

## 1 HOUSE BILL NO. 214

2 INTRODUCED BY M. BERTOGLIO, D. BEDEY, J. KASSMIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EDUCATION LAWS TO ENHANCE  
 5 EDUCATIONAL OPPORTUNITIES FOR STUDENTS; REVISING DEFINITIONS TO DISTINGUISH IN-  
 6 PERSON OFFSITE INSTRUCTIONAL SETTINGS AND REMOTE INSTRUCTION AND REVISING RELATED  
 7 DEFINITIONS AND STATUTES; ~~INCLUDING REQUIRING SCHOOL DISTRICTS TO PROVIDE REMOTE~~  
 8 ~~INSTRUCTION FOR OUT-OF-DISTRICT STUDENTS AS A CIRCUMSTANCE FOR MANDATORY~~  
 9 ~~ATTENDANCE AGREEMENTS UNDER CERTAIN CONDITIONS; PROVIDING FRACTIONAL ENROLLMENT~~  
 10 ~~FOR ANB CALCULATIONS WHEN A STUDENT IS ENROLLED IN MULTIPLE SCHOOL DISTRICTS;~~  
 11 ~~ESTABLISHING SPECIFIC CONDITIONS UNDER WHICH A DISTRICT MAY PROVIDE INSTRUCTION~~  
 12 ~~ACROSS SCHOOL DISTRICT LINES;~~ AMENDING SECTIONS 20-1-101, 20-3-363, ~~20-5-321~~, 20-7-118, 20-7-  
 13 1601, AND 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

14

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

16

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

18 **"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the  
 19 following definitions apply:

- 20 (1) "Accreditation standards" means the body of administrative rules governing standards such as:
- 21 (a) school leadership;
  - 22 (b) educational opportunity;
  - 23 (c) academic requirements;
  - 24 (d) program area standards;
  - 25 (e) content and performance standards;
  - 26 (f) school facilities and records;
  - 27 (g) student assessment; and
  - 28 (h) general provisions.

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

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

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

7           (5)     "Average number belonging" or "ANB" means the average number of regularly enrolled, full-  
8 time pupils physically attending a school OF THE DISTRICT or an offsite instructional setting or receiving  
9 ~~educational services at an offsite instructional setting~~ remote instruction from the public schools of a district.

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

12          (7)     "Board of regents" means the board of regents of higher education created by Article X, section  
13 9, subsection (2), of the Montana constitution and 2-15-1505.

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

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

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

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

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

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

28          (a)     offer a sequence of courses that provide a pupil with the academic and technical knowledge

1 and skills that the pupil needs to prepare for further education and for careers in the current or emerging  
2 employment sectors; and

3 (b) include competency-based applied learning through advanced opportunities, work-based  
4 learning partnerships, and other experiential learning opportunities that contribute to the academic knowledge,  
5 higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills,  
6 and occupation-specific skills of the pupil.

7 (13) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be  
8 conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between  
9 classes and, ~~in an offsite instructional setting~~, includes time spent logging on and off ~~an offsite learning platform~~  
10 when receiving remote instruction.

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

12 (14) "Offsite instructional setting" means an instructional setting ~~at a location, separate from a main~~  
13 ~~school site, AND THAT IS AN EXTENSION OF A SCHOOL OF THE DISTRICT, LOCATED APART FROM THE SCHOOL, BUT~~  
14 WITHIN THE BOUNDARIES OF THE DISTRICT, EXCEPT AS PROVIDED IN [SECTION 5], where a school district provides ~~for~~  
15 in-person pupil instruction to a student who is enrolled in the district. A district shall comply with any rules  
16 adopted by the board of public education that specify standards for the provision of educational services at an  
17 offsite instructional setting.

18 (15) "Principal" means a person who holds a valid class 3 Montana teacher certificate with an  
19 applicable principal's endorsement that has been issued by the superintendent of public instruction under the  
20 provisions of this title and the policies adopted by the board of public education and who has been employed by  
21 a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including  
22 a principal.

23 (16) "Pupil" means an individual who is admitted by the board of trustees pursuant to 20-5-101 and  
24 who is enrolled in a school established and maintained under the laws of the state at public expense. The  
25 eligibility of pupils and calculations for average number belonging are governed by 20-9-311.

