

1 HOUSE BILL NO. 206  
2 INTRODUCED BY D. BEDEY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TUITION AND IN-STATE TREATMENT  
5 LAWS; ESTABLISHING A TUITION PER-ANB AMOUNT THAT REFLECTS UPDATES TO THE SCHOOL  
6 FUNDING FORMULA; REQUIRING THE DISTRICT OF RESIDENCE TO CONTRIBUTE A PORTION OF THE  
7 TUITION COSTS FOR PUPILS PLACED IN GROUP HOMES OR FOSTER CARE AND FOR A PORTION OF  
8 THE EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC  
9 HOSPITALS AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; REVISING FUNDING FOR THE  
10 EDUCATIONAL COSTS OF ELIGIBLE CHILDREN IN IN-STATE CHILDREN'S PSYCHIATRIC HOSPITALS  
11 AND IN-STATE RESIDENTIAL TREATMENT FACILITIES; PROVIDING RULEMAKING AUTHORITY;  
12 AMENDING SECTIONS 20-5-323, 20-5-324, 20-7-403, 20-7-420, 20-7-435, AND 20-9-343, MCA; AND  
13 PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **Section 1.** Section 20-5-323, MCA, is amended to read:

18 **"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (2) through (5),  
19 whenever a child has approval to attend a school outside of the child's district of residence under the provisions  
20 of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the  
21 ~~per-ANB maximum rate established in 20-9-306~~ tuition per-ANB amount for the year of attendance.

22 (2) ~~The~~ Except for the tuition paid by the district of residence under 20-5-324(2)(b), the tuition for a  
23 child with a disability must be determined under rules adopted by the superintendent of public instruction for the  
24 calculation of tuition for special education pupils. The rules must provide:

25 (i) that tuition amounts must be reduced by the funding generated by the district of attendance due to  
26 the child's attendance; and

27 (ii) an option for tuition set at the actual unique costs of providing a free appropriate public education.

28 (3) The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in

1 addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who  
2 requires a program with costs that exceed the average district costs must be determined as the actual  
3 individual costs of providing that program according to the following:

4 (a) the district of attendance and the district, person, or entity responsible for the tuition payments  
5 shall approve an agreement ~~with the district of attendance~~ for the tuition cost;

6 (b) for a Montana resident student, ~~80% of the maximum per-ANB rate established in 20-9-306~~ 120%  
7 of the tuition per-ANB amount, received in the year for which the tuition charges are calculated, must be  
8 subtracted from the per-student program costs for a Montana resident student; and

9 (c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per-~~ANB~~  
10 student.

11 (4) When a child attends a public school of another state or province, the amount of daily tuition may  
12 not be greater than the average annual cost for each student in the child's district of residence. This calculation  
13 for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the  
14 preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal  
15 year. For the purposes of this subsection, the following do not apply:

16 (a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;

17 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;

18 (c) an order issued under Title 40, chapter 4, part 2; or

19 (d) out-of-state placement by a state agency.

20 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency  
21 making the placement is responsible for the education costs resulting from the placement.

22 (6) The amount, if any, charged for transportation may not exceed the lesser of the average  
23 transportation cost for each student in the child's district of residence or 35 cents a mile. The average  
24 expenditures for the district transportation fund for the preceding school fiscal year must be calculated by  
25 dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

26 (7) As used in this section, "tuition per-ANB amount" means the applicable per-ANB maximum rate  
27 established in 20-9-306, plus the sum of:

28 (a) the data for achievement payment rate under 20-9-306;

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1 (b) the Indian education for all payment rate under 20-9-306; and  
2 (c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-  
3 321."

4  
5 **Section 2.** Section 20-5-324, MCA, is amended to read:

6 **"20-5-324. Tuition report and payment provisions.** (1) ~~Following the close of each school fiscal~~  
7 ~~year,~~In order to be eligible to receive payment under subsection (2), the trustees of a district shall report to the  
8 superintendent of public instruction by June 30 of each fiscal the following information for the concluding school  
9 fiscal year:

10 (a) the name and district of residence of each child who attended a school of the district under a  
11 mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e) ~~in the~~  
12 ~~previous school year;~~

13 (b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

14 (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-  
15 323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

16 (d) the names, districts of attendance, and amount of tuition paid by the district for resident students  
17 attending public schools out of state ~~in the previous school year;~~ and

18 (e) the names, schools of attendance, and amount of tuition to be paid by the district for resident  
19 students attending day-treatment programs under approved individualized education programs at private,  
20 nonsectarian schools ~~in the previous school year.~~

21 (2) (a) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

22 ~~(a)~~(i) except as provided in subsection (2)(b) of this section, pay the district of attendance the amount  
23 of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;

24 ~~(b)~~(ii) determine the total per-ANB entitlement for which the district of residence would have been  
25 eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the  
26 prior year; and

27 ~~(c)~~(iii) reimburse the district of residence for the state portion of the per-ANB entitlement for each  
28 student reported in subsections (1)(d) and (1)(e), not to exceed the district's actual payment of tuition or fees for

1 service for the student in the previous year.

