

## HOUSE BILL NO. 591

INTRODUCED BY M. BLASDEL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE SPECIAL NEEDS SCHOLARSHIP PROGRAM;  
5 DESCRIBING THE STUDENTS AND SCHOOLS WHO MAY PARTICIPATE IN THE PROGRAM; REQUIRING  
6 RESPONSIBILITIES OF STUDENTS, PARENTS, SCHOOLS, AND THE SUPERINTENDENT OF PUBLIC  
7 INSTRUCTION; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE  
8 DATE."

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

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12 NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Special Needs  
13 Scholarship Program Act".

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15 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7] the following definitions  
16 apply:

17 (1) "Eligible student" means a K-12 student who has an individualized education plan and who was  
18 eligible to attend a public school during the preceding semester or is enrolling in public school for the first time.  
19 Eligible students include but are not limited to students who are mentally handicapped, speech and language  
20 impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally  
21 disturbed, specific learning disabled, autistic, or hospitalized or homebound because of illness or disability.

22 (2) "Parent" means a biological parent, adoptive parent, guardian, custodian, or other person with  
23 authority to act on behalf of the child.

24 (3) "Participating school" means a public school outside of the resident school district or any nonpublic  
25 school providing education to K-12 students that has notified the superintendent of public instruction of its intent  
26 to participate in the program and comply with the program's requirements.

27 (4) "Program" means the special needs scholarship program provided for in [sections 1 through 7].

28 (5) "School district" means the public school district in which the student resides.

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30 NEW SECTION. **Section 3. Special needs scholarship program -- elements -- limitations.** (1) A

1 parent of an eligible student who may qualify for a scholarship from the state for the parent's child to enroll in and  
2 attend a participating school may apply for a scholarship if:

3 (a) the student with special needs has an individualized education plan that meets the requirements of  
4 the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq., and its implementing regulations at 34  
5 CFR, part 300;

6 (b) the student has been accepted for admission at a participating school; and

7 (c) the parent has requested a scholarship from the superintendent of public instruction on or before the  
8 established deadline.

9 (2) The superintendent of public instruction shall notify the resident school district that a student with  
10 special needs has requested a special needs scholarship. Upon receiving notice, the resident school district shall  
11 provide the superintendent with a copy of the student's most current individualized education plan.

12 (3) Upon receipt of the eligible student's request for a scholarship, the superintendent shall review the  
13 student's individualized education plan to determine the amount of the scholarship. The superintendent shall  
14 provide the student's parent with a timely written explanation of its determination for the amount of the  
15 scholarship.

16 (4) The maximum scholarship granted to an eligible student is an amount equivalent to the cost of the  
17 educational program that would have been provided for the student in the resident school district or the amount  
18 of the participating school's estimated costs for serving the student, whichever is less. The costs of any  
19 assessment of the student's special needs by the participating school may be included in the scholarship amount.

20 (5) An eligible student is counted in the enrollment of the student's resident school district. The  
21 scholarship funds for an eligible student are provided by payments in support of special education programs  
22 under the provisions of 20-9-321. The amount of the scholarship must be subtracted from the resident school  
23 district's state payment in support of special education for the resident school district.

24 (6) Once awarded a special needs scholarship, a student is entitled to the scholarship until the student  
25 withdraws from a participating school, graduates from high school, or reaches 19 years of age, whichever occurs  
26 first.

27 (7) A student's parent may remove the student from the participating school at any time and place the  
28 student in another participating school or in a public school. The student retains the scholarship as long as the  
29 school to which the student transfers is a participating school. If a parent transfers a student between participating  
30 schools, the scholarship amount must be prorated between participating schools according to the period of

1 attendance at each school.

2 (8) A participating school may not refund, rebate, or share a student's scholarship with a parent or the  
3 student in any manner. Funds from a student's scholarship may be used only for educational purposes.

4 (9) Although receipt of a scholarship is determined by whether a student has an individualized education  
5 plan, the participating school is not required to adopt the individualized education plan. It is within the discretion  
6 of the parent and the participating school to determine the student's educational plan.

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8 **NEW SECTION. Section 4. Resident school district responsibilities.** (1) A resident school district  
9 shall annually notify the parents of a student with special needs of the special needs scholarship program and  
10 offer that student's parent an opportunity to enroll the student in a participating school of the parent's choice.

11 (2) With the prior written consent of the eligible student's parent, the resident school district shall provide  
12 a participating school that has admitted an eligible student under this program with a complete copy of the  
13 student's school records, in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
14 1232g.

15 (3) The resident school district shall provide transportation for an eligible student to and from the  
16 participating school pursuant to 20-10-123.

17 (4) The resident school district shall count the pupil in its enrollment for state aid purposes.