26 (17) "Pupil instruction" means the conduct of organized learning opportunities for pupils enrolled in  
27 public schools while under the supervision of a teacher. The term includes any directed, distributive,  
28 collaborative, or work-based or other experiential learning activity provided, supervised, guided, facilitated, or

1 coordinated under the supervision of a teacher that is conducted purposely to achieve content proficiency and  
 2 facilitate the acquisition of knowledge, skills, and abilities by pupils enrolled in public schools, and to otherwise  
 3 fulfill their full educational potential.

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

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

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

10 (21) "Remote instruction" means pupil instruction that occurs through virtual learning processes  
 11 incorporating distance and online learning methods that best prepare pupils to meet desired learning outcomes  
 12 as authorized in 20-7-118.

13 ~~(21)(22)~~ "School election" means a regular school election or any election conducted by a district or  
 14 community college district for authorizing taxation, authorizing the issuance of bonds by an elementary, high  
 15 school, or K-12 district, or accepting or rejecting any proposition that may be presented to the electorate for  
 16 decision in accordance with the provisions of this title.

17 ~~(22)(23)~~ "School food services" means a service of providing food for the pupils of a district on a  
 18 nonprofit basis and includes any food service financially assisted through funds or commodities provided by the  
 19 United States government.

20 (24) "SCHOOL OF THE DISTRICT" OR "SCHOOL IN THE DISTRICT" MEANS AN ACCREDITED SCHOOL OPERATED  
 21 BY THE DISTRICT THAT IS LOCATED WITHIN THE BOUNDARIES OF THE DISTRICT OPERATING THE SCHOOL.

22 ~~(23)(24)(25)~~ "Special school election" means an election held on a day other than the day of the  
 23 regular school election, primary election, or general election.

24 ~~(24)(25)(26)~~ "State board of education" means the board composed of the board of public education  
 25 and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

26 ~~(25)(26)(27)~~ "State university" means Montana state university-Bozeman.

27 ~~(26)(27)(28)~~ "Student with limited English proficiency" means any student:

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

1 English;

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

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

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

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

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

10 or

11 (iii) the opportunity to participate fully in society.

12 ~~(27)(28)(29)~~ "Superintendent of public instruction" means that state government official designated as  
13 a member of the executive branch by the Montana constitution.

14 ~~(28)(29)(30)~~ "System" means the Montana university system.

15 ~~(29)(30)(31)~~ "Teacher" means a person, except a district superintendent, who holds a valid Montana  
16 teacher certificate that has been issued by the superintendent of public instruction under the provisions of this  
17 title and the policies adopted by the board of public education and who is employed by a district as a member of  
18 its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an  
19 emergency authorization of employment has been issued under the provisions of 20-4-111.

20 ~~(30)(31)(32)~~ "Textbook" means a book, digital resource, or manual used as a principal source of study  
21 material for a given class or group of students.

22 ~~(31)(32)(33)~~ "Textbook dealer" means a party, company, corporation, or other organization selling,  
23 offering to sell, or offering for adoption textbooks to districts in the state.

24 ~~(32)(33)(34)~~ "Trustees" means the governing board of a district.

25 ~~(33)(34)(35)~~ "University" means the university of Montana-Missoula.

26 ~~(34)(35)(36)~~ "Vocational-technical education" means vocational-technical education of vocational-  
27 technical students that is conducted by a unit of the Montana university system, a community college, or a  
28 tribally controlled community college, as designated by the board of regents."

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**SECTION 2. SECTION 20-3-363, MCA, IS AMENDED TO READ:**

**"20-3-363. Multidistrict agreements -- fund transfers.** (1) (a) The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section.

(b) A multidistrict agreement may include an agreement through which one district provides culturally rooted instruction aligned to a learning environment for English language learners or an Indian language immersion program to pupils of a district participating in the multidistrict agreement. The costs and other terms of service must be reflected in the multidistrict agreement.

(c) An agreement must include provisions for dissolution of the cooperative, including the conditions under which dissolution may occur and the disposition of any remaining funds that had been transferred to an interlocal cooperative fund in support of the cooperative. An agreement must be approved by the boards of trustees of all participating districts and must include a provision specifying terms upon which a district may exit the multidistrict cooperative. The agreement may be for a period of up to 3 years.

