

Amendment - 1st Reading-white - Requested by: Daniel Salomon - (S) Education and Cultural Resources

68th Legislature

Drafter: Pad McCracken, 406-444-3595

HB0203.002.002

1 HOUSE BILL NO. 203
2 INTRODUCED BY D. BEDEY, M. BERTOGLIO
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EDUCATION LAWS RELATED TO OUT-
5 OF-DISTRICT ATTENDANCE; REVISING OUT-OF-DISTRICT AND TUITION LAWS TO INCREASE
6 EDUCATIONAL CHOICE AND IMPROVE TAXPAYER EQUITY; PROVIDING LIMITED CIRCUMSTANCES
7 UNDER WHICH AN OUT-OF-DISTRICT ATTENDANCE APPLICATION MAY BE DENIED; REQUIRING THAT
8 DISTRICTS OF RESIDENCE PAY TUITION FOR RESIDENT CHILDREN WHO ATTEND OUT OF DISTRICT;
9 REQUIRING THE SUBMISSION OF OUT-OF-DISTRICT ATTENDANCE AGREEMENTS TO THE OFFICE OF
10 PUBLIC INSTRUCTION; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO PROVIDE
11 AN ANNUAL REPORT; ENSURING THAT TUITION REVENUE RECEIVED BY A DISTRICT OF
12 ATTENDANCE IS USED TO REDUCE LOCAL PROPERTY TAXES; AMENDING SECTIONS 20-5-320, 20-5-
13 321, 20-5-322, 20-5-323, 20-5-324, AND 20-9-141, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE
14 AND AN APPLICABILITY DATE."

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

17
18 **Section 1.** Section 20-5-320, MCA, is amended to read:

19 **"20-5-320. ~~Attendance with discretionary approval~~ Out-of-district attendance by parent or**
20 **guardian request with no extenuating circumstances.** (1) A child may be enrolled in and attend a school in
21 a Montana school district that is outside of the child's district of residence ~~or a public school in a district of~~
22 ~~another state or province that is adjacent to the county of the child's residence, subject to discretionary approval~~
23 ~~by the trustees of the resident district and the district of choice~~ at the request of the child's parent or guardian as
24 described in this section. If the trustees ~~grant discretionary approval~~ of the district of attendance approve of the
25 child's attendance in a school of the district, the parent or guardian may be ~~charged tuition and may be charged~~
26 responsible for transportation.

27 (2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the

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1 provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes
2 to attend.

3 (b) The application must be made on an out-of-district attendance agreement form supplied by the
4 district and developed by the superintendent of public instruction.

5 (b)—The attendance agreement must set forth the financial obligations, if any, for tuition and for costs
6 incurred for transporting the child under Title 20, chapter 10. Unless otherwise agreed by the district of
7 residence and the district of attendance, the family of a nonresident child whose application for attendance has
8 been approved is responsible for transportation of the child and the child is not an eligible transportee as
9 defined in 20-10-101. The district of attendance may discretionarily provide transportation pursuant to 20-10-
10 122.

11 (c) The trustees of the district of attendance may adopt policies for the application process,
12 including but not limited to reasonable timelines for the submission of applications.

13 (d) The trustees of the district of attendance shall serve children who are residents of the district
14 and nonresident children seeking enrollment under 20-5-321 prior to enrolling children under this section.

15 (e) In reviewing and determining whether to approve an application for attendance by a
16 nonresident child, the trustees of the district of attendance shall approve the application unless the trustees find
17 that the impact of approval of the application will negatively impact the quality of education for resident pupils by
18 grade level, by school, or in the district in the aggregate in one or more of the following ways:

19 (i) the approval would result in exceeding limits of:

20 (A) building construction standards pursuant to Title 50, chapter 60;

21 (B) capacity and ingress and egress elements, either by individual room or by school building, of
22 any fire code authorized by Title 50, chapter 3; or

23 (C) evacuation elements of the district's adopted school safety plan;

24 (ii) the approval would impede meeting goals, standards, or objectives of quality that the trustees
25 have previously adopted in a plan for continuous educational improvement required under rules adopted by the
26 board of public education; or

27 (iii) the approval would risk jeopardizing the educational quality within the district because the

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1 nonresident child who is applying was:

2 (A) truant as defined in 20-5-106 in the last school district attended; ~~or~~

3 (B) regardless of the existence of an individualized education program, expelled by another school
4 district at any time ~~or; or~~

5 (C) suspended in another school district in any of the 3 school fiscal years preceding the school
6 fiscal year for which attendance is requested. THIS SUBSECTION ~~(2)(e)(iii)(B)(2)(e)(iii)(C)~~ DOES NOT APPLY TO A
7 STUDENT WHO IS ELIGIBLE FOR SPECIAL EDUCATION OR RELATED SERVICES.

