

HOUSE BILL NO. 390

INTRODUCED BY J. MCNIVEN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE SPECIAL EDUCATION SCHOLARSHIP PROGRAM; ESTABLISHING ELIGIBILITY REQUIREMENTS FOR THE PROGRAM; REQUIRING RESPONSIBILITIES OF STUDENTS, PARENTS, EDUCATION PROVIDERS, AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; SUPERSEDING THE UNFUNDED MANDATE LAWS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Special Education Scholarship Program Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6] the following definitions apply:

(1) (a) "Education provider" means, except as provided in subsection (1)(b), a public school outside of the resident school district, nonpublic school, virtual school, registered tutor, or other education provider providing education, including expenses for education therapies, to K-12 students and that has notified the superintendent of public instruction of the education provider's intent to participate in the program and comply with the program's requirements.

(b) The term does not include a home school.

(2) "Eligible student" means a child who:

(a) has been evaluated in accordance with the regulations of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq., and its implementing regulations at 34 CFR, part 300, as having a disability and who because of the disability needs special education and related services;

(b) has an individualized education program that meets the requirements of the Individuals With Disabilities Education Act; and

(c) was eligible to attend a public school during the preceding semester or is enrolling in public school for the first time.



1 (3) "Home school" means instruction provided by a parent to the parent's child, stepchild, or ward in the
2 parent's residence.

3 (4) "Parent" means a biological or adoptive parent or other legal guardian of the child.

4 (5) "Program" means the special education scholarship program provided for in [sections 1 through 6].

5 (6) "Resident school district" means the public school district in which the student resides.

6

7 **NEW SECTION. Section 3. Special education scholarship program -- elements -- limitations.** (1)

8 A resident school district shall annually notify the parents of an eligible student of the special education
9 scholarship program.

10 (2) If a parent of an eligible student chooses to participate in the program, the parent shall notify the
11 resident school district of that choice.

12 (3) Upon written request of the eligible student's parent, the resident school district shall provide a
13 participating education provider that has enrolled an eligible student under this program with a complete copy of
14 the student's school records, in accordance with the Family Educational Rights and Privacy Act of 1974, 20
15 U.S.C. 1232g.

16 (4) The clerk of the resident school district shall distribute scholarship payments for an eligible student
17 participating in the program to a financial institution of the district's choice. The distribution must be made in four
18 equal payments on September 1, December 1, March 1, and June 1. Financial institutions accepting scholarship
19 funds shall distribute funds only to a participating education provider as directed by the parent. Upon an eligible
20 student's 20th birthday, the district shall reclaim all remaining scholarship funds for that eligible student that were
21 deposited at the financial institution.

22 (5) The resident school district shall pay from the district's general fund in four quarterly payments an
23 amount equal to 90% of the per-pupil average, but not the per-ANB average, of total school expenditures for the
24 state of Montana as determined for the previous year by the office of public instruction. Funds to be included in
25 total school expenditures must include the following:

26 (a) general fund;

27 (b) transportation;

28 (c) bus depreciation;

29 (d) food services;

30 (e) tuition;

- 1 (f) retirement;
2 (g) miscellaneous programs;
3 (h) traffic education;
4 (i) nonoperating;
5 (j) lease rental agreement;
6 (k) compensated absence fund;
7 (l) metal mines tax reserve;
8 (m) state mining impact;
9 (n) impact aid;
10 (o) litigation reserve;
11 (p) technology acquisition;
12 (q) flexibility fund;
13 (r) debt service;
14 (s) building reserve; and
15 (t) interlocal agreement.

16 (6) Once awarded the special education scholarship, a student is entitled to the scholarship from the
17 resident district until the student no longer resides in the district, graduates from high school, or reaches 19 years
18 of age, whichever occurs first.

19 (7) The resident school district shall continue to include the student in the school district's ANB
20 calculation as provided in 20-9-311 until the student no longer resides in the district, graduates high school, or
21 reaches 19 years of age, whichever occurs first.

22 (8) (a) A student's parent may remove the student from the participating education provider at any time
23 and place the student with another participating education provider or in a public school. The student retains the
24 scholarship as long as the student transfers to another participating education provider.

25 (b) If a parent transfers a student between participating education providers, the scholarship amount
26 must be prorated between participating education providers according to the period of attendance at each
27 education provider.

28 (c) If the student transfers to another public school, the resident school district will continue to count the
29 student for ANB purposes and the school accepting the student may not count the student for ANB purposes.

30 (d) If the student moves to a new resident district the student remains eligible for the scholarship. The

1 parent shall notify the new resident district that the parent has chosen to participate in the program.

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

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

9 (11) The resident school district is not responsible for the administration of or reporting of scores from
10 any statewide assessment for a student participating in the program.

11
12 **NEW SECTION. Section 4. Superintendent of public instruction responsibilities -- rules.** (1) The
13 superintendent of public instruction shall adopt rules implementing the provisions of [sections 1 through 6],
14 including rules providing for:

- 15 (a) the verification of student eligibility;
16 (b) the maintenance of a registry of participating education providers; and
17 (c) the calculation of scholarship value for participating students under [section 3].

18 (2) The superintendent of public instruction may exclude an education provider from participation in the
19 program if the superintendent establishes that the participating education provider has:

- 20 (a) intentionally and substantially misrepresented information required under [section 5];
21 (b) routinely failed to comply with the accountability standards established in [section 5];
22 (c) failed to comply with [section 3(8)]; or
23 (d) failed to refund to the resident school district any scholarship overpayments in a timely manner.

24 (3) If the superintendent of public instruction excludes an education provider from the program, the
25 superintendent shall notify eligible students and parents of this decision within 14 days. Participating students
26 enrolled with an education provider excluded by the superintendent of public instruction retain scholarship
27 program eligibility to enroll with another participating education provider.

28
29 **NEW SECTION. Section 5. Accountability standards for participating education providers.** (1) In
30 order to ensure that students are treated fairly and safely, all nonpublic participating education providers shall:

- 1 (a) comply with applicable local health and safety regulations;
- 2 (b) hold a valid occupancy permit if required by the municipality;
- 3 (c) certify that the education provider complies with the nondiscrimination policies set forth in 42 U.S.C.
- 4 1981; and
- 5 (d) require that any employee who may have unsupervised access to children be subject to a criminal
- 6 history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c).
- 7 (2) In order to ensure that public funds are spent appropriately, all nonpublic participating education
- 8 providers shall demonstrate their financial accountability by:
- 9 (a) annually submitting to the superintendent of public instruction on a form prescribed by the
- 10 superintendent a report of scholarship receipts and expenditures for services provided to participating students;
- 11 and
- 12 (b) if the superintendent of public instruction determines that an audit is needed based upon reliable
- 13 information reporting a misappropriation or mishandling of program funds, the educational provider shall submit
- 14 to an audit provided by the superintendent of public instruction to certify that the report to the superintendent is
- 15 free of material misstatements and fairly represents the costs per pupil. The auditor's report must be limited in
- 16 scope to those records that are necessary.
- 17 (3) The education provider shall annually provide proof to the financial institution of the provider's
- 18 participation in the program.
- 19 (4) In order to ensure that participating education providers provide academic accountability to parents
- 20 of students in the program, all participating education providers shall regularly report to the parent on the student's
- 21 progress, including but not limited to:
- 22 (a) appropriate annual testing; and
- 23 (b) a comprehensive annual written evaluation specifying the progress the student has made toward
- 24 specific benchmarks established for that student.
- 25 (5) Except as otherwise provided in [sections 1 through 6], a nonpublic participating education provider
- 26 is autonomous and not an agent of the state or federal government, and therefore:
- 27 (a) neither the superintendent of public instruction nor any other state agency may regulate the
- 28 educational program of a participating education provider that enrolls an eligible student;
- 29 (b) the creation of the special education scholarship program does not expand the regulatory authority
- 30 of the state, its officers, or any school district to impose any additional regulation on participating education

1 providers beyond those reasonably necessary to enforce the requirements of the program.

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3 **NEW SECTION. Section 6. Student and parent responsibilities.** (1) It is the responsibility of a parent
4 to select the child's participating education provider, request admission, apply for a special education scholarship,
5 and direct the financial institution to make payment to the participating education provider.

6 (2) A student participating in the program must comply fully with a participating education provider's
7 written code of conduct and must remain in attendance throughout the school year, subject to [section 3(8)], or
8 unless excused by the education provider for illness or other good cause.

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

12

13 **Section 7.** Section 20-9-311, MCA, is amended to read:

14 **"20-9-311. Calculation of average number belonging (ANB) -- three-year averaging.** (1) Average
15 number belonging (ANB) must be computed for each budget unit as follows:

16 (a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were
17 enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on
18 February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and
19 divide the sum by two; and

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

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

24 (3) When a school district has approval to operate less than the minimum aggregate hours under
25 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

26 (4) (a) For the purpose of calculating ANB, enrollment in an education program:

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

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

- 1 (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time
2 enrollment; and
- 3 (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.
- 4 (b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per
5 school year may not be included for purposes of ANB.
- 6 (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on
7 the hours necessary and appropriate to provide the course within a regular classroom schedule.
- 8 (d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school,
9 program, or district may not be counted as more than one full-time pupil for ANB purposes.
- 10 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
11 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose
12 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
13 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
14 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
15 districts offering full-time kindergarten.
- 16 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days,
17 the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes
18 attendance prior to the day of the enrollment count.
- 19 (7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB
20 calculations.
- 21 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a
22 district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the
23 district, except that the ANB is calculated as a separate budget unit when:
- 24 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town
25 located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled,
26 full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must
27 receive a basic entitlement for the school calculated separately from the other schools of the district;
- 28 (ii) a school of the district is located more than 20 miles from any other school of the district and
29 incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school
30 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school

1 calculated separately from the other schools of the district;

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

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

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

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

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

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

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

21 (d) a school has not been accredited by the board of public education, the regularly enrolled, full-time
22 pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes,
23 nor will an average number belonging for the nonaccredited school be used in determining the BASE funding
24 program for the district.

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

28 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program
29 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
30 only if the pupil;

1 (i) is offered access to the complete range of educational services for the basic education program
2 required by the accreditation standards adopted by the board of public education; or

3 (ii) is participating in the special education scholarship program provided for in [sections 1 through 6].

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

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

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

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

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

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

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

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

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

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

30 (g) enrolled in an educational program or course provided at district expense using electronic or offsite

1 delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
 2 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite
 3 instructional setting with the approval of the trustees of the district. The pupil shall:

- 4 (i) meet the residency requirements for that district as provided in 1-1-215;
 5 (ii) live in the district and must be eligible for educational services under the Individuals With Disabilities
 6 Education Act or under 29 U.S.C. 794; or
 7 (iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.
 8 (h) a resident of the district attending the Montana youth challenge program or a Montana job corps
 9 program under an interlocal agreement with the district under 20-9-707-; or
 10 (i) participating in the special education scholarship program provided for in [sections 1 through 6].

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

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

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

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

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

23 (b) dividing the sum calculated under subsection (14)(a) by three."
 24

25 **NEW SECTION. Section 8. Unfunded mandate laws superseded.** The provisions of [this act]
 26 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.
 27

28 **NEW SECTION. Section 9. Notification to tribal governments.** The secretary of state shall send a
 29 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 30 Chippewa tribe.