2 (b) The district of residence for each child reported under the provisions of subsection (1)(a) of this  
3 section shall pay the district of attendance twice the maximum tuition rate under 20-5-323(1) prorated for the  
4 actual days of enrollment. The superintendent of public instruction is only responsible for any additional tuition  
5 amount pursuant to 20-5-323(2) and (3).

6 (3) By August 15 following the year of attendance, the district of attendance shall notify the district of  
7 residence of an obligation under subsection (2)(b). By December 31 following the year of attendance, the  
8 district of residence shall pay at least one-half of any tuition obligation established under subsection (2)(b) out  
9 of the money realized to date from the district tuition fund levy or from the district's general fund or any other  
10 legally available fund in the discretion of the trustees. The remaining tuition obligation must be paid by June 15  
11 of the school fiscal year following the year of attendance.

12 ~~(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of~~  
13 ~~attendance shall submit the report required by subsection (1) within the school fiscal year following the year of~~  
14 ~~attendance.~~

15 (4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district  
16 placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

17 (5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the  
18 resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has  
19 approval to attend a day-treatment program under an approved individualized education program at a private,  
20 nonsectarian school located in or outside of the child's district of residence, the district of residence shall  
21 finance the tuition amount from the levy authorized to support the district tuition fund or from the district's  
22 general fund or any other legally available fund in the discretion of the trustees and any transportation amount  
23 from the levy authorized to support the transportation fund or from the district's general fund or any other legally  
24 available fund in the discretion of the trustees.

25 (ii) By December 31 of the school fiscal year following the year of attendance, the district of residence  
26 shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) ~~out~~  
27 ~~of the money realized to date from the district tuition or transportation fund levy.~~ The remaining tuition and  
28 transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

1 (iii) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a  
2 school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a  
3 free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in  
4 the district. The amount of the levy imposed for the costs associated with educating each child with a disability  
5 under this subsection (5)(a)(iii) is limited to the actual cost of service under the child's individualized education  
6 program minus:

- 7 (A) the student's state special education payment;
- 8 (B) the student's federal special education payment;
- 9 (C) the student's per-ANB amount;
- 10 (D) the prorated portion of the district's basic entitlement for each qualifying student; and
- 11 (E) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each  
12 qualifying student.

13 (b) When a child has approval to attend a school outside the child's district of residence because of a  
14 parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the  
15 child shall finance the tuition and transportation amount.

16 (6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts  
17 to the district general fund and transportation receipts to the transportation fund.

18 (b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year  
19 that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund  
20 and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for  
21 which the tuition was received.

22 (c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a  
23 disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district  
24 miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support  
25 the costs of the program for which the tuition was received.

26 (d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts  
27 of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in  
28 the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the

1 district general fund budget.

2 (7) The reimbursements paid under subsection (2)~~(e)~~(a)(iii) must be deposited into the district tuition  
3 fund and must be used by the district to pay obligations for resident students attending public schools out of  
4 state or for resident students attending day-treatment programs under approved individualized education  
5 programs at private, nonsectarian schools at district expense.

6 (8) The provisions of this section do not apply to out-of-state placements made by a state agency  
7 pursuant to 20-7-422."  
8

9 **Section 3.** Section 20-7-403, MCA, is amended to read:

10 **"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction  
11 shall supervise and coordinate the conduct of special education in the state by:

12 (1) recommending to the board of public education adoption of those policies necessary to establish a  
13 planned and coordinated program of special education in the state;

14 (2) administering the policies adopted by the board of public education;

15 (3) certifying special education teachers on the basis of the special qualifications for the teachers as  
16 prescribed by the board of public education;

17 (4) establishing procedures to be used by school district personnel in identifying a child with a  
18 disability;

19 (5) preparing appropriate technical assistance documents to assist local districts in implementing  
20 special education policies and procedures;

21 (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies  
22 in identifying the special education needs of children, in planning programs, and in admitting and discharging  
23 children from those programs;

24 (7) assisting local school districts, institutions, and other agencies in developing full-service programs  
25 for a child with a disability;

26 (8) providing technical assistance to district superintendents, principals, teachers, and trustees;