8 (f) The trustees of a district that receives more applications than the district can accommodate
9 under subsections (2)(e)(i) and (2)(e)(ii) may adopt and implement policy providing priority among the
10 applications on any rational basis that prioritizes the quality of education for students who are residents of the
11 district of attendance and the obligations of resident taxpayers.

12 (e) (i) ~~The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the~~
13 ~~district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity~~
14 ~~and may charge tuition for all students whose tuition is required to be paid by another type of entity. However,~~
15 ~~any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.~~

16 (ii) ~~As used in this subsection (2)(c), "entity" includes:~~

17 (A) ~~except as provided in subsection (2)(c)(ii)(B), a parent or guardian of a student who is a~~
18 ~~nonresident of the district of choice;~~

19 (B) ~~a parent or guardian of a student who lives in a location where one unified school system as~~
20 ~~provided in 20-6-312 is the district of residence for grades K-8 and another unified school system as provided in~~
21 ~~20-6-312 is the district of residence for grades 9-12; and~~

22 (C) ~~the trustees of the district of residence.~~

23 (3) ~~An out-of-district attendance agreement approved under this section requires that the parent or~~
24 ~~guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district~~
25 ~~of residence and the district of choice approve the agreement.~~

26 (4) ~~If the trustees of the district of choice waive tuition, approval of the resident district trustees is not~~
27 ~~required.~~

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1 ~~(5) The trustees of a school district may approve or disapprove the out-of-district attendance~~
2 ~~agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district~~
3 ~~attendance agreements.~~

4 ~~(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as~~
5 ~~the result of an appeal must authorize the child named in the agreement to enroll in and attend the school~~
6 ~~named in the agreement for the designated school year.~~

7 ~~(7) The trustees of the district where the child wishes to attend have the discretion to approve any~~
8 ~~attendance agreement.~~

9 ~~(8)~~(3) This section does not preclude the trustees of a district from approving an attendance
10 agreement for educational program offerings not provided by the resident district, such as the kindergarten or
11 grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and
12 any tuition and transportation requirement. The tuition requirements under 20-5-323 and 20-5-324 apply to
13 agreements under this subsection. For purposes of this subsection, the trustees of the resident district shall
14 initiate the out-of-district agreement.

15 ~~(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a~~
16 ~~child, at personal expense, to any school of a district other than the resident district when the trustees of the~~
17 ~~district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed~~
18 ~~to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be~~
19 ~~reduced by the amount that the parent or guardian of the child paid in district property taxes during the~~
20 ~~immediately preceding school fiscal year for the benefit and support of the district in which the child will attend~~
21 ~~school.~~

22 ~~(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a~~
23 ~~domestic corporation whose shares are 95% held by related family members to the sixth degree of~~
24 ~~consanguinity or by marriage to the sixth degree of affinity.~~

25 ~~(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under~~
26 ~~subsection (9)(a) is determined in the following manner:~~

27 ~~(i) determine the percentage of the total shares of the corporation held by the shareholder parent or~~

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1 ~~parents or guardian;~~

2 ~~(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation,~~
3 ~~parent, or guardian for the benefit and support of the district in which the child will attend school.~~

4 ~~(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes~~
5 ~~paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.~~

6 ~~(4)(4)~~ As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as
7 provided in Title 72, chapter 5, part 2."

8

9 **Section 2.** Section 20-5-321, MCA, is amended to read:

10 **"20-5-321. Attendance with mandatory approval -- tuition and transportation.** (1) An out-of-
11 district attendance agreement that allows a child to enroll in and attend a school in a Montana school district
12 that is outside of the child's district of residence or in a public school district of a state or province that is
13 adjacent to the county of the child's residence is mandatory whenever any of the following extenuating
14 circumstances exist:

15 (a) the child resides closer to the school that the child wishes to attend and more than 3 miles from
16 the school the child would attend in the resident district and the resident district does not provide transportation;

17 (b) (i) the child resides in a location where, because of geographic conditions between the child's
18 home and the school that the child would attend within the district of residence, it is impractical to attend school
19 in the district of residence, as determined by the county transportation committee based on the following
20 criteria:

21 (A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child
22 as authorized under 20-10-121;

23 (B) whether distance traveled is greater than 40 miles one way from the child's home to school on
24 a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence
25 over the shortest passable route; or

26 (C) whether the condition of the road or existence of a geographic barrier, such as a river or
27 mountain pass, causes a hazard that prohibits safe travel between the home and school.