(2) All expenditures in support of the multidistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the district's general fund, budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund. Transfers to the interlocal cooperative fund from each participating school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. Transfers from the retirement fund and debt service fund are prohibited. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the budgeted fund from which the transfer was made.

1           (4)     The intent of this section is to increase the flexibility and efficiency of school districts without an  
2 increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund  
3 supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the  
4 amount of funds transferred.

5           (5)     As used in this title, "multidistrict cooperative" means a public entity created by two or more  
6 school districts executing a multidistrict agreement under this section or any school district or other public entity  
7 participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either  
8 a coordinating or a cooperating agency."

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10           **Section 2.** Section 20-5-321, MCA, is amended to read:

11           ~~"20-5-321. Attendance with mandatory approval -- tuition and transportation. (1) An out-of-~~  
12 ~~district attendance agreement that allows a child to enroll in and attend a school in a Montana school district~~  
13 ~~that is outside of the child's district of residence or in a public school district of a state or province that is~~  
14 ~~adjacent to the county of the child's residence is mandatory whenever:~~

15           ~~(a) — the child resides closer to the school that the child wishes to attend and more than 3 miles from~~  
16 ~~the school the child would attend in the resident district and the resident district does not provide transportation;~~

17           ~~(b) — (i) the child resides in a location where, because of geographic conditions between the child's~~  
18 ~~home and the school that the child would attend within the district of residence, it is impractical to attend school~~  
19 ~~in the district of residence, as determined by the county transportation committee based on the following~~  
20 ~~criteria:~~

21           ~~(A) — the length of time that is in excess of the 1 hour limit for each bus trip for an elementary child~~  
22 ~~as authorized under 20-10-121;~~

23           ~~(B) — whether distance traveled is greater than 40 miles one way from the child's home to school on~~  
24 ~~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~~  
25 ~~over the shortest passable route; or~~

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

28           ~~(ii) — The decision of the county transportation committee is subject to appeal to the superintendent~~

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

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

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

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

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

23 ~~(f) — the child is seeking remote instruction under 20-7-118 in the nearest district when the child's~~  
 24 ~~district of residence does not provide remote instruction in an equivalent course. A course is not equivalent if~~  
 25 ~~the course does not provide the same level of advantage on successful completion, including but not limited to~~  
 26 ~~dual credit, advanced placement, and career certification.~~

27 ~~(2) — (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have~~  
 28 ~~a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall~~

1 complete an out-of-district attendance agreement in consultation with an appropriate official of the district that  
2 the child will attend.

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

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

10 (ii) — As used in this subsection (2)(c), "entity" includes:

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

13 (B) — a parent or guardian of a student who lives in a location where one unified school system as  
14 provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in  
15 20-6-312 is the district of residence for grades 9-12;

16 (C) — the trustees of the district of residence; and

17 (D) — a state agency.

18 (3) — Except as provided in subsection (4), the trustees of the resident district and the trustees of the  
19 district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of  
20 attendance shall:

21 (a) — notify the county superintendent of schools of the county of the child's residence of the  
22 approval of the agreement within 10 days; and

23 (b) — submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e)  
24 to the superintendent of public instruction for approval for payment under 20-5-324.

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

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**Section 3.** Section 20-7-118, MCA, is amended to read:

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

- (a) meeting the residency requirements for that district as provided in 1-1-215;
- (b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or
- (c) ~~attending school in~~ receiving remote instruction from the district under a mandatory attendance agreement as ~~provided in 20-5-321; or~~
- (d) ~~attending school in the nearest district offering offsite instruction that agrees to enroll the pupil when the pupil's district of residence does not provide offsite instruction in an equivalent course in which the pupil is enrolled. A course is not equivalent if the course does not provide the same level of advantage on successful completion, including but not limited to dual credit, advanced placement, and career certification. Attendance in these cases is subject to approval of the trustees of the district providing the offsite instruction.~~

SEEKING REMOTE INSTRUCTION IN THE NEAREST DISTRICT WHEN THE PUPIL'S DISTRICT OF RESIDENCE DOES NOT PROVIDE REMOTE OR IN-PERSON INSTRUCTION IN AN EQUIVALENT COURSE. A COURSE IS NOT EQUIVALENT IF THE COURSE DOES NOT PROVIDE THE SAME LEVEL OF ADVANTAGE ON SUCCESSFUL COMPLETION, INCLUDING BUT NOT LIMITED TO DUAL CREDIT, ADVANCED PLACEMENT, AND CAREER CERTIFICATION.