27 (9) conducting conferences, offering advice, and otherwise cooperating with parents and other  
28 interested persons;

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1 (10) ensuring appropriate training and instructional material for persons appointed as surrogate  
2 parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation  
3 to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent  
4 legal assistance in implementing hearing or appeal procedures;

5 (11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that  
6 each educational program for a child with a disability, including a homeless child with a disability, administered  
7 within the state, including each program administered by any other agency, is under the general supervision of  
8 the superintendent of public instruction, meets the education standards of the board of public education, and  
9 meets the requirements of the superintendent of public instruction, reserving to the other agencies and political  
10 subdivisions their full responsibilities for other aspects of the care of children needing special education or for  
11 providing or paying for some or all of the costs of a free appropriate public education to a child with a disability  
12 within the state;

13 (12) contracting for the delivery of audiological services to those children allowed by Montana law in  
14 accordance with policies of the board of public education; and

15 (13) ~~except for those children who qualify for residential services under the Montana public mental~~  
16 ~~health program pursuant to Title 53, chapter 6, contracting, pursuant to 20-7-435, with a public school district or~~  
17 ~~a private residential facility for the provision of appropriate educational opportunity, including provision of a free~~  
18 ~~appropriate public education~~ for a child placed in an in-state residential treatment facility or children's  
19 psychiatric hospital, including the provision of a free appropriate public education for a child with a disability."

21 **Section 4.** Section 20-7-420, MCA, is amended to read:

22 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) Except  
23 for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a  
24 child's district of residence for special education purposes must be determined in accordance with the  
25 provisions of 1-1-215.

26 (2) The superintendent of public instruction is financially responsible for a portion of tuition and  
27 transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401,  
28 who attends school outside the district ~~and county~~ of residence because the student has been placed in a foster

1 care or group home licensed by the state. The superintendent of public instruction is not financially responsible  
2 for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an  
3 out-of-state private residential facility.

4 ~~(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential~~  
5 ~~treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are~~  
6 ~~provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public~~  
7 ~~instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant~~  
8 ~~to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must~~  
9 ~~be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate~~  
10 ~~under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall~~  
11 ~~pay the remaining balance from available funds. However, the amount spent from available funds for this~~  
12 ~~purpose may not exceed \$500,000 during a biennium.~~

13 ~~(4)(3)~~ A state agency that makes a placement of a child with a disability is responsible for the financial  
14 costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement  
15 of a child with a disability is responsible for the education fees required to provide a free appropriate public  
16 education that complies with the requirements of Title 20, chapter 7, part 4."

17  
18 **Section 5.** Section 20-7-435, MCA, is amended to read:

19 **"20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-**  
20 **state residential treatment programs for eligible children.** (1) (a) It is the intent of the legislature that eligible  
21 children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an  
22 appropriate educational opportunity in a cost-effective manner, ~~including the provision of a free appropriate~~  
23 ~~public education for an eligible child with a disability that is consistent with state standards for the provision of~~  
24 ~~special education and related services. General education programs for eligible children without disabilities~~  
25 ~~must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.~~

26 (b) As used in this section, "appropriate educational opportunity" means:

27 (i) for an eligible child without a disability:

28 (A) if provided by a nonpublic school, an education program provided in accordance with the



1 requirements for a nonpublic school under the provisions of 20-5-109; and  
 2 (B) if provided by a public school, an education program consistent with accreditation standards  
 3 provided for in 20-7-111; and  
 4 (ii) for an eligible child with a disability, a free appropriate public education consistent with state  
 5 standards for the provision of special education and related services.

6 (2) The From appropriations provided for the purposes of this section, the superintendent of public  
 7 instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for  
 8 provision of an educational program for an eligible child in the hospital or treatment facility.

9 (3) (a) Whenever the superintendent of public instruction contracts with an in-state children's  
 10 psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in  
 11 the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

12 (a) —ensure establish a daily rate per eligible child for each hospital or facility that reflects actual  
 13 documented costs of providing an appropriate educational opportunity at that hospital or facility and that  
 14 excludes the cost of services that are eligible for reimbursement under any provision of state or federal law or  
 15 an insurance policy the provision of a free appropriate public education and an education that is consistent with  
 16 the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment  
 17 facility not to exceed ~~120%~~ 100% of the tuition per-ANB amount pursuant to as defined in 20-5-323 divided by  
 18 180.

19 (b) For each eligible child, the superintendent of public instruction shall pay the hospital or treatment  
 20 facility the daily rate under subsection (3)(a).

