

HOUSE BILL NO. 671  
INTRODUCED BY W. STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DEFINITION OF "AVERAGE NUMBER BELONGING" TO "ACTUAL NUMBER BELONGING"; AMENDING SECTIONS 7-2-2253, 20-1-101, 20-3-106, 20-3-205, 20-6-502, 20-6-503, 20-6-504, 20-6-506, 20-9-311, 20-9-313, 20-9-314, AND 20-9-707, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 7-2-2253, MCA, is amended to read:

**"7-2-2253. Procedure to transfer money to school and road funds.** (1) The county superintendent of schools of an old county shall furnish the county superintendent of schools of the new county with a certification of the ~~average~~ actual number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners of the old county the amount due. The board of the old county shall order a warrant drawn on the treasury of the old county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county and taken from the old county.

(2) The county treasurer shall certify to the county commissioners of an old county the amount due in the different road funds. The county commissioners shall order a warrant drawn on the treasury of the old county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county and taken from the old county, which amounts ~~shall~~ must be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of ~~such~~ the district to the treasurer of the new county."

**Section 2.** 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) "Accreditation standards" means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) "Actual number belonging" or "ANB" means the actual number of regularly enrolled, full-time pupils physically attending or receiving educational services from the public schools of a district as compiled on a class-by-class and day-by-day basis. Pupils with valid medical or parental excuses must be included for purposes of calculating actual number belonging.

~~(2)~~(3) "Aggregate hours" means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

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

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

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

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

(7) "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.

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

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

(10) "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.

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

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

(12) "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.

(13) (a) "Minimum aggregate hours" means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

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

(14) "Offsite instructional setting" means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) "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.

(16) "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 who 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~~ actual 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.

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

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

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

(20) "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.

(21) "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.

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

(23) "Student with limited English proficiency" means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;  
(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual's level of English proficiency; or

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

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

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

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

(iii) the opportunity to participate fully in society.

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

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

(26) "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.

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

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

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

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

(31) "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 3.** Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools -- powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county

superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the ~~average~~ actual number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(18) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(19) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(20) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(21) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(22) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(23) administer the traffic education program in accordance with the provisions of 20-7-502;

(24) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(25) review school building plans and specifications in accordance with the provisions of 20-6-622;

(26) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

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

(28) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(29) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 4.** Section 20-3-205, MCA, is amended to read:

**"20-3-205. Powers and duties.** (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) ~~estimate~~ calculate the ~~average~~ actual number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions

of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(m) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(n) act on any request to transfer ~~average~~ actual number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);

(o) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(p) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(q) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(r) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(s) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(t) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(u) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(v) administer the oath of office to trustees without the receipt of pay for administering the oath;

(w) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next



superintendent;

(x) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(y) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."

**Section 5.** Section 20-6-502, MCA, is amended to read:

**"20-6-502. Opening or reopening of elementary school.** The trustees of any elementary district may open or reopen an elementary school of the district when the opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least two pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school. The petition must identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend the school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average actual number belonging (ANB) of the school would be two or more. If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.

(3) The county superintendent shall present the petition, the trustees' approval, and the county superintendent's findings on the probable ANB to the board of county commissioners for their consideration. The

board shall deny the opening or reopening of any school if the county superintendent's enrollment estimate calculation for the school is less than two ANB. In all other cases, the board may approve or disapprove the requested opening or reopening of the elementary school.

(4) (a) If the board approves a school opening or reopening, the county superintendent shall send a copy of the approval, along with the petition, the trustees' approval, and the county superintendent's estimate calculation of the probable ANB, to the superintendent of public instruction. Except under the circumstances described in subsection (4)(b), the trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school by the fourth Monday of June. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate calculation of the county superintendent for the school and the ANB amount must be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. An ANB amount may not be approved for the ensuing school fiscal year for an opening or reopening school when the request for the school has not been received by the superintendent of public instruction by June 1.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school may open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of 20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made."

**Section 6.** Section 20-6-503, MCA, is amended to read:

**"20-6-503. Opening or reopening of a high school.** (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when ~~such~~ the opening or reopening has been approved by the superintendent of public instruction; ~~except that~~ when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to

open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen ~~such the~~ school by June 1 before the school fiscal year in which they intend to open or reopen the high school. ~~Such The~~ application shall state:

- (a) their reasons why the high school should be opened or reopened;
- (b) the probable enrollment of ~~such the~~ high school;
- (c) the distance and road conditions of the route to neighboring high schools;
- (d) the taxable value of the district;
- (e) the building and equipment facilities available for ~~such the~~ high school;
- (f) the planned course of instruction for ~~such the~~ high school;
- (g) the planned methods of complying with high school standards of accreditation; and
- (h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open ~~such the~~ high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall ~~estimate~~ calculate the ~~average~~ actual number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall ~~shall~~ must be used for budgeting and BASE funding program purposes.