(2) A SCHOOL OF A DISTRICT PROVIDING REMOTE INSTRUCTION SHALL PROVIDE REMOTE INSTRUCTION TO AN OUT-OF-DISTRICT PUPIL UNDER SUBSECTION (1)(C) UNLESS, BECAUSE OF CLASS SIZE RESTRICTIONS, THE ACCREDITATION OF THE SCHOOL WOULD BE ADVERSELY IMPACTED BY PROVIDING REMOTE INSTRUCTION TO THE PUPIL.

~~(2)~~(3) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section."

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**Section 4.** Section 20-7-1601, MCA, is amended to read:

**"20-7-1601. Forms of personalized learning -- legislative intent.** The legislature finds and declares pursuant to Article X, section 1, of the 1972 Montana constitution that forms of personalized learning authorized under Montana law, including but not limited to work-based learning pursuant to 20-7-1510, proficiency under 20-9-311, determinations of course equivalency by an elected board of trustees under 20-3-324(18), ~~offsite~~ remote instruction under 20-7-118, and transformational learning, are appropriate means of fulfilling the people's goal of developing the full educational potential of each person. The provision of and participation in forms of personalized learning under this part and in compliance with accreditation standards of the board of public education are constitutionally compliant and protected. The legislature declares that any public or private regulation that discriminates against a district or pupil participating in forms of personalized learning referenced in this section is inconsistent with constitutional goals and guarantees under Article X of the Montana constitution."

**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

1 an education program:

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

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

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

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

10 (b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than  
11 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

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

14 (d) A school district may include in its calculation of ANB a pupil who is enrolled in a program  
15 providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b)  
16 if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by  
17 the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted  
18 to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the  
19 student has demonstrated proficiency.

20 (e) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public  
21 school, program, or district may not be counted as more than one full-time pupil for ANB purposes. When a  
22 pupil is concurrently enrolled in more than one district, any fractional enrollment under subsection (4)(a) must  
23 be attributed first to a pupil's nonresident district.

24 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state  
25 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose  
26 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the  
27 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten  
28 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for

1 districts offering full-time kindergarten.

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

5 (7) (a) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the  
6 ANB calculations.

7 (b) Except as provided in subsection (7)(c), a pupil who has reached 19 years of age by  
8 September 10 of the school year may not be included in the ANB calculations.

9 (c) A pupil with disabilities who is over 19 years of age and has not yet reached 21 years of age by  
10 September 10 of the school year and who is receiving special education services from a school district pursuant  
11 to 20-7-411(4)(a) may be included in the ANB calculations if:

12 (i) the student has not graduated;

13 (ii) the student is eligible for special education services and is likely to be eligible for adult services  
14 for individuals with developmental disabilities due to the significance of the student's disability; and

15 (iii) the student's individualized education program has identified transition goals that focus on  
16 preparation for living and working in the community following high school graduation since age 16 or the  
17 student's disability has increased in significance after age 16.

18 (d) A school district providing special education services pursuant to subsection (7)(c) is  
19 encouraged to collaborate with agencies and programs that serve adults with developmental disabilities in  
20 meeting the goals of a student's transition plan.

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

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

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

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

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

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

15 (A) 75% of the basic entitlement for the fourth year;

16 (B) 50% of the basic entitlement for the fifth year; and

17 (C) 25% of the basic entitlement for the sixth year.

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

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

24 (d) when a school has been designated as nonaccredited by the board of public education  
25 because of failure to meet the board of public education's assurance and performance standards, the regularly  
26 enrolled pupils attending the nonaccredited school are not eligible for average number belonging calculation  
27 purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE  
28 funding program for the district.