18 (5) If state assessments are not offered at the participating school, a parent of an eligible student  
19 participating in this program may request that the student take the statewide assessments with the resident  
20 school district. The resident school district shall inform the parents and the student as to times that the statewide  
21 assessments are offered to the resident district's students.

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23 **NEW SECTION. Section 5. Superintendent of public instruction responsibilities -- rulemaking.**

24 (1) The superintendent of public instruction shall adopt rules and procedures allowing student participation in the  
25 program that clarify:

26 (a) the eligibility and participation of participating schools, including timelines that will maximize student,  
27 public, and private school participation;

28 (b) the calculation and distribution of scholarships to eligible students and participating schools; and

29 (c) the application and approval procedures for eligible students and participating schools.

30 (2) The superintendent of public instruction may exclude a school from participation in the program if the

1 superintendent establishes that the participating school has:

2 (a) intentionally and substantially misrepresented information required under [section 6];

3 (b) routinely failed to comply with the accountability standards established in [section 6];

4 (c) failed to comply with [section 3(8)]; or

5 (d) failed to refund to the state any scholarship overpayments in a timely manner.

6 (3) If the superintendent of public instruction excludes a school from the program, the superintendent  
7 shall notify eligible students and parents of this decision within 14 days. Participating students attending a school  
8 excluded by the superintendent of public instruction retain scholarship program eligibility to attend another  
9 participating school.

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11 NEW SECTION. **Section 6. Accountability standards for participating schools.** (1) To ensure that  
12 students are treated fairly and safely, all nonpublic participating schools shall:

13 (a) comply with applicable local health and safety regulations;

14 (b) hold a valid occupancy permit if required by the municipality;

15 (c) certify that the school complies with the nondiscrimination policies set forth in 42 U.S.C. 1981; and

16 (d) conduct criminal background checks on employees. The participating school shall exclude from  
17 employment any person not permitted by state law to work in a school or who poses a threat to the safety of  
18 students.

19 (2) To ensure that public funds are spent appropriately, all nonpublic participating schools shall  
20 demonstrate their financial accountability by:

21 (a) annually submitting to the superintendent of public instruction a financial information report for the  
22 school that complies with uniform financial accounting standards established by the superintendent of public  
23 instruction and conducted by a certified public accountant; and

24 (b) annually submitting to an audit to certify that the report to the superintendent is free of material  
25 misstatements and fairly represents the costs per pupil. The auditor's report must be limited in scope to those  
26 records that are necessary for the superintendent to make payments to participating schools on behalf of parents  
27 for special needs scholarships.

28 (3) If the school receives \$50,000 or more during the school year, the nonpublic participating school shall  
29 demonstrate the school's financial viability by annually:

30 (a) filing with the superintendent of public instruction a surety bond payable to the state in an amount

1 equal to the aggregate amount of the special needs scholarships expected to be paid during the school year to  
2 students admitted to the participating school; or

3 (b) filing with the superintendent of public instruction financial information that demonstrates the school  
4 has the ability to pay an aggregate amount equal to the amount of the special needs scholarships expected to  
5 be paid during the school year to students admitted to the participating school.

6 (4) To ensure that participating schools provide academic accountability to parents of students in the  
7 program, all participating schools shall regularly report to the parent on the student's progress.

8 (5) Except as otherwise provided in [sections 1 through 7], a nonpublic participating school is  
9 autonomous and not an agent of the state or federal government and therefore:

10 (a) neither the superintendent of public instruction nor any other state agency may regulate the  
11 educational program of a nonpublic participating school that accepts an eligible student;

12 (b) the creation of the special needs scholarship program does not expand the regulatory authority of  
13 the state, its officers, or any school district to impose any additional regulation on nonpublic participating schools  
14 beyond those reasonably necessary to enforce the requirements of the program; and

15 (c) nonpublic participating schools have the maximum freedom to provide for the educational needs of  
16 the students without governmental control.

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18 **NEW SECTION. Section 7. Student and parent responsibilities.** (1) It is the responsibility of a parent  
19 to select the child's participating school, apply for admission, and apply for a special needs scholarship.

20 (2) A student participating in the program must comply fully with a participating school's written code of  
21 conduct and must remain in attendance throughout the school year, subject to [section 3(7)], or unless excused  
22 by the school for illness or other good cause.

23 (3) A parent's decision for the student to participate in the program constitutes a private placement for  
24 purposes of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq., and its implementing  
25 regulations at 34 CFR, part 300.

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27 **NEW SECTION. Section 8. Notification to tribal governments.** The secretary of state shall send a  
28 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
29 Chippewa tribe.

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1            NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified  
2 as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 through 7].

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4            NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

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