

SENATE BILL NO. 342

INTRODUCED BY S. O'BRIEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EDUCATION LAWS RELATED TO PUBLIC PRESCHOOL PROGRAMS; REVISING THE DEFINITION OF "PUPIL"; ALLOWING PRESCHOOL PUPILS TO BE INCLUDED IN AVERAGE NUMBER BELONGING CALCULATIONS; ELIMINATING THE BAR AGAINST USING STATE EQUALIZATION AID TO PROVIDE FUNDING FOR PRESCHOOL PROGRAMS; AMENDING SECTIONS 20-1-101, 20-1-301, 20-5-101, 20-7-117, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. 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) "Accreditation standards" means the body of administrative rules governing standards such as:

(a) school leadership;

(b) educational opportunity;

(c) academic requirements;

(d) program area standards;

(e) content and performance standards;

(f) school facilities and records;

(g) student assessment; and

(h) general provisions.

(2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

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

(4) "At-risk student" means any student who is affected by environmental conditions that negatively impact the student's educational performance or threaten a student's likelihood of promotion or graduation.

(5) "Average number belonging" or "ANB" means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

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

(7) "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.

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

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

(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) (a) "Educational program" means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) "K-12 career and vocational/technical education" means organized educational activities that have been approved by the office of public instruction and 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.

(13) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) "Offsite instructional setting" means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) "Principal" means 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. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(16) "Pupil" means ~~a child who is 5 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~~ an individual who is admitted by the board of trustees pursuant to 20-5-101 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. The eligibility of pupils and calculations for average number belonging are governed by 20-9-311.

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

(18) "Qualified and effective teacher or administrator" means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

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

(20) "Regular school election" or "trustee election" means the election for school board members held on the day established in 20-20-105(1).

(21) "School election" means a regular school election or any election conducted by a district or community college district for authorizing taxation, authorizing the issuance of bonds by an elementary, high school, or K-12 district, or accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

(22) "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.

(23) "Special school election" means an election held on a day other than the day of the regular school election, primary election, or general election.

(24) "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.

(25) "State university" means Montana state university-Bozeman.

(26) "Student with limited English proficiency" means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state's proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

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

(28) "System" means the Montana university system.

(29) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher

1 certificate that has been issued by the superintendent of public instruction under the provisions of this title and
2 the policies adopted by the board of public education and who is employed by a district as a member of its
3 instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an
4 emergency authorization of employment has been issued under the provisions of 20-4-111.

5 (30) "Textbook" means a book or manual used as a principal source of study material for a given class
6 or group of students.

7 (31) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to
8 sell, or offering for adoption textbooks to districts in the state.

9 (32) "Trustees" means the governing board of a district.

10 (33) "University" means the university of Montana-Missoula.

11 (34) "Vocational-technical education" means vocational-technical education of vocational-technical
12 students that is conducted by a unit of the Montana university system, a community college, or a tribally
13 controlled community college, as designated by the board of regents."
14

15 **Section 2.** Section 20-1-301, MCA, is amended to read:

16 **"20-1-301. School fiscal year.** (1) The school fiscal year begins on July 1 and ends on June 30. At
17 least the minimum aggregate hours required in subsection (2) must be conducted during each school fiscal
18 year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient. The
19 minimum aggregate hours required in subsection (2) are not required for any pupil demonstrating proficiency
20 pursuant to 20-9-311(4)(d).

21 (2) The minimum aggregate hours required by grade are:

22 (a) 360 hours for a half-time preschool or kindergarten program or 720 hours for a full-time preschool
23 or kindergarten program, as provided in 20-7-117;

24 (b) 720 hours for grades 1 through 3; and

25 (c) 1,080 hours for grades 4 through 12.

26 (3) For any elementary or high school district that fails to provide for at least the minimum aggregate
27 hours, as listed in subsections (1) and (2), to any pupil not demonstrating proficiency pursuant to 20-9-
28 311(4)(d), the superintendent of public instruction shall reduce the direct state aid for the district for that school

1 year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours
2 missed by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)."

3
4 **Section 3.** Section 20-5-101, MCA, is amended to read:

5 **"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school
6 in the district when the child is:

7 (a) 5 years of age or older on or before September 10 of the year in which the child is to enroll but is
8 not yet 19 years of age;

9 (b) a resident of the district; and

10 (c) otherwise qualified under the provisions of this title to be admitted to the school.

11 (2) The trustees of a district may assign and admit any nonresident child to a school in the district
12 under the tuition provisions of this title.

13 (3) The trustees may at their discretion assign and admit to a school in the district:

14 (a) __a child to a school in the district who is under 5 years of age or to be enrolled in a preschool or
15 kindergarten program established under 20-7-117 or in a special education program established under 20-7-
16 411;

17 (b) __an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving
18 the age provision of this section. The trustees may also admit; and

19 (c) __an individual who has graduated from high school but is not yet 19 years of age even though no
20 special circumstances exist for waiver of the age provision of this section.

21 (4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B.
22 McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The
23 trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

24 (5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in
25 accordance with the tuition provisions of this title.

