible child, the eligible child's school district of residence shall pay the hospital or
24 treatment facility a daily rate of 20%-40% of the tuition per-ANB amount pursuant to AS DEFINED IN 20-5-323
25 divided by 180 in a manner prescribed by the superintendent of public instruction. The district of residence
26 ~~may~~ SHALL finance the tuition amount from the levy authorized to support the district tuition fund OR FROM THE
27 DISTRICT'S GENERAL FUND OR ANY OTHER LEGALLY AVAILABLE FUND IN THE DISCRETION OF THE TRUSTEES.

28 (D) AN ELIGIBLE CHILD WHOSE APPROPRIATE EDUCATIONAL OPPORTUNITY IS PROVIDED UNDER SUBSECTION

(5)(A) OR (5)(B) OF THIS SECTION MAY NOT RECEIVE FUNDING UNDER THIS SUBSECTION (3).;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition, beyond those authorized under this section, may not be charged for an eligible ~~Montana~~ child who receives ~~inpatient treatment and an education under contract with an~~ in-state children's psychiatric hospital or residential treatment facility under subsection (3) or as provided under subsection (5).

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an ~~education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part~~ APPROPRIATE EDUCATIONAL OPPORTUNITY for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall, from appropriations provided for the purposes of this section:

(a) provide for the education of AN APPROPRIATE EDUCATIONAL OPPORTUNITY FOR the eligible child utilizing qualified specialists who are employees of the office of public instruction or under contract with the office of public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance the reimbursement from the levy authorized to support the district tuition fund; or

(b) negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for OPPORTUNITY FOR ELIGIBLE children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to

~~fulfill the requirements of providing the child with an education to be paid to the district of attendance by the office of public instruction and the amount to be paid by the eligible child's district of residence are determined as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d) and (1)(e).~~

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

(7) The superintendent of public instruction may distribute funds appropriated for contracts with in-state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school districts for the purpose of supporting educational programs for children with significant behavioral or physical needs."

Section 6. Section 20-9-343, MCA, is amended to read:

"20-9-343. Definition of and revenue for state equalization aid. (1) As used in this title, the term "state equalization aid" means revenue as required in this section for:

~~(a) distribution to the public schools for guaranteed tax base aid, BASE aid, and state debt service assistance; and~~

~~(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.~~

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, and state debt service assistance, ~~and negotiated payments authorized under 20-7-420(3).~~

(3) The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) subject to 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-

1 9-342."

2

3 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2021.

4

5 NEW SECTION. **Section 8. Applicability.** [This act] applies to school fiscal years beginning on or
6 after July 1, 2021.

7

- END -