

HOUSE BILL NO. 274

INTRODUCED BY K. KELKER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AGE REQUIREMENTS RELATED TO SCHOOL
5 ADMISSION AND FUNDING; REVISING THE DEFINITION OF "PUPIL"; ALLOWING KINDERGARTEN
6 STUDENTS AGE 5 OR OLDER TO BE ADMITTED WITHOUT SPECIAL PERMISSION OF TRUSTEES;
7 ALLOWING CERTAIN STUDENTS WITH DISABILITIES UP TO 21 YEARS OF AGE TO BE INCLUDED IN
8 AVERAGE NUMBER BELONGING CALCULATIONS; AMENDING SECTIONS 20-1-101, 20-5-101, AND
9 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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

14 **"20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following
15 definitions apply:

- 16 (1) "Accreditation standards" means the body of administrative rules governing standards such as:
17 (a) school leadership;
18 (b) educational opportunity;
19 (c) academic requirements;
20 (d) program area standards;
21 (e) content and performance standards;
22 (f) school facilities and records;
23 (g) student assessment; and
24 (h) general provisions.
- 25 (2) "Aggregate hours" means the hours of pupil instruction for which a school course or program is
26 offered or for which a pupil is enrolled.
- 27 (3) "Agricultural experiment station" means the agricultural experiment station established at Montana
28 state university-Bozeman.
- 29 (4) "At-risk student" means any student who is affected by environmental conditions that negatively
30 impact the student's educational performance or threaten a student's likelihood of promotion or graduation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 district.

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

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

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

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

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

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

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

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

28 (23) "Special school election" means an election held on a day other than the day of the regular school
29 election, primary election, or general election.

30 (24) "State board of education" means the board composed of the board of public education and the

1 board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

2 (25) "State university" means Montana state university-Bozeman.

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

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

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

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

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

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

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

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

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

16 (28) "System" means the Montana university system.

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

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

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

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

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

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

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2 **Section 2.** Section 20-5-101, MCA, is amended to read:

3 **"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school
4 in the district when the child is:

5 (a) 6 5 years of age or older on or before September 10 of the year in which the child is to enroll but is
6 not yet 19 years of age;

7 (b) a resident of the district; and

8 (c) otherwise qualified under the provisions of this title to be admitted to the school.

9 (2) The trustees of a district may assign and admit any nonresident child to a school in the district under
10 the tuition provisions of this title.

11 (3) The trustees may at their discretion assign and admit a child to a school in the district who is under
12 6 5 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit
13 waiving the age provision of this section. The trustees may also admit an individual who has graduated from high
14 school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision
15 of this section.

16 (4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney
17 Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees
18 may not require an out-of-district attendance agreement or tuition for a homeless child.

19 (5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance
20 with the tuition provisions of this title.

21 (6) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the
22 district outside of the adopted school boundaries applicable to the child is subject to the district's grievance policy.
23 Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding the
24 assignment is final."

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26 **Section 3.** Section 20-9-311, MCA, is amended to read:

27 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average number
28 belonging (ANB) must be computed for each budget unit as follows:

29 (a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as
30 of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first

1 Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day,
2 and divide the sum by two; and

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

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

7 (3) When a school district has approval to operate less than the minimum aggregate hours under
8 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

9 (4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an
10 education program:

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

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

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

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

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

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

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

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

30 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state

1 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose
2 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
3 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
4 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
5 districts offering full-time kindergarten.

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

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

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

13 (c) A pupil with disabilities who is over the age of 19 and has not yet reached 22 years of age by
14 September 10 of the school year and who is receiving special education services from a school district pursuant
15 to 20-7-411(4)(a) may be included in the ANB calculations if:

16 (i) the student has not graduated;

17 (ii) the student is eligible for special education because of a significant disability and is likely to be eligible
18 for adult services for individuals with developmental disabilities due to the significance of the student's disability;
19 and

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

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

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

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

29 (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town
30 located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled

1 pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive
2 a basic entitlement for the school calculated separately from the other schools of the district;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) dividing the sum calculated under subsection (14)(a) by three."
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28 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.
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30 **NEW SECTION. Section 5. Applicability.** [This act] applies to school years beginning on or after July

1 1, 2017.

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