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HOUSE BILL NO. 26
INTRODUCED BY M. FUNK
BY REQUEST OF THE EDUCATION INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL LAWS TO SIMPLIFY THE DEFINITION OF "PUPIL" AND ENSURE THAT OLDER STUDENTS ADMITTED AT THE DISCRETION OF TRUSTEES ARE CONSIDERED PUPILS; RELOCATING AND CLARIFYING THE PROHIBITION ON PUPILS 19 YEARS OF AGE OR OLDER BEING INCLUDED IN ANB CALCULATIONS; AMENDING SECTIONS 20-1-101 AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the ages at which children are required to be admitted to public schools and the ages at which trustees may admit children at the trustees' discretion are established in 20-5-101, MCA;

WHEREAS, eligibility for inclusion in average number belonging calculations is governed in 20-9-311, MCA; and

WHEREAS, if trustees, at their discretion, enroll an individual 19 years of age or older, that individual needs to be defined as a pupil so that other school laws apply.

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

Section 1. 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;

1 (f) school facilities and records;

2 (g) student assessment; and

3 (h) general provisions.

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

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

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

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

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

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

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

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

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

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

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

28 (12) "K-12 career and vocational/technical education" means organized educational activities that have

1 been approved by the office of public instruction and that:

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

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

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

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

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

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

20 (16) "Pupil" means ~~a child who is 5 years of age or older on or before September 10 of the year in~~
21 ~~which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3)~~
22 ~~but who has not yet reached 19 years of age and~~ an individual who is admitted by the board of trustees
23 pursuant to 20-5-101 and who is enrolled in a school established and maintained under the laws of the state at
24 public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition
25 of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled
26 under 20-5-101(3) in a school established and maintained under the laws of the state at public expense. The
27 eligibility of pupils and calculations for average number belonging are governed by 20-9-311.

28 (17) "Pupil instruction" means the conduct of organized instruction of pupils enrolled in public schools

1 while under the supervision of a teacher.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) the ability to meet the state's proficiency assessments;
2 (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or
3 (iii) the opportunity to participate fully in society.

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

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

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

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

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

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

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

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

21

22 **Section 2.** Section 20-9-311, MCA, is amended to read:

23 **"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging.** (1) Average
24 number belonging (ANB) must be computed for each budget unit as follows:

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

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

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

5 (3) When a school district has approval to operate less than the minimum aggregate hours under 20-
6 9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

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

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

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

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

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

16 (b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than
17 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

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

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

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

28 (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
8 resumes 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) A pupil who has reached 19 years of age by September 10 of the school year may not be included
12 in the ANB calculations.

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

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

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

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

25 (iii) the superintendent of public instruction approves an application not to aggregate when conditions
26 exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any
27 other condition exists that would result in an unusual hardship to the pupils of the school if they were
28 transported to another school, the number of regularly enrolled pupils of the school must be calculated

1 separately for ANB purposes and the district must receive a basic entitlement for the school calculated
2 separately from the other schools of the district; or

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

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

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

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

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

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

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

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

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

28 (b) Access to school programs and services for a student placed by the trustees in a private program

1 for special education may be limited to the programs and services specified in an approved individual education
2 plan supervised by the district.

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

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

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

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

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

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

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

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

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

26 (g) enrolled in an educational program or course provided at district expense using electronic or
27 offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
28 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite

1 instructional setting with the approval of the trustees of the district. The pupil shall:

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

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

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

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

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

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

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

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

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

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

21

22 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

23

- END -