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1 "**20-5-322. Residency determination -- notification -- appeal for attendance agreement.** (1)~~1~~
2 ~~considering an out-of-district attendance agreement~~ For the purposes of 20-5-320 through 20-5-324, except as
3 provided in 20-9-707, ~~the trustees shall determine the~~ a child's district of residence must be determined on the
4 basis of the provisions of 1-1-215.

5 (2) Within 10 days of the initial application for an agreement, the trustees of the district of ~~choice~~
6 attendance shall notify the parent or guardian of the child and the trustees of the district of residence involved in
7 the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

8 (3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the
9 trustees of the district of attendance shall:

10 (a) provide copies of the approved or disapproved attendance agreement to the parent or guardian
11 and to the child's district of residence. In the case of a disapproval, the trustees shall provide the specific
12 allowable reason for the disapproval pursuant to 20-5-320(2)(e) or 20-5-321(4) and supporting documentation.

13 (4)(b) ~~Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of~~
14 ~~the district of residence shall approve or disapprove the agreement under the provisions of this part and forward~~
15 for an approved agreement, provide a copy of the completed agreement to the county superintendent of
16 schools of the county of residence, ~~the trustees of the district of choice, and the parent or guardian~~ the county
17 superintendent of schools of the county of attendance, and the superintendent of public instruction.

18 (5)(4) If an out-of-district attendance agreement is disapproved or no action is taken, the parent or
19 guardian may appeal the disapproval or lack of action to the county superintendent of the district of attendance
20 and, subsequently, to the superintendent of public instruction under the provisions for the appeal of
21 controversies ~~in this title~~ pursuant to 20-3-107 and 20-3-210.

22 (6)(5) For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by
23 reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for
24 the duration of the student's enrollment in the district for that school year."

25

26 **Section 4.** Section 20-5-323, MCA, is amended to read:

27 "**20-5-323. Tuition and transportation -- rates.** (1) Except as provided in subsections (2) through

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1 (5), whenever a child ~~has approval to attend~~ enrolls in and attends a school outside of the child's district of
2 residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident
3 student may not exceed 20% district of residence shall pay the district of attendance 40% a percentage equal
4 to the lesser of the percentage of either school district's adopted general fund budget funded by BASE and
5 over-BASE property tax levies in the year of attendance not to exceed 35.3% of the tuition per-ANB amount for
6 the year of attendance as described in 20-5-324.

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

10 (a) that tuition amounts must be reduced by the funding generated by the district of attendance
11 due to the child's attendance; and

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

14 (3) The state-paid tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) in
15 addition to the tuition paid by the district of residence under 20-5-324(2)(b) for a student without disabilities who
16 requires a program with costs that exceed the average district costs must be determined as the actual
17 individual costs of providing that program according to the following:

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

20 (b) for a Montana resident student, 120% of the tuition per-ANB amount, received in the year for
21 which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana
22 resident student; and

23 (c) the maximum tuition rate paid to a district under this ~~section~~ subsection (3) may not exceed
24 \$2,500 per student.

25 (4) When a child attends a public school of another state or province, the amount of daily tuition
26 may not be greater than the average annual cost for each student in the child's district of residence. This
27 calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted

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1 funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding
2 school fiscal year. For the purposes of this subsection, the following do not apply:

- 3 (a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;
- 4 (b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-
5 314;
- 6 (c) an order issued under Title 40, chapter 4, part 2; or
- 7 (d) out-of-state placement by a state agency.
- 8 (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency
9 making the placement is responsible for the education costs resulting from the placement.

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

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

- 16 ~~(a) the data for achievement payment rate under 20-9-306;~~
- 17 ~~(b) the Indian education for all payment rate under 20-9-306; and~~
- 18 ~~(c) the per-ANB amounts of the instructional block grant and related services block grant under 20-
19 9-321."~~

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

22 **"20-5-324. Tuition ~~report and payment provisions~~ -- state obligations -- district obligations --**
23 **financing -- reporting.** (1) In order to be eligible to receive state reimbursement or payment under subsection
24 (2)(a), the trustees of a district shall report to the superintendent of public instruction by June 30 the following
25 information for the concluding school fiscal year:

- 26 (a) the name and district of residence of each child who attended a school of the district under a
27 mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e);