26 (6) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the
27 district outside of the adopted school boundaries applicable to the child is subject to the district's grievance
28 policy. Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding

1 the assignment is final."

2
3 **Section 4.** Section 20-7-117, MCA, is amended to read:

4 **"20-7-117. Kindergarten and preschool programs.** (1) The trustees of an elementary district:

5 (a) may establish and operate a free preschool program for children 3 to 5 years of age pursuant to
6 20-5-101(3)(a); and

7 (b) __ shall establish or make available a kindergarten program capable of accommodating, at a
8 minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for
9 which the program is to be conducted or who have been enrolled by special permission at the discretion of the
10 board of trustees pursuant to 20-5-101(3)(a).

11 (2) (a) The preschool program and the kindergarten program; which the trustees may designate as
12 either a half-time or full-time program;

13 (i) __ must be an integral part of the elementary school and must be financed and governed accordingly;
14 provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have
15 reached 5 years of age on or before September 10 of the school year covered by the calculation or have been
16 enrolled by special permission of the board of trustees; ;

17 (ii) may be designated as either a half-time or a full-time program; and

18 (iii) A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-
19 301.

20 (b) A preschool program or kindergarten program that is designated as a full-time program must allow
21 a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-
22 5-102, to enroll the child half-time.

23 ~~(2) The trustees of an elementary school district may establish and operate a free preschool program~~
24 ~~for children between the ages of 3 and 5 years. When preschool programs are established, they must be an~~
25 ~~integral part of the elementary school and must be governed accordingly. Financing of preschool programs may~~
26 ~~not be supported by money available from state equalization aid."~~

27
28 **Section 5.** Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging. (1) Average

number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by

1 the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted
2 to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the
3 student has demonstrated proficiency.

4 (e) A pupil ~~in kindergarten through grade 12~~ who is concurrently enrolled in more than one public
5 school, program, or district may not be counted as more than one full-time ~~pupil enrollment~~ for ANB purposes.

6 (5) For a district that is transitioning from a half-time to a full-time preschool or kindergarten program,
7 the state superintendent shall count preschool or kindergarten enrollment in the previous year as full-time
8 enrollment for the purpose of calculating ANB for the elementary programs offering full-time preschool or
9 kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public
10 instruction shall count the preschool or kindergarten enrollment as one-half enrollment and then add the
11 additional preschool or kindergarten ANB to the 3-year average ANB for districts offering full-time preschool or
12 kindergarten.

13 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days,
14 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil
15 resumes attendance prior to the day of the enrollment count.

16 (7) ~~The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB~~
17 ~~calculations.~~ (a) A pupil in the following programs may be calculated in the ANB calculations:

18 (i) a preschool program established under 20-7-117, provided the pupil has reached 4 years of age on
19 or before September 10 of the school year;

20 (ii) a special education program for a preschool child with a disability established under 20-7-411(3); or

21 (iii) a kindergarten program established under 20-7-117, provided the pupil has reached 5 years of age
22 on or before September 10 of the school year.

23 (b) A pupil who has reached 19 years of age on or before September 10 of the school year may not
24 be included in the ANB calculations.

25 (8) The average number belonging of the regularly enrolled pupils for the public schools of a district
26 must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except
27 that:

28 (a) the ANB is calculated as a separate budget unit when:

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

- (A) 75% of the basic entitlement for the fourth year;
- (B) 50% of the basic entitlement for the fifth year; and
- (C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) when a school has been designated as nonaccredited by the board of public education because of

1 failure to meet the board of public education's assurance and performance standards, the regularly enrolled
2 pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes,
3 nor will an average number belonging for the nonaccredited school be used in determining the BASE funding
4 program for the district.

5 (9) The district shall provide the superintendent of public instruction with semiannual reports of school
6 attendance, absence, and enrollment for regularly enrolled students, using a format determined by the
7 superintendent.

8 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education
9 program provided by the district through any combination of onsite or offsite instruction may be included for
10 ANB purposes only if the pupil is offered access to the complete range of educational services for the basic
11 education program required by the accreditation standards adopted by the board of public education.

12 (b) Access to school programs and services for a student placed by the trustees in a private program
13 for special education may be limited to the programs and services specified in an approved individual education
14 plan supervised by the district.

15 (c) Access to school programs and services for a student who is incarcerated in a facility, other than a
16 youth detention center, may be limited to the programs and services provided by the district at district expense
17 under an agreement with the incarcerating facility.

18 (d) This subsection (10) may not be construed to require a school district to offer access to activities
19 governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a
20 pupil who is not otherwise eligible under the rules of the organization.

21 (11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under
22 this title and who is:

23 (a) a resident of the district or a nonresident student admitted by trustees under a student attendance
24 agreement and who is attending a school of the district;

25 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving
26 individualized educational services supervised by the district, at district expense, at a home or facility that does
27 not offer an educational program;

28 (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention

center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

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

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(13) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (13)(a) and then combined.

1 (14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

2 (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the
3 previous 2 school fiscal years; and

4 (b) dividing the sum calculated under subsection (14)(a) by three."
5

6 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2021.

7 - END -