

HOUSE BILL NO. 203

INTRODUCED BY D. BEDEY, M. BERTOGLIO

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EDUCATION LAWS RELATED TO OUT-OF-DISTRICT ATTENDANCE; REVISING OUT-OF-DISTRICT AND TUITION LAWS TO INCREASE EDUCATIONAL CHOICE AND IMPROVE TAXPAYER EQUITY; PROVIDING LIMITED CIRCUMSTANCES UNDER WHICH AN OUT-OF-DISTRICT ATTENDANCE APPLICATION MAY BE DENIED; REQUIRING THAT DISTRICTS OF RESIDENCE PAY TUITION FOR RESIDENT CHILDREN WHO ATTEND OUT OF DISTRICT; REQUIRING THE SUBMISSION OF OUT-OF-DISTRICT ATTENDANCE AGREEMENTS TO THE OFFICE OF PUBLIC INSTRUCTION; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PROVIDE AN ANNUAL REPORT; ENSURING THAT TUITION REVENUE RECEIVED BY A DISTRICT OF ATTENDANCE IS USED TO REDUCE LOCAL PROPERTY TAXES; AMENDING SECTIONS 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, AND 20-9-141, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

**"20-5-320. ~~Attendance with discretionary approval~~ Out-of-district attendance by parent or guardian request with no extenuating circumstances.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence ~~or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice~~ at the request of the child's parent or guardian as described in this section. If the trustees ~~grant discretionary approval~~ of the district of attendance approve of the child's attendance in a school of the district, the parent or guardian may be ~~charged tuition and may be charged responsible~~ responsible for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes

1 to attend.

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(B) regardless of the existence of an individualized education program,~~ expelled by another school  
2 district at any time or suspended in another school district in any of the 3 school fiscal years preceding the  
3 school fiscal year for which attendance is requested. ~~This subsection (2)(e)(iii)(B) does not apply to a student~~  
4 ~~who is eligible for special education or related services.~~

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

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

13 ~~(ii) As used in this subsection (2)(c), "entity" includes:~~

14 ~~(A) except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a~~  
15 ~~nonresident of the district of choice;~~

16 ~~(B) a parent or guardian of a student who lives in a location where one unified school system as~~  
17 ~~provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in~~  
18 ~~20-6-312 is the district of residence for grades 9-12; and~~

19 ~~(C) the trustees of the district of residence.~~

20 ~~(3) An out-of-district attendance agreement approved under this section requires that the parent or~~  
21 ~~guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district~~  
22 ~~of residence and the district of choice approve the agreement.~~

23 ~~(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not~~  
24 ~~required.~~

25 ~~(5) The trustees of a school district may approve or disapprove the out-of-district attendance~~  
26 ~~agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district~~  
27 ~~attendance agreements.~~

28 ~~(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as~~

1 the result of an appeal must authorize the child named in the agreement to enroll in and attend the school  
2 named in the agreement for the designated school year.

3 ~~(7) The trustees of the district where the child wishes to attend have the discretion to approve any~~  
4 ~~attendance agreement.~~

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

11 ~~(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a~~  
12 ~~child, at personal expense, to any school of a district other than the resident district when the trustees of the~~  
13 ~~district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed~~  
14 ~~to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be~~  
15 ~~reduced by the amount that the parent or guardian of the child paid in district property taxes during the~~  
16 ~~immediately preceding school fiscal year for the benefit and support of the district in which the child will attend~~  
17 ~~school.~~

18 ~~(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a~~  
19 ~~domestic corporation whose shares are 95% held by related family members to the sixth degree of~~  
20 ~~consanguinity or by marriage to the sixth degree of affinity.~~

21 ~~(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under~~  
22 ~~subsection (9)(a) is determined in the following manner:~~

23 ~~(i) determine the percentage of the total shares of the corporation held by the shareholder parent or~~  
24 ~~parents or guardian;~~

25 ~~(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation,~~  
26 ~~parent, or guardian for the benefit and support of the district in which the child will attend school.~~

27 ~~(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes~~  
28 ~~paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.~~

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

**Section 2.** 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 any of the following extenuating circumstances exist:

(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;

(b) (i) the child resides in a location where, because of 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(5)(a)(ii)(4)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule ~~upon~~ on a decision of the county transportation committee without an appeal being filed.