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

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

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

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

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

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

20           (a)     a resident of the district or a nonresident student admitted by trustees under a student  
21 attendance agreement and who is attending a school or an offsite instructional setting of the district;

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

25           (c)     unable to attend school due to the student's incarceration in a facility, other than a youth  
26 detention center, and who is receiving individualized educational services supervised by the district, at district  
27 expense, at a home or facility that does not offer an educational program;

28           (d)     receiving special education and related services, other than day treatment, under a placement

- 1 by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the  
 2 district's expense under an approved individual education plan supervised by the district;
- 3 (e) participating in the running start program at district expense under 20-9-706;
- 4 (f) receiving educational services, provided by the district, using appropriately licensed district staff  
 5 at a private residential program or private residential facility licensed by the department of public health and  
 6 human services;
- 7 (g) enrolled in an educational program or course provided at district expense using ~~electronic or~~  
 8 ~~offsite remote~~ delivery methods, including but not limited to tutoring, distance learning programs, online  
 9 programs, and technology delivered learning programs, ~~while attending a school of the district or any other~~  
 10 ~~nonsectarian offsite instructional setting with the approval of the trustees of the district~~ OR UNDER THE  
 11 PROVISIONS OF [SECTION 5]. The pupil shall:
- 12 (i) MUST meet the residency requirements for that district as provided in 1-1-215;
- 13 (ii) SHALL live in the district and must be eligible for educational services under the Individuals With  
 14 Disabilities Education Act or under 29 U.S.C. 794; ~~or~~
- 15 (iii) ~~attend school in the district~~ MUST be enrolled in the educational program or course under a  
 16 mandatory attendance agreement as provided in 20-5-321; OR
- 17 (IV) MUST BE RECEIVING:
- 18 (A) REMOTE INSTRUCTION UNDER 20-7-118(1)(C); OR
- 19 (B) OFFSITE INSTRUCTION UNDER [SECTION 5].
- 20 (h) a resident of the district attending the Montana youth challenge program or a Montana job  
 21 corps program under an interlocal agreement with the district under 20-9-707.
- 22 (12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth  
 23 challenge program participant as half-time enrollment.
- 24 (13) (a) A district may, for ANB purposes, include in the October and February enrollment counts an  
 25 individual who is otherwise eligible under this title and who during the prior school year:
- 26 (i) resided in the district;
- 27 (ii) was not enrolled in the district or was not enrolled full time; and
- 28 (iii) completed an extracurricular activity with a duration of at least 6 weeks.

1 (b) (i) Except as provided in subsection (13)(b)(ii), each completed extracurricular activity under  
 2 subsection (13)(a) may be counted as one-sixteenth enrollment for the individual, but under this subsection (13)  
 3 the individual may not be counted as more than one full-time enrollment for ANB purposes.

4 (ii) Each completed extracurricular activity lasting longer than 18 weeks may be counted as one-  
 5 eighth enrollment.

6 (c) For the purposes of this section, "extracurricular activity" means:

7 (i) a sport or activity sanctioned by an organization having jurisdiction over interscholastic  
 8 activities, contests, and tournaments;

9 (ii) an approved career and technical student organization, pursuant to 20-7-306; or

10 (iii) a school theater production.

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

15 (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum  
 16 general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the  
 17 elementary and high school programs pursuant to subsection (14)(a) and then combined.

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

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

22 (b) dividing the sum calculated under subsection (15)(a) by three."  
 23

24 ~~NEW SECTION. SECTION 5. — PROVISION OF INSTRUCTION OUTSIDE DISTRICT BOUNDARY. (1) A SCHOOL~~  
 25 ~~DISTRICT MAY ENTER INTO AN INTERLOCAL AGREEMENT PURSUANT TO TITLE 7, CHAPTER 11, OR A MULTIDISTRICT~~  
 26 ~~AGREEMENT PURSUANT TO 20-3-363 WITH ANOTHER SCHOOL DISTRICT TO PROVIDE IN-PERSON INSTRUCTION AT AN~~  
 27 ~~OFFSITE INSTRUCTIONAL SETTING LOCATED WITHIN THE BOUNDARIES OF THE DISTRICT OF RESIDENCE.~~