(4) Nothing ~~herein contained shall~~ in this section may be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district."

**Section 7.** Section 20-6-504, MCA, is amended to read:

**"20-6-504. Opening of a junior high school.** (1) The trustees of any elementary district and the trustees of the high school district in which ~~such the~~ elementary district is located may open a junior high school when ~~such the~~ opening has been approved by the superintendent of public instruction; ~~;~~ except that when the high school district operates a county high school, the opening of a junior high school shall ~~shall~~ must be approved under the provisions of 20-6-505.

(2) When the trustees of ~~such the~~ districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open ~~such the~~ school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall ~~shall~~ must contain ~~such the~~ information

~~as is~~ required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open ~~such~~ the school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall ~~estimate~~ calculate the ~~average~~ average actual number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall ~~must~~ be used for budgeting and BASE funding program purposes during the ensuing school fiscal year."

**Section 8.** Section 20-6-506, MCA, is amended to read:

**"20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.** (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall ~~estimate~~ calculate the ~~average~~ average actual number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied to prorate the BASE funding program amount between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school."

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

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

(a) compute an average actual enrollment by adding a count of regularly enrolled full-time pupils who were actually enrolled each day of the school year ~~as of the first Monday in October of the prior~~ current school fiscal year to a count of regularly enrolled full-time pupils who were actually enrolled on February 1 of during 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) For the purpose of calculating ANB, enrollment in an education program:

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

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

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

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

(b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

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

(d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

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

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

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

~~(8)~~(7) The ~~average~~ actual number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils actually attending the schools of the district, except that the ANB is calculated as a separate budget unit when:

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

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

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

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

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

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

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

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

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

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time

pupils attending the nonaccredited school are not eligible for ~~average~~ actual number belonging calculation purposes, nor will an ~~average~~ actual number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

~~(9)(8)~~ The district shall provide the superintendent of public instruction with semiannual reports of daily school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

~~(10)(9)~~ (a) Except as provided in subsections ~~(10)(b)~~ (9)(b) and ~~(10)(c)~~ (9)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

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

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

(d) This subsection ~~(10)~~ (9) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

~~(11)(10)~~ A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

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

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

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

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's

expense under an approved individual education plan supervised by the district;

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

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

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending a Montana job corps program under an interlocal agreement with the district under 20-9-707.

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

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection ~~(12)(a)~~ (11)(a) and then combined.

~~(13)~~(12) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

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

(b) dividing the sum calculated under subsection ~~(13)(a)~~ (12)(a) by three."

**Section 10.** Section 20-9-313, MCA, is amended to read:

**"20-9-313. Circumstances under which regular average actual number belonging may be increased.** (1) The average actual number belonging of a school, calculated in accordance with the ANB formula



prescribed in 20-9-311, may be increased when:

(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average actual number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average actual number belonging for the high school must be established by the county superintendent's estimate calculation, after an investigation of the probable number of pupils that will attend the high school.

(c) a district anticipates an increase in the average actual number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated calculated increase in average actual number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average actual number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(e) for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

(f) a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program."

**Section 11.** Section 20-9-314, MCA, is amended to read:

**"20-9-314. Procedures for determining eligibility and amount of increased average actual number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall ~~estimate~~ calculate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the ~~average actual~~ number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the ~~average actual~~ number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the ~~estimated~~ calculated enrollment, including the factual information on which the ~~estimate~~ calculation is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the ~~estimated~~ calculated ~~average actual~~ number belonging for the ensuing ANB calculation period. After approving ~~an estimate~~ a calculation, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the ~~estimated~~ calculated enrollment exceeds the enrollment used for the budgeted ANB; and

(b) approve an increase of the ~~average actual~~ number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the ~~average actual~~ number belonging used to establish the basic entitlement and total per-ANB

entitlement for the ensuing ANB calculation period is determined using the difference between the enrollment for the ensuing school fiscal year and 106% of the enrollment used to calculate the budgeted ANB. The amount determined is the maximum allowable increase added to the average actual number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, as provided in subsection (5), using the actual enrollment in place of the ~~estimated~~ calculated enrollment. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

**Section 12.** Section 20-9-707, MCA, is amended to read:

**"20-9-707. Agreement with accredited Montana job corps program.** (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with a Montana job corps program accredited by the northwest association of schools and colleges to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average actual number belonging, in a public school in the student's district of residence. Credits taken at the accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student's district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student's district of residence. Upon accumulating the necessary credits at either a school in the district of residence or at an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending a job corps program may not claim the job corps program's facility as the

student's residence for the purposes of this section."

NEW SECTION. **Section 13. Effective date -- applicability.** [This act] is effective July 1, 2009, and applies to school fiscal years beginning on or after July 1, 2012.

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