(c) (i) the child is a member of a family that is required to send another child outside of the

1 trustees of the district of attendance shall;

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

5 ~~(4)(b) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of~~  
6 ~~the district of residence shall approve or disapprove the agreement under the provisions of this part and forward~~  
7 ~~for an approved agreement, provide a copy of the completed agreement to the county superintendent of~~  
8 ~~schools of the county of residence, the trustees of the district of choice, and the parent or guardian the county~~  
9 ~~superintendent of schools of the county of attendance, and the superintendent of public instruction.~~

10 ~~(5)(4)~~ If an out-of-district attendance agreement is disapproved or no action is taken, the parent or  
11 guardian may appeal the disapproval or lack of action to the county superintendent of the district of attendance  
12 and, subsequently, to the superintendent of public instruction under the provisions for the appeal of  
13 controversies in this title pursuant to 20-3-107 and 20-3-210.

14 ~~(6)(5)~~ For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by  
15 reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for  
16 the duration of the student's enrollment in the district for that school year."

17  
18 **Section 4.** Section 20-5-323, MCA, is amended to read:

19 **"20-5-323. Tuition and transportation -- rates.** (1) Except as provided in subsections (2) through  
20 (5), whenever a child ~~has approval to attend~~ enrolls in and attends a school outside of the child's district of  
21 residence under the provisions of 20-5-320 or 20-5-321, the ~~rate of tuition charged for a Montana resident~~  
22 ~~student may not exceed 20%~~ district of residence shall pay the district of attendance ~~40%~~ 35.3% of the tuition  
23 per-ANB amount for the year of attendance as described in 20-5-324.

24 (2) Except for the tuition paid by the district of residence under 20-5-324(2)(b), the tuition for a  
25 child with a disability must be determined under rules adopted by the superintendent of public instruction for the  
26 calculation of tuition for special education pupils. The rules must provide:

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

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

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

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

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

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

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

(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:

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

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

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

- (a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);
- (b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);
- (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);
- (d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state; and
- (e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools.

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

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



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

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

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

(3) ~~By August~~ Whenever a child enrolls in and attends a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, by July 15 following the year of attendance, the district of attendance shall notify the district of residence of an obligation under ~~subsection (2)(b)~~ 20-5-323. ~~By December 31 following the year of attendance, the district of residence shall pay at least one-half of any tuition obligation established under subsection (2)(b) out of the money realized to date from the district tuition fund levy or from the district's general fund or any other legally available fund in the discretion of the trustees. The remaining tuition obligation must be paid by June 15 of the school fiscal year following the year of attendance.~~

~~(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)(4)~~ (a) (i) When a child ~~has approval to attend~~ attends a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321~~(4)(a) or (4)(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 any~~ tuition amount required under 20-5-323 from the levy authorized to support the district tuition fund or from the district's general fund or any other legally available fund in the discretion of the trustees and any transportation amount from the levy authorized to support the transportation fund or from the district's general fund or any other legally available fund in the discretion of the trustees.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of

1 residence shall pay at least one-half of any tuition and transportation obligation established under subsection  
2 ~~(5)(a)(i)~~ (4)(a)(i). The remaining tuition and transportation obligation must be paid by June 15 of the school  
3 fiscal year following the year of attendance.

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

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

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

20 ~~(6)(5)~~ (a) Except as provided in ~~subsections (6)(b) through (6)(d)~~ subsection (5)(b), the district of  
21 attendance shall anticipate and credit tuition receipts to the district general fund, to reduce the general fund net  
22 levy requirement first to the BASE budget and any remaining to the over-BASE budget pursuant to 20-9-141,  
23 and transportation receipts to the transportation fund. In order to provide local property tax reduction for the  
24 tuition amount received under 20-5-323(1), the amount of the reduction in the BASE budget mills levied as a  
25 result of anticipated tuition payments must be calculated as a final step in computing the district's general fund  
26 net BASE levy requirement pursuant to the procedure set forth in 20-9-141(2) and the district's guaranteed tax  
27 base aid must be calculated prior to the reduction in BASE mills.

28 ~~(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year~~

1 that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund  
2 and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for  
3 which the tuition was received.

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

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

13 (7)(6) The reimbursements paid under subsection (2)(a)(iii) must be deposited into the district tuition  
14 fund and must be used by the district to pay obligations for resident students attending public schools out of  
15 state or for resident students attending day-treatment programs under approved individualized education  
16 programs at private, nonsectarian schools at district expense.

17 (8)(7) The provisions of this section do not apply to out-of-state placements made by a state agency  
18 pursuant to 20-7-422.

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

22 (a) the total enrollment of the district;

23 (b) the number of nonresident students served by the district under out-of-district attendance  
24 agreements; and

25 (c) the number of resident students served by other school districts under out-of-district attendance  
26 agreements."

27  
28 **Section 6.** Section 20-9-141, MCA, is amended to read: