

SENATE BILL NO. 313
INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A MONTANA ONLINE SCHOOL UNDER THE SUPERVISION OF THE BOARD OF PUBLIC EDUCATION; PROVIDING FOR A THREE-MEMBER ADVISORY BOARD APPOINTED BY THE BOARD OF PUBLIC EDUCATION AND AN EXECUTIVE DIRECTOR; AUTHORIZING CERTIFIED TEACHERS AND SPECIALISTS TO TEACH ONLINE COURSES AS INDEPENDENT CONTRACTORS; AUTHORIZING PAYMENT OF ANB TO SCHOOL DISTRICTS CONTRACTING WITH THE MONTANA ONLINE SCHOOL TO PROVIDE ELECTRONIC DELIVERY OF EDUCATIONAL COURSES TO ENROLLED STUDENTS; REQUIRING LOCAL SCHOOL DISTRICTS TO PAY A STUDENT COURSE FEE AND AN ADMINISTRATIVE FEE TO THE MONTANA ONLINE SCHOOL; REQUIRING DISTRICTS TO EVALUATE COURSES TAUGHT ELECTRONICALLY; REQUIRING THE MONTANA ONLINE SCHOOL TO PUBLISH EVALUATION RESULTS; AMENDING SECTIONS 19-20-302, 20-1-101, 20-2-121, 20-3-324, AND 39-31-306, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Montana online school -- legislative intent -- advisory board -- rules.

(1) There is a Montana online school conducted as a separate school of the state of Montana under the general supervision, direction, and control of the board of public education.

(2) It is the intent of the legislature that the online school shall provide students enrolled in kindergarten through grade 12 with supplementary courses for advancement, credit recovery, college preparation, and dual enrollment and that an enrollment preference is provided to students in rural or small schools, students attending a public school within the boundaries of a Montana Indian reservation, and students attending schools eligible for Title I funds. The parent or guardian of a student under 17 years of age shall provide written consent prior to enrollment of the student in an online school course.

(3) The Montana online school consists of:

(a) a three-member advisory board appointed by the board of public education; and

(b) a full-time executive director under contract to the board of public education and under the supervision of the advisory board. Administrative support must be provided to the executive director by the board

of public education. Office space may be provided by the department of education at the university of Montana-Missoula.

(4) The board of public education may accept donations or apply for federal grants to support the online school.

(5) The board of public education may adopt rules necessary for the maintenance and governance of the online school, including:

- (a) uniform procedures for enrollment of eligible students; and
- (b) evaluation of teachers and courses taught online.

NEW SECTION. Section 2. Duties of Montana online school and school districts -- student eligibility and enrollment -- fees -- contract teachers. (1) The Montana online school established in [section 1] shall:

(a) determine the needs of Montana's school districts and contract with one or more teachers or other providers to provide electronic delivery of courses to school districts that contract with the school for online educational services;

(b) ensure that all courses taught by the school comply with federal education mandates and state laws; and

(c) summarize the results of evaluations of each course taught by the online school and provide a copy of the results to each participating school district.

(2) A school district contracting with the Montana online school for electronic delivery of educational services:

(a) may include that student in its average number belonging calculation pursuant to 20-1-101;

(b) shall pay the online school an amount not to exceed \$600 each semester for each enrolled student, based on the actual cost of the course provided and the contractual arrangement with the online school to provide a teacher or specialist for the course;

(c) shall pay an additional 15% surcharge based on the district's total costs per student to pay the costs of the executive director and administrative costs of the online school;

(d) shall provide a distance learning facilitator within the district, who is qualified under 20-4-104, to interface with teachers and specialists providing instruction and to support students taking online courses;

(e) shall provide to the online school an evaluation of each course provided by the school on forms provided by the board of public education;

(f) shall act as the fiscal agent for contracts with the online school;

(g) shall ensure compliance with student accessibility laws; and

(h) shall provide any other related services needed for a child with a disability, as defined in 20-7-401, contracting to take online courses.

(3) For the 2006 school fiscal year, the online school may enroll up to 1,000 students who are enrolled in a public school district. The number of online courses for the 2006 school fiscal year may not exceed a maximum of 60 courses for 1,000 enrolled students.

(4) For the 2007 and subsequent school fiscal years, the board of public education, following a needs assessment for online courses by the advisory board, shall determine the maximum number of online courses to be offered and the maximum number of students that may be enrolled.

(5) A teacher or specialist providing educational services through the online school shall:

(a) meet the qualifications of 20-4-104; and

(b) provide services as an independent contractor and is not considered an active member of the teachers' retirement system for any online instructional services provided.

(6) A teacher or specialist employed full-time by a district may teach only one online course limited to 20 students. A teacher or specialist employed part-time by a district may teach the same number of online courses as the number of courses taught by a full-time teacher or specialist employed by a district, plus one additional course limited to 20 students. Teacher or specialist compensation must be based on successful course completion by students rather than the number of student registrations. A teacher or specialist may be provided with preparation materials for teaching online courses by the university of Montana-Missoula.

Section 3. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system:

(a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101, excluding a teacher or specialist certified under 20-4-106 contracting to provide educational services through the Montana online school pursuant to [sections 1 and 2];

(b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) a person employed as a speech-language pathologist, school nurse, or school psychologist or in a

teaching capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) a person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) the superintendent of public instruction or a person employed in an instructional services capacity by the office of public instruction; and

(f) a person elected to the office of county superintendent of schools.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher or a part-time teacher's aide:

(i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or

(ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).

(b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.

(c) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(d) A person employed as a part-time teacher's aide on July 1, 2001, who is not a member of the

retirement system shall file an irrevocable written election as required by subsection (4)(a)(i) on the first day of employment as a part-time teacher's aide after July 1, 2001.

(e) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).

(f) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.

(5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-804.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.

(7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom."

Section 4. Section 20-1-101, MCA, is amended to read:

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

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

(2) "Average number belonging" or "ANB" means:

(a) the average number of regularly enrolled, full-time pupils attending the public schools of a district; or
(b) subject to the provisions of [sections 1 and 2], pupils, physically present or not, to whom the district provides education from its approved curriculum through the electronic delivery of programming under the supervision of a certified teacher and in compliance with the standards promulgated by the superintendent of public instruction.

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

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

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

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

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

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

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

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

(10) "Pupil" means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education -- powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

- (3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;
- (4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;
- (5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;
- (6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;
- (7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;
- (8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;
- (9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;
- (10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;
- (11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;
- (12) adopt rules for student assessment in the public schools; ~~and~~
- (13) supervise and provide administrative support to the Montana online school established in [section 1]; and
- ~~(13)~~(14) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 6. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

- (1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;
- (2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered

necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) subject to 15-10-420, establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(26) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(27) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(28) consider and, if advisable for a high school or K-12 district, establish a student financial institution,

as defined in 32-1-115; ~~and~~

(29) provide services for the Montana online school pursuant to the requirements of [sections 1 and 2];

and

~~(29)(30)~~ perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 7. Section 39-31-306, MCA, is amended to read:

"39-31-306. Collective bargaining agreements. (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain:

(a) a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

(b) a provision authorizing a teacher or specialist employed by the district to provide educational services as an independent contractor to the Montana online school pursuant to [sections 1 and 2]."

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 and 2] are intended to be codified

as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 and 2].

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2005, and applies to the enrollment of students in online courses by school districts on or after July 1, 2005.

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