21 (c) For each eligible child, the eligible child's school district of residence shall pay the hospital or  
 22 treatment facility a daily rate of ~~20%- 40%~~ of the tuition per-ANB amount pursuant to as defined in 20-5-323  
 23 divided by 180 in a manner prescribed by the superintendent of public instruction. The district of residence may  
 24 shall finance the tuition amount from the levy authorized to support the district tuition fund or from the district's  
 25 general fund or any other legally available fund in the discretion of the trustees.

26 (d) An eligible child whose appropriate educational opportunity is provided under subsection (5)(a) or  
 27 (5)(b) of this section may not receive funding under this subsection (3).;

28 (b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for

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1 providing special education, including the costs of retirement benefits, federal social security system  
2 contributions, and unemployment compensation insurance;

3 ~~(c) from appropriations provided for this purpose, fund any approved allowable costs under this~~  
4 ~~section, with the exception of services for which reimbursement is made under any provision of state or federal~~  
5 ~~law or an insurance policy;~~

6 ~~(d) provide funding for allowable costs according to a proration based on average daily membership.~~

7 (4) A supplemental education fee or tuition, beyond those authorized under this section, may not be  
8 charged for an eligible ~~Montana~~ child who receives ~~inpatient treatment and an education under contract with an~~  
9 ~~in-state children's psychiatric hospital or residential treatment facility~~ under subsection (3) or as provided under  
10 subsection (5).

11 (5) If a children's psychiatric hospital or residential treatment facility fails to provide an ~~education in~~  
12 ~~accordance with 20-5-109 or a free appropriate public education under the provisions of this part~~ appropriate  
13 educational opportunity for an eligible child at the children's psychiatric hospital or residential treatment facility  
14 or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction  
15 shall, from appropriations provided for the purposes of this section:

16 (a) provide for ~~the education of an appropriate educational opportunity for~~ the eligible child utilizing  
17 qualified specialists who are employees of the office of public instruction or under contract with the office of  
18 public instruction for the purposes of this section. The eligible child's district of residence shall reimburse the  
19 office of public instruction at the daily rate established in subsection (3)(c). The district of residence may finance  
20 the reimbursement from the levy authorized to support the district tuition fund; or

21 (b) negotiate with the school district in which the children's psychiatric hospital or residential treatment  
22 facility is located for the supervision and implementation of an appropriate educational ~~program that is~~  
23 ~~consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for~~  
24 opportunity for eligible children attending the children's psychiatric hospital or residential treatment facility. The  
25 amount ~~negotiated with the school district must include all education and related services costs that may be~~  
26 ~~negotiated under the provisions of subsection (3) and all education and related services costs necessary to~~  
27 ~~fulfill the requirements of providing the child with an education~~ to be paid to the district of attendance by the  
28 office of public instruction and the amount to be paid by the eligible child's district of residence are determined

1 as provided in 20-5-323 and 20-5-324 for out-of-district attendance agreements approved under 20-5-321(1)(d)  
2 and (1)(e).

3 (6) Funds provided to a district under this section, including funds received under the provisions of 20-  
4 7-420:

5 (a) must be deposited in the miscellaneous programs fund of the district that provides the education  
6 program for an eligible child, regardless of the age or grade placement of the child who is served under a  
7 negotiated contract; and

8 (b) are not subject to the budget limitations in 20-9-308.

9 (7) The superintendent of public instruction may distribute funds appropriated for contracts with in-  
10 state children's psychiatric hospitals or residential treatment facilities under subsection (2) to public school  
11 districts for the purpose of supporting educational programs for children with significant behavioral or physical  
12 needs."

13

14 **Section 6.** Section 20-9-343, MCA, is amended to read:

15 **"20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term  
16 "state equalization aid" means revenue as required in this section for:

17 ~~(a) distribution to the public schools for guaranteed tax base aid, BASE aid, and state debt service~~  
18 ~~assistance; and~~

19 ~~(b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.~~

20 (2) The superintendent of public instruction may spend throughout the biennium funds appropriated  
21 for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, and state debt service  
22 assistance, ~~and negotiated payments authorized under 20-7-420(3).~~

23 (3) The following money must be paid into the guarantee account provided for in 20-9-622 for the  
24 public schools of the state as indicated:

25 (a) subject to 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

26 (b) investment income earned by investing interest and income money described in 20-9-341 and 20-  
27 9-342."

28

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67th Legislature

Drafter: Pad McCracken, 406-444-3595

HB 206.1.1

1            NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2021.

2

3            NEW SECTION. **Section 8. Applicability.** [This act] applies to school fiscal years beginning on or

4 after July 1, 2021.

5

- END -

DRAFT