28 ~~(2) — AN AGREEMENT UNDER THIS SECTION MAY BE DESIGNED TO PROVIDE APPROPRIATE SUPPORT FOR OR~~

1 ~~DIRECT STUDENT ACCESS TO CULTURALLY ROOTED INSTRUCTION ALIGNED TO A LEARNING ENVIRONMENT FOR ENGLISH~~  
 2 ~~LANGUAGE LEARNERS OR AN INDIAN LANGUAGE IMMERSION PROGRAM IN THE DISTRICT OF RESIDENCE.~~

3 ~~(3) AN AGREEMENT UNDER THIS SECTION MUST:~~

4 ~~(A) AUTHORIZE THE DISTRICT OF INSTRUCTION TO LEASE OR ACQUIRE FACILITIES AND HIRE EMPLOYEES TO~~  
 5 ~~OPERATE THE OFFSITE INSTRUCTIONAL SETTING ;~~

6 ~~(B) PROVIDE THAT THE ENROLLMENT OF STUDENTS ATTENDING THE OFFSITE INSTRUCTIONAL SETTING IS~~  
 7 ~~INCLUDED IN THE ANB CALCULATIONS FOR THE DISTRICT OF INSTRUCTION AND THAT THE DISTRICT OF RESIDENCE PAY~~  
 8 ~~THE DISTRICT OF INSTRUCTION 35.3 % OF THE APPLICABLE PER-ANB MAXIMUM RATE ESTABLISHED IN 20-9-306 FOR~~  
 9 ~~EACH ANB ;~~

10 ~~(C) PROVIDE THAT THE DISTRICT OF INSTRUCTION IS RESPONSIBLE FOR ALL AGENCY REPORTING AND~~  
 11 ~~COMPLIANCE, MAINTAINING ACCREDITATION STANDARDS, AND ALL OTHER STATE OR FEDERAL MANDATES ;~~

12 ~~(D) IF THE TWO DISTRICTS ARE IN DIFFERENT COUNTIES, PROVIDE THAT THE DISTRICT OF RESIDENCE PAY~~  
 13 ~~THE DISTRICT OF INSTRUCTION AN AMOUNT EQUAL TO THE EMPLOYER CONTRIBUTION FOR RETIREMENT COSTS FOR ANY~~  
 14 ~~TEACHER AT THE OFFSITE INSTRUCTIONAL SETTING; AND~~

15 ~~(E) IF THE TWO DISTRICTS ARE SERVED BY DIFFERENT SPECIAL EDUCATION COOPERATIVES, INCLUDE A~~  
 16 ~~PROVISION, AGREEABLE TO BOTH COOPERATIVES, ADDRESSING WHICH COOPERATIVE WILL SERVE CHILDREN WITH~~  
 17 ~~DISABILITIES AT THE OFFSITE INSTRUCTIONAL SETTING AND HOW THAT COOPERATIVE WILL RECEIVE FUNDING.~~

18 ~~(4) THE DISTRICT OF RESIDENCE MAY FINANCE THE PAYMENTS UNDER THIS SECTION FROM THE LEVY~~  
 19 ~~AUTHORIZED TO SUPPORT THE DISTRICT TUITION FUND OR FROM THE DISTRICT'S GENERAL FUND OR ANY OTHER LEGALLY~~  
 20 ~~AVAILABLE FUND IN THE DISCRETION OF THE TRUSTEES. A DISTRICT OF INSTRUCTION RECEIVING PAYMENTS UNDER THIS~~  
 21 ~~SECTION SHALL ANTICIPATE AND CREDIT PAYMENTS:~~

22 ~~(A) UNDER SUBSECTION (3)(B) TO THE DISTRICT GENERAL FUND AS A SOURCE OF NONLEVY REVENUE; AND~~

23 ~~(B) UNDER SUBSECTION (3)(D) TO THE DISTRICT RETIREMENT FUND.~~

24 ~~(5) WITHIN 30 DAYS OF SIGNING AN AGREEMENT UNDER THIS SECTION, THE DISTRICT OF INSTRUCTION~~  
 25 ~~SHALL SUBMIT A COPY OF THE AGREEMENT SIGNED BY BOTH SCHOOL DISTRICTS TO THE SUPERINTENDENT OF PUBLIC~~  
 26 ~~INSTRUCTION.~~

27

28 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2023.

